

**VOLUME 3**  
**Titles 28B through 39**

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Containing all laws of a general and permanent nature through the 2004 regular session, which adjourned sine die March 11, 2004.

# REVISED CODE OF WASHINGTON

2004 Edition

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## CERTIFICATE

The 2004 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with RCW 1.08.037, certified to comply with the current specifications of the committee.



JOHN G. SCHULTZ, Chair  
STATUTE LAW COMMITTEE

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## PREFACE

**Numbering system:** The number of each section of this code is made up of three parts, in sequence as follows: Number of title; number of chapter within the title; number of section within the chapter. Thus RCW 1.04.020 is Title 1, chapter 4, section 20. The section part of the number (.020) is initially made up of three digits, constitutes a true decimal, and provides a facility for numbering new sections to be inserted between old sections already consecutively numbered, merely by adding one or more digits at the end of the number. In most chapters of the code, sections have been numbered by tens (.010, .020, .030, .040, etc.), leaving nine vacant numbers between original sections so that for a time new sections may be inserted without extension of the section number beyond three digits.

**Citation to the Revised Code of Washington:** The code should be cited as RCW; see RCW 1.04.040. An RCW title should be cited Title 7 RCW. An RCW chapter should be cited chapter 7.24 RCW. An RCW section should be cited RCW 7.24.010. Through references should be made as RCW 7.24.010 through 7.24.100. Series of sections should be cited as RCW 7.24.010, 7.24.020, and 7.24.030.

**History of the Revised Code of Washington; Source notes:** The Revised Code of Washington was adopted by the legislature in 1950; see chapter 1.04 RCW. The original publication (1951) contained material variances from the language and organization of the session laws from which it was derived, including a variety of divisions and combinations of the session law sections. During 1953 through 1959, the Statute Law Committee, in exercise of the powers contained in chapter 1.08 RCW, completed a comprehensive study of these variances and, by means of a series of administrative orders or reenactment bills, restored each title of the code to reflect its session law source, but retaining the general codification scheme originally adopted. An audit trail of this activity has been preserved in the concluding segments of the source note of each section of the code so affected. The legislative source of each section is enclosed in brackets [ ] at the end of the section. Reference to session laws is abbreviated; thus "1891 c 23 § 1; 1854 p 99 § 135" refers to section 1, chapter 23, Laws of 1891 and section 135, page 99, Laws of 1854. "Prior" indicates a break in the statutory chain, usually a repeal and reenactment. "RRS or Rem. Supp.—" indicates the parallel citation in Remington's Revised Code, last published in 1949.

Where, before restoration, a section of this code constituted a consolidation of two or more sections of the session laws, or of sections separately numbered in Remington's, the line of derivation is shown for each component section, with each line of derivation being set off from the others by use of small Roman numerals, "(i)," "(ii)," etc.

Where, before restoration, only a part of a session law section was reflected in a particular RCW section the history note reference is followed by the word "part."

"Formerly" and its correlative form "FORMER PART OF SECTION" followed by an RCW citation preserves the record of original codification.

**Double amendments:** Some double or other multiple amendments to a section made without reference to each other are set out in the code in smaller (8-point) type. See RCW 1.12.025.

**Index:** Titles 1 through 91 are indexed in the RCW General Index. Separate indexes are provided for the Rules of Court and the State Constitution.

**Sections repealed or decodified; Disposition table:** Memorials to RCW sections repealed or decodified are tabulated in numerical order in the table entitled "Disposition of former RCW sections."

**Codification tables:** To convert a session law citation to its RCW number (for Laws of 1951 or later) consult the codification tables. A similar table is included to relate the disposition in RCW of sections of Remington's Revised Statutes.

**Errors or omissions:** (1) Where an obvious clerical error has been made in the law during the legislative process, the code reviser adds a corrected word, phrase, or punctuation mark in [brackets] for clarity. These additions do not constitute any part of the law.

(2) Although considerable care has been taken in the production of this code, within the limits of available time and facilities it is inevitable that in so large a work that there will be errors, both mechanical and of judgment. When those who use this code detect errors in particular sections, a note citing the section involved and the nature of the error may be sent to: Code Reviser, Box 40551, Legislative Building, Olympia, WA 98504-0551, so that correction may be made in a subsequent publication.

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## Chapter 28B.04 RCW DISPLACED HOMEMAKER ACT

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- 28B.04.110 Acceptance and use of contributions authorized—Qualifications.
- 28B.04.120 Discrimination prohibited.

**28B.04.010 Short title.** This chapter may be known and cited as the "displaced homemaker act." [1979 c 73 § 1.]

**28B.04.020 Legislative findings—Purpose.** (*Effective until July 1, 2005.*) The legislature finds that homemakers are an unrecognized part of the work force who make an invaluable contribution to the strength, durability, and purpose of our state.

The legislature further finds that there is an increasing number of persons in this state who, having fulfilled a role as homemaker, find themselves "displaced" in their middle years through divorce, death of spouse, disability of spouse, or other loss of family income of a spouse. As a consequence, displaced homemakers are very often left with little or no income; they are ineligible for categorical welfare assistance; they are subject to the highest rate of unemployment of any sector of the work force; they face continuing discrimination in employment because of their age and lack of recent paid work experience; they are ineligible for unemployment insurance because they have been engaged in unpaid labor in the home; they are ineligible for social security benefits because they are too young, and many never qualify because they have been divorced from the family wage earner; they may have lost beneficiaries' rights under employer's pension and health plans through divorce or death of spouse; and they are often unacceptable to private health insurance plans because of their age.

It is the purpose of this chapter to establish guidelines under which the higher education coordinating board shall contract to establish multipurpose service centers and programs to provide necessary training opportunities, counseling, and services for displaced homemakers so that they may enjoy the independence and economic security vital to a productive life. [1985 c 370 § 36; 1982 1st ex.s. c 15 § 1; 1979 c 73 § 2.]

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It is the purpose of this chapter to establish guidelines under which the state board for community and technical colleges shall contract to establish multipurpose service centers and programs to provide necessary training opportunities, counseling, and services for displaced homemakers so that they may enjoy the independence and economic security vital to a productive life. [2004 c 275 § 29; 1985 c 370 § 36; 1982 1st ex.s. c 15 § 1; 1979 c 73 § 2.]

**Effective date—2004 c 275 §§ 28-32:** "Sections 28 through 32 of this act take effect July 1, 2005." [2004 c 275 § 33.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.04.030 Definitions. (Effective until July 1, 2005.)**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the higher education coordinating board.

(2) "Center" means a multipurpose service center for displaced homemakers as described in RCW 28B.04.040.

(3) "Program" means those programs described in RCW 28B.04.050 which provide direct, outreach, and information and training services which serve the needs of displaced homemakers.

(4) "Displaced homemaker" means an individual who:

(a) Has worked in the home for ten or more years providing unsalaried household services for family members on a full-time basis; and

(b) Is not gainfully employed;

(c) Needs assistance in securing employment; and

(d) Has been dependent on the income of another family member but is no longer supported by that income, or has been dependent on federal assistance but is no longer eligible for that assistance, or is supported as the parent of minor children by public assistance or spousal support but whose children are within two years of reaching their majority. [1985 c 370 § 37; 1979 c 73 § 3.]

(2004 Ed.)

**28B.04.030 Definitions. (Effective July 1, 2005.)**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the state board for community and technical colleges.

(2) "Center" means a multipurpose service center for displaced homemakers as described in RCW 28B.04.040.

(3) "Program" means those programs described in RCW 28B.04.050 which provide direct, outreach, and information and training services which serve the needs of displaced homemakers.

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**Effective date—2004 c 275 §§ 28-32:** See note following RCW 28B.04.020.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.04.040 Multipurpose service centers—Contracts for—Rules embodying standards for—Funds for.**

(1) The board, in consultation with state and local governmental agencies, community groups, and local and national organizations concerned with displaced homemakers, shall receive applications and may contract with public or private nonprofit organizations to establish multipurpose service centers for displaced homemakers. In determining sites and administering agencies or organizations for the centers, the board shall consider the experience and capabilities of the public or private nonprofit organizations making application to provide services to a center.

(2) The board shall issue rules prescribing the standards to be met by each center in accordance with the policies set forth in this chapter. Continuing funds for the maintenance of each center shall be contingent upon the determination by the board that the center is in compliance with the contractual conditions and with the rules prescribed by the board. [1985 c 370 § 38; 1982 1st ex.s. c 15 § 2; 1979 c 73 § 4.]

**28B.04.050 Multipurpose service centers—Referral to services by—Displaced homemakers as staff.**

(1) Each center contracted for under this chapter shall include or provide information and referral to the following services:

(a) Job counseling services which shall:

(i) Be specifically designed for displaced homemakers;

(ii) Counsel displaced homemakers with respect to appropriate job opportunities; and

(iii) Take into account and build upon the skills and experience of a homemaker and emphasize job readiness as well as skill development;

(b) Job training and job placement services which shall:

(i) Emphasize short-term training programs and programs which expand upon homemaking skills and volunteer experience and which lead to gainful employment;

(ii) Develop, through cooperation with state and local government agencies and private employers, model training and placement programs for jobs in the public and private sectors;

(iii) Assist displaced homemakers in gaining admission to existing public and private job training programs and opportunities, including vocational education and apprenticeship training programs; and

(iv) Assist in identifying community needs and creating new jobs in the public and private sectors;

(c) Health counseling services, including referral to existing health programs, with respect to:

(i) General principles of preventative health care;

(ii) Health care consumer education, particularly in the selection of physicians and health care services, including, but not limited to, health maintenance organizations and health insurance;

(iii) Family health care and nutrition;

(iv) Alcohol and drug abuse; and

(v) Other related health care matters;

(d) Financial management services which provide information and assistance with respect to insurance, taxes, estate and probate problems, mortgages, loans, and other related financial matters;

(e) Educational services, including:

(i) Outreach and information about courses offering credit through secondary or postsecondary education programs, and other re-entry programs, including bilingual programming where appropriate; and

(ii) Information about such other programs as are determined to be of interest and benefit to displaced homemakers by the board;

(f) Legal counseling and referral services; and

(g) Outreach and information services with respect to federal and state employment, education, health, public assistance, and unemployment assistance programs which the board determines would be of interest and benefit to displaced homemakers.

(2) The staff positions of each multipurpose center contracted for in accordance with RCW 28B.04.040, including supervisory, technical, and administrative positions, shall, to the maximum extent possible, be filled by displaced homemakers. [1985 c 370 § 39; 1982 1st ex.s. c 15 § 3; 1979 c 73 § 5.]

#### **28B.04.060 Contracting for specific programs.**

The board may contract, where appropriate, with public or private nonprofit groups or organizations serving the needs of displaced homemakers for programs designed to:

(1) Provide direct services to displaced homemakers, including job counseling, job training and placement, health counseling, financial management, educational counseling, legal counseling, and referral services as described in RCW 28B.04.050;

(2) Provide statewide outreach and information services for displaced homemakers; and

(3) Provide training opportunities for persons serving the needs of displaced homemakers, including those persons in

areas not directly served by programs and centers established under this chapter. [1985 c 370 § 40; 1982 1st ex.s. c 15 § 4; 1979 c 73 § 6.]

#### **28B.04.080 Consultation and cooperation with other agencies—Agency report of available services and funds therefor—Board as clearinghouse for information and resources.**

(Effective until July 1, 2005.) (1) The board shall consult and cooperate with the department of social and health services; the \*state board for community college education; the superintendent of public instruction; the \*\*commission for vocational education; the employment security department; the department of labor and industries; sponsoring agencies under the federal comprehensive employment and training act (87 Stat. 839; 29 U.S.C. Sec. 801 et seq.), and any other persons or agencies as the board deems appropriate to facilitate the coordination of centers established under this chapter with existing programs of a similar nature.

(2) Annually on July 1st, each agency listed in subsection (1) of this section shall submit a description of each service or program under its jurisdiction which would support the programs and centers established by this chapter and the funds available for such support.

(3) The board shall serve as a clearinghouse for displaced homemaker information and resources and shall compile and disseminate statewide information to the centers, related agencies, and interested persons upon request. [1985 c 370 § 42; 1982 1st ex.s. c 15 § 6; 1979 c 73 § 8.]

**Reviser's note:** \*(1) The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

\*\*\*(2) The commission on vocational education and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1986, and repealed June 30, 1987. See 1983 c 197 §§ 17 and 43.

#### **28B.04.080 Consultation and cooperation with other agencies—Agency report of available services and funds therefor—Board as clearinghouse for information and resources.**

(Effective July 1, 2005.) (1) The board shall consult and cooperate with the department of social and health services; the higher education coordinating board; the superintendent of public instruction; the work force training and education coordinating board; the employment security department; the department of labor and industries; sponsoring agencies under the federal comprehensive employment and training act (87 Stat. 839; 29 U.S.C. Sec. 801 et seq.), and any other persons or agencies as the board deems appropriate to facilitate the coordination of centers established under this chapter with existing programs of a similar nature.

(2) Annually on July 1st, each agency listed in subsection (1) of this section shall submit a description of each service or program under its jurisdiction which would support the programs and centers established by this chapter and the funds available for such support.

(3) The board shall serve as a clearinghouse for displaced homemaker information and resources and shall compile and disseminate statewide information to the centers, related agencies, and interested persons upon request. [2004 c 275 § 31; 1985 c 370 § 42; 1982 1st ex.s. c 15 § 6; 1979 c 73 § 8.]

**Effective date—2004 c 275 §§ 28-32:** See note following RCW 28B.04.020.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.04.085 Displaced homemaker program advisory committee.** (*Effective until July 1, 2005.*) (1) The executive coordinator of the higher education coordinating board shall establish an advisory committee, to be known as the displaced homemaker program advisory committee.

(2) The advisory committee shall be advisory to the executive coordinator and staff of the board.

(3) Committee membership shall not exceed twenty-two persons and shall be geographically and generally representative of the state. At least one member of the advisory committee shall either be or recently have been a displaced homemaker.

(4) Functions of the advisory committee shall be:

(a) To provide advice on all aspects of administration of the displaced homemaker program, including content of program rules, guidelines, and application procedures;

(b) To assist in coordination of activities under the displaced homemaker program with related activities of other state and federal agencies, with particular emphasis on facilitation of coordinated funding. [1987 c 230 § 2.]

**Effective date—1987 c 230:** See note following RCW 36.18.010.

**28B.04.085 Displaced homemaker program advisory committee.** (*Effective July 1, 2005.*) (1) The executive coordinator of the board shall establish an advisory committee, to be known as the displaced homemaker program advisory committee.

(2) The advisory committee shall be advisory to the executive coordinator and staff of the board.

(3) Committee membership shall not exceed twenty-two persons and shall be geographically and generally representative of the state. At least one member of the advisory committee shall either be or recently have been a displaced homemaker.

(4) Functions of the advisory committee shall be:

(a) To provide advice on all aspects of administration of the displaced homemaker program, including content of program rules, guidelines, and application procedures;

(b) To assist in coordination of activities under the displaced homemaker program with related activities of other state and federal agencies, with particular emphasis on facilitation of coordinated funding. [2004 c 275 § 32; 1987 c 230 § 2.]

**Effective date—2004 c 275 §§ 28-32:** See note following RCW 28B.04.020.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Effective date—1987 c 230:** See note following RCW 36.18.010.

**28B.04.090 Considerations when awarding contracts.** In the awarding of contracts under this chapter, consideration shall be given to need, geographic location, population ratios, and the extent of existing services. [1979 c 73 § 9.]

**28B.04.100 Percentage of funding for centers or program to be provided by administering organization.** Thirty percent of the funding for the centers and programs

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under this chapter shall be provided by the organization administering the center or program. Contributions in-kind, whether materials and supplies, physical facilities, or personal services, may be considered as all or part of the funding provided by the organization. [1979 c 73 § 10.]

**28B.04.110 Acceptance and use of contributions authorized—Qualifications.** The board may, in carrying out this chapter, accept, use, and dispose of contributions of money, services, and property: PROVIDED, That funds generated within individual centers may be retained and utilized by those centers. All moneys received by the board or any employee thereof pursuant to this section shall be deposited in a depository approved by the state treasurer. Disbursements of such funds shall be on authorization of the board or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control such funds shall be subject in all respects to chapter 43.88 RCW, but no appropriation shall be required to permit expenditure of such funds. [1985 c 370 § 43; 1979 c 73 § 11.]

**28B.04.120 Discrimination prohibited.** No person in this state, on the ground of sex, age, race, color, religion, national origin, or the presence of any sensory, mental, or physical handicap, shall be excluded from participating in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this chapter. [1979 c 73 § 12.]

## Chapter 28B.06 RCW PROJECT EVEN START

### Sections

28B.06.010 Intent—Short title.

28B.06.020 Definitions.

28B.06.030 Adult literacy program—Basic skills instruction—Credit toward work and training requirement—Rules.

28B.06.040 Preference for existing programs before developing new programs.

**28B.06.010 Intent—Short title.** (1) Parents can be the most effective teachers for their children. Providing illiterate or semiliterate parents with opportunities to acquire basic skills and child development knowledge will enhance their ability to assist and support their children in the learning process, and will enhance children's learning experiences in the formal education environment by providing children with the motivation and positive home environment which contribute to enhanced academic performance.

(2) This chapter may be known and cited as project even start. [1995 c 335 § 301; 1990 c 33 § 505; 1987 c 518 § 104. Formerly RCW 28A.610.010, 28A.130.010.]

**Part headings, table of contents not law—1995 c 335:** See note following RCW 28A.150.360.

**Intent—1994 c 166; 1987 c 518:** See note following RCW 28A.215.150.

**Severability—1987 c 518:** See note following RCW 28A.215.150.

**28B.06.020 Definitions.** Unless the context clearly requires otherwise, the definition in this section shall apply throughout this chapter.

"Parent" or "parents" means a parent who has less than an eighth grade ability in one or more of the basic skill areas of reading, language arts, or mathematics, as measured by a standardized test, and who has a child or children enrolled in: (1) The state early childhood education and assistance program; (2) a federal head start program; (3) a state or federally funded elementary school basic skills program serving students who have scored below the national average on a standardized test in one or more of the basic skill areas of reading, language arts, or mathematics; or (4) a cooperative preschool at a community or technical college. [1995 c 335 § 302; 1990 c 33 § 506; 1987 c 518 § 105. Formerly RCW 28A.610.020, 28A.130.012.]

**Part headings, table of contents not law—1995 c 335:** See note following RCW 28A.150.360.

**Intent—1994 c 166; 1987 c 518:** See note following RCW 28A.215.150.

**Severability—1987 c 518:** See note following RCW 28A.215.150.

**28B.06.030 Adult literacy program—Basic skills instruction—Credit toward work and training requirement—Rules.** (1) The state board for community and technical colleges, in consultation with the department of community, trade, and economic development, the department of social and health services, the superintendent of public instruction, and community-based, nonprofit providers of adult literacy services, shall develop an adult literacy program to serve eligible parents as defined under \*RCW 28A.610.020. The program shall give priority to serving parents with children who have not yet enrolled in school or are in grades kindergarten through three.

(2) In addition to providing basic skills instruction to eligible parents, the program may include other program components which may include transportation, child care, and such other directly necessary activities as may be necessary to accomplish the purposes of this chapter.

(3) Parents who elect to participate in training or work programs, as a condition of receiving public assistance, shall have the hours spent in parent participation programs, conducted as part of a federal head start program, or the state early childhood education and assistance program under RCW 28A.215.100 through 28A.215.200 and 28A.215.900 through 28A.215.908, or parent literacy programs under this chapter, counted toward the fulfillment of their work and training obligation for the receipt of public assistance.

(4) State funds as may be appropriated for project even start shall be used solely to expand and complement, but not supplant, federal funds for adult literacy programs.

(5) The state board for community and technical colleges shall adopt rules as necessary to carry out the purposes of this chapter. [1995 c 335 § 303; 1990 c 33 § 507; 1987 c 518 § 106. Formerly RCW 28A.610.030, 28A.130.014.]

**\*Reviser's note:** RCW 28A.610.020 was recodified as RCW 28B.06.020 pursuant to 1995 c 335 § 306.

**Part headings, table of contents not law—1995 c 335:** See note following RCW 28A.150.360.

**Intent—1994 c 166; 1987 c 518:** See note following RCW 28A.215.150.

**Severability—1987 c 518:** See note following RCW 28A.215.150.

**28B.06.040 Preference for existing programs before developing new programs.** The state board for community and technical colleges is authorized and directed, whenever possible, to fund or cooperatively work with existing adult literacy programs and parenting related programs offered through the common school and community and technical college systems or community-based, nonprofit organizations to provide services for eligible parents before developing and funding new adult literacy programs to carry out the purposes of project even start. [1996 c 11 § 1; 1987 c 518 § 107. Formerly RCW 28A.610.040, 28A.130.016.]

**Intent—1994 c 166; 1987 c 518:** See note following RCW 28A.215.150.

**Severability—1987 c 518:** See note following RCW 28A.215.150.

## Chapter 28B.07 RCW

### WASHINGTON HIGHER EDUCATION FACILITIES AUTHORITY

#### Sections

- 28B.07.010 Intent.
- 28B.07.020 Definitions.
- 28B.07.030 Washington higher education facilities authority—Created—Members—Chairperson—Records—Quorum—Compensation and travel expenses.
- 28B.07.040 Powers and duties.
- 28B.07.050 Special obligation bonds—Issuance—Personal liability—Debt limit.
- 28B.07.060 Bonds—Special obligations—Payment—Funds—Segregation of proceeds and moneys.
- 28B.07.070 Agreements with participant—Participant's payment of certain costs and expenses.
- 28B.07.080 Moneys deemed trust funds—Agreement or trust indenture with bank or trust company authorized.
- 28B.07.090 Holders or owners of bonds—Trustees—Enforcement of rights—Purchase at foreclosure sale.
- 28B.07.100 Bonds are securities—Legal investments.
- 28B.07.110 Projects or financing—Exemption from certain restrictions on procedures for awarding contracts.
- 28B.07.120 Bond counsel—Selection.
- 28B.07.130 Underwriters—Selection.
- 28B.07.900 Chapter supplemental—Application of other laws.
- 28B.07.910 Construction—1983 c 169.
- 28B.07.920 Severability—1983 c 169.

**28B.07.010 Intent.** The legislature finds that the state has a vital interest in ensuring that higher education institutions are maintained in the state in sufficient numbers and located in such locations, as to be accessible to as many citizens as possible. Adequate educational opportunities are essential to the economic, intellectual, and social well-being of the state and its people. Washington's independently-governed private nonprofit higher education institutions are a necessary part of the state's higher educational resources. They provide educational diversity and choice for all residents of the communities in which they are located, communities which may not otherwise be served directly by a public baccalaureate-granting college or university.

The legislature further finds that some of the factors that contribute to educational costs are beyond the control of these higher education institutions and their governing boards. The factors include the need to modify facilities to render the facilities accessible to the handicapped or disabled, the necessity of modernizing structures to keep them safe and efficient, and the demands of energy conservation and resource utilization. Many of these needs are associated with the public functions these institutions perform and the

requirements of the state and federal governments. Compounding the problem is the fact that the cost of these renovations are borne entirely by the institutions.

Because these institutions serve an important public purpose addressing both the needs of individuals and the needs of the state, and because the performance of that public function can be facilitated at no expense or liability to the state, the legislature declares it to be the public policy of the state of Washington to enable the building, providing, and utilization of modern, well-equipped, efficient, and reasonably priced higher educational facilities, as well as the improvement, expansion, and modernization of such facilities, in a manner that will minimize the capital cost of construction, financing, and use of such facilities. The intention of this policy is to improve and ensure the quality and range of educational services available to the citizens of this state. The intent of the legislature is to accomplish these and related purposes, and this chapter shall be liberally construed in order to further these goals. [1983 c 169 § 1.]

**28B.07.020 Definitions.** As used in this chapter, the following words and terms shall have the following meanings, unless the context otherwise requires:

(1) "Authority" means the Washington higher education facilities authority created under RCW 28B.07.030 or any board, body, commission, department or officer succeeding to the principal functions of the authority or to whom the powers conferred upon the authority shall be given by law.

(2) "Bonds" means bonds, notes, commercial paper, certificates of indebtedness, or other evidences of indebtedness of the authority issued under this chapter.

(3) "Bond resolution" means any resolution of the authority, adopted under this chapter, authorizing the issuance and sale of bonds.

(4) "Higher education institution" means a private, non-profit educational institution, the main campus of which is permanently situated in the state, which is open to residents of the state, which neither restricts entry on racial or religious grounds, which provides programs of education beyond high school leading at least to the baccalaureate degree, and which is accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the higher education coordinating board.

(5) "Participant" means a higher education institution which, under this chapter, undertakes the financing of a project or projects or undertakes the refunding or refinancing of obligations, mortgages, or advances previously incurred for a project or projects.

(6) "Project" means any land or any improvement, including, but not limited to, buildings, structures, fixtures, utilities, machinery, excavations, paving, and landscaping, and any interest in such land or improvements, and any personal property pertaining or useful to such land and improvements, which are necessary, useful, or convenient for the operation of a higher education institution, including but not limited to, the following: Dormitories or other multi-unit housing facilities for students, faculty, officers, or employees; dining halls; student unions; administration buildings; academic buildings; libraries; laboratories; research facilities; computer facilities; classrooms; athletic facilities; health care facilities; maintenance, storage, or utility facilities; park-

ing facilities; or any combination thereof, or any other structures, facilities, or equipment so related.

(7) "Project cost" means any cost related to the acquisition, construction, improvement, alteration, or rehabilitation by a participant or the authority of any project and the financing of the project through the authority, including, but not limited to, the following costs paid or incurred: Costs of acquisition of land or interests in land and any improvement; costs of contractors, builders, laborers, materialmen, and suppliers of tools and equipment; costs of surety and performance bonds; fees and disbursements of architects, surveyors, engineers, feasibility consultants, accountants, attorneys, financial consultants, and other professionals; interest on bonds issued by the authority during any period of construction; principal of and interest on interim financing of any project; debt service reserve funds; depreciation funds, costs of the initial start-up operation of any project; fees for title insurance, document recording, or filing; fees of trustees and the authority; taxes and other governmental charges levied or assessed on any project; and any other similar costs. Except as specifically set forth in this definition, the term "project cost" does not include books, fuel, supplies, and similar items which are required to be treated as a current expense under generally accepted accounting principles.

(8) "Trust indenture" means any agreement, trust indenture, or other similar instrument by and between the authority and one or more corporate trustees. [1985 c 370 § 47; 1983 c 169 § 2.]

**28B.07.030 Washington higher education facilities authority—Created—Members—Chairperson—Records—Quorum—Compensation and travel expenses.**

(1) The Washington higher education facilities authority is hereby established as a public body corporate and politic, with perpetual corporate succession, constituting an agency of the state of Washington exercising essential governmental functions. The authority is a "public body" within the meaning of RCW 39.53.010.

(2) The authority shall consist of seven members as follows: The governor, lieutenant governor, executive director of the higher education coordinating board, and four public members, one of whom shall be the president of a higher education institution at the time of appointment. The public members shall be residents of the state and appointed by the governor, subject to confirmation by the senate, on the basis of their interest or expertise in the provision of higher education and the financing of higher education. The public members of the authority shall serve for terms of four years. The initial terms of the public members shall be staggered in a manner determined by the governor. In the event of a vacancy on the authority due to death, resignation, or removal of one of the public members, and upon the expiration of the term of any public member, the governor shall appoint a successor for a term expiring on the fourth anniversary of the successor's date of the appointment. If any of the state offices are abolished, the resulting vacancy on the authority shall be filled by the state officer who shall succeed substantially to the power and duties of the abolished office. Any public member of the authority may be removed by the governor for misfeasance, malfeasance, wilful neglect of duty, or any other cause after notice and a public hearing,

unless such notice and hearing shall be expressly waived in writing.

(3) The governor shall serve as chairperson of the authority. The authority shall elect annually one of its members as secretary. If the governor shall be absent from a meeting of the authority, the secretary shall preside. However, the governor may designate an employee of the governor's office to act on the governor's behalf in all other respects during the absence of the governor at any meeting of the authority. If the designation is in writing and is presented to the person presiding at the meetings of the authority who is included in the designation, the vote of the designee has the same effect as if cast by the governor.

(4) Any person designated by resolution of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents, and papers filed with the authority, the minute book or a journal of the authority, and the authority's official seal, if any. The person may cause copies to be made of all minutes and other records and documents of the authority, and may give certificates to the effect that such copies are true copies. All persons dealing with the authority may rely upon the certificates.

(5) Four members of the authority constitute a quorum. The authority may act on the basis of a motion except when authorizing the issuance and sale of bonds, in which case the authority shall act by resolution. Bond resolutions and other resolutions shall be adopted upon the affirmative vote of four members of the authority, and shall be signed by those members voting yes. Motions shall be adopted upon the affirmative vote of a majority of a quorum of members present at any meeting of the authority. All actions taken by the authority shall take effect immediately without need for publication or other public notice. A vacancy in the membership of the authority does not impair the power of the authority to act under this chapter.

(6) The members of the authority shall be compensated in accordance with RCW 43.03.240 and shall be entitled to reimbursement, solely from the funds of the authority, for travel expenses as determined by the authority incurred in the discharge of their duties under this chapter. [1985 c 370 § 48; 1984 c 287 § 62; 1983 c 169 § 3.]

**Legislative findings—Severability—Effective date—1984 c 287:**  
See notes following RCW 43.03.220.

**28B.07.040 Powers and duties.** The authority is authorized and empowered to do the following, on such terms, with such security and undertakings, subject to such conditions, and in return for such consideration, as the authority shall determine in its discretion to be necessary, useful, or convenient in accomplishing the purposes of this chapter:

(1) To promulgate rules in accordance with chapter 34.05 RCW;

(2) To adopt an official seal and to alter the same at pleasure;

(3) To maintain an office at any place or places as the authority may designate;

(4) To sue and be sued in its own name, and to plead and be impleaded;

(5) To make and execute agreements with participants and others and all other instruments necessary, useful, or con-

venient for the accomplishment of the purposes of this chapter;

(6) To provide long-term or short-term financing or refinancing to participants for project costs, by way of loan, lease, conditional sales contract, mortgage, option to purchase, or other financing or security device or any such combination;

(7) If, in order to provide to participants the financing or refinancing of project costs described in subsection (6) of this section, the authority deems it necessary or convenient for it to own a project or projects or any part of a project or projects, for any period of time, it may acquire, contract, improve, alter, rehabilitate, repair, manage, operate, mortgage, subject to a security interest, lease, sell, or convey the project;

(8) To fix, revise from time to time, and charge and collect from participants and others rates, rents, fees, charges, and repayments as necessary to fully and timely reimburse the authority for all expenses incurred by it in providing the financing and refinancing and other services under this section and for the repayment, when due, of all the principal of, redemption premium, if any, and interest on all bonds issued under this chapter to provide the financing, refinancing, and services;

(9) To accept and receive funds, grants, gifts, pledges, guarantees, mortgages, trust deeds, and other security instruments, and property from the federal government or the state or other public body, entity, or agency and from any public or private institution, association, corporation, or organization, including participants. It shall not accept or receive from the state or any taxing agency any money derived from taxes, except money to be devoted to the purposes of a project of the state or of a taxing agency;

(10) To open and maintain a bank account or accounts in one or more qualified public depositories in this state and to deposit all or any part of authority funds therein;

(11) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, an executive director, and such other employees and agents as may be necessary in its judgment to carry out the purposes of this chapter, and to fix their compensation;

(12) To provide financing or refinancing to two or more participants for a single project or for several projects in such combinations as the authority deems necessary, useful, or convenient;

(13) To charge to and equitably apportion among participants the administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter;

(14) To consult with the higher education coordinating board to determine project priorities under the purposes of this chapter; and

(15) To do all other things necessary, useful, or convenient to carry out the purposes of this chapter.

In the exercise of any of these powers, the authority shall incur no expense or liability which shall be an obligation, either general or special, of the state, or a general obligation of the authority, and shall pay no expense or liability from funds other than funds of the authority. Funds of the state shall not be used for such purpose. [1985 c 370 § 49; 1983 c 169 § 4.]

**28B.07.050 Special obligation bonds—Issuance—Personal liability—Debt limit.** (1) The authority may, from time to time, issue its special obligation bonds in order to carry out the purposes of this chapter and to enable the authority to exercise any of the powers granted to it in this chapter. The bonds shall be issued pursuant to a bond resolution or trust indenture and shall be payable solely out of the special fund or funds created by the authority in the bond resolution or trust indenture. The special fund or funds shall be funded in whole or in part from moneys paid by one or more participants for whose benefit such bonds were issued and from the sources, if any, described in RCW 28B.07.040(9) or from the proceeds of bonds issued by the authority for the purpose of refunding any outstanding bonds of the authority.

(2) The bonds may be secured by:

(a) A first lien against any unexpended proceeds of the bonds;

(b) A first lien against moneys in the special fund or funds created by the authority for their payment;

(c) A first or subordinate lien against the revenue and receipts of the participant or participants which revenue is derived in whole or in part from the project financed by the authority;

(d) A first or subordinate security interest against any real or personal property, tangible or intangible, of the participant or participants, including, but not limited to, the project financed by the authority;

(e) Any other real or personal property, tangible or intangible; or

(f) Any combination of (a) through (e) of this subsection.

Any security interest created against the unexpended bond proceeds and against the special funds created by the authority shall be immediately valid and binding against the moneys and any securities in which the moneys may be invested without authority or trustee possession, and the security interest shall be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article 9A of the Uniform Commercial Code, Title 62A RCW, and regardless of whether the party has notice of the security interest.

(3) The bonds may be issued as serial bonds or as term bonds or any such combination. The bonds shall bear such date or dates; mature at such time or times; bear interest at such rate or rates, either fixed or variable; be payable at such time or times; be in such denominations; be in such form, either coupon or registered, or both; carry such registration privileges; be made transferable, exchangeable, and interchangeable; be payable in lawful money of the United States of America at such place or places; be subject to such terms of redemption; and be sold at public or private sale, in such manner, at such time, and at such price as the authority shall determine. The bonds shall be executed by the manual or facsimile signatures of the chairperson and the authority's duly-elected secretary or its executive director, and by the trustee if the authority determines to use a trustee. At least one signature shall be manually subscribed. Coupon bonds shall have attached interest coupons bearing the facsimile signatures of the chairperson and the secretary or the executive director.

(4) Any bond resolution, trust indenture, or agreement with a participant relating to bonds issued by the authority or

the financing or refinancing made available by the authority may contain provisions, which may be made a part of the contract with the holders or owners of the bonds to be issued, pertaining to the following, among other matters: (a) The security interests granted by the participant to secure repayment of any amounts financed and the performance by the participant of its other obligations in the financing; (b) the security interests granted to the holders or owners of the bonds to secure repayment of the bonds; (c) rentals, fees, and other amounts to be charged, and the sums to be raised in each year through such charges, and the use, investment, and disposition of the sums; (d) the segregation of reserves or sinking funds, and the regulation, investment, and disposition thereof; (e) limitations on the uses of the project; (f) limitations on the purposes to which, or the investments in which, the proceeds of the sale of any issue of bonds may be applied; (g) terms pertaining to the issuance of additional parity bonds; (h) terms pertaining to the incurrence of parity debt; (i) the refunding of outstanding bonds; (j) procedures, if any, by which the terms of any contract with bondholders may be amended or abrogated; (k) acts or failures to act which constitute a default by the participant or the authority in their respective obligations and the rights and remedies in the event of a default; (l) the securing of bonds by a pooling of leases whereby the authority may assign its rights, as lessor, and pledge rents under two or more leases with two or more participants, as lessees; (m) terms governing performance by the trustee of its obligation; or (n) such other additional covenants, agreements, and provisions as are deemed necessary, useful, or convenient by the authority for the security of the holders of the bonds.

(5) Bonds may be issued by the authority to refund other outstanding authority bonds, at or prior to the maturity thereof, and to pay any redemption premium with respect thereto. Bonds issued for such refunding purposes may be combined with bonds issued for the financing or refinancing of new projects. Pending the application of the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the authority may enter into an agreement or agreements with a corporate trustee under RCW 28B.07.080 with respect to the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of the bonds to be redeemed.

(6) All bonds and any interest coupons appertaining to the bonds shall be negotiable instruments under Title 62A RCW.

(7) Neither the members of the authority, nor its employees or agents, nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance of the bonds.

(8) The authority may purchase its bonds with any of its funds available for the purchase. The authority may hold, pledge, cancel, or resell the bonds subject to and in accordance with agreements with bondholders.

(9) At no time shall the total outstanding bonded indebtedness of the authority exceed one billion dollars. [2003 c 84 § 1; 1983 c 169 § 5.]

**28B.07.060 Bonds—Special obligations—Payment—Funds—Segregation of proceeds and moneys.** Bonds issued under this chapter shall not be deemed to constitute obligations, either general or special, of the state or of any political subdivision of the state, or a pledge of the faith and credit of the state or of any political subdivision, or a general obligation of the authority. The bonds shall be special obligations of the authority and shall be payable solely from the special fund or funds created by the authority in the bond resolution or trust indenture pursuant to which the bonds were issued. The fund or funds shall be funded in whole or in part from moneys paid by one or more participants for whose benefit the bonds were issued, from the sources, if any, under RCW 28B.07.040(9), or from the proceeds of bonds issued by the authority for the purpose of refunding any outstanding bonds of the authority. The issuance of bonds under this chapter shall not obligate, directly, indirectly, or contingently, the state or any political subdivision of the state to levy any taxes or appropriate or expend any funds for the payment of the principal or the interest on the bonds.

Neither the proceeds of bonds issued under this chapter, any moneys used or to be used to pay the principal of or interest on the bonds, nor any moneys received by the authority to defray its administrative costs shall constitute public money or property. All of such moneys shall be kept segregated and set apart from funds of the state and any political subdivision of the state and shall not be subject to appropriation or allotment by the state or subject to the provisions of chapter 43.88 RCW. [1983 c 169 § 6.]

**28B.07.070 Agreements with participant—Participant's payment of certain costs and expenses.** In connection with any bonds issued by the authority, the authority shall enter into agreements with participants which shall provide for the payment by each participant of amounts which shall be sufficient, together with other revenues available to the authority, if any, to: (1) Pay the participant's share of the administrative costs and expenses of the authority; (2) pay the costs of maintaining, managing, and operating the project or projects financed by the authority, to the extent that the payment of the costs has not otherwise been adequately provided for; (3) pay the principal of, premium, if any, and interest on outstanding bonds of the authority issued in respect of such project or projects as the same shall become due and payable; and (4) create and maintain reserves required or provided for in any bond resolution or trust indenture authorizing the issuance of such bonds of the authority. The payments shall not be subject to supervision or regulation by any department, committee, board, body, bureau, or agency of the state other than the authority. [1983 c 169 § 7.]

**28B.07.080 Moneys deemed trust funds—Agreement or trust indenture with bank or trust company authorized.** All moneys received by or on behalf of the authority under this chapter, whether as proceeds from the sale of bonds or from participants or from other sources shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The authority, in lieu of receiving and applying the moneys itself, may enter into an agreement or trust indenture with one or more banks or trust companies

having the power and authority to conduct trust business in the state to:

(1) Perform all of any part of the obligations of the authority with respect to: (a) Bonds issued by it; (b) the receipt, investment, and application of the proceeds of the bonds and moneys paid by a participant or available from other sources for the payment of the bonds; (c) the enforcement of the obligations of a participant in connection with the financing or refinancing of any project; and (d) other matters relating to the exercise of the authority's powers under this chapter;

(2) Receive, hold, preserve, and enforce any security interest or evidence of security interest granted by a participant for purposes of securing the payment of the bonds; and

(3) Act on behalf of the authority or the holders or owners of bonds of the authority for purposes of assuring or enforcing the payment of the bonds, when due. [1983 c 169 § 8.]

**28B.07.090 Holders or owners of bonds—Trustees—Enforcement of rights—Purchase at foreclosure sale.** Any holder or owner of bonds of the authority issued under this chapter or any holder of the coupons appertaining to the bonds, and the trustee or trustees under any trust indenture, except to the extent the rights given are restricted by the authority in any bond resolution or trust indenture authorizing the bonds, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any of their respective rights, and may become the purchaser at any foreclosure sale if the person is the highest bidder. [1983 c 169 § 9.]

**28B.07.100 Bonds are securities—Legal investments.** The bonds of the authority are securities in which all public officers and bodies of this state and all counties, cities, municipal corporations, and political subdivisions, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies and associations, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control. [1983 c 169 § 10.]

**28B.07.110 Projects or financing—Exemption from certain restrictions on procedures for awarding contracts.** A project or the financing or refinancing thereof pursuant to this chapter shall not be subject to the requirements of any law or rule relating to competitive bidding, lease performance bonds, or other restrictions imposed on the procedure for award of contracts. [1983 c 169 § 11.]

**28B.07.120 Bond counsel—Selection.** (1) The authority shall adopt written policies to provide for the selection of bond counsel. The policies shall provide for the creation and maintenance of a roster of attorneys whom the authority believes possess the requisite special expertise and professional standing to provide bond counsel opinions which would be accepted by the underwriters, bondholders and other members of the financial community, and which would

be in furtherance of the public interest in obtaining the lowest possible interest rates on the bonds issued by the authority. Any attorney may apply to have his or her name placed on the roster, but may not be placed on the roster unless the attorney demonstrates to the authority's satisfaction that the attorney would issue the kind of opinions required by this section.

(2) Prior to selecting an attorney or attorneys to provide bond counsel services, the authority shall provide all attorneys on the roster with a notice of its intentions to select bond counsel and shall invite each of them to submit to the authority his or her fee schedule for providing bond counsel services. The authority shall have wide discretion in selecting the attorney or attorneys it considers to be most appropriate to provide the services, but in the exercise of this discretion the authority shall consider all submitted fee schedules and the public interest in achieving issuance of bonds on terms most favorable to the authority. At least once every two calendar years, the authority shall select anew an attorney or attorneys to serve as bond counsel. However, the authority may retain an attorney for longer than two years when necessary to complete work on a particular bond issue. An attorney previously retained may be selected again but only after the authority has provided other attorneys on the roster with an opportunity to be selected and has made the fee schedule review required under this subsection. As an alternative to retaining counsel for a period of time, the authority may appoint an attorney to serve as counsel in respect to only a particular bond issue or issues. [1983 c 169 § 13.]

**28B.07.130 Underwriters—Selection.** (1) The authority shall adopt written policies to provide for the selection of underwriters. The policies shall provide for the creation of a roster of underwriters who the authority believes possess the requisite special expertise and professional standing to provide bond marketing services which would be accepted by bondholders and other members of the financial community, and which would be in furtherance of the public interest in marketing the authority's bonds at the lowest possible costs. Any underwriter may apply to have its name placed on the roster, but may not be placed on the roster unless it demonstrates to the authority's satisfaction that it meets the requirements of this section.

(2) Whenever the authority decides that it needs the services of an underwriter, it shall provide all underwriters on the roster with a notice of its intentions and shall invite each of them to submit to the authority an itemization of its fees and other charges for providing underwriting services on the issue. The itemization shall be by categories designed by the authority. The authority shall have wide discretion in selecting the underwriter it considers to be most appropriate to provide the services, but in the exercise of this discretion the authority shall consider the underwriter's fees and other charges and the public interest in achieving issuance of bonds on terms most favorable to the authority. The authority may adopt rules setting forth conditions under which an institution of higher education may be permitted to exercise the notice and selection procedures set forth in this subsection. These rules shall require the institution to comply with the provisions of this subsection as if it were the authority and to obtain the authority's prior approval of the selection of an underwriter. [1983 c 169 § 14.]

(2004 Ed.)

**28B.07.900 Chapter supplemental—Application of other laws.** This chapter provides a complete, additional, and alternative method for accomplishing the purposes of this chapter and shall be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. [1983 c 169 § 15.]

**28B.07.910 Construction—1983 c 169.** This chapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes. Insofar as the provisions of this chapter are inconsistent with the provisions of any general or special law, or parts thereof, the provisions of this chapter shall be controlling. [1983 c 169 § 16.]

**28B.07.920 Severability—1983 c 169.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 169 § 17.]

## Chapter 28B.10 RCW

### COLLEGES AND UNIVERSITIES GENERALLY

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*Accreditation lists of colleges and universities whose graduates may receive teachers' certificates: RCW 28A.305.130(1) and (3).*

*AIDS information: Chapter 70.24 RCW.*

*Alcohol, pure ethyl, purchase of: RCW 66.16.010.*

*Boxing, kickboxing, martial arts, and wrestling events exemptions for: RCW 67.08.015.*

*physical examination of contestants, urinalysis: RCW 67.08.090.*

*Business colleges, excise tax: RCW 82.04.170.*

*Commercial activities by institutions of higher education—Development of policies governing: Chapter 28B.63 RCW.*

*Common schools, joint programs with for highly capable students: RCW 28A.185.030.*

*Determination of lands purchased or leased by institutions of higher education are used as school sites—Reversion, when: RCW 79.17.140.*

*Discrimination to deny public accommodations because of race, color, or creed, penalty: RCW 9.91.010.*

*Enrollment forecasts: RCW 43.62.050.*

*Eye protection, public and private educational institutions: RCW 70.100.010 through 70.100.040.*

*Gender equity—Goals: RCW 28B.15.455.*

*Governing body of recognized student association at college or university, open public meetings act applicable to: RCW 42.30.200.*

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*articles of incorporation: RCW 24.03.025.*

*dissolution: RCW 24.03.220, 24.03.250.*

*filing articles of consolidation: RCW 24.03.200.*

*filing fees: RCW 24.03.405.*

#### *merger and consolidation*

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*authorized: RCW 24.03.195.*

*effect: RCW 24.03.210.*

*effective, when: RCW 24.03.205.*

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*joint agreement: RCW 24.03.195.*

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*Information and research services of colleges and universities, authority for school districts to obtain: RCW 28A.320.110.*

*Institutions of higher education, purchase of leased lands with improvements by: RCW 79.17.110 through 79.17.130.*

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#### *Purchase of materials and supplies*

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*general administration department powers as to: RCW 43.19.190.*

*Sale of alcohol to, special price: RCW 66.16.010.*

*State work-study program: Chapter 28B.12 RCW.*

*Stills, license for laboratory: RCW 66.24.140.*

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*Students, residence for election purposes not lost by: State Constitution Art. 6 § 4, RCW 29A.04.151(3).*

*Vacation leave for personnel: RCW 43.01.042.*

*Western regional higher education compact: Chapter 28B.70 RCW.*

**28B.10.016 Definitions.** For the purposes of this title:

(1) "State universities" means the University of Washington and Washington State University.

(2) "Regional universities" means Western Washington University at Bellingham, Central Washington University at Ellensburg, and Eastern Washington University at Cheney.

(3) "State college" means The Evergreen State College in Thurston county.

(4) "Institutions of higher education" or "postsecondary institutions" means the state universities, the regional universities, The Evergreen State College, the community colleges, and the technical colleges.

(5) "Governing board" means the board of regents or the board of trustees of the institutions of higher education. [1992 c 231 § 1; 1991 c 238 § 113; 1977 ex.s. c 169 § 1.]

**Effective date—1992 c 231:** "This act shall take effect July 1, 1992." [1992 c 231 § 35.]

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

**Tenure or terms, rights, including property rights, not affected—1977 ex.s. c 169:** "Nothing in this 1977 amendatory act shall affect the tenure of or the terms of any officials, administrative assistants, faculty members, or other employees of any institution of higher education within this state, whether such institutions have hereinabove in this 1977 amendatory act been redesignated as regional universities or otherwise. Nothing in this 1977 amendatory act shall affect any rights, whether to property or otherwise, existing on or after the effective date of this 1977 amendatory act, the intent of the legislature being solely to redesignate as regional universities certain institutions of higher education within this state." [1977 ex.s. c 169 § 113.]

**Statute and RCW designations affected—1977 ex.s. c 169:** "It is the intent of the legislature that after the effective date of this 1977 amendatory act, where the names "Western Washington State College", "Central Washington State College", or "Eastern Washington State College" are used in any bill enacted by the legislature or found within the Revised Code of Washington, they shall mean "Western Washington University", "Central Washington University", and "Eastern Washington University", respectively." [1977 ex.s. c 169 § 114.]

**Severability—1977 ex.s. c 169:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 169 § 116.]

**28B.10.017 "Eligible student" defined.** "Eligible student" means a student who (1) was enrolled in a Washington college, university, community college, or vocational-technical institute on or after August 2, 1990, and (2) is unable to complete the period of enrollment or academic term in which the student was enrolled because the student was deployed either in the Persian Gulf combat zone, as designated by the president of the United States by executive order, or in another location in support of the Persian Gulf combat zone. An eligible student is required to verify his or her inability to complete an academic term through military service records, movement orders, or a certified letter signed by the student's installation personnel officer. [1991 c 164 § 1.]

**28B.10.020 Acquisition of property by universities and The Evergreen State College.** The boards of regents of the University of Washington and Washington State Univer-

sity, respectively, and the boards of trustees of Central Washington University, Eastern Washington University, Western Washington University, and The Evergreen State College, respectively, shall have the power and authority to acquire by exchange, gift, purchase, lease, or condemnation in the manner provided by chapter 8.04 RCW for condemnation of property for public use, such lands, real estate and other property, and interests therein as they may deem necessary for the use of said institutions respectively. However, the purchase or lease of major off-campus facilities is subject to the approval of the higher education coordinating board under RCW 28B.76.230. [2004 c 275 § 47; 1985 c 370 § 50; 1977 ex.s. c 169 § 7; 1969 ex.s. c 223 § 28B.10.020. Prior: 1967 c 47 § 16; 1947 c 104 § 1; Rem. Supp. 1947 § 4623-20. Formerly RCW 28.76.020.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.10.022 Authority to enter into financing contracts—Notice.** (1) The boards of regents of the state universities and the boards of trustees of the regional universities, The Evergreen State College, and the state board for community and technical colleges, are severally authorized to enter into financing contracts as provided in chapter 39.94 RCW. Except as provided in subsection (2) of this section, financing contracts shall be subject to the approval of the state finance committee.

(2) The board of regents of a state university may enter into financing contracts which are payable solely from and secured by all or any component of the fees and revenues of the university derived from its ownership and operation of its facilities not subject to appropriation by the legislature and not constituting "general state revenues," as defined in Article VIII, section 1 of the state Constitution, without the prior approval of the state finance committee.

(3) Except for financing contracts for facilities or equipment described under chapter 28B.140 RCW, the board of regents shall notify the state finance committee at least sixty days prior to entering into such contract and provide information relating to such contract as requested by the state finance committee. [2003 c 6 § 1; 2002 c 151 § 5; 1989 c 356 § 6.]

**28B.10.023 Contracts subject to requirements established under office of minority and women's business enterprises.** All contracts entered into under this chapter by institutions of higher education on or after September 1, 1983, are subject to the requirements established under chapter 39.19 RCW. [1983 c 120 § 10.]

**Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120:** See RCW 39.19.910, 39.19.920.

**28B.10.025 Purchases of works of art—Procedure.** The Washington state arts commission shall, in consultation with the boards of regents of the University of Washington and Washington State University and with the boards of trustees of the regional universities, The Evergreen State College, and the community college districts, determine the amount to be made available for the purchases of art under RCW 28B.10.027, and payment therefor shall be made in

accordance with law. The designation of projects and sites, the selection, contracting, purchase, commissioning, reviewing of design, execution and placement, acceptance, maintenance, and sale, exchange, or disposition of works of art shall be the responsibility of the Washington state arts commission in consultation with the board of regents or trustees. However, the costs to carry out the Washington state arts commission's responsibility for maintenance shall not be funded from the moneys referred to under this section, RCW 43.17.200, 43.19.455, or 28A.335.210, but shall be contingent upon adequate appropriations being made for that purpose. [1990 c 33 § 557; 1983 c 204 § 8; 1977 ex.s. c 169 § 8; 1974 ex.s. c 176 § 4.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—1983 c 204:** See note following RCW 43.46.090.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

*Acquisition of works of art for public buildings and lands—Visual arts program established:* RCW 43.46.090.

*Allocation of moneys for acquisition of works of art—Expenditure by arts commission—Conditions:* RCW 43.17.200.

*Purchase of works of art—Interagency reimbursement for expenditure by visual arts program:* RCW 43.17.205.

*State art collection:* RCW 43.46.095.

**28B.10.027 Allocation of moneys for acquisition of works of art—Expenditure by arts commission—Conditions.** All universities and colleges shall allocate as a non-deductible item, out of any moneys appropriated for the original construction or any major renovation or remodel work exceeding two hundred thousand dollars of any building, an amount of one-half of one percent of the appropriation to be expended by the Washington state arts commission with the approval of the board of regents or trustees for the acquisition of works of art. The works of art may be placed on public lands of institutions of higher education, integral to or attached to a public building or structure of institutions of higher education, detached within or outside a public building or structure of institutions of higher education, part of a portable exhibition or collection, part of a temporary exhibition, or loaned or exhibited in other public facilities.

In addition to the cost of the works of art the one-half of one percent of the appropriation shall be used to provide for the administration of the visual arts program by the Washington state arts commission and all costs for installation of the work of art. For the purpose of this section building shall not include sheds, warehouses, and other buildings of a temporary nature. [1983 c 204 § 9.]

**Severability—1983 c 204:** See note following RCW 43.46.090.

**28B.10.029 Property purchase and disposition—Independent printing production and purchasing authority—Purchase of correctional industries products.** (1) An institution of higher education may exercise independently those powers otherwise granted to the director of general administration in chapter 43.19 RCW in connection with the purchase and disposition of all material, supplies, services, and equipment needed for the support, maintenance, and use of the respective institution of higher education. Property disposition policies followed by institutions of higher educa-

tion shall be consistent with policies followed by the department of general administration. Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapters 39.19, 39.29, and 43.03 RCW, and RCW 43.19.1901, 43.19.1906, 43.19.1911, 43.19.1917, 43.19.1937, 43.19.534, 43.19.685, 43.19.700 through 43.19.704, and 43.19.560 through 43.19.637. The community and technical colleges shall comply with RCW 43.19.450. Except for the University of Washington, institutions of higher education shall comply with RCW 43.41.310, 43.41.290, and 43.41.350. If an institution of higher education can satisfactorily demonstrate to the director of the office of financial management that the cost of compliance is greater than the value of benefits from any of the following statutes, then it shall be exempt from them: RCW 43.19.685; 43.19.534; and 43.19.637. Any institution of higher education that chooses to exercise independent purchasing authority for a commodity or group of commodities shall notify the director of general administration. Thereafter the director of general administration shall not be required to provide those services for that institution for the duration of the general administration contract term for that commodity or group of commodities.

(2) The council of presidents and the state board for community and technical colleges shall convene its correctional industries business development advisory committee, and work collaboratively with correctional industries, to:

(a) Reaffirm purchasing criteria and ensure that quality, service, and timely delivery result in the best value for expenditure of state dollars;

(b) Update the approved list of correctional industries products from which higher education shall purchase; and

(c) Develop recommendations on ways to continue to build correctional industries' business with institutions of higher education.

(3) Higher education and correctional industries shall develop a plan to build higher education business with correctional industries to increase higher education purchases of correctional industries products, based upon the criteria established in subsection (2) of this section. The plan shall include the correctional industries' production and sales goals for higher education and an approved list of products from which higher education institutions shall purchase, based on the criteria established in subsection (2) of this section. Higher education and correctional industries shall report to the legislature regarding the plan and its implementation no later than January 30, 2005.

(4) Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2006, to purchase one percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections. Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2008, to purchase two percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(5) An institution of higher education may exercise independently those powers otherwise granted to the public printer in chapter 43.78 RCW in connection with the produc-

tion or purchase of any printing and binding needed by the respective institution of higher education. Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapter 39.19 RCW. Any institution of higher education that chooses to exercise independent printing production or purchasing authority shall notify the public printer. Thereafter the public printer shall not be required to provide those services for that institution. [2004 c 167 § 10. Prior: 1998 c 344 § 5; 1998 c 111 § 2; 1996 c 110 § 5; 1993 c 379 § 101.]

**Intent—Findings—1998 c 344:** See note following RCW 28B.38.010.

**Intent—1993 c 379:** "The legislature acknowledges the academic freedom of institutions of higher education, and seeks to improve their efficiency and effectiveness in carrying out their missions. By this act, the legislature intends to increase the flexibility of institutions of higher education to manage personnel, construction, purchasing, printing, and tuition." [1993 c 379 § 1.]

**Severability—1993 c 379:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 379 § 407.]

**Effective date—1993 c 379:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 379 § 408.]

**28B.10.030 Display of United States flag.** Every board of trustees or board of regents shall cause a United States flag being in good condition to be displayed on the campus of their respective state institution of higher education during the hours of nine o'clock a.m. and four o'clock p.m. on school days, except during inclement weather. [1969 ex.s. c 223 § 28B.10.030. Prior: 1939 c 17 § 1; RRS § 4531-1. Formerly RCW 28.76.030.]

**28B.10.031 Check cashing privileges.** (1) Any institution of higher education may, at its option and after the approval by governing boards, accept in exchange for cash a payroll check, expense check, financial aid check, or personal check from a student or employee of that institution of higher education in accordance with the following conditions:

(a) The check shall be drawn to the order of cash or bearer and be immediately payable by a drawee financial institution;

(b) The person presenting the check to the institution of higher education shall produce identification that he or she is currently enrolled or employed at the institution of higher education; and

(c) The payroll check, expense check, or financial aid check shall have been issued by the institution of higher education.

(2) In the event that any personal check cashed under this section is dishonored by the drawee financial institution when presented for payment, the institution of higher education, after giving notice of the dishonor to the student or employee and providing an opportunity for a brief adjudicative proceeding, may:

(a) In the case of a student, place a hold on the student's enrollment and transcript records until payment in full of the value of the dishonored check and reasonable collection fees and costs;

(b) In the case of an employee, withhold from the next payroll check or expense check the full amount of the dishonored check plus a collection fee. In the case that the employee no longer is employed by the institution of higher education at time of dishonor, then the institution of higher education may pursue other legal collection efforts that are to be paid by the drawer or endorser of the dishonored check along with the full value of the check. [1993 c 145 § 1.]

**28B.10.032 Public and private institutions offering teacher preparation programs—Exploration of methods to enhance awareness of teacher preparation programs.** The state's public and private institutions of higher education offering teacher preparation programs and school districts are encouraged to explore ways to facilitate faculty exchanges, and other cooperative arrangements, to generate increased awareness and understanding by higher education faculty of the common school teaching experience and increased awareness and understanding by common school faculty of the teacher preparation programs. [1987 c 525 § 233.]

**Intent—Short title—1987 c 525 §§ 202-233:** See notes following RCW 28A.410.040.

**Severability—1987 c 525:** See note following RCW 28A.300.050.

**28B.10.040 Higher educational institutions to be nonsectarian.** All institutions of higher education supported wholly or in part by state funds, and by whatsoever name so designated, shall be forever free from religious or sectarian control or influence. [1969 ex.s. c 223 § 28B.10.040. Prior: (i) 1909 c 97 p 242 § 7; RRS § 4559; prior: 1897 c 118 § 188; 1890 p 396 § 5. Formerly RCW 28.77.013; 28.76.040, part. (ii) 1909 c 97 p 243 § 1, part; RRS § 4568, part; prior: 1897 c 118 § 190, part; 1891 c 145 § 1, part. Formerly RCW 28.80.015, part; 28.76.040, part.]

*Nonsectarian: State Constitution Art. 9 § 4, Art. 26.*

**28B.10.042 Personal identifiers—Use of social security numbers prohibited.** (1) Institutions of higher education shall not use the social security number of any student, staff, or faculty for identification except for the purposes of employment, financial aid, research, assessment, accountability, transcripts, or as otherwise required by state or federal law.

(2) Each institution of higher education shall develop a system of personal identifiers for students to be used for grading and other administrative purposes. The personal identifiers may not be social security numbers. [2001 c 103 § 2.]

**Findings—2001 c 103:** "The legislature finds that the occurrences of identity theft are increasing. The legislature also finds that widespread use of the federally issued social security numbers has made identity theft more likely to occur." [2001 c 103 § 1.]

**Effective date—2001 c 103 § 2:** "Section 2 of this act takes effect July 1, 2002." [2001 c 103 § 5.]

**28B.10.0421 Personal identifiers—Funding.** Each institution of higher education shall use its own existing budgetary funds to develop the system for personal identifiers. No new state funds shall be allocated for this purpose. [2001 c 103 § 4.]

**Findings—2001 c 103:** See note following RCW 28B.10.042.

**28B.10.050 Entrance requirements exceeding minimum requirements.** Except as the legislature shall otherwise specifically direct, the boards of regents and the boards of trustees for the state universities, the regional universities, and The Evergreen State College may establish entrance requirements for their respective institutions of higher education which meet or exceed the minimum entrance requirements established under RCW 28B.76.290(2). [2004 c 275 § 48; 1985 c 370 § 91; 1984 c 278 § 19; 1977 ex.s. c 169 § 9; 1969 ex.s. c 223 § 28B.10.050. Prior: 1917 c 10 § 9; RRS § 4540. Formerly RCW 28.76.050.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—1984 c 278:** See note following RCW 28A.185.010.

**Effective date—1984 c 278:** See note following RCW 28A.230.130.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.10.055 Credits—Statewide transfer policy and agreement—Establishment.** See RCW 28B.76.240 and 28B.76.2401.

**28B.10.100 "Major line" defined.** The term "major line," whenever used in this code, shall be held and construed to mean the development of the work or courses of study in certain subjects to their fullest extent, leading to a degree or degrees in that subject. [1969 ex.s. c 223 § 28B.10.100. Prior: 1917 c 10 § 1; RRS § 4532. Formerly RCW 28.76.010.]

**28B.10.105 Courses exclusive to the University of Washington.** See RCW 28B.20.060.

**28B.10.106 Courses exclusive to Washington State University.** See RCW 28B.30.060 and 28B.30.065.

**28B.10.115 Major lines common to University of Washington and Washington State University.** The courses of instruction of both the University of Washington and Washington State University shall embrace as major lines, pharmacy, architecture, civil engineering, mechanical engineering, chemical engineering, and forest management as distinguished from forest products and logging engineering which are exclusive to the University of Washington. These major lines shall be offered and taught at said institutions only. [2003 c 82 § 1; 1985 c 218 § 1; 1969 ex.s. c 223 § 28B.10.115. Prior: 1963 c 23 § 2; 1961 c 71 § 2; prior: (i) 1917 c 10 § 8; RRS § 4539. (ii) 1917 c 10 § 4; RRS § 4535. Formerly RCW 28.76.080.]

**28B.10.120 Graduate work.** Whenever a course is authorized to be offered and taught by this code, in any of the institutions herein mentioned, as a major line, it shall carry with it the right to offer, and teach graduate work in such major lines. [1969 ex.s. c 223 § 28B.10.120. Prior: 1917 c 10 § 7; RRS § 4538. Formerly RCW 28.76.100.]

**28B.10.125 Technology literacy—Reports.** (1) Beginning in April 2000, representatives of the public baccalaureate institutions designated by the council of presidents,

in consultation with representatives of the community and technical colleges and representatives of the higher education coordinating board, shall convene an interinstitutional group to begin to: (a) Develop a definition of information and technology literacy; (b) develop strategies or standards by which to measure the achievement of information and technology literacy; and (c) develop a financial assessment of the cost of implementation.

(2) The baccalaureate institutions shall provide the house of representatives and senate committees on higher education with a progress report in January 2001.

(3) By the end of January 2002, the baccalaureate institutions shall deliver to the house of representatives and senate committees on higher education a report detailing: (a) The definition of information and technology literacy; (b) strategies or standards for measurement; (c) institutionally specific plans for implementation; and (d) an evaluation of the feasibility of implementation taking into consideration cost.

(4) If the legislature determines that implementation is feasible, the public baccalaureate institutions shall pilot test strategies to assess and report on information and technology literacy during the 2002-03 academic year.

(5) By the end of January 2004, the institutions shall report to the house of representatives and senate committees on higher education the results of the 2002-03 pilot study.

(6) Implementation of assessment strategies shall begin in the academic year 2003-04.

(7) The higher education coordinating board shall report results to the house of representatives and senate committees on higher education in the 2005 legislative session. [2000 c 166 § 2.]

**Findings—2000 c 166:** "The legislature finds that competence in information literacy and fluency in information technology are increasingly important in the workplace as well as in day-to-day activities. The legislature finds that to prepare students to meet the challenges of the work force and society, students must be able to effectively manage and apply information from a variety of sources. In addition, the legislature finds that institutions of higher education have the opportunity to provide students with a framework and approach to use information and technology effectively." [2000 c 166 § 1.]

**28B.10.140 Teachers' training courses.** The University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, and The Evergreen State College are each authorized to train teachers and other personnel for whom teaching certificates or special credentials prescribed by the state board of education are required, for any grade, level, department, or position of the public schools of the state. [2004 c 60 § 1; 1977 ex.s. c 169 § 10; 1969 ex.s. c 223 § 28B.10.140. Prior: 1967 c 47 § 17; 1949 c 34 § 1; Rem. Supp. 1949 § 4618-3. Formerly RCW 28.76.120.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.10.170 College and university fees.** See chapter 28B.15 RCW.

**28B.10.265 Waiver from fees—Children of certain citizens missing in action or prisoners of war.** Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen

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State College, and the community colleges may waive all or a portion of the tuition, operating, and services and activities fees for children of any person who was a Washington domiciliary and who within the past eleven years has been determined by the federal government to be a prisoner of war or missing in action in Southeast Asia, including Korea, or who shall become so hereafter, if the children meet such other educational qualifications as such institution of higher education shall deem reasonable and necessary under the circumstances. Applicants for free or reduced tuition shall provide institutional administrative personnel with documentation of their rights under this section. [1993 sp.s. c 18 § 1; 1992 c 231 § 2; 1985 c 390 § 1; 1973 c 63 § 2; 1972 ex.s. c 17 § 2.]

**Effective date—1993 sp.s. c 18:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 sp.s. c 18 § 38.]

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Effective date—1973 c 63:** "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 8, 1973]: PROVIDED, That qualified applicants under sections 1 and 2 of this 1973 amendatory act shall be admitted to such institutions free of tuition and such fees commencing not later than the next succeeding quarter, semester or like educational period beginning after the effective date of this 1973 amendatory act." [1973 c 63 § 3.]

**Effective date—1972 ex.s. c 17:** "This 1972 act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately [February 19, 1972]: PROVIDED, That qualified applicants under sections 1 and 2 of this 1972 act shall be admitted to such institutions tuition-free commencing not later than the next succeeding quarter, semester or like educational period beginning after the effective date of this 1972 act." [1972 ex.s. c 17 § 3.]

**28B.10.270 Rights of Washington national guard and other military reserve students called to active service.**

(1) A member of the Washington national guard or any other military reserve component who is a student at an institution of higher education and who is ordered for a period exceeding thirty days to either active state service, as defined in RCW 38.04.010, or to federal active military service has the following rights:

(a) With regard to courses in which the person is enrolled, the person may:

(i) Withdraw from one or more courses for which tuition and fees have been paid that are attributable to the courses. The tuition and fees must be credited to the person's account at the institution. Any refunds are subject to the requirements of the state or federal financial aid programs of origination. In such a case, the student shall not receive credit for the courses and shall not receive a failing grade, an incomplete, or other negative annotation on the student's record, and the student's grade point average shall not be altered or affected in any manner because of action under this item;

(ii) Be given a grade of incomplete and be allowed to complete the course upon release from active duty under the institution's standard practice for completion of incompletes; or

(iii) Continue and complete the course for full credit. Class sessions the student misses due to performance of state or federal active military service must be counted as excused absences and must not be used in any way to adversely impact the student's grade or standing in the class. Any stu-

dent who selects this option is not, however, automatically excused from completing assignments due during the period the student is performing state or federal active military service. A letter grade or a grade of pass must only be awarded if, in the opinion of the faculty member teaching the course, the student has completed sufficient work and has demonstrated sufficient progress toward meeting course requirements to justify the grade;

(b) To receive a refund of amounts paid for room, board, and fees attributable to the time period during which the student was serving in state or federal active military service and did not use the facilities or services for which the amounts were paid. Any refund of room, board, and fees is subject to the requirements of the state or federal financial aid programs of origination; and

(c) If the student chooses to withdraw, the student has the right to be readmitted and enrolled as a student at the institution, without penalty or redetermination of admission eligibility, within one year following release from the state or federal active military service.

(2) The protections in this section may be invoked as follows:

(a) The person, or an appropriate officer from the military organization in which the person will be serving, must give written notice that the person is being, or has been, ordered to qualifying service; and

(b) Upon written request from the institution, the person shall provide written verification of service.

(3) This section provides minimum protections for students. Nothing in this section prevents institutions of higher education from providing additional options or protections to students who are ordered to state or federal active military service. [2004 c 161 § 1.]

**Effective date—2004 c 161:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2004]." [2004 c 161 § 7.]

**28B.10.280 Student loans—Federal student aid programs.** The boards of regents of the state universities and the boards of trustees of regional universities, The Evergreen State College, and community college districts may each create student loan funds, and qualify and participate in the National Defense Education Act of 1958 and such other similar federal student aid programs as are or may be enacted from time to time, and to that end may comply with all of the laws of the United States, and all of the rules, regulations and requirements promulgated pursuant thereto. [1977 ex.s. c 169 § 11; 1970 ex.s. c 15 § 27; 1969 ex.s. c 222 § 2; 1969 ex.s. c 223 § 28B.10.280. Prior: 1959 c 191 § 1. Formerly RCW 28.76.420.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Severability—1970 ex.s. c 15:** See note following RCW 28A.230.160.

**Legislative declaration—Severability—1969 ex.s. c 222:** See notes following RCW 28B.92.010.

*State educational trust fund—Established—Deposits—Use:* RCW 28B.92.140.

**28B.10.281 Student loans—Certain activities may make student ineligible for aid.** Any student who organizes

and/or participates in any demonstration, riot or other activity of which the effect is to interfere with or disrupt the normal educational process at such institution shall not be eligible for such aid. [1969 ex.s. c 222 § 3. Formerly RCW 28.76.421.]

**Legislative declaration—Severability—1969 ex.s. c 222:** See notes following RCW 28B.92.010.

**28B.10.284 Uniform minor student capacity to borrow act.** See chapter 26.30 RCW.

**28B.10.293 Additional charges authorized in collection of debts—Public and private institutions of higher education.** Each state public or private institution of higher education may, in the control and collection of any debt or claim due owing to it, impose reasonable financing and late charges, as well as reasonable costs and expenses incurred in the collection of such debts, if provided for in the note or agreement signed by the debtor. [1977 ex.s. c 18 § 1.]

**28B.10.295 Educational materials on abuses of, and illnesses consequent from, alcohol.** The boards of regents of the state's universities, the boards of trustees of the respective state colleges, and the boards of trustees of the respective community colleges, with the cooperation of the \*state board for community college education, shall make available at some place of prominence within the premises of each campus educational materials on the abuses of alcohol in particular and the illnesses consequent therefrom in general: PROVIDED, That such materials shall be obtained from public or private organizations at no cost to the state. [1975 1st ex.s. c 164 § 2.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Legislative recognition of community alcohol centers:** "The legislature recognizes the invaluable services performed by the community alcohol centers throughout the state, which centers would view making available such educational materials as referred to in section 2 of this act as a part of their community outreach education and preventive program and for which material no fees would be charged." [1975 1st ex.s. c 164 § 1.]

**28B.10.300 Acquisition, construction, equipping and betterment of lands, buildings and facilities at universities and The Evergreen State College—Authorized.** The boards of regents of the state universities and the boards of trustees of the regional universities and The Evergreen State College are severally authorized to:

(1) Enter into contracts with persons, firms or corporations for the construction, installation, equipping, repairing, renovating and betterment of buildings and facilities for the following:

(a) dormitories

(b) hospitals

(c) infirmaries

(d) dining halls

(e) student activities

(f) services of every kind for students, including, but not limited to, housing, employment, registration, financial aid, counseling, testing and offices of the dean of students

(g) vehicular parking

(h) student, faculty and employee housing and boarding;

(2) Purchase or lease lands and other appurtenances necessary for the construction and installation of such buildings and facilities and to purchase or lease lands with buildings and facilities constructed or installed thereon suitable for the purposes aforesaid;

(3) Lease to any persons, firms, or corporations such portions of the campus of their respective institutions as may be necessary for the construction and installation of buildings and facilities for the purposes aforesaid and the reasonable use thereof;

(4) Borrow money to pay the cost of the acquisition of such lands and of the construction, installation, equipping, repairing, renovating, and betterment of such buildings and facilities, including interest during construction and other incidental costs, and to issue revenue bonds or other evidence of indebtedness therefor, and to refinance the same before or at maturity and to provide for the amortization of such indebtedness from services and activities fees or from the rentals, fees, charges, and other income derived through the ownership, operation and use of such lands, buildings, and facilities and any other dormitory, hospital, infirmary, dining, student activities, student services, vehicular parking, housing or boarding building or facility at the institution;

(5) Contract to pay as rental or otherwise the cost of the acquisition of such lands and of the construction and installation of such buildings and facilities on the amortization plan; the contract not to run over forty years;

(6) Expend on the amortization plan services and activities fees and/or any part of all of the fees, charges, rentals, and other income derived from any or all revenue-producing lands, buildings, and facilities of their respective institutions, heretofore or hereafter acquired, constructed or installed, including but not limited to income from rooms, dormitories, dining rooms, hospitals, infirmaries, housing or student activity buildings, vehicular parking facilities, land or the appurtenances thereon, and to pledge such services and activities fees and/or the net income derived through the ownership, operation and use of any lands, buildings or facilities of the nature described in subsection (1) hereof for the payment of part or all of the rental, acquisition, construction, and installation, and the betterment, repair, and renovation or other contract charges, bonds or other evidence of indebtedness agreed to be paid on account of the acquisition, construction, installation or rental of, or the betterment, repair or renovation of, lands, buildings, facilities and equipment of the nature authorized by this section. [1977 ex.s. c 169 § 13; 1973 1st ex.s. c 130 § 1; 1969 ex.s. c 223 § 28B.10.300. Prior: 1967 ex.s. c 107 § 1; 1963 c 167 § 1; 1961 c 229 § 2; prior: (i) 1950 ex.s. c 17 § 1, part; 1947 c 64 § 1, part; 1933 ex.s. c 23 § 1, part; 1925 ex.s. c 91 § 1, part; Rem. Supp. 1947 § 4543-1, part. (ii) 1947 c 64 § 2, part; 1933 ex.s. c 23 § 2, part; 1925 ex.s. c 91 § 2, part; Rem. Supp. 1947 § 4543-2, part. Formerly RCW 28.76.180.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

*Prior bonds validated:* See 1961 c 229 § 10.

**28B.10.305 Acquisition, construction, equipping and betterment of lands, buildings and facilities at universities and The Evergreen State College—Use of lands, buildings, and facilities.** The lands, buildings, facilities, and

equipment acquired, constructed or installed for those purposes shall be used in the respective institutions primarily for:

(1) dormitories

(2) hospitals

(3) infirmaries

(4) dining halls

(5) student activities

(6) services of every kind for students, including, but not limited to housing, employment, registration, financial aid, counseling, testing and offices of the dean of students

(7) vehicular parking

(8) student, faculty and employee housing and boarding.

[1969 ex.s. c 223 § 28B.10.305. Prior: 1967 ex.s. c 107 § 2; 1963 c 167 § 2; 1961 c 229 § 3; prior: 1950 ex.s. c 17 § 1, part; 1947 c 64 § 1, part; 1933 ex.s. c 23 § 1, part; 1925 ex.s. c 91 § 1, part; Rem. Supp. 1947 § 4543-1, part. Formerly RCW 28.76.190.]

**28B.10.310 Acquisition, construction, equipping and betterment of lands, buildings and facilities at universities and The Evergreen State College—Bonds—Sale, interest, form, payment, term, execution, negotiability, etc.** Each issue or series of such bonds: Shall be sold at such price and at such rate or rates of interest; may be serial or term bonds; may mature at such time or times in not to exceed forty years from date of issue; may be sold at public or private sale; may be payable both principal and interest at such place or places; may be subject to redemption prior to any fixed maturities; may be in such denominations; may be payable to bearer or to the purchaser or purchasers thereof or may be registrable as to principal or principal and interest as provided in RCW 39.46.030; may be issued under and subject to such terms, conditions and covenants providing for the payment of the principal thereof and interest thereon, which may include the creation and maintenance of a reserve fund or account to secure the payment of such principal and interest and a provision that additional bonds payable out of the same source or sources may later be issued on a parity therewith, and such other terms, conditions, covenants and protective provisions safeguarding such payment, all as determined and found necessary and desirable by said boards of regents or trustees. If found reasonably necessary and advisable, such boards of regents or trustees may select a trustee for the owners of each such issue or series of bonds and/or for the safeguarding and disbursements of the proceeds of their sale for the uses and purposes for which they were issued and, if such trustee or trustees are so selected, shall fix its or their rights, duties, powers, and obligations. The bonds of each such issue or series: Shall be executed on behalf of such universities or colleges by the president of the board of regents or the chairman of the board of trustees, and shall be attested by the secretary or the treasurer of such board, one of which signatures may be a facsimile signature; and shall have the seal of such university or college impressed, printed, or lithographed thereon, and any interest coupons attached thereto shall be executed with the facsimile signatures of said officials. The bonds of each such issue or series and any of the coupons attached thereto shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state even though they shall be payable solely from any spe-

cial fund or funds. [1983 c 167 § 31; 1972 ex.s. c 25 § 1; 1970 ex.s. c 56 § 22; 1969 ex.s. c 232 § 96; 1969 ex.s. c 223 § 28B.10.310. Prior: 1961 c 229 § 7. Formerly RCW 28.76.192.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**28B.10.315 Acquisition, construction, equipping and betterment of lands, buildings and facilities at universities and The Evergreen State College—Funding, refunding bonds.** Such boards of regents or trustees may from time to time provide for the issuance of funding or refunding revenue bonds to fund or refund at or prior to maturity any or all bonds of other indebtedness, including any premiums or penalties required to be paid to effect such funding or refunding, heretofore or hereafter issued or incurred to pay all or part of the cost of acquiring, constructing, or installing any lands, buildings, or facilities of the nature described in RCW 28B.10.300.

Such funding or refunding bonds and any coupons attached thereto shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state.

Such funding or refunding bonds may be exchanged for or applied to the payment of the bonds or other indebtedness being funded or refunded or may be sold in such manner and at such price, and at such rate or rates of interest as the boards of regents or trustees deem advisable, either at public or private sale.

The provisions of this chapter relating to the maturities, terms, conditions, covenants, interest rate, issuance, and sale of revenue bonds shall be applicable to such funding or refunding bonds except as may be otherwise specifically provided in this section. [1983 c 167 § 32; 1970 ex.s. c 56 § 23; 1969 ex.s. c 232 § 97; 1969 ex.s. c 223 § 28B.10.315. Prior: 1961 c 229 § 8. Formerly RCW 28.76.194.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**28B.10.320 Acquisition, construction, equipping and betterment of lands, buildings and facilities at universities and The Evergreen State College—Authority to be liberally construed—Future acquisitions and installations may be pledged for payment.** The authority granted in RCW 28B.10.300 through 28B.10.330 and 28B.15.220 shall be liberally construed and shall apply to all lands, buildings, and facilities of the nature described in RCW 28B.10.300 heretofore or hereafter acquired, constructed, or installed and to any rentals, contract obligations, bonds or other indebtedness heretofore or hereafter issued or incurred to pay part or all of the cost thereof, and shall include authority to pledge for the amortization plan the net income from any and all existing and future lands, buildings and facilities of the nature described in RCW 28B.10.300 whether or not the same were originally financed hereunder or under predecessor statutes.

[1969 ex.s. c 223 § 28B.10.320. Prior: 1961 c 229 § 9. Formerly RCW 28.76.196.]

**28B.10.325 Acquisition, construction, equipping and betterment of lands, buildings and facilities at universities and The Evergreen State College—Rate of interest on obligations.** The rate or rates of interest on the principal of any obligation made or incurred under the authority granted in RCW 28B.10.300 shall be as authorized by the board of regents or trustees. [1970 ex.s. c 56 § 24; 1969 ex.s. c 232 § 98; 1969 ex.s. c 223 § 28B.10.325. Prior: 1961 c 229 § 4; prior: 1950 ex.s. c 17 § 1, part; 1947 c 64 § 1, part; 1933 ex.s. c 23 § 1, part; 1925 ex.s. c 91 § 1, part; Rem. Supp. 1947 § 4353-1, part. Formerly RCW 28.76.200.]

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**28B.10.330 Acquisition, construction, equipping and betterment of lands, buildings and facilities at universities and The Evergreen State College—Nonliability of state.** The state shall incur no liability by reason of the exercise of the authority granted in RCW 28B.10.300. [1969 ex.s. c 223 § 28B.10.330. Prior: 1961 c 229 § 5; prior: 1950 ex.s. c 17 § 1, part; 1947 c 64 § 1, part; 1933 ex.s. c 23 § 1, part; 1925 ex.s. c 91 § 1, part; Rem. Supp. 1947 § 4543-1, part. Formerly RCW 28.76.210.]

**28B.10.335 Validation of prior bond issues.** All terms, conditions, and covenants, including the pledges of student activity fees, student use fees and student building use fees, special student fees or any similar fees charged to all full time students, or to all students, as the case may be, registering at the state's colleges and universities, contained in all bonds heretofore issued to pay all or part of the cost of acquiring, constructing or installing any lands, buildings, or facilities of the nature described in RCW 28B.10.300 are hereby declared to be lawful and binding in all respects. [1973 1st ex.s. c 130 § 3.]

**28B.10.350 Construction work, remodeling or demolition, bids when—Exemption—Waiver—Prevailing rate of wage—Universities and The Evergreen State College.** (1) When the cost to The Evergreen State College, any regional university, or state university, of any building, construction, renovation, remodeling, or demolition other than maintenance or repairs will equal or exceed the sum of thirty-five thousand dollars, complete plans and specifications for such work shall be prepared and such work shall be put out for public bids and the contract shall be awarded to the lowest responsible bidder if in accordance with the bid specifications: PROVIDED, That when the estimated cost of such building, construction, renovation, remodeling, or demolition equals or exceeds the sum of twenty-five thousand dollars, such project shall be deemed a public works and "the prevailing rate of wage," under chapter 39.12 RCW shall be applicable thereto: PROVIDED FURTHER, That when such building, construction, renovation, remodeling, or demolition involves one trade or craft area and the estimated cost exceeds fifteen thousand dollars, complete plans and speci-

cations for such work shall be prepared and such work shall be put out for public bids, and the contract shall be awarded to the lowest responsible bidder if in accordance with the bid specifications. This subsection shall not apply when a contract is awarded by the small works roster procedure authorized in RCW 39.04.155 or under any other procedure authorized for an institution of higher education.

(2) The Evergreen State College, any regional university, or state university may require a project to be put to public bid even when it is not required to do so under subsection (1) of this section.

(3) Where the estimated cost to The Evergreen State College, any regional university, or state university of any building, construction, renovation, remodeling, or demolition is less than twenty-five thousand dollars or the contract is awarded by the small works roster procedure authorized in RCW 39.04.155, the publication requirements of RCW 39.04.020 shall be inapplicable.

(4) In the event of any emergency when the public interest or property of The Evergreen State College, regional university, or state university would suffer material injury or damage by delay, the president of such college or university may declare the existence of such an emergency and reciting the facts constituting the same may waive the requirements of this section with reference to any contract in order to correct the condition causing the emergency: PROVIDED, That an "emergency," for the purposes of this section, means a condition likely to result in immediate physical injury to persons or to property of such college or university in the absence of prompt remedial action or a condition which immediately impairs the institution's ability to perform its educational obligations. [2001 c 38 § 1; 2000 c 138 § 202; 1993 c 379 § 109; 1985 c 152 § 1; 1979 ex.s. c 12 § 1; 1977 ex.s. c 169 § 14; 1971 ex.s. c 258 § 1.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**Intent—Severability—Effective date—1993 c 379:** See notes following RCW 28B.10.029.

**Severability—1979 ex.s. c 12:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 12 § 3.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Severability—1971 ex.s. c 258:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 258 § 3.]

*Subcontractors to be identified by bidder, when:* RCW 39.30.060.

**28B.10.360 Educational and career opportunities in the military, student access to information on, when.** If a public institution of higher education provides access to the campus and the student information directory to persons or groups which make students aware of occupational or educational options, the institution of higher education shall provide access on the same basis to official recruiting representatives of the military forces of the state and the United States for the purpose of informing students of educational and career opportunities available in the military. [1980 c 96 § 2.]

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**28B.10.400 Annuities and retirement income plans—Authorized.** The boards of regents of the state universities, the boards of trustees of the regional universities and of The Evergreen State College, and the \*state board for community college education are authorized and empowered:

(1) To assist the faculties and such other employees as any such board may designate in the purchase of old age annuities or retirement income plans under such rules and regulations as any such board may prescribe. County agricultural agents, home demonstration agents, 4-H club agents, and assistant county agricultural agents paid jointly by the Washington State University and the several counties shall be deemed to be full time employees of the Washington State University for the purposes hereof;

(2) To provide, under such rules and regulations as any such board may prescribe for the faculty members or other employees under its supervision, for the retirement of any such faculty member or other employee on account of age or condition of health, retirement on account of age to be not earlier than the sixty-fifth birthday: PROVIDED, That such faculty member or such other employee may elect to retire at the earliest age specified for retirement by federal social security law: PROVIDED FURTHER, That any supplemental payment authorized by subsection (3) of this section and paid as a result of retirement earlier than age sixty-five shall be at an actuarially reduced rate;

(3) To pay to any such retired person or to his designated beneficiary(s), each year after his retirement, a supplemental amount which, when added to the amount of such annuity or retirement income plan, or retirement income benefit pursuant to RCW 28B.10.415, received by him or his designated beneficiary(s) in such year, will not exceed fifty percent of the average annual salary paid to such retired person for his highest two consecutive years of full time service under an annuity or retirement income plan established pursuant to subsection (1) of this section at an institution of higher education: PROVIDED, HOWEVER, That if such retired person prior to his retirement elected a supplemental payment survivors option, any such supplemental payments to such retired person or his designated beneficiary(s) shall be at actuarially reduced rates: PROVIDED FURTHER, That if a faculty member or other employee of an institution of higher education who is a participant in a retirement plan authorized by this section dies, or has died before retirement but after becoming eligible for retirement on account of age, the designated beneficiary(s) shall be entitled to receive the supplemental payment authorized by this subsection (3) of this section to which such designated beneficiary(s) would have been entitled had said deceased faculty member or other employee retired on the date of death after electing a supplemental payment survivors option: PROVIDED FURTHER, That for the purpose of this subsection, the designated beneficiary(s) shall be (a) the surviving spouse of the retiree; or, (b) with the written consent of such spouse, if any, such other person or persons as shall have an insurable interest in the retiree's life and shall have been nominated by written designation duly executed and filed with the retiree's institution of higher education. [1979 ex.s. c 259 § 1; 1977 ex.s. c 169 § 15; 1975 1st ex.s. c 212 § 1; 1973 1st ex.s. c 149 § 1; 1971 ex.s. c 261 § 1; 1969 ex.s. c 223 § 28B.10.400. Prior: 1965 c 54 § 2; 1957 c 256 § 1; 1955 c 123 § 1; 1947 c 223 § 1; 1943 c 262 § 1; 1937

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c 223 § 1; Rem. Supp. 1947 § 4543-11. Formerly RCW 28.76.240.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Effective date—1979 ex.s. c 259:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1979 ex.s. c 259 § 5.]

**Severability—1979 ex.s. c 259:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 259 § 4.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Severability—1973 1st ex.s. c 149:** "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 149 § 9.]

**Appropriation—1973 1st ex.s. c 149:** "The sum of \$1,611,650 is hereby appropriated from the general fund for the purpose of carrying out this 1973 amendatory act, to be allocated by the governor to the institutions of higher education." [1973 1st ex.s. c 149 § 10.]

**Effective date—1973 1st ex.s. c 149:** "This 1973 amendatory act shall take effect on July 1, 1974." [1973 1st ex.s. c 149 § 11.]

**Severability—1971 ex.s. c 261:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 261 § 7.]

**28B.10.401 Assumptions to be applied when establishing supplemental payment under RCW 28B.10.400(3).** The boards of regents of the state universities, the boards of trustees of the state colleges, and the \*state board for community college education, when establishing the amount of supplemental payment under RCW 28B.10.400(3) as now or hereafter amended, shall apply the following assumptions:

(1) That the faculty member or such other employee at the time of retirement elected a joint and two-thirds survivor option on their annuity or retirement income plan using actual ages, but not exceeding a five-year age difference if married, or an actuarial equivalent option if single, which represents accumulations including all dividends from all matching contributions and any benefit that such faculty member is eligible to receive from any Washington state public retirement plan while employed at an institution of higher education;

(2) That on and after July 1, 1974, matching contributions were allocated equally between a fixed dollar and a variable dollar annuity;

(3) That for each year after age fifty, the maximum amount of contributions pursuant to RCW 28B.10.410 as now or hereafter amended be contributed toward the purchase of such annuity or retirement income plan, otherwise three-fourths of the formula described in RCW 28B.10.415, as now or hereafter amended, shall be applied. [1979 ex.s. c 259 § 3.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Effective date—Severability—1979 ex.s. c 259:** See notes following RCW 28B.10.400.

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**28B.10.405 Annuities and retirement income plans—Contributions by faculty and employees.** Members of the faculties and such other employees as are designated by the boards of regents of the state universities, the boards of trustees of the regional universities and of The Evergreen State College, or the \*state board for community college education shall be required to contribute not less than five percent of their salaries during each year of full time service after the first two years of such service toward the purchase of such annuity or retirement income plan; such contributions may be in addition to federal social security tax contributions, if any. [1977 ex.s. c 169 § 16; 1973 1st ex.s. c 149 § 2; 1971 ex.s. c 261 § 2; 1969 ex.s. c 223 § 28B.10.405. Prior: 1955 c 123 § 2; 1947 c 223 § 2; Rem. Supp. 1947 § 4543-12. Formerly RCW 28.76.250.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Severability—Appropriation—Effective date—1973 1st ex.s. c 149:** See notes following RCW 28B.10.400.

**Severability—1971 ex.s. c 261:** See note following RCW 28B.10.400.

**28B.10.407 Annuities and retirement income plans—Credit for authorized leaves of absence without pay.** (1) A faculty member or other employee designated by the boards of regents of the state universities, the boards of trustees of the regional universities and The Evergreen State College, or the \*state board for community college education who is granted an authorized leave of absence without pay may apply the period of time while on the leave in the computation of benefits in any annuity and retirement plan authorized under RCW 28B.10.400 through 28B.10.430 only to the extent provided in subsection (2) of this section.

(2) An employee who is eligible under subsection (1) of this section may receive a maximum of two years' credit during the employee's entire working career for periods of authorized leave without pay. Such credit may be obtained only if the employee pays both the employer and employee contributions required under RCW 28B.10.405 and 28B.10.410 while on the authorized leave of absence and if the employee returns to employment with the university or college immediately following the leave of absence for a period of not less than two years. The employee and employer contributions shall be based on the average of the employee's compensation at the time the leave of absence was authorized and the time the employee resumes employment. Any benefit under RCW 28B.10.400(3) shall be based only on the employee's compensation earned from employment with the university or college.

An employee who is inducted into the armed forces of the United States shall be deemed to be on an unpaid, authorized leave of absence. [1987 c 448 § 1.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**28B.10.409 Annuities and retirement income plans—Membership while serving as state legislator.** (1) On or after January 1, 1997, any employee who is on leave of

absence from an institution in order to serve as a state legislator may elect to continue to participate in any annuity or retirement plan authorized under RCW 28B.10.400 during the period of such leave.

(2) The institution shall pay the employee's salary attributable to legislative service and shall match the employee's retirement plan contributions based on the salary for the leave period. The state legislature shall reimburse the institution for the salary and employer contributions covering the leave period.

(3) "Institution" for purposes of this section means any institution or entity authorized to provide retirement benefits under RCW 28B.10.400. [1997 c 123 § 2.]

**28B.10.410 Annuities and retirement income plans—Limitation on institution's contribution.** The boards of regents of the state universities, the boards of trustees of the regional universities and of The Evergreen State College, or the \*state board for community college education shall pay not more than one-half of the annual premium of any annuity or retirement income plan established under the provisions of RCW 28B.10.400 as now or hereafter amended. Such contribution shall not exceed ten percent of the salary of the faculty member or other employee on whose behalf the contribution is made. This contribution may be in addition to federal social security tax contributions made by the boards, if any. [1977 ex.s. c 169 § 17; 1973 1st ex.s. c 149 § 3; 1971 ex.s. c 261 § 3; 1969 ex.s. c 223 § 28B.10.410. Prior: 1955 c 123 § 3; 1947 c 223 § 3; Rem. Supp. 1947 § 4543-13. Formerly RCW 28.76.260.]

\*Reviser's note: The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Severability—Appropriation—Effective date—1973 1st ex.s. c 149:** See notes following RCW 28B.10.400.

**Severability—1971 ex.s. c 261:** See note following RCW 28B.10.400.

**28B.10.415 Annuities and retirement income plans—Limitation on annuity or retirement income plan payment.** The boards of regents of the state universities, the boards of trustees of the regional universities and of The Evergreen State College, or the \*state board for community college education shall not pay any amount to be added to the annuity or retirement income plan of any retired person who has served for less than ten years in one or more of the state institutions of higher education. In the case of persons who have served more than ten years but less than twenty-five years no amount shall be paid in excess of four percent of the amount authorized in subdivision (3) of RCW 28B.10.400 as now or hereafter amended, multiplied by the number of years of full time service rendered by such person: PROVIDED, That credit for years of service at an institution of higher education shall be limited to those years in which contributions were made by a faculty member or other employee designated pursuant to RCW 28B.10.400(1) and the institution or the state as a result of which a benefit is being received by a retired person from any Washington state public retirement plan: PROVIDED FURTHER, That all such benefits that a retired person is eligible to receive shall reduce any supple-

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mentation payments provided for in RCW 28B.10.400 as now or hereafter amended. [1979 ex.s. c 259 § 2; 1977 ex.s. c 169 § 18; 1973 1st ex.s. c 149 § 4; 1971 ex.s. c 261 § 4; 1969 ex.s. c 223 § 28B.10.415. Prior: 1955 c 123 § 4; 1947 c 223 § 4; Rem. Supp. 1947 § 4543-14. Formerly RCW 28.76.270.]

\*Reviser's note: The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Effective date—Severability—1979 ex.s. c 259:** See notes following RCW 28B.10.400.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Severability—Appropriation—Effective date—1973 1st ex.s. c 149:** See notes following RCW 28B.10.400.

**Severability—1971 ex.s. c 261:** See note following RCW 28B.10.400.

**28B.10.417 Annuities and retirement income plans—Rights and duties of faculty or employees with Washington state teachers' retirement system credit—Regional universities and The Evergreen State College.** (1) A faculty member or other employee designated by the board of trustees of the applicable regional university or of The Evergreen State College as being subject to an annuity or retirement income plan and who, at the time of such designation, is a member of the Washington state teachers' retirement system, shall retain credit for such service in the Washington state teachers' retirement system and except as provided in subsection (2) of this section, shall leave his or her accumulated contributions in the teachers' retirement fund. Upon his or her attaining eligibility for retirement under the Washington state teachers' retirement system, such faculty member or other employee shall receive from the Washington state teachers' retirement system a retirement allowance consisting of an annuity which shall be the actuarial equivalent of his or her accumulated contributions at his or her age when becoming eligible for such retirement and a pension for each year of creditable service established and retained at the time of said designation as provided in RCW 41.32.497 as now or hereafter amended. Anyone who on July 1, 1967, was receiving pension payments from the teachers' retirement system based on thirty-five years of creditable service shall thereafter receive a pension based on the total years of creditable service established with the retirement system: PROVIDED, HOWEVER, That any such faculty member or other employee who, upon attainment of eligibility for retirement under the Washington state teachers' retirement system, is still engaged in public educational employment, shall not be eligible to receive benefits under the Washington state teachers' retirement system until he or she ceases such public educational employment. Any retired faculty member or other employee who enters service in any public educational institution shall cease to receive pension payments while engaged in such service: PROVIDED FURTHER, That such service may be rendered up to seventy-five days in a school year without reduction of pension.

(2) A faculty member or other employee designated by the board of trustees of the applicable regional university or of The Evergreen State College as being subject to the annuity and retirement income plan and who, at the time of such designation, is a member of the Washington state teachers'

retirement system may, at his or her election and at any time, on and after midnight June 10, 1959, terminate his or her membership in the Washington state teachers' retirement system and withdraw his or her accumulated contributions and interest in the teachers' retirement fund upon written application to the board of trustees of the Washington state teachers' retirement system. Faculty members or other employees who withdraw their accumulated contributions, on and after the date of withdrawal of contributions, shall no longer be members of the Washington state teachers' retirement system and shall forfeit all rights of membership, including pension benefits, theretofore acquired under the Washington state teachers' retirement system. [1977 ex.s. c 169 § 19; 1971 ex.s. c 261 § 5.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Severability—1971 ex.s. c 261:** See note following RCW 28B.10.400.

**28B.10.420 Annuities and retirement income plans—Retirement at age seventy—Reemployment, conditions when.** (1) Except as provided otherwise in subsection (2) of this section, faculty members or other employees designated by the boards of regents of the state universities, the boards of trustees of the regional universities or of The Evergreen State College, or the \*state board for community college education pursuant to RCW 28B.10.400 through 28B.10.420 as now or hereafter amended shall be retired from their employment with their institutions of higher education not later than the end of the academic year next following their seventieth birthday.

(2) As provided in this subsection, the board of regents of a state university, the board of trustees of a regional university or The Evergreen State College, or the \*state board for community college education may reemploy any person who is "retired" pursuant to subsection (1) of this section, who applies for reemployment and who has reached seventy years of age on or after July 1, 1970. The following provisions shall govern such reemployment:

(a) Prior to the reemployment, the board of regents, board of trustees, or state board shall have found that the person possesses outstanding qualifications which in the judgment of the board would permit the person to continue valuable service to the institution.

(b) The period of reemployment shall not be counted as service under, or result in any eligibility for benefits or increased benefits under, any state authorized or supported annuity or retirement income plan. Reemployment shall not result in the reemployed person or employer making any contributions to any such plan.

(c) No person may be reemployed on a full time basis if such person is receiving benefits under any state authorized or supported annuity or retirement income plan. The reemployment of any person on a full time basis shall be immediately terminated upon the person's obtaining of any such benefits.

(d) A person may be reemployed on a part time basis and receive or continue to receive any benefits for which such person is eligible under any state authorized or supported annuity or retirement income plan. Such part time work, however, shall not exceed forty percent of full time employment during any year.

(e) A person reemployed pursuant to this section shall comply with all conditions of reemployment and all rules providing for the administration of this subsection which are prescribed or adopted by the board of regents, or board of trustees, or by the \*state board for community college education. [1979 c 14 § 1. Prior: 1977 ex.s. c 276 § 1; 1977 ex.s. c 169 § 20; 1973 1st ex.s. c 149 § 5; 1969 ex.s. c 223 § 28B.10.420; prior: 1947 c 223 § 5; Rem. Supp. 1947 § 4543-14a. Formerly RCW 28.76.280.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Severability—Appropriation—Effective date—1973 1st ex.s. c 149:** See notes following RCW 28B.10.400.

*Retirement, earliest age allowable:* RCW 28B.10.400.

*"State universities," "regional universities," "state college," "institutions of higher education," and "postsecondary institutions" defined:* RCW 28B.10.016.

**28B.10.423 Annuities and retirement income plans—Limit on retirement income—Adjustment of rates.** It is the intent of RCW 28B.10.400, 28B.10.405, 28B.10.410, 28B.10.415, 28B.10.420, 28B.10.423 and 83.20.030 that the retirement income resulting from the contributions described herein from the state of Washington and the employee shall be projected actuarially so that it shall not exceed sixty percent of the average of the highest two consecutive years salary. Periodic review of the retirement systems established pursuant to RCW 28B.10.400, 28B.10.405, 28B.10.410, 28B.10.415, 28B.10.420, 28B.10.423 and \*83.20.030 will be undertaken at such time and in such manner as determined by the committees on ways and means of the senate and of the house of representatives and the public pension commission, and joint contribution rates will be adjusted if necessary to accomplish this intent. [1973 1st ex.s. c 149 § 8.]

**\*Reviser's note:** RCW 83.20.030 was repealed by 1979 ex.s. c 209 § 54.

**Severability—Appropriation—Effective date—1973 1st ex.s. c 149:** See notes following RCW 28B.10.400.

**28B.10.425 Additional pension for certain retired university faculty members or employees.** Retired faculty members or employees of the University of Washington or Washington State University, who have reached age sixty-five or are disabled from further service as of June 10, 1971, who at the time of retirement or disability were not eligible for federal old age, survivors, or disability benefit payments (social security), and who are receiving retirement income on July 1, 1970 pursuant to RCW 28B.10.400, shall, upon application approved by the board of regents of the institution retired from, receive an additional pension of three dollars per month for each year of full time service at such institution, including military leave. For periods of service that are less than full time service, the monthly rate of the pension shall be prorated accordingly to include such periods of service. [1971 ex.s. c 76 § 1.]

**28B.10.430 Annuities and retirement income plans—Minimum monthly benefit—Computation.** (1) For any

person receiving a monthly benefit pursuant to a program established under RCW 28B.10.400, the pension portion of such benefit shall be the sum of the following amounts:

(a) One-half of the monthly benefit payable under such program by a life insurance company; and

(b) The monthly equivalent of the supplemental benefit described in RCW 28B.10.400(3).

(2) Notwithstanding any provision of law to the contrary, effective July 1, 1979, no person receiving a monthly benefit pursuant to RCW 28B.10.400 shall receive, as the pension portion of that benefit, less than ten dollars per month for each year of service creditable to the person whose service is the basis of the benefit. Portions of a year shall be treated as fractions of a year and the decimal equivalent shall be multiplied by ten dollars. Where the benefit was adjusted at the time benefit payments to the beneficiary commenced, the minimum pension provided in this section shall be adjusted in a manner consistent with that adjustment.

(3) Notwithstanding any provision of law to the contrary, effective July 1, 1979, the monthly benefit of each person who commenced receiving a monthly benefit under this chapter as of a date no later than July 1, 1974, shall be permanently increased by a post-retirement adjustment. Such adjustment shall be calculated as follows:

(a) Monthly benefits to which this subsection and subsection (2) of this section are both applicable shall be determined by first applying subsection (2) and then applying this subsection. The department shall determine the total years of creditable service and the total dollar benefit base accrued as of December 31, 1978, except that this determination shall take into account only those persons to whom this subsection applies;

(b) The department shall multiply the total benefits determined in (a) of this subsection by six percent and divide the dollar value thus determined by the total service determined in (a) of this subsection. The resultant figure shall then be a post-retirement increase factor which shall be applied as specified in (c) of this subsection;

(c) Each person to whom this subsection applies shall receive an increase which is the product of the factor determined in (b) of this subsection multiplied by the years of creditable service. [1979 ex.s. c 96 § 5.]

**28B.10.431 Annuities and retirement income plans—Monthly benefit—Post-retirement adjustment—Computation.** Notwithstanding any provision of law to the contrary, effective July 1, 1983, the monthly benefit of each person who either is receiving a benefit pursuant to a program established under RCW 28B.10.400 for their service as of July 1, 1978, or commenced receiving a monthly benefit as a surviving spouse or written designated beneficiary with an insurable interest in the retiree as of a date no later than December 31, 1982, shall be permanently increased by a post-retirement adjustment of \$.74 per month for each year of creditable service the faculty member or employee established with the annuity or retirement income plan. Any fraction of a year of service shall be counted in the computation of the post-retirement adjustment. [1983 1st ex.s. c 56 § 2.]

**Effective date—1983 1st ex.s. c 56:** See note following RCW 2.12.046.

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**28B.10.480 Tax deferred annuities for employees.**

The regents or trustees of any of the state's institutions of higher education are authorized to provide and pay for tax deferred annuities for their respective employees in lieu of a portion of salary or wages as authorized under the provisions of 26 U.S.C., section 403(b), as amended by Public Law 87-370, 75 Stat. 796 as now or hereafter amended. [1969 ex.s. c 223 § 28B.10.480. Prior: 1965 c 54 § 1, part. Formerly RCW 28.02.120, part.]

**28B.10.485 Charitable gift annuities, issuance of by universities and The Evergreen State College—Scope.**

The boards of the state universities, regional universities, and the state college are authorized to issue charitable gift annuities paying a fixed dollar amount to individual annuitants for their lifetimes in exchange for the gift of assets to the respective institution in a single transaction. The boards shall invest one hundred percent of the charitable gift annuity assets in a reserve for the lifetimes of the respective annuitants to meet liabilities that result from the gift program. [1979 c 130 § 1.]

**Severability—1979 c 130:** "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 130 § 15.]

*Charitable gift annuity business: Chapter 48.38 RCW.*

*Title 48 RCW not to apply to charitable gift annuities issued by university or state college: RCW 48.23.010.*

**28B.10.487 Charitable gift annuities, issuance of by universities and The Evergreen State College—Obligation as to annuity payments.**

The obligation to make annuity payments to individuals under charitable gift annuity agreements issued by the board of a state university, regional university, or of the state college pursuant to RCW 28B.10.485 shall be secured by and limited to the assets given in exchange for the annuity and reserves established by the board. Such agreements shall not constitute:

(1) An obligation, either general or special, of the state; or

(2) A general obligation of a state university, regional university, or of the state college or of the board. [1979 c 130 § 5.]

**Severability—1979 c 130:** See note following RCW 28B.10.485.

**28B.10.500 Removal of regents or trustees from universities and The Evergreen State College.**

No regent of the state universities, or trustee of the regional universities or of The Evergreen State College shall be removed during the term of office for which appointed, excepting only for misconduct or malfeasance in office, and then only in the manner hereinafter provided. Before any regent or trustee may be removed for such misconduct or malfeasance, a petition for removal, stating the nature of the misconduct or malfeasance of such regent or trustee with reasonable particularity, shall be signed and verified by the governor and served upon such regent or trustee. Said petition, together with proof of service of same upon such regent or trustee, shall forthwith be filed with the clerk of the supreme court. The chief justice of the supreme court shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of hearing, which

shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member of the board by the tribunal shall disqualify such member for reappointment. [1977 ex.s. c 169 § 21; 1969 ex.s. c 223 § 28B.10.500. Prior: 1943 c 59 § 1; Rem. Supp. 1943 § 4603-1. Formerly RCW 28.76.290.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.10.510 Attorney general as advisor.** The attorney general of the state shall be the legal advisor to the presidents and the boards of regents and trustees of the institutions of higher education and he shall institute and prosecute or defend all suits in behalf of the same. [1973 c 62 § 3; 1969 ex.s. c 223 § 28B.10.510. Prior: 1909 c 97 p 242 § 8; RRS § 4560; prior: 1897 c 118 § 189; 1890 p 399 § 19. Formerly RCW 28.77.125; 28.76.300.]

**Savings—1973 c 62:** "Nothing in this 1973 amendatory act shall be construed to affect any existing right acquired under the statutes amended or repealed herein or the term of office or election or appointment or employment of any person elected, appointed or employed under the statutes amended or repealed herein." [1973 c 62 § 26.]

**Severability—1973 c 62:** "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 62 § 28.]

*Attorney general's powers in general: Chapter 43.10 RCW.*

*Employment of attorneys by state agencies restricted: RCW 43.10.067.*

**28B.10.520 Regents and trustees—Oaths.** Each member of a board of regents or board of trustees of a university or other state institution of higher education, before entering upon his duties, shall take and subscribe an oath to discharge faithfully and honestly his duties and to perform strictly and impartially the same to the best of his ability, such oath to be filed with the secretary of state. [1977 ex.s. c 169 § 22; 1969 ex.s. c 223 § 28B.10.520. Prior: 1909 c 97 p 248 § 13; RRS § 4593; prior: 1897 c 118 § 202; 1891 c 145 § 14. Formerly RCW 28.80.140.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.10.525 Regents and trustees—Travel expenses.** Each member of a board of regents or board of trustees of a university or other state institution of higher education, shall be entitled to receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day or portion thereof in which he or she is actually engaged in business of the board. [1979 c 14 § 2. Prior: 1977 ex.s. c 169 § 23; 1977 ex.s. c 118 § 1; 1975-'76 2nd ex.s. c 34 § 72; 1969 ex.s. c 223 § 28B.10.525; prior: (i) 1939 c 176 § 1, part; 1927 c 227 § 1, part; 1909 c 97 p 240 § 5, part; RRS § 4557, part. Formerly RCW 28.77.130, part. (ii) 1909 c 97 p 249 § 14; RRS § 4594; prior: 1897 c 118 § 203; 1891 c 145 § 15. Formerly RCW 28.80.150.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

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**28B.10.528 Delegation of powers and duties by governing boards.** The governing boards of institutions of higher education shall have power, when exercised by resolution, to delegate to the president or his designee, of their respective university or college, any of the powers and duties vested in or imposed upon such governing board by law. Delegated powers and duties may be exercised in the name of the respective governing boards. [1971 ex.s. c 57 § 21.]

**28B.10.550 Police forces for universities and The Evergreen State College—Authorized.** The boards of regents of the state universities, and the boards of trustees of the regional universities or of The Evergreen State College, acting independently and each on behalf of its own institution:

(1) May each establish a police force for its own institution, which force shall function under such conditions and regulations as the board prescribes; and

(2) May supply appropriate badges and uniforms indicating the positions and authority of the members of such police force. [1977 ex.s. c 169 § 24; 1969 ex.s. c 223 § 28B.10.550. Prior: 1965 ex.s. c 16 § 1; 1949 c 123 § 1; Rem. Supp. 1949 § 4543-16. Formerly RCW 28.76.310.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.10.555 Police forces for universities and The Evergreen State College—Powers.** The members of a police force established under authority of RCW 28B.10.550, when appointed and duly sworn:

(1) Shall be peace officers of the state and have such police powers as are vested in sheriffs and peace officers generally under the laws of this state; and

(2) May exercise such powers upon state lands devoted mainly to the educational or research activities of the institution to which they were appointed; and

(3) Shall have power to pursue and arrest beyond the limits of such state lands, if necessary, all or any violators of the rules or regulations herein provided for. [1969 ex.s. c 223 § 28B.10.555. Prior: 1965 ex.s. c 16 § 2; 1949 c 123 § 2; Rem. Supp. 1949 § 4543-17. Formerly RCW 28.76.320.]

**28B.10.560 Police forces for universities and The Evergreen State College—Establishment of traffic regulations—Adjudication of parking infractions—Appeal.**

(1) The boards of regents of the state universities, and the boards of trustees of the regional universities and of The Evergreen State College, acting independently and each on behalf of its own institution, may each:

(a) Establish and promulgate rules and regulations governing pedestrian traffic and vehicular traffic and parking upon lands and facilities of the university or college;

(b) Adjudicate matters involving parking infractions internally; and

(c) Collect and retain any penalties so imposed.

(2) If the rules or regulations promulgated under subsection (1) of this section provide for internal adjudication of parking infractions, a person charged with a parking infraction who deems himself or herself aggrieved by the final decision in an internal adjudication may, within ten days after written notice of the final decision, appeal by filing a written

notice thereof with the college or university police force. Documents relating to the appeal shall immediately be forwarded to the district court in the county in which the offense was committed, which court shall have jurisdiction over such offense and such appeal shall be heard de novo. [1983 c 221 § 1; 1977 ex.s. c 169 § 25; 1969 ex.s. c 223 § 28B.10.560. Prior: 1965 ex.s. c 16 § 3; 1949 c 123 § 3; Rem. Supp. 1949 § 4543-18. Formerly RCW 28.76.330.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.10.567 Police forces for universities and The Evergreen State College—Benefits for duty-related death, disability or injury.** The boards of regents of the state universities and board of trustees of the regional universities and the board of trustees of The Evergreen State College are authorized and empowered, under such rules and regulations as any such board may prescribe for the duly sworn police officers employed by any such board as members of a police force established pursuant to RCW 28B.10.550, to provide for the payment of death or disability benefits or medical expense reimbursement for death, disability, or injury of any such duly sworn police officer who, in the line of duty, loses his life or becomes disabled or is injured, and for the payment of such benefits to be made to any such duly sworn police officer or his surviving spouse or the legal guardian of his child or children, as defined in RCW 41.26.030(7), or his estate: PROVIDED, That the duty-related benefits authorized by this section shall in no event be greater than the benefits authorized on June 25, 1976 for duty-related death, disability, or injury of a law enforcement officer under chapter 41.26 RCW: PROVIDED FURTHER, That the duty-related benefits authorized by this section shall be reduced to the extent of any amounts received or eligible to be received on account of the duty-related death, disability, or injury to any such duly sworn police officer, his surviving spouse, the legal guardian of his child or children, or his estate, under workers' compensation, social security including the changes incorporated under Public Law 89-97 as now or hereafter amended, or disability income insurance and health care plans under chapter 41.05 RCW. [1987 c 185 § 2; 1977 ex.s. c 169 § 26; 1975-'76 2nd ex.s. c 81 § 1.]

**Intent—Severability—1987 c 185:** See notes following RCW 51.12.130.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.10.569 Crime statistics reporting—Safety information provided—Task forces on campus security and safety.** (1) Each institution of higher education with a commissioned police force shall report to the Washington association of sheriffs and police chiefs or its successor agency, on a monthly basis, crime statistics for the Washington state uniform crime report, in the format required by the Washington association of sheriffs and police chiefs, or its successor agency. Institutions of higher education which do not have commissioned police forces shall report crime statistics through appropriate local law enforcement agencies.

(2) Each institution of higher education shall publish and distribute a report which shall be updated annually and which shall include the crime statistics as reported under subsection

(1) of this section for the most recent three-year period. Upon request, the institution shall provide the report to every person who submits an application for admission to either a main or branch campus, and to each new employee at the time of employment. In its acknowledgement of receipt of the formal application for admission, the institution shall notify the applicant of the availability of such information. The information also shall be provided on an annual basis to all students and employees. Institutions with more than one campus shall provide the required information on a campus-by-campus basis.

(3) Each institution of higher education shall provide to every new student and new employee, and upon request to other interested persons, information which follows the general categories for safety policies and procedures outlined in this section. Such categories shall, at a minimum, include campus enrollments, campus nonstudent work force profile, the number and duties of campus security personnel, arrangements with state and local police, and policies on controlled substances. Information for the most recent academic year also shall include a description of any programs offered by an institution's student affairs or services department, and by student government organizations regarding crime prevention and counseling, including a directory of available services and appropriate telephone numbers and physical locations of these services. In addition, institutions maintaining student housing facilities shall include information detailing security policies and programs.

Institutions with a main campus and one or more branch campuses shall provide the information on a campus-by-campus basis.

In the case of community colleges, colleges shall provide such information to the main campuses only and shall provide reasonable alternative information at any off-campus centers and other affiliated college sites enrolling less than one hundred students.

(4) Each institution shall establish a task force which shall annually examine campus security and safety issues. The task force shall review the report published and distributed pursuant to this section in order to ensure the accuracy and effectiveness of the report, and make any suggestions for improvement. This task force shall include representation from the institution's administration, faculty, staff, recognized student organization, and police or security organization. [1990 c 288 § 7.]

**28B.10.570 Interfering by force or violence with any administrator, faculty member or student unlawful—Penalty.** (1) It shall be unlawful for any person, singly or in concert with others, to interfere by force or violence with any administrator, faculty member or student of any university, college or community college who is in the peaceful discharge or conduct of his or her duties or studies.

(2) A person violating this section is guilty of a gross misdemeanor and shall be fined not more than five hundred dollars, or imprisoned in jail not more than six months, or both such fine and imprisonment. [2003 c 53 § 171; 1971 c 45 § 1; 1970 ex.s. c 98 § 1. Formerly RCW 28.76.600.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Severability—1971 c 45:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected." [1971 c 45 § 8.]

**Severability—1970 ex.s. c 98:** "If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this act so adjudged to be invalid or unconstitutional." [1970 ex.s. c 98 § 5.]

*Disturbing school, school activities or meetings—Penalty—Disposition of fines: RCW 28A.635.030.*

**28B.10.571 Intimidating any administrator, faculty member or student by threat of force or violence unlawful—Penalty.** (1) It shall be unlawful for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, faculty member or student of any university, college or community college who is in the peaceful discharge or conduct of his or her duties or studies.

(2) A person violating this section is guilty of a gross misdemeanor and shall be fined not more than five hundred dollars, or imprisoned in jail not more than six months, or both such fine and imprisonment. [2003 c 53 § 172; 1971 c 45 § 2; 1970 ex.s. c 98 § 2. Formerly RCW 28.76.601.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Severability—1971 c 45:** See note following RCW 28B.10.570.

**Severability—1970 ex.s. c 98:** See note following RCW 28B.10.570.

**28B.10.572 Certain unlawful acts—Disciplinary authority exception.** The crimes defined in RCW 28B.10.570 and 28B.10.571 shall not apply to school administrators or teachers who are engaged in the reasonable exercise of their disciplinary authority. [2003 c 53 § 173; 1970 ex.s. c 98 § 3. Formerly RCW 28.76.602.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Severability—1970 ex.s. c 98:** See note following RCW 28B.10.570.

**28B.10.575 Student housing—Liquor prohibited, areas—Complaints regarding liquor and illegal drug use—Policies, procedures, sanctions.** (1) Each public institution of higher education shall notify all students applying for college or university-owned student housing of the availability of housing in an area in which all liquor use is prohibited.

(2) Each public institution of higher education, upon request, shall provide students access to student housing on a residence hall floor, designated area, or in a building where liquor use is prohibited.

(3) Each public institution shall have in place, and distribute to students in college or university-owned student housing, a process for reporting violations and complaints of liquor and illegal drug use.

(4) Each public institution shall have in place, distribute to students, and vigorously enforce policies and procedures for investigating complaints regarding liquor and illegal drug use in college or university-owned student housing, including the sanctions that may be applied for violations of the institution's liquor and illegal drug use policies.

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(5) Students who violate the institution's liquor and illegal drug use policies are subject to disciplinary action. Sanctions that may be applied for violations of the institution's liquor or illegal drug use policies include warnings, restitution for property damage, probation, expulsion from college or university-owned housing, and suspension from the institution.

(6) As used in this section:

(a) "Liquor" has the meaning in RCW 66.04.010; and

(b) "Illegal drug use" refers to the unlawful use of controlled substances under chapter 69.50 RCW or legend drugs under chapter 69.41 RCW. [1996 c 17 § 2.]

**Policy—1996 c 17:** "The state makes a substantial investment of finances and resources in students who are attending state institutions of higher education. In exchange, students are expected to actively pursue their education and contribute to an academic environment that is conducive to learning. Students who abuse liquor and drugs, however, are unable to make full use of this educational opportunity. More important, students who abuse liquor and drugs create an environment that interferes with the ability of other students to pursue their education. This is especially true in university-owned student housing where liquor and drug abuse contribute to noise, vandalism, theft, and violence. While the universities and colleges may not be able to stop all liquor and drug abuse among student populations, the very least they can do is ensure that the vast majority of students without drug or liquor problems are provided with a living environment that is safe and conducive to the pursuit of higher education." [1996 c 17 § 1.]

**28B.10.580 Term papers, theses, dissertations, sale of prohibited—Legislative findings—Purpose.** (1) The legislature finds that commercial operations selling term papers, theses, and dissertations encourages academic dishonesty, and in so doing impairs the public confidence in the credibility of institutions of higher education whether in this state or any other to function within their prime mission, that of providing a quality education to the citizens of this or any other state.

(2) The legislature further finds that this problem, beyond the ability of these institutions to control effectively, is a matter of state concern, while at the same time recognizing the need for and the existence of legitimate research functions.

It is the declared intent of RCW 28B.10.580 through 28B.10.584, therefore, that the state of Washington prohibit the preparation for sale or commercial sale of term papers, theses and dissertations: PROVIDED, That such legislation shall not affect legitimate and proper research activities: PROVIDED FURTHER, That such legislation does not impinge on the rights, under the First Amendment, of freedom of speech, of the press, and of distributing information. [1981 c 23 § 1; 1979 c 43 § 1.]

**Severability—1981 c 23:** "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 23 § 3.]

**Severability—1979 c 43:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1979 c 43 § 4.]

**28B.10.582 Term papers, theses, dissertations, sale of prohibited—Definitions.** Unless the context clearly indicates otherwise, the words used in RCW 28B.10.580 through 28B.10.584 shall have the meaning given in this section:

(1) "Person" means any individual, partnership, corporation, or association.

(2) "Assignment" means any specific written, recorded, pictorial, artistic, or other academic task, including but not limited to term papers, theses, dissertations, essays, and reports, that is intended for submission to any postsecondary institution in fulfillment of the requirements of a degree, diploma, certificate, or course of study at any such educational institution.

(3) "Prepare" means to create, write, or in any way produce in whole or substantial part a term paper, thesis, dissertation, essay, report, or other assignment for a monetary fee.

(4) "Postsecondary institution" means any university, college, or other postsecondary educational institution. [1981 c 23 § 2; 1979 c 43 § 2.]

**Severability—1981 c 23:** See note following RCW 28B.10.580.

**Severability—1979 c 43:** See note following RCW 28B.10.580.

**28B.10.584 Term papers, theses, dissertations, sale of prohibited—Violations enumerated—Exempted acts—Civil penalties—Injunctive relief.** (1) No person shall prepare, offer to prepare, cause to be prepared, sell, or offer for sale to any other person, including any student enrolled in a postsecondary institution, any assignment knowing, or under the circumstances having reason to know, that said assignment is intended for submission either in whole or substantial part under a student's name in fulfillment of the requirements for a degree, diploma, certificate, or course of study at any postsecondary institution.

(2) No person shall sell or offer for sale to any student enrolled in a postsecondary institution any assistance in the preparation, research or writing of an assignment knowing or under the circumstances having reason to know, that said assignment is intended for submission either in whole or substantial part under said student's name to such educational institution in fulfillment of the requirements for a degree, diploma, certificate, or course of study.

(3) Nothing contained in this section shall prevent any person from providing tutorial assistance, research material, information, or other assistance to persons enrolled in a postsecondary institution which is not intended for submission in whole or in substantial part as an assignment under the student's name to such institution. Nor shall any person be prevented by this section from rendering services for a monetary fee which includes typing, assembling, transcription, reproduction, or editing of a manuscript or other assignment: PROVIDED, That such services are not rendered with the intent of making substantive changes in a manuscript or other assignment.

(4) Any person violating any provision of RCW 28B.10.580, 28B.10.582 or 28B.10.584 shall be subject to civil penalties of not more than one thousand dollars for each violation. Any court of competent jurisdiction is hereby authorized to grant such further relief as is necessary to enforce the provisions of this section, including the issuance of an injunction.

(5) Any person against whom a judgment has been entered pursuant to subsection (4) of this section, shall upon any subsequent violation of RCW 28B.10.580, 28B.10.582 or 28B.10.584 be subject to civil penalties not to exceed ten

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thousand dollars. Any court of competent jurisdiction is hereby authorized to grant such further relief as is necessary to enforce the provisions of this section, including the issuance of an injunction.

(6) Actions for injunction under the provisions of this section may be brought in the name of the state of Washington upon the complaint of the attorney general or any prosecuting attorney in the name of the state of Washington. [1979 c 43 § 3.]

**Severability—1979 c 43:** See note following RCW 28B.10.580.

**28B.10.600 District schools may be used for teacher training by universities and The Evergreen State College—Authority.** The boards of regents of the state universities are each authorized to enter into agreements with the board of directors of any school district in this state whereby one or more of the public schools operated by such district may be used by the university for the purpose of training students at said university as teachers, supervisors, principals, or superintendents. The boards of trustees of the regional universities and of The Evergreen State College are authorized to enter into similar agreements for the purpose of training students at their institutions as teachers, supervisors, or principals. [1977 ex.s. c 169 § 27; 1969 ex.s. c 223 § 28B.10.600. Prior: 1949 c 182 § 1; Rem. Supp. 1949 § 4543-40. Formerly RCW 28.76.350.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

*Regional university model schools and training departments:* RCW 28B.35.300 through 28B.35.315.

*The Evergreen State College model schools and training departments:* RCW 28B.40.300 through 28B.40.315.

**28B.10.605 District schools may be used for teacher training by universities and The Evergreen State College—Agreement for financing, organization, etc.** The financing and the method of organization and administration of such a training program operated by agreement between a state university board of regents or a regional university board of trustees or The Evergreen State College board of trustees, and the board of directors of any school district, shall be determined by agreement between them. [1977 ex.s. c 169 § 28; 1969 ex.s. c 223 § 28B.10.605. Prior: 1949 c 182 § 2; Rem. Supp. 1949 § 4543-41. Formerly RCW 28.76.360.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.10.620 Agreements for research work by private nonprofit corporations at universities—Authority.** The boards of regents of the state universities are hereby empowered to enter into agreements with corporations organized under \*chapters 24.08, 24.16 or 24.20 RCW, whereby such corporations may be permitted to conduct on university property devoted mainly to medical, educational or research activities, under such conditions as the boards of regents shall prescribe, any educational, hospital, research or related activity which the boards of regents shall find will further the objects of the university. [1969 ex.s. c 223 § 28B.10.620. Prior: 1949 c 152 § 1; Rem. Supp. 1949 § 4543-30. Formerly RCW 28.76.370.]

**\*Reviser's note:** Chapters 24.08 and 24.16 RCW were repealed by 1967 c 235; but see chapter 24.03 RCW, the Washington nonprofit corporation act.

**28B.10.625 Agreements for research work by private nonprofit corporations at universities—Funds may be expended in cooperative effort.** The boards of regents of the state universities may expend funds available to said institutions in any cooperative effort with such corporations which will further the objects of the particular university and may permit any such corporation or corporations to use any property of the university in carrying on said functions. [1969 ex.s. c 223 § 28B.10.625. Prior: 1949 c 152 § 2; Rem. Supp. 1949 § 4543-31. Formerly RCW 28.76.380.]

**28B.10.640 Student associations to contract for certain purchases, concessions, printing, etc.—Procedure.** The associated students of the University of Washington, the associated students of Washington State University, the student associations of the state community colleges and the student associations of the regional universities and of The Evergreen State College shall contract for all purchases for printing of athletic programs, athletic tickets, athletic press brochures, yearbooks, magazines, newspapers, and letting of concessions, exceeding one thousand dollars, notice of call for bid on the same to be published in at least two newspapers of general circulation in the county wherein the institution is located two weeks prior to the award being made. The contract shall be awarded to the lowest responsible bidder, if the price bid is fair and reasonable and not greater than the market value and price, and if the bid satisfactorily covers the quality, design, performance, convenience and reliability of service of the manufacturer and/or dealer. The aforesaid student associations may require such security as they deem proper to accompany the bids submitted, and they shall also fix the amount of the bond or other security that shall be furnished by the person to whom the contract is awarded. Such student associations may reject any or all bids submitted, if for any reason it is deemed for the best interest of their organizations to do so and readvertise in accordance with the provisions of this section. The student associations may reject the bid of any person who has had a prior contract, and who did not, in its opinion, faithfully comply with its terms: PROVIDED, That nothing in this section shall apply to printing done or presses owned and operated by the associated students of the University of Washington, the associated students of Washington State University or the student associations of the regional universities or of The Evergreen State College or community colleges, or to printing done on presses owned or operated by their respective institutions. [1977 ex.s. c 169 § 29; 1969 ex.s. c 223 § 28B.10.640. Prior: 1967 ex.s. c 8 § 50; 1957 c 212 § 1. Formerly RCW 28.76.390.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.10.648 Employees—Peer review committees—Members' immunity—Proceedings—Statement of reasons—Legal representation of members.** (1) Employees, agents, or students of institutions of higher education serving on peer review committees which recommend or decide on

appointment, reappointment, tenure, promotion, merit raises, dismissal, or other disciplinary measures for employees of the institution, are immune from civil actions for damages arising from the good faith performance of their duties as members of the committees. Individuals who provide written or oral statements in support of or against a person reviewed are also immune from civil actions if their statements are made in good faith.

(2) Peer review proceedings shall be pursuant to rules and regulations promulgated by the respective institutions of higher education.

(3) Upon the request of an evaluated person, the appropriate administrative officer of the institution shall provide a statement of the reasons of the peer review committees and of participating administrative officers for a final unfavorable decision on merit, promotion, tenure or reappointment. In the case of a disciplinary or dismissal proceeding, a statement of reasons shall be provided by the reviewing committee to the evaluated person for any decision unfavorable to such person.

(4) The institutions of higher education shall provide legal representation for any past or current members of the peer review committee and for individuals who testify orally or in writing in good faith before such committee in any legal action which may arise from committee proceedings. [1984 c 137 § 1.]

**Severability—1984 c 137:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 137 § 2.]

**28B.10.650 Remunerated professional leaves for faculty members of institutions of higher education.** It is the intent of the legislature that when the state and regional universities, The Evergreen State College, and community colleges grant professional leaves to faculty and exempt staff, such leaves be for the purpose of providing opportunities for study, research, and creative activities for the enhancement of the institution's instructional and research programs.

The boards of regents of the state universities, the boards of trustees of the regional universities and of The Evergreen State College and the board of trustees of each community college district may grant remunerated professional leaves to faculty members and exempt staff, as defined in RCW 41.06.070, in accordance with regulations adopted by the respective governing boards for periods not to exceed twelve consecutive months in accordance with the following provisions:

(1) The remuneration from state general funds and general local funds for any such leave granted for any academic year shall not exceed the average of the highest quartile of a rank order of salaries of all full time teaching faculty holding academic year contracts or appointments at the institution or in the district.

(2) Remunerated professional leaves for a period of more or less than an academic year shall be compensated at rates not to exceed a proportional amount of the average salary as otherwise calculated for the purposes of subsection (1) of this section.

(3) The grant of any such professional leave shall be contingent upon a signed contractual agreement between the respective governing board and the recipient providing that

the recipient shall return to the granting institution or district following his or her completion of such leave and serve in a professional status for a period commensurate with the amount of leave so granted. Failure to comply with the provisions of such signed agreement shall constitute an obligation of the recipient to repay to the institution any remuneration received from the institution during the leave.

(4) The aggregate cost of remunerated professional leaves awarded at the institution or district during any year, including the cost of replacement personnel, shall not exceed the cost of salaries which otherwise would have been paid to personnel on leaves: **PROVIDED**, That for community college districts the aggregate cost shall not exceed one hundred fifty percent of the cost of salaries which would have otherwise been paid to personnel on leaves: **PROVIDED FURTHER**, That this subsection shall not apply to any community college district with fewer than seventy-five full time faculty members and granting fewer than three individuals such leaves in any given year.

(5) The average number of annual remunerated professional leaves awarded at any such institution or district shall not exceed four percent of the total number of full time equivalent faculty, as defined by the office of financial management, who are engaged in instruction, and exempt staff as defined in RCW 41.06.070.

(6) Negotiated agreements made in accordance with chapter 28B.52 RCW and entered into after July 1, 1977, shall be in conformance with the provisions of this section.

(7) The respective institutions and districts shall maintain such information which will ensure compliance with the provisions of this section. [2004 c 275 § 45; 1985 c 370 § 53; 1981 c 113 § 1; 1979 c 44 § 1; 1979 c 14 § 3. Prior: 1977 ex.s. c 173 § 1; 1977 ex.s. c 169 § 30; 1969 ex.s. c 223 § 28B.10.650; prior: 1959 c 155 § 1. Formerly RCW 28.76.400.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Effective date—1977 ex.s. c 173:** "This act shall take effect on July 1, 1977." [1977 ex.s. c 173 § 4.]

**Severability—1977 ex.s. c 173:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 173 § 3.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.10.660 Insurance or protection authorized—Premiums—Health benefits for graduate student appointees.** (1) The governing boards of any of the state's institutions of higher education may make available liability, life, health, health care, accident, disability and salary protection or insurance or any one of, or a combination of, the enumerated types of insurance, or any other type of insurance or protection, for the regents or trustees and students of the institution. Except as provided in subsection (2) of this section, the premiums due on such protection or insurance shall be borne by the assenting regents, trustees, or students. The regents or trustees of any of the state institutions of higher education may make liability insurance available for employees of the institutions. The premiums due on such liability insurance shall be borne by the university or college.

(2) A governing board of a public four-year institution of higher education may make available, and pay the costs of, health benefits for graduate students holding graduate service appointments, designated as such by the institution. Such health benefits may provide coverage for spouses and dependents of such graduate student appointees. [1993 sp.s. c 9 § 1; 1979 ex.s. c 88 § 1. Prior: 1973 1st ex.s. c 147 § 4; 1973 1st ex.s. c 9 § 2; 1971 ex.s. c 269 § 3; 1969 ex.s. c 237 § 4; 1969 ex.s. c 223 § 28B.10.660; prior: 1967 c 135 § 2, part; 1959 c 187 § 1, part. Formerly RCW 28.76.410, part.]

**Effective date—Effect of veto—Savings—Severability—1973 1st ex.s. c 147:** See notes following RCW 41.05.050.

**Severability—1971 ex.s. c 269:** See note following RCW 28A.400.350.

**28B.10.665 Liability insurance for officers and employees authorized.** See RCW 36.16.138.

**28B.10.680 Precollege course work—Findings—Intent.** The legislature finds that some college students who have recently graduated from high school must immediately enroll in one or more precollege classes before they can proceed successfully through college. The legislature also finds that these students should have received basic skills in English, reading, spelling, grammar, and mathematics before graduating from high school. It is the intent of the legislature that colleges and universities provide information to school districts about recent graduates who enroll in precollege classes. It is also the intent of the legislature to encourage institutions of higher education and the common schools to work together to solve problems of common concern. [1995 c 310 § 1.]

**28B.10.682 Precollege course work—Adoption of definitions.** By June 30, 1996, in consultation with the commission on student learning, the superintendent of public instruction, the state board of education, faculty, teachers from institutions of higher education and high schools, and others as appropriate, the higher education coordinating board shall adopt common definitions of remedial and precollege material and course work. The definitions adopted by the board shall be rigorous, challenging students to come to college well prepared to engage in college and university work, and shall be adopted by each institution of higher education as defined in RCW 28B.10.016. [1995 c 310 § 2.]

**28B.10.685 Precollege course work—Enrollment information—Report.** Beginning in 1997, by September 30th of each year, each state university, regional university, state college, and, for community colleges and technical colleges, the state board for community and technical colleges shall provide a report to the office of the superintendent of public instruction, the state board of education, and the commission on student learning under \*RCW 28A.630.885. The report shall contain the following information on students who, within three years of graduating from a Washington high school, enrolled the prior year in a state-supported precollege level class at the institution: (1) The number of such students enrolled in a precollege level class in mathematics, reading, grammar, spelling, writing, or English; (2) the types of precollege classes in which each student was enrolled; and

(3) the name of the Washington high school from which each student graduated.

For students who enrolled in a precollege class within three years of graduating from a Washington high school, each institution of higher education shall also report to the Washington high school from which the student graduated. The annual report shall include information on the number of students from that high school enrolled in precollege classes, and the types of classes taken by the students. [1995 c 310 § 3.]

**\*Reviser's note:** RCW 28A.630.885 was recodified as RCW 28A.655.060 pursuant to 1999 c 388 § 607. RCW 28A.655.060 was subsequently repealed by 2004 c 19 § 206.

**28B.10.690 Graduation rate improvement—Findings.** The legislature finds that, in public colleges and universities, improvement is needed in graduation rates and in the length of time required for students to attain their educational objectives. The legislature also finds that public colleges and universities should offer classes in a way that will permit full-time students to complete a degree or certificate program in about the amount of time described in the institution's catalog as necessary to complete that degree or certificate program. [1993 c 414 § 1.]

**28B.10.691 Graduation rate improvement—Strategic plans—Adoption of strategies.** (1) By May 15, 1994, each state institution of higher education, as part of its strategic plan, shall adopt strategies designed to shorten the time required for students to complete a degree or certificate and to improve the graduation rate for all students.

(2) Beginning with the fall 1995-96 academic term, each institution of higher education as defined in RCW 28B.10.016 shall implement the strategies described in subsection (1) of this section. [1993 c 414 § 2.]

**28B.10.693 Graduation rate improvement—Student progression understandings.** Each institution of higher education as defined in RCW 28B.10.016 may enter into a student progression understanding with an interested student. The terms of the understanding shall permit a student to obtain a degree or certificate within the standard period of time assumed for a full-time student pursuing that degree or certificate. Usually, the standard amount of time will be about two years for an associate of arts degree and about four years for a baccalaureate degree. Student progression understandings shall not give rise to any cause of action on behalf of any student as a result of the failure of any state institution of higher education to fulfill its obligations under the student progression understanding. [1993 c 414 § 4.]

**28B.10.695 Timely completion of degree and certificate programs—Adoption of policies.** (1) Each four-year institution of higher education and the state board for community and technical colleges shall develop policies that ensure undergraduate students enrolled in degree or certificate programs complete their programs in a timely manner in order to make the most efficient use of instructional resources and provide capacity within the institution for additional students.

(2) Policies adopted under this section shall address, but not be limited to, undergraduate students in the following circumstances:

(a) Students who accumulate more than one hundred twenty-five percent of the number of credits required to complete their respective baccalaureate or associate degree or certificate programs;

(b) Students who drop more than twenty-five percent of their course load before the grading period for the quarter or semester, which prevents efficient use of instructional resources; and

(c) Students who remain on academic probation for more than one quarter or semester.

(3) Policies adopted under this section may include assessment by the institution of a surcharge in addition to regular tuition and fees to be paid by a student for continued enrollment. [2003 c 407 § 1.]

**28B.10.700 Physical education in curriculum.** The \*state board for community college education, the boards of trustees of the regional universities and of The Evergreen State College, and the boards of regents of the state universities, with appreciation of the legislature's desire to emphasize physical education courses in their respective institutions, shall provide for the same, being cognizant of legislative guide lines put forth in RCW 28A.230.050 relating to physical education courses in high schools. [1977 ex.s. c 169 § 31; 1969 ex.s. c 223 § 28B.10.700. Prior: 1963 c 235 § 1, part; prior: (i) 1923 c 78 § 1, part; 1919 c 89 § 2, part; RRS § 4683, part. (ii) 1919 c 89 § 5, part; RRS § 4686, part. Formerly RCW 28.05.040, part.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.10.703 Programs for intercollegiate athletic competition—Authorized.** The governing boards of each of the state universities, the regional universities, The Evergreen State College, and community colleges in addition to their other duties prescribed by law shall have the power and authority to establish programs for intercollegiate athletic competition. Such competition may include participation as a member of an athletic conference or conferences, in accordance with conference rules. [1977 ex.s. c 169 § 32; 1971 ex.s. c 28 § 2.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.10.704 Funds for assistance of student participants in intercollegiate activities or activities relating to performing arts.** Funds used for purposes of providing scholarships or other forms of financial assistance to students in return for participation in intercollegiate athletics in accordance with RCW 28B.10.703 shall include but not be limited to moneys received as contributed or donated funds, or revenues derived from athletic events, including gate receipts and revenues obtained from the licensing of radio and television broadcasts.

Funds used for purposes of providing scholarships or other forms of financial assistance to students in return for participation in curriculum-related activities relating to performing arts shall include but not be limited to moneys received as contributed or donated funds, or revenues derived from performing arts events, including admission receipts and revenues obtained from the licensing of radio and television broadcasts. [1979 ex.s. c 1 § 1; 1973 1st ex.s. c 46 § 9; 1971 ex.s. c 28 § 3.]

**Severability—1973 1st ex.s. c 46:** "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 46 § 11.]

**28B.10.710 Washington state or Pacific Northwest history in curriculum.** There shall be a one quarter or semester course in either Washington state history and government, or Pacific Northwest history and government in the curriculum of all teachers' colleges and teachers' courses in all institutions of higher education. No person shall be graduated from any of said schools without completing said course of study, unless otherwise determined by the state board of education. Any course in Washington state or Pacific Northwest history and government used to fulfill this requirement shall include information on the culture, history, and government of the American Indian peoples who were the first human inhabitants of the state and the region. [1993 c 77 § 1; 1969 ex.s. c 223 § 28B.10.710. Prior: 1967 c 64 § 1, part; 1963 c 31 § 1, part; 1961 c 47 § 2, part; 1941 c 203 § 1, part; Rem. Supp. 1941 § 4898-3, part. Formerly RCW 28.05.050, part.]

**28B.10.730 AIDS information—Four-year institutions.** The governing board of each state four-year institution of higher education shall make information available to all newly matriculated students on methods of transmission of the human immunodeficiency virus and prevention of acquired immunodeficiency syndrome. The curricula and materials shall be reviewed for medical accuracy by the office on AIDS in coordination with the appropriate regional AIDS service network. [1988 c 206 § 501.]

**Severability—1988 c 206:** See RCW 70.24.900.

**28B.10.776 Budget calculation—Enrollment levels—Participation rate.** It is the policy of the state of Washington that the essential requirements level budget calculation for institutions of higher education include enrollment levels necessary to maintain, by educational sector, the participation rate funded in the 1993 fiscal year. The participation rate shall be based on the state's estimated population ages seventeen and above by appropriate age groups. [1993 sp.s. c 15 § 2.]

**Findings—1993 sp.s. c 15:** "The legislature finds that the proportion of the state budget dedicated to postsecondary educational programs has decreased for two decades. At the same time, major technological, economic, and demographic changes have exacerbated the need for improved training and education to maintain a high quality, competitive work force, and a well-educated populace to meet the challenges of the twenty-first century. Therefore, the legislature finds that there is increasing need for postsecondary educational opportunities for citizens of the state of Washington.

The legislature declares that the policy of the state of Washington shall be to improve the access to, and the quality of, this state's postsecondary educational system. The budgetary policy of the state of Washington shall be

to provide a level of protection and commitment to the state's postsecondary educational system commensurate with the responsibility of this state to the educational and professional improvement of its citizens and work force." [1993 sp.s. c 15 § 1.]

**Effective date—1993 sp.s. c 15:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 sp.s. c 15 § 10.]

**28B.10.778 Budget calculation—New enrollments—Funding level—Inflation factor.** It is the policy of the state of Washington that, for new enrollments provided under RCW 28B.10.776, the essential requirements level budget calculation for those enrollments shall, each biennium, at a minimum, include a funding level per full-time equivalent student that is equal to the rate assumed in the omnibus appropriations act for the last fiscal year of the previous biennium for the instructional, primary support, and library programs, plus an inflation factor. The inflation factor should be equivalent to the inflation factor used to calculate basic education in the common school system budget request submitted by the governor. [1993 sp.s. c 15 § 3.]

**Findings—Effective date—1993 sp.s. c 15:** See notes following RCW 28B.10.776.

**28B.10.780 Budget calculation—Funding level.** It is the policy of the state of Washington that the essential requirements level budget calculation for state institutions of higher education include a funding level per full-time equivalent student that is, each biennium, at a minimum, equal to the general fund—state and tuition fund rate per student assumed in the omnibus appropriations act for the last fiscal year of the previous biennium for the state-funded programs, minus one-time expenditures and plus an inflation factor. The inflation factor should be equivalent to the inflation factor used to calculate basic education in the common school system budget request submitted by the governor. [1993 sp.s. c 15 § 4.]

**Findings—Effective date—1993 sp.s. c 15:** See notes following RCW 28B.10.776.

**28B.10.782 Budget calculation—Increased enrollment target level—Availability of information.** It is the policy of the state of Washington that higher education enrollments be increased in increments each biennium in order to achieve, by the year 2010, the goals, by educational sector, adopted by the higher education coordinating board in its enrollment plan entitled "Design for the 21st Century: Expanding Higher Education Opportunities in Washington," or subsequent revisions adopted by the board.

Per student costs for additional students to achieve this policy shall be at the same rate per student as enrollments mandated in RCW 28B.10.776.

For each public college and university, and for the community and technical college system, budget documents generated by the governor and the legislature in the development and consideration of the biennial omnibus appropriations act shall display an enrollment target level. The enrollment target level is the biennial state-funded enrollment increase necessary to fulfill the state policy set forth in this section. The budget documents shall compare the enrollment target level with the state-funded enrollment increases contained in the

biennial budget proposals of the governor and each house of the legislature. The information required by this section shall be set forth in the budget documents so that enrollment and cost information concerning the number of students and additional funds needed to reach the enrollment goals are prominently displayed and easily understood.

For the governor's budget request, the information required by this section shall be made available in the document entitled "Operating Budget Supporting Data" or its successor document. [1993 sp.s. c 15 § 5.]

**Findings—Effective date—1993 sp.s. c 15:** See notes following RCW 28B.10.776.

**28B.10.784 Budget calculation—Participation rate and enrollment level estimates—Recommendations to governor and legislature.** The participation rate used to calculate enrollment levels under RCW 28B.10.776 and 28B.10.782 shall be based on fall enrollment reported in the higher education enrollment report as maintained by the office of financial management, fall enrollment as reported in the management information system of the state board for community and technical colleges, and the corresponding fall population forecast by the office of financial management. Formal estimates of the state participation rates and enrollment levels necessary to fulfill the requirements of RCW 28B.10.776 and 28B.10.782 shall be determined by the office of financial management as part of its responsibility to develop and maintain student enrollment forecasts for colleges and universities under RCW 43.62.050. Formal estimates of the state participation rates and enrollment levels required by this section shall be based on procedures and standards established by a technical work group consisting of staff from the higher education coordinating board, the public four-year institutions of higher education, the state board for community and technical colleges, the fiscal and higher education committees of the house of representatives and the senate, and the office of financial management. Formal estimates of the state participation rates and enrollment levels required by this section shall be submitted to the fiscal committees of the house of representatives and senate on or before November 15th of each even-numbered year. The higher education coordinating board shall periodically review the enrollment goals set forth in RCW 28B.10.776 and 28B.10.782 and submit recommendations concerning modification of these goals to the governor and to the higher education committees of the house of representatives and the senate. [1993 sp.s. c 15 § 6.]

**Findings—Effective date—1993 sp.s. c 15:** See notes following RCW 28B.10.776.

**28B.10.786 Budget calculation—Student financial aid programs.** It is the policy of the state of Washington that financial need not be a barrier to participation in higher education. It is also the policy of the state of Washington that the essential requirements level budget calculation include funding for state student financial aid programs. The calculation should, at a minimum, include a funding level equal to the amount provided in the second year of the previous biennium in the omnibus appropriations act, adjusted for the percentage of needy resident students, by educational sector, likely to be included in any enrollment increases necessary to maintain,

by educational sector, the participation rate funded in the 1993 fiscal year. The calculation should also be adjusted to reflect, by educational sector, any increases in cost of attendance. The cost of attendance figures should be calculated by the higher education coordinating board and provided to the office of financial management and appropriate legislative committees by June 30th of each even-numbered year. [1993 sp.s. c 15 § 7.]

**Findings—Effective date—1993 sp.s. c 15:** See notes following RCW 28B.10.776.

**28B.10.790 State student financial aid program—Certain residents attending college or university in another state, applicability to—Authorization.** Washington residents attending any nonprofit college or university in another state which has a reciprocity agreement with the state of Washington shall be eligible for the student financial aid program outlined in chapter 28B.92 RCW if (1) they qualify as a "needy student" under RCW 28B.92.030(3), and (2) the institution attended is a member institution of an accrediting association recognized by rule of the higher education coordinating board for the purposes of this section and is specifically encompassed within or directly affected by such reciprocity agreement and agrees to and complies with program rules and regulations pertaining to such students and institutions adopted pursuant to RCW 28B.92.150. [2004 c 275 § 44; 1985 c 370 § 54; 1980 c 13 § 1.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—1980 c 13:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 13 § 3.]

**28B.10.792 State student financial aid program—Certain residents attending college or university in another state, applicability to—Guidelines.** The higher education coordinating board shall develop guidelines for determining the conditions under which an institution can be determined to be directly affected by a reciprocity agreement for the purposes of RCW 28B.10.790: PROVIDED, That no institution shall be determined to be directly affected unless students from the county in which the institution is located are provided, pursuant to a reciprocity agreement, access to Washington institutions at resident tuition and fee rates to the extent authorized by Washington law. [1985 c 370 § 55; 1980 c 13 § 2.]

**Severability—1980 c 13:** See note following RCW 28B.10.790.

**28B.10.825 Institutional student loan fund for needy students.** The board of trustees or regents of each of the state's colleges or universities may allocate from services and activities fees an amount not to exceed one dollar per quarter or one dollar and fifty cents per semester to an institutional student loan fund for needy students, to be administered by such rules or regulations as the board of trustees or regents may adopt: PROVIDED, That loans from such funds shall not be made for terms exceeding twelve months, and the true annual rate of interest charged shall be six percent. [1971 ex.s. c 279 § 4.]

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

*Colleges and universities defined: RCW 28B.15.005.*

**28B.10.840 Definitions for purposes of RCW 28B.10.840 through 28B.10.844.** The term "institution of higher education" whenever used in RCW 28B.10.840 through 28B.10.844, shall be held and construed to mean any public institution of higher education in Washington. The term "educational board" whenever used in RCW 28B.10.840 through 28B.10.844, shall be held and construed to mean the \*state board for community college education and the higher education coordinating board. [1985 c 370 § 57; 1975 1st ex.s. c 132 § 17; 1972 ex.s. c 23 § 1.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Effective date—Severability—1975 1st ex.s. c 132:** See notes following RCW 28B.76.110.

**28B.10.842 Actions against regents, trustees, officers, employees, or agents of institutions of higher education or educational boards—Defense—Costs—Payment of obligations from liability account.** Whenever any action, claim, or proceeding is instituted against any regent, trustee, officer, employee, or agent of an institution of higher education or member of the governing body, officer, employee, or agent of an educational board arising out of the performance or failure of performance of duties for, or employment with such institution or educational board, the board of regents or board of trustees of the institution or governing body of the educational board may grant a request by such person that the attorney general be authorized to defend said claim, suit, or proceeding, and the costs of defense of such action shall be paid as provided in RCW 4.92.130. If a majority of the members of a board of regents or trustees or educational board is or would be personally affected by such findings and determination, or is otherwise unable to reach any decision on the matter, the attorney general is authorized to grant a request. When a request for defense has been authorized, then any obligation for payment arising from such action, claim, or proceedings shall be paid from the liability account, notwithstanding the nature of the claim, pursuant to the provisions of \*RCW 4.92.130 through 4.92.170, as now or hereafter amended: PROVIDED, That this section shall not apply unless the authorizing body has made a finding and determination by resolution that such regent, trustee, member of the educational board, officer, employee, or agent was acting in good faith. [1999 c 163 § 7; 1975 c 40 § 4; 1972 ex.s. c 23 § 2.]

**\*Reviser's note:** RCW 4.92.140 and 4.92.170 were repealed by 1989 c 419 § 18, effective July 1, 1989.

**Effective date—1999 c 163:** See note following RCW 4.92.130.

*Liability coverage of university personnel and students: RCW 28B.20.250 through 28B.20.255.*

**28B.10.844 Regents, trustees, officers, employees or agents of institutions of higher education or educational boards, insurance to protect and hold personally harmless.** The board of regents and the board of trustees of each of the state's institutions of higher education and governing body of an educational board are authorized to purchase insurance to protect and hold personally harmless any regent,

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trustee, officer, employee or agent of their respective institution, any member of an educational board, its officers, employees or agents, from any action, claim or proceeding instituted against him arising out of the performance or failure of performance of duties for or employment with such institution or educational board and to hold him harmless from any expenses connected with the defense, settlement or monetary judgments from such actions. [1972 ex.s. c 23 § 3.]

*Liability coverage of university personnel and students: RCW 28B.20.250 through 28B.20.255.*

**28B.10.850 Capital improvements, bonds for—Authorized—Form, terms, conditions, sale, signatures.** For the purpose of providing needed capital improvements consisting of the acquisition, construction, remodeling, furnishing and equipping of state buildings and facilities for the institutions of higher education, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of thirty million two hundred thousand dollars or so much thereof as shall be required to finance the capital projects relating to the institutions of higher education as set forth in the capital appropriations act, chapter 114, Laws of 1973 1st ex. sess., to be paid and discharged within thirty years of the date of issuance in accordance with Article VIII, section 1 of the Constitution of the state of Washington.

The state finance committee is authorized to prescribe the form of such bonds, and the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof.

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds. [1985 ex.s. c 4 § 13; 1973 1st ex.s. c 135 § 1.]

**Severability—1985 ex.s. c 4:** See RCW 43.99G.900.

**Severability—1973 1st ex.s. c 135:** "If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 135 § 7.]

**28B.10.851 Capital improvements, bonds for—Account created, purpose.** The proceeds from the sale of the bonds authorized herein, together with all grants, donations, transferred funds and all other moneys which the state finance committee may direct the state treasurer to deposit therein shall be deposited in the state higher education construction account hereby created in the state treasury. [1991 sp.s. c 13 § 45; 1985 c 57 § 11; 1973 1st ex.s. c 135 § 2.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**Severability—1973 1st ex.s. c 135:** See note following RCW 28B.10.850.

**28B.10.852 Capital improvements, bonds for—Bond anticipation notes, purpose.** At the time the state finance committee determines to issue such bonds or a portion

thereof, it may, pending the issuing of such bonds, issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of the bonds, which notes shall be designated as "bond anticipation notes". Such portion of the proceeds of the sale of such bonds that may be required for such purpose shall be applied to the payment of the principal of and interest on such anticipation notes which have been issued. The proceeds from the sale of bonds or notes authorized by RCW 28B.10.850 through 28B.10.855 shall be deposited in the state higher education construction account in the state treasury and shall be used exclusively for the purposes specified in RCW 28B.10.850 through 28B.10.855 and for the payment of expenses incurred in the issuance and sale of the bonds. [1985 c 57 § 12; 1973 1st ex.s. c 135 § 3.]

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**Severability—1973 1st ex.s. c 135:** See note following RCW 28B.10.850.

**28B.10.853 Capital improvements, bonds for—Bond redemption fund created, purpose—Compelling transfer of funds to.** The state higher education bond redemption fund of 1973 is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by RCW 28B.10.850 through 28B.10.855. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements, and on July 1st of each year the state treasurer shall deposit such amount in the state higher education bond redemption fund of 1973 from any general state revenues received in the state treasury and certified by the state treasurer to be general state revenues.

The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1973 1st ex.s. c 135 § 4.]

**Severability—1973 1st ex.s. c 135:** See note following RCW 28B.10.850.

**28B.10.854 Capital improvements, bonds for—Legislature may provide additional means of revenue.** The legislature may provide additional means for raising moneys for the payment of the interest and principal of the bonds authorized herein and RCW 28B.10.850 through 28B.10.855 shall not be deemed to provide an exclusive method for such payment. [1973 1st ex.s. c 135 § 5.]

**Severability—1973 1st ex.s. c 135:** See note following RCW 28B.10.850.

**28B.10.855 Capital improvements, bonds for—As legal investment for state and municipal funds.** The bonds herein authorized shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1973 1st ex.s. c 135 § 6.]

**Severability—1973 1st ex.s. c 135:** See note following RCW 28B.10.850.

**28B.10.863 Distinguished professorship program—Solicitation and receipt of gifts—Investment of endowed funds—Report to the legislature.**

**Reviser's note:** RCW 28B.10.863 was amended by 1987 c 505 § 11 without reference to its repeal by 1987 c 8 § 10. It has been decodified for publication purposes pursuant to RCW 1.12.025.

**28B.10.878 G. Robert Ross distinguished faculty award.** The G. Robert Ross distinguished faculty award is hereby established. The board of trustees at Western Washington University shall establish the guidelines for the selection of the recipients of the G. Robert Ross distinguished faculty award. The board shall establish a local endowment fund for the deposit of all state funds appropriated for this purpose and any private donations. The board shall administer the endowment fund and the award. The principal of the invested endowment fund shall not be invaded and the proceeds from the endowment fund may be used to supplement the salary of the holder of the award, to pay salaries of his or her assistants, and to pay expenses associated with the holder's scholarly work. [1988 c 125 § 2.]

**Finding—1988 c 125 § 2:** "The legislature finds that G. Robert Ross, immediate past president of Western Washington University, was an exemplary university president who helped lead his school to a position of increasing excellence and national prominence. Dr. Ross was a convincing spokesperson for excellence in all areas of education and was a leader who strongly encouraged the faculty and staff at Western Washington University to be actively involved in the pursuit of scholarly activities.

The legislature wishes to honor the public spirit, dedication, integrity, perseverance, inspiration, and accomplishments of Western Washington University faculty through the creation of the G. Robert Ross Distinguished Faculty Award." [1988 c 125 § 1.]

**Severability—1988 c 125:** See RCW 28B.106.902.

**28B.10.890 Collegiate license plate fund—Scholarships.** A collegiate license plate fund is established in the custody of the state treasurer for each college or university with a collegiate license plate program approved by the department [of licensing] under RCW 46.16.324. All receipts from collegiate license plates authorized under \*RCW 46.16.301 shall be deposited in the appropriate local college or university nonappropriated, nonallotted fund. Expenditures from the funds may be used only for student scholarships. Only the president of the college or university or the president's designee may authorize expenditures from the fund. [1994 c 194 § 7.]

**\*Reviser's note:** RCW 46.16.301 was amended by 1997 c 291 § 5, deleting authorization for collegiate license plates. For collegiate license plates, see RCW 46.16.313.

**28B.10.900 "Hazing" defined.** As used in RCW 28B.10.901 and 28B.10.902, "hazing" includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary educational institution in this state. "Hazing" does not include customary athletic events or other similar contests or competitions. [1993 c 514 § 1.]

**28B.10.901 Hazing prohibited—Penalty.** (1) No student, or other person in attendance at any public or private institution of higher education, or any other postsecondary

educational institution, may conspire to engage in hazing or participate in hazing of another.

(2) A violation of this section is a misdemeanor, punishable as provided under RCW 9A.20.021.

(3) Any organization, association, or student living group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages. [1993 c 514 § 2.]

**28B.10.902 Participating in or permitting hazing—Loss of state-funded grants or awards—Loss of official recognition or control—Rules.** (1) A person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the institution of higher education.

(2) Any organization, association, or student living group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by a public institution of higher education.

(3) The public institutions of higher education shall adopt rules to implement this section. [1993 c 514 § 3.]

**28B.10.903 Conduct associated with initiation into group or pastime or amusement with group—Sanctions adopted by rule.** Institutions of higher education shall adopt rules providing sanctions for conduct associated with initiation into a student organization or living group, or any pastime or amusement engaged in with respect to an organization or living group not amounting to a violation of RCW 28B.10.900. Conduct covered by this section may include embarrassment, ridicule, sleep deprivation, verbal abuse, or personal humiliation. [1993 c 514 § 4.]

**28B.10.910 Students with disabilities—Core services.** Each student with one or more disabilities is entitled to receive a core service only if the service is reasonably needed to accommodate the student's disabilities. The requesting student shall make a reasonable request for core services in a timely manner and the institution of higher education or agency providing the service shall respond reasonably and in a timely manner. [1994 c 105 § 2.]

**Intent—1994 c 105:** "It is a fundamental aspiration of the people of Washington that individuals be afforded the opportunity to compete academically. Accordingly, it is an appropriate act of state government, in furtherance of this aspiration, to make available appropriate support services to those individuals who are able to attend college by virtue of their potential and desire, but whose educational progress and success is hampered by a lack of accommodation.

Furthermore, under existing federal and state laws, institutions of higher education are obligated to provide services to students with disabilities. The legislature does not intend to confer any new or expanded rights, however, the intent of this act is to provide a clearer, more succinct statement of those rights than is presently available and put Washington on record as supporting those rights.

It is the intent of the legislature that these services be provided within the bounds of the law. Therefore, the institution of higher education's obligations to provide reasonable accommodations are limited by the defenses provided in federal and state statutes, such as undue financial burden and undue hardship." [1994 c 105 § 1.]

(2004 Ed.)

**28B.10.912 Students with disabilities—Core services described—Notice of nondiscrimination.** Each institution of higher education shall ensure that students with disabilities are reasonably accommodated within that institution. The institution of higher education shall provide students with disabilities with the appropriate core service or services necessary to ensure equal access.

Core services shall include, but not be limited to:

(1) Flexible procedures in the admissions process that use a holistic review of the student's potential, including appropriate consideration in statewide and institutional alternative admissions programs;

(2) Early registration or priority registration;

(3) Sign language, oral and tactile interpreter services, or other technological alternatives;

(4) Textbooks and other educational materials in alternative media, including, but not limited to, large print, braille, electronic format, and audio tape;

(5) Provision of readers, notetakers, scribes, and proofreaders including recruitment, training, and coordination;

(6) Ongoing review and coordination of efforts to improve campus accessibility, including but not limited to, all aspects of barrier-free design, signage, high-contrast identification of hazards of mobility barriers, maintenance of access during construction, snow and ice clearance, and adequate disability parking for all facilities;

(7) Facilitation of physical access including, but not limited to, relocating of classes, activities, and services to accessible facilities and orientation if route of travel needs change, such as at the beginning of a quarter or semester;

(8) Access to adaptive equipment including, but not limited to, TDDs, FM communicators, closed caption devices, amplified telephone receivers, closed circuit televisions, low-vision reading aids, player/recorders for 15/16 4-track tapes, photocopy machines able to use eleven-by-seventeen inch paper, braille devices, and computer enhancements;

(9) Referral to appropriate on-campus and off-campus resources, services, and agencies;

(10) Release of syllabi, study guides, and other appropriate instructor-produced materials in advance of general distribution, and access beyond the regular classroom session to slides, films, overheads and other media and taping of lectures;

(11) Accessibility for students with disabilities to tutoring, mentoring, peer counseling, and academic advising that are available on campus;

(12) Flexibility in test taking arrangements;

(13) Referral to the appropriate entity for diagnostic assessment and documentation of the disability;

(14) Flexibility in timelines for completion of courses, certification, and degree requirements;

(15) Flexibility in credits required to be taken to satisfy institutional eligibility for financial aid; and

(16) Notification of the institution of higher education's policy of nondiscrimination on the basis of disability and of steps the student may take if he or she believes discrimination has taken place. This notice shall be included in all formal correspondence that communicates decisions or policies adversely affecting the student's status or rights with the institution of higher education. This notice shall include the phone numbers of the United States department of education,

the United States office of civil rights, and the Washington state human rights commission. [1994 c 105 § 3.]

**Intent—1994 c 105:** See note following RCW 28B.10.910.

**28B.10.914 Students with disabilities—Accommodation.** Reasonable accommodation for students with disabilities shall be provided as appropriate for all aspects of college and university life, including but not limited to: Recruitment, the application process, enrollment, registration, financial aid, course work, research, academic counseling, housing programs owned or operated by the institution of higher education, and nonacademic programs and services. [1994 c 105 § 4.]

**Intent—1994 c 105:** See note following RCW 28B.10.910.

**28B.10.916 Supplemental instructional materials for students with print access disability.** (1) An individual, firm, partnership or corporation that publishes or manufactures instructional materials for students attending any public or private institution of higher education in the state of Washington shall provide to the public or private institution of higher education, for use by students attending the institution, any instructional material in an electronic format mutually agreed upon by the publisher or manufacturer and the public or private institution of higher education. Computer files or electronic versions of printed instructional materials shall be provided; video materials must be captioned or accompanied by transcriptions of spoken text; and audio materials must be accompanied by transcriptions. These supplemental materials shall be provided to the public or private institution of higher education at no additional cost and in a timely manner, upon receipt of a written request as provided in subsection (2) of this section.

(2) A written request for supplemental materials must:

(a) Certify that a student with a print access disability attending or registered to attend a public or participating private institution of higher education has purchased the instructional material or the public or private institution of higher education has purchased the instructional material for use by a student with a print access disability;

(b) Certify that the student has a print access disability that substantially prevents him or her from using standard instructional materials;

(c) Certify that the instructional material is for use by the student in connection with a course in which he or she is registered or enrolled at the public or private institution of higher education; and

(d) Be signed by the coordinator of services for students with disabilities at the public or private institution of higher education or by the college or campus official responsible for monitoring compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) at the public or private institution of higher education.

(3) An individual, firm, partnership or corporation specified in subsection (1) of this section may also require that, in addition to the requirements in subsection (2) of this section, the request include a statement signed by the student agreeing to both of the following:

(a) He or she will use the instructional material provided in specialized format solely for his or her own educational purposes; and

(b) He or she will not copy or duplicate the instructional material provided in specialized format for use by others.

(4) If a public or private institution of higher education provides a student with the specialized format version of an instructional material, the media must be copy-protected or the public or private institution of higher education shall take other reasonable precautions to ensure that students do not copy or distribute specialized format versions of instructional materials in violation of the Copyright Revisions Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

(5) For purposes of this section:

(a) "Instructional material or materials" means textbooks and other materials that are required or essential to a student's success in a postsecondary course of study in which a student with a disability is enrolled. The determination of which materials are "required or essential to student success" shall be made by the instructor of the course in consultation with the official making the request in accordance with guidelines issued pursuant to subsection (9) of this section. The term specifically includes both textual and nontextual information.

(b) "Print access disability" means a condition in which a person's independent reading of, reading comprehension of, or visual access to materials is limited or reduced due to a sensory, neurological, cognitive, physical, psychiatric, or other disability recognized by state or federal law. The term is applicable, but not limited to, persons who are blind, have low vision, or have reading disorders or physical disabilities.

(c) "Structural integrity" means all instructional material, including but not limited to the text of the material, sidebars, the table of contents, chapter headings and subheadings, footnotes, indexes, glossaries, graphs, charts, illustrations, pictures, equations, formulas, and bibliographies. Structural order of material shall be maintained. Structural elements, such as headings, lists, and tables must be identified using current markup and tools. If good faith efforts fail to produce an agreement between the publisher or manufacturer and the public or private institution of higher education, as to an electronic format that will preserve the structural integrity of instructional materials, the publisher or manufacturer shall provide the instructional material in a verified and valid HTML format and shall preserve as much of the structural integrity of the instructional materials as possible.

(d) "Specialized format" means Braille, audio, or digital text that is exclusively for use by blind or other persons with print access disabilities.

(6) Nothing in this section is to be construed to prohibit a public or private institution of higher education from assisting a student with a print access disability through the use of an electronic version of instructional material gained through this section or by transcribing or translating or arranging for the transcription or translation of the instructional material into specialized formats that provide persons with print access disabilities the ability to have increased independent access to instructional materials. If such specialized format is made, the public or private institution of higher education may share the specialized format version of the instructional material with other students with print access disabilities for whom the public or private institution of higher education is

authorized to request electronic versions of instructional material. The addition of captioning to video material by a Washington public or private institution of higher education does not constitute an infringement of copyright.

(7) A specialized format version of instructional materials developed at one public or private institution of higher education in Washington state may be shared for use by a student at another public or private institution of higher education in Washington state for whom the latter public or private institution of higher education is authorized to request electronic versions of instructional material.

(8) Nothing in this section shall be deemed to authorize any use of instructional materials that would constitute an infringement of copyright under the Copyright Revision Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

(9) The governing boards of public and participating private institutions of higher education in Washington state shall each adopt guidelines consistent with this section for its implementation and administration. At a minimum, the guidelines shall address all of the following:

(a) The designation of materials deemed "required or essential to student success";

(b) The determination of the availability of technology for the conversion of materials pursuant to subsection (4) of this section and the conversion of mathematics and science materials pursuant to subsection (5)(c) of this section;

(c) The procedures and standards relating to distribution of files and materials pursuant to this section;

(d) The guidelines shall include procedures for granting exceptions when it is determined that an individual, firm, partnership or corporation that publishes or manufactures instructional materials is not technically able to comply with the requirements of this section; and

(e) Other matters as are deemed necessary or appropriate to carry out the purposes of this section.

(10) A violation of this chapter constitutes an unfair practice under chapter 49.60 RCW, the law against discrimination. All rights and remedies under chapter 49.60 RCW, including the right to file a complaint with the human rights commission and to bring a civil action, apply. [2004 c 46 § 1.]

**Chapter 28B.12 RCW**

**STATE WORK-STUDY PROGRAM**

(Formerly: College work-study program)

Sections

28B.12.010	Created.
28B.12.020	Purpose.
28B.12.030	Definitions.
28B.12.040	Board to develop and administer program—Agreements authorized, limitation—Work study advisory committee.
28B.12.050	Disbursal of state work-study funds—Criteria.
28B.12.060	Rules—Mandatory provisions.
28B.12.070	Annual report of institutions to higher education coordinating board.

**28B.12.010 Created.** There is hereby created a program of financial aid to students pursuing a post-secondary education which shall be known as the state work-study program. [1994 c 130 § 1; 1974 ex.s. c 177 § 1.]

**Severability—1974 ex.s. c 177:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of

the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 177 § 10.]

**28B.12.020 Purpose.** The purpose of the program created in RCW 28B.12.010 is to provide financial assistance to needy students, including needy students from middle-income families, attending eligible post-secondary institutions in the state of Washington by stimulating and promoting their employment, thereby enabling them to pursue courses of study at such institutions. An additional purpose of this program shall be to provide such needy students, wherever possible, with employment related to their academic or vocational pursuits. [1994 c 130 § 2; 1974 ex.s. c 177 § 2.]

**Severability—1974 ex.s. c 177:** See note following RCW 28B.12.010.

**28B.12.030 Definitions.** As used in this chapter, the following words and terms shall have the following meanings, unless the context shall clearly indicate another or different meaning or intent:

(1) The term "needy student" shall mean a student enrolled or accepted for enrollment at a post-secondary institution who, according to a system of need analysis approved by the higher education coordinating board, demonstrates a financial inability, either parental, familial, or personal, to bear the total cost of education for any semester or quarter.

(2) The term "eligible institution" shall mean any post-secondary institution in this state accredited by the Northwest Association of Schools and Colleges, or a branch of a member institution of an accrediting association recognized by rule of the board for purposes of this section, that is eligible for federal student financial aid assistance and has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington, or any public technical college in the state. [2002 c 187 § 2; 1994 c 130 § 3; 1974 ex.s. c 177 § 3.]

**Severability—1974 ex.s. c 177:** See note following RCW 28B.12.010.

**28B.12.040 Board to develop and administer program—Agreements authorized, limitation—Work study advisory committee.** With the assistance of an advisory committee, the higher education coordinating board shall develop and administer the state work-study program. The board shall be authorized to enter into agreements with employers and eligible institutions for the operation of the program. These agreements shall include such provisions as the higher education coordinating board may deem necessary or appropriate to carry out the purposes of this chapter.

The members of the work-study advisory committee may include, but need not be limited to representatives of public and private community colleges, technical colleges, and four-year institutions of higher education; vocational schools; students; community service organizations; public schools; business; and labor. When selecting members of the advisory committee, the board shall consult with institutions of higher education, the state board for community and technical colleges, the work force training and education coordinating board, and appropriate associations and organizations. With the exception of off-campus community service placements, the share from moneys disbursed under the state work-study program of the compensation of students

employed under such program in accordance with such agreements shall not exceed eighty percent of the total such compensation paid such students.

By rule, the board shall define community service placements and may determine any salary matching requirements for any community service employers. [1994 c 130 § 4; 1993 c 385 § 3; 1985 c 370 § 58; 1974 ex.s. c 177 § 4.]

**Severability—1974 ex.s. c 177:** See note following RCW 28B.12.010.

**Purpose—1974 ex.s. c 177:** See RCW 28B.12.020.

**28B.12.050 Disbursal of state work-study funds—**

**Criteria.** The higher education coordinating board shall disburse state work-study funds. In performing its duties under this section, the board shall consult eligible institutions and post-secondary education advisory and governing bodies. The board shall establish criteria designed to achieve such distribution of assistance under this chapter among students attending eligible institutions as will most effectively carry out the purposes of this chapter. [1994 c 130 § 5; 1987 c 330 § 201; 1985 c 370 § 59; 1974 ex.s. c 177 § 5.]

**Construction—Application of rules—1987 c 330:** "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections. The rules of the agencies abolished by this act shall continue in force until acted upon by the succeeding agency and shall be enforced by the succeeding agency. If there is no succeeding agency, the rules shall terminate." [1987 c 330 § 1401.]

**Severability—1987 c 330:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 330 § 1402.]

**Severability—1974 ex.s. c 177:** See note following RCW 28B.12.010.

**28B.12.060 Rules—Mandatory provisions. (Effective until March 15, 2005.)** The higher education coordinating board shall adopt rules as may be necessary or appropriate for effecting the provisions of this chapter, and not in conflict with this chapter, in accordance with the provisions of chapter 34.05 RCW, the state higher education administrative procedure act. Such rules shall include provisions designed to make employment under the work-study program reasonably available, to the extent of available funds, to all eligible students in eligible post-secondary institutions in need thereof. The rules shall include:

(1) Providing work under the state work-study program that will not result in the displacement of employed workers or impair existing contracts for services;

(2) Furnishing work only to a student who:

(a) Is capable, in the opinion of the eligible institution, of maintaining good standing in such course of study while employed under the program covered by the agreement; and

(b) Has been accepted for enrollment as at least a half-time student at the eligible institution or, in the case of a student already enrolled in and attending the eligible institution, is in good standing and in at least half-time attendance there either as an undergraduate, graduate or professional student; and

(c) Is not pursuing a degree in theology;

(3) Placing priority on providing:

(a) Work opportunities for students who are residents of the state of Washington as defined in RCW 28B.15.012 and

28B.15.013 except resident students defined in \*RCW 28B.15.012(2)(e);

(b) Job placements in fields related to each student's academic or vocational pursuits, with an emphasis on off-campus job placements whenever appropriate; and

(c) Off-campus community service placements;

(4) Provisions to assure that in the state institutions of higher education, utilization of this work-study program:

(a) Shall only supplement and not supplant classified positions under jurisdiction of chapter 41.06 RCW;

(b) That all positions established which are comparable shall be identified to a job classification under the Washington personnel resources board's classification plan and shall receive equal compensation;

(c) Shall not take place in any manner that would replace classified positions reduced due to lack of funds or work; and

(d) That work study positions shall only be established at entry level positions of the classified service unless the overall scope and responsibilities of the position indicate a higher level; and

(5) Provisions to encourage job placements in occupations that meet Washington's economic development goals, especially those in international trade and international relations. The board shall permit appropriate job placements in other states and other countries. [1994 c 130 § 6. Prior: 1993 sp.s. c 18 § 3; 1993 c 281 § 14; 1987 c 330 § 202; 1985 c 370 § 60; 1974 ex.s. c 177 § 6.]

**\*Reviser's note:** RCW 28B.15.012 was amended by 2000 c 117 § 1, changing subsection (2)(e) to subsection (2)(f). RCW 28B.15.012 was subsequently amended by 2003 c 95 § 1, changing subsection (2)(f) to subsection (2)(g).

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**Construction—Application of rules—Severability—1987 c 330:** See notes following RCW 28B.12.050.

**Severability—1974 ex.s. c 177:** See note following RCW 28B.12.010.

**28B.12.060 Rules—Mandatory provisions. (Effective March 15, 2005.)** The higher education coordinating board shall adopt rules as may be necessary or appropriate for effecting the provisions of this chapter, and not in conflict with this chapter, in accordance with the provisions of chapter 34.05 RCW, the state higher education administrative procedure act. Such rules shall include provisions designed to make employment under the work-study program reasonably available, to the extent of available funds, to all eligible students in eligible post-secondary institutions in need thereof. The rules shall include:

(1) Providing work under the state work-study program that will not result in the displacement of employed workers or impair existing contracts for services;

(2) Furnishing work only to a student who:

(a) Is capable, in the opinion of the eligible institution, of maintaining good standing in such course of study while employed under the program covered by the agreement; and

(b) Has been accepted for enrollment as at least a half-time student at the eligible institution or, in the case of a student already enrolled in and attending the eligible institution, is in good standing and in at least half-time attendance there either as an undergraduate, graduate or professional student; and

(c) Is not pursuing a degree in theology;

(3) Placing priority on providing:

(a) Work opportunities for students who are residents of the state of Washington as defined in RCW 28B.15.012 and 28B.15.013 except resident students defined in \*RCW 28B.15.012(2)(f);

(b) Job placements in fields related to each student's academic or vocational pursuits, with an emphasis on off-campus job placements whenever appropriate; and

(c) Off-campus community service placements;

(4) Provisions to assure that in the state institutions of higher education, utilization of this work-study program:

(a) Shall only supplement and not supplant classified positions under jurisdiction of chapter 41.06 RCW;

(b) That all positions established which are comparable shall be identified to a job classification under the director of personnel's classification plan and shall receive equal compensation;

(c) Shall not take place in any manner that would replace classified positions reduced due to lack of funds or work; and

(d) That work study positions shall only be established at entry level positions of the classified service unless the overall scope and responsibilities of the position indicate a higher level; and

(5) Provisions to encourage job placements in occupations that meet Washington's economic development goals, especially those in international trade and international relations. The board shall permit appropriate job placements in other states and other countries. [2002 c 354 § 224; 1994 c 130 § 6. Prior: 1993 sp.s. c 18 § 3; 1993 c 281 § 14; 1987 c 330 § 202; 1985 c 370 § 60; 1974 ex.s. c 177 § 6.]

\*Reviser's note: RCW 28B.15.012 was amended by 2003 c 95 § 1, changing subsection (2)(f) to subsection (2)(g).

**Short title—Headings, captions not law—Severability—Effective dates—2002 c 354:** See RCW 41.80.907 through 41.80.910.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**Construction—Application of rules—Severability—1987 c 330:** See notes following RCW 28B.12.050.

**Severability—1974 ex.s. c 177:** See note following RCW 28B.12.010.

**28B.12.070 Annual report of institutions to higher education coordinating board.** Each eligible institution shall submit to the higher education coordinating board an annual report in accordance with such requirements as are adopted by the board. [1994 c 130 § 7; 1985 c 370 § 61; 1974 ex.s. c 177 § 7.]

**Severability—1974 ex.s. c 177:** See note following RCW 28B.12.010.

## Chapter 28B.13 RCW

### 1974 BOND ISSUE FOR CAPITAL IMPROVEMENTS

#### Sections

- 28B.13.010 Bonds authorized—Amount—Purpose—Form, conditions of sale, etc.  
 28B.13.020 Disposition of proceeds from sale of bonds.  
 28B.13.030 Bond anticipation notes—Authorized—Payment of principal and interest on—Disposition of proceeds from sale of bonds and notes.  
 28B.13.040 Bond redemption fund—Created—Use—Rights of bond owner and holder.  
 28B.13.050 Chapter not exclusive method for payment of interest and principal on bonds.

(2004 Ed.)

28B.13.060 Bonds as legal investment for public funds.

28B.13.900 Severability—1974 ex.s. c 181.

*State finance committee: Chapter 43.33 RCW.*

**28B.13.010 Bonds authorized—Amount—Purpose—Form, conditions of sale, etc.** For the purpose of providing needed capital improvements consisting of the acquisition, construction, remodeling, furnishing and equipping of state buildings and facilities for the institutions of higher education, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of seven million eight hundred one thousand eighty dollars or so much thereof as shall be required to finance the capital project relating to institutions of higher education as set forth in the capital appropriations act, chapter 197 (SSB 3253), Laws of 1974 ex. sess., to be paid and discharged within thirty years of the date of issuance in accordance with Article VIII, section 1 of the Constitution of the state of Washington.

The state finance committee is authorized to prescribe the form of such bonds, and the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof.

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds. [1974 ex.s. c 181 § 1.]

**28B.13.020 Disposition of proceeds from sale of bonds.** The proceeds from the sale of the bonds authorized by this chapter, together with all grants, donations, transferred funds and all other moneys which the state finance committee may direct the state treasurer to deposit therein shall be deposited in the state higher education construction account in the state general fund. [1974 ex.s. c 181 § 2.]

**28B.13.030 Bond anticipation notes—Authorized—Payment of principal and interest on—Disposition of proceeds from sale of bonds and notes.** At the time the state finance committee determines to issue such bonds or a portion thereof, it may, pending the issuing of such bonds, issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of the bonds, which notes shall be designated as "bond anticipation notes". Such portion of the proceeds of the sale of such bonds that may be required for such purpose shall be applied to the payment of the principal of and interest on such anticipation notes which have been issued. The proceeds from the sale of bonds or notes authorized by this chapter shall be deposited in the state higher education construction account of the general fund in the state treasury and shall be used exclusively for the purposes specified in this chapter and for the payment of expenses incurred in the issuance and sale of the bonds. [1974 ex.s. c 181 § 3.]

**28B.13.040 Bond redemption fund—Created—Use—Rights of bond owner and holder.** The state higher education bond redemption fund of 1974 is hereby created in

the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by this chapter. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements, and on July 1st of each year the state treasurer shall deposit such amount in the state higher education bond redemption fund of 1974 from any general state revenues received in the state treasury and certified by the state treasurer to be general state revenues.

The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed therein. [1974 ex.s. c 181 § 4.]

**28B.13.050 Chapter not exclusive method for payment of interest and principal on bonds.** The legislature may provide additional means for raising moneys for the payment of the interest and principal of the bonds authorized herein and this chapter shall not be deemed to provide an exclusive method for such payment. [1974 ex.s. c 181 § 5.]

**28B.13.060 Bonds as legal investment for public funds.** The bonds authorized by this chapter shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1974 ex.s. c 181 § 6.]

**28B.13.900 Severability—1974 ex.s. c 181.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 181 § 7.]

## Chapter 28B.14 RCW

### 1975 BOND ISSUE FOR CAPITAL IMPROVEMENTS

#### Sections

- 28B.14.010 Bonds authorized—Amount—Consideration for minority contractors on projects so funded.
- 28B.14.020 Bond anticipation notes—Authorized—Payment.
- 28B.14.030 Form, terms, conditions, sale and covenants of bonds and notes.
- 28B.14.040 Disposition of proceeds from sale of bonds and notes—Use.
- 28B.14.050 1975 state higher education bond retirement fund—Created—Purpose.
- 28B.14.060 Bonds as legal investment for public funds.

**28B.14.010 Bonds authorized—Amount—Consideration for minority contractors on projects so funded.** For the purpose of providing needed capital improvements consisting of the acquisition, construction, remodeling, furnishing and equipping of state buildings and facilities for the institutions of higher education, the state finance committee is hereby authorized to issue from time to time general obligation bonds of the state of Washington in the aggregate principal amount of fourteen million eight hundred eighty thousand dollars, or so much thereof as shall be required to finance the capital projects relating to institutions of higher education as determined by the legislature in its capital appropriations acts from time to time, for such purposes, to be paid and discharged within thirty years of the date of issuance

in accordance with Article VIII, section 1, of the Constitution of the state of Washington. It is the intent of the legislature that in any decision to contract for capital projects funded as the result of this chapter, full and fair consideration shall be given to minority contractors. [1975-'76 2nd ex.s. c 126 § 1; 1975 1st ex.s. c 237 § 1.]

**Severability—1975 1st ex.s. c 237:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, shall in no way be affected." [1975 1st ex.s. c 237 § 8.]

**28B.14.020 Bond anticipation notes—Authorized—Payment.** When the state finance committee has determined to issue such general obligation bonds or a portion thereof as authorized in RCW 28B.14.010, it may, pending the issuance thereof, issue in the name of the state temporary notes in anticipation of the issuance of such bonds, which notes shall be designated as "bond anticipation notes". Such portion of the proceeds of the sale of such bonds as may be required for the payment of principal and redemption premium, if any, of and interest on such notes shall be applied thereto when such bonds are issued. [1975 1st ex.s. c 237 § 2.]

**Severability—1975 1st ex.s. c 237:** See note following RCW 28B.14.010.

**28B.14.030 Form, terms, conditions, sale and covenants of bonds and notes.** The state finance committee is authorized to prescribe the form, terms, conditions and covenants of the bonds and/or the bond anticipation notes provided for in RCW 28B.14.010 and 28B.14.020, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance.

Each such bond and bond anticipation note shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal thereof and interest thereon when due. [1975 1st ex.s. c 237 § 3.]

**Severability—1975 1st ex.s. c 237:** See note following RCW 28B.14.010.

**28B.14.040 Disposition of proceeds from sale of bonds and notes—Use.** Except for that portion of the proceeds required to pay bond anticipation notes pursuant to RCW 28B.14.020, the proceeds from the sale of the bonds and/or bond anticipation notes authorized in this chapter, together with all grants, donations, transferred funds, and all other moneys which the state finance committee may direct the state treasurer to deposit therein, shall be deposited in the state higher education construction account of the general fund in the state treasury. All such proceeds shall be used exclusively for the purposes specified in this chapter and for the payment of the expenses incurred in connection with the sale and issuance of such bonds and bond anticipation notes. [1975 1st ex.s. c 237 § 4.]

**Severability—1975 1st ex.s. c 237:** See note following RCW 28B.14.010.

**28B.14.050 1975 state higher education bond retirement fund—Created—Purpose.** The 1975 state higher education bond retirement fund is hereby created in the state treasury for the purpose of the payment of principal of and

interest on the bonds authorized to be issued pursuant to this chapter.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on such bonds. On July 1st of each such year the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the 1975 state higher education bond retirement fund an amount equal to the amount certified by the state finance committee. [1975 1st ex.s. c 237 § 5.]

**Severability—1975 1st ex.s. c 237:** See note following RCW 28B.14.010.

**28B.14.060 Bonds as legal investment for public funds.** The bonds authorized in this chapter shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1975 1st ex.s. c 237 § 6.]

**Severability—1975 1st ex.s. c 237:** See note following RCW 28B.14.010.

## Chapter 28B.14B RCW

### 1977 BOND ISSUE FOR CAPITAL IMPROVEMENTS

#### Sections

- 28B.14B.010 Bonds authorized—Amount—Conditions.
- 28B.14B.020 Bond anticipation notes—Authorized—Payment.
- 28B.14B.030 Form, terms, conditions, sale and covenants of bonds and notes.
- 28B.14B.040 Disposition of proceeds from sale of bonds and notes—Use.
- 28B.14B.050 State higher education bond retirement fund of 1977—Created—Purpose.
- 28B.14B.060 Bonds as legal investment for public funds.

**28B.14B.010 Bonds authorized—Amount—Conditions.** For the purpose of providing needed capital improvements consisting of the acquisition, construction, remodeling, furnishing and equipping of state buildings and facilities for the institutions of higher education, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of nine million five hundred thousand dollars, or so much thereof as may be required to finance such projects, and all costs incidental thereto. No bonds authorized by this chapter shall be offered for sale without prior legislative appropriation, and these bonds shall be paid and discharged within thirty years of the date of issuance in accordance with Article VIII, section 1 of the state Constitution. [1977 ex.s. c 345 § 1.]

**Severability—1977 ex.s. c 345:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 345 § 8.]

**28B.14B.020 Bond anticipation notes—Authorized—Payment.** When the state finance committee has determined to issue such general obligation bonds or a portion thereof as authorized in RCW 28B.14B.010, it may, pending the issuance thereof, issue in the name of the state temporary notes in anticipation of the issuance of such bonds, which notes shall be designated as "bond anticipation notes". Such portion of the proceeds of the sale of such bonds as may be required for the payment of principal of and redemption

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premium, if any, and interest on such notes shall be applied thereto when such bonds are issued. [1977 ex.s. c 345 § 2.]

**Severability—1977 ex.s. c 345:** See note following RCW 28B.14B.010.

**28B.14B.030 Form, terms, conditions, sale and covenants of bonds and notes.** The state finance committee is authorized to prescribe the form, terms, conditions and covenants of the bonds and/or the bond anticipation notes provided for in RCW 28B.14B.010 and 28B.14B.020, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance.

Each such bond and bond anticipation note shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal thereof and interest thereon when due. [1977 ex.s. c 345 § 3.]

**Severability—1977 ex.s. c 345:** See note following RCW 28B.14B.010.

**28B.14B.040 Disposition of proceeds from sale of bonds and notes—Use.** Except for that portion of the proceeds required to pay bond anticipation notes pursuant to RCW 28B.14B.020, the proceeds from the sale of the bonds and/or bond anticipation notes authorized in this chapter, together with all grants, donations, transferred funds, and all other moneys which the state finance committee may direct the state treasurer to deposit therein, shall be deposited in the state higher education construction account of the general fund in the state treasury. All such proceeds shall be used exclusively for the purposes specified in this chapter and for the payment of the expenses incurred in connection with the sale and issuance of such bonds and bond anticipation notes. [1977 ex.s. c 345 § 4.]

**Severability—1977 ex.s. c 345:** See note following RCW 28B.14B.010.

**28B.14B.050 State higher education bond retirement fund of 1977—Created—Purpose.** The state higher education bond retirement fund of 1977 is hereby created in the state treasury for the purpose of the payment of principal of and interest on the bonds authorized to be issued pursuant to this chapter or, if the legislature so determines, for any bonds and notes hereafter authorized and issued for the institutions of higher education.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on such bonds. Not less than thirty days prior to the date on which any such interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state higher education bond retirement fund of 1977 an amount equal to the amount certified by the state finance committee to be due on such payment date. [1977 ex.s. c 345 § 5.]

**Severability—1977 ex.s. c 345:** See note following RCW 28B.14B.010.

**28B.14B.060 Bonds as legal investment for public funds.** The bonds authorized in RCW 28B.14B.010 through 28B.14B.060 shall constitute a legal investment for all state

funds or for funds under state control and all funds of municipal corporations. [1977 ex.s. c 345 § 6.]

**Severability—1977 ex.s. c 345:** See note following RCW 28B.14B.010.

### Chapter 28B.14C RCW

## 1977 BOND ACT FOR THE REFUNDING OF OUTSTANDING LIMITED OBLIGATION REVENUE BONDS

#### Sections

28B.14C.010	Purpose—Bonds authorized—Amount.
28B.14C.020	Refunding as benefit to state.
28B.14C.030	Constitutional and statutory authority applicable—Specific state finance committee powers.
28B.14C.040	Limitation as to amount of bonds to be issued—Pledge of state's credit.
28B.14C.050	Disposition of proceeds of refunding issues.
28B.14C.060	Institutions of higher education refunding bond retirement fund of 1977—Created—Use.
28B.14C.070	Chapter not exclusive method for payment of interest and principal on bonds.
28B.14C.080	Chapter as affecting University of Washington building revenue bond redemption.
28B.14C.090	Chapter as affecting Washington State University building revenue bond redemption.
28B.14C.100	Chapter as affecting Western Washington State College building and normal school fund revenue bonds.
28B.14C.110	Chapter as affecting Eastern Washington State College building and normal school fund revenue bonds.
28B.14C.120	Chapter as affecting Central Washington State College building and normal school fund revenue bonds.
28B.14C.130	Chapter as affecting Evergreen State College building revenue bonds.
28B.14C.140	Use limited when reserves transferred to state general fund.
28B.14C.900	Severability—1977 ex.s. c 354.

### 28B.14C.010 Purpose—Bonds authorized—Amount.

The state finance committee is hereby authorized to issue from time to time on behalf of the state, general obligation bonds of the state in the amount of forty-eight million six hundred thousand dollars, or so much thereof as may be required to refund at or prior to maturity, all or some or any part of the various issues of outstanding limited obligation revenue bonds identified below, issued by various of the institutions of higher education, similarly identified:

(1) University of Washington building revenue bonds, all series, aggregating \$28,850,000 in original principal amount;

(2) Washington State University building revenue bonds and building and scientific fund revenue bonds, all series, aggregating \$19,450,000 in original principal amount;

(3) Western Washington State College building and normal school fund revenue bonds, all series, aggregating \$11,620,000 in original principal amount;

(4) Eastern Washington State College building and normal school fund revenue bonds, all series, aggregating \$9,501,000 in original principal amount;

(5) Central Washington State College building and normal school fund revenue bonds, all series, including refunding series, aggregating \$8,925,000 in original principal amount; and

(6) The Evergreen State College building revenue bonds, all series, aggregating \$2,191,125 in original principal amount. [1985 ex.s. c 4 § 14; 1985 c 390 § 2; 1977 ex.s. c 354 § 1.]

**Severability—1985 ex.s. c 4:** See RCW 43.99G.900.

**28B.14C.020 Refunding as benefit to state.** The refunding authorized by this chapter is to be carried out primarily for the purpose of releasing for other needs of the state and its agencies the reserves presently required under existing covenants and statutes to secure payment of the various issues of the bonds to be refunded and, as such, is of substantial benefit to the state. [1977 ex.s. c 354 § 2.]

**28B.14C.030 Constitutional and statutory authority applicable—Specific state finance committee powers.** Subject to the specific requirements of RCW 28B.14C.010 through 28B.14C.140 and 28B.14C.900, such general obligation refunding bonds shall be issued and the refunding plan carried out in accordance with Article VIII, section 1, of the state Constitution, in accordance with chapter 39.42 RCW as presently in effect, and in accordance with the following sections of chapter 39.53 RCW as presently in effect, where applicable: RCW 39.53.010, 39.53.030, 39.53.060, 39.53.070, 39.53.100, and 39.53.110. The remainder of chapter 39.53 RCW shall not be applicable to the refunding authorized by this chapter.

In addition to the powers granted to the state finance committee in this subsection, said committee is hereby authorized (1) to determine the times and manner of redemption of the various bonds to be refunded, if any are to be redeemed prior to maturity; (2) to carry out all procedures necessary to accomplish the call for redemption and the subsequent redemption of the bonds to be refunded on behalf of the board of regents or the board of trustees, as the case may be, of each of the institutions which originally issued the bonds to be refunded; and (3) to determine the time, manner, and call premium, if any, for redemption of the refunding issue or issues, if any of the bonds of such issue are to be redeemed prior to maturity. [1977 ex.s. c 354 § 3.]

**Reviser's note:** Phrases "as presently in effect" would, because of declaration of emergency in section 17 of 1977 ex.s. c 354, be deemed as of July 1, 1977.

**28B.14C.040 Limitation as to amount of bonds to be issued—Pledge of state's credit.** The amount of general obligation refunding bonds issued shall not exceed 1.05 times the amount which, taking into account amounts to be earned from the investment of the proceeds of such issue or issues, is required to pay the principal of, the interest on, premium of, if any, on the revenue bonds to be refunded with the proceeds of the refunding issue or issues.

Each bond issued pursuant to the provisions of this chapter shall contain a pledge of the state's full faith and credit to the payment of the principal thereof and the interest thereon and the state's unconditional promise to pay said principal and interest as the same shall become due. [1977 ex.s. c 354 § 4.]

**28B.14C.050 Disposition of proceeds of refunding issues.** The proceeds of the refunding issue or issues shall be invested and applied to the payment of the principal of, interest on and redemption premium, if any, on the bonds to be refunded, at the times and in the manner determined by the state finance committee consistent with the provisions and intent of this chapter. Any investment of such proceeds shall

be made only in direct general obligations of the United States of America.

Any proceeds in excess of the amounts required to accomplish the refunding, or any such direct obligation of the United States of America acquired with such excess proceeds, shall be used to pay the fees and costs incurred in the refunding and the balance shall be deposited in the institutions of higher education refunding bond retirement fund of 1977. [1977 ex.s. c 354 § 5.]

**28B.14C.060 Institutions of higher education refunding bond retirement fund of 1977—Created—Use.** There is hereby created in the state treasury the institutions of higher education refunding bond retirement fund of 1977, which fund shall be devoted to the payment of principal of, interest on and redemption premium, if any, on the bonds authorized to be issued pursuant to this chapter.

The state finance committee shall, on or before June 30 of each year, certify to the state treasurer the amount needed in the next succeeding twelve months to pay the installments of principal of and interest on the refunding bonds coming due in such period. The state treasurer shall, not less than thirty days prior to the due date of each installment, withdraw from any general state revenues received in the state treasury an amount equal to the amount certified by the state finance committee as being required to pay such installment; shall deposit such amount in the institutions of higher education refunding bond retirement fund of 1977; and shall apply in a timely manner the funds so deposited to the payment of the installment due on the bonds. [1991 sp.s. c 13 § 80; 1977 ex.s. c 354 § 6.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**28B.14C.070 Chapter not exclusive method for payment of interest and principal on bonds.** The legislature may provide additional means for the payment of the principal of and interest on bonds issued pursuant to this chapter and this chapter shall not be deemed to provide an exclusive method for such payment. [1977 ex.s. c 354 § 7.]

**28B.14C.080 Chapter as affecting University of Washington building revenue bond redemption.** At such time as ample provision has been made for full payment, when due under the terms thereof or upon redemption prior to maturity, of all the principal of and interest on and redemption premium, if applicable, on all the outstanding University of Washington building revenue bonds payable from the University of Washington bond retirement fund, which provision has been made in a refunding plan adopted by the state finance committee pursuant to the terms of this chapter utilizing a part of the proceeds and the investment proceeds of the refunding bonds issued pursuant to this chapter, then:

(1) The said University of Washington bonds so refunded shall be deemed not to be "outstanding" or "unpaid" for purposes of RCW 28B.20.720, 28B.20.725, 28B.20.800 or any other statute pertaining to said bonds or any covenant of the University of Washington board of regents pertaining to said bonds;

(2) The board of regents of the University of Washington shall, from moneys thereafter paid into the University of Washington bond retirement fund pursuant to the provisions of chapter 28B.20 RCW, transfer to the state general fund amounts sufficient to pay the principal of and the interest on that portion or series of the refunding bonds necessary to refund the said University of Washington bonds. The state finance committee shall determine all matters pertaining to the said transfer, including the amounts to be transferred and the time and manner of transfer; and

(3) Anything to the contrary contained in chapter 28B.20 RCW notwithstanding, the state treasurer shall immediately transfer to the state general fund all reserves, less any amount required to effect the refunding, which have been accumulated theretofore in the University of Washington bond retirement fund pursuant to covenants in the said University of Washington bonds.

(4) Anything to the contrary contained in RCW 28B.20.725 notwithstanding, the board of regents of the University of Washington is empowered to authorize the transfer from time to time to the University of Washington building account any moneys in the University of Washington bond retirement fund in excess of the amounts determined by the state finance committee to be transferred from such bond retirement fund in accordance with subsection (2) of this section. [1985 c 390 § 3; 1977 ex.s. c 354 § 8.]

**28B.14C.090 Chapter as affecting Washington State University building revenue bond redemption.** At such time as ample provision has been made for full payment, when due under the terms thereof or upon redemption prior to maturity, of all the principal of and interest on and redemption premium, if applicable, on all the outstanding Washington State University building revenue bonds and building and scientific fund revenue bonds payable from the Washington State University bond retirement fund, which provision has been made in a refunding plan adopted by the state finance committee pursuant to the terms of this chapter utilizing a part of the proceeds and the investment proceeds of the refunding bonds issued pursuant to this chapter, then:

(1) The said Washington State University bonds so refunded shall be deemed not to be "outstanding" or "unpaid" for purposes of RCW 28B.20.720, 28B.30.740, 28B.30.750 or any other statute pertaining to said bonds or any covenant of Washington State University board of regents pertaining to said bonds;

(2) The board of regents of Washington State University shall, from moneys thereafter paid into the Washington State University bond retirement fund pursuant to the provisions of chapter 28B.30 RCW, transfer to the state general fund amounts sufficient to pay the principal of and the interest on that portion or series of the refunding bonds necessary to refund the said Washington State University bonds. The state finance committee shall determine all matters pertaining to the said transfer, including the amounts to be transferred and the time and manner of transfer; and

(3) Anything to the contrary contained in chapter 28B.30 RCW notwithstanding, the state treasurer shall immediately transfer to the state general fund all reserves, less any amount required to effect the refunding, which have been accumulated theretofore in the Washington State University bond

retirement fund pursuant to covenants in the said Washington State University bonds.

(4) Anything to the contrary contained in RCW 28B.30.750 notwithstanding, the board of regents of Washington State University is empowered to authorize the transfer from time to time to the Washington State University building account any moneys in the Washington State University bond retirement fund in excess of the amounts determined by the state finance committee to be transferred from such bond retirement fund in accordance with subsection (2) of this section. [1985 c 390 § 4; 1977 ex.s. c 354 § 9.]

**28B.14C.100 Chapter as affecting Western Washington State College building and normal school fund revenue bonds.** At such time as ample provision has been made for full payment, when due under the terms thereof or upon redemption prior to maturity, of all the principal of and interest on and redemption premium, if applicable, on all the outstanding Western Washington State College building and normal school fund revenue bonds payable from the Western Washington State College bond retirement fund, which provision has been made in a refunding plan adopted by the state finance committee pursuant to the terms of this chapter utilizing a part of the proceeds and the investment proceeds of the refunding bonds issued pursuant to this chapter, then:

(1) The said Western Washington State College bonds so refunded shall be deemed not to be "outstanding" or "unpaid" for purposes of RCW 28B.40.370, 28B.40.750, or, other than RCW 28B.40.751, any other statute pertaining to said bonds or any covenant of the board of trustees of Western Washington State College pertaining to said bonds;

(2) Anything to the contrary in chapter 28B.40 RCW notwithstanding, all building fees and all normal school fund revenues received by Western Washington State College pursuant to RCW 28B.40.751 shall thenceforth be deposited into the Western Washington State College capital projects account and the board of trustees of said college shall thereafter transfer from said capital projects account to the state general fund, amounts sufficient to pay the principal of and interest on that portion or series of the refunding bonds necessary to refund the said bonds. The state finance committee shall determine all matters pertaining to the said transfer, including the amounts to be transferred and the time and manner of transfer; and

(3) Anything to the contrary contained in chapter 28B.40 RCW notwithstanding, the state treasurer shall immediately transfer to the state general fund all reserves, less any amount required to effect the refunding, which have been accumulated theretofore in the Western Washington State College bond retirement fund pursuant to covenants in the said Western Washington State College bonds. [1985 c 390 § 5; 1977 ex.s. c 354 § 10.]

**Reviser's note:** Reference to RCW 28B.40.370, 28B.40.750, and 28B.40.751 and to "chapter 28B.40 RCW" relates to such sections and chapter as they were before the effective date (September 21, 1977) of 1977 ex.s. c 169, which renamed Central Washington State College, Eastern Washington State College, and Western Washington State College as Central Washington University, Eastern Washington University, and Western Washington University, respectively, creating three regional Universities within the state, and setting forth the specific laws relating to them in chapter 28B.35 RCW, and leaving as chapter 28B.40 RCW the specific laws relating to The Evergreen State College.

*"State universities," "regional universities," "state college," "institutions of higher education," and "postsecondary institutions" defined: RCW 28B.10.016.*

*Western Washington University capital projects account: RCW 28B.35.370.*

**28B.14C.110 Chapter as affecting Eastern Washington State College building and normal school fund revenue bonds.** At such time as ample provision has been made for full payment, when due under the terms thereof or upon redemption prior to maturity, of all the principal of and interest on and redemption premium, if applicable, on all the outstanding Eastern Washington State College building and normal school fund revenue bonds payable from the Eastern Washington State College bond retirement fund, which provision has been made in a refunding plan adopted by the state finance committee pursuant to the terms of this chapter utilizing a part of the proceeds and the investment proceeds of the refunding bonds issued pursuant to this chapter, then:

(1) The said Eastern Washington State College bonds so refunded shall be deemed not to be "outstanding" or "unpaid" for purposes of RCW 28B.40.370, 28B.40.750, or, other than RCW 28B.40.751, any other statute pertaining to said bonds or any covenant of the board of trustees of Eastern Washington State College pertaining to said bonds;

(2) Anything to the contrary in chapter 28B.40 RCW notwithstanding, all building fees and all normal school fund revenues received by Eastern Washington State College pursuant to RCW 28B.40.751 shall thenceforth be deposited into the Eastern Washington State College capital projects account and the board of trustees of said college shall thereafter transfer from said capital projects account to the state general fund, amounts sufficient to pay the principal of and interest on that portion or series of the refunding bonds necessary to refund the said bonds. The state finance committee shall determine all matters pertaining to the said transfer, including the amounts to be transferred and the time and manner of transfer; and

(3) Anything to the contrary contained in chapter 28B.40 RCW notwithstanding, the state treasurer shall immediately transfer to the state general fund all reserves, less any amount required to effect the refunding, which have been accumulated theretofore in the Eastern Washington State College bond retirement fund pursuant to covenants in the said Eastern Washington State College bonds. [1985 c 390 § 6; 1977 ex.s. c 354 § 11.]

**Reviser's note:** Reference to RCW 28B.40.370, 28B.40.750, and 28B.40.751 and to "chapter 28B.40 RCW" relates to such sections and chapter as they were before the effective date (September 21, 1977) of 1977 ex.s. c 169, which renamed Central Washington State College, Eastern Washington State College, and Western Washington State College as Central Washington University, Eastern Washington University, and Western Washington University, respectively, creating three regional universities within the state, and setting forth the specific laws relating to them in chapter 28B.35 RCW, and leaving as chapter 28B.40 RCW the specific laws relating to The Evergreen State College.

*Eastern Washington University capital projects account: RCW 28B.35.370.*

*"State universities," "regional universities," "state college," "institutions of higher education," and "postsecondary institutions" defined: RCW 28B.10.016.*

**28B.14C.120 Chapter as affecting Central Washington State College building and normal school fund revenue bonds.** At such time as ample provision has been made

for full payment, when due under the terms thereof or upon redemption prior to maturity, of all the principal of and interest on and redemption premium, if applicable, on all the outstanding Central Washington State College building and normal school fund revenue bonds payable from the Central Washington State College bond retirement fund, which provision has been made in a refunding plan adopted by the state finance committee pursuant to the terms of this chapter utilizing a part of the proceeds and the investment proceeds of the refunding bonds issued pursuant to this chapter, then:

(1) The said Central Washington State College bonds so refunded shall be deemed not to be "outstanding" or "unpaid" for purposes of RCW 28B.40.370, 28B.40.750, or, other than RCW 28B.40.751, any other statute pertaining to said bonds or any covenant of the board of trustees of Central Washington State College pertaining to said bonds;

(2) Anything to the contrary in chapter 28B.40 RCW notwithstanding, all building fees and all normal school fund revenues received by Central Washington State College pursuant to RCW 28B.40.751 shall thenceforth be deposited into the Central Washington State College capital projects account and the board of trustees of said college shall thereafter transfer from said capital projects account to the state general fund, amounts sufficient to pay the principal of and interest on that portion or series of the refunding bonds necessary to refund the said bonds. The state finance committee shall determine all matters pertaining to the said transfer, including the amounts to be transferred and the time and manner of transfer; and

(3) Anything to the contrary contained in chapter 28B.40 RCW notwithstanding, the state treasurer shall immediately transfer to the state general fund all reserves, less any amount required to effect the refunding, which have been accumulated theretofore in the Central Washington State College bond retirement fund pursuant to covenants in the said Central Washington State College bonds. [1985 c 390 § 7; 1977 ex.s. c 354 § 12.]

**Reviser's note:** Reference to RCW 28B.40.370, 28B.40.750, and 28B.40.751 and to "chapter 28B.40 RCW" relates to such sections and chapter as they were before the effective date (September 21, 1977) of 1977 ex.s. c 169, which renamed Central Washington State College, Eastern Washington State College, and Western Washington State College as Central Washington University, Eastern Washington University, and Western Washington University, respectively, creating three regional universities within the state and setting forth the specific laws relating to them in chapter 28B.35 RCW and leaving as chapter 28B.40 RCW the specific laws relating to The Evergreen State College.

*Central Washington University capital projects account: RCW 28B.35.370.*

*"State universities," "regional universities," "state college," "institutions of higher education," and "postsecondary institutions" defined: RCW 28B.10.016.*

**28B.14C.130 Chapter as affecting Evergreen State College building revenue bonds.** At such time as ample provision has been made for full payment, when due under the terms thereof or upon redemption prior to maturity, of all the principal of and interest on and redemption premium, if applicable, on all the outstanding Evergreen State College building revenue bonds payable from the Evergreen State College bond retirement fund, which provision has been made in a refunding plan adopted by the state finance committee pursuant to the terms of this chapter utilizing a part of

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the proceeds and the investment proceeds of the refunding bonds issued pursuant to this chapter, then:

(1) The said Evergreen State College bonds so refunded shall be deemed not to be "outstanding" or "unpaid" for purposes of RCW 28B.40.370, 28B.40.750, or, other than RCW 28B.40.751, any other statute pertaining to said bonds or any covenant of the board of trustees of The Evergreen State College pertaining to said bonds;

(2) Anything to the contrary in chapter 28B.40 RCW notwithstanding, all building fees and all normal school fund revenues received by The Evergreen State College pursuant to RCW 28B.40.751 shall thenceforth be deposited into the Evergreen State College capital projects account and the board of trustees of said college shall thereafter transfer from said capital projects account to the state general fund, amounts sufficient to pay the principal of and interest on that portion or series of the refunding bonds necessary to refund the said bonds. The state finance committee shall determine all matters pertaining to the said transfer, including the amounts to be transferred and the time and manner of transfer; and

(3) Anything to the contrary contained in chapter 28B.40 RCW notwithstanding, the state treasurer shall immediately transfer to the state general fund all reserves, less any amount required to effect the refunding, which have been accumulated theretofore in the Evergreen State College bond retirement fund pursuant to covenants in the said Evergreen State College bonds. [1985 c 390 § 8; 1977 ex.s. c 354 § 13.]

**Reviser's note:** Reference to RCW 28B.40.370, 28B.40.750, and 28B.40.751 and to "chapter 28B.40 RCW" relates to such sections and chapter as they were before the effective date (September 21, 1977) of 1977 ex.s. c 169, which renamed Central Washington State College, Eastern Washington State College, and Western Washington State College as Central Washington University, Eastern Washington University, and Western Washington University, respectively, creating three regional universities within the state, and setting forth the specific laws relating to them in chapter 28B.35 RCW, and leaving as chapter 28B.40 RCW the specific laws relating to The Evergreen State College.

*"State universities," "regional universities," "state college," "institutions of higher education," and "postsecondary institutions" defined: RCW 28B.10.016.*

**28B.14C.140 Use limited when reserves transferred to state general fund.** Any reserves transferred to the state general fund by the state treasurer pursuant to RCW 28B.14C.080(3), 28B.14C.090(3), 28B.14C.100(3), 28B.14C.110(3), 28B.14C.120(3), or 28B.14C.130(3) shall be appropriated and expended solely for the maintenance and support of the institutions listed in RCW 28B.14C.010. [1977 ex.s. c 354 § 14.]

**28B.14C.900 Severability—1977 ex.s. c 354.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances shall not be affected. [1977 ex.s. c 354 § 15.]

## Chapter 28B.14D RCW

### 1979 BOND ISSUE FOR CAPITAL IMPROVEMENTS

#### Sections

28B.14D.010 Bonds authorized—Amount—Conditions.

- 28B.14D.020 Bond anticipation notes—Authorized—Payment.  
 28B.14D.030 Form, terms, conditions, sale and covenants of bonds and notes.  
 28B.14D.040 Disposition of proceeds from sale of bonds and notes—Higher education construction account.  
 28B.14D.050 Administration and use of proceeds from bonds and notes.  
 28B.14D.060 Higher education bond retirement fund of 1979—Created—Purpose—Treasurer's duties.  
 28B.14D.070 Building or capital projects account moneys deposited in general fund.  
 28B.14D.080 Bonds as legal investment for public funds.  
 28B.14D.090 Prerequisite for issuance of bonds.  
 28B.14D.900 Construction—Provisions as subordinate in nature.  
 28B.14D.950 Severability—1979 ex.s. c 253.

**28B.14D.010 Bonds authorized—Amount—Conditions.** For the purpose of providing needed capital improvements consisting of the acquisition, construction, remodeling, furnishing, and equipping of state buildings and facilities for the institutions of higher education, the state finance committee is authorized to issue from time to time general obligation bonds of the state of Washington in the sum of forty-six million dollars, or so much thereof as may be required, to finance these projects and all costs incidental thereto. No bonds authorized by this chapter shall be offered for sale without prior legislative appropriation, and these bonds shall be paid and discharged within thirty years of the date of issuance in accordance with Article VIII, section 1 of the state Constitution. [1979 ex.s. c 253 § 1.]

**28B.14D.020 Bond anticipation notes—Authorized—Payment.** When the state finance committee has determined to issue the general obligation bonds or a portion thereof as authorized in RCW 28B.14D.010, it may, pending the issuance thereof, issue in the name of the state temporary notes in anticipation of the issuance of the bonds, which notes shall be designated as "bond anticipation notes." Such portion of the proceeds of the sale of the bonds as may be required for the payment of principal of and redemption premium, if any, and interest on the notes shall be applied thereto when the bonds are issued. [1979 ex.s. c 253 § 2.]

**28B.14D.030 Form, terms, conditions, sale and covenants of bonds and notes.** The state finance committee is authorized to prescribe the form, terms, conditions, and covenants of the bonds and the bond anticipation notes provided for in RCW 28B.14D.010 and 28B.14D.020, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance.

Each bond and bond anticipation note shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal thereof and interest thereon when due. [1979 ex.s. c 253 § 3.]

**28B.14D.040 Disposition of proceeds from sale of bonds and notes—Higher education construction account.** The proceeds from the sale of the bonds authorized in this chapter, together with all grants, donations, transferred funds, and all other moneys which the state finance committee or the board of regents or board of trustees of any of the state institutions of higher education may direct the state treasurer to deposit therein, shall be deposited in the higher education construction account hereby created in the state trea-

surey. [1991 sp.s. c 13 § 8; 1985 c 57 § 13; 1979 ex.s. c 253 § 4.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**28B.14D.050 Administration and use of proceeds from bonds and notes.** Subject to legislative appropriation, all proceeds of the bonds and bond anticipation notes authorized in this chapter shall be administered and expended by the boards of regents or the boards of trustees of the state institutions of higher education exclusively for the purposes specified in this chapter and for the payment of the expenses incurred in connection with the sale and issuance of such bonds and bond anticipation notes. [1979 ex.s. c 253 § 5.]

**28B.14D.060 Higher education bond retirement fund of 1979—Created—Purpose—Treasurer's duties.** The higher education bond retirement fund of 1979 is hereby created in the state treasury for the purpose of the payment of principal of and interest on the bonds authorized to be issued under this chapter or, if the legislature so determines, for any bonds and notes hereafter authorized and issued for the institutions of higher education.

Upon completion of the projects for which appropriations have been made by the legislature, any proceeds of the bonds and bond anticipation notes authorized by this chapter remaining in the higher education construction account shall be transferred by the state treasurer upon authorization of the board of regents or the board of trustees of each institution, as appropriate, to the higher education bond retirement fund of 1979 to reduce the transfer or transfers required by RCW 28B.14D.070.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the higher education bond retirement fund of 1979 an amount equal to the amount certified by the state finance committee to be due on the payment date. [1979 ex.s. c 253 § 6.]

**28B.14D.070 Building or capital projects account moneys deposited in general fund.** On or before June 30th of each year the state finance committee shall determine the relative shares of the principal and interest payments determined pursuant to RCW 28B.14D.060, exclusive of deposit interest credit, attributable to each of the institutions of higher education in proportion to the principal amount of bonds issued under this chapter for purposes of funding projects for each institution. On each date on which any interest or principal and interest payment is due, the board of regents or the board of trustees of each institution of higher education shall cause the amount so computed to be paid out of the appropriate building account or capital projects account to the state treasurer for deposit into the general fund of the state treasury. [1979 ex.s. c 253 § 7.]

**28B.14D.080 Bonds as legal investment for public funds.** The bonds authorized by this chapter shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1979 ex.s. c 253 § 8.]

**28B.14D.090 Prerequisite for issuance of bonds.** The bonds authorized by this chapter shall be issued only after an officer designated by the board of regents or board of trustees of each institution of higher education receiving an appropriation from the higher education construction account has certified, based upon his estimates of future tuition income and other factors, that an adequate balance will be maintained in that institution's building account or capital projects account to enable the board to meet the requirements of RCW 28B.14D.070 during the life of the bonds to be issued. [1979 ex.s. c 253 § 9.]

**28B.14D.900 Construction—Provisions as subordinate in nature.** No provision of this chapter or \*chapter 43.99 RCW, or of RCW 28B.20.750 through 28B.20.758 shall be deemed to repeal, override, or limit any provision of RCW 28B.10.300 through 28B.10.335, 28B.15.210, 28B.15.310, 28B.20.700 through 28B.20.745, 28B.30.700 through 28B.30.780, or 28B.35.700 through 28B.35.790, nor any provision or covenant of the proceedings of the board of regents or board of trustees of any state institution of higher education heretofore or hereafter taken in the issuance of its revenue bonds secured by a pledge of its building fees and/or other revenues mentioned within such statutes. The obligation of such boards to make the transfers provided for in RCW 28B.14D.070, 28B.14C.080(2), 28B.14C.090(2), 28B.14C.100(2), 28B.14C.110(2), 28B.14C.120(2), 28B.14C.130(2), 28B.14G.060, 28B.20.757, 43.99G.070, and 43.99H.060 (1) and (4), and in any similar law heretofore or hereafter enacted shall be subject and subordinate to the lien and charge of any revenue bonds heretofore or hereafter issued by such boards on the building fees and/or other revenues pledged to secure such revenue bonds, and on the moneys in the building account or capital project account and the individual institutions of higher education bond retirement funds. [1991 sp.s. c 31 § 9; 1985 c 390 § 9; 1979 ex.s. c 253 § 10.]

\*Reviser's note: Chapter 43.99 RCW was recodified as chapter 79A.25 RCW pursuant to 1999 c 249 § 1601.

**Severability—1991 sp.s. c 31:** See RCW 43.99I.900.

**28B.14D.950 Severability—1979 ex.s. c 253.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 253 § 12.]

## Chapter 28B.14E RCW

### 1979 BOND ISSUE FOR CAPITAL IMPROVEMENTS

#### Sections

28B.14E.010 Bonds authorized—Amount—Conditions.  
 28B.14E.020 Bond anticipation notes—Authorized—Payment.  
 28B.14E.030 Form, terms, conditions, sale and covenants of bonds and notes.

(2004 Ed.)

28B.14E.040 Disposition of proceeds from sale of bonds and notes—Use.  
 28B.14E.050 Existing fund utilized for payment of principal and interest—Treasurer's duties.  
 28B.14E.060 Bonds as legal investment for public funds.  
 28B.14E.950 Severability—1979 ex.s. c 223.

**28B.14E.010 Bonds authorized—Amount—Conditions.** For the purpose of providing needed capital improvements consisting of the acquisition, construction, remodeling, furnishing and equipping of state buildings and facilities for the institutions of higher education, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of fourteen million dollars, or so much thereof as may be required, to finance these projects, and all costs incidental thereto. No bonds authorized by this chapter shall be offered for sale without prior legislative appropriation, and these bonds shall be paid and discharged within thirty years of the date of issuance in accordance with Article VIII, section 1 of the state Constitution. [1979 ex.s. c 223 § 1.]

**28B.14E.020 Bond anticipation notes—Authorized—Payment.** When the state finance committee has determined to issue the general obligation bonds or a portion thereof as authorized in RCW 28B.14E.010, it may, pending the issuance thereof, issue in the name of the state temporary notes in anticipation of the issuance of the bonds, which notes shall be designated as "bond anticipation notes". Such portion of the proceeds of the sale of the bonds as may be required for the payment of principal of and redemption premium, if any, and interest on the notes shall be applied thereto when the bonds are issued. [1979 ex.s. c 223 § 2.]

**28B.14E.030 Form, terms, conditions, sale and covenants of bonds and notes.** The state finance committee is authorized to prescribe the form, terms, conditions, and covenants of the bonds and/or the bond anticipation notes provided for in RCW 28B.14E.010 and 28B.14E.020, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance.

Each bond and bond anticipation note shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal thereof and interest thereon when due. [1979 ex.s. c 223 § 3.]

**28B.14E.040 Disposition of proceeds from sale of bonds and notes—Use.** Except for that portion of the proceeds required to pay bond anticipation notes under RCW 28B.14E.020, the proceeds from the sale of the bonds and/or bond anticipation notes authorized in this chapter, together with all grants, donations, transferred funds, and all other moneys which the state finance committee may direct the state treasurer to deposit therein, shall be deposited in the state higher education construction account of the general fund in the state treasury. All such proceeds shall be used exclusively for the purposes specified in this chapter and for the payment of the expenses incurred in connection with the sale and issuance of the bonds and bond anticipation notes. [1979 ex.s. c 223 § 4.]

**28B.14E.050 Existing fund utilized for payment of principal and interest—Treasurer's duties.** The state

higher education bond retirement fund of 1977 in the state treasury shall be used for the purpose of the payment of principal of and interest on the bonds authorized to be issued under this chapter or, if the legislature so determines, for any bonds and notes hereafter authorized and issued for the institutions of higher education.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state higher education bond retirement fund of 1977 an amount equal to the amount certified by the state finance committee to be due on the payment date. [1979 ex.s. c 223 § 5.]

**28B.14E.060 Bonds as legal investment for public funds.** The bonds authorized in RCW 28B.14E.010 through 28B.14E.050 shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1979 ex.s. c 223 § 6.]

**28B.14E.950 Severability—1979 ex.s. c 223.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 223 § 8.]

## Chapter 28B.14F RCW

### BOND ISSUES FOR CAPITAL IMPROVEMENTS

#### Sections

#### 1981 BOND ISSUE

28B.14F.010	Bonds authorized—Amount—Condition.
28B.14F.020	Bonds to pledge credit of state, promise to pay.
28B.14F.030	Disposition of proceeds from sale of bonds—Use.
28B.14F.040	Existing fund utilized for payment of principal and interest—Committee and treasurer's duties.
28B.14F.050	Bonds as legal investment for public funds.

#### 1983 BOND ISSUE

28B.14F.060	Bonds authorized—Amount—Condition.
28B.14F.062	Disposition of proceeds from sale of bonds—Use.
28B.14F.064	Existing fund utilized for payment of principal and interest—Committee and treasurer's duties—Form and conditions of bonds.
28B.14F.066	Refunding bonds—Legislature may provide additional means for payment.
28B.14F.068	Bonds as legal investment for public funds.

#### 1984 BOND ISSUE

28B.14F.070	Bonds authorized—Amount—Condition.
28B.14F.072	Disposition of proceeds from sale of bonds—Use.
28B.14F.074	Existing fund utilized for payment of principal and interest.
28B.14F.076	Legislature may provide additional methods of raising money.
28B.14F.078	Bonds as legal investment for public funds.

#### CONSTRUCTION

28B.14F.950	Severability—1981 c 232.
28B.14F.951	Severability—1983 1st ex.s. c 58.
28B.14F.952	Severability—1984 c 264.

#### 1981 BOND ISSUE

**28B.14F.010 Bonds authorized—Amount—Condition.** For the purpose of providing needed capital improvements consisting of the acquisition, construction, remodeling, furnishing and equipping of state buildings and facilities for the institutions of higher education, including facilities for the community college system, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of eight million one hundred thousand dollars, or so much thereof as may be required, to finance these projects, and all costs incidental thereto. No bonds authorized by this section may be offered for sale without prior legislative appropriation. [1981 c 232 § 1.]

**28B.14F.020 Bonds to pledge credit of state, promise to pay.** Each bond shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal thereof and interest thereon when due. [1981 c 232 § 2.]

**28B.14F.030 Disposition of proceeds from sale of bonds—Use.** The proceeds from the sale of the bonds authorized in RCW 28B.14F.010 through 28B.14F.050, together with all grants, donations, transferred funds, and all other moneys which the state finance committee may direct the state treasurer to deposit therein, shall be deposited in the state higher education construction account of the general fund in the state treasury. All such proceeds shall be used exclusively for the purposes specified in RCW 28B.14F.010 through 28B.14F.050 and for the payment of the expenses incurred in connection with the sale and issuance of the bonds. [1981 c 232 § 3.]

**28B.14F.040 Existing fund utilized for payment of principal and interest—Committee and treasurer's duties.** The state higher education bond retirement fund of 1977 in the state treasury shall be used for the purpose of the payment of principal of and interest on the bonds authorized to be issued under RCW 28B.14F.010 through 28B.14F.050.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state higher education bond retirement fund of 1977 an amount equal to the amount certified by the state finance committee to be due on the payment date.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [1981 c 232 § 4.]

**28B.14F.050 Bonds as legal investment for public funds.** The bonds authorized in RCW 28B.14F.010 through 28B.14F.040 shall constitute a legal investment for all state

funds or for funds under state control and all funds of municipal corporations. [1981 c 232 § 5.]

#### 1983 BOND ISSUE

**28B.14F.060 Bonds authorized—Amount—Condition.** For the purpose of providing needed capital improvements consisting of the acquisition, construction, remodeling, furnishing and equipping of state buildings and facilities for the institutions of higher education, including facilities for the community college system, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of eleven million two hundred fifty thousand dollars, or so much thereof as may be required, to finance these projects and all costs incidental thereto. No bonds authorized in this section may be offered for sale without prior legislative appropriation. [1983 1st ex.s. c 58 § 1.]

**28B.14F.062 Disposition of proceeds from sale of bonds—Use.** The proceeds from the sale of the bonds authorized in RCW 28B.14F.060, together with all grants, donations, transferred funds, and all other moneys which the state finance committee may direct the state treasurer to deposit therein, shall be deposited in the state higher education construction account in the general fund and shall be used exclusively for the purposes specified in RCW 28B.14F.060 and for the payment of expenses incurred in the issuance and sale of the bonds. [1983 1st ex.s. c 58 § 2.]

**28B.14F.064 Existing fund utilized for payment of principal and interest—Committee and treasurer's duties—Form and conditions of bonds.** The state higher education bond retirement fund of 1977 shall be used for the payment of the principal of and interest on the bonds authorized in RCW 28B.14F.060.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state higher education bond retirement fund of 1977 an amount equal to the amount certified by the state finance committee to be due on the payment date.

Bonds issued under RCW 28B.14F.060 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [1983 1st ex.s. c 58 § 3.]

**28B.14F.066 Refunding bonds—Legislature may provide additional means for payment.** The legislature may provide additional means for raising moneys for the pay-

ment of the principal of and interest on the bonds authorized in RCW 28B.14F.060, and RCW 28B.14F.064 shall not be deemed to provide an exclusive method for the payment. [1983 1st ex.s. c 58 § 4.]

**28B.14F.068 Bonds as legal investment for public funds.** The bonds authorized in RCW 28B.14F.060 shall be a legal investment for all state funds or funds under state control and for all funds of any other public body. [1983 1st ex.s. c 58 § 5.]

#### 1984 BOND ISSUE

**28B.14F.070 Bonds authorized—Amount—Condition.** For the purpose of acquiring land and providing needed capital improvements consisting of the acquisition, design, construction, repair, modification, and equipping of state buildings and facilities, including heating and utility distribution systems, for the community college system and the University of Washington, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of eight million six hundred seventy thousand dollars, or so much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. [1984 c 264 § 1.]

**28B.14F.072 Disposition of proceeds from sale of bonds—Use.** The proceeds from the sale of the bonds authorized in RCW 28B.14F.070, together with all grants, donations, transferred funds, and all other moneys which the state finance committee may direct the state treasurer to deposit therein, shall be deposited in the state higher education construction account in the general fund and shall be used exclusively for the purposes specified in RCW 28B.14F.070 and for the payment of expenses incurred in the issuance and sale of the bonds. [1984 c 264 § 2.]

**28B.14F.074 Existing fund utilized for payment of principal and interest.** The state higher education bond retirement fund of 1977 shall be used for the payment of the principal of and interest on the bonds authorized in RCW 28B.14F.070.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state higher education bond retirement fund of 1977 an amount equal to the amount certified by the state finance committee to be due on the payment date.

Bonds issued under RCW 28B.14F.070 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall con-

tain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [1984 c 264 § 3.]

**28B.14F.076 Legislature may provide additional methods of raising money.** The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 28B.14F.070, and RCW 28B.14F.074 shall not be deemed to provide an exclusive method for the payment. [1984 c 264 § 4.]

**28B.14F.078 Bonds as legal investment for public funds.** The bonds authorized in RCW 28B.14F.070 shall be a legal investment for all state funds or funds under state control and for all funds of any other public body. [1984 c 264 § 5.]

## CONSTRUCTION

**28B.14F.950 Severability—1981 c 232.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 232 § 6.]

**28B.14F.951 Severability—1983 1st ex.s. c 58.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 58 § 6.]

**28B.14F.952 Severability—1984 c 264.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 264 § 6.]

## Chapter 28B.14G RCW 1981 BOND ISSUE FOR CAPITAL IMPROVEMENTS (1981 C 233)

### Sections

28B.14G.010	Bonds authorized—Amount—Condition.
28B.14G.020	Bonds to pledge credit of state, promise to pay.
28B.14G.030	Disposition of proceeds from sale of bonds.
28B.14G.040	Administration and expenditure of proceeds from sale of bonds—Condition.
28B.14G.050	Existing fund utilized for payment of principal and interest—Committee and treasurer's duties.
28B.14G.060	Apportioning shares of principal and interest payments—Committee and treasurer's duties.
28B.14G.070	Bonds as legal investment for public funds.
28B.14G.080	Issuance of bonds subject to certification of maintenance of fund balances.
28B.14G.900	Construction—Provisions as subordinate in nature.
28B.14G.950	Severability—1981 c 233.

**28B.14G.010 Bonds authorized—Amount—Condition.** For the purpose of providing needed capital improve-

ments consisting of the acquisition, construction, remodeling, furnishing, and equipping of state buildings and facilities for the institutions of higher education and capital improvements consisting of land acquisition, construction, remodeling, furnishing, and equipping of the hospital and related facilities for the University of Washington, the state finance committee is authorized to issue from time to time general obligation bonds of the state of Washington in the sum of eighty-six million dollars, or so much thereof as may be required, to finance these projects and all costs incidental thereto. No bonds authorized by this section may be offered for sale without prior legislative appropriation. [1981 c 233 § 1.]

**28B.14G.020 Bonds to pledge credit of state, promise to pay.** Each bond shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal thereof and interest thereon when due. [1981 c 233 § 2.]

**28B.14G.030 Disposition of proceeds from sale of bonds.** The proceeds from the sale of the bonds authorized in this chapter, together with all grants, donations, transferred funds, and all other moneys which the state finance committee or the board of regents or board of trustees of any of the state institutions of higher education may direct the state treasurer to deposit therein, shall be deposited in the higher education construction account of the general fund. [1981 c 233 § 3.]

**28B.14G.040 Administration and expenditure of proceeds from sale of bonds—Condition.** Subject to legislative appropriation, all proceeds of the bonds authorized in this chapter shall be administered and expended by the boards of regents or the boards of trustees of the state institutions of higher education exclusively for the purposes specified in this chapter and for the payment of the expenses incurred in connection with the sale and issuance of such bonds. [1981 c 233 § 4.]

**28B.14G.050 Existing fund utilized for payment of principal and interest—Committee and treasurer's duties.** The higher education bond retirement fund of 1979 shall be used for the purpose of the payment of principal and interest on the bonds authorized to be issued under this chapter.

Upon completion of the projects for which appropriations have been made by the legislature, any proceeds of the bonds authorized by this chapter remaining in the higher education construction account shall be transferred by the state treasurer upon authorization of the board of regents or the board of trustees of each institution, as appropriate, to the higher education bond retirement fund of 1979 to reduce the transfer or transfers required by RCW 28B.14G.060.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues

received in the state treasury and deposit in the higher education bond retirement fund of 1979 an amount equal to the amount certified by the state finance committee to be due on the payment date. [1981 c 233 § 5.]

**28B.14G.060 Apportioning shares of principal and interest payments—Committee and treasurer's duties.** On or before June 30th of each year the state finance committee shall determine the relative shares of the principal and interest payments determined under RCW 28B.14G.050, exclusive of deposit interest credit, attributable to each of the institutions of higher education in proportion to the principal amount of bonds issued under this chapter for purposes of funding projects for each institution. On each date on which any interest or principal and interest payment is due, the board of regents or the board of trustees of each institution of higher education shall cause the amount so computed to be paid out of the appropriate building account or capital projects account to the state treasurer for deposit into the general fund of the state treasury: PROVIDED, That the amount of such principal and interest attributable to any hospital-related project at the University of Washington shall be paid out of the appropriate local hospital account. [1981 c 233 § 6.]

**28B.14G.070 Bonds as legal investment for public funds.** The bonds authorized by this chapter shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1981 c 233 § 7.]

**28B.14G.080 Issuance of bonds subject to certification of maintenance of fund balances.** The bonds authorized by this chapter shall be issued only after an officer designated by the board of regents or board of trustees of each institution of higher education receiving an appropriation from the higher education construction account has certified, based upon his estimates of future tuition income and other factors, that an adequate balance will be maintained in that institution's building account or capital projects account to enable the board to meet the requirements of RCW 28B.14G.060 during the life of the bonds to be issued: PROVIDED, That with respect to any hospital-related project at the University of Washington, it shall be certified, based on estimates of the hospital's adjusted gross revenues and other factors, that an adequate balance will be maintained in that institution's local hospital account to enable the board to meet the requirements of RCW 28B.14G.060 during the life of the bonds to be issued. [1981 c 233 § 8.]

**28B.14G.900 Construction—Provisions as subordinate in nature.** No provision of this chapter shall be deemed to repeal, override, or limit any provision of RCW 28B.15.210, 28B.15.310, \*28B.15.402, 28B.20.700 through 28B.20.745, 28B.30.700 through 28B.30.780, or 28B.35.700 through 28B.35.790, nor any provision or covenant of the proceedings of the board of regents or board of trustees of any state institution of higher education hereafter taken in the issuance of its revenue bonds secured by a pledge of its building fees and/or other revenues mentioned within such stat-

utes. The obligation of the board to make the transfers provided for in RCW 28B.14G.060, chapters 28B.14C and 28B.14D RCW, and RCW 28B.20.757 shall be subject and subordinate to the lien and charge of any revenue bonds hereafter issued against building fees and/or other revenues pledged to pay and secure such bonds, and on the moneys in the building account, capital project account, the individual institutions of higher education bond retirement funds and the University of Washington hospital local fund. [1985 c 390 § 10; 1982 1st ex.s. c 48 § 14; 1981 c 233 § 9.]

**\*Reviser's note:** RCW 28B.15.402 was repealed by 1995 1st sp.s. c 9 § 13.

**Severability—1982 1st ex.s. c 48:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 48 § 23.]

**28B.14G.950 Severability—1981 c 233.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 233 § 10.]

## Chapter 28B.14H RCW

### WASHINGTON'S FUTURE BOND ISSUE

#### Sections

28B.14H.005	Intent.
28B.14H.010	Definitions.
28B.14H.020	Washington's future bonds authorized.
28B.14H.030	Bond issuance—Intent.
28B.14H.040	Terms and covenants.
28B.14H.050	Proceeds.
28B.14H.060	Projects for the 2005-07 and 2007-09 biennia—Intent.
28B.14H.070	Payment procedures.
28B.14H.080	Bonds—Legal investment for public funds.
28B.14H.090	Additional methods of paying debt service authorized.
28B.14H.100	Chapter supplemental.
28B.14H.110	Creation of the Gardner-Evans higher education construction account.
28B.14H.900	Severability—2003 1st sp.s. c 18.
28B.14H.901	Short title.
28B.14H.902	Captions not law.

**28B.14H.005 Intent.** The state's institutions of higher education are a vital component of the future economic prosperity of our state. In order to ensure that Washington continues to be able to provide a highly qualified work force that can attract businesses and support the economic vitality of the state, it is the intent of chapter 18, Laws of 2003 1st sp. sess. to provide new money for capital projects to help fulfill higher education needs across the state.

This new source of funding for the critical capital needs of the state's institutions of higher education furthers the mission of higher education and is intended to enhance the abilities of those institutions, over the next six years, to fulfill their critical roles in maintaining and stimulating the state's economy.

It is the intent of the legislature that this new source of funding not displace funding levels for the capital and operating budgets of the institutions of higher education. It is instead intended that the new funding will allow the institutions, over the next three biennia, to use the current level of capital funding to provide for many of those urgent preservation, replacement, and maintenance needs that have been

deferred. This approach is designed to maintain or improve the current infrastructure of our institutions of higher education, and simultaneously to provide new instruction and research capacity to serve the increasing number of traditional college-aged students and those adults returning to college to update skills or retrain so that they can meet the demands of Washington's changing work force. This new source of funding may also be used for major preservation projects that renovate, replace, or modernize facilities to enhance capacity/access by maintaining or improving the usefulness of existing space for important instruction and research programs. [2003 1st sp.s. c 18 § 2.]

**28B.14H.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bonds" means bonds, notes, commercial paper, certificates of indebtedness, or other evidences of indebtedness of the state issued under this chapter.

(2) "Institutions of higher education" means the University of Washington and Washington State University, Western Washington University at Bellingham, Central Washington University at Ellensburg, Eastern Washington University at Cheney, The Evergreen State College, and the community colleges and technical colleges as defined by RCW 28B.50.030.

(3) "Washington's future bonds" means all or any portion of the general obligation bonds authorized in RCW 28B.14H.020. [2003 1st sp.s. c 18 § 3.]

**28B.14H.020 Washington's future bonds authorized.**

(1) For the purpose of providing needed capital improvements consisting of the predesign, design, acquisition, construction, modification, renovation, expansion, equipping, and other improvement of state buildings and facilities for the institutions of higher education, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of seven hundred seventy-two million five hundred thousand dollars, or so much thereof as may be required, to finance all or a part of the cost of these projects and all costs incidental thereto. The bonds issued under the authority of this section shall be known as Washington's future bonds.

(2) Bonds authorized in this section shall be sold in the manner, at the time or times, in amounts, and at such prices as the state finance committee shall determine.

(3) No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. [2003 1st sp.s. c 18 § 4.]

**28B.14H.030 Bond issuance—Intent.** It is the intent of the legislature that the proceeds of new bonds authorized in this chapter will be appropriated in phases over three biennia, beginning with the 2003-2005 biennium, to provide additional funding for capital projects and facilities of the institutions of higher education above historical levels of funding.

This chapter is not intended to limit the legislature's ability to appropriate bond proceeds if the full amount authorized in this chapter has not been appropriated after three biennia, and the authorization to issue bonds contained in this chapter

does not expire until the full authorization has been appropriated and issued. [2003 1st sp.s. c 18 § 5.]

**28B.14H.040 Terms and covenants.** (1) The state finance committee is authorized to prescribe the form, terms, conditions, and covenants of the bonds provided for in this chapter, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance.

(2) Bonds issued under this chapter shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due. [2003 1st sp.s. c 18 § 6.]

**28B.14H.050 Proceeds.** (1) The proceeds from the sale of the bonds authorized in RCW 28B.14H.020 shall be deposited in the Gardner-Evans higher education construction account created in RCW 28B.14H.110.

(2) The proceeds shall be used exclusively for the purposes in RCW 28B.14H.020 and for the payment of the expenses incurred in connection with the sale and issuance of the bonds. [2003 1st sp.s. c 18 § 7.]

**28B.14H.060 Projects for the 2005-07 and 2007-09 biennia—Intent.** The legislature intends to use the proceeds from the sale of bonds issued under this chapter for the following projects during the 2005-07 and 2007-09 biennia:

- (1) For the University of Washington:
  - (a) Life sciences I building;
  - (b) Bothell branch campus phase 2B;
- (2) For Washington State University:
  - (a) Spokane Riverpoint campus - academic center building;
  - (b) Pullman campus - Holland Library renovation;
  - (c) Pullman campus - biotechnology/life sciences 1;
  - (d) TriCities campus - bioproducts and sciences building; and
  - (e) Intercollegiate College of Nursing, Spokane - nursing building at Riverpoint;
- (3) For Eastern Washington University: Hargreaves Hall;
- (4) For Central Washington University: Hogue technology;
- (5) For The Evergreen State College:
  - (a) Daniel J. Evans building;
  - (b) Communications building and theater expansion;
- (6) For Western Washington University:
  - (a) Academic instructional center;
  - (b) Parks Hall;
  - (c) Performing Arts Center renovation;
- (7) For the community and technical college system:
  - (a) Green River Community College science building;
  - (b) Walla Walla Community College basic skills/computer lab;
  - (c) Pierce College Puyallup, communication arts and allied health; or
- (8) For other projects that maintain or increase access to institutions of higher education. [2003 1st sp.s. c 18 § 8.]

**28B.14H.070 Payment procedures.** (1) The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in this chapter.

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in this chapter.

(3) On each date on which any interest or principal and interest payment is due on bonds issued under this chapter, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date.

(4) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2003 1st sp.s. c 18 § 9.]

**28B.14H.080 Bonds—Legal investment for public funds.** The bonds authorized by this chapter shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [2003 1st sp.s. c 18 § 10.]

**28B.14H.090 Additional methods of paying debt service authorized.** The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized under this chapter, and RCW 28B.14H.070 shall not be deemed to provide an exclusive method for payment. [2003 1st sp.s. c 18 § 11.]

**28B.14H.100 Chapter supplemental.** This chapter provides a complete, additional, and alternative method for accomplishing the purposes of this chapter and is supplemental and additional to powers conferred by other laws. The issuance of bonds under this chapter shall not be deemed to be the only method to fund projects under this chapter. [2003 1st sp.s. c 18 § 12.]

**28B.14H.110 Creation of the Gardner-Evans higher education construction account.** The Gardner-Evans higher education construction account is created in the state treasury. Proceeds from the bonds issued under RCW 28B.14H.020 shall be deposited in the account. The account shall be used for purposes of RCW 28B.14H.020. Moneys in the account may be spent only after appropriation. [2003 1st sp.s. c 18 § 13.]

**28B.14H.900 Severability—2003 1st sp.s. c 18.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2003 1st sp.s. c 18 § 15.]

**28B.14H.901 Short title.** This act shall be known as the building Washington's future act. [2003 1st sp.s. c 18 § 1.]

(2004 Ed.)

**28B.14H.902 Captions not law.** Captions used in this act are not any part of the law. [2003 1st sp.s. c 18 § 14.]

## Chapter 28B.15 RCW

### COLLEGE AND UNIVERSITY FEES

#### Sections

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*Uniform minor student capacity to borrow act: Chapter 26.30 RCW.*

*Waiver from fees—Children of certain citizens missing in action or prisoners of war: RCW 28B.10.265.*

**28B.15.005 "Colleges and universities" defined.** (1) "Colleges and universities" for the purposes of this chapter shall mean Central Washington University at Ellensburg, Eastern Washington University at Cheney, Western Washington University at Bellingham, The Evergreen State College in Thurston county, community colleges as are provided for in chapter 28B.50 RCW, the University of Washington, and Washington State University.

(2) "State universities" for the purposes of this chapter shall mean the University of Washington and Washington State University.

(3) "Regional universities" for the purposes of this chapter shall mean Central Washington University, Eastern Washington University and Western Washington University. [1977 ex.s. c 169 § 33; 1971 ex.s. c 279 § 1.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Severability—1971 ex.s. c 279:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 279 § 25.]

**28B.15.011 Classification as resident or nonresident student—Legislative intent.** It is the intent of the legislature that the state institutions of higher education shall apply uniform rules as prescribed in RCW 28B.15.012 through 28B.15.014, and not otherwise, in determining whether students shall be classified as resident students or nonresident students for all tuition and fee purposes. [1971 ex.s. c 273 § 1.]

**Severability—1971 ex.s. c 273:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected." [1971 ex.s. c 273 § 6.]

**28B.15.012 Classification as resident or nonresident student—Definitions.** Whenever used in chapter 28B.15 RCW:

(1) The term "institution" shall mean a public university, college, or community college within the state of Washington.

(2) The term "resident student" shall mean:

(a) A financially independent student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution and has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(b) A dependent student, if one or both of the student's parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution;

(c) A student classified as a resident based upon domicile by an institution on or before May 31, 1982, who was enrolled at a state institution during any term of the 1982-1983 academic year, so long as such student's enrollment

(excepting summer sessions) at an institution in this state is continuous;

(d) Any student who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state, whose parents or legal guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who enrolls in a public institution of higher education within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year;

(e) Any person who has completed the full senior year of high school and obtained a high school diploma, both at a Washington public high school or private high school approved under chapter 28A.195 RCW, or a person who has received the equivalent of a diploma; who has lived in Washington for at least three years immediately prior to receiving the diploma or its equivalent; who has continuously lived in the state of Washington after receiving the diploma or its equivalent and until such time as the individual is admitted to an institution of higher education under subsection (1) of this section; and who provides to the institution an affidavit indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so and a willingness to engage in any other activities necessary to acquire citizenship, including but not limited to citizenship or civics review courses;

(f) A student who is on active military duty stationed in the state or who is a member of the Washington national guard;

(g) A student who is the spouse or a dependent of a person who is on active military duty stationed in the state. If the person on active military duty is reassigned out-of-state, the student maintains the status as a resident student so long as the student is continuously enrolled in a degree program;

(h) A student who resides in the state of Washington and is the spouse or a dependent of a person who is a member of the Washington national guard;

(i) A student of an out-of-state institution of higher education who is attending a Washington state institution of higher education pursuant to a home tuition agreement as described in RCW 28B.15.725; or

(j) A student who meets the requirements of RCW 28B.15.0131: PROVIDED, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational.

(3) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of RCW 28B.15.012 and 28B.15.013. Except for students qualifying under subsection (2)(e) or (i) of this section, a nonresident student shall include:

(a) A student attending an institution with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one year after the completion of such semester or quarter.

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(b) A person who is not a citizen of the United States of America who does not have permanent or temporary resident status or does not hold "Refugee-Parolee" or "Conditional Entrant" status with the United States immigration and naturalization service or is not otherwise permanently residing in the United States under color of law and who does not also meet and comply with all the applicable requirements in RCW 28B.15.012 and 28B.15.013.

(4) The term "domicile" shall denote a person's true, fixed and permanent home and place of habitation. It is the place where the student intends to remain, and to which the student expects to return when the student leaves without intending to establish a new domicile elsewhere. The burden of proof that a student, parent or guardian has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.

(5) The term "dependent" shall mean a person who is not financially independent. Factors to be considered in determining whether a person is financially independent shall be set forth in rules and regulations adopted by the higher education coordinating board and shall include, but not be limited to, the state and federal income tax returns of the person and/or the student's parents or legal guardian filed for the calendar year prior to the year in which application is made and such other evidence as the board may require.

(6) The term "active military duty" means the person is serving on active duty in:

(a) The armed forces of the United States government; or

(b) The Washington national guard; or

(c) The coast guard, merchant mariners, or other nonmilitary organization when such service is recognized by the United States government as equivalent to service in the armed forces. [2004 c 128 § 1; 2003 c 95 § 1; 2002 c 186 § 2. Prior: (2002 c 186 § 1 expired June 30, 2002); 2000 c 160 § 1; 2000 c 117 § 2; (2000 c 117 § 1 expired June 30, 2002); 1999 c 320 § 5; 1997 c 433 § 2; 1994 c 188 § 2; 1993 sp.s. c 18 § 4; prior: 1987 c 137 § 1; 1987 c 96 § 1; 1985 c 370 § 62; 1983 c 285 § 1; 1982 1st ex.s. c 37 § 1; 1972 ex.s. c 149 § 1; 1971 ex.s. c 273 § 2.]

**Intent—2003 c 95:** "It is the intent of the legislature to ensure that students who receive a diploma from a Washington state high school or receive the equivalent of a diploma in Washington state and who have lived in Washington for at least three years prior to receiving their diploma or its equivalent are eligible for in-state tuition rates when they enroll in a public institution of higher education in Washington state." [2003 c 95 § 2.]

**Effective date—2003 c 95:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 95 § 4.]

**Expiration date—2002 c 186 § 1:** "Section 1 of this act expires June 30, 2002." [2002 c 186 § 4.]

**Effective date—2002 c 186 § 2:** "Section 2 of this act takes effect June 30, 2002." [2002 c 186 § 5.]

**Effective date—2000 c 117 § 2:** "Section 2 of this act takes effect June 30, 2002." [2000 c 117 § 5.]

**Expiration date—2000 c 117 § 1:** "Section 1 of this act expires June 30, 2002." [2000 c 117 § 4.]

**Intent—Severability—1997 c 433:** See notes following RCW 28B.15.725.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1982 1st ex.s. c 37:** "Sections 13 and 14 of this amendatory act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public

institutions, and shall take effect immediately. All other sections of this amendatory act shall take effect on June 1, 1982." [1982 1st ex.s. c 37 § 24.]

**Severability—1982 1st ex.s. c 37:** "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 37 § 23.]

**Severability—1971 ex.s. c 273:** See note following RCW 28B.15.011.

**28B.15.013 Classification as resident or nonresident student—Standards for determining domicile in the state—Presumptions—Cut-off date for classification application change.** (1) The establishment of a new domicile in the state of Washington by a person formerly domiciled in another state has occurred if such person is physically present in Washington primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to such other state or to acquire a domicile at some other place outside of Washington.

(2) Unless proven to the contrary it shall be presumed that:

(a) The domicile of any person shall be determined according to the individual's situation and circumstances rather than by marital status or sex.

(b) A person does not lose a domicile in the state of Washington by reason of residency in any state or country while a member of the civil or military service of this state or of the United States, nor while engaged in the navigation of the waters of this state or of the United States or of the high seas if that person returns to the state of Washington within one year of discharge from said service with the intent to be domiciled in the state of Washington; any resident dependent student who remains in this state when such student's parents, having theretofore been domiciled in this state for a period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution, remove from this state, shall be entitled to continued classification as a resident student so long as such student's attendance (except summer sessions) at an institution in this state is continuous.

(3) To aid the institution in deciding whether a student, parent, legally appointed guardian or the person having legal custody of a student is domiciled in the state of Washington primarily for purposes other than educational, the rules and regulations adopted by the higher education coordinating board shall include but not be limited to the following:

(a) Registration or payment of Washington taxes or fees on a motor vehicle, mobile home, travel trailer, boat, or any other item of personal property owned or used by the person for which state registration or the payment of a state tax or fee is required will be a factor in considering evidence of the establishment of a Washington domicile.

(b) Permanent full time employment in Washington by a person will be a factor in considering the establishment of a Washington domicile.

(c) Registration to vote for state officials in Washington will be a factor in considering the establishment of a Washington domicile.

(4) After a student has registered at an institution such student's classification shall remain unchanged in the absence of satisfactory evidence to the contrary. A student wishing to

apply for a change in classification shall reduce such evidence to writing and file it with the institution. In any case involving an application for a change from nonresident to resident status, the burden of proof shall rest with the applicant. Any change in classification, either nonresident to resident, or the reverse, shall be based upon written evidence maintained in the files of the institution and, if approved, shall take effect the semester or quarter such evidence was filed with the institution: PROVIDED, That applications for a change in classification shall be accepted up to the thirtieth calendar day following the first day of instruction of the quarter or semester for which application is made. [1989 c 175 § 79; 1985 c 370 § 63; 1982 1st ex.s. c 37 § 2; 1979 ex.s. c 15 § 1; 1972 ex.s. c 149 § 2; 1971 ex.s. c 273 § 3.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Effective date—Severability—1982 1st ex.s. c 37:** See notes following RCW 28B.15.012.

**Severability—1971 ex.s. c 273:** See note following RCW 28B.15.011.

**28B.15.0131 Resident tuition rates—American Indian students.** For the purposes of determining resident tuition rates, resident students shall include American Indian students who meet two conditions. First, for a period of one year immediately prior to enrollment at a state institution of higher education as defined in RCW 28B.10.016, the student must have been domiciled in one or a combination of the following states: Idaho; Montana; Oregon; or Washington. Second, the students must be members of one of the following American Indian tribes whose traditional and customary tribal boundaries included portions of the state of Washington, or whose tribe was granted reserved lands within the state of Washington:

- (1) Colville Confederated Tribes;
- (2) Confederated Tribes of the Chehalis Reservation;
- (3) Hoh Indian Tribe;
- (4) Jamestown S'Klallam Tribe;
- (5) Kalispel Tribe of Indians;
- (6) Lower Elwha Klallam Tribe;
- (7) Lummi Nation;
- (8) Makah Indian Tribe;
- (9) Muckleshoot Indian Tribe;
- (10) Nisqually Indian Tribe;
- (11) Nooksack Indian Tribe;
- (12) Port Gamble S'Klallam Community;
- (13) Puyallup Tribe of Indians;
- (14) Quileute Tribe;
- (15) Quinault Indian Nation;
- (16) Confederated Tribes of Salish Kootenai;
- (17) Sauk Suiattle Indian Nation;
- (18) Shoalwater Bay Indian Tribe;
- (19) Skokomish Indian Tribe;
- (20) Snoqualmie Tribe;
- (21) Spokane Tribe of Indians;
- (22) Squaxin Island Tribe;
- (23) Stillaguamish Tribe;
- (24) Suquamish Tribe of the Port Madison Reservation;
- (25) Swinomish Indian Community;
- (26) Tulalip Tribes;
- (27) Upper Skagit Indian Tribe;
- (28) Yakama Indian Nation;
- (29) Coeur d'Alene Tribe;

- (30) Confederated Tribes of the Umatilla Indian Reservation;
- (31) Confederated Tribes of Warm Springs;
- (32) Kootenai Tribe; and
- (33) Nez Perce Tribe.

Any student enrolled at a state institution of higher education as defined in RCW 28B.10.016 who is paying resident tuition under this section, and who has not established domicile in the state of Washington at least one year before enrollment, shall not be included in any calculation of state-funded enrollment for budgeting purposes, and no state general fund moneys shall be appropriated to a state institution of higher education for the support of such student. [1994 c 188 § 1.]

**28B.15.0139 Resident tuition rates—Border county higher education opportunity project.** For the purposes of determining resident tuition rates, "resident student" includes a resident of Oregon, residing in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county, who meets the following conditions:

- (1) The student is eligible to pay resident tuition rates under Oregon laws and has been domiciled in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county for at least ninety days immediately before enrollment at a community college located in Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, or Walla Walla county, Washington; or
- (2) The student is enrolled in courses located at the Tri-Cities or Vancouver branch of Washington State University for eight credits or less. [2003 c 159 § 4; 2002 c 130 § 3; 2000 c 160 § 2; 1999 c 320 § 4.]

**28B.15.014 Exemption from nonresident tuition fees differential.** Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may exempt the following nonresidents from paying all or a portion of the nonresident tuition fees differential:

- (1) Any person who resides in the state of Washington and who holds a graduate service appointment designated as such by a public institution of higher education or is employed for an academic department in support of the instructional or research programs involving not less than twenty hours per week during the term such person shall hold such appointment.
- (2) Any faculty member, classified staff member or administratively exempt employee holding not less than a half time appointment at an institution who resides in the state of Washington, and the dependent children and spouse of such persons.
- (3) Any immigrant refugee and the spouse and dependent children of such refugee, if the refugee (a) is on parole status, or (b) has received an immigrant visa, or (c) has applied for United States citizenship.
- (4) Any dependent of a member of the United States congress representing the state of Washington. [2000 c 117 § 3; (2004 Ed.)

1997 c 433 § 3; 1993 sp.s. c 18 § 5; 1992 c 231 § 3. Prior: 1989 c 306 § 3; 1989 c 290 § 3; 1985 c 362 § 1; 1984 c 232 § 1; 1982 1st ex.s. c 37 § 3; 1971 ex.s. c 273 § 4.]

**Intent—Severability—1997 c 433:** See notes following RCW 28B.15.725.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Intent—1989 c 290:** See note following RCW 28B.15.725.

**Severability—1984 c 232:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 232 § 2.]

**Effective date—Severability—1982 1st ex.s. c 37:** See notes following RCW 28B.15.012.

**Severability—1971 ex.s. c 273:** See note following RCW 28B.15.011.

**28B.15.015 Classification as resident or nonresident student—Board to adopt rules relating to students' residency status, recovery of fees.** The higher education coordinating board, upon consideration of advice from representatives of the state's institutions with the advice of the attorney general, shall adopt rules and regulations to be used by the state's institutions for determining a student's resident and nonresident status and for recovery of fees for improper classification of residency. [1985 c 370 § 64; 1982 1st ex.s. c 37 § 4.]

**Effective date—Severability—1982 1st ex.s. c 37:** See notes following RCW 28B.15.012.

**28B.15.020 "Tuition fees" defined—Use.** The term "tuition fees" as used in this chapter shall mean the fees charged students registering at the state's colleges and universities which consist of:

- (1) The "building fees" as defined in RCW 28B.15.025; and
- (2) The "operating fees" as defined in RCW 28B.15.031. [1985 c 390 § 11; 1977 ex.s. c 169 § 34; 1969 ex.s. c 223 § 28B.15.020. Prior: (i) 1967 ex.s. c 8 § 31, part. Formerly RCW 28.85.310, part. (ii) 1963 c 181 § 1, part; 1961 ex.s. c 10 § 1, part; 1959 c 186 § 1, part; 1947 c 243 § 1, part; 1945 c 187 § 1, part; 1933 c 169 § 1, part; 1931 c 48 § 1, part; 1921 c 139 § 1, part; 1919 c 63 § 1, part; 1915 c 66 § 2, part; RRS § 4546, part. Formerly RCW 28.77.030, part. (iii) 1963 c 180 § 1, part; 1961 ex.s. c 11 § 1, part; 1949 c 73 § 1, part; 1931 c 49 § 1, part; 1921 c 164 § 1, part; Rem. Supp. 1949 § 4569, part. Formerly RCW 28.80.030, part. (iv) 1967 c 47 § 10, part; 1965 ex.s. c 147 § 1, part; 1963 c 143 § 1, part; 1961 ex.s. c 13 § 3, part. Formerly RCW 28.81.080, part.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.15.022 "Nonresident tuition fees differential" defined.** Unless the context clearly requires otherwise, as used in this chapter "nonresident tuition fees differential" means the difference between resident tuition fees and nonresident tuition fees. [1992 c 231 § 32.]

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**28B.15.025 "Building fees" defined—Use.** The term "building fees" means the fees charged students registering at the state's colleges and universities, which fees are to be used

as follows: At the University of Washington, solely for the purposes provided in RCW 28B.15.210; at Washington State University, solely for the purposes provided in RCW 28B.15.310; at each of the regional universities and at The Evergreen State College, solely for the purposes provided in RCW 28B.35.370; and at the community colleges, for the purposes provided in RCW 28B.50.320, 28B.50.360 and 28B.50.370. The term "building fees" is a renaming of the "general tuition fee," and shall not be construed to affect otherwise moneys pledged to, or used for bond retirement purposes. [1985 c 390 § 12.]

**28B.15.031 "Operating fees"—Defined—Disposition.** The term "operating fees" as used in this chapter shall include the fees, other than building fees, charged all students registering at the state's colleges and universities but shall not include fees for short courses, self-supporting degree credit programs and courses, marine station work, experimental station work, correspondence or extension courses, and individual instruction and student deposits or rentals, disciplinary and library fines, which colleges and universities shall have the right to impose, laboratory, gymnasium, health, technology and student activity fees, or fees, charges, rentals, and other income derived from any or all revenue producing lands, buildings and facilities of the colleges or universities heretofore or hereafter acquired, constructed or installed, including but not limited to income from rooms, dormitories, dining rooms, hospitals, infirmaries, housing or student activity buildings, vehicular parking facilities, land, or the appurtenances thereon, or such other special fees as may be established by any college or university board of trustees or regents from time to time. All moneys received as operating fees at any institution of higher education shall be deposited in a local account containing only operating fees revenue and related interest: PROVIDED, That a minimum of three and one-half percent of operating fees shall be retained by the institutions for the purposes of RCW 28B.15.820. Local operating fee accounts shall not be subject to appropriation by the legislature or allotment procedures under chapter 43.88 RCW. [2003 c 232 § 2; 1996 c 142 § 2; 1995 1st sp.s. c 9 § 2. Prior: 1993 sp.s. c 18 § 6; 1993 c 379 § 201; 1987 c 15 § 2; prior: 1985 c 390 § 13; 1985 c 356 § 2; 1982 1st ex.s. c 37 § 12; 1981 c 257 § 1; 1979 c 151 § 14; 1977 ex.s. c 331 § 3; 1971 ex.s. c 279 § 2.]

**Finding—Intent—2003 c 232:** "The legislature finds that, as a partner in financing public higher education with students and parents who pay tuition and fees, periodic increases in state funding, state financial aid, and tuition must be authorized to provide high quality higher education for the citizens of Washington. It is the intent of the legislature to address higher education through a cooperative bipartisan effort that includes the legislative and executive branches of government, parents, students, educators, as well as business, labor, and community leaders. The legislature recognizes the importance of keeping the public commitment to public higher education and will continue searching for policies that halt the trend for the growth in tuition revenue to outpace the revenue provided by the state. The legislature believes that a well-educated citizenry is essential to both the private and the public good. The economic and civic health of the state require both an educated citizenry and a well-trained work force. The six-year time limitation authorizing the governing boards to establish tuition rates for all students other than undergraduate resident students will give the legislature, the governor, and the higher education institutions an opportunity to determine whether this policy achieves the goal of maintaining quality and access for all who are eligible for and can benefit from a higher education. Using data from six years of this tuition policy, the state will be able to identify options

for long-term funding of higher education including not only tuition but general fund and financial aid sources." [2003 c 232 § 1.]

**Severability—1996 c 142:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 142 § 4.]

**Effective date—1996 c 142:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 142 § 5.]

**Intent—Purpose—1995 1st sp.s. c 9:** "It is the intent of the legislature to address higher education funding through a cooperative bipartisan effort that includes the legislative and executive branches of government, parents, students, educators, and concerned citizens. This effort will begin in 1995, with the results providing the basis for discussion during the 1996 legislative session for future decisions and final legislative action in 1997.

The purpose of this act is to provide tuition increases for public institutions of higher education as a transition measure until final action is taken in 1997." [1995 1st sp.s. c 9 § 1.]

**Effective date—1995 1st sp.s. c 9:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 14, 1995]." [1995 1st sp.s. c 9 § 14.]

**Appropriation—1993 sp.s. c 18:** "All moneys in the accounts established under \*RCW 28B.15.824 on July 1, 1993, are hereby appropriated to the respective institutions of higher education for deposit in the institution's local account established under RCW 28B.15.031." [1993 sp.s. c 18 § 15.]

**\*Reviser's note:** RCW 28B.15.824 was repealed by 1993 c 379 § 206 and by 1993 sp.s. c 18 § 14, effective July 1, 1993.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Intent—Severability—Effective date—1993 c 379:** See notes following RCW 28B.10.029.

**Effective date—1987 c 15:** See note following RCW 28B.15.411.

**Effective date—Severability—1982 1st ex.s. c 37:** See notes following RCW 28B.15.012.

**Severability—1981 c 257:** "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 257 § 13.]

**Effective date—1977 ex.s. c 331:** "The effective date of this 1977 amendatory act shall be September 1, 1977." [1977 ex.s. c 331 § 5.]

**Severability—1977 ex.s. c 331:** "If any provision of this 1977 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 331 § 4.]

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

**28B.15.041 "Services and activities fees" defined.** The term "services and activities fees" as used in this chapter is defined to mean fees, other than tuition fees, charged to all students registering at the state's community colleges, regional universities, The Evergreen State College, and state universities. Services and activities fees shall be used as otherwise provided by law or by rule or regulation of the board of trustees or regents of each of the state's community colleges, The Evergreen State College, the regional universities, or the state universities for the express purpose of funding student activities and programs of their particular institution. Student activity fees, student use fees, student building use fees, special student fees, or other similar fees charged to all full time students, or to all students, as the case may be, registering at the state's colleges or universities and pledged for the payment of bonds heretofore or hereafter issued for, or other indebtedness incurred to pay, all or part of the cost of acquiring, constructing or installing any lands, buildings, or facilities of the nature described in RCW 28B.10.300 as now

or hereafter amended, shall be included within and deemed to be services and activities fees. [1985 c 390 § 14; 1977 ex.s. c 169 § 35. Prior: 1973 1st ex.s. c 130 § 2; 1973 1st ex.s. c 46 § 1; 1971 ex.s. c 279 § 3.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Severability—1973 1st ex.s. c 46:** See note following RCW 28B.10.704.

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

**28B.15.043 "Services and activities fees"—Allocations from for institutional loan fund for needy students.** See RCW 28B.10.825.

**28B.15.044 Services and activities fees—Legislative declaration on expenditure.** It is the intent of the legislature that students will propose budgetary recommendations for consideration by the college or university administration and governing board to the extent that such budget recommendations are intended to be funded by services and activities fees. It is also the intent of the legislature that services and activities fee expenditures for programs devoted to political or economic philosophies shall result in the presentation of a spectrum of ideas. [1986 c 91 § 1; 1980 c 80 § 1.]

**Severability—1980 c 80:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 80 § 4.]

**28B.15.045 Services and activities fees—Guidelines governing establishment and funding of programs supported by—Scope—Mandatory provisions—Dispute resolution.** The legislature recognizes that institutional governing boards have a responsibility to manage and protect institutions of higher education. This responsibility includes ensuring certain lawful agreements for which revenues from services and activities fees have been pledged. Such lawful agreements include, but are not limited to, bond covenant agreements and other contractual obligations. Institutional governing boards are also expected to protect the stability of programs that benefit students.

The legislature also recognizes that services and activities fees are paid by students for the express purpose of funding student services and programs. It is the intent of the legislature that governing boards ensure that students have a strong voice in recommending budgets for services and activities fees. The boards of trustees and the boards of regents of the respective institutions of higher education shall adopt guidelines governing the establishment and funding of programs supported by services and activities fees. Such guidelines shall stipulate procedures for budgeting and expending services and activities fee revenue. Any such guidelines shall be consistent with the following provisions:

(1) Student representatives from the services and activities fee committee and representatives of the college or university administration shall have an opportunity to address the board before board decisions on services and activities fee budgets and dispute resolution actions are made;

(2) Members of the governing boards shall adhere to the principle that services and activities fee committee desires be given priority consideration on funding items that do not fall

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into the categories of preexisting contractual obligations, bond covenant agreements, or stability for programs affecting students;

(3) Responsibility for proposing to the administration and the governing board program priorities and budget levels for that portion of program budgets that derive from services and activities fees shall reside with a services and activities fee committee, on which students shall hold at least a majority of the voting memberships, such student members shall represent diverse student interests, and shall be recommended by the student government association or its equivalent. The chairperson of the services and activities fee committee shall be selected by the members of that committee. The governing board shall insure that the services and activities fee committee provides an opportunity for all viewpoints to be heard at a public meeting during its consideration of the funding of student programs and activities.

(4) The services and activities fee committee shall evaluate existing and proposed programs and submit budget recommendations for the expenditure of those services and activities fees with supporting documents simultaneously to the college or university governing board and administration.

(5) The college or university administration shall review the services and activities fee committee budget recommendations and publish a written response to the services and activities fee committee. This response shall outline potential areas of difference between the committee recommendations and the administration's proposed budget recommendations. This response, with supporting documentation, shall be submitted to the services and activities fee committee in a timely manner to allow adequate consideration.

(6)(a) In the event of a dispute or disputes involving the services and activities fee committee recommendations, the college or university administration shall meet with the services and activities fee committee in a good faith effort to resolve such dispute or disputes prior to submittal of final recommendations to the governing board.

(b) If said dispute is not resolved within fourteen days, a dispute resolution committee shall be convened by the chair of the services and activities fee committee within fourteen days.

(7) The dispute resolution committee shall be selected as follows: The college or university administration shall appoint two nonvoting advisory members; the governing board shall appoint three voting members; and the services and activities fee committee chair shall appoint three student members of the services and activities fee committee who will have a vote, and one student representing the services and activities fee committee who will chair the dispute resolution committee and be nonvoting. The committee shall meet in good faith, and settle by vote any and all disputes. In the event of a tie vote, the chair of the dispute resolution committee shall vote to settle the dispute.

(8) The governing board may take action on those portions of the services and activities fee budget not in dispute in accordance with the customary budget approval timeline established by the board. The governing board shall consider the results, if any, of the dispute resolution committee and shall take action.

(9) Services and activities fees and revenues generated by programs and activities funded by such fees shall be

deposited and expended through the office of the chief fiscal officer of the institution.

(10) Services and activities fees and revenues generated by programs and activities funded by such fees shall be subject to the applicable policies, regulations, and procedures of the institution and the budget and accounting act, chapter 43.88 RCW.

(11) All information pertaining to services and activities fees budgets shall be made available to interested parties.

(12) With the exception of any funds needed for bond covenant obligations, once the budget for expending service and activities fees is approved by the governing board, funds shall not be shifted from funds budgeted for associated students or departmentally related categories or the reserve fund until the administration provides written justification to the services and activities fee committee and the governing board, and the governing board and the services and activities fee committee give their express approval. In the event of a fund transfer dispute among the services and activities fee committee, the administration, or the governing board, said dispute shall be resolved pursuant to subsections (6)(b), (7), and (8) of this section.

(13) Any service and activities fees collected which exceed initially budgeted amounts are subject to subsections (1) through (10) and (12) of this section. [1994 c 41 § 1; 1990 c 7 § 1; 1986 c 91 § 2; 1980 c 80 § 2.]

**Severability—1980 c 80:** See note following RCW 28B.15.044.

**28B.15.051 "Technology fees"—Defined—Use—Student government approval.** (1) The governing board of each of the state universities, the regional universities, and The Evergreen State College, upon the written agreement of its respective student government association or its equivalent, may establish and charge each enrolled student a technology fee, separate from tuition fees. During the 1996-97 academic year, any technology fee shall not exceed one hundred twenty dollars for a full-time student. Any technology fee charged to a part-time student shall be calculated as a pro rata share of the fee charged to a full-time student.

(2) Revenue from this fee shall be used exclusively for technology resources for general student use.

(3) Only changes in the amount of the student technology fee agreed upon by both the governing board and its respective student government association or its equivalent shall be used to adjust the amount charged to students. Changes in the amount charged to students, once implemented, become the basis for future changes.

(4) Annually, the student government association or its equivalent may abolish the fee by a majority vote. In the event of such a vote, the student government association or its equivalent shall notify the governing board of the institution. The fee shall cease being collected the term after the student government association or its equivalent voted to eliminate the fee.

(5) The student government association or its equivalent shall approve the annual expenditure plan for the fee revenue.

(6) The universities and The Evergreen State College shall deposit three and one-half percent of revenues from the technology fee into the institutional financial aid fund under RCW 28B.15.820.

(7) As used in this section, "technology fee" is a fee charged to students to recover, in whole or in part, the costs of providing and maintaining services to students that include, but need not be limited to: Access to the internet and world wide web, e-mail, computer and multimedia work stations and laboratories, computer software, and dial-up telephone services.

(8) Prior to the establishment of a technology fee, a governing board shall provide to the student governing body a list of existing fees of a similar nature or for a similar purpose. The board and the student governing body shall ensure that student fees for technology are not duplicative. [1996 c 142 § 1.]

**Severability—Effective date—1996 c 142:** See notes following RCW 28B.15.031.

**28B.15.065 Adjustment of state appropriations for needy student financial aid.** It is the intent of the legislature that needy students not be deprived of access to higher education due to increases in educational costs or consequent increases in tuition and fees. It is the sense of the legislature that state appropriations for student financial aid be adjusted in an amount which together with funds estimated to be available in the form of basic educational opportunity grants as authorized under Section 411 of the federal Higher Education Act of 1965 as now or hereafter amended will equal twenty-four percent of any change in revenue estimated to occur as a result of revisions in tuition and fee levels under the provisions of chapter 322, Laws of 1977 ex. sess. [1977 ex.s. c 322 § 6.]

**Severability—1977 ex.s. c 322:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 322 § 17.]

**28B.15.066 General fund appropriations to institutions of higher education.** It is the intent of the legislature that:

In making appropriations from the state's general fund to institutions of higher education, each appropriation shall conform to the following:

(1) The appropriation shall not be reduced by the amount of operating fees revenue estimated to be collected from students enrolled at the state-funded enrollment level specified in the omnibus biennial operating appropriations act;

(2) The appropriation shall not be reduced by the amount of operating fees revenue collected from students enrolled above the state-funded level specified in the omnibus biennial operating appropriations act; and

(3) The general fund state appropriation shall not be reduced by the amount of operating fees revenue collected as a result of waiving less operating fees revenue than the amounts authorized under RCW 28B.15.910. State general fund appropriations shall not be provided for revenue foregone as a result of or for waivers granted under RCW 28B.15.915. [2003 c 232 § 3; 2000 c 152 § 2; 1999 c 309 § 932; 1995 1st sp.s. c 9 § 3; 1993 c 379 § 205.]

**Finding—Intent—2003 c 232:** See note following RCW 28B.15.031.

**Severability—Effective date—1999 c 309:** See notes following RCW 41.06.152.

**Intent—Purpose—Effective date—1995 1st sp.s. c 9:** See notes following RCW 28B.15.031.

**Intent—Severability—Effective date—1993 c 379:** See notes following RCW 28B.10.029.

**28B.15.067 Tuition fees—Established.** (1) Tuition fees shall be established under the provisions of this chapter.

(2) Beginning with the 2003-04 academic year and ending with the 2008-09 academic year, reductions or increases in full-time tuition fees for resident undergraduates shall be as provided in the omnibus appropriations act.

(3) Beginning with the 2003-04 academic year and ending with the 2008-09 academic year, the governing boards of the state universities, the regional universities, The Evergreen State College, and the state board for community and technical colleges may reduce or increase full-time tuition fees for all students other than resident undergraduates, including summer school students and students in other self-supporting degree programs. Percentage increases in full-time tuition fees may exceed the fiscal growth factor. Reductions or increases may be made for all or portions of an institution's programs, campuses, courses, or students.

(4) Academic year tuition for full-time students at the state's institutions of higher education beginning with 2009-10, other than summer term, shall be as charged during the 2008-09 academic year unless different rates are adopted by the legislature.

(5) The tuition fees established under this chapter shall not apply to high school students enrolling in participating institutions of higher education under RCW 28A.600.300 through 28A.600.400.

(6) For the academic years 2003-04 through 2008-09, the University of Washington shall use an amount equivalent to ten percent of all revenues received as a result of law school tuition increases beginning in academic year 2000-01 through academic year 2008-09 to assist needy low and middle income resident law students.

(7) For the academic years 2003-04 through 2008-09, institutions of higher education shall use an amount equivalent to ten percent of all revenues received as a result of graduate academic school tuition increases beginning in academic year 2003-04 through academic year 2008-09 to assist needy low and middle-income resident graduate academic students. [2003 c 232 § 4; 1997 c 403 § 1; 1996 c 212 § 1; 1995 1st sp.s. c 9 § 4; 1992 c 231 § 4; 1990 1st ex.s. c 9 § 413; 1986 c 42 § 1; 1985 c 390 § 15; 1982 1st ex.s. c 37 § 15; 1981 c 257 § 2.]

**Finding—Intent—2003 c 232:** See note following RCW 28B.15.031.

**Severability—1996 c 212:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 212 § 2.]

**Intent—Purpose—Effective date—1995 1st sp.s. c 9:** See notes following RCW 28B.15.031.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Finding—Severability—1990 1st ex.s. c 9:** See notes following RCW 28A.225.220.

**Effective date—Severability—1982 1st ex.s. c 37:** See notes following RCW 28B.15.012.

**Severability—1981 c 257:** See note following RCW 28B.15.031.

**28B.15.069 Building fees—Services and activities fees—Other fees.** (1) The building fee for each academic

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year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition for each tuition category in the 1994-95 academic year, rounded up to the nearest half percent.

(2) The governing boards of each institution of higher education, except for the technical colleges, shall charge to and collect from each student a services and activities fee. A governing board may increase the existing fee annually, consistent with budgeting procedures set forth in RCW 28B.15.045, by a percentage not to exceed the annual percentage increase in student tuition fees for resident undergraduate students: PROVIDED, That such percentage increase shall not apply to that portion of the services and activities fee previously committed to the repayment of bonded debt. These rate adjustments may exceed the fiscal growth factor. For the 2003-04 academic year, the services and activities fee shall be based upon the resident undergraduate services and activities fee in 2002-03. The services and activities fee committee provided for in RCW 28B.15.045 may initiate a request to the governing board for a fee increase.

(3) Tuition and services and activities fees consistent with subsection (2) of this section shall be set by the state board for community and technical colleges for community college summer school students unless the community college charges fees in accordance with RCW 28B.15.515.

(4) Subject to the limitations of RCW 28B.15.910, each governing board of a community college may charge such fees for ungraded courses, noncredit courses, community services courses, and self-supporting courses as it, in its discretion, may determine, consistent with the rules of the state board for community and technical colleges. [2003 c 232 § 5; 1997 c 403 § 2; 1995 1st sp.s. c 9 § 5.]

**Finding—Intent—2003 c 232:** See note following RCW 28B.15.031.

**Intent—Purpose—Effective date—1995 1st sp.s. c 9:** See notes following RCW 28B.15.031.

**28B.15.100 Tuition and fees set by individual institutions—Limitations—Tuition and fees for certain part-time, additional time, and out-of-state students.** (1) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges shall charge to and collect from each of the students registering at the particular institution for any quarter or semester such tuition fees and services and activities fees, and other fees as such board shall in its discretion determine. The total of all fees shall be rounded to the nearest whole dollar amount: PROVIDED, That such tuition fees shall be established in accordance with RCW 28B.15.067.

(2) Part-time students shall be charged tuition and services and activities fees proportionate to full-time student rates established for residents and nonresidents: PROVIDED, That except for students registered at community colleges, students registered for fewer than two credit hours shall be charged tuition and services and activities fees at the rate established for two credit hours: PROVIDED FURTHER, That, subject to the limitations of RCW 28B.15.910, residents of Idaho or Oregon who are enrolled in community college district number twenty for six or fewer credits during any quarter or semester may be exempted from payment of

all or a portion of the nonresident tuition fees differential upon a declaration by the higher education coordinating board that it finds Washington residents from the community college district are afforded substantially equivalent treatment by such other states.

(3) Full-time students registered for more than eighteen credit hours shall be charged an additional operating fee for each credit hour in excess of eighteen hours at the applicable established per credit hour tuition fee rate for part-time students: PROVIDED, That, subject to the limitations of RCW 28B.15.910, the governing boards of the state universities and the community colleges may exempt all or a portion of the additional charge, for students who are registered exclusively in first professional programs in medicine, dental medicine, veterinary medicine, doctor of pharmacy, or law, or who are registered exclusively in required courses in vocational preparatory programs. [2003 c 232 § 6; 1999 c 321 § 2; 1998 c 75 § 1; 1995 1st sp.s. c 9 § 8; 1993 sp.s. c 18 § 7; 1992 c 231 § 6. Prior: 1985 c 390 § 18; 1985 c 370 § 67; 1982 1st ex.s. c 37 § 11; 1981 c 257 § 5; 1977 ex.s. c 322 § 2; 1977 ex.s. c 169 § 36; 1971 ex.s. c 279 § 5; 1969 ex.s. c 223 § 28B.15.100; prior: (i) 1967 ex.s. c 8 § 31, part. Formerly RCW 28.85.310, part. (ii) 1963 c 181 § 1, part; 1961 ex.s. c 10 § 1, part; 1959 c 186 § 1, part; 1947 c 243 § 1, part; 1945 c 187 § 1, part; 1933 c 169 § 1, part; 1931 c 48 § 1, part; 1921 c 139 § 1, part; 1919 c 63 § 1, part; 1915 c 66 § 2, part; RRS § 4546, part. Formerly RCW 28.77.030, part. (iii) 1963 c 180 § 1, part; 1961 ex.s. c 11 § 1, part; 1949 c 73 § 1, part; 1931 c 49 § 1, part; 1921 c 164 § 1, part; Rem. Supp. 1949 § 4569, part. Formerly RCW 28.80.030, part. (iv) 1967 c 47 § 10, part; 1965 ex.s. c 147 § 1, part; 1963 c 143 § 1, part; 1961 ex.s. c 13 § 3, part. Formerly RCW 28.81.080, part.]

**Finding—Intent—2003 c 232:** See note following RCW 28B.15.031.

**Intent—1999 c 321:** "The legislature recognizes that certain tuition policies may have an adverse impact on the unique role of community colleges.

Therefore, it is the intent of the legislature to eliminate impediments to the ability of community colleges to meet the diverse needs of students and business interests." [1999 c 321 § 1.]

**Intent—Purpose—Effective date—1995 1st sp.s. c 9:** See notes following RCW 28B.15.031.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Effective date—Severability—1982 1st ex.s. c 37:** See notes following RCW 28B.15.012.

**Severability—1981 c 257:** See note following RCW 28B.15.031.

**Severability—1977 ex.s. c 322:** See note following RCW 28B.15.065.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

**28B.15.110 Tuition and fees when joint program of four year institutions—Supplemental fees, when.** Where students at any of the four year state colleges or universities participate in a joint program undertaken by two or more of such institutions, and which leads to a degree, the tuition and fees assessed each student participating in such joint program shall be equal.

The governing board at each state four year institution shall, where the tuition and fees which it charges resident students participating in a joint program falling within the scope

of this section would be less than those charged to any such students from any other state four year institution who participates in such joint program, impose a supplemental fee upon its resident students so participating in order to make the tuition and fees charged to them equal to the highest amount charged to any other resident student from a state four year institution who participates in the program. Such governing board shall, where the tuition and fees which it charges nonresident students participating in a joint program falling within the scope of this section would be less than those charged to any such students participating from any other state four year institution who participates in such joint program, impose a supplemental fee upon its nonresident students so participating in order to make the tuition and fees charged to them equal to the highest amount charged to any other nonresident student from a state four year institution who participates in the program. [1977 ex.s. c 126 § 1.]

"State universities," "regional universities," "state college," "institutions of higher education," and "postsecondary institutions" defined: RCW 28B.10.016.

**28B.15.210 Fees—University of Washington—Disposition of building fees.** Within thirty-five days from the date of collection thereof, all building fees at the University of Washington, including building fees to be charged students registering in the schools of medicine and dentistry, shall be paid into the state treasury and credited as follows:

One-half or such larger portion as may be necessary to prevent a default in the payments required to be made out of the bond retirement fund, and in no event shall such one-half be less than twelve dollars and fifty cents per each resident student per quarter, and thirty-seven dollars and fifty cents per each nonresident student per quarter to the "University of Washington bond retirement fund" and the remainder thereof to the "University of Washington building account." The sum so credited to the University of Washington building account shall be used exclusively for the purpose of erecting, altering, maintaining, equipping, or furnishing buildings except for any sums transferred as authorized in RCW 28B.20.725(3). The sum so credited to the University of Washington bond retirement fund shall be used for the payment of principal of and interest on bonds outstanding as provided by chapter 28B.20 RCW except for any sums transferred as authorized in RCW 28B.20.725(5). [1985 c 390 § 20; 1969 ex.s. c 223 § 28B.15.210. Prior: 1963 c 224 § 1; 1959 c 193 § 7; 1957 c 254 § 6; 1947 c 243 § 2; 1945 c 187 § 2; 1939 c 156 § 1; 1933 c 169 § 2; 1921 c 139 § 2; 1919 c 63 § 2; 1915 c 66 § 3; Rem. Supp. 1947 § 4547. Formerly RCW 28.77.040.]

**28B.15.220 Fees—University of Washington—Disposition of special fees.** All fees except building fees shall be held by the board of regents as a revolving fund and expended for the purposes for which collected and be accounted for in accordance with law: PROVIDED, That the board of regents shall have authority to place in a separate fund or funds any or all fees or rentals exacted for the use of facilities of any dormitory, hospital, or infirmary building, and the board of regents shall have authority to pledge any or all such fees for the retirement of any bonds that may be issued for the construction of such dormitory, hospital, or

infirmary building. [1985 c 390 § 21; 1969 ex.s. c 223 § 28B.15.220. Prior: 1961 c 229 § 6; prior: (i) 1933 ex.s. c 24 § 1; 1921 c 139 § 3; 1919 c 63 § 3; 1915 c 66 § 4; RRS § 4548. (ii) 1947 c 64 § 2, part; 1933 ex.s. c 23 § 2, part; 1925 ex.s. c 91 § 2, part; Rem. Supp. 1947 § 4543-2, part. Formerly RCW 28.77.050.]

**28B.15.225 Exemption from fees of schools of medicine or dentistry at University of Washington—Exemption from nonresident tuition fees differential for participants in the Washington, Alaska, Montana, Idaho, or Wyoming program at Washington State University.** Subject to the limitations of RCW 28B.15.910, the governing board of the University of Washington may exempt the following students from the payment of all or a portion of the nonresident tuition fees differential: Students admitted to the university's school of medicine pursuant to contracts with the states of Alaska, Montana, Idaho, or Wyoming, or agencies thereof, providing for a program of regionalized medical education conducted by the school of medicine; or students admitted to the university's school of dentistry pursuant to contracts with the states of Utah, Idaho, or any other western state which does not have a school of dentistry, or agencies thereof, providing for a program of regionalized dental education conducted by the school of dentistry. The proportional cost of the program, in excess of resident student tuition and fees, will be reimbursed to the university by or on behalf of participating states or agencies. Subject to the limitations of RCW 28B.15.910, the governing board of Washington State University may exempt from payment all or a portion of the nonresident tuition fees differential for any student admitted to the University of Washington's school of medicine and attending Washington State University as a participant in the Washington, Alaska, Montana, Idaho, or Wyoming program in this section. Washington State University may reduce the professional student tuition for students enrolled in this program by the amount the student pays the University of Washington as a registration fee. [1997 c 50 § 1; 1993 sp.s. c 18 § 9; 1992 c 231 § 8; 1981 c 20 § 1; 1975 1st ex.s. c 105 § 1.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**28B.15.310 Fees—Washington State University—Disposition of building fees.** Within thirty-five days from the date of collection thereof, all building fees shall be paid into the state treasury and credited to the Washington State University bond retirement fund, one-half or such larger portion as may be necessary to prevent a default in the payments required to be made out of such bond retirement fund; the remainder thereof to the Washington State University building account.

The sum so credited to the Washington State University building account shall be expended by the board of regents for buildings, equipment, or maintenance on the campus of Washington State University as may be deemed most advisable and for the best interests of the university, except for any sums transferred as authorized by law. Expenditures so made shall be accounted for in accordance with existing law and shall not be expended until appropriated by the legislature.

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The sum so credited to the Washington State University bond retirement fund shall be used to pay and secure the payment of the principal of and interest on building bonds issued by the university, except for any sums which may be transferred out of such fund as authorized by law. [1985 c 390 § 22; 1969 ex.s. c 223 § 28B.15.310. Prior: 1961 ex.s. c 11 § 2; 1935 c 185 § 1; 1921 c 164 § 2; RRS § 4570. Formerly RCW 28.80.040.]

*Chapter not to repeal, override, or limit other statutes or actions: RCW 28B.31.100.*

**28B.15.380 Exemption from payment of fees at state universities, regional universities, and The Evergreen State College—Veterans and children of certain law enforcement officers or fire fighters.** Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, and The Evergreen State College may exempt the following students from the payment of all or a portion of tuition fees and services and activities fees:

(1) All veterans as defined in RCW 41.04.005: PROVIDED, That such persons are no longer entitled to federal vocational or educational benefits conferred by virtue of their military service: AND PROVIDED FURTHER, That if any such veterans have not resided in this state for one year prior to registration, the board may exempt the student from paying up to fifty percent of the nonresident tuition fees differential. Such exemptions may be provided only to those persons otherwise covered who were enrolled in universities on or before October 1, 1977.

(2) Children of any law enforcement officer or fire fighter who lost his or her life or became totally disabled in the line of duty while employed by any public law enforcement agency or full time or volunteer fire department in this state: PROVIDED, That such persons may receive the exemption only if they begin their course of study at a state-supported college or university within ten years of their graduation from high school. [1993 sp.s. c 18 § 10; 1992 c 231 § 9; 1990 c 154 § 1; 1985 c 390 § 23; 1979 c 82 § 1; 1977 ex.s. c 322 § 10; 1977 ex.s. c 169 § 37; 1973 1st ex.s. c 191 § 1; 1971 ex.s. c 279 § 8; 1969 ex.s. c 269 § 8; 1969 ex.s. c 223 § 28B.15.380. Prior: (i) 1947 c 46 § 1; 1921 c 139 § 5; Rem. Supp. 1947 § 4550. Formerly RCW 28.77.070. (ii) 1921 c 164 § 4, part; RRS § 4572, part. Formerly RCW 28.80.060, part.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Severability—1979 c 82:** "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1979 c 82 § 3.]

**Severability—1977 ex.s. c 322:** See note following RCW 28B.15.065.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Effective date—1973 1st ex.s. c 191:** "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1973." [1973 1st ex.s. c 191 § 4.]

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

*"Totally disabled" defined for certain purposes: RCW 28B.15.385.*

**28B.15.385 "Totally disabled" defined for certain purposes.** For the purposes of RCW 28B.15.380, 28B.15.385, 28B.15.520 and \*28B.40.361 the phrase "totally disabled" as used in RCW 28B.15.380, 28B.15.520 and \*28B.40.361 shall mean a person who has become totally and permanently disabled for life by bodily injury or disease, and is thereby prevented from performing any occupation or gainful pursuit. [1973 1st ex.s. c 191 § 5.]

**\*Reviser's note:** RCW 28B.40.361 was repealed by 1993 sp.s. c 18 § 14, effective July 1, 1993.

**Effective date—1973 1st ex.s. c 191:** See note following RCW 28B.15.380.

**28B.15.411 Fees—Installment payments.** Each institution of higher education, at its discretion, may offer students an optional plan to pay in advance the building fees, operating fees, and services and activities fees for any quarter or semester in periodic installments, as established by that institution of higher education. [1987 c 15 § 1; 1985 c 356 § 1.]

**Effective date—1987 c 15:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1987." [1987 c 15 § 3.]

**Report to legislature—1985 c 356:** "Any institution of higher education offering a payment plan under RCW 28B.15.411, shall report to the legislature by January 1, 1988, about the effectiveness of the plan and costs of administering the plan." [1985 c 356 § 3.]

**28B.15.450 Gender equity—Intent.** The legislature finds that the ratio of women to men in intercollegiate athletics in Washington's higher education system is inequitable. It is the intent of the legislature, through additional tuition and fee waivers, to achieve gender equity in intercollegiate athletics. [1989 c 340 § 1.]

**28B.15.455 Gender equity—Goals.** Institutions of higher education shall strive to accomplish the following goals by June 30, 2002:

(1) Provide the following benefits and services equitably to male and female athletes participating in intercollegiate athletic programs: Equipment and supplies; medical services; services and insurance; transportation and per diem allowances; opportunities to receive coaching and instruction; scholarships and other forms of financial aid; conditioning programs; laundry services; assignment of game officials; opportunities for competition, publicity, and awards; and scheduling of games and practice times, including use of courts, gyms, and pools. Each institution which provides showers, toilets, lockers, or training room facilities for athletic purposes shall provide access to comparable facilities for both males and females.

(2) Provide equitable intercollegiate athletic opportunities for male and female students including opportunities to participate and to receive the benefits of the services listed in subsection (1) of this section.

(3) Provide participants with female and male coaches and administrators to act as role models. [1997 c 5 § 1; 1989 c 340 § 3.]

**Effective date—1997 c 5:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect July 1, 1997." [1997 c 5 § 7.]

**28B.15.460 Gender equity—Tuition and fee waivers—Institutional plan for underrepresented gender class.** (1) An institution of higher education shall not grant any waivers for the purpose of achieving gender equity until the 1991-92 academic year, and may grant waivers for the purpose of achieving gender equity in intercollegiate athletic programs as authorized in RCW 28B.15.740, for the 1991-92 academic year only if the institution's governing board has adopted a plan for complying with the provisions of RCW 28B.15.455 and submitted the plan to the higher education coordinating board.

(2)(a) Beginning in the 1992-93 academic year, an institution of higher education shall not grant any waiver for the purpose of achieving gender equity in intercollegiate athletic programs as authorized in RCW 28B.15.740 unless the institution's plan has been approved by the higher education coordinating board.

(b) Beginning in the 1999-2000 academic year, an institution that did not provide, by June 30, 1998, athletic opportunities for an historically underrepresented gender class at a rate that meets or exceeds the current rate at which that class participates in high school athletics in Washington state shall have a new institutional plan approved by the higher education coordinating board before granting further waivers.

(c) Beginning in the 2003-04 academic year, an institution of higher education that was not within five percent of the ratio of undergraduates described in RCW 28B.15.470 by June 30, 2002, shall have a new plan for achieving gender equity in intercollegiate athletic programs approved by the higher education coordinating board before granting further waivers.

(3) The plan shall include, but not be limited to:

(a) For any institution with an historically underrepresented gender class described in subsection (2)(b) of this section, provisions that ensure that by July 1, 2000, the institution shall provide athletic opportunities for the underrepresented gender class at a rate that meets or exceeds the current rate at which that class participates in high school interscholastic athletics in Washington state not to exceed the point at which the underrepresented gender class is no longer underrepresented;

(b) For any institution with an underrepresented gender class described in subsection (2)(c) of this section, provisions that ensure that by July 1, 2004, the institution will have reached substantial proportionality in its athletic program;

(c) Activities to be undertaken by the institution to increase participation rates of any underrepresented gender class in interscholastic and intercollegiate athletics. These activities may include, but are not limited to: Sponsoring equity conferences, coaches clinics and sports clinics; and taking a leadership role in working with athletic conferences to reduce barriers to participation by those gender classes in interscholastic and intercollegiate athletics;

(d) An identification of barriers to achieving and maintaining equitable intercollegiate athletic opportunities for men and women; and

(e) Measures to achieve institutional compliance with the provisions of RCW 28B.15.455. [1997 c 5 § 2; 1989 c 340 § 4.]

**Effective date—1997 c 5:** See note following RCW 28B.15.455.

**28B.15.465 Gender equity—Reports.** (1) The higher education coordinating board shall report every four years, beginning December 1998, to the governor and the house of representatives and senate committees on higher education, on institutional efforts to comply with the requirements of RCW 28B.15.740, 28B.15.455, and 28B.15.460. Each report shall include recommendations on measures to assist institutions with compliance.

(2) Before the board makes its report in December 2006, the board shall assess the extent of institutional compliance with the requirements of RCW 28B.15.740, 28B.15.455, and 28B.15.460.

(3) The report in this section may be combined with the report required in RCW 28B.110.040(3). [1997 c 5 § 3; 1989 c 340 § 5.]

**Effective date—1997 c 5:** See note following RCW 28B.15.455.

**28B.15.470 Gender equity—"Underrepresented gender class," "equitable" defined.** (1) As used in and for the limited purposes of RCW 28B.15.450 through 28B.15.465 and 28B.15.740, "underrepresented gender class" means female students or male students, where the ratio of participation of female or male students who are seventeen to twenty-four year old undergraduates enrolled full-time on the main campus, respectively, in intercollegiate athletics has historically been less than approximately the ratio of female to male students or male to female students, respectively, enrolled as undergraduates at an institution.

(2) As used in and for the limited purpose of RCW 28B.15.460(3)(a), an "underrepresented gender class" in interscholastic athletics means female students or male students, where the ratio of participation of female or male students, respectively, in K-12 interscholastic athletics has historically been less than approximately the ratio of female to male students or male to female students, respectively, enrolled in K-12 public schools in Washington.

(3) As used in and for the limited purposes of RCW 28B.15.460, "equitable" means that the ratio of female and male students participating in intercollegiate athletics is substantially proportionate to the percentages of female and male students who are seventeen to twenty-four year old undergraduates enrolled full time on the main campus. [1997 c 5 § 4; 1989 c 340 § 6.]

**Effective date—1997 c 5:** See note following RCW 28B.15.455.

**28B.15.475 Gender equity—Construction—1989 c 340.** Nothing in this act shall be construed to excuse any institution from any more stringent requirement to achieve gender equity imposed by law, nor to permit any institution to decrease participation of any underrepresented gender class. [1989 c 340 § 7.]

**28B.15.515 Community colleges—State-funded enrollment levels—Summer school—Enrollment level variances.** (1) The boards of trustees of the community col-

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lege districts may operate summer schools on either a self-supporting or a state-funded basis.

If summer school is operated on a self-supporting basis, the fees charged shall be retained by the colleges, and shall be sufficient to cover the direct costs, which are instructional salaries and related benefits, supplies, publications, and records.

Community colleges that have self-supporting summer schools shall continue to receive general fund state support for vocational programs that require that students enroll in a four quarter sequence of courses that includes summer quarter due to clinical or laboratory requirements and for ungraded courses limited to adult basic education, vocational apprenticeship, aging and retirement, small business management, industrial first aid, and parent education.

(2) The board of trustees of a community college district may permit the district's state-funded, full-time equivalent enrollment level, as provided in the omnibus state appropriations act, to vary. If the variance is above the state-funded level, the district may charge those students above the state-funded level a fee equivalent to the amount of tuition and fees that are charged students enrolled in state-funded courses. These fees shall be retained by the colleges.

(3) The state board for community and technical colleges shall ensure compliance with this section. [1993 sp.s. c 18 § 13; 1993 sp.s. c 15 § 8; 1991 c 353 § 1.]

**Reviser's note:** This section was amended by 1993 sp.s. c 15 § 8 and by 1993 sp.s. c 18 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Findings—Effective date—1993 sp.s. c 15:** See notes following RCW 28B.10.776.

**Effective date—1991 c 353:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 15, 1991." [1991 c 353 § 3.]

**28B.15.520 Waiver of fees and nonresident tuition fees differential—Community colleges.** Subject to the limitations of RCW 28B.15.910, the governing boards of the community colleges may:

(1) Waive all or a portion of tuition fees and services and activities fees for:

(a) Students nineteen years of age or older who are eligible for resident tuition and fee rates as defined in RCW 28B.15.012 through 28B.15.015 and who enroll in a course of study or program which will enable them to finish their high school education and obtain a high school diploma or certificate; and

(b) Children of any law enforcement officer or fire fighter who lost his or her life or became totally disabled in the line of duty while employed by any public law enforcement agency or full time or volunteer fire department in this state: PROVIDED, That such persons may receive the waiver only if they begin their course of study at a community college within ten years of their graduation from high school;

(2) Waive all or a portion of the nonresident tuition fees differential for:

(a) Nonresident students enrolled in a community college course of study or program which will enable them to

finish their high school education and obtain a high school diploma or certificate. The waiver shall be in effect only for those courses which lead to a high school diploma or certificate; and

(b) Up to forty percent of the students enrolled in the regional education program for deaf students, subject to federal funding of such program. [1993 sp.s. c 18 § 16; 1992 c 231 § 12; 1990 c 154 § 2; 1987 c 390 § 1. Prior: 1985 c 390 § 26; 1985 c 198 § 1; 1982 1st ex.s. c 37 § 8; 1979 ex.s. c 148 § 1; 1973 1st ex.s. c 191 § 2; 1971 ex.s. c 279 § 12; 1970 ex.s. c 59 § 8; 1969 ex.s. c 261 § 29. Formerly RCW 28.85.310, part.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Effective date—Severability—1982 1st ex.s. c 37:** See notes following RCW 28B.15.012.

**Effective date—1973 1st ex.s. c 191:** See note following RCW 28B.15.380.

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

**Severability—1970 ex.s. c 59:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 59 § 11.]

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020.

*GED test, eligibility:* RCW 28A.305.190.

*"Totally disabled" defined for certain purposes:* RCW 28B.15.385.

**28B.15.522 Waiver of tuition and fees for long-term unemployed or underemployed persons—Community colleges.** (1) The governing boards of the community colleges may waive all or a portion of the tuition and services and activities fees for persons under subsection (2) of this section pursuant to the following conditions:

(a) Such persons shall register for and be enrolled in courses on a space available basis and new course sections shall not be created as a result of the registration;

(b) Enrollment information on persons registered pursuant to this section shall be maintained separately from other enrollment information and shall not be included in official enrollment reports, nor shall such persons be considered in any enrollment statistics which would affect budgetary determinations; and

(c) Persons who enroll under this section shall have the same access to support services as do all other students and shall be subject to all course prerequisite requirements.

(2) A person is eligible for the waiver under subsection (1) of this section if the person:

(a) Meets the requirements for a resident student under RCW 28B.15.011 through 28B.15.015;

(b) Is twenty-one years of age or older;

(c) At the time of initial enrollment under subsection (1) of this section, has not attended an institution of higher education for the previous six months;

(d) Is not receiving or is not entitled to receive unemployment compensation of any nature under Title 50 RCW; and

(e) Has an income at or below the need standard established under chapter 74.04 RCW by the department of social and health services.

(3) The state board for community and technical colleges shall adopt rules to carry out this section. [1993 sp.s. c 18 § 17; 1992 c 231 § 13; 1985 c 390 § 27; 1984 c 50 § 2.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Intent—1984 c 50:** "The legislature finds that providing educational opportunities to the long-term unemployed and underemployed is a valuable incentive to these individuals to reestablish themselves as contributing members of society. To this end, the legislature finds that creating the opportunity for these people to attend the state's community colleges on a space available basis, without charge, will provide the impetus for self-improvement without drawing upon the limited resources of the state or its institutions." [1984 c 50 § 1.]

**Severability—1984 c 50:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 50 § 4.]

**28B.15.524 Community college international student exchange program.** The community college international student exchange program is hereby established. [1987 c 12 § 1.]

**28B.15.526 Community college international student exchange program—Resident tuition for participants authorized.** The legislature intends to permit the governing boards of the community colleges to charge resident tuition and fees for students of foreign nations who are participants in the international student exchange program. [1987 c 12 § 2.]

**28B.15.527 Waiver of nonresident tuition fees differential for students of foreign nations—Community colleges.** Subject to the limitations of RCW 28B.15.910, the governing boards of the community colleges may waive all or a portion of the nonresident tuition fees differential for undergraduate students of foreign nations as follows:

(1) Priority in the awarding of waivers shall be given to students on academic exchanges and students participating in special programs recognized through formal agreements between states, cities, or institutions;

(2) The waiver programs under this section shall promote reciprocal placements and waivers in foreign nations for Washington residents. The number of foreign students granted waivers through this program shall not exceed the number of that institution's own students enrolled in approved study programs abroad during the same period;

(3) No reciprocal placements shall be required for up to thirty students participating in the Georgetown University scholarship program funded by the United States agency for international development;

(4) Participation shall be limited to one hundred full-time foreign students each year. [1993 sp.s. c 18 § 18; 1992 c 231 § 14; 1989 c 245 § 5; 1987 c 12 § 3.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Analyses—1989 c 245:** See note following RCW 28B.76.310.

**28B.15.540 Waiver of tuition and fees for residents sixty years of age or older—Limitations.** Consistent with the regulations and procedures established by the governing boards of the state universities, the regional universities, and

The Evergreen State College and the state board for community and technical colleges, each institution may for Washington residents who are sixty years of age or older:

(1) Waive, in whole or in part, the tuition and services and activities fees for students who qualify under this section and who are enrolled for credit, and

(2) Waive, in whole or in part, the tuition and services and activities fees for students who qualify under this section, but charge a nominal fee not to exceed five dollars per quarter, or semester, as the case may be, for such students who are enrolled on an audit basis: PROVIDED, That residents enrolling with fee exemptions under this section shall register for not more than two quarter or semester courses at one time on a space available basis, and no new course sections shall be created as a direct result of such registration: PROVIDED FURTHER, That such waivers shall not be available to students who plan to use the course credits gained thereby for increasing credentials or salary schedule increases: PROVIDED FURTHER, That enrollment information concerning fee exemptions awarded under this section shall be maintained separately from other enrollment information but shall not be included in official enrollment reports: PROVIDED, That persons who enroll pursuant to provisions of this section shall not be considered for any purpose in determining student-teacher ratio, nor for any purpose relating to enrollment totals, nor any other statistic which would affect budgetary determinations. Persons enrolling under the provisions of this section shall have, in equal with all other students, access to course counseling services and shall be subject to all course prerequisite requirements. [1992 c 231 § 16; 1985 c 390 § 29; 1975 1st ex.s. c 157 § 2.]

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Purpose—1975 1st ex.s. c 157:** "In recognition of the worthwhile goal of making education a life-long process, it is the declared desire of the legislature to promote the availability of postsecondary education for the state's older residents." [1975 1st ex.s. c 157 § 1.]

**28B.15.543 Waiver or grant of tuition and fees for recipients of the Washington scholars award—Qualifications.** (1) Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges shall waive tuition and service and activities fees for students named by the higher education coordinating board on or before June 30, 1994, as recipients of the Washington scholars award under RCW 28A.600.100 through 28A.600.150. The waivers shall be used only for undergraduate studies. To qualify for the waiver, recipients shall enter the college or university within three years of high school graduation and maintain a minimum grade point average at the college or university equivalent to 3.30. Students shall be eligible to receive a maximum of twelve quarters or eight semesters of waivers and may transfer among state-supported institutions of higher education during that period and continue to have the tuition and services and activities fees waived by the state-supported institution of higher education that the student attends. Should the student's cumulative grade point average fall below 3.30 during the first three quarters or two semesters, that student may petition the higher education coordinating board which shall have the

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authority to establish a probationary period until such time as the student's grade point average meets required standards.

(2) Students named by the higher education coordinating board after June 30, 1994, as recipients of the Washington scholars award under RCW 28A.600.100 through 28A.600.150 shall be eligible to receive a grant for undergraduate course work as authorized under RCW 28B.76.660. [2004 c 275 § 49; 1995 1st sp.s. c 5 § 2; 1993 sp.s. c 18 § 19; 1992 c 231 § 17; 1990 c 33 § 558; 1987 c 465 § 2. Prior: 1985 c 390 § 30; 1985 c 370 § 68; 1985 c 341 § 16; 1984 c 278 § 17.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—Effective date—1995 1st sp.s. c 5:** See notes following RCW 28A.600.130.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Application—1987 c 465 § 2:** "The amendments to RCW 28B.15.543 by section 2, chapter 465, Laws of 1987 shall apply to persons holding the Washington scholars award as of July 26, 1987, as well as persons holding the award after July 26, 1987." [1987 c 465 § 3.]

**Severability—1984 c 278:** See note following RCW 28A.185.010.

**28B.15.544 Waiver of nonresident tuition fees differential for western undergraduate exchange program students.** Subject to the limitations of RCW 28B.15.910, the governing boards of Washington State University, Eastern Washington University, and Central Washington University may waive all or a portion of the difference between fifty percent of the resident tuition and fees amount and the nonresident tuition fees differential for nonresident students who enroll under the western interstate commission for higher education western undergraduate exchange program. [1999 c 344 § 2.]

**Findings—Intent—1999 c 344:** "The legislature finds that policies that encourage regional planning and access to higher education benefit both the students and the state. Such policies improve access, reduce unnecessary duplication, and make higher education more cost-effective. The western undergraduate exchange program, coordinated by the western interstate commission for higher education is a program through which students in participating states may enroll in designated institutions in other participating states at a special, reduced tuition level. During the 1998-99 school year institutions in fifteen western states participated in the western undergraduate exchange program, including Washington's bordering states of Oregon and Idaho. Eastern Washington University participated on a pilot basis. It is the intent of the legislature to permit Washington's institutions of higher education to participate in the western undergraduate exchange program." [1999 c 344 § 1.]

**28B.15.545 Waiver of tuition and fees for recipients of the Washington award for vocational excellence—Grants.** (1) Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges shall waive tuition and services and activities fees for a maximum of two years for those recipients of the Washington award for vocational excellence established under RCW 28C.04.520 through 28C.04.540 who received their awards before June 30, 1994. Each recipient shall not receive a waiver for more than six quarters or four semesters. To qualify for the waiver, recipients shall enter the college or university within three years of receiving the award. A min-

imum grade point average at the college or university equivalent to 3.00, or an above-average rating at a technical college, shall be required in the first year to qualify for the second-year waiver. The tuition waiver shall be granted for undergraduate studies only.

(2) Students named by the work force training and education coordinating board after June 30, 1994, as recipients of the Washington award for vocational excellence under RCW 28C.04.520 through 28C.04.550 shall be eligible to receive a grant for undergraduate course work as authorized under RCW 28B.76.670. [2004 c 275 § 50; 1995 1st sp.s. c 7 § 7; 1993 sp.s. c 18 § 20; 1992 c 231 § 18; 1987 c 231 § 1; 1985 c 390 § 31; 1984 c 267 § 6.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—1995 1st sp.s. c 7:** See note following RCW 28C.04.520.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**28B.15.546 Second-year waiver of tuition and fees for recipients of the Washington award for vocational excellence.** Students receiving the Washington award for vocational excellence in 1987 and thereafter are eligible for a second-year waiver. [1987 c 231 § 5.]

**28B.15.555 Waiver of tuition and fees for students of foreign nations—Intent.** The legislature intends to permit the governing boards of the four-year institutions of higher education to waive tuition and fees for certain students of foreign nations. To the greatest extent possible, students chosen for these waivers and for the institutions' own approved study abroad programs shall reflect the range of socioeconomic and ethnic characteristics of the students' institutions and native countries. [1986 c 232 § 1.]

**28B.15.556 Waiver of tuition and fees for students of foreign nations—Authorized—Limitations.** Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, and The Evergreen State College may waive all or a portion of the tuition, and services and activities fees for undergraduate or graduate students of foreign nations subject to the following limitations:

(1) No more than the equivalent of one hundred waivers may be awarded to undergraduate or graduate students of foreign nations at each of the two state universities;

(2) No more than the equivalent of twenty waivers may be awarded to undergraduate or graduate students of foreign nations at each of the regional universities and The Evergreen State College;

(3) Priority in the awarding of waivers shall be given to students on academic exchanges or academic special programs sponsored by recognized international educational organizations; and

(4) An undergraduate or graduate student of a foreign nation receiving a waiver under this section is not eligible for any other waiver.

The waiver programs under this section, to the greatest extent possible, shall promote reciprocal placements and

waivers in foreign nations for Washington residents. The number of waivers awarded by each institution shall not exceed the number of that institution's own students enrolled in approved study programs abroad during the same period. [1993 sp.s. c 18 § 21; 1992 c 231 § 19; 1986 c 232 § 2.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**28B.15.558 Waiver of tuition and fees for state employees, veterans of the Korean conflict, and Washington national guard members.** (1) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may waive all or a portion of the tuition and services and activities fees for state employees as defined under subsection (2) of this section, veterans of the Korean conflict, and members of the Washington national guard. The enrollment of these persons is pursuant to the following conditions:

(a) Such persons shall register for and be enrolled in courses on a space available basis and no new course sections shall be created as a result of the registration;

(b) Enrollment information on persons registered pursuant to this section shall be maintained separately from other enrollment information and shall not be included in official enrollment reports, nor shall such persons be considered in any enrollment statistics that would affect budgetary determinations; and

(c) Persons registering on a space available basis shall be charged a registration fee of not less than five dollars.

(2) For the purposes of this section, "state employees" means persons employed half-time or more in one or more of the following employee classifications:

(a) Permanent employees in classified service under chapter 41.06 RCW;

(b) Permanent employees governed by chapter 41.56 RCW pursuant to the exercise of the option under \*RCW 41.56.201;

(c) Permanent classified employees and exempt paraprofessional employees of technical colleges; and

(d) Faculty, counselors, librarians, and exempt professional and administrative employees at institutions of higher education as defined in RCW 28B.10.016.

(3) For the purposes of this section, "veterans of the Korean conflict" means persons who served on active duty in the armed forces of the United States during any portion of the period beginning June 27, 1950, and ending January 31, 1955.

(4) In awarding waivers, an institution of higher education may award waivers to eligible persons employed by the institution before considering waivers for eligible persons who are not employed by the institution.

(5) If an institution of higher education exercises the authority granted under this section, it shall include all eligible state employees, veterans of the Korean conflict, and members of the Washington national guard in the pool of persons eligible to participate in the program.

(6) In establishing eligibility to receive waivers, institutions of higher education may not discriminate between full-time employees and employees who are employed half-time

or more. [2003 c 160 § 2; 1997 c 211 § 1; 1996 c 305 § 3; 1992 c 231 § 20; 1990 c 88 § 1.]

**\*Reviser's note:** RCW 41.56.201 was repealed by 2002 c 354 § 403, effective July 1, 2005.

**Finding—Intent—2003 c 160:** "The legislature finds that military and naval veterans who have served their country in wars on foreign soil have risked their own lives to defend both the lives of all Americans and the freedom that define[s] and distinguish[es] our nation. It is the intent of the legislature to honor veterans of the Korean conflict for the public service they have provided to their country." [2003 c 160 § 1.]

**Effective date—1996 c 305 § 3:** "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1996]." [1996 c 305 § 4.]

**Severability—1996 c 305:** See note following RCW 28B.85.020.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**28B.15.600 Refunds or cancellation of fees—Four-year institutions of higher education.** (1) The governing boards of the state universities, the regional universities, and The Evergreen State College may refund or cancel in full the tuition and services and activities fees if the student withdraws from a university or college course or program prior to the sixth day of instruction of the quarter or semester for which the fees have been paid or are due. If the student withdraws on or after the sixth day of instruction, the governing boards may refund or cancel up to one-half of the fees, provided such withdrawal occurs within the first thirty calendar days following the beginning of instruction. However, if a different policy is required by federal law in order for the institution of higher education to maintain eligibility for federal funding of programs, the governing board may adopt a refund policy that meets the minimum requirements of the federal law, and the policy may treat all students attending the institution in the same manner. Additionally, if federal law provides that students who receive federal financial aid must return a larger amount to the federal government than that refunded by the institution, the governing board may adopt a refund policy that uses the formula used to calculate the amount returned to the federal government, and the policy may treat all students attending the institution in the same manner.

(2) The governing boards of the respective universities and college may adopt rules for the refund of tuition and fees for courses or programs that begin after the start of the regular quarter or semester.

(3) The governing boards may extend the refund or cancellation period for students who withdraw for medical reasons, shall adopt policies that comply with RCW 28B.10.270 for students who are called into the military service of the United States, and may refund other fees pursuant to such rules as they may prescribe. [2004 c 161 § 2; 2003 c 319 § 1; 1995 c 36 § 1; 1993 sp.s. c 18 § 22; 1991 c 164 § 5; 1985 c 390 § 32; 1983 c 256 § 1; 1977 ex.s. c 169 § 40; 1973 1st ex.s. c 46 § 2; 1971 ex.s. c 279 § 15; 1969 ex.s. c 223 § 28B.15.600. Prior: 1963 c 89 § 1. Formerly RCW 28.76.430.]

**Effective date—2004 c 161:** See note following RCW 28B.10.270.

**Effective date—1995 c 36:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 13, 1995]." [1995 c 36 § 3.]

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**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Severability—1973 1st ex.s. c 46:** See note following RCW 28B.10.704.

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

**28B.15.605 Refunds or cancellation of fees—Community colleges and technical colleges.** (1) The governing boards of the community colleges and technical colleges shall refund or cancel up to one hundred percent but no less than eighty percent of the tuition and services and activities fees if the student withdraws from a college course or program before the sixth day of instruction of the regular quarter for which the fees have been paid or are due. If the student withdraws on or after the sixth day of instruction, the governing boards shall refund or cancel up to fifty percent but no less than forty percent of the fees provided such withdrawal occurs within the first twenty calendar days following the beginning of instruction. However, if a different policy is required by federal law in order for the college to maintain eligibility for federal funding of programs, the governing board may adopt a refund policy that meets the minimum requirements of the federal law and the policy may treat all students attending the institution in the same manner.

(2) The governing boards of the respective community college or technical college shall adopt rules consistent with subsection (1) of this section for the refund of tuition and fees for the summer quarter and for courses or programs that begin after the start of the regular quarter.

(3) The governing boards of community colleges and technical colleges may extend the refund or cancellation period for students who withdraw for medical reasons and shall adopt policies that comply with RCW 28B.10.270 for students who are called into the military service of the United States. [2004 c 161 § 3; 1995 c 36 § 2.]

**Effective date—2004 c 161:** See note following RCW 28B.10.270.

**Effective date—1995 c 36:** See note following RCW 28B.15.600.

**28B.15.610 Voluntary fees of students.** The provisions of this chapter shall not apply to or affect any student fee or charge which the students voluntarily maintain upon themselves for student purposes only. [1969 ex.s. c 223 § 28B.15.610. Prior: 1915 c 66 § 8; RRS § 4552. Formerly RCW 28.77.065.]

**28B.15.615 Exemption from resident operating fees and technology fees for persons holding graduate service appointments.** Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities and the regional universities may exempt the following students from paying all or a portion of the resident operating fee and the technology fee: Students granted a graduate service appointment, designated as such by the institution, involving not less than twenty hours of work per week. The exemption shall be for the term of the appointment. [1996 c 142 § 3; 1993 sp.s. c 18 § 23; 1992 c 231 § 21; 1984 c 105 § 1.]

**Severability—Effective date—1996 c 142:** See notes following RCW 28B.15.031.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**28B.15.620 Exemption from tuition and fees increase at institutions of higher education—Vietnam veterans.**

(1) The legislature finds that military and naval veterans who have served their country in wars on foreign soil have risked their own lives to defend both the lives of all Americans and the freedoms that define and distinguish our nation. The legislature also finds that veterans of the Vietnam conflict suffered during and after the war as the country anguished over its involvement in the conflict. It is the intent of the legislature to honor Vietnam veterans for the public service they have provided to their country. It is the further intent of the legislature that, for eligible Vietnam veterans, colleges and universities waive tuition and fee increases that have occurred since October 1, 1977.

(2) Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may exempt veterans of the Vietnam conflict who have served in the southeast Asia theater of operations from the payment of all or a portion of any increase in tuition and fees that occur after October 1, 1977, if the veteran qualifies as a resident student under RCW 28B.15.012.

(3) For the purposes of this section, "veterans of the Vietnam conflict" shall be those persons who have been on active federal service as a member of the armed military or naval forces of the United States between a period commencing August 5, 1964, and ending on May 7, 1975. [1999 c 82 § 1; 1995 c 349 § 1; 1994 c 208 § 1; 1993 sp.s. c 18 § 24; 1992 c 231 § 22; 1989 c 306 § 4; 1983 c 307 § 1; 1979 ex.s. c 83 § 1; 1977 ex.s. c 322 § 9; 1972 ex.s. c 149 § 3; 1971 ex.s. c 279 § 22.]

**Effective date—1999 c 82:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 22, 1999]." [1999 c 82 § 4.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Severability—1977 ex.s. c 322:** See note following RCW 28B.15.065.

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

**28B.15.625 Rights of Washington national guard and other military reserve students called to active service.**

Private vocational schools and private higher education institutions are encouraged to provide students who are members of the Washington national guard or any other military reserve component and who are ordered for a period exceeding thirty days into active state service or federal active military service the same rights and opportunities provided under RCW 28B.10.270 by public higher education institutions. [2004 c 161 § 4; 1991 c 164 § 10.]

**Effective date—2004 c 161:** See note following RCW 28B.10.270.

**28B.15.628 Waiver of tuition and fees increases at institutions of higher education—Persian Gulf veterans.**

(1) The legislature finds that military and naval veterans who have served their country in wars on foreign soil have risked their own lives to defend both the lives of all Americans and the freedoms that define and distinguish our nation. It is the intent of the legislature to honor Persian Gulf combat zone

veterans for the public service they have provided to their country. It is the further intent of the legislature that, for eligible Persian Gulf combat zone veterans, institutions of higher education waive tuition and fee increases that have occurred after the 1990-91 academic year.

(2) Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may exempt veterans of the Persian Gulf combat zone from all or a portion of increases in tuition and fees that occur after the 1990-91 academic year, if the veteran could have qualified as a Washington resident student under RCW 28B.15.012(2), had he or she been enrolled as a student on August 1, 1990.

(3) For the purposes of this section, "a veteran of the Persian Gulf combat zone" means a person who served on active duty in the armed forces of the United States during any portion of the 1991 calendar year in the Persian Gulf combat zone as designated by executive order of the president of the United States. [1999 c 82 § 2; 1996 c 169 § 1; 1994 c 208 § 2; 1993 sp.s. c 18 § 25; 1992 c 231 § 23; 1991 c 228 § 14.]

**Effective date—1999 c 82:** See note following RCW 28B.15.620.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**28B.15.629 Tuition waivers at technical colleges—Vietnam veterans—Persian Gulf veterans.**

Technical colleges are encouraged to provide veterans of the Vietnam conflict as defined in RCW 28B.15.620 and veterans of the Persian Gulf combat zone as defined in RCW 28B.15.628 with tuition waivers. [1999 c 82 § 3.]

**Effective date—1999 c 82:** See note following RCW 28B.15.620.

**28B.15.700 Nonresident tuition fees—Exemption under Western regional higher education compact contracts.** See RCW 28B.70.050.

**28B.15.725 Home tuition programs.** (1) The governing boards of the state universities, the regional universities, and The Evergreen State College may establish home tuition programs by negotiating home tuition agreements with an out-of-state institution or consortium of institutions of higher education if no loss of tuition and fee revenue occurs as a result of the agreements.

(2) Home tuition agreements allow students at Washington state institutions of higher education to attend an out-of-state institution of higher education as part of a student exchange. Students participating in a home tuition program shall pay an amount equal to their regular, full-time tuition and required fees to either the Washington institution of higher education or the out-of-state institution of higher education depending upon the provisions of the particular agreement. Payment of course fees in excess of generally applicable tuition and required fees must be addressed in each home tuition agreement to ensure that the instructional programs of the Washington institution of higher education do not incur additional uncompensated costs as a result of the exchange.

(3) Student participation in a home tuition agreement authorized by this section is limited to one academic year.

(4) Students enrolled under a home tuition agreement shall reside in Washington state for the duration of the program, may not use the year of enrollment under this program to establish Washington state residency, and are not eligible for state financial aid. [1997 c 433 § 4; 1994 c 234 § 1; 1993 sp.s. c 18 § 26; 1992 c 231 § 24; 1989 c 290 § 2.]

**Intent—1997 c 433:** "It is the intent of the legislature to provide for diverse educational opportunities at the state's institutions of higher education and to facilitate student participation in educational exchanges with institutions outside the state of Washington. To accomplish this, this act establishes a home tuition program allowing students at Washington state institutions of higher education to take advantage of out-of-state and international educational opportunities while paying an amount equal to their regularly charged tuition and required fees." [1997 c 433 § 1.]

**Severability—1997 c 433:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 433 § 6.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Intent—1989 c 290; 1994 c 234:** "The legislature recognizes that a unique educational experience can result from an undergraduate student attending an out-of-state institution. It also recognizes that some Washington residents may be unable to pursue such out-of-state enrollment owing to their limited financial resources and the higher cost of nonresident tuition. The legislature intends to facilitate expanded nonresident undergraduate enrollment opportunities for residents of the state by authorizing the governing boards of the four-year institutions of higher education to enter into exchange programs with other states' institutions with comparable programs wherein the participating institutions agree that visiting undergraduate students will pay resident tuition rates of the host institutions." [1994 c 234 § 2; 1989 c 290 § 1.]

**28B.15.730 Waiver of nonresident tuition fees differential—Washington/Oregon reciprocity program.** Subject to the limitations of RCW 28B.15.910, the state board for community and technical colleges and the governing boards of the state universities, the regional universities, the community colleges, and The Evergreen State College may waive all or a portion of the nonresident tuition fees differential for residents of Oregon, upon completion of and to the extent permitted by an agreement between the higher education coordinating board and appropriate officials and agencies in Oregon granting similar waivers for residents of the state of Washington. [1993 sp.s. c 18 § 27; 1992 c 231 § 25; 1985 c 370 § 69; 1983 c 104 § 1; 1979 c 80 § 1.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Severability—1979 c 80:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 80 § 5.]

**28B.15.732 Washington/Oregon reciprocity tuition and fee program—Reimbursement when greater net revenue loss.** Prior to January 1 of each odd-numbered year the higher education coordinating board, in cooperation with the \*state board for community college education, and in consultation with appropriate agencies and officials in the state of Oregon, shall determine for the purposes of RCW 28B.15.730 the number of students for whom nonresident tuition and fees have been waived for the first academic year of the biennium and the fall term of the second academic year, and make an estimate of the number of such students for the remainder of the second academic year, and the differ-

ence between the aggregate amount of tuition and fees that would have been paid to the respective states by residents of the other state had such waivers not been made, and the aggregate amount of tuition and fees paid by residents of the other state. Should the board determine that the state of Oregon has experienced a greater net tuition and fee revenue loss than institutions in Washington, it shall pay from funds appropriated for this purpose to the appropriate agency or institutions in Oregon an amount determined by subtracting the net tuition and fee revenue loss of Washington from the net tuition and fee revenue loss of Oregon, minus twenty-five thousand dollars for each year of the biennium: PROVIDED, That appropriate officials in the state of Oregon agree to make similar restitution to the state of Washington should the net tuition and fee revenue loss in Washington be greater than that in Oregon. [1985 c 370 § 70; 1979 c 80 § 2.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Severability—1979 c 80:** See note following RCW 28B.15.730.

**28B.15.734 Washington/Oregon reciprocity tuition and fee program—Implementation agreement.** The higher education coordinating board may enter into an agreement with appropriate officials or agencies in Oregon to implement the provisions of RCW 28B.15.730 through 28B.15.734. [1985 c 370 § 71; 1979 c 80 § 3.]

**Severability—1979 c 80:** See note following RCW 28B.15.730.

**28B.15.736 Washington/Oregon reciprocity tuition and fee program—Program review.** By January 10 of each odd-numbered year, the higher education coordinating board shall review the costs and benefits of this program and shall transmit copies of their review to the governor and the appropriate policy and fiscal committees of the legislature. [1985 c 370 § 72; 1983 c 104 § 2; 1979 c 80 § 4.]

**Severability—1979 c 80:** See note following RCW 28B.15.730.

**28B.15.740 Limitation on total tuition and fee waivers.** (1) Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may waive all or a portion of tuition and fees for needy students who are eligible for resident tuition and fee rates pursuant to RCW 28B.15.012 and 28B.15.013. Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may waive all or a portion of tuition and fees for other students at the discretion of the governing boards, except on the basis of participation in intercollegiate athletic programs, not to exceed three-fourths of one percent of gross authorized operating fees revenue under RCW 28B.15.910 for the community colleges considered as a whole and not to exceed two percent of gross authorized operating fees revenue for the other institutions of higher education.

(2) In addition to the tuition and fee waivers provided in subsection (1) of this section and subject to the provisions of RCW 28B.15.455, 28B.15.460, and 28B.15.910, a total dollar amount of tuition and fee waivers awarded by any state

university, regional university, or state college under this chapter, not to exceed one percent, as calculated in subsection (1) of this section, may be used for the purpose of achieving or maintaining gender equity in intercollegiate athletic programs. At any institution that has an underrepresented gender class in intercollegiate athletics, any such waivers shall be awarded:

(a) First, to members of the underrepresented gender class who participate in intercollegiate athletics, where such waivers result in saved or displaced money that can be used for athletic programs for the underrepresented gender class. Such saved or displaced money shall be used for programs for the underrepresented gender class; and

(b) Second, (i) to nonmembers of the underrepresented gender class who participate in intercollegiate athletics, where such waivers result in saved or displaced money that can be used for athletic programs for members of the underrepresented gender class. Such saved or displaced money shall be used for programs for the underrepresented gender class; or (ii) to members of the underrepresented gender class who participate in intercollegiate athletics, where such waivers do not result in any saved or displaced money that can be used for athletic programs for members of the underrepresented gender class. [1997 c 207 § 1; 1995 1st sp.s. c 9 § 9; 1993 sp.s. c 18 § 28; 1992 c 231 § 26; 1989 c 340 § 2; 1986 c 232 § 3; 1985 c 390 § 33; 1982 1st ex.s. c 37 § 9; 1980 c 62 § 1; 1979 ex.s. c 262 § 1.]

**Intent—Purpose—Effective date—1995 1st sp.s. c 9:** See notes following RCW 28B.15.031.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Effective date—Severability—1982 1st ex.s. c 37:** See notes following RCW 28B.15.012.

**Severability—1979 ex.s. c 262:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 262 § 5.]

**28B.15.750 Waiver of nonresident tuition fees differential—Washington/Idaho reciprocity program.** Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, and The Evergreen State College and the state board for community and technical colleges may waive all or a portion of the nonresident tuition fees differential for residents of Idaho, upon completion of and to the extent permitted by an agreement between the higher education coordinating board and appropriate officials and agencies in Idaho granting similar waivers for residents of the state of Washington. [1993 sp.s. c 18 § 29; 1992 c 231 § 27; 1985 c 370 § 73; 1983 c 166 § 1.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**28B.15.752 Washington/Idaho reciprocity tuition and fee program—Reimbursement when greater net revenue loss.** Prior to January 1 of each odd-numbered year, the higher education coordinating board, in cooperation with the \*state board for community college education and in consultation with appropriate agencies and officials in the state of Idaho, shall determine for the purposes of RCW 28B.15.750 the number of students for whom nonresident tuition and fees

have been waived for the first academic year of the biennium and the fall term of the second academic year, and make an estimate of the number of such students for the remainder of the second academic year, and the difference between the aggregate amount of tuition and fees that would have been paid to the respective states by residents of the other state had such waivers not been made, and the aggregate amount of tuition and fees paid by residents of the other state. Should the board determine that the state of Idaho has experienced a greater net tuition and fee revenue loss than institutions in Washington, it shall pay from funds appropriated for this purpose to the appropriate agency or institution in Idaho an amount determined by subtracting the net tuition and fee revenue loss of Washington from the net tuition and fee revenue loss of Idaho, minus twenty-five thousand dollars for each year of the biennium if the appropriate officials in the state of Idaho agree to make similar restitution to the state of Washington should the net tuition and fee revenue loss in Washington be greater than that in Idaho. [1985 c 370 § 74; 1983 c 166 § 2.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**28B.15.754 Washington/Idaho reciprocity tuition and fee program—Implementation agreement—Program review.** The higher education coordinating board may enter into an agreement with appropriate officials or agencies in the state of Idaho to implement RCW 28B.15.750 and 28B.15.752. By January 10 of each odd-numbered year, the board shall review the costs and benefits of any agreement entered into under RCW 28B.15.750 and shall transmit copies of their review to the governor and the appropriate policy and fiscal committees of the legislature. [1987 c 446 § 1; 1985 c 370 § 75; 1983 c 166 § 3.]

**Effective date—1987 c 446:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1987." [1987 c 446 § 5.]

**28B.15.756 Waiver of nonresident tuition fees differential—Washington/British Columbia reciprocity program.** Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, and The Evergreen State College and the state board for community and technical colleges may waive all or a portion of the nonresident tuition fees differential for residents of the Canadian province of British Columbia, upon completion of and to the extent permitted by an agreement between the higher education coordinating board and appropriate officials and agencies in the Canadian province of British Columbia providing for enrollment opportunities for residents of the state of Washington without payment of tuition or fees in excess of those charged to residents of British Columbia. [1993 sp.s. c 18 § 30; 1992 c 231 § 28; 1987 c 446 § 2; 1985 c 370 § 76; 1983 c 166 § 4.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Effective date—1987 c 446:** See note following RCW 28B.15.754.

**28B.15.758 Washington/British Columbia reciprocity tuition and fee program—Implementation agreement—Program review.** The higher education coordinating board may enter into an agreement with appropriate officials or agencies in the Canadian province of British Columbia to implement RCW 28B.15.756. The agreement should provide for a balanced exchange of enrollment opportunities, without payment of excess tuition or fees, for residents of the state of Washington or the Canadian province of British Columbia. By January 10 of each odd-numbered year, the board shall review the costs and benefits of any agreement entered into under RCW 28B.15.756 and shall transmit copies of their review to the governor and the appropriate policy and fiscal committees of the legislature. [1987 c 446 § 3; 1985 c 370 § 77; 1983 c 166 § 5.]

**Effective date—1987 c 446:** See note following RCW 28B.15.754.

**28B.15.760 Loan program for mathematics and science teachers—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28B.15.762 and 28B.15.764.

(1) "Institution of higher education" or "institution" means a college or university in the state of Washington which is a member institution of an accrediting association recognized as such by rule of the higher education coordinating board.

(2) "Board" means the higher education coordinating board.

(3) "Eligible student" means a student registered for at least ten credit hours or the equivalent and demonstrates achievement of a 3.00 grade point average for each academic year, who is a resident student as defined by RCW 28B.15.012 through 28B.15.015, who is a "needy student" as defined in RCW 28B.92.030, and who has a declared major in a program leading to a degree in teacher education in a field of science or mathematics, or a certificated teacher who meets the same credit hour and "needy student" requirements and is seeking an additional degree in science or mathematics.

(4) "Public school" means a middle school, junior high school, or high school within the public school system referred to in Article IX of the state Constitution.

(5) "Forgiven" or "to forgive" means to collect service as a teacher in a field of science or mathematics at a public school in the state of Washington in lieu of monetary payment.

(6) "Satisfied" means paid-in-full.

(7) "Borrower" means an eligible student who has received a loan under RCW 28B.15.762. [2004 c 275 § 65; 1985 c 370 § 79; 1983 1st ex.s. c 74 § 1.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—1983 1st ex.s. c 74:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 74 § 6.]

**28B.15.762 Loan program for mathematics and science teachers—Terms and conditions—Collection—Disposition of payments—Rules.** (1) The board may make long-term loans to eligible students at institutions of higher

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education from the funds appropriated to the board for this purpose. The amount of any such loan shall not exceed the demonstrated financial need of the student or two thousand five hundred dollars for each academic year whichever is less, and the total amount of such loans to an eligible student shall not exceed ten thousand dollars. The interest rates and terms of deferral of such loans shall be consistent with the terms of the guaranteed loan program established by 20 U.S.C. Sec. 1701 et seq. The period for repaying the loan principal and interest shall be ten years with payments accruing quarterly commencing nine months from the date the borrower graduated. The entire principal and interest of each loan payment shall be forgiven for each payment period in which the borrower teaches science or mathematics in a public school in this state until the entire loan is satisfied or the borrower ceases to teach science or mathematics at a public school in this state. Should the borrower cease to teach science or mathematics at a public school in this state before the time in which the principal and interest on the loan are satisfied, payments on the unsatisfied portion of the principal and interest on the loan shall begin the next payment period and continue until the remainder of the loan is paid.

(2) The board is responsible for collection of loans made under subsection (1) of this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Collection and servicing of loans under subsection (1) of this section shall be pursued using the full extent of the law, including wage garnishment if necessary, and shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency. The board is responsible to forgive all or parts of such loans under the criteria established in subsection (1) of this section and shall maintain all necessary records of forgiven payments.

(3) Receipts from the payment of principal or interest or any other subsidies to which the board as lender is entitled, which are paid by or on behalf of borrowers under subsection (1) of this section, shall be deposited with the higher education coordinating board and shall be used to cover the costs of making the loans under subsection (1) of this section, maintaining necessary records, and making collections under subsection (2) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to make loans to eligible students.

(4) Any funds not used to make loans, or to cover the cost of making loans or making collections, shall be placed in the state educational trust fund for needy or disadvantaged students.

(5) The board shall adopt necessary rules to implement this section. [1996 c 107 § 2; 1985 c 370 § 80; 1983 1st ex.s. c 74 § 2.]

**Severability—1983 1st ex.s. c 74:** See note following RCW 28B.15.760.

**28B.15.764 Loan program for mathematics and science teachers—Cooperation by board and institutions of higher education.** The board and institutions of higher education shall work cooperatively to implement RCW 28B.15.762 and to publicize this program to eligible students. [1985 c 370 § 81; 1983 1st ex.s. c 74 § 3.]

**Severability—1983 1st ex.s. c 74:** See note following RCW 28B.15.760.

**28B.15.766 Loan program for mathematics and science teachers—Duration—\*Legislative budget committee review.** No loans shall be made after August 23, 1989, until the program is reviewed by the \*legislative budget committee and is reenacted by the legislature. [1983 1st ex.s. c 74 § 4.]

**\*Reviser's note:** The "legislative budget committee" was redesignated the "joint legislative audit and review committee" by 1996 c 288 § 3.

**Severability—1983 1st ex.s. c 74:** See note following RCW 28B.15.760.

**28B.15.790 Effective communication—Intent.** The legislature finds that the quality of undergraduate education is enhanced by association with graduate assistants from other countries who can effectively communicate their knowledge and diverse cultural backgrounds.

It is the intent of the legislature to assist the institutions in their effort to improve the quality of undergraduate education at the state's four-year colleges and universities. Attainment of an excellent education is facilitated when communication is clear, concise, sensitive to cultural differences, and demonstrative of proven pedagogical skills. It is the further intent of the legislature to assure students and parents that graduate teaching assistants at our state institutions of higher education are able to communicate effectively and understandably with undergraduate students. [1991 c 228 § 1.]

**28B.15.792 Effective communication—Principles.** The Washington state legislature affirms the following principles:

(1) Washington's college and university students are entitled to excellent instruction at the state's institutions of higher education. Excellent education requires the ability to communicate effectively in college classrooms and laboratories.

(2) The presence of students, faculty, and staff from other countries on Washington's college campuses enriches the educational experience of Washington's students and enhances scholarship and research at the state's colleges and universities.

(3) With the exception of courses designed to be taught primarily in a foreign language, undergraduate students shall be provided with classroom instruction, laboratory instruction, clinics, seminars, studios, and other participatory and activity courses by a person fluent in both the spoken and written English language.

(4) Persons of all nationalities, races, religions, and ethnic backgrounds are welcome and valued in the state of Washington. [1991 c 228 § 2.]

**28B.15.794 Effective communication—Implementation of principles.** The governing board of each state university, regional university, state college, and community college shall ensure that the principles in \*section 1 of this act are implemented at its institution of higher education. [1991 c 228 § 3.]

**\*Reviser's note:** A translation of "section 1 of this act" is RCW 28B.15.790. RCW 28B.15.792 was apparently intended.

**28B.15.796 Effective communication—Task force to improve communication and teaching skills of faculty and teaching assistants.** The council of presidents, in consultation with the higher education coordinating board, shall convene a task force of representatives from the four-year universities and colleges. The task force shall:

(1) Review institutional policies and procedures designed to ensure that faculty and teaching assistants are able to communicate effectively with undergraduate students in classrooms and laboratories;

(2) Research methods and procedures designed to improve the communication and teaching skills of any person funded by state money who instructs undergraduate students in classrooms and laboratories;

(3) Share the results of that research with each participating university and college; and

(4) Work with each participating university and college to assist the institution in its efforts to improve the communication and pedagogical skills of faculty and teaching assistants instructing undergraduate students. [1991 c 228 § 4.]

**28B.15.800 Pledged bond retirement funds to be set aside from tuition and fees—1977 ex.s. c 322.** Notwithstanding any other section of chapter 322, Laws of 1977 ex. sess., the boards of regents and trustees of the respective institutions of higher education shall set aside from tuition and fees charged in each schedule an amount heretofore pledged and necessary for the purposes of bond retirement until such time as any such debt has been satisfied. [1985 c 390 § 34; 1977 ex.s. c 322 § 15.]

**Severability—1977 ex.s. c 322:** See note following RCW 28B.15.065.

**28B.15.805 Pledged bond retirement funds to be set aside from tuition and fees—1981 c 257.** Notwithstanding any other provision of chapter 257, Laws of 1981, the boards of regents and trustees of the respective institutions of higher education shall set aside from tuition and fees charged in each schedule an amount heretofore pledged and necessary for the purposes of bond retirement until such time as any such debt has been satisfied. [1981 c 257 § 10.]

**Severability—1981 c 257:** See note following RCW 28B.15.031.

**28B.15.820 Institutional financial aid fund—"Eligible student" defined.** (1) Each institution of higher education, including technical colleges, shall deposit a minimum of three and one-half percent of revenues collected from tuition and services and activities fees in an institutional financial aid fund that is hereby created and which shall be held locally. Moneys in the fund shall be used only for the following purposes: (a) To make guaranteed long-term loans to eligible students as provided in subsections (3) through (8) of this section; (b) to make short-term loans as provided in subsection (9) of this section; or (c) to provide financial aid to needy students as provided in subsection (10) of this section.

(2) An "eligible student" for the purposes of subsections (3) through (8) and (10) of this section is a student registered for at least six credit hours or the equivalent, who is eligible for resident tuition and fee rates as defined in RCW 28B.15.012 and 28B.15.013, and who is a "needy student" as defined in RCW 28B.92.030.

(3) The amount of the guaranteed long-term loans made under this section shall not exceed the demonstrated financial need of the student. Each institution shall establish loan terms and conditions which shall be consistent with the terms of the guaranteed loan program established by 20 U.S. Code Section 1071 et seq., as now or hereafter amended. All loans made shall be guaranteed by the Washington student loan guaranty association or its successor agency. Institutions are hereby granted full authority to operate as an eligible lender under the guaranteed loan program.

(4) Before approving a guaranteed long-term loan, each institution shall analyze the ability of the student to repay the loan based on factors which include, but are not limited to, the student's accumulated total education loan burdens and the employment opportunities and average starting salary characteristics of the student's chosen fields of study. The institution shall counsel the student on the advisability of acquiring additional debt, and on the availability of other forms of financial aid.

(5) Each institution is responsible for collection of guaranteed long-term loans made under this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Institutions shall cooperate with other lenders and the Washington student loan guaranty association, or its successor agency, in the coordinated collection of guaranteed loans, and shall assure that the guarantability of the loans is not violated. Collection and servicing of guaranteed long-term loans under this section shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency: PROVIDED, That institutions be permitted to perform such servicing if specifically recognized to do so by the Washington student loan guaranty association or its successor agency. Collection and servicing of guaranteed long-term loans made by community colleges under subsection (1) of this section shall be coordinated by the state board for community and technical colleges and shall be conducted under procedures adopted by the state board.

(6) Receipts from payment of interest or principal or any other subsidies to which institutions as lenders are entitled, that are paid by or on behalf of borrowers of funds under subsections (3) through (8) of this section, shall be deposited in each institution's financial aid fund and shall be used to cover the costs of making the guaranteed long-term loans under this section and maintaining necessary records and making collections under subsection (5) of this section: PROVIDED, That such costs shall not exceed five percent of aggregate outstanding loan principal. Institutions shall maintain accurate records of such costs, and all receipts beyond those necessary to pay such costs, shall be deposited in the institution's financial aid fund.

(7) The governing boards of the state universities, the regional universities, and The Evergreen State College, and the state board for community and technical colleges, on behalf of the community colleges and technical colleges, shall each adopt necessary rules and regulations to implement this section.

(8) First priority for any guaranteed long-term loans made under this section shall be directed toward students who would not normally have access to educational loans

from private financial institutions in Washington state, and maximum use shall be made of secondary markets in the support of loan consolidation.

(9) Short-term loans, not to exceed one year, may be made from the institutional financial aid fund to students enrolled in the institution. No such loan shall be made to any student who is known by the institution to be in default or delinquent in the payment of any outstanding student loan. A short-term loan may be made only if the institution has ample evidence that the student has the capability of repaying the loan within the time frame specified by the institution for repayment.

(10) Any moneys deposited in the institutional financial aid fund that are not used in making long-term or short-term loans may be used by the institution for locally-administered financial aid programs for needy students, such as need-based institutional employment programs or need-based tuition and fee scholarship or grant programs. These funds shall be used in addition to and not to replace institutional funds that would otherwise support these locally-administered financial aid programs. First priority in the use of these funds shall be given to needy students who have accumulated excessive educational loan burdens. An excessive educational loan burden is a burden that will be difficult to repay given employment opportunities and average starting salaries in the student's chosen fields of study. Second priority in the use of these funds shall be given to needy single parents, to assist these students with their educational expenses, including expenses associated with child care and transportation. [2004 c 275 § 66; 1995 1st sp.s. c 9 § 10. Prior: 1993 c 385 § 1; 1993 c 173 § 1; 1985 c 390 § 35; 1983 1st ex.s. c 64 § 1; 1982 1st ex.s. c 37 § 13; 1981 c 257 § 9.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—Purpose—Effective date—1995 1st sp.s. c 9:** See notes following RCW 28B.15.031.

**Effective date—Severability—1982 1st ex.s. c 37:** See notes following RCW 28B.15.012.

**Severability—1981 c 257:** See note following RCW 28B.15.031.

**28B.15.900 "State universities," "regional universities," "state college," "institutions of higher education," and "postsecondary institutions" defined.** See RCW 28B.10.016.

**28B.15.910 Limitation on total operating fees revenue waived, exempted, or reduced.** (1) For the purpose of providing state general fund support to public institutions of higher education, except for revenue waived under programs listed in subsections (3) and (4) of this section, and unless otherwise expressly provided in the omnibus state appropriations act, the total amount of operating fees revenue waived, exempted, or reduced by a state university, a regional university, The Evergreen State College, or the community colleges as a whole, shall not exceed the percentage of total gross authorized operating fees revenue in this subsection. As used in this section, "gross authorized operating fees revenue" means the estimated gross operating fees revenue as estimated under RCW 82.33.020 or as revised by the office of financial management, before granting any waivers. This

limitation applies to all tuition waiver programs established before or after July 1, 1992.

- |                                   |            |
|-----------------------------------|------------|
| (a) University of Washington      | 21 percent |
| (b) Washington State University   | 20 percent |
| (c) Eastern Washington University | 11 percent |
| (d) Central Washington University | 8 percent  |
| (e) Western Washington University | 10 percent |
| (f) The Evergreen State College   | 6 percent  |
| (g) Community colleges as a whole | 35 percent |

(2) The limitations in subsection (1) of this section apply to waivers, exemptions, or reductions in operating fees contained in the following:

- (a) RCW 28B.10.265;
- (b) RCW 28B.15.014;
- (c) RCW 28B.15.100;
- (d) RCW 28B.15.225;
- (e) RCW 28B.15.380;
- (f) RCW 28B.15.520;
- (g) RCW 28B.15.526;
- (h) RCW 28B.15.527;
- (i) RCW 28B.15.543;
- (j) RCW 28B.15.545;
- (k) RCW 28B.15.555;
- (l) RCW 28B.15.556;
- (m) RCW 28B.15.615;
- (n) RCW 28B.15.620;
- (o) RCW 28B.15.628;
- (p) RCW 28B.15.730;
- (q) RCW 28B.15.740;
- (r) RCW 28B.15.750;
- (s) RCW 28B.15.756;
- (t) RCW 28B.50.259;
- (u) RCW 28B.70.050; and
- (v) During the 1997-99 fiscal biennium, the western

interstate commission for higher education undergraduate exchange program for students attending Eastern Washington University.

(3) The limitations in subsection (1) of this section do not apply to waivers, exemptions, or reductions in services and activities fees contained in the following:

- (a) RCW 28B.15.522;
- (b) RCW 28B.15.540; and
- (c) RCW 28B.15.558.

(4) The total amount of operating fees revenue waived, exempted, or reduced by institutions of higher education participating in the western interstate commission for higher education western undergraduate exchange program under RCW 28B.15.544 shall not exceed the percentage of total gross authorized operating fees revenue in this subsection.

- |                                   |           |
|-----------------------------------|-----------|
| (a) Washington State University   | 1 percent |
| (b) Eastern Washington University | 3 percent |
| (c) Central Washington University | 3 percent |

[2004 c 275 § 51; 2000 c 152 § 3; 1999 c 344 § 3; 1998 c 346 § 904; 1997 c 433 § 5; 1993 sp.s. c 18 § 31; 1992 c 231 § 33.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Findings—Intent—1999 c 344:** See note following RCW 28B.15.544.

**Construction—Severability—Effective date—1998 c 346:** See notes following RCW 50.24.014.

**Intent—Severability—1997 c 433:** See notes following RCW 28B.15.725.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**28B.15.915 Waiver of operating fees—Report.** In addition to waivers granted under the authority of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, subject to state board policy, may waive all or a portion of the operating fees for any student. There shall be no state general fund support for waivers granted under this section.

By January 31st of each odd-numbered year, the institutions of higher education shall prepare a report of the costs and benefits of waivers granted under chapter 152, Laws of 2000 and shall transmit copies of their report to the appropriate policy and fiscal committees of the legislature. [2000 c 152 § 1.]

## Chapter 28B.16 RCW

### STATE HIGHER EDUCATION PERSONNEL LAW

#### Sections

28B.16.015 Option to have relationship and obligations governed by chapter 41.56 RCW.

*Adoption of rules for leave sharing program: RCW 41.04.670.*

#### *Civil service*

*director of personnel: RCW 41.06.130.*

*Washington personnel resources board: RCW 41.06.110.*

*Peer review committees—Proceedings—Statement of reasons: RCW 28B.10.648.*

*State work-study program not to supplant classified positions: RCW 28B.12.060.*

**28B.16.015 Option to have relationship and obligations governed by chapter 41.56 RCW.** (*Effective until July 1, 2005.*) At any time after July 1, 1993, an institution of higher education and the exclusive bargaining representative of a bargaining unit of employees classified under this chapter or chapter 41.06 RCW as appropriate may exercise their option to have their relationship and corresponding obligations governed entirely by the provisions of chapter 41.56 RCW, by filing notice of the parties' intent to be so governed, subject to the mutual adoption of a collective bargaining agreement recognizing the notice of intent. The parties shall provide the notice to the board or its successor and the public employment relations commission. On the first day of the month following the month during which the institution of higher education and the exclusive bargaining representative provide notice to the board or its successor and the public employment relations commission that they have executed an initial collective bargaining agreement recognizing the notice of intent, this chapter shall cease to apply to all employees in the bargaining unit covered by the agreement, and all labor relations functions of the board or its successor with respect to these employees shall be transferred to the public employment relations commission. [1993 c 379 § 310.]

**Intent—Severability—Effective date—1993 c 379:** See notes following RCW 28B.10.029.

## Chapter 28B.20 RCW

## UNIVERSITY OF WASHINGTON

## Sections

## GENERAL

- 28B.20.010 Designation.  
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- Insurance for officers, employees and students:* RCW 28B.10.660.
- Liquor revolving fund, alcoholism and drug abuse research, use for:* RCW 66.08.180.
- Museum, designated as state natural history and anthropology museum:* RCW 27.40.010.
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*loan fund under national defense education act:* RCW 28B.10.280.
- Teachers*  
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*use of district schools for training:* RCW 28B.10.600 through 28B.10.605.
- Toxicological laboratories:* RCW 68.50.107.

*Traffic regulations, penalty for violations: RCW 28B.10.560.*

*Tuition, exemptions of children of deceased or disabled veterans or citizens missing in action or prisoners of war: RCW 28B.10.265.*

## GENERAL

**28B.20.010 Designation.** The state university located and established in Seattle, King county, shall be designated the University of Washington. [1969 ex.s. c 223 § 28B.20.010. Prior: 1909 c 97 p 238 § 1; RRS § 4544; prior: 1897 c 118 § 182; 1890 p 395 § 1. Formerly RCW 28.77.010.]

**28B.20.020 Purpose.** The aim and purpose of the University of Washington shall be to provide a liberal education in literature, science, art, law, medicine, military science and such other fields as may be established therein from time to time by the board of regents or by law. [1969 ex.s. c 223 § 28B.20.020. Prior: 1909 c 97 p 238 § 2; RRS § 4545; prior: 1897 c 118 § 183; 1893 c 122 § 6; 1890 p 395 § 2. Formerly RCW 28.77.020.]

**28B.20.054 Credits—Statewide transfer policy and agreement—Establishment.** See RCW 28B.76.240 and 28B.76.2401.

**28B.20.055 "Major line" defined.** See RCW 28B.10.100.

**28B.20.057 Major lines common to University of Washington and Washington State University.** See RCW 28B.10.115.

**28B.20.060 Courses exclusive to University of Washington.** The courses of instruction of the University of Washington shall embrace as exclusive major lines, law, medicine, forest products, logging engineering, library sciences, aeronautic and astronautic engineering, and fisheries. [1985 c 218 § 2; 1969 ex.s. c 223 § 28B.20.060. Prior: 1963 c 23 § 1; 1961 c 71 § 1; prior: (i) 1917 c 10 § 2; RRS § 4533. (ii) 1917 c 10 § 5; RRS § 4536. Formerly RCW 28.77.025; 28.76.060.]

**28B.20.095 University fees.** See chapter 28B.15 RCW.

**28B.20.100 Regents—Appointment—Terms—Vacancies—Quorum.** (1) The governance of the University of Washington shall be vested in a board of regents to consist of ten members, one of whom shall be a student. The governor shall select the student member from a list of candidates, of at least three and not more than five, submitted by the governing body of the associated students. They shall be appointed by the governor with the consent of the senate, and, except for the student member, shall hold their offices for a term of six years from the first day of October and until their successors shall be appointed and qualified. The student member shall hold his or her office for a term of one year from the first day of June until his or her successor is appointed and qualified. The student member shall be a full-

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time student in good standing at the university at the time of appointment.

(2) Six members of said board shall constitute a quorum for the transaction of business. In the case of a vacancy, or when an appointment is made after the date of the expiration of a term, the governor shall fill the vacancy for the remainder of the term of the regent whose office has become vacant or expired.

(3) Except for the term of the student member, no more than the terms of two members will expire simultaneously on the last day of September in any one year.

(4) A student appointed under this section shall excuse himself or herself from participation or voting on matters relating to the hiring, discipline, or tenure of faculty members and personnel. [1998 c 95 § 1; 1985 c 61 § 1; 1979 ex.s. c 103 § 2; 1973 c 62 § 7; 1969 ex.s. c 223 § 28B.20.100. Prior: 1909 c 97 p 239 § 3; RRS § 4554; prior: 1897 c 118 § 184; 1895 c 101 § 1; 1890 p 396 § 3. Formerly RCW 28.77.090, 28.77.100, part.]

**Present terms not affected—1979 ex.s. c 103:** "Nothing in sections 2 through 6 of this amendatory act shall shorten the terms of regents or trustees presently in office." [1979 ex.s. c 103 § 7.]

**Severability—1979 ex.s. c 103:** "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 103 § 8.]

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**28B.20.105 Regents—Organization and conduct of business—Bylaws, rules and regulations—Meetings.** The board shall organize by electing from its membership a president and an executive committee, of which committee the president shall be ex officio chairman. The board may adopt bylaws or rules and regulations for its own government. The board shall hold regular quarterly meetings, and during the interim between such meetings the executive committee may transact business for the whole board: PROVIDED, That the executive committee may call special meetings of the whole board when such action is deemed necessary. [1969 ex.s. c 223 § 28B.20.105. Prior: (i) 1909 c 97 p 240 § 4; RRS § 4555; prior: 1897 c 118 § 185. Formerly RCW 28.77.100. (ii) 1939 c 176 § 1, part; 1927 c 227 § 1, part; 1909 c 97 p 240 § 5, part; RRS § 4557, part. Formerly RCW 28.77.130, part.]

**28B.20.110 Regents—Secretary—Treasurer—Duties—Treasurer's bond.** The board shall appoint a secretary and a treasurer who shall hold their respective offices during the pleasure of the board and carry out such respective duties as the board shall prescribe. In addition to such other duties as the board prescribes, the secretary shall record all proceedings of the board and carefully preserve the same. The treasurer shall give bond for the faithful performance of the duties of his office in such amount as the regents may require: PROVIDED, That the university shall pay the fee for such bond. [1969 ex.s. c 223 § 28B.20.110. Prior: 1890 p 396 § 6; RRS § 4556. Formerly RCW 28.77.110.]

**28B.20.115 Regents—Oaths.** See RCW 28B.10.520.

**28B.20.116 Regents—Expenses.** See RCW 28B.10.525.

**28B.20.117 Regents—Attorney general as advisor.** See RCW 28B.10.510.

**28B.20.130 Powers and duties of regents—General.** General powers and duties of the board of regents are as follows:

(1) To have full control of the university and its property of various kinds, except as otherwise provided by law.

(2) To employ the president of the university, his or her assistants, members of the faculty, and employees of the institution, who except as otherwise provided by law, shall hold their positions during the pleasure of said board of regents.

(3) Establish entrance requirements for students seeking admission to the university which meet or exceed the standards specified under RCW 28B.76.290(2). Completion of examinations satisfactory to the university may be a prerequisite for entrance by any applicant at the university's discretion. Evidence of completion of public high schools and other educational institutions whose courses of study meet the approval of the university may be acceptable for entrance.

(4) Establish such colleges, schools, or departments necessary to carry out the purpose of the university and not otherwise proscribed by law.

(5) With the assistance of the faculty of the university, prescribe the course of study in the various colleges, schools, and departments of the institution and publish the necessary catalogues thereof.

(6) Grant to students such certificates or degrees as recommended for such students by the faculty. The board, upon recommendation of the faculty, may also confer honorary degrees upon persons other than graduates of this university in recognition of their learning or devotion to literature, art, or science: PROVIDED, That no degree shall ever be conferred in consideration of the payment of money or the giving of property of whatsoever kind.

(7) Accept such gifts, grants, conveyances, bequests, and devises, whether real or personal property, or both, in trust or otherwise, for the use or benefit of the university, its colleges, schools, departments, or agencies; and sell, lease or exchange, invest or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms of said gifts, grants, conveyances, bequests, and devises. The board shall adopt proper rules to govern and protect the receipt and expenditure of the proceeds of all fees, and the proceeds, rents, profits, and income of all gifts, grants, conveyances, bequests, and devises above-mentioned.

(8) Except as otherwise provided by law, to enter into such contracts as the regents deem essential to university purposes.

(9) To submit upon request such reports as will be helpful to the governor and to the legislature in providing for the institution.

(10) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230, offer new degree programs, offer off-campus programs, participate in consortia or centers, contract for off-campus educational programs, and purchase or lease major off-campus facilities.

[2004 c 275 § 52; 1998 c 245 § 16; 1985 c 370 § 92; 1977 c 75 § 20; 1969 ex.s. c 223 § 28B.20.130. Prior: 1939 c 176 § 1, part; 1927 c 227 § 1, part; 1909 c 97 p 240 § 5, part; RRS § 4557, part; prior: 1895 c 101 § 2, part; 1893 c 122 § 10, part; 1890 pp 396, 397, 398 §§ 7, 9, 11. Formerly RCW 28.77.130, 28.77.140.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.20.134 Powers and duties of regents—Consent to sale of university granted lands.** See RCW 79.11.010.

**28B.20.135 Powers and duties of regents—Employment of architects, engineers, for construction of buildings and facilities.** The board shall have power to employ or contract for the services of skilled architects and engineers to prepare plans and specifications, and supervise the construction of university buildings and facilities and to fix the compensation for such employees or for such services. [1969 ex.s. c 223 § 28B.20.135. Prior: 1909 c 97 p 242 § 10; RRS § 4563. Formerly RCW 28.77.133.]

**28B.20.140 Powers and duties of regents—Contracts for erection of buildings or improvements.** The board of regents shall enter into such contracts with one or more contractors for the erection and construction of university buildings or improvements thereto as in their judgment shall be deemed for the best interest of the university; such contract or contracts shall be let after public notice and under such regulations as shall be established by said board or as otherwise provided by law to the person or persons able to perform the same on the most advantageous terms: PROVIDED, That in all cases said board shall require from contractors a good and sufficient bond for the faithful performance of the work, and the full protection of the state against mechanics' and other liens: AND PROVIDED FURTHER, That the board shall not have the power to enter into any contract for the erection of any buildings or improvements which shall bind said board to pay out any sum of money in excess of the amount provided for said purpose. [1969 ex.s. c 223 § 28B.20.140. Prior: 1909 c 97 p 242 § 9; RRS § 4562. Formerly RCW 28.77.137.]

**28B.20.145 Powers and duties of regents—Regents' spending limited by income.** The board of regents are hereby prohibited from creating any debt or in any manner encumbering the university beyond its capacity for payment thereof from the biennial income of the university for the then current biennium. [1969 ex.s. c 223 § 28B.20.145. Prior: 1890 p 399 § 20; RRS § 4566. Formerly RCW 28.77.170.]

**28B.20.200 Faculty—Composition—General powers.** The faculty of the University of Washington shall consist of the president of the university and the professors and the said faculty shall have charge of the immediate government of the institution under such rules as may be prescribed by the board of regents. [1969 ex.s. c 223 § 28B.20.200. Prior: 1909 c 97 p 241 § 6; RRS § 4558; prior: 1897 c 118 § 187. Formerly RCW 28.77.120.]

**28B.20.250 Liability coverage of university personnel and students—Authorized—Scope.** The board of regents of the University of Washington, subject to such conditions and limitations and to the extent it may prescribe, is authorized to provide by purchase of insurance, by self-insurance, or by any combination of arrangements, indemnification of regents, officers, employees, agents, and students from liability on any action, claim, or proceeding instituted against them arising out of the performance or failure of performance, of duties for or employment with the university, or of responsibilities imposed by approved programs of the university, and to hold such persons harmless from any expenses connected with the defense, settlement, or payment of monetary judgments from such action, claim, or proceeding. [1975-'76 2nd ex.s. c 12 § 1.]

**28B.20.253 Liability coverage of university personnel and students—Self-insurance revolving fund.** (1) A self-insurance revolving fund in the custody of the university is hereby created to be used solely and exclusively by the board of regents of the University of Washington for the following purposes:

(a) The payment of judgments against the university, its schools, colleges, departments, and hospitals and against its regents, officers, employees, agents, and students for whom the defense of an action, claim, or proceeding has been provided pursuant to RCW 28B.20.250.

(b) The payment of claims against the university, its schools, colleges, departments, and hospitals and against its regents, officers, employees, agents, and students for whom the defense of an action, claim, or proceeding has been provided pursuant to RCW 28B.20.250: PROVIDED, That payment of claims in excess of twenty-five thousand dollars must be approved by the state attorney general.

(c) For the cost of investigation, administration, and defense of actions, claims, or proceedings, and other purposes essential to its liability program.

(2) Said self-insurance revolving fund shall consist of periodic payments by the University of Washington from any source available to it in such amounts as are deemed reasonably necessary to maintain the fund at levels adequate to provide for the anticipated cost of payments of incurred claims and other costs to be charged against the fund.

(3) No money shall be paid from the self-insurance revolving fund unless first approved by the board of regents, and unless all proceeds available to the claimant from any valid and collectible liability insurance shall have been exhausted. [1997 c 288 § 1; 1991 sp.s. c 13 § 117; 1975-'76 2nd ex.s. c 12 § 2.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**28B.20.255 Liability coverage of university personnel and students—As exclusive authority.** RCW 28B.20.250 through 28B.20.255 constitutes the exclusive authority for the board of regents of the University of Washington to provide liability coverage for its regents, officers, employees, agents, and students, and further provides the means for defending and payment of all such actions, claims, or proceedings. RCW 28B.20.250 through 28B.20.255 shall govern notwithstanding the provisions of chapter 4.92 RCW

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and RCW 28B.10.842 and 28B.10.844. [1975-'76 2nd ex.s. c 12 § 3.]

**28B.20.277 Mathematics, engineering, and science achievement program—Establishment and administration through university.** See RCW 28A.625.210.

**28B.20.279 High-technology education and training.** See chapter 28B.65 RCW.

**28B.20.280 Masters and doctorate level degrees in technology authorized—Review by higher education coordinating board.** The board of regents of the University of Washington may offer masters level and doctorate level degrees in technology subject to review and approval by the higher education coordinating board. [1985 c 370 § 82; 1983 1st ex.s. c 72 § 10.]

**Effective date—Short title—1983 1st ex.s. c 72:** See RCW 28B.65.905 and 28B.65.900.

**28B.20.283 Washington technology center—Findings.** The legislature finds that the development and commercialization of new technology is a vital part of economic development.

The legislature also finds that it is in the interests of the state of Washington to provide a mechanism to transfer and apply research and technology developed at the institutions of higher education to the private sector in order to create new products and technologies which provide job opportunities in advanced technology for the citizens of this state.

It is the intent of the legislature that the University of Washington, the Washington State University, and the department of community, trade, and economic development work cooperatively with the private sector in the development and implementation of a world class technology transfer program. [1995 c 399 § 25; 1992 c 142 § 1.]

**28B.20.285 Washington technology center—Created—Purpose.** A Washington technology center is created to be a collaborative effort between the state's universities, private industry, and government. The technology center shall be headquartered at the University of Washington. The mission of the technology center shall be to perform and commercialize research on a statewide basis that benefits the intermediate and long-term economic vitality of the state of Washington, and to develop and strengthen university-industry relationships through the conduct of research that is primarily of interest to Washington-based companies or state economic development programs. The technology center shall:

(1) Perform and/or facilitate research supportive of state science and technology objectives, particularly as they relate to state industries;

(2) Provide leading edge collaborative research and technology transfer opportunities primarily to state industries;

(3) Provide substantial opportunities for training undergraduate and graduate students through direct involvement in research and industry interactions;

(4) Emphasize and develop nonstate support of the technology center's research activities;

(5) Administer the investing in innovation grants program;

(6) Through its northwest energy technology collaborative, carry out the activities required by RCW 28B.20.296; and

(7) Provide a forum for effective interaction between the state's technology-based industries and its academic research institutions through promotion of faculty collaboration with industry, particularly within the state. [2004 c 151 § 3; 2003 c 403 § 10; 1992 c 142 § 3; 1983 1st ex.s. c 72 § 11.]

**Intent—2003 c 403:** See RCW 70.210.010.

**Effective date—Short title—1983 1st ex.s. c 72:** See RCW 28B.65.905 and 28B.65.900.

**28B.20.287 Washington technology center—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28B.20.285 and 28B.20.289 through 28B.20.295.

(1) "Technology center" means the Washington technology center, including the affiliated staff, faculty, facilities, and research centers operated by the technology center.

(2) "Board" means the board of directors of the Washington technology center.

(3) "High technology" or "technology" includes but is not limited to the modernization, miniaturization, integration, and computerization of electronic, hydraulic, pneumatic, laser, mechanical, robotics, nuclear, chemical, telecommunication, and other technological applications to enhance productivity in areas including but not limited to manufacturing, communications, medicine, bioengineering, renewable energy and energy efficiency, and commerce. [2004 c 151 § 4; 1992 c 142 § 2.]

**\*Reviser's note:** The reference to "sections 3 through 8 of this act" has been translated to "RCW 28B.20.289 through 28B.20.295." A literal translation would have been "RCW 28B.20.285 through 28B.20.295 and 1992 c 142 § 8 (uncodified)."

**28B.20.289 Washington technology center—Administration—Board of directors.** (1) The technology center shall be administered by the board of directors of the technology center.

(2) The board shall consist of the following members: Fourteen members from among individuals who are associated with or employed by technology-based industries and have broad business experience and an understanding of high technology; eight members from the state's universities with graduate science and engineering programs; the executive director of the Spokane Intercollegiate Research and Technology Institute or his or her designated representative; the provost of the University of Washington or his or her designated representative; the provost of the Washington State University or his or her designated representative; and the director of the department of community, trade, and economic development or his or her designated representative. The term of office for each board member, excluding the executive director of the Spokane Intercollegiate Research and Technology Institute, the provost of the University of Washington, the provost of the Washington State University, and the director of the department of community, trade, and economic development, shall be three years. The executive director of the technology center shall be an ex officio, non-

voting member of the board. The board shall meet at least quarterly. Board members shall be appointed by the governor based on the recommendations of the existing board of the technology center, and the research universities. The governor shall stagger the terms of the first group of appointees to ensure the long term continuity of the board.

(3) The duties of the board include:

(a) Developing the general operating policies for the technology center;

(b) Appointing the executive director of the technology center;

(c) Approving the annual operating budget of the technology center;

(d) Establishing priorities for the selection and funding of research projects that guarantee the greatest potential return on the state's investment;

(e) Approving and allocating funding for research projects conducted by the technology center, based on the recommendations of the advisory committees for each of the research centers;

(f) In cooperation with the department of community, trade, and economic development, developing a biennial work plan and five-year strategic plan for the technology center that are consistent with the statewide technology development and commercialization goals;

(g) Coordinating with the University of Washington, Washington State University, and other participating institutions of higher education in the development of training, research, and development programs to be conducted at the technology center that shall be targeted to meet industrial needs;

(h) Assisting the department of community, trade, and economic development in the department's efforts to develop state science and technology public policies and coordinate publicly funded programs;

(i) Performing the duties required under chapter 70.210 RCW relating to the investing in innovation grants program;

(j) Reviewing annual progress reports on funded research projects that are prepared by the advisory committees for each of the research centers;

(k) Providing an annual report to the governor and the legislature detailing the activities and performance of the technology center; and

(l) Submitting annually to the department of community, trade, and economic development an updated strategic plan and a statement of performance measured against the mission, roles, and contractual obligations of the technology center. [2003 c 403 § 11; 1995 c 399 § 26; 1992 c 142 § 4.]

**Intent—2003 c 403:** See RCW 70.210.010.

**28B.20.291 Washington technology center—Support from participating institutions.** The University of Washington, Washington State University, and other participating institutions of higher education shall provide the affiliated staff, faculty, and facilities required to support the operation of the technology center. [1992 c 142 § 5.]

**28B.20.293 Washington technology center—Role of department of community, trade, and economic development.** The department of community, trade, and economic

development shall contract with the University of Washington for the expenditure of state-appropriated funds for the operation of the Washington technology center. The department of community, trade, and economic development shall provide guidance to the technology center regarding expenditure of state-appropriated funds and the development of the center's strategic plan. The director of the department of community, trade, and economic development shall not withhold funds appropriated for the technology center if the technology center complies with the provisions of its contract with the department of community, trade, and economic development. The department shall be responsible to the legislature for the contractual performance of the center. [1995 c 399 § 27; 1992 c 142 § 6.]

**28B.20.295 Washington technology center—Availability of facilities to other institutions.** The facilities of the technology center shall be made available to other institutions of higher education within the state when this would benefit specific program needs. [1992 c 142 § 7.]

**28B.20.296 Washington technology center—Renewable energy and energy efficiency business development—Strategic plan.** (1) The Washington technology center, through its northwest energy technology collaborative, shall provide a forum for public and private collaborative initiatives to promote renewable energy and energy efficiency sectors in Washington state and the Pacific Northwest. The center shall seek to integrate the initiatives of the northwest energy technology collaborative into existing state programs and initiatives, including grant programs administered by the center, and energy efficiency business development projects and energy assistance programs of the department of community, trade, and economic development.

(2) The center, through its northwest energy technology collaborative, shall develop and implement a strategic plan for public and private collaboration in renewable energy and energy efficiency business development. The center, together with the department, shall prepare an initial draft of a statewide strategic plan and circulate it widely among businesses and individuals in these sectors for review and comment. The center shall also organize a summit of public and private sector interests to further developments of the proposed strategic plan. The plan shall address, among other things, the role that public sector policies, programs, and expenditures may play in promoting these economic sectors, including subjects such as work force development, education, tax incentives, economic development assistance, public sector energy purchases, public sector construction standards, transportation, and land use regulation and zoning. The strategic plan shall include recommendations for legislative and administrative policy changes and for legislative appropriations. The plan shall also recommend proposals for capital and operating investments in public higher education facilities, proposals for creating and strengthening public and private partnerships, and proposals for federal financial assistance and expenditures for research and development programs in Washington state. The finalized strategic plan shall be provided to the governor and to the appropriate commit-

tees of the senate and house of representatives by January 1, 2005.

(3) The strategic plan required by subsection (2) of this section may be incorporated into the center's five-year strategic plan required by RCW 28B.20.289(3)(f). [2004 c 151 § 2.]

**28B.20.298 Clean energy research, development, manufacturing, and marketing—Findings—Policy.** (1) The legislature finds that Washington state currently derives many benefits from its renewable energy and energy efficiency sectors. These sectors are an important source of employment and income for a significant number of Washington residents, currently generating close to one billion dollars in annual revenue and employing over three thousand eight hundred people. Equally important, energy efficiency and renewable energy businesses add to the region's quality of life by employing technologies that can reduce some of the harmful effects of the reliance on fossil fuels. Washington state possesses all the necessary elements to do much more to develop these sectors and to become a national leader in the research, development, manufacturing, and marketing of clean energy technologies and services. The state's work force is highly educated; the state's higher education institutions are supportive of clean energy research and cooperate closely with the private sector in developing and deploying new energy technologies; there are numerous enterprises already located in the state that are engaged in clean energy research and development; and the state's citizens, utilities, and governmental sectors at all levels are committed to diversifying the state's energy sources and increasing energy efficiency.

(2) It is therefore declared to be the policy of the state that its public agencies and institutions of higher learning maximize their efforts collectively and cooperatively with the private sector to establish the state as a leader in clean energy research, development, manufacturing, and marketing. To this end, all state agencies are directed to employ their existing authorities and responsibilities to:

(a) Work with local organizations and energy companies to facilitate the development and implementation of workable renewable energy and energy efficiency projects;

(b) Actively promote policies that support energy efficiency and renewable energy development;

(c) Encourage utilities and customer groups to invest in new renewables and products and services that promote energy efficiency; and

(d) Assist in the development of stronger markets for renewables and products and services that promote energy efficiency.

(3) For the purposes of this section and RCW 28B.20.296 and for RCW 28B.20.285 and 28B.20.287, energy efficiency shall include the application of digital technologies to the generation, delivery, and use of power. [2004 c 151 § 1.]

**28B.20.300 Schools of medicine, dentistry, and related health services—Authorization.** The board of regents of the University of Washington is hereby authorized and directed forthwith to establish, operate and maintain

schools of medicine, dentistry, and related health sciences at the university. [1969 ex.s. c 223 § 28B.20.300. Prior: 1945 c 15 § 1; Rem. Supp. 1945 § 4566-5. Formerly RCW 28.77.200.]

*Autopsy of deceased infant under three years, delivery of body to University of Washington medical school for purposes of, costs: RCW 68.50.100, 68.50.104.*

*Requisites for accreditation and approval of medical schools: RCW 18.71.055.*

**28B.20.305 Schools of medicine, dentistry, and related health services—Purpose.** The aim and purpose of the schools of medicine, dentistry and related health sciences shall be to provide for students of both sexes, on equal terms, all and every type of instruction in the various branches of medicine, dentistry, and related health sciences and to grant such degrees as are commonly granted by similar institutions. [1969 ex.s. c 223 § 28B.20.305. Prior: 1945 c 15 § 2; Rem. Supp. 1945 § 4566-6. Formerly RCW 28.77.210.]

**28B.20.315 Drug testing laboratory—Service—Employees as expert witnesses, traveling expenses and per diem.** The University of Washington is authorized and directed to arrange for a drug testing laboratory. The laboratory shall offer a testing service for law enforcement officers for the identification of known or suspected dangerous and narcotic drugs. Employees of the laboratory are authorized to appear as expert witnesses in criminal trials held within the state: PROVIDED, That the traveling expenses and per diem of such employees shall be borne by the party for the benefit of whom the testimony of such employees is requested. [1969 ex.s. c 266 § 1. Formerly RCW 28.77.215.]

**28B.20.320 Marine biological preserve—Established and described—Unlawful gathering of marine biological materials—Penalty.** (1) There is hereby created an area of preserve of marine biological materials useful for scientific purposes, except when gathered for human food, and except, also, the plant nereocystis, commonly called "kelp." Such area of preserve shall consist of the salt waters and the beds and shores of the islands constituting San Juan county and of Cypress Island in Skagit county.

(2) No person shall gather such marine biological materials from the area of preserve, except upon permission first granted by the director of the Friday Harbor Laboratories of the University of Washington.

(3) A person gathering such marine biological materials contrary to the terms of this section is guilty of a misdemeanor. [2003 c 53 § 174; 1969 ex.s. c 223 § 28B.20.320. Prior: 1923 c 74 § 1; RRS § 8436-1. Formerly RCW 28.77.230.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**28B.20.328 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands.** (1) Any lease of public lands with outdoor recreation potential authorized by the regents of the University of Washington shall be open and available to the public for compatible recreational use unless the regents of the University of Washington determine that the leased land should be closed in

order to prevent damage to crops or other land cover, to improvements on the land, to the lessee, or to the general public or is necessary to avoid undue interference with carrying forward a university program. Any lessee may file an application with the regents of the University of Washington to close the leased land to any public use. The regents shall cause a written notice of the impending closure to be posted in a conspicuous place in the university's business office and in the office of the county auditor in which the land is located thirty days prior to the public hearing. This notice shall state the parcel or parcels involved and shall indicate the time and place of the public hearing. Upon a determination by the regents that posting is not necessary, the lessee shall desist from posting. Upon a determination by the regents that posting is necessary, the lessee shall post his leased premises so as to prohibit recreational uses thereon. In the event any such lands are so posted, it shall be unlawful for any person to hunt or fish, or for any person other than the lessee or his immediate family to use any such posted lands for recreational purposes.

(2) The regents of the University of Washington may insert the provisions of subsection (1) of this section in all leases hereafter issued. [1969 ex.s. c 46 § 3. Formerly RCW 28.77.235.]

**28B.20.330 Rights-of-way to railroads and street car railways—Conditions.** Any railroad company now having in operation a line of railroad, or branches, sidings, or spurs thereof, upon any property in this state in use by the University of Washington for university purposes, or as a part of the grounds set aside or devoted to university purposes, may have such right-of-way confirmed to it, its successors and assigns, upon the following terms and conditions: Such railroad company shall file with the board of regents of said university a plat showing the right-of-way desired, and shall file a duplicate thereof with the commissioner of public lands; and any railroad company or street car company desiring hereafter to construct a railroad or street car line, or extensions thereof, with branches, sidings, or spurs, upon any property in this state in use by the University of Washington for university purposes, or as a part of the ground set aside or devoted to university purposes, may have such right-of-way confirmed to it, its successors and assigns, upon the following terms and conditions: Such railroad company or street car company shall file with the board of regents of said university a plat showing the right-of-way desired, and shall file a duplicate thereof with the commissioner of public lands. [1969 ex.s. c 223 § 28B.20.330. Prior: 1909 c 248 § 1; RRS § 8095. Formerly RCW 28.77.240.]

**28B.20.332 Rights-of-way to railroads and street car railways—Regents to make agreement.** The board of regents of said University of Washington are authorized, upon the filing of such plat with it, to agree in writing with any such railroad company or street car company, upon the boundaries and the extent of such right-of-way, the manner in which the same shall be maintained and fenced and occupied, and prescribe the number, character, and maintenance of crossings, cross-overs, and subways, and as to what sum said railroad company or street car company shall pay for the

right-of-way granted. [1969 ex.s. c 223 § 28B.20.332. Prior: 1909 c 248 § 2; RRS § 8096. Formerly RCW 28.77.250.]

**28B.20.334 Rights-of-way to railroads and street car railways—Form of deed—Certified copy filed.** If such agreement is entered into, said board of regents shall transmit a certified copy thereof to the commissioner of public lands, who shall, after the full amount of money provided in such agreement shall be paid by said railroad company or street car company to the state treasurer, issue to such railroad company or street car company, in the name of the state of Washington, a deed for the right-of-way described in such agreement, which said deed shall recite and be subject to all the terms and conditions of such agreement, and certified copies of said deed shall be filed, one in the office of the commissioner of public lands, and the other with the secretary of said board of regents. [1969 ex.s. c 223 § 28B.20.334. Prior: 1909 c 248 § 3; RRS § 8097. Formerly RCW 28.77.260.]

**28B.20.336 Rights-of-way to railroads and street car railways—Deed conveys conditional easement.** The conveyance herein provided for shall not be deemed to convey the fee to the land described, but an easement only thereover and for railroad or street car purposes only, and when the right-of-way granted as aforesaid shall not be used for the purposes for which it was granted, then and thereupon the easement right shall immediately become void. [1969 ex.s. c 223 § 28B.20.336. Prior: 1909 c 248 § 4; RRS § 8098. Formerly RCW 28.77.270.]

**28B.20.340 University site dedicated for street and boulevard purposes—Description.** There is hereby dedicated to the public for street and boulevard purposes the following described lands situated in section 16, township 25 north, range 4 east, W.M., and blocks 7 and 8 of Lake Washington shore lands, to wit: Beginning at the one-quarter (1/4) corner on the north line of said section sixteen (16); thence east along the north line thereof, a distance of three hundred forty-nine and thirty-four one-hundredths (349.34) feet; thence south at right angles to the said north line, a distance of thirty-five feet to the point of beginning of this description; thence south eighty-nine degrees fifty-seven minutes and forty-three seconds (89°57'43") east a distance of six hundred seventy-three and seventeen one-hundredths (673.17) feet; thence southwesterly along the arc of a curve to the left, having a uniform radius of one thousand (1,000) feet, said curve being tangent to the last above described line, a distance of one thousand three hundred seventy-three and six one-hundredths (1,373.06) feet to a point of tangency; thence south eleven degrees twenty-two minutes and two seconds (11°22'02") west, a distance of five hundred fifty-six and twenty-two one-hundredths (556.22) feet to a point of tangency on the easterly margin of Montlake Boulevard as laid off and established by Ordinance No. 26332; thence along said easterly margin northerly along the arc of a curve to the left, having a uniform radius of four hundred sixty (460) feet, a distance of one hundred forty-three and forty-one one-hundredths (143.41) feet to a point of a reverse curve; thence northerly along the arc of a curve to the right having a uniform radius of four hundred sixty (460) feet, a distance of one

hundred twenty and ninety-four one-hundredths (120.94) feet to a point of reverse curve; thence northerly along the arc of a curve to the left, having a uniform radius of two thousand nine hundred seventy-four and ninety-three one-hundredths (2,974.93) feet, a distance of two hundred eighty-four (284) feet; thence departing from said easterly margin north eleven degrees twenty-two minutes and two seconds (11°22'02") east, a distance of fourteen and seventy-four one-hundredths (14.74) feet to the beginning of a curve to the right, having a uniform radius of one thousand seventy (1,070) feet; thence northeasterly along the arc of said curve, a distance of seven hundred ninety-six and thirty-three one-hundredths (796.33) feet to a point of reverse curve; thence northeasterly, northerly and northwesterly along the arc of a curve to the left, having a uniform radius of seventy-four and forty-six one-hundredths (74.46) feet, a distance of one hundred eighty-seven and ten one-hundredths (187.10) feet to the point of beginning.

Also the following described lands, to wit: Beginning at a point on the east line of said section, said point being distant nine hundred eighty-nine and sixty one-hundredths (989.60) feet south from the northeast corner of said section; thence south along said east line a distance of four hundred seventy-nine and fifty-three one-hundredths (479.53) feet to a point on the government meander line along the shore of Lake Washington; thence along said meander line south seventy-eight degrees thirteen minutes thirty-three seconds (78°13'33") west, a distance of sixty-six and fifty one-hundredths (66.50) feet; thence north twenty-nine degrees forty-six minutes twenty-seven seconds (29°46'27") west, a distance of one hundred sixty-six and ninety-two one-hundredths (166.92) feet; thence departing from said meander line north no degrees fifty-three minutes seven seconds (0°53'07") east, a distance of three hundred fifty-four and sixty-three one-hundredths (354.63) feet; thence northwesterly along the arc of a curve to the right having a uniform radius of one hundred eighty-five (185) feet, a distance of twenty-two and two one-hundredths (22.02) feet to a point of tangency on a line which bears north twenty-nine degrees six minutes fifty-three seconds (29°06'53") west; thence northwesterly along said line, a distance of nine hundred eighteen and sixty-five one-hundredths (918.65) feet to the beginning of a curve to the left, having a uniform radius of two hundred fifty (250) feet; thence northwesterly along the arc of said curve, a distance of two hundred sixty-five and fifty one-hundredths (265.50) feet to a point of tangency on the south margin of East Forty-fifth Street; thence east along said south margin, a distance of three hundred twenty-nine and fourteen one-hundredths (329.14) feet to a point which is distant five hundred ten and seventy-nine one-hundredths (510.79) feet west from the east line of said section sixteen (16); thence southwesterly, southerly and southeasterly along the arc of a curve to the left having a uniform radius of sixty (60) feet a distance of one hundred twenty-four and seventy-eight one-hundredths (124.78) feet to a point of tangency; thence south twenty-nine degrees six minutes fifty-three seconds (29°06'53") east, a distance of nine hundred twenty-four and twenty-four one-hundredths (924.24) feet to the beginning of a curve to the left having a uniform radius of one hundred fifteen (115) feet; thence southeasterly along the arc of said curve, a distance of one hundred twenty and fifty-one one-

hundredths (120.51) feet to the point of beginning. [1969 ex.s. c 223 § 28B.20.340. Prior: 1913 c 24 § 1. Formerly RCW 28.77.280.]

**28B.20.342 University site dedicated for street and boulevard purposes—Local assessments barred against site.** No assessments for the opening, improvement or maintenance of any public street upon the tracts of land described in RCW 28B.20.340 shall ever be levied, assessed or collected upon any portion of section 16, township 25 north, range 4 east, W.M., or upon any portion of blocks 7 and 8 Lake Washington shorelands. [1969 ex.s. c 223 § 28B.20.342. Prior: 1913 c 24 § 2. Formerly RCW 28.77.290.]

**28B.20.344 University site dedicated for street and boulevard purposes—Eminent domain may not be exercised against site.** The power of eminent domain of any municipal or other corporation whatever is hereby declared not to extend to any portion of said section 16, township 25 north, range 4 east, W.M., and blocks 7 and 8 of Lake Washington shorelands. [1969 ex.s. c 223 § 28B.20.344. Prior: 1913 c 24 § 3. Formerly RCW 28.77.300.]

**28B.20.350 1947 conveyance for arboretum and botanical garden purposes—Description.** There is hereby granted to the University of Washington the following described land, to wit:

Lots two (2) and three (3), Block eleven-A (11-A) of the supplemental map of Lake Washington shorelands, filed September 5, 1916 in the office of the commissioner of public lands, to be used for arboretum and botanical garden purposes and for no other purposes, except as provided in RCW 28B.20.354. [1969 ex.s. c 223 § 28B.20.350. Prior: 1947 c 45 § 1. Formerly RCW 28.77.310.]

**28B.20.352 1947 conveyance for arboretum and botanical garden purposes—Deed of conveyance.** The commissioner of public lands is hereby authorized and directed to certify the lands described in RCW 28B.20.350 to the governor, and the governor is hereby authorized and directed to execute, and the secretary of state to attest, a deed of said shorelands to the university. [1969 ex.s. c 223 § 28B.20.352. Prior: 1947 c 45 § 2. Formerly RCW 28.77.315.]

**28B.20.354 1947 conveyance for arboretum and botanical garden purposes—Part may be conveyed by regents to city of Seattle.** (1) The board of regents of the University of Washington is hereby authorized to convey to the city of Seattle that portion of said lot three (3) of the shorelands described in RCW 28B.20.350 which is within the following described tract, to wit:

A rectangular tract of land one hundred twenty (120) feet in north-south width, and four hundred (400) feet in east-west length, with the north boundary coincident with the north boundary of the old canal right of way, and the west boundary on the southerly extension of the west line of Lot eleven (11), Block four (4), Montlake Park, according to the recorded plat

thereof, approximately five hundred sixty (560) feet east of the east line of Montlake Boulevard.

(2) The board of regents is authorized to convey to the city of Seattle free of all restrictions or limitations, or to incorporate in the conveyance to the city of Seattle such provisions for reverter of said land to the university as the board deems appropriate. Should any portion of the land so conveyed to the city of Seattle again vest in the university by reason of the operation of any provisions incorporated by the board in the conveyance to the city of Seattle, the University of Washington shall hold such reverted portion subject to the reverter provisions of RCW 28B.20.356. [1969 ex.s. c 223 § 28B.20.354. Prior: 1947 c 45 § 3. Formerly RCW 28.77.320.]

**28B.20.356 1947 conveyance for arboretum and botanical garden purposes—Reversion for unauthorized use—Reconveyance for highway purposes.** In case the University of Washington should attempt to use or permit the use of such shorelands or any portion thereof for any other purpose than for arboretum and botanical garden purposes, except as provided in RCW 28B.20.354, the same shall forthwith revert to the state of Washington without suit, action or any proceedings whatsoever or the judgment of any court forfeiting the same: PROVIDED, That the board of regents of the University of Washington is hereby authorized and directed to reconvey to the state of Washington block eleven-A (11-A) of the supplemental map of Lake Washington shorelands, filed September 5, 1916 in the office of the commissioner of public lands, or such portion thereof as may be required by the state of Washington or any agency thereof for state highway purposes. The state of Washington or any agency thereof requiring said land shall pay to the University of Washington the fair market value thereof and such moneys paid shall be used solely for arboretum purposes. Such reconveyance shall be made at such time as the state or such agency has agreed to pay the same. [1969 ex.s. c 223 § 28B.20.356. Prior: 1959 c 164 § 2; 1947 c 45 § 4; No RRS. Formerly RCW 28.77.330.]

**28B.20.360 1939 conveyance of shorelands to university—Description.** The commissioner of public lands of the state of Washington is hereby authorized and directed to certify in the manner now provided by law to the governor for deeding to the University of Washington all of the following described Lake Washington shorelands, to wit: Blocks sixteen (16) and seventeen (17), Lake Washington Shorelands, as shown on the map of said shorelands on file in the office of the commissioner of public lands. [1969 ex.s. c 223 § 28B.20.360. Prior: 1939 c 60 § 1; No RRS. Formerly RCW 28.77.333.]

**28B.20.362 1939 conveyance of shorelands to university—Deed of conveyance.** The governor is hereby authorized and directed to execute, and the secretary of state to attest, a deed conveying to the University of Washington all of said shorelands. [1969 ex.s. c 223 § 28B.20.362. Prior: 1939 c 60 § 2; No RRS. Formerly RCW 28.77.335.]

**28B.20.364 1939 conveyance of shorelands to university—Grant for arboretum and botanical garden purposes—Reversion for unauthorized use—Reconveyance for highway purposes.** All of the shorelands described in RCW 28B.20.360 are hereby granted to the University of Washington to be used for arboretum and botanical garden purposes and for no other purposes. In case the said University of Washington should attempt to use or permit the use of said shorelands or any portion thereof for any other purpose, the same shall forthwith revert to the state of Washington without suit, action or any proceedings whatsoever or the judgment of any court forfeiting the same: PROVIDED, That the board of regents of the University of Washington is hereby authorized and directed to reconvey to the state of Washington blocks 16 and 17 of Lake Washington shorelands, or such portions thereof as may be required by the state of Washington or any agency thereof for state highway purposes. The state of Washington or any agency thereof requiring said land shall pay to the University of Washington the fair market value thereof and such moneys paid shall be used solely for arboretum purposes. Such reconveyance shall be made at such time as the state or such agency has agreed to pay the same. [1969 ex.s. c 223 § 28B.20.364. Prior: 1959 c 164 § 1; 1939 c 60 § 3; No RRS. Formerly RCW 28.77.337.]

**28B.20.370 Transfer of certain Lake Union shorelands to university.** Block 18-A, Second Supplemental Maps of Lake Union Shore Lands, as shown on the official maps thereof on file in the office of the commissioner of public lands, is hereby transferred to the University of Washington and shall be held and used for university purposes only. [1969 ex.s. c 223 § 28B.20.370. Prior: 1963 c 71 § 1. Formerly RCW 28.77.339.]

**28B.20.381 "University tract" defined.** For the purposes of this chapter, "university tract" means the tract of land in the city of Seattle, consisting of approximately ten acres, originally known as the "old university grounds," and more recently referred to as the "metropolitan tract," together with all buildings, improvements, facilities, and appurtenances thereon. [1999 c 346 § 2.]

**Purpose—Construction—1999 c 346:** "The purpose of this act is to consolidate the statutes authorizing the board of regents of the University of Washington to control the property of the university. Nothing in this act may be construed to diminish in any way the powers of the board of regents to control its property including, but not limited to, the powers now or previously set forth in RCW \*28B.20.392 through 28B.20.398." [1999 c 346 § 1.]

**\*Reviser's note:** RCW 28B.20.392 was repealed by 1999 c 346 § 8.

**Effective date—1999 c 346:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 17, 1999]." [1999 c 346 § 9.]

**28B.20.382 University tract—Conditions for sale, lease, or lease renewal—Inspection of records—Deposit of proceeds—University of Washington facilities bond retirement account.** (1) Until authorized by statute of the legislature, the board of regents of the university, with respect to the university tract, shall not sell the land or any part thereof or any improvement thereon, or lease the land or any part thereof or any improvement thereon or renew or extend any lease thereof for a term of more than eighty years.

Any sale of the land or any part thereof or any improvement thereon, or any lease or renewal or extension of any lease of the land or any part thereof or any improvement thereon for a term of more than eighty years made or attempted to be made by the board of regents shall be null and void until the same has been approved or ratified and confirmed by legislative act.

(2) The board of regents shall have power from time to time to lease the land, or any part thereof or any improvement thereon for a term of not more than eighty years. Any and all records, books, accounts, and agreements of any lessee or sublessee under this section, pertaining to compliance with the terms and conditions of such lease or sublease, shall be open to inspection by the board of regents, the ways and means committee of the senate, the appropriations committee of the house of representatives, and the joint legislative audit and review committee or any successor committees. It is not intended that unrelated records, books, accounts, and agreements of lessees, sublessees, or related companies be open to such inspection. The board of regents shall make a full, detailed report of all leases and transactions pertaining to the land or any part thereof or any improvement thereon to the joint legislative audit and review committee, including one copy to the staff of the committee, during odd-numbered years.

(3) The net proceeds from the sale or lease of land in the university tract, or any part thereof or any improvement thereon, shall be deposited into the University of Washington facilities bond retirement account hereby established outside the state treasury as a nonappropriated local fund to be used exclusively for the purpose of erecting, altering, maintaining, equipping, or furnishing buildings at the University of Washington. The board of regents shall transfer from the University of Washington facilities bond retirement account to the University of Washington building account under RCW 43.79.080 any funds in excess of amounts reasonably necessary for payment of debt service in combination with other nonappropriated local funds related to capital projects for which debt service is required under section 4, chapter 380, Laws of 1999. [1999 c 346 § 3; 1998 c 245 § 17; 1996 c 288 § 27; 1987 c 505 § 13; 1980 c 87 § 10; 1977 ex.s. c 365 § 1; 1974 ex.s. c 174 § 1.]

**Purpose—Construction—Effective date—1999 c 346:** See notes following RCW 28B.20.381.

**28B.20.394 University tract—Powers of regents—Agreements to pay for governmental services.** In addition to the powers conferred upon the board of regents of the University of Washington by RCW 28B.20.395, the board of regents is authorized and shall have the power to enter into an agreement or agreements with the city of Seattle and the county of King, Washington, to pay to the city and the county such sums as shall be mutually agreed upon for governmental services rendered to the university tract, which sums shall not exceed the amounts that would be received pursuant to limitations imposed by RCW 84.52.043 by the city of Seattle and county of King respectively from real and personal property taxes paid on the university tract or any leaseholds thereon if such taxes could lawfully be levied. [1999 c 346 § 4; 1973 1st ex.s. c 195 § 10; 1972 ex.s. c 107 § 1; 1969 ex.s. c 223 §

28B.20.394. See also 1973 1st ex.s. c 195 § 140. Prior: 1955 c 229 § 1. Formerly RCW 28.77.361.]

**Purpose—Construction—Effective date—1999 c 346:** See notes following RCW 28B.20.381.

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**28B.20.395 University tract—Powers of regents, generally.** In addition to the powers conferred under the original deeds of conveyance to the state of Washington and under existing law, and subject to RCW 28B.20.382, the board of regents has full control of the university tract as provided in this chapter including, but not limited to:

(1) With regard to the whole or portions of the land, the authority to manage, to improve, to alter, to operate, to lease, to contract indebtedness, to borrow funds, to issue bonds, notes, and warrants, to provide for the amortization of and to pay the bonds, notes, warrants, and other evidences of indebtedness, at or prior to maturity, to use and pledge the income derived from operating, managing, and leasing the university tract for such purpose, and to otherwise own, operate, and control the university tract to the same extent as any other property of the university;

(2) With regard to the whole or portions of any building or buildings or other improvements thereon or appurtenances thereto, the authority to sell, subject to the terms of any underlying lease on the land, to manage, to improve, to alter, to operate, to lease, to grant a deed of trust or a mortgage lien, to contract indebtedness, to borrow funds, to issue bonds, notes, and warrants, to provide for the amortization thereof and to pay the bonds, notes, warrants, and other evidences of indebtedness, at or prior to maturity, to use and pledge the income derived from operating, managing, and leasing the university tract for such purpose, and to otherwise own, operate, and control the university tract to the same extent as any other property of the university consistent with the purpose of the donors of the metropolitan tract. [1999 c 346 § 5.]

**Purpose—Construction—Effective date—1999 c 346:** See notes following RCW 28B.20.381.

**28B.20.396 University tract—Bonding authority.** Bonds issued pursuant to the authority granted under RCW 28B.20.395:

(1) Shall not constitute (a) an obligation, either general or special, of the state or (b) a general obligation of the University of Washington or of the board of regents;

(2) Shall be:

(a) Either in bearer form or in registered form as provided in RCW 39.46.030, and

(b) Issued in denominations of not less than one hundred dollars;

(3) Shall state:

(a) The date of issue, and

(b) The series of the issue and be consecutively numbered within the series, and

(c) That the bond is payable only out of a special fund established for the purpose, and designate the fund;

(4) Shall bear interest, payable either annually, or semi-annually as the board of regents may determine;

(5) Shall be payable solely out of:

(a) Revenue derived from operating, managing and leasing the university tract, and

(b) A special fund, created by the board of regents for the purpose, consisting either of (i) a fixed proportion, or (ii) a fixed amount out of and not exceeding a fixed proportion, or (iii) a fixed amount without regard to any fixed proportion, of the revenue so derived;

(6) May contain covenants by the board of regents in conformity with the provisions of RCW 28B.20.398(2);

(7) Shall be payable at such times over a period of not to exceed thirty years, in such manner and at such place or places as the board of regents determines;

(8) Shall be executed in such manner as the board of regents by resolution determines;

(9) Shall be sold in such manner as the board of regents deems for the best interest of the University of Washington;

(10) May be issued under chapter 39.46 RCW. [1999 c 346 § 6; 1983 c 167 § 33; 1970 ex.s. c 56 § 25; 1969 ex.s. c 232 § 99; 1969 ex.s. c 223 § 28B.20.396. Prior: 1947 c 284 § 3; Rem. Supp. 1947 § 4566-13. Formerly RCW 28.77.370.]

**Purpose—Construction—Effective date—1999 c 346:** See notes following RCW 28B.20.381.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**28B.20.398 University tract—Powers of regents—Bond issuance—Covenants—Redemption—Action for compliance.** (1) Any resolution of the board of regents pursuant to the provisions of RCW 28B.20.395 shall provide for the creation of a special fund, in conformity with the provisions of RCW 28B.20.396(5)(b).

(2) Any resolution authorizing the issuance of bonds pursuant to the provisions of RCW 28B.20.395, 28B.20.396, and 28B.20.398 may contain covenants of the board of regents to protect and safeguard the security and rights of the owners of any such bonds such as are then customary in connection with similar bonds and considered advisable in order to assure the maximum marketability for said bonds. Without limiting the generality of the foregoing, any such resolution may contain covenants as to:

(a) The creation of a special fund into which the proceeds of all bonds issued pursuant to the provisions of such resolution shall be deposited, the terms and conditions upon which payments may be made from such special fund, and for the payment of interest on bonds issued pursuant to such resolution from the moneys in said fund;

(b) Maintaining rental and leasehold rates and other charges at a level sufficient at all times to provide revenue (i) to pay the interest on and principal of all bonds and other obligations payable from said revenue, (ii) to make all other payments from said revenues required under the provisions of any resolution adopted in connection with the issuance of warrants or bonds under RCW 28B.20.395, 28B.20.396, and 28B.20.398 and (iii) to pay the operating, management, maintenance, repair and upkeep costs of the university tract;

(c) Collection, deposit, custody and disbursement of the revenues from the university tract or any portions thereof including (i) a specification of the depositaries to be desig-

nated, and (ii) authorization of such depositaries, or other banks or trust companies, to act as fiscal agent of the board of regents for the custody of the proceeds of bonds and the moneys held in any funds created pursuant to RCW 28B.20.395, 28B.20.396, and 28B.20.398, or any resolution authorizing such bonds, and to represent bond owners in the event of a default on such bonds or in the event of a default in the performance of any duty or obligation of the board of regents in connection therewith, with such power and duty as such resolution may provide;

(d) Creation and administration of reserve and other funds for the payment, at or prior to maturity, of any indebtedness chargeable against the revenues from the university tract and for creation of working funds, depreciation funds, replacement funds, reserves for extraordinary repairs and any other fund deemed necessary or desirable to insure the continued profitable operation of the said university tract;

(e) Deposit of collateral security or indemnity bonds to secure the proceeds (i) of bonds issued pursuant to the provisions of such resolution and (ii) of all revenues which are pledged to secure the repayment of bonds issued pursuant to the provisions of such resolution and (iii) of all moneys deposited in any special fund created under the authority of RCW 28B.20.395, 28B.20.396, and 28B.20.398 or any covenant thereunder;

(f) The obligation of the board of regents to maintain the building or buildings in good condition and to operate and manage the same in an economical and efficient manner;

(g) The amount and kind of insurance to be carried by the board of regents in connection with the building or buildings, the companies in which such insurance shall be carried, the term thereof, the application of the proceeds of any such insurance, and adjustments of losses under any such policy of insurance;

(h) Limitations upon the amount of additional bonds, warrants and other obligations payable out of the revenues from the building or buildings which may be thereafter issued and the terms and conditions upon which such additional bonds, warrants or other obligations may be issued;

(i) Limitations upon the creation of additional liens or encumbrances on the building or buildings or the personal property used in connection therewith;

(j) The terms and conditions upon which the building or buildings, or any part thereof, may be sold, mortgaged, leased or otherwise disposed of, and the use or other disposition of the proceeds of any such sale, mortgage or lease;

(k) The methods of operation, management and maintenance of the building or buildings;

(l) Accounting and auditing and the keeping of records, reports and audits with respect to the building or buildings;

(m) The amendment or modification of any resolution authorizing the issuance of bonds pursuant to the provisions of RCW 28B.20.395, 28B.20.396, and 28B.20.398, including the terms and conditions upon which such amendment or modification may be effected and the number, amount or percentage of assenting bonds necessary to effectuate the same;

(n) Limitations upon the use of space or facilities in the building or buildings without payment therefor; and

(o) Such other matters as may be necessary or desirable to insure a successful and profitable operation of the building or buildings.

(3) The term "building or buildings" as used in subsection (2) of this section means the building or buildings or improvements upon the university tract with respect to which the revenues are pledged, under the terms of the resolution, to secure the payment of bonds issued under such resolution.

(4) The provisions of RCW 28B.20.395, 28B.20.396, and 28B.20.398 and of any resolution adopted in conformity with the provisions of this section shall constitute a contract with the owners of warrants or bonds issued pursuant thereto, and the provisions thereof shall be enforceable in any court of competent jurisdiction by any owner of such warrants or bonds by mandamus or any other appropriate suit, action or proceeding at law or in equity.

(5) Bonds issued pursuant to the provisions of RCW 28B.20.395, 28B.20.396, and 28B.20.398 may be redeemed, at the option of the board of regents, at such time or times, upon such terms and conditions, and at such premiums as the board of regents specifies in the resolution.

(6) If the board of regents fails to pay the required amounts into the special fund, established in conformity with subsection (2) of this section, the owner of any bond or bonds affected thereby may maintain an action against the board of regents to compel compliance with the terms of the resolution in this respect.

(7) Pending the preparation and execution of any bonds the issuance of which is authorized under the provisions of subsection (2) of this section, temporary bonds may be issued in such form as the board of regents determines. [1999 c 346 § 7; 1983 c 167 § 34; 1969 ex.s. c 223 § 28B.20.398. Prior: 1947 c 284 § 4; Rem. Supp. 1947 § 4566-14. Formerly RCW 28.77.380.]

**Purpose—Construction—Effective date—1999 c 346:** See notes following RCW 28B.20.381.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

#### SCHOLARSHIPS, FELLOWSHIPS, SPECIAL RESEARCH PROJECTS, AND HOSPITAL

**28B.20.410 Children's center for research and training in mental retardation—Established.** There is hereby established at the University of Washington a children's center for research and training in mental retardation and other handicapping conditions. [1969 ex.s. c 223 § 28B.20.410. Prior: 1963 c 193 § 1. Formerly RCW 28.77.430.]

**28B.20.412 Children's center for research and training in mental retardation—Administration.** The center shall be administered by the board of regents of the University of Washington. [1982 c 163 § 4; 1973 c 62 § 8; 1969 ex.s. c 223 § 28B.20.412. Prior: 1963 c 193 § 2. Formerly RCW 28.77.432.]

**Severability—Effective date—1982 c 163:** See notes following RCW 2.10.052.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**28B.20.414 Children's center for research and training in mental retardation—Purpose.** The general purposes of the center shall be:

(1) To provide clinical and laboratory facilities for research on the causes, diagnosis, prevention, and treatment of mental retardation and other handicapping conditions in children;

(2) To develop improved professional and in-service training programs in the various disciplines concerned with handicapped children;

(3) To provide diagnostic and consultative services to various state programs and to regional and local centers, to an extent compatible with the primary research and teaching objectives of the center. [1969 ex.s. c 223 § 28B.20.414. Prior: 1963 c 193 § 3. Formerly RCW 28.77.434.]

**28B.20.420 Graduate scholarships for engineering research—Established.** In order to further the development of advance studies in engineering there shall be established in the engineering laboratories of the University of Washington, ten graduate scholarships and/or fellowships to the amount of one thousand dollars and tuition each, per academic year. These scholarships shall be in the field of engineering which can best be used to aid the industrial development of the state of Washington and its resources. This graduate work shall be done in the laboratories of the university and shall be directed along the lines of professional research and testing. [1969 ex.s. c 223 § 28B.20.420. Prior: 1945 c 241 § 1. Formerly RCW 28.77.220.]

**28B.20.422 Graduate scholarships for engineering research—Studies published—Direction of program—Qualifications for candidates.** The studies and results of such scholarships shall be published as bulletins or engineering reports of the college of engineering of the university and a reasonable number of copies thereof shall be available to the public without cost. The provisions of RCW 28B.20.420 and this section shall include the cost of individual scholarships, the cost of necessary supplies and materials to be utilized, and the cost of printing and distribution of the bulletins or engineering reports. The direction of this research program shall rest in the proper department or departments and schools of the engineering college of the university and the candidates must meet the qualifications of the graduate school of the university for graduate students. [1969 ex.s. c 223 § 28B.20.422. Prior: 1945 c 241 § 2. Formerly RCW 28.77.225; 28.77.220, part.]

**28B.20.426 Fellowship program in forensic pathology—Funding—Recipient's services to county coroners.**

(1) A fellowship program in forensic pathology is created in the school of medicine at the University of Washington. The program shall provide training for one person per year. The program shall be funded from funds in the death investigation[s] account of the general fund under RCW 43.79.445.

(2) The fellowship recipient, during the period of his or her fellowship, shall be available, as soon as his or her level of expertise warrants it, to the county coroners of the state without charge to perform autopsies, for consultations, and to provide testimony in court.

(3) The forensic pathology fellowship shall be administered according to the provisions in RCW 43.103.030, as amended. [1991 c 176 § 3; 1986 c 31 § 1.]

**Effective date—1986 c 31:** "This act shall take effect July 1, 1986." [1986 c 31 § 3.]

**28B.20.440 University hospital.** The board of regents of the University of Washington is hereby authorized to operate a hospital upon university grounds to be used in conjunction with the university's medical and dental schools, including equipping and additional construction to the same. [1969 ex.s. c 223 § 28B.20.440. Cf. (i) 1947 c 286 § 2. No RRS. (ii) 1945 c 15 § 4. No RRS.]

**28B.20.450 Occupational and environmental research facility—Construction and maintenance authorized—Purpose.** There shall be constructed and maintained at the University of Washington an occupational and environmental research facility in the school of medicine having as its objects and purposes testing, research, training, teaching, consulting and service in the fields of industrial and occupational medicine and health, the prevention of industrial and occupational disease among workers, the promotion and protection of safer working environments and dissemination of the knowledge and information acquired from such objects and purposes. [1989 c 12 § 4; 1969 ex.s. c 223 § 28B.20.450. Prior: 1963 c 151 § 1. Formerly RCW 28.77.410.]

**28B.20.452 Occupational and environmental research facility—Industry to share costs.** See RCW 51.16.042.

**28B.20.454 Occupational and environmental research facility—Submission of industrial and occupational health problems to facility—Availability of information.** Any matter or problem relating to the industrial and occupational health of workers may be submitted to the environmental research facility by any public agency or interested party. All research data and pertinent information available or compiled at such facility related to the industrial and occupational health of workers shall be made available and supplied without cost to any public agency or interested party. [1989 c 12 § 5; 1969 ex.s. c 223 § 28B.20.454. Prior: 1963 c 151 § 3. Formerly RCW 28.77.414.]

**28B.20.456 Occupational and environmental research facility—Advisory committee.** There is hereby created an advisory committee to the environmental research facility consisting of eight members. Membership on the committee shall consist of the director of the department of labor and industries, the assistant secretary for the division of health services of the department of social and health services, the president of the Washington state labor council, the president of the association of Washington business, the dean of the school of public health and community medicine of the University of Washington, the dean of the school of engineering of the University of Washington, the president of the Washington state medical association, or their representatives, and the chairman of the department of environmental health of the University of Washington, who shall be ex officio chairman of the committee without vote. Such committee shall meet at least semiannually at the call of the chairman. Members shall serve without compensation. It shall consult, review and evaluate policies, budgets, activities and pro-

grams of the facility relating to industrial and occupational health to the end that the facility will serve in the broadest sense the health of the workman as it may be related to his employment. [1973 c 62 § 9; 1969 ex.s. c 223 § 28B.20.456. Prior: 1963 c 151 § 4. Formerly RCW 28.77.416.]

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**28B.20.458 Occupational and environmental research facility—Acceptance of loans, gifts, etc.—Presentation of vouchers for payments from accident and medical aid funds.** The University of Washington may accept and administer loans, grants, funds, or gifts, conditional or otherwise, in furtherance of the objects and purposes of RCW 28B.20.450 through 28B.20.458, from the federal government and from other sources public or private. For the purpose of securing payment from the accident fund and medical aid fund as funds are required, vouchers shall be presented to the department of labor and industries. [1969 ex.s. c 223 § 28B.20.458. Prior: 1963 c 151 § 5. Formerly RCW 28.77.418.]

**28B.20.462 Warren G. Magnuson institute for biomedical research and health professions training—Established.** The Warren G. Magnuson institute for biomedical research and health professions training is established within the Warren G. Magnuson health sciences center at the University of Washington. The institute shall be administered by the university. The institute may be funded through a combination of federal, state, and private funds, including earnings on the endowment fund in RCW 28B.20.472. [1990 c 282 § 1.]

**28B.20.464 Warren G. Magnuson institute—Purposes.** The purposes of the Warren G. Magnuson institute for biomedical research and health professions training are as follows:

(1) Supporting one or more individuals engaged in biomedical research into the causes of, the treatments for, or the management of diabetes is the primary purpose of the institute;

(2) Providing financial assistance to students in graduate or postgraduate training programs in the health professions at the university is the secondary purpose of the institute;

(3) Supporting biomedical research into the causes of, the treatment for, or the management of Parkinson's disease, osteoporosis, or any other disease or medical disorder where the achievement of a significant result in the near term is especially promising; and

(4) Enhancing the training, research, and public service missions of the health sciences schools of the University of Washington. [1990 c 282 § 2.]

**28B.20.466 Warren G. Magnuson institute—Endowment fund earnings.** Unless designated otherwise by donors, the earnings on the endowment fund in RCW 28B.20.472 shall be distributed as follows:

(1) Earnings on the first seven hundred fifty thousand dollars shall be expended at the direction of the dean of the school of medicine, in support of one or more individuals

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engaged in biomedical research into the causes of, the treatments for, or the management of diabetes;

(2) Earnings on the next two hundred fifty thousand dollars shall be expended to provide financial assistance to students in graduate or postgraduate training programs in the health professions at the university, including: Medicine, nursing, public health and community medicine, dentistry, pharmacy, and social work. At least one such student at all times shall be in a career pathway preparing for or engaged in research related to diabetes, its antecedents, or complications; and

(3) Earnings on additional funds within the endowment may be used for any purpose of the institute as outlined in RCW 28B.20.464. [1990 c 282 § 3.]

**28B.20.468 Warren G. Magnuson institute—Trust fund.** The Warren G. Magnuson institute trust fund is hereby established. The trust fund shall be administered by the state treasurer. Funds appropriated by the legislature for the trust fund shall be deposited into the trust fund. At the request of the board of regents of the University of Washington, and when conditions set forth in RCW 28B.20.470 are met, the treasurer shall release state matching moneys in the fund to the University of Washington's local endowment fund. No appropriation is required for expenditures from the trust fund. [1991 sp.s. c 13 § 106; 1990 c 282 § 4.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**28B.20.470 Warren G. Magnuson institute—State matching funds.** The University of Washington may apply to the treasurer for five hundred thousand dollars from the Warren G. Magnuson institute trust fund when the university can match the state funds with an amount of cash donations equal to twice the state funds provided. Private donations mean moneys from nonstate sources that include, but are not limited to federal moneys and assessments by commodity commissions authorized to conduct research activities including but not limited to research studies authorized under RCW 15.66.030 and 15.65.040. [1990 c 282 § 5.]

**28B.20.472 Warren G. Magnuson institute—Local endowment fund.** The state matching funds and the private donations shall be deposited in the university's local endowment fund. The university is responsible for investing and maintaining all moneys within the fund. The principal of the invested endowment fund shall not be invaded. The university may augment the endowment fund with additional private donations. The earnings of the fund shall be used solely to support the purposes of the Warren G. Magnuson institute for biomedical research and health professions training as set forth in RCW 28B.20.464. [1990 c 282 § 6.]

**28B.20.500 Medical students from rural areas—Admission preference.** The school of medicine at the University of Washington shall develop and implement a policy to grant admission preference to prospective medical students from rural areas of the state who agree to serve for at least five years as primary care physicians in rural areas of Washington after completion of their medical education and have

applied for and meet the qualifications of the program under chapter 28B.115 RCW. Should the school of medicine be unable to fill any or all of the admission openings due to a lack of applicants from rural areas who meet minimum qualifications for study at the medical school, it may admit students not eligible for preferential admission under this section. [1991 c 332 § 26; 1990 c 271 § 9.]

**Application to scope of practice—Captions not law—1991 c 332:** See notes following RCW 18.130.010.

#### FINANCING BUILDINGS AND FACILITIES—1957 ACT

**28B.20.700 Construction, remodeling, improvement, financing, etc., authorized.** The board of regents of the University of Washington is empowered, in accordance with the provisions of this chapter, to provide for the construction, completion, reconstruction, remodeling, rehabilitation and improvement of buildings and facilities authorized by the legislature for the use of the university and to finance the payment thereof by bonds payable out of a special fund from revenues hereafter derived from the payment of building fees, gifts, bequests or grants, and such additional funds as the legislature may provide. [1985 c 390 § 36; 1969 ex.s. c 223 § 28B.20.700. Prior: 1959 c 193 § 1; 1957 c 254 § 1. Formerly RCW 28.77.500.]

**28B.20.705 Definitions.** The following terms, whenever used or referred to in this chapter, shall have the following meaning, excepting in those instances where the context clearly indicates otherwise:

(1) The word "board" means the board of regents of the University of Washington.

(2) The words "building fees" mean the building fees charged students registering at the university.

(3) The words "bond retirement fund" mean the special fund created by chapter 254, Laws of 1957, to be known as the University of Washington bond retirement fund.

(4) The word "bonds" means the bonds payable out of the bond retirement fund.

(5) The word "projects" means the construction, completion, reconstruction, remodeling, rehabilitation, or improvement of any building or other facility of the university authorized by the legislature at any time and to be financed by the issuance and sale of bonds. [1985 c 390 § 37; 1969 ex.s. c 223 § 28B.20.705. Prior: 1963 c 224 § 2; 1963 c 182 § 1; 1959 c 193 § 2; 1957 c 254 § 2. Formerly RCW 28.77.510.]

**28B.20.710 Contracts, issuance of evidences of indebtedness, acceptance of grants.** In addition to the powers conferred under existing law, the board is authorized and shall have the power:

(1) To contract for the construction, completion, reconstruction, remodeling, rehabilitation and improvement of such buildings or other facilities of the university as are and which may hereafter be authorized by the legislature.

(2) To finance the same by the issuance of bonds secured by the pledge of any or all of the revenues and receipts of the bond retirement fund.

(3) Without limitation of the foregoing, to accept grants from the United States government, or any federal or state agency or instrumentality, or any public or private corpora-

tion, association, or person to aid in defraying the costs of any such projects. [1969 ex.s. c 223 § 28B.20.710. Prior: 1963 c 182 § 2; 1959 c 193 § 3; 1957 c 254 § 3. Formerly RCW 28.77.520.]

**28B.20.715 Bonds—Issuance, sale, form, term, interest, etc.—Covenants—Deposit of proceeds.** For the purpose of financing the cost of any projects, the board is hereby authorized to adopt the resolution or resolutions and prepare all other documents necessary for the issuance, sale and delivery of the bonds or any part thereof at such time or times as it shall deem necessary and advisable. Said bonds:

(1) Shall not constitute

(a) An obligation, either general or special, of the state; or

(b) A general obligation of the University of Washington or of the board;

(2) Shall be

(a) Either registered or in coupon form; and

(b) Issued in denominations of not less than one hundred dollars; and

(c) Fully negotiable instruments under the laws of this state; and

(d) Signed on behalf of the university by the president of the board, attested by the secretary of the board, have the seal of the university impressed thereon or a facsimile of such seal printed or lithographed in the bottom border thereof, and the coupons attached thereto shall be signed with the facsimile signatures of such president and secretary;

(3) Shall state

(a) The date of issue; and

(b) The series of the issue and be consecutively numbered within the series; and

(c) That the bond is payable both principal and interest solely out of the bond retirement fund;

(4) Each series of bonds shall bear interest, payable either annually or semiannually, as the board may determine;

(5) Shall be payable both principal and interest out of the bond retirement fund;

(6) Shall be payable at such times over a period of not to exceed forty years from date of issuance, at such place or places, and with such reserved rights of prior redemption, as the board may prescribe;

(7) Shall be sold in such manner and at such price as the board may prescribe;

(8) Shall be issued under and subject to such terms, conditions and covenants providing for the payment of the principal thereof and interest thereon and such other terms, conditions, covenants and protective provisions safeguarding such payment, not inconsistent with this chapter, and as found to be necessary by the board for the most advantageous sale thereof, which may include but not be limited to:

(a) A covenant that the building fees shall be established, maintained and collected in such amounts that will provide money sufficient to pay the principal of and interest on all bonds payable out of the bond retirement fund, to set aside and maintain the reserves required to secure the payment of such principal and interest, and to maintain any coverage which may be required over such principal and interest;

(b) A covenant that a reserve account shall be created in the bond retirement fund to secure the payment of the princi-

pal of and interest on all bonds issued and a provision made that certain amounts be set aside and maintained therein;

(c) A covenant that sufficient moneys may be transferred from the University of Washington building account to the bond retirement fund when ordered by the board of regents in the event there is ever an insufficient amount of money in the bond retirement fund to pay any installment of interest or principal and interest coming due on the bonds or any of them;

(d) A covenant fixing conditions under which bonds on a parity with any bonds outstanding may be issued.

The proceeds of the sale of all bonds, exclusive of accrued interest which shall be deposited in the bond retirement fund, shall be deposited in the state treasury to the credit of the University of Washington building account and shall be used solely for paying the costs of the projects. [1985 c 390 § 38; 1970 ex.s. c 56 § 26; 1969 ex.s. c 232 § 100; 1969 ex.s. c 223 § 28B.20.715. Prior: 1959 c 193 § 4; 1957 c 254 § 4. Formerly RCW 28.77.530.]

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**28B.20.720 University of Washington bond retirement fund—Composition—Pledge of building fees.** For the purpose of paying and securing the payment of the principal of and interest on the bonds as the same shall become due, there shall be paid into the state treasury and credited to a special trust fund to be known as the University of Washington bond retirement fund, the following:

(1) One-half of such building fees as the board may from time to time determine, or such larger portion as may be necessary to prevent default in the payments required to be made out of the bond retirement fund, and in no event shall such one-half be less than twelve dollars and fifty cents per each resident student per quarter and less than thirty-seven dollars and fifty cents per each nonresident student per quarter;

(2) Any gifts, bequests, or grants which may be made, or may become available, for the purpose of furthering the construction of any authorized projects, or for the repayment of the costs thereof;

(3) Such additional funds as the legislature may provide.

Said bond retirement fund shall be kept segregated from all moneys in the state treasury and shall, while any of such bonds or any interest thereon remains unpaid, be available solely for the payment thereof except as provided in RCW 28B.20.725(5). As a part of the contract of sale of such bonds, the board undertakes to charge and collect building fees and to deposit the portion of such fees in the bond retirement fund in amounts which will be sufficient to pay the principal of, and interest on all such bonds outstanding. [1985 c 390 § 39; 1969 ex.s. c 223 § 28B.20.720. Prior: 1959 c 193 § 5; 1957 c 254 § 5. Formerly RCW 28.77.540.]

*1977 Bond act for the refunding of outstanding limited obligation revenue bonds of institutions of higher education, as affecting: RCW 28B.14C.080 through 28B.14C.130.*

**28B.20.721 Revenues derived from certain university lands deposited in University of Washington bond retirement fund.** All moneys received from the lease or rental of lands set apart by the enabling act for university purposes; all

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interest or income arising from the proceeds of the sale of such lands or of the timber, fallen timber, stone, gravel, or other valuable material thereon; and all moneys received as interest on deferred payments on contracts for the sale of such lands shall be deposited in the "University of Washington bond retirement fund" to be expended for the purposes set forth in RCW 28B.20.720. [1969 ex.s. c 223 § 28B.20.721. Prior: 1963 c 216 § 1. Formerly RCW 28.77.541.]

**28B.20.725 Additional powers of board—Issuance of bonds, investments, transfer of funds, etc.** The board is hereby empowered:

(1) To reserve the right to issue bonds later on a parity with any bonds being issued;

(2) To authorize the investing of moneys in the bond retirement fund and any reserve account therein;

(3) To authorize the transfer of money from the University of Washington building account to the bond retirement fund when necessary to prevent a default in the payments required to be made out of such fund;

(4) To create a reserve account or accounts in the bond retirement fund to secure the payment of the principal of and interest on any bonds;

(5) To authorize the transfer to the University of Washington building account of any money on deposit in the bond retirement fund in excess of debt service for a period of three years from the date of such transfer on all outstanding bonds payable out of such fund. [1969 ex.s. c 223 § 28B.20.725. Prior: 1959 c 193 § 6. Formerly RCW 28.77.545.]

*1977 Bond act for the refunding of outstanding limited obligation revenue bonds of institutions of higher education, as affecting: RCW 28B.14C.080 through 28B.14C.130.*

**28B.20.730 Refunding bonds.** The board is hereby empowered to issue refunding bonds to provide funds to refund any or all outstanding bonds payable from the bond retirement fund and to pay any redemption premium payable on such outstanding bonds being refunded. Such refunding bonds may be issued in the manner and on terms and conditions and with the covenants permitted by this chapter for the issuance of bonds. The refunding bonds shall be payable out of the bond retirement fund and shall not constitute an obligation either general or special, of the state or a general obligation of the University of Washington or the board. The board may exchange the refunding bonds at par for the bonds which are being refunded or may sell them in such manner, at such price and at such rate or rates of interest as it deems for the best interest of the university. [1970 ex.s. c 56 § 27; 1969 ex.s. c 232 § 101; 1969 ex.s. c 223 § 28B.20.730. Prior: 1959 c 193 § 8. Formerly RCW 28.77.547.]

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**28B.20.735 Bonds not general obligations—Legislature may provide additional means of payment.** The bonds authorized to be issued pursuant to the provisions of RCW 28B.20.700 through 28B.20.740 shall not be general obligations of the state of Washington, but shall be limited obligation bonds payable only from the special fund created for their payment derived from the building fees as herein

provided. The legislature may provide additional means for raising money for the payment of interest and principal of said bonds. RCW 28B.20.700 through 28B.20.740 shall not be deemed to provide an exclusive method for such payment. The power given to the legislature by this section to provide additional means for raising money is permissive, and shall not in any way be construed as a pledge of the general credit of the state of Washington. [1985 c 390 § 40; 1969 ex.s. c 223 § 28B.20.735. Prior: 1957 c 254 § 7. Formerly RCW 28.77.550.]

**28B.20.740 RCW 28B.20.700 through 28B.20.740 as concurrent with other laws.** RCW 28B.20.700 through 28B.20.740 is to be construed as concurrent with other legislation with reference to providing funds for the construction of buildings at the University of Washington, and is not to be construed as limiting any other provision of law with reference thereto. [1969 ex.s. c 223 § 28B.20.740. Prior: 1957 c 254 § 10. Formerly RCW 28.77.580.]

#### MISCELLANEOUS

**28B.20.745 Validation—1959 c 193.** Any covenants of the bonds issued by the University of Washington under the authority of chapter 254, Laws of 1957 not expressly authorized by said chapter but authorized in chapter 193, Laws of 1959 are hereby declared to be legal and binding in all respects. [1969 ex.s. c 223 § 28B.20.745. Prior: 1959 c 193 § 11. Formerly RCW 28.77.590.]

**28B.20.750 Hospital project bonds—State general obligation bonds in lieu of revenue bonds.** The legislature has previously approved by its appropriation of funds from time to time, a capital improvement project for the University of Washington hospital, which project was to be partly funded by the issuance, by the university board of regents, of revenue bonds payable from certain university hospital fees. In order that such project may be funded on terms most advantageous to the state, it is hereby determined to be in the public interest that state general obligation bonds be issued to provide part of the funds for such project in lieu of revenue bonds. [1975 1st ex.s. c 88 § 1.]

**Severability—1975 1st ex.s. c 88:** "If any provision of this 1975 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, shall in no way be affected." [1975 1st ex.s. c 88 § 12.]

**28B.20.751 Hospital project bonds—Amount authorized.** For the purpose of providing financing for needed acquisition, construction, remodeling, furnishing or equipping of buildings and facilities of the University of Washington hospital, the state finance committee is hereby authorized to issue from time to time general obligation bonds of the state of Washington in the aggregate principal amount of eight million dollars, or so much thereof as shall be required to finance the university hospital improvements project described in RCW 28B.20.750, to be paid and discharged within thirty years of the date of issuance, in accordance with Article VIII, section 1, of the Constitution of the state of Washington. [1975 1st ex.s. c 88 § 2.]

**Severability—1975 1st ex.s. c 88:** See note following RCW 28B.20.750.

**28B.20.752 Hospital project bonds—Bond anticipation notes, authorized, payment.** When the state finance committee has determined to issue such general obligation bonds or a portion thereof, it may, pending the issuance thereof, issue in the name of the state temporary notes in anticipation of the issuance of such bonds, which notes shall be designated as "bond anticipation notes". Such portion of the proceeds of the sale of such bonds as may be required for the payment of principal and redemption premium, if any, of and interest on such notes shall be applied thereto when such bonds are issued. [1975 1st ex.s. c 88 § 3.]

**Severability—1975 1st ex.s. c 88:** See note following RCW 28B.20.750.

**28B.20.753 Hospital project bonds—Form, terms, conditions, sale, and covenants for bonds and notes.** The state finance committee is authorized to prescribe the form, terms, conditions and covenants of the bonds and/or the bond anticipation notes, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance.

Each such bond and bond anticipation note shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal thereof and the interest thereon when due. [1975 1st ex.s. c 88 § 4.]

**Severability—1975 1st ex.s. c 88:** See note following RCW 28B.20.750.

**28B.20.754 Hospital project bonds—Disposition of proceeds.** Except for that portion of the proceeds required to pay bond anticipation notes pursuant to RCW 28B.20.752, the proceeds from the sale of the bonds and/or bond anticipation notes authorized herein, together with all grants, donations, transferred funds and other moneys which the state finance committee or the board of regents of the University of Washington may direct the state treasurer to deposit therein, shall be deposited in the building authority construction account in the state treasury. [1975 1st ex.s. c 88 § 5.]

**Severability—1975 1st ex.s. c 88:** See note following RCW 28B.20.750.

**28B.20.755 Hospital project bonds—Administration of proceeds from bonds and notes.** Subject to legislative appropriation, all proceeds of the bonds and/or bond anticipation notes authorized in RCW 28B.20.750 through 28B.20.759 shall be administered and expended by the board of regents of the University of Washington exclusively for the purposes specified in RCW 28B.20.750 through 28B.20.759 and for the payment of the expenses incurred in connection with the sale and issuance of such bonds and bond anticipation notes. [1975 1st ex.s. c 88 § 6.]

**Severability—1975 1st ex.s. c 88:** See note following RCW 28B.20.750.

**28B.20.756 Hospital project bonds—1975 University of Washington hospital bond retirement fund, created, purpose.** The 1975 University of Washington hospital bond retirement fund is hereby created in the state treasury for the

purpose of the payment of principal of and interest on the bonds authorized to be issued pursuant to RCW 28B.20.750 through 28B.20.759.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and interest coming due on such bonds. On July 1st of each such year the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the 1975 University of Washington hospital bond retirement fund an amount equal to the amount certified by the state finance committee. [1975 1st ex.s. c 88 § 7.]

**Severability—1975 1st ex.s. c 88:** See note following RCW 28B.20.750.

**28B.20.757 Hospital project bonds—Regents to accumulate moneys for bond payments.** On or before June 30th of each year, the board of regents of the university shall cause to be accumulated, in an appropriate local fund, from fees charged patients of the university hospital and other moneys legally available for such purposes, an amount at least equal to the amount required in the next succeeding twelve months for the payment of the principal of and interest coming due on the bonds issued pursuant to RCW 28B.20.750 through 28B.20.759. Notwithstanding the provisions of RCW 28B.15.220, on July 1st of each such year the board of regents of the university shall cause to be paid to the state treasurer for deposit into the general fund of the state treasury, the sum so accumulated. [1975 1st ex.s. c 88 § 8.]

**Severability—1975 1st ex.s. c 88:** See note following RCW 28B.20.750.

**28B.20.758 Hospital project bonds—As legal investment for public funds.** The bonds authorized in RCW 28B.20.750 through 28B.20.759 shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1975 1st ex.s. c 88 § 9.]

**Severability—1975 1st ex.s. c 88:** See note following RCW 28B.20.750.

**28B.20.759 Hospital project bonds—Prerequisite to issuance.** The bonds authorized in RCW 28B.20.750 through 28B.20.759 shall be issued only after the university board of regents has certified to the state finance committee that projected revenue from fees charged patients of the university hospital shall be adequate, based upon reasonable projections for that revenue, to enable the board of regents to meet the requirement of RCW 28B.20.757 during the life of the bonds proposed to be issued. [1975 1st ex.s. c 88 § 10.]

**Severability—1975 1st ex.s. c 88:** See note following RCW 28B.20.750.

**28B.20.770 Acquisition, construction, equipping and betterment of lands, buildings and facilities at universities and The Evergreen State College.** See RCW 28B.10.300 through 28B.10.330.

**28B.20.800 Revenues derived from certain university lands and income from university permanent fund depos-**

**ited in University of Washington bond retirement fund—Covenant.** All moneys hereafter received from the lease or rental of lands set apart for the University of Washington by chapter 91, Laws of 1903 and section 9, chapter 122, Laws of 1893, and all interest or income arising from the proceeds of the sale of such land, less the allocation to the state treasurer's service account [fund] pursuant to RCW 43.08.190 and the state investment board expense account pursuant to RCW 43.33A.160, and all proceeds from the sale of timber, fallen timber, stone, gravel, or other valuable material and all other receipts therefrom shall be deposited to the credit of the "University of Washington bond retirement fund" to be expended for the purposes set forth in RCW 28B.20.720. All proceeds of sale of such lands, exclusive of investment income, shall be deposited to the credit of the state university permanent fund, shall be retained therein and shall not be transferred to any other fund or account. All interest earned or income received from the investment of the money in the state university permanent fund shall be deposited to the credit of the University of Washington bond retirement fund less the allocations to the state treasurer's service fund pursuant to RCW 43.08.190 and the state investment board expense account pursuant to RCW 43.33A.160.

As a part of the contract of sale of bonds payable out of the University of Washington bond retirement fund, the board of regents of the University of Washington may covenant that all moneys derived from the above provided sources, which are required to be paid into the bond retirement fund, shall continue to be paid into such bond retirement fund for as long as any of such bonds are outstanding. [1991 sp.s. c 13 § 97; 1969 ex.s. c 223 § 28B.20.800. Prior: 1965 ex.s. c 135 § 1. Formerly RCW 28.77.620.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

*1977 Bond act for the refunding of outstanding limited obligation revenue bonds of institutions of higher education, as affecting: RCW 28B.14C.080 through 28B.14C.130.*

**28B.20.805 Revenues derived from certain university lands and income from university permanent fund deposited in University of Washington bond retirement fund—Ratification of previous transfers.** The transfers heretofore made of all moneys from the sources described in RCW 28B.20.800 and 43.79.201 into the University of Washington bond retirement fund and permanent fund are in all respects ratified and confirmed. [1969 ex.s. c 223 § 28B.20.805. Prior: 1965 ex.s. c 135 § 3. Formerly RCW 28.77.630.]

**28B.20.810 Revenues derived from certain university lands and income from university permanent fund deposited in University of Washington bond retirement fund—Transfers of certain funds and investments from university permanent fund to University of Washington bond retirement fund and University of Washington building account.** The board of regents of the University of Washington is empowered to authorize from time to time the transfer from the state university permanent fund to be held in reserve in the bond retirement fund created by RCW 28B.20.720 any unobligated funds and investments derived from lands set apart for the support of the university by chapter 91, Laws of 1903 and section 9, chapter 122, Laws of 1893, to the extent

required to comply with bond covenants regarding principal and interest payments and reserve requirements for bonds payable out of the bond retirement fund up to a total amount of five million dollars, and to transfer any or all of said unobligated funds and investments in excess of five million dollars to the university building account created by RCW 43.79.330(22). Any funds transferred to the bond retirement fund pursuant to this section shall be replaced by moneys first available out of the moneys required to be deposited in such fund pursuant to RCW 28B.20.800. The board is further empowered to direct the state finance committee to convert any investments in such permanent fund acquired with funds derived from such lands into cash or obligations of or guaranteed by the United States of America prior to the transfer of such funds and investments to such reserve account or building account. [1991 sp.s. c 13 § 78; 1969 ex.s. c 223 § 28B.20.810. Prior: 1965 ex.s. c 135 § 4. Formerly RCW 28.77.640.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**28B.20.820 Revenues derived from certain university lands and income from university permanent fund deposited in University of Washington bond retirement fund—RCW 79.64.040 not affected.** Nothing contained in RCW 28B.20.800 through 28B.20.820 and RCW 43.79.201 is intended to amend or modify RCW 79.64.040 (section 4, chapter 178, Laws of 1961). [1969 ex.s. c 223 § 28B.20.820. Prior: 1965 ex.s. c 135 § 5. Formerly RCW 28.77.650.]

### Chapter 28B.25 RCW

#### JOINT CENTER FOR HIGHER EDUCATION

##### Sections

28B.25.020 Coordination of programs—Master plan for Riverpoint higher education park.

#### **28B.25.020 Coordination of programs—Master plan for Riverpoint higher education park.**

**Reviser's note:** RCW 28B.25.020 was amended by 1998 c 245 § 18 without reference to its repeal by 1998 c 344 § 17. It has been decodified for publication purposes under RCW 1.12.025.

### Chapter 28B.30 RCW

#### WASHINGTON STATE UNIVERSITY

##### Sections

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*annuity and retirement plans:* RCW 28B.10.400 through 28B.10.423.

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*investment in regents' revenue bonds:* RCW 43.84.140.

*source:* RCW 43.79.130.

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*created:* RCW 43.79.110.

*investment in regents' revenue bonds:* RCW 43.84.140.

*Washington State University fund, sources:* RCW 43.79.140.

*Governing body of recognized student association at college or university, open public meetings act applicable to:* RCW 42.30.200.

*Home economics extension work:* RCW 36.50.010.

*Idaho—Tuition and fees—Reciprocity with Washington:* RCW 28B.15.750 through 28B.15.754.

*Insurance for officers, employees and students:* RCW 28B.10.660.

*Liquor revolving fund, alcoholism and drug abuse research, use for:* RCW 66.08.180.

*1977 Washington State University buildings and facilities financing act:* Chapter 28B.31 RCW.

*Oregon—Tuition and fees—Reciprocity with Washington:* RCW 28B.15.730 through 28B.15.736.

*Parking facilities:* RCW 28B.10.300.

*Pest districts, general supervision over:* RCW 17.12.060.

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*share crop leasing authorized:* RCW 79.13.320.

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*Scientific school grant:* RCW 43.79.100.

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*acquisition of property for:* RCW 47.20.600.

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*sale of buildings and personalty acquired in acquisition of land:* RCW 47.20.630.

*use declared public use:* RCW 47.20.605.

*State building authority, projects approved:* Chapter 43.75 RCW.

*State College of Washington building account, name changed to Washington State University building account:* RCW 43.79.335.

**Students**

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*loan fund for national defense education act:* RCW 28B.10.280.

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*use of district schools for training:* RCW 28B.10.600 through 28B.10.605.

*Traffic regulations, penalty for violations:* RCW 28B.10.560.

*Tuition, exemptions of children of deceased or disabled veterans or certain citizens missing in action or prisoners of war:* RCW 28B.10.265.

**28B.30.010 Designation.** The state university located and established in Pullman, Whitman county, shall be designated Washington State University. [1969 ex.s. c 223 § 28B.30.010. Prior: 1959 c 77 § 1; 1905 c 53 § 1; 1891 c 145 § 1; RRS § 4567. Formerly RCW 28.80.010.]

**28B.30.015 Purpose.** The aim and the purpose of Washington State University shall be to provide a higher education in such fields as may be established therein from time to time by the board of regents or by law, including instruction in agriculture or other industrial pursuits, mechanical arts and the natural sciences. [1969 ex.s. c 223 § 28B.30.015. Prior: 1909 c 97 p 243 § 1, part; RRS § 4568, part; prior: 1897 c 118 § 190, part; 1891 c 145 § 1, part. Formerly RCW 28.80.015; 28.76.040, part and 28.76.050, part.]

**28B.30.050 Collaboration with Eastern Washington University and local community colleges.** Washington State University and Eastern Washington University shall collaborate with one another and with local community colleges in providing educational pathways and programs to the citizens of the Spokane area. [2004 c 57 § 3; 1991 c 205 § 11; 1989 1st ex.s. c 7 § 6. Formerly RCW 28B.45.050.]

**28B.30.054 Credits—Statewide transfer policy and agreement—Establishment.** See RCW 28B.76.240 and 28B.76.2401.

**28B.30.055 "Major line" defined.** See RCW 28B.10.100.

**28B.30.057 Major lines common to University of Washington and Washington State University.** See RCW 28B.10.115.

**28B.30.060 Courses exclusive to Washington State University.** The courses of instruction of Washington State University shall embrace as exclusive major lines, agriculture in all its branches and subdivisions, veterinary medicine, and economic science in its application to agriculture and rural life. [1969 ex.s. c 223 § 28B.30.060. Prior: 1917 c 10 § 3; RRS § 4534. Formerly RCW 28.80.025; 28.76.070, part.]

**28B.30.065 Exclusive instruction in agriculture.** Work and instruction in agriculture in all its branches and subdivisions shall be offered and taught in Washington State University exclusively. [1969 ex.s. c 223 § 28B.30.065. Prior: 1917 c 10 § 6; RRS § 4537. Formerly RCW 28.80.026; 28.76.070, part.]

**28B.30.067 Wine grape industry, instruction relating to—Purpose.** Marked increases in state and national consumption make it evident that our developing wine grape industry has a bright future. To help assure its success the legislature concludes that Washington State University should provide a sound research, extension, and resident instruction base for both wine grape production and the processing aspects of the wine industry. [1981 1st ex.s. c 5 § 5.]

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

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*Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and department of social and health services: RCW 66.08.180.*

**28B.30.068 Wine grape industry, instruction relating to—Administration.** Revenues received from RCW 66.08.180 for wine and wine grape research, extension programs related to wine and wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine industry by Washington State University shall be administered by the College of Agriculture. When formulating or changing plans for programs and research, the College of Agriculture shall confer with representatives of the Washington Wine Society. [1981 1st ex.s. c 5 § 7.]

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

*Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and department of social and health services: RCW 66.08.180.*

**28B.30.075 University fees.** See chapter 28B.15 RCW.

**28B.30.095 Management.** The management of Washington State University and its experiment stations, the care and preservation of all property of which the institution shall become possessed, the erection and construction of all buildings necessary for the use of said university and stations, and the disbursement and expenditure of all money provided for said university, shall be vested in the board of regents, constituted as provided in RCW 28B.30.100; said regents and their successors in office shall have the right to cause all things to be done necessary to carry out the provisions of this chapter or as otherwise provided by law. [1969 ex.s. c 223 § 28B.30.095. Prior: 1949 c 115 § 1, part; 1909 c 97 p 245 § 5, part; Rem. Supp. 1949 § 4576, part; prior: 1897 c 118 § 194, part; 1891 c 145 § 4, part. Formerly RCW 28.80.070, part, 28.80.080, part and 28.80.130, part.]

**28B.30.100 Regents—Appointment—Terms—Vacancies—Quorum—Bond.** (1) The governance of Washington State University shall be vested in a board of regents to consist of ten members one of whom shall be a student. The governor shall select the student member from a list of candidates, of at least three and not more than five, submitted by the governing body of the associated students. They shall be appointed by the governor, by and with the consent of the senate and, except for the student member, shall hold their offices for a term of six years from the first day of October and until their successors are appointed and qualified. The student member shall hold his or her office for a term of one year from the first day of June until his or her successor is appointed and qualified. The student member shall be a full-time student in good standing at the university at the time of appointment.

(2) Six members of said board shall constitute a quorum for the transaction of business. In the case of a vacancy or when an appointment is made after the date of the expiration of a term, the governor shall fill the vacancy for the remainder of the term of the regent whose office has become vacant or expired.

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(3) Except for the term of the student member, no more than the terms of two members will expire simultaneously on the last day of September in any one year.

(4) Each regent shall, before entering upon the discharge of his respective duties as such, execute a good and sufficient bond to the state of Washington, with two or more sufficient sureties, residents of the state, or with a surety company licensed to do business within the state, in the penal sum of not less than five thousand dollars, conditioned for the faithful performance of his duties as such regent: PROVIDED, That the university shall pay any fees incurred for any such bonds for their board members.

(5) A student appointed under this section shall excuse himself or herself from participation or voting on matters relating to the hiring, discipline, or tenure of faculty members and personnel. [1998 c 95 § 2; 1985 c 61 § 2; 1979 ex.s. c 103 § 3; 1973 c 62 § 10; 1969 ex.s. c 223 § 28B.30.100. Prior: 1949 c 115 § 1, part; 1909 c 97 p 245 § 5, part; Rem. Supp. 1949 § 4576, part; prior: 1897 c 118 § 194, part; 1891 c 145 § 4, part. Formerly RCW 28.80.070, part, 28.80.080, part and 28.80.130, part.]

**Present terms not affected—Severability—1979 ex.s. c 103:** See notes following RCW 28B.20.100.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**28B.30.115 Regents—Oaths.** See RCW 28B.10.520.

**28B.30.116 Regents—Expenses.** See RCW 28B.10.525.

**28B.30.117 Regents—Attorney general as advisor.** See RCW 28B.10.510.

**28B.30.120 Regents—Meetings—Vacancy not to affect rights of remaining members.** Meetings of the board of regents may be called in such manner as the board may prescribe, and a full meeting of the board shall be called at least once a year. No vacancy in said board shall impair the rights of the remaining members of the board. [1979 ex.s. c 103 § 6; 1969 ex.s. c 223 § 28B.30.120. Prior: 1909 c 97 p 248 § 12; RRS § 4592; prior: 1897 c 118 § 201; 1891 c 145 § 12. Formerly RCW 28.80.100.]

**Present terms not affected—Severability—1979 ex.s. c 103:** See notes following RCW 28B.20.100.

**28B.30.125 Regents—Board organization—President—President's duties—Bylaws, laws.** The board of regents shall meet and organize by the election of a president from their own number on or as soon as practicable after the first Wednesday in April of each year.

The board president shall be the chief executive officer of the board and shall preside at all meetings thereof, except that in his absence the board may appoint a chairman pro tempore. The board president shall sign all instruments required to be executed by said board other than those for the disbursement of funds.

The board may adopt bylaws for its own organizational purposes and enact laws for the government of the university and its properties. [1969 ex.s. c 223 § 28B.30.125. Prior: (i) 1955 c 346 § 1, part; 1909 c 97 p 246 § 6, part; RRS § 4577,

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part. Formerly RCW 28.80.110, part. (ii) 1909 c 97 p 247 § 7, part; RRS § 4578, part; prior: 1897 c 118 § 196, part; 1891 c 145 § 7, part. Formerly RCW 28.80.120, part. (iii) 1909 c 97 p 249 § 16, part; RRS § 4596, part; prior: 1897 c 118 § 205, part; 1891 c 145 § 19, part. Formerly RCW 28.80.160, part.]

**28B.30.130 Regents—Treasurer of board—Bond—Disbursement of funds by.** The board of regents shall appoint a treasurer who shall be the financial officer of the board and who shall hold office during the pleasure of the board. The treasurer shall render a true and faithful account of all moneys received and paid out by him, and shall give bond for the faithful performance of the duties of his office in such amount as the regents require: PROVIDED, That the university shall pay the fee for such bond.

The treasurer shall make disbursements of the funds in his hands on the order of the board, which order shall be countersigned by the secretary of the board, and shall state on what account the disbursement is made. [1969 ex.s. c 223 § 28B.30.130. Prior: (i) 1955 c 346 § 1, part; 1909 c 97 p 246 § 6, part; RRS § 4577, part. Formerly RCW 28.80.110, part. (ii) 1909 c 97 p 246 § 7, part; RRS § 4578, part; prior: 1897 c 118 § 196, part; 1891 c 145 § 7, part. Formerly RCW 28.80.120, part. (iii) 1909 c 97 p 249 § 16, part; RRS § 4596, part; prior: 1897 c 118 § 205, part; 1891 c 145 § 19, part. Formerly RCW 28.80.160, part.]

**28B.30.135 Regents—University president as secretary of board—Duties—Bond.** The president of the university shall be secretary of the board of regents but he shall not have the right to vote; as such he shall be the recording officer of said board, shall attest all instruments required to be signed by the board president, shall keep a true record of all the proceedings of the board, and shall perform all the duties pertaining to the office and do all other things required of him by the board. The secretary shall give a bond in the penal sum of not less than five thousand dollars conditioned for the faithful performance of his duties as such officer: PROVIDED, That the university shall pay the fee for such bond. [1969 ex.s. c 223 § 28B.30.135. Prior: (i) 1955 c 346 § 1, part; 1909 c 97 p 246 § 6, part; RRS § 4577, part. Formerly RCW 28.80.110, part. (ii) 1909 c 97 p 247 § 7, part; RRS § 4578, part; prior: 1897 c 118 § 196, part; 1891 c 145 § 7, part. Formerly RCW 28.80.120, part.]

**28B.30.140 Regents—Employees, board members, to have no interest in contracts.** No employee or member of the university board of regents shall be interested pecuniarily, either directly or indirectly, in any contract for any building or improvement at said university, or for the furnishing of supplies for the same. [1969 ex.s. c 223 § 28B.30.140. Prior: 1909 c 97 p 249 § 17; RRS § 4597; prior: 1897 c 118 § 206; 1891 c 145 § 21. Formerly RCW 28.80.170.]

*Code of ethics, interest in contract, public officers and employees: Chapters 42.23, 42.52 RCW.*

**28B.30.150 Regents—General powers and duties.** The regents of Washington State University, in addition to other duties prescribed by law, shall:

(1) Have full control of the university and its property of various kinds, except as otherwise provided by law.

(2) Employ the president of the university, his or her assistants, members of the faculty, and employees of the university, who, except as otherwise provided by law, shall hold their positions during the pleasure of said board of regents.

(3) Establish entrance requirements for students seeking admission to the university which meet or exceed the standards specified under RCW 28B.76.290(2). Completion of examinations satisfactory to the university may be a prerequisite for entrance by any applicant, at the university's discretion. Evidence of completion of public high schools and other educational institutions whose courses of study meet the approval of the university may be acceptable for entrance.

(4) Establish such colleges, schools, or departments necessary to carry out the purpose of the university and not otherwise proscribed by law.

(5) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230, offer new degree programs, offer off-campus programs, participate in consortia or centers, contract for off-campus educational programs, and purchase or lease major off-campus facilities.

(6) With the assistance of the faculty of the university, prescribe the courses of instruction in the various colleges, schools, and departments of the institution and publish the necessary catalogues thereof.

(7) Collect such information as the board deems desirable as to the schemes of technical instruction adopted in other parts of the United States and foreign countries.

(8) Provide for holding agricultural institutes including farm marketing forums.

(9) Provide that instruction given in the university, as far as practicable, be conveyed by means of laboratory work and provide in connection with the university one or more physical, chemical, and biological laboratories, and suitably furnish and equip the same.

(10) Provide training in military tactics for those students electing to participate therein.

(11) Establish a department of elementary science and in connection therewith provide instruction in elementary mathematics, including elementary trigonometry, elementary mechanics, elementary and mechanical drawing, and land surveying.

(12) Establish a department of agriculture and in connection therewith provide instruction in physics with special application of its principles to agriculture, chemistry with special application of its principles to agriculture, morphology and physiology of plants with special reference to common grown crops and fungus enemies, morphology and physiology of the lower forms of animal life, with special reference to insect pests, morphology and physiology of the higher forms of animal life and in particular of the horse, cow, sheep, and swine, agriculture with special reference to the breeding and feeding of livestock and the best mode of cultivation of farm produce, and mining and metallurgy, appointing demonstrators in each of these subjects to superintend the equipment of a laboratory and to give practical instruction therein.

(13) Establish agricultural experiment stations in connection with the department of agriculture, including at least

one in the western portion of the state, and appoint the officers and prescribe regulations for their management.

(14) Grant to students such certificates or degrees, as recommended for such students by the faculty.

(15) Confer honorary degrees upon persons other than graduates of the university in recognition of their learning or devotion to literature, art, or science when recommended thereto by the faculty: PROVIDED, That no degree shall ever be conferred in consideration of the payment of money or the giving of property of whatsoever kind.

(16) Adopt plans and specifications for university buildings and facilities or improvements thereto and employ skilled architects and engineers to prepare such plans and specifications and supervise the construction of buildings or facilities which the board is authorized to erect, and fix the compensation for such services. The board shall enter into contracts with one or more contractors for such suitable buildings, facilities, or improvements as the available funds will warrant, upon the most advantageous terms offered at a public competitive letting, pursuant to public notice under rules established by the board. The board shall require of all persons with whom they contract for construction and improvements a good and sufficient bond for the faithful performance of the work and full protection against all liens.

(17) Except as otherwise provided by law, direct the disposition of all money appropriated to or belonging to the state university.

(18) Receive and expend the money appropriated under the act of congress approved May 8, 1914, entitled "An Act to provide for cooperative agricultural extension work between the agricultural colleges in the several States receiving the benefits of the Act of Congress approved July 2, 1862, and Acts supplemental thereto and the United States Department of Agriculture" and organize and conduct agricultural extension work in connection with the state university in accordance with the terms and conditions expressed in the acts of congress.

(19) Except as otherwise provided by law, to enter into such contracts as the regents deem essential to university purposes.

(20) Acquire by lease, gift, or otherwise, lands necessary to further the work of the university or for experimental or demonstrational purposes.

(21) Establish and maintain at least one agricultural experiment station in an irrigation district to conduct investigational work upon the principles and practices of irrigational agriculture including the utilization of water and its relation to soil types, crops, climatic conditions, ditch and drain construction, fertility investigations, plant disease, insect pests, marketing, farm management, utilization of fruit byproducts, and general development of agriculture under irrigation conditions.

(22) Supervise and control the agricultural experiment station at Puyallup.

(23) Establish and maintain at Wenatchee an agricultural experiment substation for the purpose of conducting investigational work upon the principles and practices of orchard culture, spraying, fertilization, pollenization, new fruit varieties, fruit diseases and pests, byproducts, marketing, management, and general horticultural problems.

(24) Accept such gifts, grants, conveyances, devises, and bequests, whether real or personal property, in trust or otherwise, for the use or benefit of the university, its colleges, schools, or departments; and sell, lease or exchange, invest or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms of said gifts, grants, conveyances, bequests, and devises; and adopt proper rules to govern and protect the receipt and expenditure of the proceeds of all fees, and the proceeds, rents, profits, and income of all gifts, grants, conveyances, bequests, and devises.

(25) Construct when the board so determines a new foundry and a mining, physical, technological building, and fabrication shop at the university, or add to the present foundry and other buildings, in order that both instruction and research be expanded to include permanent molding and die casting with a section for new fabricating techniques, especially for light metals, including magnesium and aluminum; purchase equipment for the shops and laboratories in mechanical, electrical, and civil engineering; establish a pilot plant for the extraction of alumina from native clays and other possible light metal research; purchase equipment for a research laboratory for technological research generally; and purchase equipment for research in electronics, instrumentation, energy sources, plastics, food technology, mechanics of materials, hydraulics, and similar fields.

(26) Make and transmit to the governor and members of the legislature upon request such reports as will be helpful in providing for the institution. [2004 c 275 § 53; 1998 c 245 § 19; 1985 c 370 § 93; 1977 c 75 § 21; 1973 1st ex.s. c 154 § 47; 1969 ex.s. c 223 § 28B.30.150. Prior: (a) 1953 c 101 § 1, amending (i) 1909 c 97 p 244 § 4; 1897 c 118 § 193; 1890 p 263 § 8; RRS § 4575. (ii) 1949 c 115 § 1, part; 1909 c 97 p 245 § 5, part; 1897 c 118 § 194; 1891 c 145 § 4; Rem. Supp. 1949 § 4576, part. (iii) 1909 c 97 p 249 § 19; 1897 c 118 § 208; 1895 c 146 § 1; RRS § 4599. (iv) 1909 c 97 p 247 § 8; 1897 c 118 § 197; 1891 c 145 § 8; RRS § 4579. (v) 1909 c 97 p 247 § 9; 1897 c 118 § 198; 1891 c 145 § 9; RRS § 4580. (vi) 1915 c 125 § 1; RRS § 4583. (vii) 1909 c 97 p 250 § 20; 1897 c 118 § 209; 1891 c 145 § 17; RRS § 4600. (viii) 1909 c 97 p 250 § 21; 1897 c 118 § 210; 1891 c 145 § 18; RRS § 4601. (ix) 1909 c 228 § 1; RRS § 4588. (x) 1917 c 101 § 1; RRS § 4589. (xi) 1917 c 101 § 2; RRS § 4590. (xii) 1909 c 97 p 249 § 15; 1897 c 118 § 204; 1891 c 145 § 16; RRS § 4595. (xiii) 1909 c 97 p 244 § 3, part; 1897 c 118 § 192; 1891 c 145 § 3; RRS § 4574, part. (xiv) 1899 c 107 § 1; RRS § 4603. (xv) 1899 c 82 § 1; RRS § 4587. (xvi) 1937 c 25 § 1; RRS § 4579-1. (xvii) 1937 c 25 § 2; RRS § 4579-2. Formerly RCW 28.80.130. (b) 1961 c 25 § 1. Formerly RCW 28.80.135.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

### **28B.30.200 Morrill act funds allotted to university.**

All funds granted by the United States government under the Morrill act, passed by congress and approved July 2, 1892 [1862], together with all acts amendatory thereof and supplementary thereto, for the support and in aid of colleges of agriculture and mechanic arts, as well as experiment stations and farms and extension work in agriculture and home economics in connection with colleges of agriculture and mechanic arts

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are hereby allotted to Washington State University. [1969 ex.s. c 223 § 28B.30.200. Prior: 1917 c 11 § 2; RRS § 4584. Formerly RCW 28.80.180.]

### **28B.30.210 Acceptance of federal aid—1907 c 198—**

**Assent.** The state of Washington hereby assents to the purposes, terms, provisions and conditions of the grant of money provided in an act of congress approved March 16, 1906, said act being entitled "An Act to provide for an increased annual appropriation for agricultural experiment stations and regulating the expenditure thereof," and having for its purpose the more complete endowment and maintenance of agricultural experiment stations theretofore or thereafter established under an act of congress approved March 2, 1887. [1969 ex.s. c 223 § 28B.30.210. Prior: 1907 c 198 § 1; RRS § 4585. Formerly RCW 28.80.190.]

### **28B.30.215 Acceptance of certain federal aid.**

Said annual sum appropriated and granted to the state of Washington in pursuance of said act of congress approved March 16, 1906, shall be paid as therein provided to the treasurer or other officer duly appointed by the board of regents of Washington State University at Pullman, Washington; and the board of regents of such university are hereby required to report thereon as the secretary of agriculture may prescribe. [1977 c 75 § 22; 1969 ex.s. c 223 § 28B.30.215. Prior: 1907 c 198 § 2; RRS § 4586. Formerly RCW 28.80.200.]

### **28B.30.220 Acceptance of federal aid—1925 ex.s. c**

**182.** The assent of the legislature of the state of Washington to the provisions of the act of congress approved February 24, 1925, entitled "An Act to authorize the more complete endowment of agricultural experiment stations and for other purposes," is hereby given. [1969 ex.s. c 223 § 28B.30.220. Prior: 1925 ex.s. c 182 § 1. Formerly RCW 28.80.205; 28.80.190, part.]

### **28B.30.250 University designated as recipient of all federal aid to agricultural experiment stations.**

The agricultural experiment stations in connection with Washington State University shall be under the direction of said board of regents of said university for the purpose of conducting experiments in agriculture according to the terms of section one of an act of congress approved March 2, 1887, and entitled "An Act to establish agricultural experiment stations in connection with the colleges established in the several states, under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto." The said university and experiment stations shall be entitled to receive all the benefits and donations made and given to similar institutions of learning in other states and territories of the United States by the legislation of the congress of the United States now in force, or that may be enacted, and particularly to the benefits and donations given by the provisions of an act of congress entitled "An Act donating public lands to the several states and territories which may provide colleges for the benefit of agricultural and mechanic arts," approved July 2, 1862, and all acts supplementary thereto, including the acts entitled "An Act to establish agricultural experiment stations in connection with colleges established in the several states under the

provisions of an act approved July 2, 1862, and of the acts supplementary thereto," which said last entitled act was approved March 2, 1887; also, "An Act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress approved July 2, 1862," which said last mentioned act was approved August 30, 1890. [1969 ex.s. c 223 § 28B.30.250. Prior: 1909 c 97 p 247 § 10; RRS § 4581; prior: 1897 c 118 § 199; 1891 c 145 § 10. Formerly RCW 28.80.210.]

**28B.30.255 University designated as recipient of all federal aid to agricultural experiment stations—Assent to congressional grants to university.** The assent of the legislature of the state of Washington is hereby given, in pursuance of the requirements of section nine of said act of congress, approved March 2, 1887, to the granting of money therein made to the establishment of experiment stations in accordance with section one of said last mentioned act, and assent is hereby given to carry out, within the state of Washington, every provision of said act. [1969 ex.s. c 223 § 28B.30.255. Prior: 1909 c 97 p 248 § 11; RRS § 4582; prior: 1897 c 118 § 200; 1891 c 145 § 11. Formerly RCW 28.80.220.]

**28B.30.270 State treasurer receiving agent of certain federal aid—Acts enumerated.** The state treasurer is designated as agent of the state of Washington to receive all federal appropriations for the land grant colleges in accordance with the following federal acts:

(1) Second Morrill act, approved August 30, 1890 (26 Stat. L. 417).

(2) Nelson amendment to the Morrill act making appropriations for the department of agriculture for the fiscal year ending June 30, 1908, approved March 4, 1907 (34 Stat. L. 1281).

(3) Title II, section 22 of the Bankhead-Jones act, approved June 29, 1935 (49 Stat. L. 436).

(4) Any subsequent federal act appropriating funds to the state of Washington or to Washington State University for a similar or related purpose. [1969 ex.s. c 223 § 28B.30.270. Prior: 1955 c 66 § 1. Formerly RCW 28.80.221.]

**28B.30.275 State treasurer receiving agent of certain federal aid—Morrill Fund.** Upon receipt of the federal grant pursuant to federal statutes, the treasurer shall deposit the same in a special trust fund to be designated "Morrill Fund" which is hereby created for the use of the designated land grant college in the teaching of agriculture and mechanic art. [1969 ex.s. c 223 § 28B.30.275. Prior: 1955 c 66 § 2. Formerly RCW 28.80.222.]

**28B.30.280 State treasurer receiving agent of certain federal aid—Withdrawals.** The board of regents of Washington State University may authorize the treasurer or comptroller of Washington State University to withdraw such federal grants for the use of the university for the purposes of such grant and in accordance with state law. [1969 ex.s. c

223 § 28B.30.280. Prior: 1955 c 66 § 3. Formerly RCW 28.80.223.]

**28B.30.285 State treasurer receiving agent of certain federal aid—Trust funds not subject to appropriation.** All federal grants received by the state treasurer pursuant to RCW 28B.30.270 shall be deemed trust funds under the control of the state treasurer and not subject to appropriation by the legislature. [1969 ex.s. c 223 § 28B.30.285. Prior: 1955 c 66 § 4. Formerly RCW 28.80.224.]

**28B.30.300 State treasurer to report annually on university assets held in trust.** It shall be the duty of the state treasurer to make a report to the board of regents of Washington State University on or as soon as practicable after the close of each fiscal year, which shall contain a complete detailed statement as to the status of any university assets held in trust by the treasurer and the annual income therefrom. [1977 c 75 § 23; 1969 ex.s. c 223 § 28B.30.300. Prior: 1899 c 9 § 2; RRS § 7850. Formerly RCW 28.80.230.]

*College funds: RCW 43.79.100 through 43.79.140.*

**28B.30.310 Department of natural resources to report annually on university trust lands transactions.** It shall be the duty of the department of natural resources to make a report to the board of regents of Washington State University on or as soon as practicable after the close of each fiscal year, which shall contain a complete detailed statement of the current status of trust land sale contracts and income for the university from trust lands managed by the department. [1988 c 128 § 6; 1977 c 75 § 24; 1969 ex.s. c 223 § 28B.30.310. Prior: 1899 c 9 § 1; RRS § 7849. Formerly RCW 28.80.240.]

**28B.30.325 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands.**

(1) Any lease of public lands with outdoor recreation potential authorized by the regents of Washington State University shall be open and available to the public for compatible recreational use unless the regents of Washington State University determine that the leased land should be closed in order to prevent damage to crops or other land cover, to improvements on the land, to the lessee, or to the general public or is necessary to avoid undue interference with carrying forward a university program. Any lessee may file an application with the regents of Washington State University to close the leased land to any public use. The regents shall cause written notice of the impending closure to be posted in a conspicuous place in the university's business office, and in the office of the county auditor in which the land is located thirty days prior to the public hearing. This notice shall state the parcel or parcels involved and shall indicate the time and place of the public hearing. Upon a determination by the regents that posting is not necessary, the lessee shall desist from posting. Upon a determination by the regents that posting is necessary, the lessee shall post his leased premises so as to prohibit recreational uses thereon. In the event any such lands are so posted, it shall be unlawful for any person to hunt or fish, or for any person other than the lessee or his immediate family to use such posted land for recreational purposes.

(2) The regents of Washington State University may insert the provisions of subsection (1) of this section in all leases hereafter issued. [1969 ex.s. c 46 § 4. Formerly RCW 28.80.246.]

**28B.30.350 Medical, health and hospital service—Authorized.** The board of regents of Washington State University is hereby granted authority to enter into such contracts, leases, or agreements as may be necessary to provide adequate medical, health, and hospital service for students of Washington State University and the people of the surrounding community and to provide adequate practice facilities for students enrolled in nursing courses. [1969 ex.s. c 223 § 28B.30.350. Prior: 1947 c 95 § 1; Rem. Supp. 1947 § 4603-20. Formerly RCW 28.80.250.]

**28B.30.355 Medical, health and hospital service—Leases, contracts and agreements.** The board of regents may lease lands, buildings, or other facilities from or to non-profit corporations or associations, and may enter into such contracts and agreements with such units, agencies, corporations, or associations as will promote the intents and purposes of RCW 28B.30.350. [1969 ex.s. c 223 § 28B.30.355. Prior: 1947 c 95 § 2; Rem. Supp. 1947 § 4603-21. Formerly RCW 28.80.260.]

**28B.30.499 High-technology education and training.** See chapter 28B.65 RCW.

**28B.30.500 Masters and doctorate level degrees in technology authorized—Review by higher education coordinating board.** The board of regents of Washington State University may offer masters level and doctorate level degrees in technology subject to review and approval by the higher education coordinating board. [1985 c 370 § 83; 1983 1st ex.s. c 72 § 12.]

**Effective date—Short title—1983 1st ex.s. c 72:** See RCW 28B.65.905 and 28B.65.900.

**28B.30.520 Statewide off-campus telecommunications system—Authorized—Purpose, education in high-technology fields—Availability of facilities.** The board of regents of Washington State University is hereby authorized to establish a statewide off-campus telecommunications system to provide for graduate and continuing education in high-technology fields to citizens of the state of Washington. The statewide telecommunications system shall be administered by Washington State University with the advice of the high-technology coordinating board. Washington State University shall make the facilities of the statewide telecommunications system available to other institutions of higher education when specific program needs so require. [1983 1st ex.s. c 72 § 14.]

**Effective date—Short title—1983 1st ex.s. c 72:** See RCW 28B.65.905 and 28B.65.900.

**28B.30.530 Small business development center—Services—Use of funds.** (1) The board of regents of Washington State University shall establish the Washington State University small business development center.

(2) The center shall provide management and technical assistance including but not limited to training, counseling, and research services to small businesses throughout the state. The center shall work with public and private community development and economic assistance agencies and shall work towards the goal of coordinating activities with such agencies to avoid duplication of services.

(3) The administrator of the center may contract with other public or private entities for the provision of specialized services.

(4) The small business and development center may accept and disburse federal grants or federal matching funds or other funds or donations from any source when made, granted, or donated to carry out the center's purposes. [1984 c 77 § 1.]

**28B.30.533 Construction of RCW 28B.30.530—Conflict with federal requirements.** If any part of RCW 28B.30.530 is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of RCW 28B.30.530 is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of RCW 28B.30.530 in its application to the agencies concerned. [1984 c 77 § 2.]

**28B.30.535 International marketing program for agricultural commodities and trade (IMPACT) center created—Primary functions.** There is created an international marketing program for agricultural commodities and trade (IMPACT) center at Washington State University.

In carrying out each of its responsibilities under RCW 28B.30.537, the primary functions of the center shall be: Providing practical solutions to marketing-related problems; and developing and disseminating information which is directly applicable to the marketing of agricultural commodities and goods from this state in foreign countries or to introducing the production of commodities and goods in this state for marketing in foreign countries. [1985 c 39 § 1; 1984 c 57 § 1.]

**Effective date—1985 c 39:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1985." [1985 c 39 § 10.]

**28B.30.537 IMPACT center—Duties.** The IMPACT center shall:

(1) Coordinate the teaching, research, and extension expertise of the college of agriculture and home economics at Washington State University to assist in:

(a) The design and development of information and strategies to expand the long-term international markets for Washington agricultural products; and

(b) The dissemination of such information and strategies to Washington exporters, overseas users, and public and private trade organizations;

(2) Research and identify current impediments to increased exports of Washington agricultural products, and determine methods of surmounting those impediments and

opportunities for exporting new agricultural products and commodities to foreign markets;

(3) Prepare curricula to present and distribute information concerning international trade in agricultural commodities and products to students, exporters, international traders, and the public;

(4) Provide high-quality research and graduate education and professional nondegree training in international trade in agricultural commodities in cooperation with other existing programs;

(5) Ensure that activities of the center adequately reflect the objectives for the state's agricultural market development programs established by the department of agriculture as the lead state agency for such programs under chapter 43.23 RCW; and

(6) Link itself through cooperative agreements with the center for international trade in forest products at the University of Washington, the state department of agriculture, the department of community, trade, and economic development, Washington's agriculture businesses and associations, and other state agency data collection, processing, and dissemination efforts. [1998 c 245 § 20; 1995 c 399 § 28. Prior: 1987 c 505 § 14; 1987 c 195 § 3; 1985 c 39 § 2; 1984 c 57 § 2.]

**Effective date—1985 c 39:** See note following RCW 28B.30.535.

**28B.30.539 IMPACT center—Director.** The IMPACT center shall be administered by a director appointed by the dean of the college of agriculture and home economics of Washington State University. [1985 c 39 § 3; 1984 c 57 § 3.]

**Effective date—1985 c 39:** See note following RCW 28B.30.535.

**28B.30.541 IMPACT center—Use of research and services—Fees.** The governor, the legislature, state agencies, and the public may use the IMPACT center's trade policy research and advisory services as may be needed. The IMPACT center shall establish a schedule of fees for actual services rendered. [1985 c 39 § 4; 1984 c 57 § 6.]

**Effective date—1985 c 39:** See note following RCW 28B.30.535.

**28B.30.543 IMPACT center—Contributions and support.** The IMPACT center shall aggressively solicit financial contributions and support from nonstate sources, including the agricultural industries and producer organizations and individuals, to help fund its research and education programs, and shall use previously appropriated funds of Washington State University and existing resources as much as is possible to further the center's activities. [1985 c 39 § 5; 1984 c 57 § 7.]

**Effective date—1985 c 39:** See note following RCW 28B.30.535.

**28B.30.600 Tree fruit research center facility, financing—Bonds, authorization conditional—Amount—Discharge.** For the purpose of funding and providing the planning, construction, furnishing and equipping, together with all improvements thereon, of an office-laboratory facility at Washington State University Tree Fruit Research Center, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one million nine hundred fifty thousand dollars, or so much thereof

as may be required, to finance the project defined in RCW 28B.30.600 through 28B.30.619 as now or hereafter amended and all costs incidental thereto, but only if the state finance committee determines that the interest on the bonds will be exempt from federal income tax. Such bonds shall be paid and discharged within thirty years of the date of issuance in accordance with Article VIII, section 1 of the state Constitution. [1977 c 32 § 1; 1975 1st ex.s. c 109 § 1; 1974 ex.s. c 109 § 1.]

**Severability—1975 1st ex.s. c 109:** "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 109 § 7.]

**Severability—1974 ex.s. c 109:** "If any provision of this 1974 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 109 § 14.]

**28B.30.602 Tree fruit research center facility, financing—Bonds, committee to control issuance, sale and retirement of.** The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance committee. The committee is authorized to prescribe the form, terms, conditions, and covenants of the bonds, the time or times of sale of all or any portion of them, and the conditions and manner of their sale, issuance and redemption. None of the bonds herein authorized shall be sold for less than the par value thereof.

The committee may provide that the bonds, or any of them, may be called prior to the maturity date thereof under such terms, conditions, and provisions as it may determine and may authorize the use of facsimile signatures in the issuance of such bonds and notes, if any. Such bonds shall be payable at such places as the committee may provide. [1974 ex.s. c 109 § 2.]

**Severability—1974 ex.s. c 109:** See note following RCW 28B.30.600.

**28B.30.604 Tree fruit research center facility, financing—Anticipation notes authorized—Use of proceeds.** At the time the state finance committee determines to issue such bonds or a portion thereof, it may, pending the issuance of such bonds, issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of the bonds, which notes shall be designated as "anticipation notes". The proceeds from the sale of bonds and notes authorized by RCW 28B.30.600 through 28B.30.619 shall be used exclusively for the purposes specified in RCW 28B.30.600 through 28B.30.619 and for the payment of expenses incurred in the issuance and sale of bonds: PROVIDED, That such portion of the proceeds of the sale of such bonds as may be required for the payment of the principal and interest on such anticipation notes as have been issued, shall be deposited in the bond redemption fund created in RCW 28B.30.610. [1980 c 32 § 5; 1975 1st ex.s. c 109 § 2; 1974 ex.s. c 109 § 3.]

**Severability—1975 1st ex.s. c 109:** See note following RCW 28B.30.600.

**Severability—1974 ex.s. c 109:** See note following RCW 28B.30.600.

**28B.30.606 Tree fruit research center facility, financing—Administration of proceeds from sale of bonds or**

**notes—Investment of surplus funds.** The principal proceeds from the sale of the bonds or notes deposited in the office-laboratory construction account of the general fund shall be administered by Washington State University. Whenever there is a surplus of funds available in the office-laboratory construction account of the general fund to meet current expenditures payable therefrom, the state finance committee may invest such portion of said funds as the university deems appropriate in securities issued by the United States or agencies of the United States government as defined by RCW 43.84.080 (1) and (4). All income received from such investments shall be deposited to the credit of the bond retirement fund created in RCW 28B.30.610. [1975 1st ex.s. c 109 § 3; 1974 ex.s. c 109 § 4.]

**Severability—1975 1st ex.s. c 109:** See note following RCW 28B.30.600.

**Severability—1974 ex.s. c 109:** See note following RCW 28B.30.600.

**28B.30.608 Tree fruit research center facility, financing—Security for bonds issued.** Bonds issued under the provisions of RCW 28B.30.600 through 28B.30.619 as now or hereafter amended shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. [1977 c 32 § 2; 1974 ex.s. c 109 § 5.]

**Severability—1974 ex.s. c 109:** See note following RCW 28B.30.600.

**28B.30.610 Tree fruit research center facility, financing—Office-laboratory facilities bond redemption fund created, use.** The office-laboratory facilities bond redemption fund is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of the principal of and interest on the bonds and notes authorized by RCW 28B.30.600 through 28B.30.619. The state finance committee, shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet such bond retirement and interest requirements which may exceed cash available in the bond redemption fund from rental revenues, and on July 1st of each year the state treasurer shall deposit such amount in the office-laboratory facilities bond redemption fund from any general state revenues received in the state treasury and certified by the state treasurer to be general state revenues. [1975 1st ex.s. c 109 § 4; 1974 ex.s. c 109 § 6.]

**Severability—1975 1st ex.s. c 109:** See note following RCW 28B.30.600.

**Severability—1974 ex.s. c 109:** See note following RCW 28B.30.600.

**28B.30.612 Tree fruit research center facility, financing—Rights of owner and holder of bonds.** The owner and holder of any of the bonds authorized by RCW 28B.30.600 through 28B.30.619 may by a mandamus or other appropriate proceeding require the transfer and payment of funds as directed herein. [1974 ex.s. c 109 § 7.]

**Severability—1974 ex.s. c 109:** See note following RCW 28B.30.600.

**28B.30.614 Tree fruit research center facility, financing—Lease agreement prerequisite to sale of bonds—Dis-**

**position of lease payments.** None of the bonds authorized in RCW 28B.30.600 through 28B.30.619 as now or hereafter amended shall be sold unless a long-term lease agreement shall be entered into between Washington State University and the general services administration of the federal government providing for the occupancy of this facility by the United States Department of Agriculture and the National Weather Service for tree fruit research similar to the research performed at the Washington State University Tree Fruit Center. The lease payments by the federal government shall be in an amount at least equal to the amount required to provide for the amortization of the principal of and interest on the bonds authorized by RCW 28B.30.600 through 28B.30.619 as now or hereafter amended as certified by the state finance committee, in addition to custodial, maintenance and utility services costs. A portion of the annual lease payments received by the university equal to the amount required for payment of the principal and interest on the bonds shall be forthwith remitted by the university and deposited in the state treasury to the credit of the state general fund. [1977 c 32 § 3; 1975 1st ex.s. c 109 § 5; 1974 ex.s. c 109 § 8.]

**Severability—1975 1st ex.s. c 109:** See note following RCW 28B.30.600.

**Severability—1974 ex.s. c 109:** See note following RCW 28B.30.600.

**28B.30.616 Tree fruit research center facility, financing—Bonds, legislature may provide additional means for payment.** The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 28B.30.600 through 28B.30.619, and RCW 28B.30.600 through 28B.30.619 shall not be deemed to provide an exclusive method for such payments. [1974 ex.s. c 109 § 9.]

**Severability—1974 ex.s. c 109:** See note following RCW 28B.30.600.

**28B.30.618 Tree fruit research center facility, financing—Bonds as legal investment for public funds.** The bonds authorized in RCW 28B.30.600 through 28B.30.619 shall be a legal investment for all state funds or funds under state control and for all funds of any other public body. [1974 ex.s. c 109 § 10.]

**Severability—1974 ex.s. c 109:** See note following RCW 28B.30.600.

**28B.30.619 Tree fruit research center facility, financing—Appropriation.** There is hereby appropriated to Washington State University from the office-laboratory construction account of the general fund, out of the sale of the bonds or notes authorized by RCW 28B.30.600 through 28B.30.619, the sum of one million nine hundred fifty thousand dollars, or such lesser amount as may be required, to finance the planning, construction, furnishing and equipping, together with all improvements thereon, of the facility authorized by RCW 28B.30.600 through 28B.30.619. [1975 1st ex.s. c 109 § 6; 1974 ex.s. c 109 § 11.]

**Severability—1975 1st ex.s. c 109:** See note following RCW 28B.30.600.

**Severability—1974 ex.s. c 109:** See note following RCW 28B.30.600.

**28B.30.620 Tree fruit research center facility, financing—Alternatives authorized.** In the event the state finance committee determines that interest on the bonds authorized in RCW 28B.30.600 through 28B.30.619 as now or hereafter amended will not be exempt from federal income tax, Washington State University may issue its revenue bonds as provided in RCW 28B.10.300 through 28B.10.325 to pay the cost of the facilities authorized by RCW 28B.30.600 as now or hereafter amended, and the lease rental received from the federal government shall be retained by the university instead of being deposited in the state treasury as provided by RCW 28B.30.614 as now or hereafter amended.

In addition to the authority granted to the state treasurer by \*RCW 43.84.100, with the consent of the state finance committee the state treasurer may make a loan from funds in the state treasury in the manner generally prescribed by \*RCW 43.84.100 to the local construction fund established by Washington State University for the office-laboratory building authorized by RCW 28B.30.600 through 28B.30.619 as now or hereafter amended, should a determination be made for Washington State University to issue revenue bonds. [1977 c 32 § 4.]

**\*Reviser's note:** RCW 43.84.100 was repealed by 1985 c 57 § 90, effective July 1, 1985.

**28B.30.630 Puget Sound water quality field agents program—Definitions.** As used in RCW 28B.30.630 through 28B.30.638 the following definitions apply:

(1) "Sea grant" means the Washington state sea grant program.

(2) "Cooperative extension" means the cooperative extension service of Washington State University. [1990 c 289 § 1.]

**28B.30.632 Puget Sound water quality field agents program—Local field agents.** (1) The sea grant and cooperative extension shall jointly administer a program to provide field agents to work with local governments, property owners, and the general public to increase the propagation of shellfish, and to address Puget Sound water quality problems within Kitsap, Mason, and Jefferson counties that may limit shellfish propagation potential. The sea grant and cooperative extension shall each make available the services of no less than two agents within these counties for the purposes of this section.

(2) The responsibilities of the field agents shall include but not be limited to the following:

(a) Provide technical assistance to property owners, marine industry owners and operators, and others, regarding methods and practices to address nonpoint and point sources of pollution of Puget Sound;

(b) Provide technical assistance to address water quality problems limiting opportunities for enhancing the recreational harvest of shellfish;

(c) Provide technical assistance in the management and increased production of shellfish to facility operators or to those interested in establishing an operation;

(d) Assist local governments to develop and implement education and public involvement activities related to Puget Sound water quality;

(e) Assist in coordinating local water quality programs with region-wide and statewide programs;

(f) Provide information and assistance to local watershed committees.

(3) The sea grant and cooperative extension shall mutually coordinate their field agent activities to avoid duplicative efforts and to ensure that the full range of responsibilities under RCW 28B.30.632 through \*28B.30.636 are carried out. They shall consult with the \*\*Puget Sound water quality authority and ensure consistency with the authority's water quality management plan.

(4) Recognizing the special expertise of both agencies, the sea grant and cooperative extension shall cooperate to divide their activities as follows:

(a) Sea grant shall have primary responsibility to address water quality issues related to activities within Puget Sound, and to provide assistance regarding the management and improvement of shellfish production; and

(b) Cooperative extension shall have primary responsibility to address upland and freshwater activities affecting Puget Sound water quality and associated watersheds. [1990 c 289 § 2.]

**Reviser's note:** \*(1) RCW 28B.30.636 was repealed by 1998 c 245 § 176.

\*\* (2) The Puget Sound water quality authority and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1995, and repealed June 30, 1996. See 1990 c 115 §§ 11 and 12. Powers, duties, and functions of the Puget Sound water quality authority pertaining to cleanup and protection of Puget Sound transferred to the Puget Sound action team by 1996 c 138 § 11. See RCW 90.71.903.

**28B.30.634 Puget Sound water quality field agents program—Matching requirements.** Sea grant and cooperative extension shall require a match from nonstate sources of at least twenty-five percent of the cost of the services provided, and not exceeding fifty percent of the cost. The match may be either monetary compensation or in-kind services, such as the provision for office space or clerical support. Only direct costs of providing the services, excluding costs of administrative overhead, may be included in the estimate of costs. [1990 c 289 § 3.]

**28B.30.638 Puget Sound water quality field agents program—Captions not law.** Captions as used in RCW 28B.30.630 through 28B.30.638 constitute no part of the law. [1990 c 289 § 7.]

**28B.30.640 Climate and rural energy development center—Definitions.** The definitions in this section apply throughout RCW 28B.30.642 and 28B.30.644 unless the context clearly requires otherwise.

(1) "Center" means the Washington climate and rural energy development center.

(2) "Clean energy activities" means: (a) Activities related to renewable resources including electricity generation facilities fueled by water, wind, solar energy, geothermal energy, landfill gas, or bioenergy; (b) programs and industries promoting research, development, or commercialization of fuel cells and qualified alternative energy resources as defined in RCW 19.29A.090; (c) energy efficiency measures or technologies; and (d) technologies designed to signifi-

cantly reduce the use of or emissions from motor vehicle fuels.

(3) "Climate change" means a change of climate attributed directly or indirectly to human activity that alters the composition of the global atmosphere. [2002 c 250 § 2.]

**Findings—2002 c 250:** "The legislature makes the following findings:

(1) A vast and growing body of research and information about changes to our global, national, and regional climates is being produced by a variety of sources.

(2) Much of this research and information holds important value in helping scientists, citizens, businesses, and public policymakers understand how Washington may be affected by these changes.

(3) It is in the public interest to support efforts to promote discussion and understanding of the potential effects of climate change on Washington's water supply, agriculture, natural resources, coastal infrastructure, public health, and economy, and to encourage the formulation of sound recommendations for avoiding, mitigating, and responding to those effects.

(4) The state should support the establishment of a central clearinghouse to serve as an impartial, unbiased source of credible and reliable information about climate change for the public." [2002 c 250 § 1.]

**Effective date—2002 c 250:** "This act takes effect July 1, 2002." [2002 c 250 § 6.]

**28B.30.642 Climate and rural energy development center—Authorized.** The legislature authorizes the establishment of the Washington climate and rural energy development center in the Washington State University energy program to serve as a central, nonregulatory clearinghouse of credible and reliable information addressing various aspects of climate change and clean energy activities. [2002 c 250 § 3.]

**Findings—Effective date—2002 c 250:** See notes following RCW 28B.30.640.

**28B.30.644 Climate and rural energy development center—Funding.** The center shall be funded through grants, and voluntary monetary and in-kind contributions. [2002 c 250 § 4.]

**Findings—Effective date—2002 c 250:** See notes following RCW 28B.30.640.

#### FINANCING BUILDINGS AND FACILITIES—1961 ACT

**28B.30.700 Construction, remodeling, improvement, financing through bonds, authorized.** The board of regents of Washington State University is empowered, in accordance with the provisions of RCW 28B.30.700 through 28B.30.780, to provide for the construction, completion, reconstruction, remodeling, rehabilitation and improvement of buildings and facilities authorized by the legislature for the use of the university and to finance the payment thereof by bonds payable out of a special fund from revenues hereafter derived from the payment of building fees, gifts, bequests or grants, and such additional funds as the legislature may provide. [1985 c 390 § 41; 1969 ex.s. c 223 § 28B.30.700. Prior: 1961 ex.s. c 12 § 1. Formerly RCW 28.80.500.]

*Chapter not to repeal, override, or limit other statutes or actions: RCW 28B.31.100.*

**28B.30.710 Definitions.** The following terms, whenever used or referred to in RCW 28B.30.700 through 28B.30.780, shall have the following meaning, excepting in those instances where the context clearly indicates otherwise:

(2004 Ed.)

(1) The word "board" means the board of regents of Washington State University.

(2) The words "building fees" mean the building fees charged students registering at the university, but shall not mean special tuition or other fees charged such students or fees, charges, rentals, and other income derived from any or all revenue-producing lands, buildings, and facilities of the university, heretofore or hereafter acquired, constructed or installed, including but not limited to income from rooms, dormitories, dining rooms, hospitals, infirmaries, housing or student activity buildings, vehicular parking facilities, land or the appurtenances thereon.

(3) The words "bond retirement fund" mean the special fund created by RCW 28B.30.700 through 28B.30.780, to be known as the Washington State University bond retirement fund.

(4) The word "bonds" means the bonds payable out of the bond retirement fund.

(5) The word "projects" means the construction, completion, reconstruction, remodeling, rehabilitation, or improvement of any building or other facility of the university authorized by the legislature at any time and to be financed by the issuance and sale of bonds. [1985 c 390 § 42; 1969 ex.s. c 223 § 28B.30.710. Prior: 1961 ex.s. c 12 § 2. Formerly RCW 28.80.510.]

*Revenue bonds for construction of buildings and acquisition of facilities: RCW 28B.10.300 through 28B.10.330.*

**28B.30.720 Contracts, issuance of evidences of indebtedness, bonds, acceptance of grants.** In addition to the powers conferred under existing law, the board is authorized and shall have the power:

(1) To contract for the construction, completion, reconstruction, remodeling, rehabilitation and improvement of such buildings or other facilities of the university as are or may be authorized by the legislature.

(2) To finance the same by the issuance of bonds secured by the pledge of any or all of the revenues and receipts of the bond retirement fund.

(3) Without limitation of the foregoing, to accept grants from the United States government, or any federal or state agency or instrumentality, or any public or private corporation, association, or person to aid in defraying the costs of any such projects. [1969 ex.s. c 223 § 28B.30.720. Prior: 1963 c 182 § 3; 1961 ex.s. c 12 § 3. Formerly RCW 28.80.520.]

*Chapter not to repeal, override, or limit other statutes or actions: RCW 28B.31.100.*

**28B.30.730 Bonds—Issuance, sale, form, term, interest—Covenants—Deposit of proceeds.** For the purpose of financing the cost of any projects, the board is hereby authorized to adopt the resolution or resolutions and prepare all other documents necessary for the issuance, sale and delivery of the bonds or any part thereof at such time or times as it shall deem necessary and advisable. Said bonds:

(1) Shall not constitute

(a) An obligation, either general or special, of the state;

or

(b) A general obligation of Washington State University or of the board;

(2) Shall be

- (a) Either registered or in coupon form; and
- (b) Issued in denominations of not less than one hundred dollars; and
- (c) Fully negotiable instruments under the laws of this state; and
- (d) Signed on behalf of the university by the president of the board, attested by the secretary or the treasurer of the board, have the seal of the university impressed thereon or a facsimile of such seal printed or lithographed in the bottom border thereof, and the coupons attached thereto shall be signed with the facsimile signatures of such president and secretary;
- (3) Shall state
  - (a) The date of issue; and
  - (b) The series of the issue and be consecutively numbered within the series; and
  - (c) That the bond is payable both principal and interest solely out of the bond retirement fund;
  - (4) Each series of bonds shall bear interest, payable either annually or semiannually, as the board may determine;
  - (5) Shall be payable both principal and interest out of the bond retirement fund;
  - (6) Shall be payable at such times over a period of not to exceed forty years from date of issuance, at such place or places, and with such reserved rights of prior redemption, as the board may prescribe;
  - (7) Shall be sold in such manner and at such price as the board may prescribe;
  - (8) Shall be issued under and subject to such terms, conditions and covenants providing for the payment of the principal thereof and interest thereon and such other terms, conditions, covenants and protective provisions safeguarding such payment, not inconsistent with RCW 28B.30.700 through 28B.30.780, and as found to be necessary by the board for the most advantageous sale thereof, which may include but not be limited to:
    - (a) A covenant that the building fees shall be established, maintained and collected in such amounts that will provide money sufficient to pay the principal of and interest on all bonds payable out of the bond retirement account, to set aside and maintain the reserves required to secure the payment of such principal and interest, and to maintain any coverage which may be required over such principal and interest;
    - (b) A covenant that a reserve account shall be created in the bond retirement fund to secure the payment of the principal of and interest on all bonds issued and a provision made that certain amounts be set aside and maintained therein;
    - (c) A covenant that sufficient moneys may be transferred from the Washington State University building account to the bond retirement account when ordered by the board of regents in the event there is ever an insufficient amount of money in the bond retirement account to pay any installment of interest or principal and interest coming due on the bonds or any of them;
    - (d) A covenant fixing conditions under which bonds on a parity with any bonds outstanding may be issued.

The proceeds of the sale of all bonds shall be deposited in the state treasury to the credit of the Washington State University building account and shall be used solely for paying the costs of the projects. The Washington State University building account shall be credited with the investment

income derived pursuant to RCW 43.84.080 on the investible balances of scientific permanent fund and agricultural permanent fund, less the allocation to the state treasurer's service fund pursuant to RCW 43.08.190. During the 2001-2003 fiscal biennium, the legislature may transfer from the Washington State University building account to the state general fund such amounts as reflect the excess fund balance of the account. [2002 c 238 § 302; 1991 sp.s. c 13 § 50; 1985 c 390 § 43; 1972 ex.s. c 25 § 2; 1970 ex.s. c 56 § 28; 1969 ex.s. c 232 § 102; 1969 ex.s. c 223 § 28B.30.730. Prior: 1961 ex.s. c 12 § 4. Formerly RCW 28.80.530.]

**Severability—2002 c 238:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 238 § 307.]

**Effective date—2002 c 238:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 238 § 308.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

*Chapter not to repeal, override, or limit other statutes or actions: RCW 28B.31.100.*

**28B.30.740 Washington State University bond retirement fund—Composition—Pledge of building fees.** For the purpose of paying and securing the payment of the principal of and interest on the bonds as the same shall become due, there shall be paid into the state treasury and credited to a special trust fund to be known as the Washington State University bond retirement fund, which fund is hereby created in the state treasury, the following:

(1) One-half of such building fees as the board may from time to time determine, or such larger portion as may be necessary to prevent default in the payments required to be made out of the bond retirement fund;

(2) Any grants which may be made, or may become available, for the purpose of furthering the construction of any authorized projects, or for the repayment of the costs thereof;

(3) Such additional funds as the legislature may provide.

Said bond retirement fund shall be kept segregated from all moneys in the state treasury and shall, while any of such bonds or any interest thereon remain unpaid, be available solely for the payment thereof except as provided in subdivision (5) of RCW 28B.30.750. As a part of the contract of sale of such bonds, the board shall undertake to charge and collect building fees and to deposit the portion of such fees in the bond retirement fund in amounts which will be sufficient to pay the principal of, and interest on all such bonds outstanding. [1985 c 390 § 44; 1969 ex.s. c 223 § 28B.30.740. Prior: 1961 ex.s. c 12 § 5. Formerly RCW 28.80.540.]

*Chapter not to repeal, override, or limit other statutes or actions: RCW 28B.31.100.*

**28B.30.741 Washington State University bond retirement fund—Disposition of certain revenues from scientific school lands.** All moneys received from the lease or rental of lands set apart by the enabling act for a scientific

school; all interest or income arising from the proceeds of the sale of such lands or of the timber, fallen timber, stone, gravel or other valuable material thereon, except for investment income derived pursuant to RCW 43.84.080 and, less the allocation to the state investment board expense account pursuant to RCW 43.33A.160; and all moneys received as interest on deferred payments on contracts for the sale of such lands shall be deposited in the "Washington State University bond retirement fund" to be expended for the purposes set forth in RCW 28B.30.740. [1991 sp.s. c 13 § 76; 1969 ex.s. c 223 § 28B.30.741. Prior: 1965 c 77 § 1. Formerly RCW 28.80.541.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

*Chapter not to repeal, override, or limit other statutes or actions:* RCW 28B.31.100.

**28B.30.742 Washington State University bond retirement fund—Disposition of certain revenues from agricultural college lands.** Whenever federal law shall permit all moneys received from the lease or rental of lands set apart by the enabling act for an agricultural college, all interest or income arising from the proceeds of the sale of such lands or of the timber, fallen timber, stone, gravel or other valuable material thereon, except for investment income derived pursuant to RCW 43.84.080 and, less the allocation to the state investment board expense account pursuant to RCW 43.33A.160; and all moneys received as interest on deferred payments on contracts for the sale of such lands shall be deposited in the Washington State University bond retirement fund to be expended for the purposes set forth in RCW 28B.30.740. [1991 sp.s. c 13 § 77; 1969 ex.s. c 223 § 28B.30.742. Prior: 1965 c 77 § 2. Formerly RCW 28.80.542.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

*Chapter not to repeal, override, or limit other statutes or actions:* RCW 28B.31.100.

**28B.30.750 Additional powers of board—Issuance of bonds, investments, transfer of funds, etc.** The board is hereby empowered:

- (1) To reserve the right to issue bonds later on a parity with any bonds being issued;
- (2) To authorize the investing of moneys in the bond retirement fund and any reserve account therein;
- (3) To authorize the transfer of money from the Washington State University building account to the bond retirement fund when necessary to prevent a default in the payments required to be made out of such fund;
- (4) To create a reserve account or accounts in the bond retirement fund to secure the payment of the principal of and interest on any bonds;

(5) To authorize the transfer to the Washington State University building account of any money on deposit in the bond retirement fund in excess of debt service for a period of three years from the date of such transfer on all outstanding bonds payable out of such fund. [1969 ex.s. c 223 § 28B.30.750. Prior: 1961 ex.s. c 12 § 6. Formerly RCW 28.80.550.]

(2004 Ed.)

*Chapter not to repeal, override, or limit other statutes or actions:* RCW 28B.31.100.

**28B.30.760 Refunding bonds.** The board is hereby empowered to issue refunding bonds to provide funds to refund any or all outstanding bonds payable from the bond retirement fund and to pay any redemption premium payable on such outstanding bonds being refunded. Such refunding bonds may be issued in the manner and on terms and conditions and with the covenants permitted by RCW 28B.30.700 through 28B.30.780 for the issuance of bonds. The refunding bonds shall be payable out of the bond retirement fund and shall not constitute an obligation either general or special, of the state or a general obligation of Washington State University or the board. The board may exchange the refunding bonds at par for the bonds which are being refunded or may sell them in such manner, at such price and at such rate or rates of interest as it deems for the best interest of the university. [1970 ex.s. c 56 § 29; 1969 ex.s. c 232 § 103; 1969 ex.s. c 223 § 28B.30.760. Prior: 1961 ex.s. c 12 § 7. Formerly RCW 28.80.560.]

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

*Chapter not to repeal, override, or limit other statutes or actions:* RCW 28B.31.100.

**28B.30.770 Bonds not general obligations—Legislature may provide additional means of payment.** The bonds authorized to be issued pursuant to the provisions of RCW 28B.30.700 through 28B.30.780 shall not be general obligations of the state of Washington, but shall be limited obligation bonds payable only from the special fund created for their payment. The legislature may provide additional means for raising money for the payment of interest and principal of said bonds. RCW 28B.30.700 through 28B.30.780 shall not be deemed to provide an exclusive method for such payment. The power given to the legislature by this section to provide additional means for raising money is permissive, and shall not in any way be construed as a pledge of the general credit of the state of Washington. [1969 ex.s. c 223 § 28B.30.770. Prior: 1961 ex.s. c 12 § 8. Formerly RCW 28.80.570.]

*Chapter not to repeal, override, or limit other statutes or actions:* RCW 28B.31.100.

**28B.30.780 Other laws not repealed or limited.** RCW 28B.30.700 through 28B.30.780 is concurrent with other legislation with reference to providing funds for the construction of buildings at Washington State University, and is not to be construed as repealing or limiting any existing provision of law with reference thereto. [1969 ex.s. c 223 § 28B.30.780. Prior: 1961 ex.s. c 12 § 9. Formerly RCW 28.80.580.]

*Chapter not to repeal, override, or limit other statutes or actions:* RCW 28B.31.100.

**28B.30.800 Acquisition, construction, equipping and betterment of lands, buildings and facilities at universities and The Evergreen State College.** See RCW 28B.10.300 through 28B.10.330.

**28B.30.810 Dairy/forage and agricultural research facility—Rainier school farm—Revolving fund—Lease of herd, lands, authorized.** (1) Washington State University shall establish and operate a dairy/forage and agricultural research facility at the Rainier school farm.

(2) Local funds generated through operation of this facility shall be managed in a revolving fund, established herewith, by the university. This fund shall consist of all moneys received in connection with the operation of the facility and any moneys appropriated to the fund by law. Disbursements from the revolving fund shall be on authorization of the president of the university or the president's designee. In order to maintain an effective expenditure and revenue control, this fund, to be known as the dairy/forage facility revolving fund, shall be subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

(3) In the event state funding is not sufficient to operate the dairy cattle herd, the university is authorized to lease the herd, together with the land necessary to maintain the same, for such period and upon such terms as the university board of regents shall deem proper. [1988 c 57 § 1; 1981 c 238 § 4.]

**Effective date—Savings—Liabilities, rights, actions, contracts—1981 c 238:** See notes following RCW 72.01.140.

**28B.30.820 Dairy/forage and agricultural research facility—Transfer of property and facilities for.** Washington State University shall assume cognizance of all real property, improvements thereon, livestock, equipment, supplies, and other items transferred by the secretary of social and health services pursuant to RCW 72.01.142.

The secretary of social and health services and the university may negotiate for a division of services and expenses related to road maintenance, water, and sewer services and buildings and grounds included in the transfer pursuant to RCW 72.01.142 or on other matters concerning this transfer. Any differences which cannot be agreed upon shall be resolved by the office of financial management and certify the same to the state agencies concerned. [1981 c 238 § 3.]

**Effective date—Savings—Liabilities, rights, actions, contracts—1981 c 238:** See notes following RCW 72.01.140.

**28B.30.900 Transfer of energy education, applied research, and technology transfer programs from state energy office.** (1) All powers, duties, and functions of the state energy office under RCW 43.21F.045 relating to implementing energy education, applied research, and technology transfer programs shall be transferred to Washington State University.

(2) The specific programs transferred to Washington State University shall include but not be limited to the following: Renewable energy, energy software, industrial energy efficiency, education and information, energy ideas clearinghouse, and telecommunications.

(3)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the state energy office pertaining to the powers, functions, and duties transferred shall be delivered to the custody of Washington State University. All cabinets, furniture, office equipment, software, data base, motor vehicles, and other tangible property employed by the state energy office in carrying out the

powers, functions, and duties transferred shall be made available to Washington State University.

(b) Any appropriations made to, any other funds provided to, or any grants made to or contracts with the state energy office for carrying out the powers, functions, and duties transferred shall, on July 1, 1996, be transferred and credited to Washington State University.

(c) Whenever any question arises as to the transfer of any funds, books, documents, records, papers, files, software, data base, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, an arbitrator mutually agreed upon by the parties in dispute shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(d) All rules and all pending business before the state energy office pertaining to the powers, functions, and duties transferred shall be continued and acted upon by Washington State University. All existing contracts, grants, and obligations, excluding personnel contracts and obligations, shall remain in full force and shall be assigned to and performed by Washington State University.

(e) The transfer of the powers, duties, and functions of the state energy office does not affect the validity of any act performed before July 1, 1996.

(f) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of the office of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation.

(4) Washington State University shall enter into an inter-agency agreement with the department of community, trade, and economic development regarding the relationship between policy development and public outreach. The department of community, trade, and economic development shall provide Washington State University available existing and future oil overcharge restitution and federal energy block funding for a minimum period of five years to carry out energy programs. Nothing in chapter 186, Laws of 1996 prohibits Washington State University from seeking grant funding for energy-related programs directly from other entities.

(5) Washington State University shall select and appoint existing state energy office employees to positions to perform the duties and functions transferred. Employees appointed by Washington State University are exempt from the provisions of chapter 41.06 RCW unless otherwise designated by the institution. Any future vacant or new positions will be filled using Washington State University's standard hiring procedures. [1996 c 186 § 201.]

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**28B.30.901 Establishment of administrative units to coordinate energy education or energy program delivery programs.** In addition to the powers and duties transferred, Washington State University shall have the authority to establish administrative units as may be necessary to coordinate either energy education or energy program delivery programs, or both, and to revise, restructure, redirect, or eliminate programs transferred to Washington State University

based on available funding or to better serve the people and businesses of Washington state. [1996 c 186 § 202.]

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**28B.30.902 Lind dryland research unit—Income from leased property.** (1) The Washington state treasury has been named a devisee of certain property pursuant to a will executed by Cleora Neare on July 14, 1982. Under \*RCW 79.01.612, property that has been devised to the state is to be managed and controlled by the department of natural resources. The legislature hereby finds that it is in the best interest of the state to transfer part of the real property devised to the state under the will to Washington State University for use in conjunction with the Washington State University Lind dryland research unit located in Adams county and sell the remaining property for the benefit of the common schools.

(2) Washington State University is hereby granted ownership, management, and control of the real property legally described as all of Section 6, and the west half of Section 5, Township 17, Range 34 East E.W.M., Adams county, Washington, upon close of probate, or sooner if the property can be transferred without cost, other than costs properly allocated to the state as devisee under probate, to Washington State University.

Upon transfer of this property, the parcel shall become part of the Washington State University Lind dryland research unit. Any and all lease income derived from current leases on the property shall be deposited in a dedicated Washington State University local account for the benefit of the Lind dryland research unit.

(3) The department of natural resources shall sell the real property legally described as lots 28 and 29, block 10, Neilson Brothers plat, City of Lind, Adams county and the proceeds of the sale shall be deposited into the permanent common school fund. [1997 c 45 § 1.]

**\*Reviser's note:** RCW 79.01.612 was recodified as RCW 79.10.030 pursuant to 2003 c 334 § 555.

## Chapter 28B.31 RCW

### 1977 WASHINGTON STATE UNIVERSITY BUILDINGS AND FACILITIES FINANCING ACT

#### Sections

28B.31.010	Purpose—Bonds authorized—Amount—Payment.
28B.31.020	Bond anticipation notes—Authorized—Bond proceeds to apply to payment on.
28B.31.030	Form, terms, conditions, sale and covenants of bonds and notes—Pledge of state's credit.
28B.31.050	Administration of proceeds from bonds and notes.
28B.31.060	Washington State University bond retirement fund of 1977—Created—Purpose—Payment of interest and principal on bonds and notes.
28B.31.070	Transfer of moneys to state general fund from Washington State University building account.
28B.31.080	Bonds as legal investment for public funds.
28B.31.090	Prerequisite to bond issuance.
28B.31.100	Chapter not to repeal, override, or limit other statutes or actions—Transfers under RCW 28B.31.070 as subordinate.

**28B.31.010 Purpose—Bonds authorized—Amount—Payment.** For the purpose of providing needed capital improvements consisting of the acquisition, construction,

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remodeling, furnishing and equipping of state buildings and facilities for Washington State University, the state finance committee is hereby authorized to issue from time to time general obligation bonds of the state of Washington in the aggregate principal amount of four million four hundred thousand dollars, or so much thereof as shall be required to finance the capital projects relating to Washington State University as determined by the legislature in its capital appropriation act from time to time, to be paid and discharged in not more than thirty years of the date of issuance. [1977 ex.s. c 344 § 1.]

**Severability—1977 ex.s. c 344:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 344 § 12.]

**28B.31.020 Bond anticipation notes—Authorized—Bond proceeds to apply to payment on.** When the state finance committee has determined to issue such general obligation bonds or a portion thereof as authorized in RCW 28B.31.010, it may, pending the issuance thereof, issue in the name of the state temporary notes in anticipation of the issuance of such bonds, which notes shall be designated as "bond anticipation notes". Such portion of the proceeds of the sale of such bonds as may be required for the payment of the principal of and redemption premium, if any, and interest on such notes shall be applied thereto when such bonds are issued. [1977 ex.s. c 344 § 2.]

**Severability—1977 ex.s. c 344:** See note following RCW 28B.31.010.

**28B.31.030 Form, terms, conditions, sale and covenants of bonds and notes—Pledge of state's credit.** The state finance committee is authorized to prescribe the form, terms, conditions, and covenants of the bonds and/or the bond anticipation notes authorized by this chapter, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance.

Each such bond and bond anticipation note shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal thereof and interest thereon when due. [1977 ex.s. c 344 § 3.]

**Severability—1977 ex.s. c 344:** See note following RCW 28B.31.010.

**28B.31.050 Administration of proceeds from bonds and notes.** Subject to legislative appropriation, all proceeds of the bonds and/or bond anticipation notes authorized in this chapter shall be administered and expended by the board of regents of Washington State University exclusively for the purposes specified in this chapter and for the payment of the expenses incurred in connection with the sale and issuance of such bonds and bond anticipation notes. [1977 ex.s. c 344 § 5.]

**Severability—1977 ex.s. c 344:** See note following RCW 28B.31.010.

**28B.31.060 Washington State University bond retirement fund of 1977—Created—Purpose—Payment of interest and principal on bonds and notes.** The Washington State University bond retirement fund of 1977 is hereby created in the state treasury for the purpose of payment of the principal of and interest on the bonds authorized by this chapter.

Upon completion of the projects for which appropriations have been made by the legislature, any proceeds of the bonds and/or bond anticipation notes authorized by this chapter remaining in the Washington State University construction account shall be transferred by the board of regents to the Washington State University bond retirement fund of 1977 to reduce the transfer or transfers next required by RCW 28B.31.070.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amounts required in the next succeeding twelve months for the payment of the principal of and the interest coming due on such bonds and the dates on which such payments are due. The state treasurer, not less than thirty days prior to the date on which any such interest or principal and interest payment is due, shall withdraw from any general state revenues received in the state treasury and deposit in the Washington State University bond retirement fund of 1977 an amount equal to the amount certified by the state finance committee to be due on such payment date. [1977 ex.s. c 344 § 6.]

**Severability—1977 ex.s. c 344:** See note following RCW 28B.31.010.

**28B.31.070 Transfer of moneys to state general fund from Washington State University building account.** On or before June 30th of each year the board of regents of Washington State University shall cause to be accumulated in the Washington State University building account, from moneys transferred into said account from the Washington State University bond retirement fund pursuant to RCW 28B.30.750(5), an amount at least equal to the amount required in the next succeeding twelve months for the payment of the principal of and interest on the bonds issued pursuant to this chapter. Not less than thirty days prior to the date on which any such interest or principal and interest payment is due, the board of regents of Washington State University shall cause the amount so computed to be paid out of such building account to the state treasurer, for deposit into the general fund of the state treasury. [1977 ex.s. c 344 § 7.]

**Severability—1977 ex.s. c 344:** See note following RCW 28B.31.010.

**28B.31.080 Bonds as legal investment for public funds.** The bonds authorized by this chapter shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1977 ex.s. c 344 § 8.]

**Severability—1977 ex.s. c 344:** See note following RCW 28B.31.010.

**28B.31.090 Prerequisite to bond issuance.** The bonds authorized by this chapter shall be issued only after an officer of Washington State University, designated by the Washington State University board of regents, has certified, based upon his estimates of future tuition income and other factors, that an adequate balance will be maintained in the Washington State University building account to enable the board of regents to meet the requirements of RCW 28B.31.070 during the life of the bonds to be issued. [1977 ex.s. c 344 § 9.]

**Severability—1977 ex.s. c 344:** See note following RCW 28B.31.010.

**28B.31.100 Chapter not to repeal, override, or limit other statutes or actions—Transfers under RCW**

**28B.31.070 as subordinate.** No provision of this chapter shall be deemed to repeal, override, or limit any provision of RCW 28B.15.310 or 28B.30.700 through 28B.30.780, nor any provision or covenant of the proceedings of the board of regents of Washington State University heretofore or hereafter taken in the issuance of its revenue bonds secured by a pledge of its building fees and/or other revenues pursuant to such statutes. The obligation of the board of regents of Washington State University to make the transfers provided for in RCW 28B.31.070 shall be subject and subordinate to the lien and charge of such revenue bonds, and any revenue bonds hereafter issued, on such building fees and/or other revenues pledged to secure such bonds, and on the moneys in the Washington State University building account and the Washington State University bond retirement fund. [1985 c 390 § 45; 1977 ex.s. c 344 § 10.]

**Severability—1977 ex.s. c 344:** See note following RCW 28B.31.010.

## Chapter 28B.35 RCW REGIONAL UNIVERSITIES

### Sections

- 28B.35.010 Designation.
- 28B.35.050 Primary purposes—Eligibility requirements for designation as regional university.
- 28B.35.100 Trustees—Appointment—Terms—Quorum—Vacancies.
- 28B.35.105 Trustees—Organization and officers of board—Quorum.
- 28B.35.110 Trustees—Meetings of board.
- 28B.35.120 Trustees—General powers and duties of board.
- 28B.35.190 Trustees—Fire protection services.
- 28B.35.195 Treasurer—Appointment, term, duties, bonds.
- 28B.35.196 Credits—Statewide transfer policy and agreement—Establishment.
- 28B.35.200 Bachelor degrees authorized.
- 28B.35.205 Degrees through master's degrees authorized—Limitations—Honorary bachelor's or master's degrees.
- 28B.35.215 Doctorate level degrees in physical therapy authorized—Review by higher education coordinating board.
- 28B.35.230 Certificates, diplomas—Signing—Contents.
- 28B.35.300 Model schools and training departments—Purpose.
- 28B.35.305 Model schools and training departments—Trustees to estimate number of pupils required.
- 28B.35.310 Model schools and training departments—Requisitioning of pupils—President may refuse admission.
- 28B.35.315 Model schools and training departments—Report of attendance.
- 28B.35.320 High-technology education and training.
- 28B.35.350 Suspension and expulsion.
- 28B.35.370 Disposition of building fees and normal school fund revenues—Bond payments—Capital projects accounts for construction, equipment, maintenance of buildings, etc.
- 28B.35.390 Duties of president.
- 28B.35.395 President's housing allowance.
- 28B.35.400 Meetings of presidents.

### FINANCING BUILDINGS AND FACILITIES—1961 ACT

- 28B.35.700 Construction, remodeling, improvement, financing, etc.—Authorized.
- 28B.35.710 Definitions.
- 28B.35.720 Contracts, issuance of evidences of indebtedness, bonds, acceptance of grants.
- 28B.35.730 Bonds—Issuance, sale, form, term, interest, etc.—Covenants—Deposit of proceeds.
- 28B.35.740 Disposition of building fees and normal school fund revenues—Bond payments, etc.
- 28B.35.750 Funds payable into bond retirement funds—Pledge of building fees.
- 28B.35.751 Disposition of certain normal school fund revenues.
- 28B.35.760 Additional powers of board—Issuance of bonds, investments, transfer of funds, etc.
- 28B.35.770 Refunding bonds.
- 28B.35.780 Bonds not general obligation—Legislature may provide additional means of payment.
- 28B.35.790 Other laws not repealed or limited.

*Bond issue of 1977 for the refunding of outstanding limited obligation revenue bonds of institutions of higher education: Chapter 28B.14C RCW.*

*Branch campuses*

*Central Washington University—Yakima area: RCW 28B.45.060.*

*Washington State University and Eastern Washington University—Spokane area: RCW 28B.45.050.*

*British Columbia—Tuition and fees—Reciprocity with Washington: RCW 28B.15.756 and 28B.15.758.*

*Central College fund—Other revenue for support of Central Washington University: RCW 43.79.304.*

*Chapter as affecting*

*Central Washington State College building and normal school fund revenue bonds: RCW 28B.14C.120.*

*Eastern Washington State College building and normal school fund revenue bonds: RCW 28B.14C.110.*

*Western Washington State College building and normal school fund revenue bonds: RCW 28B.14C.100.*

*Commercial activities by institutions of higher education—Development of policies governing: Chapter 28B.63 RCW.*

*Development of methods and protocols for measuring educational costs—Schedule of educational cost study reports: RCW 28B.76.310.*

*Eastern College fund—Other revenue for support of Eastern Washington University: RCW 43.79.314.*

*Former state colleges of education—Moneys paid into general fund for support of: RCW 43.79.180.*

*Governing body of recognized student association at college or university, open public meetings act applicable to: RCW 42.30.200.*

*Idaho—Tuition and fees—Reciprocity with Washington: RCW 28B.15.750 through 28B.15.754.*

*Normal school grant to former state colleges of education: RCW 43.79.150.*

*Oregon—Tuition and fees—Reciprocity with Washington: RCW 28B.15.730 through 28B.15.736.*

*Western Washington fund—Other revenue for support of Western Washington University: RCW 43.79.324.*

**28B.35.010 Designation.** The regional universities shall be located and designated as follows: At Bellingham, Western Washington University; at Cheney, Eastern Washington University; at Ellensburg, Central Washington University. [1977 ex.s. c 169 § 44. Prior: 1969 ex.s. c 223 § 28B.40.010; prior: 1967 c 47 § 6; 1961 c 62 § 2; 1957 c 147 § 2; prior: (i) 1909 c 97 p 251, part; 1897 c 118 § 212; 1893 c 107 § 1; RRS § 4604, part. (ii) 1937 c 23 § 1; RRS § 4604-1. (iii) 1937 c 23 § 2; RRS § 4604-2. (iv) 1937 c 23 § 3; RRS § 4604-3. Formerly RCW 28B.40.010, part; 28.81.010.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.050 Primary purposes—Eligibility requirements for designation as regional university.** The primary purposes of the regional universities shall be to offer undergraduate and graduate education programs through the master's degree, including programs of a practical and applied nature, directed to the educational and professional needs of the residents of the regions they serve; to act as receiving institutions for transferring community college students; and to provide extended occupational and complementary studies programs that continue or are otherwise integrated with the educational services of the region's community colleges.

No college shall be eligible for designation as a regional university until it has been in operation for at least twenty years and has been authorized to offer master's degree programs in more than three fields. [1977 ex.s. c 169 § 2.]

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**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.100 Trustees—Appointment—Terms—Quorum—Vacancies.** (1) The governance of each of the regional universities shall be vested in a board of trustees consisting of eight members, one of whom shall be a student. The governor shall select the student member from a list of candidates, of at least three and not more than five, submitted by the governing body of the associated students. They shall be appointed by the governor with the consent of the senate and, except for the student member, shall hold their offices for a term of six years from the first day of October and until their successors are appointed and qualified. The student member shall hold his or her office for a term of one year from the first day of June and until his or her successor is appointed and qualified. The student member shall be a full-time student in good standing at the respective university at the time of appointment.

(2) Five members of the board constitute a quorum for the transaction of business. In case of a vacancy, or when an appointment is made after the date of expiration of the term, the governor shall fill the vacancy for the remainder of the term of the trustee whose office has become vacant or expired.

(3) Except for the term of the student member, no more than the terms of two members will expire simultaneously on the last day of September in any one year.

(4) A student appointed under this section shall excuse himself or herself from participation or voting on matters relating to the hiring, discipline, or tenure of faculty members and personnel. [1998 c 95 § 3; 1985 c 137 § 1; 1979 ex.s. c 103 § 4; 1977 ex.s. c 169 § 45. Prior: 1973 c 62 § 11; 1969 ex.s. c 223 § 28B.40.100; prior: 1967 ex.s. c 5 § 2; 1957 c 147 § 3; prior: (i) 1909 c 97 p 251 § 1, part; 1897 c 118 § 212; 1893 c 107 § 1; RRS § 4604, part. (ii) 1909 c 97 p 251 § 2; 1897 c 118 § 213; 1893 c 107 § 2; RRS § 4605. Formerly RCW 28B.40.100, part; 28.81.020.]

**Present terms not affected—Severability—1979 ex.s. c 103:** See notes following RCW 28B.20.100.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.105 Trustees—Organization and officers of board—Quorum.** Each board of regional university trustees shall elect one of its members chairman, and it shall elect a secretary, who may or may not be a member of the board. Each board shall have power to adopt bylaws for its government and for the government of the school, which bylaws shall not be inconsistent with law, and to prescribe the duties of its officers, committees and employees. A majority of the board shall constitute a quorum for the transaction of all business. [1977 ex.s. c 169 § 46. Prior: 1969 ex.s. c 223 § 28B.40.105; prior: 1909 p 252 § 3; RRS § 4606; prior: 1897 c 118 § 214; 1893 c 107 § 3. Formerly RCW 28B.40.105, part; 28.81.030 and 28.81.050(1), (2).]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.110 Trustees—Meetings of board.** Each board of regional university trustees shall hold at least two regular

meetings each year, at such times as may be provided by the board. Special meetings shall be held as may be deemed necessary, whenever called by the chairman or by a majority of the board. Public notice of all meetings shall be given in accordance with chapter 42.32 RCW. [1977 ex.s. c 169 § 47. Prior: 1969 ex.s. c 223 § 28B.40.110; prior: 1917 c 128 § 1, part; 1909 c 97 p 253 § 6, part; RRS § 4609, part; prior: 1897 c 118 § 217, part; 1893 c 107 § 6, part. Formerly RCW 28B.40.110, part; 28.81.040, part.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

*Open public meetings act: Chapter 42.30 RCW.*

**28B.35.120 Trustees—General powers and duties of board.** In addition to any other powers and duties prescribed by law, each board of trustees of the respective regional universities:

(1) Shall have full control of the regional university and its property of various kinds, except as otherwise provided by law.

(2) Shall employ the president of the regional university, his assistants, members of the faculty, and other employees of the institution, who, except as otherwise provided by law, shall hold their positions, until discharged therefrom by the board for good and lawful reason.

(3) With the assistance of the faculty of the regional university, shall prescribe the course of study in the various schools and departments thereof and publish such catalogues thereof as the board deems necessary: PROVIDED, That the state board of education shall determine the requisites for and give program approval of all courses leading to teacher certification by such board.

(4) Establish such divisions, schools or departments necessary to carry out the purposes of the regional university and not otherwise proscribed by law.

(5) Except as otherwise provided by law, may establish and erect such new facilities as determined by the board to be necessary for the regional university.

(6) May acquire real and other property as provided in RCW 28B.10.020, as now or hereafter amended.

(7) Except as otherwise provided by law, may purchase all supplies and purchase or lease equipment and other personal property needed for the operation or maintenance of the regional university.

(8) May establish, lease, operate, equip and maintain self-supporting facilities in the manner provided in RCW 28B.10.300 through 28B.10.330, as now or hereafter amended.

(9) Except as otherwise provided by law, to enter into such contracts as the trustees deem essential to regional university purposes.

(10) May receive such gifts, grants, conveyances, devises and bequests of real or personal property from whatsoever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the regional university programs; sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof except as limited by the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof.

(11) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230, offer new degree programs, offer off-campus programs, participate in consortia or centers, contract for off-campus educational programs, and purchase or lease major off-campus facilities.

(12) May promulgate such rules and regulations, and perform all other acts not forbidden by law, as the board of trustees may in its discretion deem necessary or appropriate to the administration of the regional university. [2004 c 275 § 54; 1985 c 370 § 94; 1977 ex.s. c 169 § 48. Prior: 1969 ex.s. c 223 § 28B.40.120; prior: 1909 c 97 p 252 § 4; RRS § 4607; prior: 1905 c 85 § 1; 1897 c 118 § 215; 1893 c 107 § 4. Formerly RCW 28B.40.120, part; 28.81.050.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.190 Trustees—Fire protection services.** Subject to the provisions of RCW 35.21.779, each board of trustees of the regional universities may:

(1) Contract for such fire protection services as may be necessary for the protection and safety of the students, staff and property of the regional university;

(2) By agreement pursuant to the provisions of chapter 239, Laws of 1967 (chapter 39.34 RCW), as now or hereafter amended, join together with other agencies or political subdivisions of the state or federal government and otherwise share in the accomplishment of any of the purposes of subsection (1) of this section:

PROVIDED, HOWEVER, That neither the failure of the trustees to exercise any of its powers under this section nor anything herein shall detract from the lawful and existing powers and duties of political subdivisions of the state to provide the necessary fire protection equipment and services to persons and property within their jurisdiction. [1992 c 117 § 1; 1977 ex.s. c 169 § 49. Prior: 1970 ex.s. c 15 § 28. Formerly RCW 28B.40.190, part.]

**Findings—1992 c 117:** See note following RCW 35.21.775.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.195 Treasurer—Appointment, term, duties, bonds.** See RCW 28B.40.195.

**28B.35.196 Credits—Statewide transfer policy and agreement—Establishment.** See RCW 28B.76.240 and 28B.76.2401.

**28B.35.200 Bachelor degrees authorized.** The degree of bachelor of arts or the degree of bachelor of science and/or the degree of bachelor of arts in education may be granted to any student who has completed a four-year course of study or the equivalent thereof in Central Washington University, Eastern Washington University, or Western Washington University. [1977 ex.s. c 169 § 50. Prior: 1969 ex.s. c 223 § 28B.40.200; prior: 1967 c 231 § 1; 1967 c 47 § 7; 1947 c 109 § 1; 1933 c 13 § 1; Rem. Supp. 1947 § 4618-1. Formerly RCW 28B.40.200, part; 28.81.052; 28.81.050(16).]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.205 Degrees through master's degrees authorized—Limitations—Honorary bachelor's or master's degrees.** In addition to all other powers and duties given to them by law, Central Washington University, Eastern Washington University, and Western Washington University are hereby authorized to grant any degree through the master's degree to any student who has completed a program of study and/or research in those areas which are determined by the faculty and board of trustees of the college to be appropriate for the granting of such degree: PROVIDED, That before any degree is authorized under this section it shall be subject to the review and approval of the higher education coordinating board.

The board of trustees, upon recommendation of the faculty, may also confer honorary bachelor's or master's degrees upon persons other than graduates of the institution, in recognition of their learning or devotion to education, literature, art, or science. No degree may be conferred in consideration of the payment of money or the donation of any kind of property. [1991 c 58 § 2; 1985 c 370 § 84; 1979 c 14 § 4. Prior: 1977 ex.s. c 169 § 51. Cf: 1975 1st ex.s. c 232 § 1.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.215 Doctorate level degrees in physical therapy authorized—Review by higher education coordinating board.** The board of trustees of Eastern Washington University may offer applied, but not research, doctorate level degrees in physical therapy subject to review and approval by the higher education coordinating board. [2001 c 252 § 1.]

**28B.35.230 Certificates, diplomas—Signing—Contents.** Every diploma issued by a regional university shall be signed by the chairman of the board of trustees and by the president of the regional university issuing the same, and sealed with the appropriate seal. In addition to the foregoing, teaching certificates shall be countersigned by the state superintendent of public instruction. Every certificate shall specifically state what course of study the holder has completed and for what length of time such certificate is valid in the schools of the state. [1977 ex.s. c 169 § 53. Prior: 1969 ex.s. c 223 § 28B.40.230; prior: 1917 c 128 § 4; 1909 c 97 p 254 § 9; RRS § 4615; prior: 1897 c 118 § 220; 1895 c 146 § 2; 1893 c 107 § 13. Formerly RCW 28B.40.230, part; 28.81.056; 28.81.050(15).]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.300 Model schools and training departments—Purpose.** A model school or schools or training departments may be provided for each regional university, in which students, before graduation, may have actual practice in teaching or courses relative thereto under the supervision and observation of critic teachers. All schools or departments involved herewith shall organize and direct their work being cognizant of public school needs. [1977 ex.s. c 169 § 54. Prior: 1969 ex.s. c 223 § 28B.40.300; prior: 1917 c 128 § 2; 1909 c 97 p 253 § 8; RRS § 4611; prior: 1897 c 118 § 219; 1893 c 107 § 12. Formerly RCW 28B.40.300, part; 28.81.058; 28.81.050(12).]

(2004 Ed.)

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.305 Model schools and training departments—Trustees to estimate number of pupils required.** The board of trustees of any regional university having a model school or training department as authorized by RCW 28B.35.300, shall, on or before the first Monday of September of each year, file with the board of the school district or districts in which such regional university is situated, a certified statement showing an estimate of the number of public school pupils who will be required to make up such model school and specifying the number required for each grade for which training for students is required. [1977 ex.s. c 169 § 55. Prior: 1969 ex.s. c 223 § 28B.40.305; prior: 1907 c 97 § 1; RRS § 4612. Formerly RCW 28B.40.305, part; 28.81.059; 28.81.050(13).]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.310 Model schools and training departments—Requisitioning of pupils—President may refuse admission.** It shall thereupon be the duty of the board of the school district or districts with which such statement has been filed, to apportion for attendance to the said model school or training department, a sufficient number of pupils from the public schools under the supervision of said board as will furnish to such regional university the number of pupils required in order to maintain such facility: PROVIDED, That the president of said regional university may refuse to accept any such pupil as in his judgment would tend to reduce the efficiency of said model school or training department. [1977 ex.s. c 169 § 56. Prior: 1969 ex.s. c 223 § 28B.40.310; prior: 1907 c 97 § 2; RRS § 4613. Formerly RCW 28B.40.310, part; 28.81.060.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.315 Model schools and training departments—Report of attendance.** Annually, on or before the date for reporting the school attendance of the school district in which said model school or training department is situated, for the purpose of taxation for the support of the common schools, the board of trustees of each such regional university having supervision over the same shall file with the board of the school district or districts, in which such model school or training department is situated, a report showing the number of common school pupils at each such model school or training department during the school year last passed, and the period of their attendance in the same form that reports of public schools are made. Any superintendent of the school district so affected shall, in reporting the attendance in said school district, segregate the attendance at said model school or training department, from the attendance in the other schools of said district: PROVIDED, That attendance shall be credited, if credit be given therefor, to the school district in which the pupil resides. [1977 ex.s. c 169 § 57. Prior: 1969 ex.s. c 223 § 28B.40.315; prior: 1917 c 128 § 3; 1907 c 97 § 3; RRS § 4614. Formerly RCW 28B.40.315, part; 28.81.061; 28.81.050(14).]

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**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.320 High-technology education and training.** See chapter 28B.65 RCW.

**28B.35.350 Suspension and expulsion.** Any student may be suspended or expelled from any regional university who is found to be guilty of an infraction of the regulations of the institution. [1977 ex.s. c 169 § 58. Prior: 1969 ex.s. c 223 § 28B.40.350; prior: 1961 ex.s. c 13 § 2, part; prior: (i) 1909 c 97 p 255 § 13; RRS § 4620. (ii) 1921 c 136 § 1, part; 1905 c 85 § 3, part; RRS § 4616, part. Formerly RCW 28B.40.350, part; 28.81.070.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.370 Disposition of building fees and normal school fund revenues—Bond payments—Capital projects accounts for construction, equipment, maintenance of buildings, etc.** Within thirty-five days from the date of collection thereof all building fees of each regional university and The Evergreen State College shall be paid into the state treasury and these together with such normal school fund revenues as provided in RCW 28B.35.751 as are received by the state treasury shall be credited as follows:

(1) On or before June 30th of each year the board of trustees of each regional university and The Evergreen State College, if issuing bonds payable out of its building fees and above described normal school fund revenues, shall certify to the state treasurer the amounts required in the ensuing twelve months to pay and secure the payment of the principal of and interest on such bonds. The amounts so certified by each regional university and The Evergreen State College shall be a prior lien and charge against all building fees and above described normal school fund revenues of such institution. The state treasurer shall thereupon deposit the amounts so certified in the Eastern Washington University capital projects account, the Central Washington University capital projects account, the Western Washington University capital projects account, or The Evergreen State College capital projects account respectively, which accounts are hereby created in the state treasury. The amounts deposited in the respective capital projects accounts shall be used exclusively to pay and secure the payment of the principal of and interest on the building bonds issued by such regional universities and The Evergreen State College as authorized by law. If in any twelve month period it shall appear that the amount certified by any such board of trustees is insufficient to pay and secure the payment of the principal of and interest on the outstanding building and above described normal school fund revenue bonds of its institution, the state treasurer shall notify the board of trustees and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal of and interest on all such bonds then outstanding shall be fully met at all times.

(2) All normal school fund revenue pursuant to RCW 28B.35.751 shall be deposited in the Eastern Washington University capital projects account, the Central Washington University capital projects account, the Western Washington University capital projects account, or The Evergreen State

College capital projects account respectively, which accounts are hereby created in the state treasury. The sums deposited in the respective capital projects accounts shall be appropriated and expended exclusively to pay and secure the payment of the principal of and interest on bonds payable out of the building fees and normal school revenue and for the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto except for any sums transferred therefrom as authorized by law. [1991 sp.s. c 13 § 49. Prior: 1985 c 390 § 47; 1985 c 57 § 15; 1977 ex.s. c 169 § 79; 1969 ex.s. c 223 § 28B.40.370; prior: 1967 c 47 §§ 11, 14; 1965 c 76 § 2; 1961 ex.s. c 14 § 5; 1961 ex.s. c 13 § 4. Formerly RCW 28B.40.370; 28.81.085; 28.81.540.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.390 Duties of president.** The president of each regional university shall have general supervision of the university and see that all laws and rules of the board of trustees are observed. [1977 ex.s. c 169 § 61. Prior: 1969 ex.s. c 223 § 28B.40.390; prior: 1909 c 97 p 253 § 7; RRS § 4610; prior: 1897 c 118 § 218; 1893 c 107 § 7. Formerly RCW 28B.40.390, part; 28.81.110.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.395 President's housing allowance.** Housing or a housing allowance may only be provided for the president of a public four-year institution of higher education who resides in the location where the institution is designated under RCW 28B.20.010, 28B.30.010, 28B.35.010, and 28B.40.010. [1998 c 344 § 4.]

**Intent—Findings—1998 c 344:** See note following RCW 28B.38.010.

**28B.35.400 Meetings of presidents.** It shall be the duty of the presidents of the several regional universities to meet at least once annually to consult with each other relative to the management of the regional universities. [1977 ex.s. c 169 § 62.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

## FINANCING BUILDINGS AND FACILITIES—1961 ACT

**28B.35.700 Construction, remodeling, improvement, financing, etc.—Authorized.** The boards of trustees of the regional universities and of The Evergreen State College are empowered in accordance with the provisions of RCW 28B.35.700 through 28B.35.790, to provide for the construction, completion, reconstruction, remodeling, rehabilitation and improvement of buildings and facilities authorized by the legislature for the use of the aforementioned universities and The Evergreen State College and to finance the payment thereof by bonds payable out of special funds from revenues hereafter derived from the payment of building fees, gifts, bequests or grants and such additional funds as the legislature

may provide. [1985 c 390 § 48; 1977 ex.s. c 169 § 82; 1969 ex.s. c 223 § 28B.40.700. Prior: 1967 c 47 § 12; 1961 ex.s. c 14 § 1. Formerly RCW 28B.40.700; 28.81.500.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.710 Definitions.** The following terms, whenever used or referred to in RCW 28B.35.700 through 28B.35.790, shall have the following meaning, excepting in those instances where the context clearly indicates otherwise:

(1) The word "boards" means the boards of trustees of the regional universities and The Evergreen State College.

(2) The words "building fees" mean the building fees charged students registering at each college, but shall not mean the special tuition or other fees charged such students or fees, charges, rentals, and other income derived from any or all revenue-producing lands, buildings, and facilities of the respective colleges, heretofore or hereafter acquired, constructed or installed, including but not limited to income from rooms, dormitories, dining rooms, hospitals, infirmaries, housing or student activity buildings, vehicular parking facilities, land or the appurtenances thereon.

(3) The words "bond retirement funds" shall mean the special funds created by law and known as the Eastern Washington University bond retirement fund, Central Washington University bond retirement fund, Western Washington University bond retirement fund, and The Evergreen State College bond retirement fund, all as referred to in RCW 28B.35.370.

(4) The word "bonds" means the bonds payable out of the bond retirement funds.

(5) The word "projects" means the construction, completion, reconstruction, remodeling, rehabilitation, or improvement of any building or other facility of any of the aforementioned colleges authorized by the legislature at any time and to be financed by the issuance and sale of bonds. [1985 c 390 § 49; 1977 ex.s. c 169 § 83; 1969 ex.s. c 223 § 28B.40.710. Prior: 1967 c 47 § 13; 1961 ex.s. c 14 § 2. Formerly RCW 28B.40.710; 28.81.510.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.720 Contracts, issuance of evidences of indebtedness, bonds, acceptance of grants.** In addition to the powers conferred under existing law, each of the boards is authorized and shall have the power:

(1) To contract for the construction, completion, reconstruction, remodeling, rehabilitation and improvement of such buildings or other facilities of the university or college as are authorized by the legislature to be financed by the issuance and sale of bonds.

(2) To finance the same by the issuance of bonds secured by the pledge of any or all of the building fees.

(3) Without limitation of the foregoing, to accept grants from the United States government, or any federal or state agency or instrumentality, or private corporation, association, or person to aid in defraying the costs of any such projects. [1985 c 390 § 50; 1977 ex.s. c 169 § 84; 1969 ex.s. c 223 § 28B.40.720. Prior: 1961 ex.s. c 14 § 3. Formerly RCW 28B.40.720; 28.81.520.]

(2004 Ed.)

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.730 Bonds—Issuance, sale, form, term, interest, etc.—Covenants—Deposit of proceeds.** For the purpose of financing the cost of any projects, each of the boards is hereby authorized to adopt the resolution or resolutions and prepare all other documents necessary for the issuance, sale and delivery of the bonds or any part thereof at such time or times as it shall deem necessary and advisable. Said bonds:

(1) Shall not constitute

(a) An obligation, either general or special, of the state;

or

(b) A general obligation of the university or college or of the board;

(2) Shall be

(a) Either registered or in coupon form; and

(b) Issued in denominations of not less than one hundred dollars; and

(c) Fully negotiable instruments under the laws of this state; and

(d) Signed on behalf of the university or college by the chairman of the board, attested by the secretary of the board, have the seal of the university or college impressed thereon or a facsimile of such seal printed or lithographed in the bottom border thereof, and the coupons attached thereto shall be signed with the facsimile signatures of such chairman and the secretary;

(3) Shall state

(a) The date of issue; and

(b) The series of the issue and be consecutively numbered within the series; and

(c) That the bond is payable both principal and interest solely out of the bond retirement fund;

(4) Each series of bonds shall bear interest, payable either annually or semiannually, as the board may determine;

(5) Shall be payable both principal and interest out of the bond retirement fund;

(6) Shall be payable at such times over a period of not to exceed forty years from date of issuance, at such place or places, and with such reserved rights of prior redemption, as the board may prescribe;

(7) Shall be sold in such manner and at such price as the board may prescribe;

(8) Shall be issued under and subject to such terms, conditions and covenants providing for the payment of the principal thereof and interest thereon and such other terms, conditions, covenants and protective provisions safeguarding such payment, not inconsistent with RCW 28B.35.700 through 28B.35.790, as now or hereafter amended, and as found to be necessary by the board for the most advantageous sale thereof, which may include but not be limited to:

(a) A covenant that the building fees shall be established, maintained and collected in such amounts that will provide money sufficient to pay the principal of and interest on all bonds payable out of the bond retirement fund, to set aside and maintain the reserves required to secure the payment of such principal and interest, and to maintain any coverage which may be required over such principal and interest;

(b) A covenant that a reserve account shall be created in the bond retirement fund to secure the payment of the princi-

pal of and interest on all bonds issued and a provision made that certain amounts be set aside and maintained therein;

(c) A covenant that sufficient moneys may be transferred from the capital projects account of the university or college issuing the bonds to the bond retirement fund of such university or college when ordered by the board of trustees in the event there is ever an insufficient amount of money in the bond retirement fund to pay any installment of interest or principal and interest coming due on the bonds or any of them;

(d) A covenant fixing conditions under which bonds on a parity with any bonds outstanding may be issued.

The proceeds of the sale of all bonds, exclusive of accrued interest which shall be deposited in the bond retirement fund, shall be deposited in the state treasury to the credit of the capital projects account of the university or college issuing the bonds and shall be used solely for paying the costs of the projects. [1985 c 390 § 51; 1977 ex.s. c 169 § 85; 1970 ex.s. c 56 § 30; 1969 ex.s. c 232 § 104; 1969 ex.s. c 223 § 28B.40.730. Prior: 1961 ex.s. c 14 § 4. Formerly RCW 28B.40.730; 28.81.530.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

*Capital projects accounts of regional universities and The Evergreen State College: RCW 28B.35.370.*

**28B.35.740 Disposition of building fees and normal school fund revenues—Bond payments, etc.** See RCW 28B.35.370.

**28B.35.750 Funds payable into bond retirement funds—Pledge of building fees.** For the purpose of paying and securing the payment of the principal of and interest on the bonds as the same shall become due, there shall be paid into the state treasury and credited to the respective bond retirement fund of each university or college issuing bonds, the following:

(1) Amounts derived from building fees as the board shall certify as necessary to prevent default in the payments required to be paid into such bond retirement fund;

(2) Any grants which may be made, or may become available, for the purpose of furthering the construction of any authorized projects, or for the repayment of the costs thereof;

(3) Such additional funds as the legislature may provide.

Said bond retirement fund shall be kept segregated from all moneys in the state treasury and shall, while any of such bonds or any interest thereon remains unpaid, be available solely for the payment thereof. As a part of the contract of sale of such bonds, the board shall undertake to charge and collect building fees and to deposit the portion of such fees in the bond retirement fund in amounts which will be sufficient to pay and secure the payment of the principal of, and interest on all such bonds outstanding. [1985 c 390 § 52; 1977 ex.s. c 169 § 86; 1969 ex.s. c 223 § 28B.40.750. Prior: 1961 ex.s. c 14 § 6. Formerly RCW 28B.40.750; 28.81.550.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

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**28B.35.751 Disposition of certain normal school fund revenues.** All moneys received from the lease or rental of lands set apart by the enabling act for state normal schools purposes; all interest or income arising from the proceeds of the sale of such lands or of the timber, fallen timber, stone, gravel, or other valuable material thereon, less the allocation to the state treasurer's service fund pursuant to RCW 43.08.190 and the state investment board expense account pursuant to RCW 43.33A.160; and all moneys received as interest on deferred payments on contracts for the sale of such lands, shall from time to time be paid into the state treasury and credited to the Eastern Washington University, Central Washington University, Western Washington University and The Evergreen State College capital projects accounts as herein provided to be expended for capital projects, and bond retirement purposes as set forth in RCW 28B.35.750, as now or hereafter amended. Eastern Washington University, Central Washington University, Western Washington University, and The Evergreen State College shall be credited with one-fourth of the total amount beginning July 1, 2003. Beginning July 1, 1995, The Evergreen State College shall receive five percent of the total amount not obligated to repayment of bonds; Eastern Washington University, Central Washington University, and Western Washington University shall receive equal amounts of the remaining amount. Beginning July 1, 1997, The Evergreen State College shall receive ten percent of the total amount not obligated to repayment of bonds; Eastern Washington University, Central Washington University, and Western Washington University shall receive equal amounts of the remaining amount. Beginning July 1, 1999, The Evergreen State College shall receive fifteen percent of the total amount not dedicated to repayment of bonds; Eastern Washington University, Central Washington University, and Western Washington University shall each receive equal amounts of the remaining amount. Beginning July 1, 2001, The Evergreen State College shall receive twenty percent of the total amount not obligated to repayment of bonds; Eastern Washington University, Central Washington University, and Western Washington University shall each receive equal amounts of the remaining amount. [1993 c 411 § 2; 1991 sp.s. c 13 § 95; 1977 ex.s. c 169 § 87; 1969 ex.s. c 223 § 28B.40.751. Prior: 1967 c 47 § 15; 1965 c 76 § 1. Formerly RCW 28B.40.751; 28.81.551.]

**Finding—1993 c 411:** "The legislature finds that Central Washington University, Eastern Washington University, Western Washington University, and The Evergreen State College are the state's comprehensive undergraduate institutions and each should share equally in the benefits derived from lands set apart in the enabling act for state normal school purposes." [1993 c 411 § 1.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.760 Additional powers of board—Issuance of bonds, investments, transfer of funds, etc.** The board of any such university or college is hereby empowered:

(1) To reserve the right to issue bonds later on a parity with any bonds being issued;

(2) To authorize the investing of moneys in the bond retirement fund and any reserve account therein;

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(3) To authorize the transfer of money from the college's or universities' capital projects account to the college's or universities' bond retirement fund when necessary to prevent a default in the payments required to be made out of such fund;

(4) To create a reserve account or accounts in the bond retirement fund to secure the payment of the principal of and interest on any bonds. [1977 ex.s. c 169 § 88; 1969 ex.s. c 223 § 28B.40.760. Prior: 1961 ex.s. c 14 § 7. Formerly RCW 28B.40.760; 28.81.560.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.770 Refunding bonds.** Each board of trustees is hereby empowered to issue refunding bonds to provide funds to refund any or all outstanding bonds payable from the bond retirement fund and to pay any redemption premium payable on such outstanding bonds being refunded. Such refunding bonds may be issued in the manner and on terms and conditions and with the covenants permitted by RCW 28B.35.700 through 28B.35.790 as now or hereafter amended for the issuance of bonds. The refunding bonds shall be payable out of the bond retirement fund and shall not constitute an obligation either general or special, of the state or a general obligation of the college or university of Washington issuing the bonds or the board thereof. The board may exchange the refunding bonds at par for the bonds which are being refunded or may sell them in such manner, at such price and at such rate or rates of interest as it deems for the best interest of the college or university. [1977 ex.s. c 169 § 89; 1970 ex.s. c 56 § 31; 1969 ex.s. c 232 § 105; 1969 ex.s. c 223 § 28B.40.770. Prior: 1961 ex.s. c 14 § 8. Formerly RCW 28B.40.770; 28.81.570.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**28B.35.780 Bonds not general obligation—Legislature may provide additional means of payment.** The bonds authorized to be issued pursuant to the provisions of RCW 28B.35.700 through 28B.35.790 as now or hereafter amended shall not be general obligations of the state of Washington, but shall be limited obligation bonds payable only from the special funds created for their payment. The legislature may provide additional means for raising money for the payment of interest and principal of said bonds. RCW 28B.35.700 through 28B.35.790 as now or hereafter amended shall not be deemed to provide an exclusive method for such payment. The power given to the legislature by this section to provide for additional means for raising money is permissive, and shall not in any way be construed as a pledge of the general credit of the state of Washington. [1977 ex.s. c 169 § 90; 1969 ex.s. c 223 § 28B.40.780. Prior: 1961 ex.s. c 14 § 9. Formerly RCW 28B.40.780; 28.81.580.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.790 Other laws not repealed or limited.** RCW 28B.35.700 through 28B.35.790 as now or hereafter amended is concurrent with other legislation with reference

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to providing funds for the construction of buildings at the regional universities or The Evergreen State College and is not to be construed as repealing or limiting any existing provision of law with reference thereto. [1977 ex.s. c 169 § 91; 1969 ex.s. c 223 § 28B.40.790. Prior: 1961 ex.s. c 14 § 10. Formerly RCW 28B.40.790; 28.81.590.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

## Chapter 28B.38 RCW

### SPOKANE INTERCOLLEGIATE RESEARCH AND TECHNOLOGY INSTITUTE

#### Sections

28B.38.010	Spokane intercollegiate research and technology institute.
28B.38.020	Administration—Board of directors—Powers and duties.
28B.38.030	Support from participating institutions.
28B.38.040	Operating staff—Cooperative agreements for programs and research.
28B.38.050	Role of department of community, trade, and economic development.
28B.38.060	Availability of facilities to other institutions.
28B.38.070	Authority to receive and expend funds.
28B.38.900	Captions not law.

**28B.38.010 Spokane intercollegiate research and technology institute.** (1) The Spokane intercollegiate research and technology institute is created.

(2) The institute shall be operated and administered as a multi-institutional education and research center, housing appropriate programs conducted in Spokane under the authority of institutions of higher education as defined in RCW 28B.10.016. Washington independent and private institutions of higher education may participate as full partners in any academic and research activities of the institute.

(3) The institute shall house education and research programs specifically designed to meet the needs of eastern Washington.

(4) The establishment of any education program at the institute and the lease, purchase, or construction of any site or facility for the institute is subject to the approval of the higher education coordinating board under RCW 28B.76.230.

(5) The institute shall be headquartered in Spokane.

(6) The mission of the institute is to perform and commercialize research that benefits the intermediate and long-term economic vitality of eastern Washington and to develop and strengthen university-industry relationships through the conduct of research that is primarily of interest to eastern Washington-based companies or state economic development programs. The institute shall:

(a) Perform and facilitate research supportive of state science and technology objectives, particularly as they relate to eastern Washington industries;

(b) Provide leading edge collaborative research and technology transfer opportunities primarily to eastern Washington industries;

(c) Provide substantial opportunities for training undergraduate and graduate students through direct involvement in research and industry interactions;

(d) Emphasize and develop nonstate support of the institute's research activities; and

(e) Provide a forum for effective interaction between the state's technology-based industries and its academic institu-

tions through promotion of faculty collaboration with industry, particularly within eastern Washington. [2004 c 275 § 55; 1998 c 344 § 9.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—Findings—1998 c 344:** "It is the intent of the legislature to provide the necessary access to quality upper division and graduate higher education opportunities for the citizens of Spokane. The legislature intends that the Spokane branch campus of Washington State University, offering upper-division and graduate programs, be located at the Riverpoint Higher Education Park and that Washington State University be the administrative and fiscal agent for the Riverpoint Higher Education Park. In addition, those programs offered by Eastern Washington University that meet the rules and guidelines established by the higher education coordinating board's program approval process may serve students at the Riverpoint Higher Education Park. The legislature intends to streamline the program planning and approval process in Spokane by eliminating the joint center for higher education; thereby treating the Spokane higher education community like other public higher education communities in Washington that receive program approval from the higher education coordinating board. However, the legislature encourages partnerships, collaboration, and avoidance of program duplication through regular communication among the presidents of Spokane's public and private institutions of higher education. The legislature further intends that the residential mission of Eastern Washington University in Cheney be strengthened and that Eastern Washington University focus on the excellence of its primary campus in Cheney.

In addition, the legislature finds that the Spokane intercollegiate research and technology institute is a vital and necessary element in the academic and economic future of eastern Washington. The legislature also finds that it is in the interest of the state of Washington to support and promote applied research and technology in areas of the state that, because of geographic or historic circumstances, have not developed fully balanced economies. It is the intent of the legislature that institutions of higher education and the department of community, trade, and economic development work cooperatively with the private sector in the development and implementation of a technology transfer and integration program to promote the economic development and enhance the quality of life in eastern Washington." [1998 c 344 § 1.]

**28B.38.020 Administration—Board of directors—Powers and duties.** (1) The institute shall be administered by the board of directors.

(2) The board shall consist of the following members:

(a) Nine members of the general public. Of the general public membership, at least six shall be individuals who are associated with or employed by technology-based or manufacturing-based industries and have broad business experience and an understanding of high technology;

(b) The executive director of the Washington technology center or the director's designee;

(c) The provost of Washington State University or the provost's designee;

(d) The provost of Eastern Washington University or the provost's designee;

(e) The provost of Central Washington University or the provost's designee;

(f) The provost of the University of Washington or the provost's designee;

(g) An academic representative from the Spokane community colleges;

(h) One member from Gonzaga University; and

(i) One member from Whitworth College.

(3) The term of office for each board member, excluding the executive director of the Washington technology center, the provosts of Washington State University, Eastern Washington University, Central Washington University, and the University of Washington, shall be three years. The executive

director of the institute shall be an ex officio, nonvoting member of the board. Board members shall be appointed by the governor. Initial appointments shall be for staggered terms to ensure the long-term continuity of the board. The board shall meet at least quarterly.

(4) The duties of the board include:

(a) Developing the general operating policies for the institute;

(b) Appointing the executive director of the institute;

(c) Approving the annual operating budget of the institute;

(d) Establishing priorities for the selection and funding of research projects that guarantee the greatest potential return on the state's investment;

(e) Approving and allocating funding for research projects conducted by the institute;

(f) In cooperation with the department of community, trade, and economic development, developing a biennial work plan and five-year strategic plan for the institute that are consistent with the statewide technology development and commercialization goals;

(g) Coordinating with public, independent, and private institutions of higher education, and other participating institutions of higher education in the development of training, research, and development programs to be conducted at the institute that are targeted to meet industrial needs;

(h) Assisting the department of community, trade, and economic development in the department's efforts to develop state science and technology public policies and coordinate publicly funded programs;

(i) Reviewing annual progress reports on funded research projects;

(j) Providing an annual report to the governor and the legislature detailing the activities and performance of the institute; and

(k) Submitting annually to the department of community, trade, and economic development an updated strategic plan and a statement of performance measured against the mission, roles, and contractual obligations of the institute.

(5) The board may enter into contracts to fulfill its responsibilities and purposes under this chapter. [1998 c 344 § 10.]

**Intent—Findings—1998 c 344:** See note following RCW 28B.38.010.

**28B.38.030 Support from participating institutions.**

Staff support for programs will be provided from among the cooperating institutions through cooperative agreements. Cooperating institutions are Washington State University as the senior research partner, Eastern Washington University, Central Washington University, the University of Washington, Gonzaga University, Whitworth College, and other participating institutions of higher education. [1998 c 344 § 11.]

**Intent—Findings—1998 c 344:** See note following RCW 28B.38.010.

**28B.38.040 Operating staff—Cooperative agreements for programs and research.** The director of the Spokane intercollegiate research and technology institute may hire staff as necessary to operate the institution. The director may enter into cooperative agreements for programs and research with public and private organizations including state

and nonstate funding agencies consistent with policies of the Spokane intercollegiate research and technology institute. [1998 c 344 § 12.]

**Intent—Findings—1998 c 344:** See note following RCW 28B.38.010.

**28B.38.050 Role of department of community, trade, and economic development.** The department of community, trade, and economic development shall contract with the institute for the expenditure of state-appropriated funds for the operation of the institute. The department of community, trade, and economic development shall provide guidance to the institute regarding expenditure of state-appropriated funds and the development of the institute's strategic plan. The director of the department of community, trade, and economic development shall not withhold funds appropriated for the institute if the institute complies with the provisions of its contract with the department of community, trade, and economic development. The department is responsible to the legislature for the contractual performance of the institute. [1998 c 344 § 13.]

**Intent—Findings—1998 c 344:** See note following RCW 28B.38.010.

**28B.38.060 Availability of facilities to other institutions.** The facilities of the institute shall be made available to other institutions of higher education within the state when this would benefit specific program needs. [1998 c 344 § 14.]

**Intent—Findings—1998 c 344:** See note following RCW 28B.38.010.

**28B.38.070 Authority to receive and expend funds.** The board may receive and expend federal funds and any private gifts or grants to further the purpose of the institute. The funds are to be expended in accordance with federal and state law and any conditions contingent in the grant of those funds. [1998 c 344 § 15.]

**Intent—Findings—1998 c 344:** See note following RCW 28B.38.010.

**28B.38.900 Captions not law.** Captions used in this chapter are not any part of the law. [1998 c 344 § 16.]

**Chapter 28B.40 RCW**

**THE EVERGREEN STATE COLLEGE**

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FINANCING BUILDINGS AND FACILITIES—1961 ACT

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*British Columbia—Tuition and fees—Reciprocity with Washington:* RCW 28B.15.756 and 28B.15.758.

*Buildings and facilities*

*borrowing money for:* RCW 28B.10.300(4).

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*rate of interest:* RCW 28B.10.325.

*contracts for construction and installation:* RCW 28B.10.300(1).

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*lease of campus lands for:* RCW 28B.10.300(3).

*purchase or lease of land for:* RCW 28B.10.300(2).

*use of acquired:* RCW 28B.10.305.

*Chapter as affecting The Evergreen State College building revenue bonds:* RCW 28B.14C.130.

*Commercial activities by institutions of higher education—Development of policies governing:* Chapter 28B.63 RCW.

*Courses, studies and instruction*

*physical education:* RCW 28B.10.700.

*state board to approve courses leading to teacher certification:* RCW 28B.40.120(3).

*Development of methods and protocols for measuring educational costs—Schedule of educational cost study reports:* RCW 28B.76.310.

*Eminent domain by:* RCW 28B.10.020.

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*approval by state board of education of courses leading to teacher certification:* RCW 28B.40.120(3).

*Eye protection, public educational institutions:* RCW 70.100.010 through 70.100.040.

*Faculty members and employees, insurance:* RCW 28B.10.660.

*Faculty members of institutions of higher education, remunerated professional leaves for:* RCW 28B.10.650.

*Flag, display:* RCW 28B.10.030.

*Funds*

*Central College fund, abolished and moneys transferred to general fund:* RCW 43.79.300, 43.79.302.

*Central College fund, appropriations, warrants, to be paid from general fund:* RCW 43.79.301, 43.79.303.

*Eastern College fund, abolished and moneys transferred to general fund:* RCW 43.79.310, 43.79.312.

*Eastern College fund, appropriations, warrants, to be paid from general fund:* RCW 43.79.311, 43.79.313.

*moneys paid into general fund for support of:* RCW 43.79.180.

*normal school current fund, sources:* RCW 43.79.180.

*normal school grant to colleges of education:* RCW 43.79.150.

*normal school permanent fund:* RCW 43.79.160.

*Western College fund, abolished and moneys transferred to general fund:* RCW 43.79.320, 43.79.322.

*Western College fund, appropriations, warrants, to be paid from general fund:* RCW 43.79.321, 43.79.323.

*Governing body of recognized student association at college or university, open public meetings act applicable to:* RCW 42.30.200.

*Idaho—Tuition and fees—Reciprocity with Washington:* RCW 28B.15.750 through 28B.15.754.

*Insurance for officers, employees and students:* RCW 28B.10.660.

*Oregon—Tuition and fees—Reciprocity with Washington:* RCW 28B.15.730 through 28B.15.736.

*Real property, acquisition of authorized:* RCW 28B.10.020.

#### Students

*insurance:* RCW 28B.10.660.

*loan fund under national defense education act:* RCW 28B.10.280.

*Tuition exemptions, children of deceased or disabled veterans and children of certain citizens missing in action or prisoners of war:* RCW 28B.10.265.

**28B.40.010 Designation.** The only state college in Washington shall be in Thurston county, The Evergreen State College. [1977 ex.s. c 169 § 64; 1969 ex.s. c 223 § 28B.40.010. Prior: 1967 c 47 § 6; 1961 c 62 § 2; 1957 c 147 § 2; prior: (i) 1909 c 97 p 251 § 1, part; 1897 c 118 § 212; 1893 c 107 § 1; RRS § 4604, part. (ii) 1937 c 23 § 1; RRS § 4604-1. (iii) 1937 c 23 § 2; RRS § 4604-2. (iv) 1937 c 23 § 3; RRS § 4604-3. Formerly RCW 28.81.010.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.40.100 Trustees—Appointment—Terms—Quorum—Vacancies.** (1) The governance of The Evergreen State College shall be vested in a board of trustees consisting of eight members, one of whom shall be a student. The governor shall select the student member from a list of candidates, of at least three and not more than five, submitted by the student body. They shall be appointed by the governor with the consent of the senate and, except for the student member, shall hold their offices for a term of six years from the first day of October and until their successors are appointed and qualified. The student member shall hold his or her office for a term of one year from the first day of June and until his or her successor is appointed and qualified. The student member shall be a full-time student in good standing at the college at the time of appointment.

(2) Five members of the board constitute a quorum for the transaction of business. In case of a vacancy, or when an appointment is made after the date of expiration of the term, the governor shall fill the vacancy for the remainder of the term of the trustee whose office has become vacant or expired.

(3) Except for the term of the student member, no more than the terms of two members will expire simultaneously on the last day of September in any one year.

(4) A student appointed under this section shall excuse himself or herself from participation or voting on matters relating to the hiring, discipline, or tenure of faculty members and personnel. [1998 c 95 § 4; 1985 c 137 § 2; 1979 ex.s. c 103 § 5; 1977 ex.s. c 169 § 65; 1973 c 62 § 11; 1969 ex.s. c 223 § 28B.40.100. Prior: 1967 ex.s. c 5 § 2; 1957 c 147 § 3; prior: (i) 1909 c 97 p 251 § 1, part; 1897 c 118 § 212; 1893 c 107 § 1; RRS § 4604, part. (ii) 1909 c 97 p 251 § 2; 1897 c 118 § 213; 1893 c 107 § 2; RRS § 4605. Formerly RCW 28.81.020.]

**Present terms not affected—Severability—1979 ex.s. c 103:** See notes following RCW 28B.20.100.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**28B.40.105 Trustees—Organization and officers of board—Quorum.** The board of The Evergreen State College trustees shall elect one of its members chairman, and it shall elect a secretary, who may or may not be a member of the board. The board shall have power to adopt bylaws for its government and for the government of the school, which bylaws shall not be inconsistent with law, and to prescribe the duties of its officers, committees and employees. A majority of the board shall constitute a quorum for the transaction of all business. [1977 ex.s. c 169 § 66; 1969 ex.s. c 223 § 28B.40.105. Prior: 1909 p 252 § 3; RRS § 4606; prior: 1897 c 118 § 214; 1893 c 107 § 3. Formerly RCW 28.81.030 and 28.81.050(1), (2).]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.40.110 Trustees—Meetings of board.** The board of The Evergreen State College trustees shall hold at least two regular meetings each year, at such times as may be provided by the board. Special meetings shall be held as may be deemed necessary, whenever called by the chairman or by a majority of the board. Public notice of all meetings shall be given in accordance with chapter 42.32 RCW. [1977 ex.s. c 169 § 67; 1969 ex.s. c 223 § 28B.40.110. Prior: 1917 c 128 § 1, part; 1909 c 97 p 253 § 6, part; RRS § 4609, part; prior: 1897 c 118 § 217, part; 1893 c 107 § 6, part. Formerly RCW 28.81.040, part.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

*Open public meetings act:* Chapter 42.30 RCW.

**28B.40.120 Trustees—General powers and duties of board.** In addition to any other powers and duties prescribed by law, the board of trustees of The Evergreen State College:

(1) Shall have full control of the state college and its property of various kinds, except as otherwise provided by law.

(2) Shall employ the president of the state college, his assistants, members of the faculty, and other employees of the institution, who, except as otherwise provided by law,

shall hold their positions, until discharged therefrom by the board for good and lawful reason.

(3) With the assistance of the faculty of the state college, shall prescribe the course of study in the various schools and departments thereof and publish such catalogues thereof as the board deems necessary: PROVIDED, That the state board of education shall determine the requisites for and give program approval of all courses leading to teacher certification by such board.

(4) Establish such divisions, schools or departments necessary to carry out the purposes of the college and not otherwise proscribed by law.

(5) Except as otherwise provided by law, may establish and erect such new facilities as determined by the board to be necessary for the college.

(6) May acquire real and other property as provided in RCW 28B.10.020, as now or hereafter amended.

(7) Except as otherwise provided by law, may purchase all supplies and purchase or lease equipment and other personal property needed for the operation or maintenance of the college.

(8) May establish, lease, operate, equip and maintain self-supporting facilities in the manner provided in RCW 28B.10.300 through 28B.10.330, as now or hereafter amended.

(9) Except as otherwise provided by law, to enter into such contracts as the trustees deem essential to college purposes.

(10) May receive such gifts, grants, conveyances, devises and bequests of real or personal property from whatsoever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the college programs; sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof except as limited by the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof.

(11) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230, offer new degree programs, offer off-campus programs, participate in consortia or centers, contract for off-campus educational programs, and purchase or lease major off-campus facilities.

(12) May promulgate such rules and regulations, and perform all other acts not forbidden by law, as the board of trustees may in its discretion deem necessary or appropriate to the administration of the college. [2004 c 275 § 56; 1985 c 370 § 95; 1977 ex.s. c 169 § 68; 1969 ex.s. c 223 § 28B.40.120. Prior: 1909 c 97 p 252 § 4; RRS § 4607; prior: 1905 c 85 § 1; 1897 c 118 § 215; 1893 c 107 § 4. Formerly RCW 28.81.050.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.40.190 Trustees—Fire protection services.** Subject to the provisions of RCW 35.21.779, the board of trustees of The Evergreen State College may:

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(1) Contract for such fire protection services as may be necessary for the protection and safety of the students, staff and property of the college;

(2) By agreement pursuant to the provisions of chapter 239, Laws of 1967 (chapter 39.34 RCW), as now or hereafter amended, join together with other agencies or political subdivisions of the state or federal government and otherwise share in the accomplishment of any of the purposes of subsection (1) of this section:

PROVIDED, HOWEVER, That neither the failure of the trustees to exercise any of its powers under this section nor anything herein shall detract from the lawful and existing powers and duties of political subdivisions of the state to provide the necessary fire protection equipment and services to persons and property within their jurisdiction. [1992 c 117 § 2; 1977 ex.s. c 169 § 69; 1970 ex.s. c 15 § 28.]

**Findings—1992 c 117:** See note following RCW 35.21.775.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Severability—1970 ex.s. c 15:** See note following RCW 28A.230.160.

**28B.40.195 Treasurer—Appointment, term, duties, bonds.** Each board of state college trustees shall appoint a treasurer who shall be the financial officer of the board and who shall hold office during the pleasure of the board. Each treasurer shall render a true and faithful account of all moneys received and paid out by him, and shall give bond for the faithful performance of the duties of his office in such amount as the trustees require: PROVIDED, That the respective colleges shall pay the fees for any such bonds. [1977 c 52 § 1.]

*Regional universities—Designation:* RCW 28B.35.010.

**28B.40.196 Credits—Statewide transfer policy and agreement—Establishment.** See RCW 28B.76.240 and 28B.76.2401.

**28B.40.200 Bachelor degrees authorized.** The degree of bachelor of arts or the degree of bachelor of science and/or the degree of bachelor of arts in education may be granted to any student who has completed a four-year course of study or the equivalent thereof in The Evergreen State College. [1977 ex.s. c 169 § 70; 1969 ex.s. c 223 § 28B.40.200. Prior: 1967 c 231 § 1; 1967 c 47 § 7; 1947 c 109 § 1; 1933 c 13 § 1; Rem. Supp. 1947 § 4618-1. Formerly RCW 28.81.052; 28.81.050(16).]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.40.206 Degrees through master's degrees authorized—Limitations—Honorary bachelor's or master's degrees.** In addition to all other powers and duties given to them by law, the board of trustees of The Evergreen State College is hereby authorized to grant any degree through the master's degree to any student who has completed a program of study and/or research in those areas which are determined by the faculty and board of trustees of the college to be appropriate for the granting of such degree: PROVIDED, That any degree authorized under this section shall be subject to the

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review and approval of the higher education coordinating board.

The board of trustees, upon recommendation of the faculty, may also confer honorary bachelor's or master's degrees upon persons other than graduates of the institution, in recognition of their learning or devotion to education, literature, art, or science. No degree may be conferred in consideration of the payment of money or the donation of any kind of property. [1991 c 58 § 3; 1985 c 370 § 85; 1979 ex.s. c 78 § 1.]

**Severability—1979 ex.s. c 78:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 78 § 4.]

**28B.40.230 Certificates, diplomas—Signing—Contents.** Every diploma issued by The Evergreen State College shall be signed by the chairman of the board of trustees and by the president of the state college, and sealed with the appropriate seal. In addition to the foregoing, teaching certificates shall be countersigned by the state superintendent of public instruction. Every certificate shall specifically state what course of study the holder has completed and for what length of time such certificate is valid in the schools of the state. [1977 ex.s. c 169 § 72; 1969 ex.s. c 223 § 28B.40.230. Prior: 1917 c 128 § 4; 1909 c 97 p 254 § 9; RRS § 4615; prior: 1897 c 118 § 220; 1895 c 146 § 2; 1893 c 107 § 13. Formerly RCW 28.81.056; 28.81.050(15).]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.40.300 Model schools and training departments—Purpose.** A model school or schools or training departments may be provided for The Evergreen State College, in which students, before graduation, may have actual practice in teaching or courses relative thereto under the supervision and observation of critic teachers. All schools or departments involved herewith shall organize and direct their work being cognizant of public school needs. [1977 ex.s. c 169 § 73; 1969 ex.s. c 223 § 28B.40.300. Prior: 1917 c 128 § 2; 1909 c 97 p 253 § 8; RRS § 4611; prior: 1897 c 118 § 219; 1893 c 107 § 12. Formerly RCW 28.81.058; 28.81.050(12).]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.40.305 Model schools and training departments—Trustees to estimate number of pupils required.** The board of trustees of The Evergreen State College, if having a model school or training department as authorized by RCW 28B.40.300, shall, on or before the first Monday of September of each year, file with the board of the school district or districts in which such state college is situated, a certified statement showing an estimate of the number of public school pupils who will be required to make up such model school and specifying the number required for each grade for which training for students is required. [1977 ex.s. c 169 § 74; 1969 ex.s. c 223 § 28B.40.305. Prior: 1907 c 97 § 1; RRS § 4612. Formerly RCW 28.81.059; 28.81.050(13).]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

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**28B.40.310 Model schools and training departments—Requisitioning of pupils—President may refuse admission.** It shall thereupon be the duty of the board of the school district or districts with which such statement has been filed, to apportion for attendance to the said model school or training department, a sufficient number of pupils from the public schools under the supervision of said board as will furnish to The Evergreen State College the number of pupils required in order to maintain such facility: PROVIDED, That the president of said state college may refuse to accept any such pupil as in his judgment would tend to reduce the efficiency of said model school or training department. [1977 ex.s. c 169 § 75; 1969 ex.s. c 223 § 28B.40.310. Prior: 1907 c 97 § 2; RRS § 4613. Formerly RCW 28.81.060.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.40.315 Model schools and training departments—Report of attendance.** Annually, on or before the date for reporting the school attendance of the school district in which said model school or training department is situated, for the purpose of taxation for the support of the common schools, the board of trustees of The Evergreen State College, since having supervision over the same, shall file with the board of the school district or districts, in which such model school or training department is situated, a report showing the number of common school pupils at each such model school or training department during the school year last passed, and the period of their attendance in the same form that reports of public schools are made. Any superintendent of the school district so affected shall, in reporting the attendance in said school district, segregate the attendance at said model school or training department, from the attendance in the other schools of said district: PROVIDED, That attendance shall be credited, if credit be given therefor, to the school district in which the pupil resides. [1977 ex.s. c 169 § 76; 1969 ex.s. c 223 § 28B.40.315. Prior: 1917 c 128 § 3; 1907 c 97 § 3; RRS § 4614. Formerly RCW 28.81.061; 28.81.050(14).]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.40.320 High-technology education and training.** See chapter 28B.65 RCW.

**28B.40.350 Suspension and expulsion.** Any student may be suspended or expelled from The Evergreen State College who is found to be guilty of an infraction of the regulations of the institution. [1977 ex.s. c 169 § 77; 1969 ex.s. c 223 § 28B.40.350. Prior: 1961 ex.s. c 13 § 2, part; prior: (i) 1909 c 97 p 255 § 13; RRS § 4620. (ii) 1921 c 136 § 1, part; 1905 c 85 § 3, part; RRS § 4616, part. Formerly RCW 28.81.070.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.40.360 State college fees.** See chapter 28B.15 RCW.

**28B.40.370 Disposition of building fees and normal school fund revenues—Bond payments—Capital projects**

accounts for construction, equipment, maintenance of buildings, etc. See RCW 28B.35.370.

**28B.40.390 Duties of president.** The president of The Evergreen State College shall have general supervision of the college and see that all laws and rules of the board of trustees are observed. [1977 ex.s. c 169 § 81; 1969 ex.s. c 223 § 28B.40.390. Prior: 1909 c 97 p 253 § 7; RRS § 4610; prior: 1897 c 118 § 218; 1893 c 107 § 7. Formerly RCW 28.81.110.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.40.500 Annuities and retirement income plans for faculty members.** See RCW 28B.10.400 through 28B.10.423.

**28B.40.505 Tax deferred annuities for employees.** See RCW 28B.10.480.

#### FINANCING BUILDINGS AND FACILITIES—1961 ACT

**28B.40.700 Construction, remodeling, improvement, financing, etc.—Authorized.** See RCW 28B.35.700.

**28B.40.710 Definitions.** See RCW 28B.35.710.

**28B.40.720 Contracts, issuance of evidences of indebtedness, bonds, acceptance of grants.** See RCW 28B.35.720.

**28B.40.730 Bonds—Issuance, sale, form, term, interest, etc.—Covenants—Deposit of proceeds.** See RCW 28B.35.730.

**28B.40.740 Disposition of building fees and normal school fund revenues—Bond payments, etc.** See RCW 28B.35.370.

**28B.40.750 Funds payable into bond retirement funds—Pledge of building fees.** See RCW 28B.35.750.

**28B.40.751 Disposition of certain normal school fund revenues.** See RCW 28B.35.751.

**28B.40.760 Additional powers of board—Issuance of bonds, investments, transfer of funds, etc.** See RCW 28B.35.760.

**28B.40.770 Refunding bonds.** See RCW 28B.35.770.

**28B.40.780 Bonds not general obligation—Legislature may provide additional means of payment.** See RCW 28B.35.780.

**28B.40.790 Other laws not repealed or limited.** See RCW 28B.35.790.

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**28B.40.795 Acquisition, construction, equipping and betterment of lands, buildings and facilities at universities and The Evergreen State College.** See RCW 28B.10.300 through 28B.10.330.

**28B.40.810 The Evergreen State College—Established.** There is hereby established in Thurston county a state college, The Evergreen State College. [1969 ex.s. c 223 § 28B.40.810. Prior: 1967 c 47 § 2. Formerly RCW 28.81.610.]

**Legislative declaration of purpose:** See 1967 c 47 § 1.

*Site selection and initial procedure to prepare college for reception of students:* See 1967 c 47 § 4.

**28B.40.820 The Evergreen State College—Trustees—Appointment—Terms.** The terms of office and date of commencement thereof of the five member board of trustees of The Evergreen State College appointed by the governor prior to August 1, 1967, shall be the same as prescribed by law for trustees of state colleges under RCW 28B.40.100, as now or hereafter amended, except that initial appointments shall be for terms as follows: One for two years, one for three years, one for four years, one for five years, and one for six years. [1969 ex.s. c 223 § 28B.40.820. Prior: 1967 c 47 § 3. Formerly RCW 28.81.620.]

**28B.40.830 The Evergreen State College—Trustees, powers and duties—Existing statutes as applicable to college—Federal benefits and donations.** The board of trustees of The Evergreen State College shall have all the powers and duties as are presently or may hereafter be granted to existing state colleges by law. All statutes pertaining to the existing state colleges shall have full force and application to The Evergreen State College.

The Evergreen State College is hereby deemed entitled to receive and share in all the benefits and donations made and given to similar institutions by the enabling act or other federal law to the same extent as other state colleges are entitled to receive and share in such benefits and donations. [1969 ex.s. c 223 § 28B.40.830. Prior: 1967 c 47 § 5. Formerly RCW 28.81.630.]

### Chapter 28B.45 RCW BRANCH CAMPUSES

#### Sections

28B.45.010	Legislative findings.
28B.45.012	Findings—Intent.
28B.45.014	Mission—Collaboration with community and technical colleges—Alternative models—Legislative intent.
28B.45.020	University of Washington—Central Puget Sound area.
28B.45.0201	Findings.
28B.45.030	Washington State University—Tri-Cities area.
28B.45.040	Washington State University—Southwest Washington area.
28B.45.060	Central Washington University—Yakima area.
28B.45.080	Partnership between community and technical colleges and branch campuses.

**28B.45.010 Legislative findings.** The legislature finds that the benefits of higher education should be more widely available to the citizens of the state of Washington. The legislature also finds that a citizen's place of residence can

restrict that citizen's access to educational opportunity at the upper division and graduate level.

Because most of the state-supported baccalaureate universities are located in areas removed from major metropolitan areas, the legislature finds that many of the state's citizens, especially those citizens residing in the central Puget Sound area, the Tri-Cities, Spokane, Vancouver, and Yakima, have insufficient and inequitable access to upper-division baccalaureate and graduate education.

This lack of sufficient educational opportunities in urban areas makes it difficult or impossible for place-bound individuals, who are unable to relocate, to complete a baccalaureate or graduate degree. It also exacerbates the difficulty financially needy students have in attending school, since many of those students need to work, and work is not always readily available in some communities where the baccalaureate institutions of higher education are located.

The lack of sufficient educational opportunities in metropolitan areas also affects the economy of the underserved communities. Businesses benefit from access to the research and teaching capabilities of institutions of higher education. The absence of these institutions from some of the state's major urban centers prevents beneficial interaction between businesses in these communities and the state's universities.

The Washington state master plan for higher education, adopted by the higher education coordinating board, recognizes the need to expand upper-division and graduate educational opportunities in the state's large urban centers. The board has also attempted to provide a means for helping to meet future educational demand through a system of branch campuses in the state's major urban areas.

The legislature endorses the assignment of responsibility to serve these urban centers that the board has made to various institutions of higher education. The legislature also endorses the creation of branch campuses for the University of Washington and Washington State University.

The legislature recognizes that, among their other responsibilities, the state's comprehensive community colleges share with the four-year universities and colleges the responsibility of providing the first two years of a baccalaureate education. It is the intent of the legislature that the four-year institutions and the community colleges work as cooperative partners to ensure the successful and efficient operation of the state's system of higher education. The legislature further intends that the four-year institutions work cooperatively with the community colleges to ensure that branch campuses are operated as models of a two plus two educational system. [1989 1st ex.s. c 7 § 1.]

**28B.45.012 Findings—Intent.** (1) In 1989, the legislature created five branch campuses to be operated by the state's two public research universities. Located in growing urban areas, the branch campuses were charged with two missions:

(a) Increasing access to higher education by focusing on upper division and graduate programs, targeting placebound students, and operating as models of a two plus two educational system in cooperation with the community colleges; and

(b) Promoting regional economic development by responding to demand for degrees from local businesses and supporting regional economies through research activities.

(2) Fifteen years later, the legislature finds that branch campuses are responding to their original mission:

(a) Branch campuses accounted for half of statewide upper division and graduate public enrollment growth since 1990;

(b) Branch campuses have grown steadily and enroll increasing numbers of transfer students each year;

(c) Branch campuses enroll proportionately more older and part-time students than their main campuses and attract increasing proportions of students from nearby counties;

(d) Although the extent of their impact has not been measured, branch campuses positively affect local economies and offer degree programs that roughly correspond with regional occupational projections; and

(e) The capital investments made by the state to support branch campuses represent a significant benefit to regional economic development.

(3) However, the legislature also finds the policy landscape in higher education has changed since the original creation of the branch campuses. Demand for access to baccalaureate and graduate education is increasing rapidly. Economic development efforts increasingly recognize the importance of focusing on local and regional economic clusters and improving collaboration among communities, businesses, and colleges and universities. Each branch campus has evolved into a unique institution, and it is appropriate to assess the nature of this evolution to ensure the role and mission of each campus is aligned with the state's higher education goals and the needs of the region where the campus is located.

(4) Therefore, it is the legislature's intent to recognize the unique nature of Washington's higher education branch campuses, reaffirm the role and mission of each, and set the course for their continued future development.

(5) It is the further intent of the legislature that the campuses be identified by the following names: University of Washington Bothell, University of Washington Tacoma, Washington State University Tri-Cities, and Washington State University Vancouver. [2004 c 57 § 1.]

**28B.45.014 Mission—Collaboration with community and technical colleges—Alternative models—Legislative intent.** (1) The primary mission of the higher education branch campuses created under this chapter remains to expand access to baccalaureate and master's level graduate education in underserved urban areas of the state in collaboration with community and technical colleges.

(2) Branch campuses shall collaborate with the community and technical colleges in their region to develop articulation agreements, dual admissions policies, and other partnerships to ensure that branch campuses serve as innovative models of a two plus two educational system. Other possibilities for collaboration include but are not limited to joint development of curricula and degree programs, colocation of instruction, and arrangements to share faculty.

(3) In communities where a private postsecondary institution is located, representatives of the private institution may be invited to participate in the conversation about meeting the

baccalaureate and master's level graduate needs in underserved urban areas of the state.

(4) However, the legislature recognizes there are alternative models for achieving this primary mission. Some campuses may have additional missions in response to regional needs and demands. At selected branch campuses, an innovative combination of instruction and research targeted to support regional economic development may be appropriate to meet the region's needs for both access and economic viability. Other campuses should focus on becoming models of a two plus two educational system through continuous improvement of partnerships and agreements with community and technical colleges. Still other campuses may be best suited to transition to a four-year comprehensive university or be removed from designation as a branch campus entirely.

(5) It is the legislature's intent that each branch campus be funded commensurate with its unique mission, the degree programs offered, and the institutional combination of instruction and research, but at a level less than a research university.

(6) In consultation with the higher education coordinating board, a branch campus may propose legislation to authorize practice-oriented or professional doctoral programs if: (a) Unique research facilities and equipment are located near the campus; or (b) the campus can clearly demonstrate student and employer demand in the region that is linked to regional economic development.

(7) It is not the legislature's intent to have each campus chart its own future path without legislative guidance. Instead, the legislature intends to consider carefully the mission and model of education that best suits each campus and best meets the needs of students, the community, and the region. [2004 c 57 § 2.]

**28B.45.020 University of Washington—Central Puget Sound area.** The University of Washington is responsible for ensuring the expansion of upper-division and graduate educational programs in the central Puget Sound area under rules or guidelines adopted by the higher education coordinating board. The University of Washington shall meet that responsibility through the operation of at least two branch campuses. One branch campus shall be located in the Tacoma area. Another branch campus shall be collocated with Cascadia Community College in the Bothell-Woodinville area. [1994 c 217 § 3; 1989 1st ex.s. c 7 § 3.]

**Effective date—1994 c 217:** See note following RCW 28B.45.0201.

**28B.45.0201 Findings.** The legislature finds that population growth in north King and south Snohomish counties has created a need to expand higher education and work force training programs for the people living and working in those areas. In keeping with the recommendations of the higher education coordinating board, the legislature intends to help address those education and training needs through the creation of Cascadia Community College, expansion of educational opportunities at Lake Washington Technical College, and support of the University of Washington's branch campus at Bothell-Woodinville. It is further the intention of the legislature, in keeping with the higher education coordinating board recommendations, that the Cascadia Community Col-

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lege and the University of Washington branch campus be collocated, and that the new community college and the University of Washington's branch campus work in partnership to ensure that properly prepared students from community colleges and other institutions are able to transfer smoothly to the branch campus.

The legislature further finds that a governing board for Cascadia Community College needs to be appointed and confirmed as expeditiously as possible. The legislature intends to work cooperatively with the governor to facilitate the appointment and confirmation of trustees for the college. [1994 c 217 § 1.]

**Effective date—1994 c 217:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 217 § 5.]

**28B.45.030 Washington State University—Tri-Cities area.** Washington State University is responsible for providing upper-division and graduate level higher education programs to the citizens of the Tri-Cities area, under rules or guidelines adopted by the higher education coordinating board. Washington State University shall meet that responsibility through the operation of a branch campus in the Tri-Cities area. The branch campus shall replace and supersede the Tri-Cities university center. All land, facilities, equipment, and personnel of the Tri-Cities university center shall be transferred from the University of Washington to Washington State University. [1989 1st ex.s. c 7 § 4.]

**28B.45.040 Washington State University—Southwest Washington area.** Washington State University is responsible for providing upper-division and graduate level higher education programs to the citizens of the southwest Washington area, under rules or guidelines adopted by the higher education coordinating board. Washington State University shall meet that responsibility through the operation of a branch campus in the southwest Washington area. [1989 1st ex.s. c 7 § 5.]

**28B.45.060 Central Washington University—Yakima area.** Central Washington University is responsible for providing upper-division and graduate level higher education programs to the citizens of the Yakima area, under rules or guidelines adopted by the higher education coordinating board. [1989 1st ex.s. c 7 § 7.]

**28B.45.080 Partnership between community and technical colleges and branch campuses.** The higher education coordinating board shall adopt performance measures to ensure a collaborative partnership between the community and technical colleges and the branch campuses. The partnership shall be one in which the community and technical colleges prepare students for transfer to the upper-division programs of the branch campuses and the branch campuses work with community and technical colleges to enable students to transfer and obtain degrees efficiently. [2004 c 57 § 5; 1989 1st ex.s. c 7 § 8. Formerly RCW 28B.80.510.]

**Legislative findings—1989 1st ex.s. c 7:** See RCW 28B.45.010.

## Chapter 28B.50 RCW

## COMMUNITY AND TECHNICAL COLLEGES

(Formerly: Community colleges)

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**28B.50.010 Short title.** This chapter shall be known as and may be cited as the community and technical college act of 1991. [1991 c 238 § 20; 1969 ex.s. c 223 § 28B.50.010. Prior: 1967 ex.s. c 8 § 1. Formerly RCW 28.85.010.]

**28B.50.020 Purpose.** The purpose of this chapter is to provide for the dramatically increasing number of students requiring high standards of education either as a part of the continuing higher education program or for occupational education and training, or for adult basic skills and literacy education, by creating a new, independent system of community and technical colleges which will:

(1) Offer an open door to every citizen, regardless of his or her academic background or experience, at a cost normally within his or her economic means;

(2) Ensure that each college district shall offer thoroughly comprehensive educational, training and service programs to meet the needs of both the communities and students served by combining high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; community services of an educational, cultural, and recreational nature; and adult education, including basic skills and gen-

eral, family, and work force literacy programs and services. However, college districts containing only technical colleges shall maintain programs solely for occupational education, basic skills, and literacy purposes, and, for as long as a need exists, may continue those programs, activities, and services offered by the technical colleges during the twelve-month period preceding September 1, 1991;

(3) Provide for basic skills and literacy education, and occupational education and technical training at technical colleges in order to prepare students for careers in a competitive work force;

(4) Provide or coordinate related and supplemental instruction for apprentices at community and technical colleges;

(5) Provide administration by state and local boards which will avoid unnecessary duplication of facilities or programs; and which will encourage efficiency in operation and creativity and imagination in education, training and service to meet the needs of the community and students;

(6) Allow for the growth, improvement, flexibility and modification of the community colleges and their education, training and service programs as future needs occur; and

(7) Establish firmly that community colleges are, for purposes of academic training, two year institutions, and are an independent, unique, and vital section of our state's higher education system, separate from both the common school system and other institutions of higher learning, and never to be considered for conversion into four-year liberal arts colleges. [1991 c 238 § 21; 1969 ex.s. c 261 § 17; 1969 ex.s. c 223 § 28B.50.020. Prior: 1967 ex.s. c 8 § 2.]

**Severability—1969 ex.s. c 261:** "If any provision of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 261 § 37. Formerly RCW 28.85.911.]

**28B.50.030 Definitions.** As used in this chapter, unless the context requires otherwise, the term:

(1) "System" shall mean the state system of community and technical colleges, which shall be a system of higher education.

(2) "Board" shall mean the work force training and education coordinating board.

(3) "College board" shall mean the state board for community and technical colleges created by this chapter.

(4) "Director" shall mean the administrative director for the state system of community and technical colleges.

(5) "District" shall mean any one of the community and technical college districts created by this chapter.

(6) "Board of trustees" shall mean the local community and technical college board of trustees established for each college district within the state.

(7) "Occupational education" shall mean that education or training that will prepare a student for employment that does not require a baccalaureate degree.

(8) "K-12 system" shall mean the public school program including kindergarten through the twelfth grade.

(9) "Common school board" shall mean a public school district board of directors.

(10) "Community college" shall include those higher education institutions that conduct education programs under RCW 28B.50.020.

(11) "Technical college" shall include those higher education institutions with the sole mission of conducting occupational education, basic skills, literacy programs, and offering on short notice, when appropriate, programs that meet specific industry needs. The programs of technical colleges shall include, but not be limited to, continuous enrollment, competency-based instruction, industry-experienced faculty, curriculum integrating vocational and basic skills education, and curriculum approved by representatives of employers and labor. For purposes of this chapter, technical colleges shall include Lake Washington Vocational-Technical Institute, Renton Vocational-Technical Institute, Bates Vocational-Technical Institute, Clover Park Vocational Institute, and Bellingham Vocational-Technical Institute.

(12) "Adult education" shall mean all education or instruction, including academic, vocational education or training, basic skills and literacy training, and "occupational education" provided by public educational institutions, including common school districts for persons who are eighteen years of age and over or who hold a high school diploma or certificate. However, "adult education" shall not include academic education or instruction for persons under twenty-one years of age who do not hold a high school degree or diploma and who are attending a public high school for the sole purpose of obtaining a high school diploma or certificate, nor shall "adult education" include education or instruction provided by any four year public institution of higher education.

(13) "Dislocated forest product worker" shall mean a forest products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business' services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(14) "Forest products worker" shall mean a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries assigned the major group standard industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment. The commissioner may adopt rules further interpreting these definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(3).

(15) "Dislocated salmon fishing worker" means a finfish products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his

or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(16) "Salmon fishing worker" means a worker in the finfish industry affected by 1994 or future salmon disasters. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries involved in the commercial and recreational harvesting of finfish including buying and processing finfish. The commissioner may adopt rules further interpreting these definitions.

(17) "Rural natural resources impact area" means:

(a) A nonmetropolitan county, as defined by the 1990 decennial census, that meets three of the five criteria set forth in subsection (18) of this section;

(b) A nonmetropolitan county with a population of less than forty thousand in the 1990 decennial census, that meets two of the five criteria as set forth in subsection (18) of this section; or

(c) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets three of the five criteria set forth in subsection (18) of this section.

(18) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area of which any part is ten miles or more from an urbanized area is considered nonurbanized. A zip code totally surrounded by zip codes qualifying as nonurbanized under this definition is also considered nonurbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter. [2003 2nd sp.s. c 4 § 33; 1997 c 367 § 13; 1995 c 226 § 17; 1992 c 21 § 5. Prior: 1991 c 315 § 15; 1991 c 238 § 22; 1985 c 461 § 14; 1982 1st ex.s. c 53 § 24; 1973 c 62 § 12; 1969 ex.s. c 261 § 18; 1969 ex.s. c 223 § 28B.50.030; prior: 1967 ex.s. c 8 § 3.]

**Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4:** See notes following RCW 50.01.010.

**Severability—Conflict with federal requirements—Effective date—1997 c 367:** See notes following RCW 43.160.020.

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**Severability—Conflict with federal requirements—Effective date—1995 c 226:** See notes following RCW 43.160.020.

**Intent—1991 c 315:** "The legislature finds that:

(1) The economic health and well-being of timber-dependent communities is of substantial public concern. The significant reduction in annual timber harvest levels likely will result in reduced economic activity and persistent unemployment and underemployment over time, which would be a serious threat to the safety, health, and welfare of residents of the timber impact areas, decreasing the value of private investments and jeopardizing the sources of public revenue.

(2) Timber impact areas are most often located in areas that are experiencing little or no economic growth, creating an even greater risk to the health, safety, and welfare of these communities. The ability to remedy problems caused by the substantial reduction in harvest activity is beyond the power and control of the regulatory process and influence of the state, and the ordinary operations of private enterprise without additional governmental assistance are insufficient to adequately remedy the resulting problems of poverty and unemployment.

(3) To address these concerns, it is the intent of the legislature to increase training and retraining services accessible to timber impact areas, and provide for coordination of noneconomic development services in timber impact areas as economic development efforts will not succeed unless social, housing, health, and other needs are addressed." [1991 c 315 § 1.]

**Severability—Conflict with federal requirements—Effective date—1991 c 315:** See RCW 50.70.900 through 50.70.902.

**Severability—1985 c 461:** See note following RCW 41.06.020.

**Severability—1982 1st ex.s. c 53:** See note following RCW 41.06.020.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020.

**28B.50.040 College districts enumerated.** The state of Washington is hereby divided into thirty college districts as follows:

(1) The first district shall encompass the counties of Clallam and Jefferson;

(2) The second district shall encompass the counties of Grays Harbor and Pacific;

(3) The third district shall encompass the counties of Kitsap and Mason;

(4) The fourth district shall encompass the counties of San Juan, Skagit and Island;

(5) The fifth district shall encompass Snohomish county except for the Northshore common school district and that portion encompassed by the twenty-third district created in subsection (23) of this section: **PROVIDED**, That the fifth district shall encompass the Everett Community College;

(6) The sixth district shall encompass the present boundaries of the common school districts of Seattle and Vashon Island, King county;

(7) The seventh district shall encompass the present boundary of the common school district of Shoreline in King county;

(8) The eighth district shall encompass the present boundaries of the common school districts of Bellevue, Issaquah, Mercer Island, Skykomish and Snoqualmie, King county;

(9) The ninth district shall encompass the present boundaries of the common school districts of Federal Way, Highline and South Central, King county;

(10) The tenth district shall encompass the present boundaries of the common school districts of Auburn, Black Diamond, Renton, Enumclaw, Kent, Lester and Tahoma, King county, and the King county portion of Puyallup common school district No. 3;

(11) The eleventh district shall encompass all of Pierce county, except for the present boundaries of the common school districts of Tacoma and Peninsula;

(12) The twelfth district shall encompass Lewis county, the Rochester common school district No. 401, the Tenino common school district No. 402 of Thurston county, and the Thurston county portion of the Centralia common school district No. 401;

(13) The thirteenth district shall encompass the counties of Cowlitz, and Wahkiakum;

(14) The fourteenth district shall encompass the counties of Clark, Skamania and that portion of Klickitat county not included in the sixteenth district;

(15) The fifteenth district shall encompass the counties of Chelan, Douglas and Okanogan;

(16) The sixteenth district shall encompass the counties of Kittitas, Yakima, and that portion of Klickitat county included in United States census divisions 1 through 4;

(17) The seventeenth district shall encompass the counties of Ferry, Lincoln (except consolidated school district 105-157-166J and the Lincoln county portion of common school district 167-202), Pend Oreille, Spokane, Stevens and Whitman;

(18) The eighteenth district shall encompass the counties of Adams and Grant, and that portion of Lincoln county comprising consolidated school district 105-157-166J and common school district 167-202;

(19) The nineteenth district shall encompass the counties of Benton and Franklin;

(20) The twentieth district shall encompass the counties of Asotin, Columbia, Garfield and Walla Walla;

(21) The twenty-first district shall encompass Whatcom county;

(22) The twenty-second district shall encompass the present boundaries of the common school districts of Tacoma and Peninsula, Pierce county;

(23) The twenty-third district shall encompass that portion of Snohomish county within such boundaries as the state board for community and technical colleges shall determine: PROVIDED, That the twenty-third district shall encompass the Edmonds Community College;

(24) The twenty-fourth district shall encompass all of Thurston county except the Rochester common school district No. 401, the Tenino common school district No. 402, and the Thurston county portion of the Centralia common school district No. 401;

(25) The twenty-fifth district shall encompass all of Whatcom county;

(26) The twenty-sixth district shall encompass the Northshore, Lake Washington, Bellevue, Mercer Island, Issaquah, Riverview, Snoqualmie Valley and Skykomish school districts;

(27) The twenty-seventh district shall encompass the Renton, Kent, Auburn, Tahoma, and Enumclaw school districts and a portion of the Seattle school district described as follows: Commencing at a point established by the intersection of the Duwamish river and the south boundary of the Seattle Community College District (number six) and thence north along the centerline of the Duwamish river to the west waterway; thence north along the centerline of the west waterway to Elliot Bay; thence along Elliot Bay to a line

established by the intersection of the extension of Denny Way to Elliot Bay; thence east along the line established by the centerline of Denny Way to Lake Washington; thence south along the shoreline of Lake Washington to the south line of the Seattle Community College District; and thence west along the south line of the Seattle Community College District to the point of beginning;

(28) The twenty-eighth district shall encompass all of Pierce county;

(29) The twenty-ninth district shall encompass all of Pierce county; and

(30) The thirtieth district shall encompass the present boundaries of the common school districts of Lake Washington and Riverview in King county and Northshore in King and Snohomish counties. [1994 c 217 § 2; 1991 c 238 § 23; 1988 c 77 § 1; 1981 c 72 § 1; 1973 1st ex.s. c 46 § 7; 1969 ex.s. c 223 § 28B.50.040. Prior: 1967 ex.s. c 8 § 4. Formerly RCW 28.85.040.]

**Effective date—1994 c 217:** See note following RCW 28B.45.0201.

**Findings—1994 c 217:** See RCW 28B.45.0201.

**Effective date—1988 c 77:** "Section 2 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The remainder of this act shall take effect July 1, 1988." [1988 c 77 § 12.]

**Severability—1988 c 77:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 77 § 11.]

**District No. 23 Interlocal cooperation agreements by school districts in Snohomish county authorized—1981 c 72:** "Any school district within Snohomish county may enter into interlocal cooperation agreements with any community college located within Snohomish county pursuant to the provisions of chapter 39.34 RCW." [1981 c 72 § 8.]

**Savings—Provisions of existing collective bargaining agreement—1981 c 72:** "Nothing contained in this amendatory act shall be construed to alter any provision of any existing collective bargaining agreement until any such agreement has expired or been modified pursuant to chapter 28B.52 RCW." [1981 c 72 § 9.]

**Savings—Generally—1981 c 72:** "Nothing in this amendatory act shall be construed to affect any existing rights, nor as affecting any actions, activities, or proceedings validated prior to the effective date of this amendatory act, nor as affecting any civil or criminal proceedings, nor any rule, regulation, or order promulgated, nor any administrative action taken prior to the effective date of this amendatory act, and the validity of any act performed with respect to Edmonds Community College, or any officer or employee thereof prior to the effective date of this amendatory act, is hereby validated." [1981 c 72 § 10.]

**Effective date of this amendatory act defined—1981 c 72:** "The phrase "the effective date of this amendatory act" as used in sections 3, 4, 6 and 10 of this amendatory act shall mean July 1, 1981: PROVIDED, That nothing in this amendatory act shall prohibit any transfers mandated in section 4 hereof nor the action contemplated in section 11 hereof prior to such July 1, 1981." [1981 c 72 § 12.]

**Severability—1981 c 72:** "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 72 § 13.]

**Severability—1973 1st ex.s. c 46:** See note following RCW 28B.10.704.

**28B.50.050 State board for community and technical colleges.** There is hereby created the "state board for community and technical colleges", to consist of nine members who represent the geographic diversity of the state, and who shall be appointed by the governor, with the consent of the

senate. At least two members shall reside east of the Cascade mountains. In making these appointments, the governor shall attempt to provide geographic balance and give consideration to representing labor, business, women, and racial and ethnic minorities, among the membership of the board. At least one member of the board shall be from business and at least one member of the board shall be from labor. The current members of the state board for community college education on September 1, 1991, shall serve on the state board for community and technical colleges until their terms expire. Successors to these members shall be appointed according to the terms of this section. A ninth member shall be appointed by September 1, 1991, for a complete term.

The successors of the members initially appointed shall be appointed for terms of four years except that a person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed only for the remainder of such term. Each member shall serve until the appointment and qualification of his or her successor. All members shall be citizens and bona fide residents of the state.

Members of the college board shall be compensated in accordance with RCW 43.03.240 and shall receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060 for each day actually spent in attending to the duties as a member of the college board.

The members of the college board may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office, in the manner provided by RCW 28B.10.500. [1991 c 238 § 30; 1988 c 76 § 1; 1984 c 287 § 64; 1982 1st ex.s. c 30 § 9; 1975-'76 2nd ex.s. c 34 § 74; 1973 c 62 § 13; 1969 ex.s. c 261 § 19; 1969 ex.s. c 223 § 28B.50.050. Prior: 1967 ex.s. c 8 § 5.]

**Legislative findings—Severability—Effective date—1984 c 287:** See notes following RCW 43.03.220.

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020. *Appointment of director of state system of community and technical colleges, by:* RCW 28B.50.060.

*Bond issue for capital projects for community colleges, 1981, board duties:* RCW 28B.59D.010 through 28B.59D.070.

*Displaced homemaker act, board participation:* RCW 28B.04.080.

*Employees of, appointment and employment of:* RCW 28B.50.060.

*Occupational forecast—Agency consultation:* RCW 50.38.030.

*Powers and duties:* RCW 28B.50.090.

**28B.50.060 Director of the state system of community and technical colleges—Appointment—Term—Qualifications—Salary and travel expenses—Duties.** A director of the state system of community and technical colleges shall be appointed by the college board and shall serve at the pleasure of the college board. The director shall be appointed with due regard to the applicant's fitness and background in education, and knowledge of and recent practical experience in the field of educational administration particularly in institutions beyond the high school level. The college board may also take into consideration an applicant's proven management background even though not particularly in the field of education.

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The director shall devote his or her time to the duties of his or her office and shall not have any direct pecuniary interest in or any stock or bonds of any business connected with or selling supplies to the field of education within this state, in keeping with chapter 42.52 RCW.

The director shall receive a salary to be fixed by the college board and shall be reimbursed for travel expenses incurred in the discharge of his or her official duties in accordance with RCW 43.03.050 and 43.03.060.

The director shall be the executive officer of the college board and serve as its secretary and under its supervision shall administer the provisions of this chapter and the rules and orders established thereunder and all other laws of the state. The director shall attend, but not vote at, all meetings of the college board. The director shall be in charge of offices of the college board and responsible to the college board for the preparation of reports and the collection and dissemination of data and other public information relating to the state system of community and technical colleges. At the direction of the college board, the director shall, together with the chairman of the college board, execute all contracts entered into by the college board.

The director shall, with the approval of the college board: (1) Employ necessary assistant directors of major staff divisions who shall serve at the director's pleasure on such terms and conditions as the director determines, and (2) subject to the provisions of chapter 41.06 RCW the director shall, with the approval of the college board, appoint and employ such field and office assistants, clerks and other employees as may be required and authorized for the proper discharge of the functions of the college board and for whose services funds have been appropriated.

The board may, by written order filed in its office, delegate to the director any of the powers and duties vested in or imposed upon it by this chapter. Such delegated powers and duties may be exercised by the director in the name of the college board. [1994 c 154 § 306; 1991 c 238 § 31; 1975-'76 2nd ex.s. c 34 § 75; 1973 1st ex.s. c 46 § 8; 1973 c 62 § 14; 1969 ex.s. c 261 § 20; 1969 ex.s. c 223 § 28B.50.060. Prior: 1967 ex.s. c 8 § 6.]

**Parts and captions not law—Effective date—Severability—1994 c 154:** See RCW 42.52.902, 42.52.904, and 42.52.905.

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**Severability—1973 1st ex.s. c 46:** See note following RCW 28B.10.704.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020.

*High-technology coordinating board, director or designee member of:* RCW 28B.65.040.

**28B.50.070 College board—Organization—Meetings—Quorum—Biennial report—Fiscal year.** The governor shall make the appointments to the college board.

The college board shall organize, adopt a seal, and adopt bylaws for its administration, not inconsistent herewith, as it may deem expedient and may from time to time amend such bylaws. Annually the board shall elect a chairperson and vice chairperson; all to serve until their successors are appointed and qualified. The college board shall at its initial meeting fix

a date and place for its regular meeting. Five members shall constitute a quorum, and no meeting shall be held with less than a quorum present, and no action shall be taken by less than a majority of the college board.

Special meetings may be called as provided by its rules and regulations. Regular meetings shall be held at the college board's established offices in Olympia, but whenever the convenience of the public or of the parties may be promoted, or delay or expenses may be prevented, it may hold its meetings, hearings or proceedings at any other place designated by it. Subject to RCW 40.07.040, the college board shall transmit a report in writing to the governor biennially which report shall contain such information as may be requested by the governor. The fiscal year of the college board shall conform to the fiscal year of the state. [1987 c 505 § 15; 1986 c 130 § 1; 1977 c 75 § 26; 1973 c 62 § 15; 1969 ex.s. c 223 § 28B.50.070. Prior: 1967 ex.s. c 8 § 7. Formerly RCW 28.85.070.]

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

*Fiscal year defined:* RCW 43.88.020.

**28B.50.080 College board—Offices and office equipment, including necessary expenses.** Suitable offices and office equipment shall be provided by the state for the college board in the city of Olympia, and the college board may incur the necessary expense for office furniture, stationery, printing, incidental expenses, and other expenses necessary for the administration of this chapter. [1969 ex.s. c 223 § 28B.50.080. Prior: 1967 ex.s. c 8 § 8. Formerly RCW 28.85.080.]

**28B.50.085 College board—Treasurer—Appointment, duties, bond—Depository.** The state board for community and technical colleges shall appoint a treasurer who shall be the financial officer of the board, who shall make such vendor payments and salary payments for the entire community and technical college system as authorized by the state board, and who shall hold office during the pleasure of the board. All moneys received by the state board and not required to be deposited elsewhere, shall be deposited in a depository selected by the board, which moneys shall be subject to the budgetary and audit provisions of law applicable to state agencies. The depository selected by the state board shall conform to the collateral requirements required for the deposit of other state funds. Disbursement shall be made by check signed by the treasurer. The treasurer shall render a true and faithful account of all moneys received and paid out by him or her and shall give bond for the faithful performance of the duties of his or her office in such amount as the board requires: PROVIDED, That the board shall pay the fee for any such bonds. [1991 c 238 § 32; 1981 c 246 § 4.]

**Severability—1981 c 246:** See note following RCW 28B.50.090.

**28B.50.090 College board—Powers and duties.** The college board shall have general supervision and control over the state system of community and technical colleges. In addition to the other powers and duties imposed upon the college board by this chapter, the college board shall be charged with the following powers, duties and responsibilities:

(1) Review the budgets prepared by the boards of trustees, prepare a single budget for the support of the state system of community and technical colleges and adult education, and submit this budget to the governor as provided in RCW 43.88.090;

(2) Establish guidelines for the disbursement of funds; and receive and disburse such funds for adult education and maintenance and operation and capital support of the college districts in conformance with the state and district budgets, and in conformance with chapter 43.88 RCW;

(3) Ensure, through the full use of its authority:

(a) That each college district shall offer thoroughly comprehensive educational, training and service programs to meet the needs of both the communities and students served by combining high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; and community services of an educational, cultural, and recreational nature; and adult education, including basic skills and general, family, and work force literacy programs and services. However, technical colleges, and college districts containing only technical colleges, shall maintain programs solely for occupational education, basic skills, and literacy purposes. For as long as a need exists, technical colleges may continue those programs, activities, and services they offered during the twelve-month period preceding May 17, 1991;

(b) That each college district shall maintain an open-door policy, to the end that no student will be denied admission because of the location of the student's residence or because of the student's educational background or ability; that, insofar as is practical in the judgment of the college board, curriculum offerings will be provided to meet the educational and training needs of the community generally and the students thereof; and that all students, regardless of their differing courses of study, will be considered, known and recognized equally as members of the student body: PROVIDED, That the administrative officers of a community or technical college may deny admission to a prospective student or attendance to an enrolled student if, in their judgment, the student would not be competent to profit from the curriculum offerings of the college, or would, by his or her presence or conduct, create a disruptive atmosphere within the college not consistent with the purposes of the institution. This subsection (3)(b) shall not apply to competency, conduct, or presence associated with a disability in a person twenty-one years of age or younger attending a technical college;

(4) Prepare a comprehensive master plan for the development of community and technical college education and training in the state; and assist the office of financial management in the preparation of enrollment projections to support plans for providing adequate college facilities in all areas of the state. The master plan shall include implementation of the vision, goals, priorities, and strategies in the statewide strategic master plan for higher education under RCW 28B.76.200 based on the community and technical college system's role and mission. The master plan shall also contain measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities;

(5) Define and administer criteria and guidelines for the establishment of new community and technical colleges or campuses within the existing districts;

(6) Establish criteria and procedures for modifying district boundary lines consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended and in accordance therewith make such changes as it deems advisable;

(7) Establish minimum standards to govern the operation of the community and technical colleges with respect to:

(a) Qualifications and credentials of instructional and key administrative personnel, except as otherwise provided in the state plan for vocational education,

(b) Internal budgeting, accounting, auditing, and financial procedures as necessary to supplement the general requirements prescribed pursuant to chapter 43.88 RCW,

(c) The content of the curriculums and other educational and training programs, and the requirement for degrees and certificates awarded by the colleges,

(d) Standard admission policies,

(e) Eligibility of courses to receive state fund support;

(8) Establish and administer criteria and procedures for all capital construction including the establishment, installation, and expansion of facilities within the various college districts;

(9) Encourage innovation in the development of new educational and training programs and instructional methods; coordinate research efforts to this end; and disseminate the findings thereof;

(10) Exercise any other powers, duties and responsibilities necessary to carry out the purposes of this chapter;

(11) Authorize the various community and technical colleges to offer programs and courses in other districts when it determines that such action is consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended;

(12) Notwithstanding any other law or statute regarding the sale of state property, sell or exchange and convey any or all interest in any community and technical college real and personal property, except such property as is received by a college district in accordance with RCW 28B.50.140(8), when it determines that such property is surplus or that such a sale or exchange is in the best interests of the community and technical college system;

(13) In order that the treasurer for the state board for community and technical colleges appointed in accordance with RCW 28B.50.085 may make vendor payments, the state treasurer will honor warrants drawn by the state board providing for an initial advance on July 1, 1982, of the current biennium and on July 1 of each succeeding biennium from the state general fund in an amount equal to twenty-four percent of the average monthly allotment for such budgeted biennium expenditures for the state board for community and technical colleges as certified by the office of financial management; and at the conclusion of such initial month and for each succeeding month of any biennium, the state treasurer will reimburse expenditures incurred and reported monthly by the state board treasurer in accordance with chapter 43.88 RCW: PROVIDED, That the reimbursement to the state board for actual expenditures incurred in the final month of each biennium shall be less the initial advance made in such biennium;

(14) Notwithstanding the provisions of subsection (12) of this section, may receive such gifts, grants, conveyances, devises, and bequests of real or personal property from private sources as may be made from time to time, in trust or

otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs and may sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof;

(15) The college board shall have the power of eminent domain;

(16) Provide general supervision over the state's technical colleges. The president of each technical college shall report directly to the director of the state board for community and technical colleges, or the director's designee, until local control is assumed by a new or existing board of trustees as appropriate, except that a college president shall have authority over program decisions of his or her college until the establishment of a board of trustees for that college. The directors of the vocational-technical institutes on March 1, 1991, shall be designated as the presidents of the new technical colleges. [2004 c 275 § 57; 2003 c 130 § 6; 1991 c 238 § 33; 1982 c 50 § 1; 1981 c 246 § 2; 1979 c 151 § 20; 1977 ex.s. c 282 § 4; 1973 c 62 § 16; 1969 ex.s. c 261 § 21; 1969 ex.s. c 223 § 28B.50.090. Prior: 1967 ex.s. c 8 § 9.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Findings—Intent—2003 c 130:** See note following RCW 28B.76.210.

**Severability—1981 c 246:** "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 246 § 6.]

**Severability—1977 ex.s. c 282:** See note following RCW 28B.50.870.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020.

*Construction, reconstruction, equipping facilities—Financing:* RCW 28B.50.340.

*Development of budget:* RCW 43.88.090.

*Eminent domain:* Title 8 RCW.

*State budgeting, accounting, and reporting system:* Chapter 43.88 RCW.

**28B.50.091 Board to waive fees for students finishing their high school education.** See RCW 28B.15.520.

**28B.50.092 Program for military personnel—Restrictions as to high school completion program.** The state board for community and technical colleges may authorize any board of trustees to do all things necessary to conduct an education, training, and service program authorized by chapter 28B.50 RCW, as now or hereafter amended, for United States military personnel and their dependents, and department of defense civilians and their dependents, at any geographical location: PROVIDED, That such programs shall be limited to those colleges which conducted programs for United States military personnel prior to January 1, 1977: PROVIDED FURTHER, That any high school completion program conducted pursuant to this section shall comply with standards set forth in rules and regulations promulgated by the superintendent of public instruction and the state board of education: AND PROVIDED FURTHER, That the superintendent of public instruction shall issue the certificate or diploma in recognition of high school completion education

provided pursuant to this section. [1991 c 238 § 34; 1977 ex.s. c 131 § 1; 1973 c 105 § 1.]

**28B.50.093 Program for military personnel—Limitation.** Prior to the state board granting authorization for any programs authorized under RCW 28B.50.092, the state board shall determine that such authorization will not deter from the primary functions of the community and technical college system within the state of Washington as prescribed by chapter 28B.50 RCW. [1991 c 238 § 35; 1973 c 105 § 2.]

**28B.50.094 Program for military personnel—Costs of funding.** The costs of funding programs authorized by RCW 28B.50.092 through 28B.50.094 shall ultimately be borne by grants or fees derived from nonstate treasury sources. [1973 c 105 § 3.]

**28B.50.095 Registration at more than one community and technical college.** In addition to other powers and duties, the college board may issue rules and regulations permitting a student to register at more than one community and technical college, provided that such student shall pay tuition and fees as if the student were registered at a single college, but not to exceed tuition and fees charged a full-time student as established under chapter 28B.15 RCW. [1995 1st sp.s. c 9 § 11; 1991 c 238 § 36; 1983 c 3 § 40; 1973 c 129 § 1.]

**Intent—Purpose—Effective date—1995 1st sp.s. c 9:** See notes following RCW 28B.15.031.

**28B.50.096 Cooperation with work force training and education coordinating board.** The college board shall cooperate with the work force training and education coordinating board in the conduct of the board's responsibilities under RCW 28C.18.060 and shall provide information and data in a format that is accessible to the board. [1991 c 238 § 79.]

**28B.50.097 Electronic job bank.** (1) The college board shall create an electronic job bank on its web site to act as a clearinghouse for people seeking academic teaching positions at the state's community and technical colleges. The job bank must be accessible on the internet. Use of the electronic job bank is not mandatory.

(2) The college board shall include a separate section on its electronic job bank reserved for the exclusive listing of part-time academic employment opportunities at state community and technical colleges.

(3) The separate section of the electronic job bank under subsection (2) of this section must, at a minimum, include an internet link to each of the following components, if available from the community or technical college offering the employment opportunity:

- (a) A description of the open position;
  - (b) A listing of required skills and experience necessary for the position; and
  - (c) The district where the employment opening exists.
- (4) The college board shall develop a strategy to promote its electronic job bank to prospective candidates. [2001 c 110 § 1.]

**28B.50.098 Appointment of trustees for new college district.** In the event a new college district is created, the governor shall appoint new trustees to the district's board of trustees in accordance with RCW 28B.50.100. [1991 c 238 § 134.]

**28B.50.100 Boards of trustees—Generally.** There is hereby created a board of trustees for each college district as set forth in this chapter. Each board of trustees shall be composed of five trustees, who shall be appointed by the governor for terms commencing October 1st of the year in which appointed. In making such appointments the governor shall give consideration to geographical diversity, and representing labor, business, women, and racial and ethnic minorities, in the membership of the boards of trustees. The boards of trustees for districts containing technical colleges shall include at least one member from business and one member from labor.

The successors of the trustees initially appointed shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed only for the remainder of the term. Each member shall serve until a successor is appointed and qualified.

Every trustee shall be a resident and qualified elector of the college district. No trustee may be an employee of the community and technical college system, a member of the board of directors of any school district, or a member of the governing board of any public or private educational institution.

Each board of trustees shall organize itself by electing a chairman from its members. The board shall adopt a seal and may adopt such bylaws, rules and regulations as it deems necessary for its own government. Three members of the board shall constitute a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations. The district president, or if there be none, the president of the college, shall serve as, or may designate another person to serve as, the secretary of the board, who shall not be deemed to be a member of the board.

Members of the boards of trustees may be removed for misconduct or malfeasance in office in the manner provided by RCW 28B.10.500. [1991 c 238 § 37; 1987 c 330 § 1001; 1983 c 224 § 1; 1979 ex.s. c 103 § 1; 1977 ex.s. c 282 § 2; 1973 c 62 § 17; 1969 ex.s. c 261 § 22; 1969 ex.s. c 223 § 28B.50.100. Prior: 1967 ex.s. c 8 § 10.]

**Construction—Application of rules—Severability—1987 c 330:** See notes following RCW 28B.12.050.

**Severability—1979 ex.s. c 103:** See note following RCW 28B.20.100.

**Severability—1977 ex.s. c 282:** See note following RCW 28B.50.870.

**Effective date—1977 ex.s. c 282 §§ 2, 3:** "Sections 2 and 3 of this 1977 amendatory act shall not take effect until January 1, 1978." [1977 ex.s. c 282 § 9.]

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020. *Chief executive officer as secretary of board:* RCW 28B.50.130.

**28B.50.130 Boards of trustees—Bylaws, rules, and regulations—Chair and vice-chair—Terms—Quorum.**

Within thirty days of their appointment the various district boards of trustees shall organize, adopt bylaws for its own government, and make such rules and regulations not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a chair and vice-chair, each to serve for one year, and annually thereafter shall elect such officers to serve until their successors are appointed or qualified. The chief executive officer of the college district, or designee, shall serve as secretary of the board. Three trustees shall constitute a quorum, and no action shall be taken by less than a majority of the trustees of the board. The district boards shall transmit such reports to the college board as may be requested by the college board. The fiscal year of the district boards shall conform to the fiscal year of the state. [1991 c 238 § 38; 1977 c 75 § 27; 1973 c 62 § 18; 1969 ex.s. c 223 § 28B.50.130. Prior: 1967 ex.s. c 8 § 13. Formerly RCW 28.85.130.]

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

*District president or president of college as secretary of board:* RCW 28B.50.100.

*Fiscal year defined:* RCW 43.88.020.

#### **28B.50.140 Boards of trustees—Powers and duties.**

Each board of trustees:

(1) Shall operate all existing community and technical colleges in its district;

(2) Shall create comprehensive programs of community and technical college education and training and maintain an open-door policy in accordance with the provisions of RCW 28B.50.090(3). However, technical colleges, and college districts containing only technical colleges, shall maintain programs solely for occupational education, basic skills, and literacy purposes. For as long as a need exists, technical colleges may continue those programs, activities, and services they offered during the twelve-month period preceding September 1, 1991;

(3) Shall employ for a period to be fixed by the board a college president for each community and technical college and, may appoint a president for the district, and fix their duties and compensation, which may include elements other than salary. Compensation under this subsection shall not affect but may supplement retirement, health care, and other benefits that are otherwise applicable to the presidents as state employees. The board shall also employ for a period to be fixed by the board members of the faculty and such other administrative officers and other employees as may be necessary or appropriate and fix their salaries and duties. Compensation and salary increases under this subsection shall not exceed the amount or percentage established for those purposes in the state appropriations act by the legislature as allocated to the board of trustees by the state board for community and technical colleges. The state board for community and technical colleges shall adopt rules defining the permissible elements of compensation under this subsection;

(4) May establish, under the approval and direction of the college board, new facilities as community needs and interests demand. However, the authority of boards of trustees to purchase or lease major off-campus facilities shall be subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230;

(5) May establish or lease, operate, equip and maintain dormitories, food service facilities, bookstores and other self-supporting facilities connected with the operation of the community and technical college;

(6) May, with the approval of the college board, borrow money and issue and sell revenue bonds or other evidences of indebtedness for the construction, reconstruction, erection, equipping with permanent fixtures, demolition and major alteration of buildings or other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances, for dormitories, food service facilities, and other self-supporting facilities connected with the operation of the community and technical college in accordance with the provisions of RCW 28B.10.300 through 28B.10.330 where applicable;

(7) May establish fees and charges for the facilities authorized hereunder, including reasonable rules and regulations for the government thereof, not inconsistent with the rules and regulations of the college board; each board of trustees operating a community and technical college may enter into agreements, subject to rules and regulations of the college board, with owners of facilities to be used for housing regarding the management, operation, and government of such facilities, and any board entering into such an agreement may:

(a) Make rules and regulations for the government, management and operation of such housing facilities deemed necessary or advisable; and

(b) Employ necessary employees to govern, manage and operate the same;

(8) May receive such gifts, grants, conveyances, devises and bequests of real or personal property from private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs as specified by law and the regulations of the state college board; sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof;

(9) May establish and maintain night schools whenever in the discretion of the board of trustees it is deemed advisable, and authorize classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for community and technical college purposes;

(10) May make rules and regulations for pedestrian and vehicular traffic on property owned, operated, or maintained by the district;

(11) Shall prescribe, with the assistance of the faculty, the course of study in the various departments of the community and technical college or colleges under its control, and publish such catalogues and bulletins as may become necessary;

(12) May grant to every student, upon graduation or completion of a course of study, a suitable diploma, nonbaccalaureate degree or certificate. Technical colleges shall offer only nonbaccalaureate technical degrees under the rules of the state board for community and technical colleges that are appropriate to their work force education and training

mission. The primary purpose of this degree is to lead the individual directly to employment in a specific occupation. Technical colleges may not offer transfer degrees. The board, upon recommendation of the faculty, may also confer honorary associate of arts degrees upon persons other than graduates of the community college, in recognition of their learning or devotion to education, literature, art, or science. No degree may be conferred in consideration of the payment of money or the donation of any kind of property;

(13) Shall enforce the rules and regulations prescribed by the state board for community and technical colleges for the government of community and technical colleges, students and teachers, and promulgate such rules and regulations and perform all other acts not inconsistent with law or rules and regulations of the state board for community and technical colleges as the board of trustees may in its discretion deem necessary or appropriate to the administration of college districts: PROVIDED, That such rules and regulations shall include, but not be limited to, rules and regulations relating to housing, scholarships, conduct at the various community and technical college facilities, and discipline: PROVIDED, FURTHER, That the board of trustees may suspend or expel from community and technical colleges students who refuse to obey any of the duly promulgated rules and regulations;

(14) May, by written order filed in its office, delegate to the president or district president any of the powers and duties vested in or imposed upon it by this chapter. Such delegated powers and duties may be exercised in the name of the district board;

(15) May perform such other activities consistent with this chapter and not in conflict with the directives of the college board;

(16) Notwithstanding any other provision of law, may offer educational services on a contractual basis other than the tuition and fee basis set forth in chapter 28B.15 RCW for a special fee to private or governmental entities, consistent with rules and regulations adopted by the state board for community and technical colleges: PROVIDED, That the whole of such special fee shall go to the college district and be not less than the full instructional costs of such services including any salary increases authorized by the legislature for community and technical college employees during the term of the agreement: PROVIDED FURTHER, That enrollments generated hereunder shall not be counted toward the official enrollment level of the college district for state funding purposes;

(17) Notwithstanding any other provision of law, may offer educational services on a contractual basis, charging tuition and fees as set forth in chapter 28B.15 RCW, counting such enrollments for state funding purposes, and may additionally charge a special supplemental fee when necessary to cover the full instructional costs of such services: PROVIDED, That such contracts shall be subject to review by the state board for community and technical colleges and to such rules as the state board may adopt for that purpose in order to assure that the sum of the supplemental fee and the normal state funding shall not exceed the projected total cost of offering the educational service: PROVIDED FURTHER, That enrollments generated by courses offered on the basis of contracts requiring payment of a share of the normal costs of the

course will be discounted to the percentage provided by the college;

(18) Shall be authorized to pay dues to any association of trustees that may be formed by the various boards of trustees; such association may expend any or all of such funds to submit biennially, or more often if necessary, to the governor and to the legislature, the recommendations of the association regarding changes which would affect the efficiency of such association;

(19) May participate in higher education centers and consortia that involve any four-year public or independent college or university: PROVIDED, That new degree programs or off-campus programs offered by a four-year public or independent college or university in collaboration with a community or technical college are subject to approval by the higher education coordinating board under RCW 28B.76.230; and

(20) Shall perform any other duties and responsibilities imposed by law or rule and regulation of the state board. [2004 c 275 § 58; 1997 c 281 § 1. Prior: 1991 c 238 § 39; 1991 c 58 § 1; 1990 c 135 § 1; prior: 1987 c 407 § 1; 1987 c 314 § 14; 1985 c 370 § 96; 1981 c 246 § 3; 1979 ex.s. c 226 § 11; 1979 c 14 § 6; prior: 1977 ex.s. c 282 § 5; 1977 c 75 § 28; 1973 c 62 § 19; 1970 ex.s. c 15 § 17; prior: 1969 ex.s. c 283 § 30; 1969 ex.s. c 261 § 23; 1969 ex.s. c 223 § 28B.50.140; prior: 1967 ex.s. c 8 § 14.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—1987 c 314:** See RCW 28B.52.900.

**Severability—1981 c 246:** See note following RCW 28B.50.090.

**Effective date—Severability—1979 ex.s. c 226:** See notes following RCW 28B.59C.010.

**Severability—1977 ex.s. c 282:** See note following RCW 28B.50.870.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**Severability—1970 ex.s. c 15:** See note following RCW 28A.230.160.

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020.

**28B.50.1401 Lake Washington Technical College board of trustees.** There is hereby created a board of trustees for district twenty-six and Lake Washington Vocational-Technical Institute, hereafter known as Lake Washington Technical College. The members of the board shall be appointed pursuant to the provisions of RCW 28B.50.100. [1991 c 238 § 24.]

**28B.50.1402 Renton Technical College board of trustees.** There is hereby created a board of trustees for district twenty-seven and Renton Vocational-Technical Institute, hereafter known as Renton Technical College. The members of the board shall be appointed pursuant to the provisions of RCW 28B.50.100. [1991 c 238 § 25.]

**28B.50.1403 Bellingham Technical College board of trustees.** There is hereby created a board of trustees for district twenty-five and Bellingham Vocational-Technical Institute, hereafter known as Bellingham Technical College. The members of the board shall be appointed pursuant to the provisions of RCW 28B.50.100. [1991 c 238 § 26.]

**28B.50.1404 Bates Technical College board of trustees.** There is hereby created a new board of trustees for district twenty-eight and Bates Vocational-Technical Institute, hereafter known as Bates Technical College. The members of the board shall be appointed pursuant to the provisions of RCW 28B.50.100. [1991 c 238 § 27.]

**28B.50.1405 Clover Park Technical College board of trustees.** There is hereby created a new board of trustees for district twenty-nine and Clover Park Vocational-Technical Institute, hereafter known as Clover Park Technical College. The members of the board shall be appointed pursuant to the provisions of RCW 28B.50.100. [1991 c 238 § 28.]

**28B.50.1406 Cascadia Community College board of trustees.** There is hereby created a board of trustees for district thirty and Cascadia Community College. The members of the board shall be appointed pursuant to the provisions of RCW 28B.50.100. [1994 c 217 § 4.]

**Effective date—1994 c 217:** See note following RCW 28B.45.0201.

**Findings—1994 c 217:** See RCW 28B.45.0201.

**28B.50.141 Credits—Statewide transfer policy and agreement—Establishment.** See RCW 28B.76.240 and 28B.76.2401.

**28B.50.142 Treasurer of board—Duties—Bond.** Each board of trustees shall appoint a treasurer who shall be the financial officer of the board and who shall hold office during the pleasure of the board. Each treasurer shall render a true and faithful account of all moneys received and paid out by him or her, comply with the provisions of RCW 28B.50.143, and shall give bond for the faithful performance of the duties of his or her office in such amount as the trustees require: PROVIDED, That the respective community and technical colleges shall pay the fees for any such bonds. [1991 c 238 § 40; 1977 ex.s. c 331 § 1.]

**Effective date—Severability—1977 ex.s. c 331:** See notes following RCW 28B.15.031.

**28B.50.143 Vendor payments, advances or reimbursements for.** In order that each college treasurer appointed in accordance with RCW 28B.50.142 may make vendor payments, the state treasurer will honor warrants drawn by each community and technical college providing for one initial advance on July 1 of each succeeding biennium from the state general fund in an amount equal to seventeen percent of each institution's average monthly allotment for such budgeted biennium expenditures as certified by the office of financial management, and at the conclusion of each such initial month, and for each succeeding month of any biennium, the state treasurer will reimburse each institution for each expenditure incurred and reported monthly by each college treasurer in accordance with chapter 43.83 RCW: PROVIDED, That the reimbursement to each institution for actual expenditures incurred in the final month of each biennium shall be less the initial advance. [1991 c 238 § 41; 1985 c 180 § 1; 1979 c 151 § 21; 1977 ex.s. c 331 § 2.]

**Effective date—Severability—1977 ex.s. c 331:** See notes following RCW 28B.15.031.

(2004 Ed.)

**28B.50.145 Community or technical college faculty senate.** The boards of trustees of the various college districts may create at each community or technical college under their control a faculty senate or similar organization to be selected by periodic vote of the respective faculties thereof. [1991 c 238 § 42; 1969 ex.s. c 283 § 51. Formerly RCW 28.85.145.]

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.150 Out-of-district residence not to affect enrollment for state resident.** Any resident of the state may enroll in any program or course maintained or conducted by a college district upon the same terms and conditions regardless of the district of his or her residence. [1991 c 238 § 43; 1969 ex.s. c 223 § 28B.50.150. Prior: 1967 ex.s. c 8 § 15. Formerly RCW 28.85.150.]

**28B.50.195 Intercollegiate coaches—Minimum standards encouraged.** The state board for community and technical colleges in consultation with the Northwest athletic association of community colleges and other interested parties shall encourage community colleges to ensure that intercollegiate coaches meet the following minimum standards:

(1) Verification of up-to-date certification in first aid and cardiopulmonary resuscitation;

(2) Maintaining knowledge of Northwest athletic association of community colleges codes, rules, and institutional policy; and

(3) Encouragement of coaches to participate in appropriate in-service training and activities. [1993 c 94 § 2.]

**Policy—1993 c 94:** "The legislature supports the establishment of minimum standards for intercollegiate coaches and a process to ensure the safety and appropriate skill development of student athletes." [1993 c 94 § 1.]

**28B.50.196 Intercollegiate coaches—Training to promote coaching competence and techniques.** The community and technical colleges are encouraged to provide training to promote development of coaching competence and to enhance the coaching techniques of intercollegiate coaches. The community and technical colleges may offer this educational service to coaches in the community and technical colleges, common schools, amateur teams, youth groups, and community sports groups. The community and technical colleges may provide this educational service through curriculum courses, workshops, or in-service training. [1993 c 94 § 3.]

**Policy—1993 c 94:** See note following RCW 28B.50.195.

**28B.50.205 AIDS information—Community and technical colleges.** The state board for community and technical colleges shall make information available to all newly matriculated students on methods of transmission of the human immunodeficiency virus and prevention of acquired immunodeficiency syndrome. The curricula and materials shall be reviewed for medical accuracy by the office on AIDS in coordination with the appropriate regional AIDS service network. [1991 c 238 § 44; 1988 c 206 § 502.]

**Severability—1988 c 206:** See RCW 70.24.900.

**28B.50.215 Overlapping service areas—Regional planning agreements.** The colleges in each overlapping service area shall jointly submit for approval to the state board for community and technical colleges a regional planning agreement. The agreement shall provide for the ongoing interinstitutional coordination of community and technical college programs and services operated in the overlapping service area. The agreement shall include the means for the adjudication of issues arising from overlapping service areas. The agreement shall include a definitive statement of mission, scope, and purpose for each college including the nature of courses, programs, and services to be offered by each college.

Technical colleges may, under the rules of the state board for community and technical colleges, offer all specific academic support courses that may be at a transfer level that are required of all students to earn a particular certificate or degree. This shall not be interpreted to mean that their mission may be expanded to include transfer preparation, nor does it preclude technical colleges from voluntarily and cooperatively using available community college courses as components of technical college programs.

Any part of the agreement that is not approved by all the colleges in the service area, shall be determined by the state board for community and technical colleges. Approved regional planning agreements shall be enforced by the full authority of the state board for community and technical colleges. Changes to the agreement are subject to state board approval.

For the purpose of creating and adopting a regional planning agreement, the trustees of the colleges in Pierce county shall form a county coordinating committee. The county coordinating committee shall consist of eight members. Each college board of trustees in Pierce county shall select two of its members to serve on the county coordinating committee. The county coordinating committee shall not employ its own staff, but shall instead utilize staff of the colleges in the county. The regional planning agreement adopted by the county coordinating committee shall include, but shall not be limited to: The items listed in this section, the transfer of credits between technical and community colleges, program articulation, and the avoidance of unnecessary duplication in programs, activities, and services. [1997 c 281 § 2; 1991 c 238 § 144.]

**28B.50.239 High-technology education and training.** See chapter 28B.65 RCW.

**28B.50.242 Video telecommunications programming.** The state board for community and technical colleges shall provide statewide coordination of video telecommunications programming for the community and technical college system. [1991 c 238 § 45; 1990 c 208 § 10.]

**28B.50.250 Adult education programs in common school districts, limitations—Certain federal programs, administration.** The state board for community and technical colleges and the state board of education are hereby authorized to permit, on an ad hoc basis, the common school districts to conduct pursuant to RCW 28B.50.530 a program in adult education in behalf of a college district when such

program will not conflict with existing programs of the same nature and in the same geographical area conducted by the college districts: PROVIDED, That federal programs for adult education shall be administered by the state board for community and technical colleges, which agency is hereby declared to be the state educational agency primarily responsible for supervision of adult education in the public schools as defined by \*RCW 28B.50.020. [1991 c 238 § 46; 1969 ex.s. c 261 § 25; 1969 ex.s. c 223 § 28B.50.250. Prior: 1967 ex.s. c 8 § 25.]

**\*Reviser's note:** The reference to RCW 28B.50.020 appears to be erroneous. "Adult education" is defined in RCW 28B.50.030.

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020. *Community education programs:* RCW 28A.620.020.

**28B.50.252 Districts offering vocational educational programs—Local advisory committees—Advice on current job needs.** (1) Each local education agency or college district offering vocational educational programs shall establish local advisory committees to provide that agency or district with advice on current job needs and on the courses necessary to meet these needs.

(2) The local program committees shall:

(a) Participate in the determination of program goals;

(b) Review and evaluate program curricula, equipment, and effectiveness;

(c) Include representatives of business and labor who reflect the local industry, and the community; and

(d) Actively consult with other representatives of business, industry, labor, and agriculture. [1991 c 238 § 77.]

**28B.50.254 Advisory council on adult education—Work force training and education coordinating board to monitor.** (1) There is hereby created the Washington advisory council on adult education. The advisory council shall advise the state board for community and technical colleges and the work force training and education coordinating board concerning adult basic education and literacy programs. The advisory council shall perform all duties of state advisory councils on adult education as specified in P.L. 100-297, as amended. The advisory council's actions shall be consistent with the state comprehensive plan for work force training and education prepared by the work force training and education coordinating board as provided for in RCW 28C.18.060.

(2) The advisory council on adult education shall consist of nine members as required by federal law, appointed by the governor. In making these appointments, to the maximum extent feasible, the governor shall give consideration to providing overlapping membership with the membership of the state job training coordinating council, and the governor shall give consideration to individuals with expertise and experience in adult basic education.

(3) The work force training and education coordinating board shall monitor the need for the council as described in subsection (1) of this section, and, if that need no longer exists, propose legislation to terminate the council. [1991 c 238 § 19.]

**28B.50.256 Facilities shared by vocational-technical institute programs and K-12 programs.** If, before Septem-

ber 1, 1991, the use of a single building facility is being shared between an existing vocational-technical institute program and a K-12 program, the respective boards shall continue to share the use of the facility until such time as it is convenient to remove one of the two programs to another facility. The determination of convenience shall be based solely upon the best interests of the students involved.

If a vocational-technical institute district board and a common school district board are sharing the use of a single facility, the program occupying the majority of the space of such facility, exclusive of space utilized equally by both, shall determine which board will be charged with the administration and control of such facility. The determination of occupancy shall be based upon the space occupied as of January 1, 1990.

The board charged with the administration and control of such facility may share expenses with the other board for the use of the facility.

In the event that the two boards are unable to agree upon which board is to administer and control the facility or upon a fair share of expenses for the use of the facility, the governor shall appoint an arbitrator to settle the matter. The decisions of the arbitrator shall be final and binding upon both boards. The expenses of the arbitration shall be divided equally by each board. [1991 c 238 § 132.]

**28B.50.259 Program for dislocated forest products workers—Waiver from tuition and fees.** (1) The state board for community and technical colleges shall administer a program designed to provide higher education opportunities to dislocated forest products workers and their unemployed spouses who are enrolled in a community or technical college for ten or more credit hours per quarter. In administering the program, the college board shall have the following powers and duties:

(a) With the assistance of an advisory committee, design a procedure for selecting dislocated forest products workers to participate in the program;

(b) Allocate funding to community and technical colleges attended by participants; and

(c) Monitor the program and report on participants' progress and outcomes.

(2) Unemployed spouses of eligible dislocated forest products workers may participate in the program, but tuition and fees may be waived under the program only for the worker or the spouse and not both.

(3) Subject to the limitations of RCW 28B.15.910, the governing boards of the community and technical colleges may waive all or a portion of tuition and fees for program participants, for a maximum of six quarters within a two-year period.

(4) During any biennium, the number of full-time equivalent students to be served in this program shall be determined by the applicable omnibus appropriations act, and shall be in addition to the community college enrollment level funded by the applicable omnibus appropriations act. [1998 c 245 § 21; 1993 sp.s. c 18 § 32; 1992 c 231 § 29; 1991 c 315 § 17.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Intent—1991 c 315:** See note following RCW 50.12.270.

**Severability—Conflict with federal requirements—Effective date—1991 c 315:** See RCW 50.70.900 through 50.70.902.

**28B.50.301 Title to or all interest in real estate, choses in action and assets obtained for vocational-technical institute purposes by school districts—Vest in or assigned to district board—Exceptions.** Title to or all interest in real estate, choses in action and all other assets, and liabilities including court claims, including but not limited to assignable contracts, cash, deposits in county funds (including any interest or premiums thereon), equipment, buildings, facilities, and appurtenances thereto held as of September 1, 1991, by or for a school district and obtained identifiably with federal, state, or local funds appropriated for vocational-technical institutes [institute] purposes or postsecondary vocational educational purposes, or used or obtained with funds budgeted for postsecondary vocational educational purposes, or used or obtained primarily for vocational-technical institute educational purposes, shall, on the date on which the first board of trustees of each district takes office, vest in or be assigned to the district board. Cash, funds, accounts, or other deposits obtained or raised by a school district to pay for indebtedness, bonded or otherwise, contracted on or before September 1, 1991, for vocational-technical institute purposes shall remain with and continue to be, after February 2, 1992, an asset of the school district. Any option acquired by the school district to purchase real property which in the judgment of the school district will be used in the common school program may remain with the school district notwithstanding that such option was obtained in consideration of the purchase by such school district of other property for vocational-technical institute purposes. Unexpended funds of a common school district derived from the sale, before September 1, 1991, of bonds authorized for any purpose which includes vocational-technical institute purposes and not committed for any existing construction contract, shall remain with and continue to be an asset of such common school district, unless within thirty days after said date such common school district determines to transfer such funds to the board of trustees. [1991 c 238 § 115.]

**28B.50.302 Title to or all interest in real estate, choses in action and assets obtained for vocational-technical institute purposes by school districts—Vest in or assigned to state board for community and technical colleges—Exceptions.** Title to or all interest in real estate, choses in action, and all other assets and liabilities, including court claims, including but not limited to assignable contracts, cash, deposits in county funds (including any interest or premiums thereon), equipment, buildings, facilities, and appurtenances thereto held as of September 1, 1991, by or for a school district and obtained identifiably with federal, state, or local funds appropriated for vocational-technical institute purposes or postsecondary vocational educational purposes, or used or obtained with funds budgeted for vocational-technical institute purposes or postsecondary vocational education purposes, or used or obtained primarily for vocational education purposes, and all liabilities including, but not limited to court claims incurred on behalf of a vocational-technical institute by a school district, shall, on the date on which

the first board of trustees of each college district takes office, vest in or be assigned to the state board for community and technical colleges. Grounds that have been used primarily as a playground for children shall continue to be made available for such use.

Cash, funds, accounts, or other deposits obtained or raised by a school district to pay for indebtedness, bonded or otherwise, contracted on or before September 1, 1991, for vocational-technical institute purposes shall remain with and continue to be, after September 1, 1991, an asset of the school district.

Any option acquired by the school district to purchase real property which in the judgment of the school district will be used in the common school program may remain with the school district notwithstanding that such option was obtained in consideration of the purchase by such school district of other property for vocational-technical institute purposes.

Unexpended funds of a common school district derived from the sale of bonds issued for vocational-technical institute capital purposes and not committed for any existing construction contract, shall be transferred to the college district of which the institute is a part for application to such projects.

For the purposes of this section and to facilitate the process of allocating the assets, the board of directors of each school district in which a vocational-technical institute is located, and the director of each vocational-technical institute, shall each submit to the state board of education, and the state board for community and technical colleges within ninety days of September 1, 1991, an inventory listing all real estate, personal property, choses in action, and other assets, held by a school district which, under the criteria of this section, will become the assets of the state board for community and technical colleges.

However, assets used primarily for vocational-technical institute purposes shall include, but not be limited to, all assets currently held by school districts which have been used on an average of at least seventy-five percent of the time during the 1989-90 school year, or if acquired subsequent to July 1, 1990, since its time of acquisition, for vocational-technical institute purposes, except that facilities used during school construction and remodeling periods to house vocational-technical institute programs temporarily and facilities that were vacated by the vocational-technical institute and returned to the school district during 1990-91 are not subject to this requirement.

The ultimate decision and approval with respect to the allocation and dispositions of the assets and liabilities including court claims under this section shall be made by a task force appointed by the governor in consultation with the superintendent of public instruction and the state board for community and technical colleges. Any issues remaining in dispute shall be settled by the governor or the governor's designee. The decision of the governor, the governor's designee, or the task force may be appealed within sixty days after such decision is issued by appealing to the district court of Thurston county. The decision of the superior court may be appealed to the supreme court of the state in accordance with the provision[s] of the administrative procedure act, chapter 34.05 RCW. [1991 c 238 § 131.]

#### **28B.50.305 Seattle Vocational Institute—Findings.**

The legislature finds that a vocational institute in the central area of the city of Seattle provides civic, social, and economic benefits to the people of the state of Washington. Economic development is enhanced by increasing the number of skilled individuals who enter the labor market and social welfare costs are reduced by the training of individuals lacking marketable skills. The students at the institute are historically economically disadvantaged, and include racial and ethnic minorities, recent immigrants, single-parent heads of households, and persons who are dislocated workers or without specific occupational skills. The institute presents a unique opportunity for business, labor, and community-based organizations, and educators to work together to provide effective vocational-technical training to the economically disadvantaged of urban Seattle, and to serve as a national model of such cooperation. Moreover, a trained work force is a major factor in attracting new employers, and with greater minority participation in the work force, the institute is uniquely located to deliver training and education to the individuals employers must increasingly turn to for their future workers. [1991 c 238 § 93.]

#### **28B.50.306 Seattle Vocational Institute—Mission—**

**Advisory committee to advise.** The mission of the institute shall be to provide occupational, basic skills, and literacy education opportunities to economically disadvantaged populations in urban areas of the college district it serves. The mission shall be achieved primarily through open-entry, open-exit, short-term, competency-based basic skill, and job training programs targeted primarily to adults. The board of trustees of the sixth college district shall appoint a nine-member advisory committee consisting of equal representation from business, labor, and community representatives to provide advice and counsel to the administration of the institute and the district administration. [1991 c 238 § 100.]

#### **28B.50.307 Seattle Vocational Institute—Funding.**

Funding for the institute shall be included in a separate allocation to the sixth college district, and funds allocated for the institute shall be used only for purposes of the institute. [1991 c 238 § 101.]

**28B.50.310 Community college fees.** See chapter 28B.15 RCW.

**28B.50.311 Community college fees—Waiver of tuition and fees for long-term unemployed or underemployed persons—Conditions—Rules.** See RCW 28B.15.522.

**28B.50.312 Resident tuition for participants in community college international student exchange program.** See RCW 28B.15.526.

**28B.50.313 Waiver of the nonresident portion of tuition and fees for students of foreign nations.** See RCW 28B.15.527.

**28B.50.320 Fees and other income—Deposit—Disbursement.** All operating fees, services and activities fees, and all other income which the trustees are authorized to impose shall be deposited as the trustees may direct unless otherwise provided by law. Such sums of money shall be subject to the budgetary and audit provisions of law applicable to state agencies. The depository selected by the trustees shall conform to the collateral requirements required for deposit of other state funds.

Disbursement shall be made by check signed by the president of the college or the president's designee appointed in writing, and such other person as may be designated by the board of trustees of the college district. Each person authorized to sign as provided above, shall execute a surety bond as provided in RCW 43.17.100. Said bond or bonds shall be filed in the office of the secretary of state. [1991 c 238 § 47; 1971 ex.s. c 279 § 17; 1970 ex.s. c 59 § 4; 1969 ex.s. c 238 § 5; 1969 ex.s. c 223 § 28B.50.320. Prior: 1967 ex.s. c 8 § 32.]

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

**Severability—1970 ex.s. c 59:** See note following RCW 28B.15.520.

**28B.50.327 Collection of student tuition and fees—Seattle Vocational Institute.** Notwithstanding the provisions of chapter 28B.15 RCW, technical colleges and the Seattle Vocational Institute may continue to collect student tuition and fees per their standard operating procedures in effect on September 1, 1991. The applicability of existing community college rules and statutes pursuant to chapter 28B.15 RCW regarding tuition and fees shall be determined by the state board for community and technical colleges within two years of September 1, 1991. [1991 c 238 § 84.]

**28B.50.328 Waivers of tuition and fees—Scholarships—Employment of instructional staff and faculty—Seattle Vocational Institute.** The district may provide for waivers of tuition and fees and provide scholarships for students at the institute. The district may negotiate with applicable public or private service providers to conduct the instructional activities of the institute. The district may employ instructional staff or faculty. The district may also contract with private individuals for instructional services. Until at least July 1, 1993, all faculty and staff serve at the pleasure of the district. In order to allow the district flexibility in its personnel policies with the institute, the district and the institute, with reference to employees of the institute employed during an initial two-year period until July 1, 1993, are exempt from chapters \*28B.16, 28B.52 (relating to collective bargaining), 41.04, 41.05, 41.06, and 41.40 RCW; from RCW 43.01.040 through 43.01.044; and from RCW 28B.50.551 and 28B.50.850 through 28B.50.875 (relating to faculty tenure). [1991 c 238 § 103.]

**\*Reviser's note:** Chapter 28B.16 RCW was repealed by 1993 c 281, with the exception of RCW 28B.16.015 and 28B.16.240, which was recodified as RCW 41.06.382. The powers, duties, and functions of the state higher education personnel board were transferred to the Washington personnel resources board. RCW 28B.16.015 and 41.06.382 were subsequently repealed by 2002 c 354 § 403, effective July 1, 2005.

**28B.50.330 Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Financing by revenue**

**bonds—Bid procedure.** The boards of trustees of college districts are empowered in accordance with the provisions of this chapter to provide for the construction, reconstruction, erection, equipping, demolition, and major alterations of buildings and other capital assets, and the acquisition of sites, rights-of-way, easements, improvements, or appurtenances for the use of the aforementioned colleges as authorized by the college board in accordance with RCW 28B.50.140; to be financed by bonds payable out of special funds from revenues hereafter derived from income received from such facilities, gifts, bequests, or grants, and such additional funds as the legislature may provide, and payable out of a bond retirement fund to be established by the respective district boards in accordance with rules and regulations of the state board. With respect to building, improvements, or repairs, or other work, where the estimated cost exceeds twenty-five thousand dollars, complete plans and specifications for such work shall be prepared and such work shall be put out for public bids and the contract shall be awarded to the lowest responsible bidder if in accordance with the bid specifications: PROVIDED, That when such building, construction, renovation, remodeling, or demolition involves one trade or craft area and the estimated cost exceeds ten thousand dollars, complete plans and specifications for such work shall be prepared and such work shall be put out for public bids, and the contract shall be awarded to the lowest responsible bidder if in accordance with the bid specifications. This subsection shall not apply when a contract is awarded by the small works procedure authorized in \*RCW 39.04.150: PROVIDED FURTHER, That any project regardless of dollar amount may be put to public bid.

Where the estimated cost to any college of any building, improvements, or repairs, or other work, is less than twenty-five thousand dollars, the publication requirements of RCW 39.04.020 shall be inapplicable. [1993 c 379 § 108; 1991 c 238 § 48; 1979 ex.s. c 12 § 2; 1969 ex.s. c 223 § 28B.50.330. Prior: 1967 ex.s. c 8 § 33. Formerly RCW 28.85.330.]

**\*Reviser's note:** RCW 39.04.150 was repealed by 2000 c 138 § 301.

**Intent—Severability—Effective date—1993 c 379:** See notes following RCW 28B.10.029.

**Severability—1979 ex.s. c 12:** See note following RCW 28B.10.350.

**28B.50.340 Construction, reconstruction, equipping and demolition of community and technical college facilities and acquisition of property—Financing by bonds secured by pledge of building fees, grants.** In addition to the powers conferred under RCW 28B.50.090, the college board is authorized and shall have the power:

(1) To permit the district boards of trustees to contract for the construction, reconstruction, erection, equipping, maintenance, demolition and major alterations of buildings and other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances of the college as approved by the state board.

(2) To finance the same by the issuance of bonds secured by the pledge of up to one hundred percent of the building fees.

(3) Without limitation of the foregoing, to accept grants from the United States government, or any federal or state agency or instrumentality, or private corporation, association, or person to aid in defraying the costs of any such projects.

(4) To retain bond counsel and professional bond consultants to aid it in issuing bonds pursuant to RCW 28B.50.340 through 28B.50.400. [1991 c 238 § 49; 1985 c 390 § 54; 1971 ex.s. c 279 § 18; 1970 ex.s. c 15 § 18. Prior: 1969 ex.s. c 261 § 26; 1969 ex.s. c 238 § 6; 1969 ex.s. c 223 § 28B.50.340; prior: 1967 ex.s. c 8 § 34.]

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

**Severability—1970 ex.s. c 15:** See note following RCW 28A.230.160.

**28B.50.350 Construction, reconstruction, equipping and demolition of community and technical college facilities and acquisition of property—Bonds—Requirements.**

For the purpose of financing the cost of any projects, the college board is hereby authorized to adopt the resolution or resolutions and prepare all other documents necessary for the issuance, sale and delivery of the bonds or any part thereof at such time or times as it shall deem necessary and advisable. Said bonds:

(1) Shall not constitute:

(a) An obligation, either general or special, of the state;

or

(b) A general obligation of the college or of the college board;

(2) Shall be:

(a) Either registered or in coupon form; and

(b) Issued in denominations of not less than one hundred dollars; and

(c) Fully negotiable instruments under the laws of this state; and

(d) Signed on behalf of the college board with the manual or facsimile signature of the chairman of the board, attested by the secretary of the board, have the seal of the college board impressed thereon or a facsimile of such seal printed or lithographed in the bottom border thereof, and the coupons attached thereto shall be signed with the facsimile signatures of such chairman and the secretary;

(3) Shall state:

(a) The date of issue; and

(b) The series of the issue and be consecutively numbered within the series; and

(c) That the bond is payable both principal and interest solely out of the bond retirement fund created for retirement thereof;

(4) Each series of bonds shall bear interest, payable either annually or semiannually, as the board may determine;

(5) Shall be payable both principal and interest out of the bond retirement fund;

(6) Shall be payable at such times over a period of not to exceed forty years from date of issuance, at such place or places, and with such reserved rights of prior redemption, as the board may prescribe;

(7) Shall be sold in such manner and at such price as the board may prescribe;

(8) Shall be issued under and subject to such terms, conditions and covenants providing for the payment of the principal thereof and interest thereon and such other terms, conditions, covenants and protective provisions safeguarding such payment, not inconsistent with RCW 28B.50.330 through 28B.50.400, and as found to be necessary by the

board for the most advantageous sale thereof, which may include but not be limited to:

(a) A covenant that a reserve account shall be created in the bond retirement fund to secure the payment of the principal of and interest on all bonds issued and a provision made that certain amounts be set aside and maintained therein;

(b) A covenant that sufficient moneys may be transferred from the capital projects account of the college board issuing the bonds to the bond retirement fund of the college board when ordered by the board in the event there is ever an insufficient amount of money in the bond retirement fund to pay any installment of interest or principal and interest coming due on the bonds or any of them;

(c) A covenant fixing conditions under which bonds on a parity with any bonds outstanding may be issued.

The proceeds of the sale of all bonds, exclusive of accrued interest which shall be deposited in the bond retirement fund, shall be deposited in the state treasury to the credit of the capital projects account of the college board and shall be used solely for paying the costs of the projects, the costs of bond counsel and professional bond consultants incurred in issuing the bonds, and for the purposes set forth in subsection (8)(b) of this section;

(9) Shall constitute a prior lien and charge against the building fees of the community and technical colleges. [1991 c 238 § 50; 1985 c 390 § 55; 1971 ex.s. c 279 § 19; 1971 c 8 § 2; 1970 ex.s. c 59 § 2; 1970 ex.s. c 56 § 32; 1970 ex.s. c 15 § 19; 1969 ex.s. c 261 § 27; 1969 ex.s. c 232 § 106; 1969 ex.s. c 223 § 28B.50.350. Prior: 1967 ex.s. c 8 § 35.]

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

**Severability—1970 ex.s. c 59:** See note following RCW 28B.15.520.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Severability—1970 ex.s. c 15:** See note following RCW 28A.230.160.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**28B.50.360 Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Community and technical college capital projects account—Disposition of building fees.**

Within thirty-five days from the date of start of each quarter all collected building fees of each such community and technical college shall be paid into the state treasury, and shall be credited as follows:

(1) On or before June 30th of each year the college board if issuing bonds payable out of building fees shall certify to the state treasurer the amounts required in the ensuing twelve-month period to pay and secure the payment of the principal of and interest on such bonds. The state treasurer shall thereupon deposit the amounts so certified in the community and technical college capital projects account. Such amounts of the funds deposited in the community and technical college capital projects account as are necessary to pay and secure the payment of the principal of and interest on the building bonds issued by the college board as authorized by this chapter shall be exclusively devoted to that purpose. If in any twelve-month period it shall appear that the amount certified by the college board is insufficient to pay and secure the payment of the principal of and interest on the outstanding building bonds, the state treasurer shall notify the college

board and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal and interest on all such bonds then outstanding shall be fully met at all times.

(2) The community and technical college capital projects account is hereby created in the state treasury. The sums deposited in the capital projects account shall be appropriated and expended exclusively to pay and secure the payment of the principal of and interest on bonds payable out of the building fees and for the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets owned by the state board for community and technical colleges in the name of the state of Washington, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto, and, during the 2003-05 biennium, engineering and architectural services provided by the department of general administration, and for the payment of principal of and interest on any bonds issued for such purposes. [2004 c 277 § 910; 2002 c 238 § 303; 2000 c 65 § 1; 1997 c 42 § 1; 1991 sp.s. c 13 §§ 47, 48; 1991 c 238 § 51. Prior: 1985 c 390 § 56; 1985 c 57 § 16; 1974 ex.s. c 112 § 4; 1971 ex.s. c 279 § 20; 1970 ex.s. c 15 § 20; prior: 1969 ex.s. c 261 § 28; 1969 ex.s. c 238 § 7; 1969 ex.s. c 223 § 28B.50.360; prior: 1967 ex.s. c 8 § 36.]

**Severability—Effective dates—2004 c 277:** See notes following RCW 89.08.550.

**Severability—Effective date—2002 c 238:** See notes following RCW 28B.30.730.

**Effective date—2000 c 65:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2000]." [2000 c 65 § 3.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**Severability—1974 ex.s. c 112:** See note following RCW 28B.50.403.

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

**Severability—1970 ex.s. c 15:** See note following RCW 28A.230.160.

*Transfer of moneys in community and technical college bond retirement fund to state general fund: RCW 28B.50.401 and 28B.50.402.*

**28B.50.370 Construction, reconstruction, equipping and demolition of community and technical college facilities and acquisition of property—Bonds—Sources for payment of principal and interest on—Funds credited to bond retirement fund—Pledge to collect building fees.** For the purpose of paying and securing the payment of the principal of and interest on the bonds as the same shall become due, there shall be paid into the state treasury and credited to the bond retirement fund of the college board, the following:

(1) Amounts derived from building fees as are necessary to pay the principal of and interest on the bonds and to secure the same;

(2) Any grants which may be made, or may become available for the purpose of furthering the construction of any authorized projects, or for the repayment of the costs thereof;

(3) Such additional funds as the legislature may provide.

Said bond retirement fund shall be kept segregated from all moneys in the state treasury and shall, while any of such

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bonds or any interest thereon remains unpaid, be available solely for the payment thereof. As a part of the contract of sale of such bonds, the college board shall charge and collect building fees as established by this chapter and deposit such fees in the bond retirement fund in amounts which will be sufficient to pay and secure the payment of the principal of, and interest on all such bonds outstanding. [1991 c 238 § 52; 1985 c 390 § 57; 1971 ex.s. c 279 § 21; 1969 ex.s. c 238 § 8; 1969 ex.s. c 223 § 28B.50.370. Prior: 1967 ex.s. c 8 § 37.]

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

*Transfer of moneys in community and technical college bond retirement fund to state general fund: RCW 28B.50.401 and 28B.50.402.*

**28B.50.380 Construction, reconstruction, equipping and demolition of community college facilities and acquisition of property—Bonds—Additional powers incident to bond authorization.** In accordance with the provisions of RCW 28B.50.340 the college board is hereby empowered:

(1) To reserve the right to issue bonds later on a parity with any bonds being issued;

(2) To authorize the investing of moneys in the bond retirement fund and any reserve account therein;

(3) To authorize the transfer of money from the college board's capital projects account to the bond retirement fund when necessary to prevent a default in the payments required to be made; and

(4) To create a reserve account or accounts in the bond retirement fund to secure the payment of the principal of and interest on any bonds. [1969 ex.s. c 223 § 28B.50.380. Prior: 1967 ex.s. c 8 § 38. Formerly RCW 28.85.380.]

**28B.50.390 Construction, reconstruction, equipping and demolition of community college facilities and acquisition of property—Refunding bonds—Authorized—Form, term, issuance, etc.—Exchange or sale.** The college board is hereby empowered to issue refunding bonds to provide funds to refund any or all outstanding bonds payable from the bond retirement fund and to pay any redemption premium payable on such outstanding bonds being refunded. Such refunding bonds may be issued in the manner and on terms and conditions and with the covenants permitted by RCW 28B.50.330 through 28B.50.400 for the issuance of bonds. The refunding bonds shall be payable out of the bond retirement fund and shall not constitute an obligation either general or special, of the state or a general obligation of the college board. The board may exchange the refunding bonds at par for the bonds which are being refunded or may sell them in such manner, at such price and at such rate or rates of interest as it deems for the best interest of the college. [1970 ex.s. c 56 § 33; 1969 ex.s. c 232 § 107; 1969 ex.s. c 223 § 28B.50.390. Prior: 1967 ex.s. c 8 § 39.]

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**28B.50.400 Construction, reconstruction, equipping and demolition of community college facilities and acquisition of property—Bonds as limited obligation bonds—Additional means to pay principal and interest on.** The bonds authorized to be issued pursuant to the provisions of

RCW 28B.50.330 through 28B.50.400 shall not be general obligations of the state of Washington, but shall be limited obligation bonds payable only from the special funds created for their payment. The legislature may specify additional means for providing funds for the payment of principal and interest of said bonds. RCW 28B.50.330 through 28B.50.400 shall not be deemed to provide an exclusive method for such payment. The power given to the legislature by this section to provide for additional means for raising money is permissive, and shall not in any way be construed as a pledge of the general credit of the state of Washington. [1969 ex.s. c 223 § 28B.50.400. Prior: 1967 ex.s. c 8 § 40. Formerly RCW 28.85.400.]

**28B.50.401 Transfer of moneys in community college bond retirement fund to state general fund—Purpose.** The state finance committee has heretofore refunded, pursuant to RCW 28B.50.403 through 28B.50.407, all of the outstanding building bonds of the community college board payable from the community college bond retirement fund. By reason of such refunding said bonds are no longer deemed to be outstanding and moneys presently on deposit in said bond retirement fund are no longer needed to pay and secure the payment of such refunded bonds. [1985 c 390 § 58; 1977 ex.s. c 223 § 1.]

**Severability—1977 ex.s. c 223:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 223 § 4.]

**28B.50.402 Transfer of moneys in community and technical college bond retirement fund to state general fund—Exception.** Notwithstanding anything to the contrary contained in RCW 28B.50.360 (1) and (2) and in RCW 28B.50.370, all moneys on deposit on or before June 30, 1977, in the community and technical college bond retirement fund, shall be transferred by the state treasurer to the state general fund, except for those moneys appropriated by section 17, chapter 1, Laws of 1977. [1991 c 238 § 53; 1977 ex.s. c 223 § 2.]

**Severability—1977 ex.s. c 223:** See note following RCW 28B.50.401.

**28B.50.403 Refunding bonds—Authorized—Limitations.** The state of Washington is hereby authorized to issue state general obligation bonds for the purpose of refunding any outstanding building, limited obligation bonds of the college board issued pursuant to this chapter in an amount not exceeding 1.05 times the amount which, taking into account amounts to be earned from the investment of the proceeds of the issue, is required to pay the principal thereof, interest thereon, any premium payable with respect thereto, and the costs incurred in accomplishing such refunding: PROVIDED, That any proceeds of the refunding bonds in excess of those required to accomplish such refunding, or any obligations acquired with such excess proceeds, shall be applied exclusively for the payment of principal, interest, or call premiums with respect to such refunding obligations. In no event shall the amount of such refunding bonds authorized in this section exceed seventy-five million dollars. [1985 c 390 § 59; 1974 ex.s. c 112 § 1.]

[Title 28B RCW—page 148]

**Severability—1974 ex.s. c 112:** "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 112 § 9.]

**28B.50.404 Refunding bonds—Issuance—Security.** Subject to the specific provisions of RCW 28B.50.360 and 28B.50.403 through 28B.50.407, such general obligation refunding bonds shall be issued and the refunding of said community and technical college building bonds shall be carried out pursuant to chapters 39.42 and 39.53 RCW as now or hereafter amended. The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise of the state to pay the principal thereof and interest thereon when due. [1991 c 238 § 54; 1985 c 390 § 60; 1974 ex.s. c 112 § 2.]

**Severability—1974 ex.s. c 112:** See note following RCW 28B.50.403.

**28B.50.405 Refunding bonds—Community and technical college refunding bond retirement fund of 1974.** There is hereby created in the state treasury the community and technical college refunding bond retirement fund of 1974, which fund shall be exclusively devoted to the payment of the principal of and interest on the refunding bonds authorized by RCW 28B.50.360 and 28B.50.403 through 28B.50.407.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to pay the principal of and interest on such bonds. On July 1st of each year the state treasurer shall deposit such amount in the refunding bond retirement fund of 1974 from any general state revenues received in the state treasury. [1991 c 238 § 55; 1974 ex.s. c 112 § 3.]

**Severability—1974 ex.s. c 112:** See note following RCW 28B.50.403.

**28B.50.406 Refunding bonds—Legislature may provide additional means of payments.** The legislature may provide additional means for raising moneys for the payment of the interest and principal of the bonds authorized in RCW 28B.50.360 and 28B.50.403 through 28B.50.407 and 28B.50.360 and 28B.50.403 through 28B.50.407 shall not be deemed to provide an exclusive method for such payment. [1974 ex.s. c 112 § 5.]

**Severability—1974 ex.s. c 112:** See note following RCW 28B.50.403.

**28B.50.407 Refunding bonds—Bonds legal investment for public funds.** The bonds authorized in RCW 28B.50.360 and 28B.50.403 through 28B.50.407 shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1974 ex.s. c 112 § 6.]

**Severability—1974 ex.s. c 112:** See note following RCW 28B.50.403.

**28B.50.409 Bonds—Committee advice and consent prerequisite to issuance.** All bonds issued after February 16, 1974 by the college board or any board of trustees for any college district under provisions of chapter 28B.50 RCW, as now or hereafter amended, shall be issued by such boards only upon the prior advice and consent of the state finance committee. [1991 c 238 § 56; 1974 ex.s. c 112 § 7.]

**Severability—1974 ex.s. c 112:** See note following RCW 28B.50.403.

**28B.50.410 Rehabilitation services for individuals with disabilities—Definitions.** See RCW 74.29.010.

**28B.50.420 Rehabilitation services for individuals with disabilities—Powers and duties of state agency.** See RCW 74.29.020.

**28B.50.430 Rehabilitation services for individuals with disabilities—Acceptance of federal aid.** See RCW 74.29.050 and 74.29.055.

**28B.50.440 Construction of chapter when part thereof in conflict with federal requirements which are condition precedent to allocation of federal funds.** If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict, and such findings or determination shall not affect the operation of the remainder of this chapter. [1969 ex.s. c 223 § 28B.50.440. Prior: 1967 ex.s. c 8 § 44. Formerly RCW 28.85.440.]

*Federal funds, receipt of authorized:* RCW 28B.50.520.

**28B.50.450 Cooperative agreements with state and local agencies.** See RCW 74.29.037.

**28B.50.455 Vocational education of individuals with disabilities—Procedures.** Each technical college shall have written procedures which include provisions for the vocational education of individuals with disabilities. These written procedures shall include a plan to provide services to individuals with disabilities, a written plan of how the technical college will comply with relevant state and federal requirements for providing vocational education to individuals with disabilities, a written plan of how the technical college will provide on-site appropriate instructional support staff in compliance with P.L. 94-142, and as since amended, and section 504 of the rehabilitation act of 1973, and as thereafter amended. [1991 c 238 § 158.]

**28B.50.460 Rehabilitation and job support services—Procedure—Register of eligible individuals and organizations.** See RCW 74.29.080.

**28B.50.465 Cost-of-living increases—Academic employees.** (1) Academic employees of community and technical college districts shall be provided an annual salary cost-of-living increase in accordance with this section. For purposes of this section, "academic employee" has the same meaning as defined in RCW 28B.52.020.

(a) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year, except as provided in (d) of this subsection, each college district shall receive a cost-of-living allocation sufficient to increase academic employee salaries, including mandatory salary-related benefits, by the rate of the yearly increase in the cost-of-living index.

(b) A college district shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the district's salary schedules, collective bargain-

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ing agreements, and other compensation policies. No later than the end of the fiscal year, each college district shall certify to the college board that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) The college board shall include any funded cost-of-living increase in the salary base used to determine cost-of-living increases for academic employees in subsequent years.

(d) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year except for the 2003-04 and 2004-05 fiscal years, the state shall fully fund the cost-of-living increase set forth in this section.

(2) For the purposes of this section, "cost-of-living index" means, for any fiscal year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section. [2003 1st sp.s. c 20 § 3; 2001 c 4 § 3 (Initiative Measure No. 732, approved November 7, 2000).]

**Severability—2001 c 4 (Initiative Measure No. 732):** See note following RCW 28A.400.205.

**28B.50.468 Cost-of-living increases—Classified employees.** (1) Classified employees of technical colleges shall be provided an annual salary cost-of-living increase in accordance with this section. For purposes of this section, "technical college" has the same meaning as defined in RCW 28B.50.030. This section applies to only those classified employees under the jurisdiction of chapter 41.56 RCW.

(a) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year, except as provided in (d) of this subsection, each technical college board of trustees shall receive a cost-of-living allocation sufficient to increase classified employee salaries, including mandatory salary-related benefits, by the rate of the yearly increase in the cost-of-living index.

(b) A technical college board of trustees shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the technical college's salary schedules, collective bargaining agreements, and other compensation policies. No later than the end of the fiscal year, each technical college shall certify to the college board that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) The college board shall include any funded cost-of-living increase in the salary base used to determine cost-of-living increases for technical college classified employees in subsequent years.

(d) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year except for the 2003-2004 and 2004-2005 fiscal years, the state shall fully fund the cost-of-living increase set forth in this section.

(2) For the purposes of this section, "cost-of-living index" means, for any fiscal year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United

States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section. [2003 1st sp.s. c 20 § 4; 2001 c 4 § 4 (Initiative Measure No. 732, approved November 7, 2000).]

**Severability—2001 c 4 (Initiative Measure No. 732):** See note following RCW 28A.400.205.

**28B.50.482 Accumulated sick leave—Transferred employees of vocational-technical institutes.** Sick leave accumulated by employees of vocational-technical institutes shall be transferred to the college districts without loss of time subject to the provisions of RCW 28B.50.551 and the further provisions of any negotiated agreements then in force. [1991 c 238 § 136.]

**28B.50.484 Health care service contracts—Transferred employees of vocational-technical institutes.** The state employees' benefit board shall adopt rules to preclude any preexisting conditions or limitations in existing health care service contracts for school district employees at vocational-technical institutes transferred to the state board for community and technical colleges. The board shall also provide for the disposition of any dividends or refundable reserves in the school district's health care service contracts applicable to vocational-technical institute employees. [1991 c 238 § 137.]

**28B.50.489 Part-time academic employees—State-mandated benefits—Definitions.** For the purposes of determining eligibility of state-mandated insurance, retirement benefits under RCW 28B.10.400, and sick leave for part-time academic employees in community and technical colleges, the following definitions shall be used:

(1) "Full-time academic workload" means the number of in-class teaching hours that a full-time instructor must teach to fulfill his or her employment obligations in a given discipline in a given college. If full-time academic workload is defined in a contract adopted through the collective bargaining process, that definition shall prevail. If the full-time workload bargained in a contract includes more than in-class teaching hours, only that portion that is in-class teaching hours may be considered academic workload.

(2) "In-class teaching hours" means contact classroom and lab hours in which full or part-time academic employees are performing contractually assigned teaching duties. The in-class teaching hours shall not include any duties performed in support of, or in addition to, those contractually assigned in-class teaching hours.

(3) "Academic employee" in a community or technical college means any teacher, counselor, librarian, or department head who is employed by a college district, whether full or part-time, with the exception of the chief administrative officer of, and any administrator in, each college district.

(4) "Part-time academic workload" means any percentage of a full-time academic workload for which the part-time

academic employee is not paid on the full-time academic salary schedule. [2000 c 128 § 2; 1996 c 120 § 1.]

**Construction—2000 c 128:** See note following RCW 28B.52.220.

**28B.50.4891 Part-time academic employees—State-mandated benefits—Reporting eligible employees.** For the purposes of determining eligibility for receipt of state-mandated benefits for part-time academic employees at community and technical colleges, each institution shall report to the appropriate agencies the names of eligible part-time academic employees who qualify for benefits based on calculating the hours worked by part-time academic employees as a percentage of the part-time academic workload to the full-time academic workload in a given discipline in a given institution. [1996 c 120 § 2.]

**28B.50.4892 Part-time academic employees—Best practices compensation and employment—Task force—Report.** (1) The legislature finds that community colleges and technical colleges have an obligation to carry out their roles and missions in an equitable fashion. The legislature also finds that governing boards for community colleges and technical colleges have a responsibility to provide leadership and guidance to their colleges in the equitable treatment of part-time faculty teaching in the community and technical colleges.

(2) The state board for community and technical colleges shall convene a task force to conduct a best practices audit of compensation packages and conditions of employment for part-time faculty in the community and technical college system. The task force shall include but need not be limited to part-time faculty, full-time faculty, members of the state board, and members of community college and technical college governing boards. In performing the audit, the task force shall focus on the employment of part-time faculty, and shall include the following issues in its deliberations: Salary issues, provision of health and retirement benefits, the implications of increased reliance on part-time rather than full-time faculty, the implications of workload definitions, and tangible and intangible ways to recognize the professional stature of part-time faculty.

(3) The task force shall report its findings to the state board, local governing boards, and other interested parties by August 30, 1996. The report shall include recommendations on a set of best practices principles for the colleges to follow in their employment of part-time faculty. By September 30, 1996, the state board for community and technical colleges shall adopt and periodically update a set of best practices principles for colleges in the community and technical college system to follow in their employment of part-time faculty. The board shall use the best practices principles in the development of its 1997-99 biennial operating budget request. The board shall encourage and, to the extent possible, require each local governing board to adopt and implement the principles. [1996 c 120 § 3.]

**28B.50.4893 Part-time academic employees—Sick leave.** (1) Part-time academic employees of community and technical colleges shall receive sick leave to be used for the same illnesses, injuries, bereavement, and emergencies as

full-time academic employees at the college in proportion to the individual's teaching commitment at the college.

(2) The provisions of RCW 41.04.665 shall apply to leave sharing for part-time academic employees who accrue sick leave under subsection (1) of this section.

(3) The provisions of RCW 28B.50.553 shall apply to remuneration for unused sick leave for part-time academic employees who accrue sick leave under subsection (1) of this section. [2000 c 128 § 1.]

**Construction—2000 c 128:** See note following RCW 28B.52.220.

**28B.50.490 Fiscal management—Powers and duties of officers and agencies.** See RCW 43.88.160.

**28B.50.500 General provisions for institutions of higher education.** See chapter 28B.10 RCW.

**28B.50.510 State purchasing and material control, community college purchases.** See RCW 43.19.190.

**28B.50.520 Federal funds, receipt of authorized.** The college board or any board of trustees is authorized to receive federal funds made available for the assistance of community and technical colleges, and providing physical facilities, maintenance or operation of schools, or for any educational purposes, according to the provisions of the acts of congress making such funds available. [1991 c 238 § 57; 1969 ex.s. c 223 § 28B.50.520. Prior: 1967 ex.s. c 8 § 52. Formerly RCW 28.85.520.]

*Construction of chapter when part thereof in conflict with federal requirements which are condition precedent to allocation of federal funds: RCW 28B.50.440.*

**28B.50.522 Office for adult literacy.** The college board personnel administering state and federally funded programs for adult basic skills and literacy education shall be known as the state office for adult literacy. [1991 c 238 § 92.]

**28B.50.528 Contracts with adjacent college district for administrative services.** If a technical college is created after September 1, 1991, that college may contract with an adjacent college district for administrative services until such time that an existing or new college district may assume jurisdiction over the college. [1991 c 238 § 139.]

**28B.50.530 Agreements for use of services or facilities between district boards of trustees and school boards.** The district boards of trustees and the common school boards are hereby authorized to enter into agreements for the use by either of the other's services, facilities or equipment and for the presentation of courses of either for students of the other where such agreements are deemed to be in the best interests of the education of the students involved. [1969 ex.s. c 223 § 28B.50.530. Prior: 1967 ex.s. c 8 § 53. Formerly RCW 28.85.530.]

*Community education programs: RCW 28A.620.020.*

**28B.50.533 Contracts with common school districts for occupational and academic programs for high school students—Enrollment opportunities—Interlocal agree-**

**ments.** Community and technical colleges may contract with local common school districts to provide occupational and academic programs for high school students. Common school districts whose students currently attend vocational-technical institutes shall not suffer loss of opportunity to continue to enroll their students at technical colleges.

For the purposes of this section, "opportunity to enroll" includes, but is not limited to, the opportunity of common school districts to enroll the same number of high school students enrolled at each vocational-technical institute during the period July 1, 1989, through June 30, 1990, and the opportunity for common school districts to increase enrollments of high school students at each technical college in proportion to annual increases in enrollment within the school districts participating on September 1, 1991. Technical colleges shall offer programs which are accessible to high school students to at least the extent that existed during the period July 1, 1989, through June 30, 1990, and to the extent necessary to accommodate proportional annual growth in enrollments of high school students within school districts participating on September 1, 1991. Accommodating such annual increases in enrollment or program offerings shall be the first priority within technical colleges subject to any enrollment or budgetary restrictions. Technical colleges shall not charge tuition or student services and activities fees to high school students enrolled in the college.

Technical colleges may enter into interlocal agreements with local school districts to provide instruction in courses required for high school graduation, basic skills, and literacy training for students enrolled in technical college programs. [1991 c 238 § 82.]

**28B.50.535 Community or technical college may issue high school diploma or certificate, limitation.** A community or technical college may issue a high school diploma or certificate, subject to rules and regulations promulgated by the superintendent of public instruction and the state board of education. [1991 c 238 § 58; 1969 ex.s. c 261 § 30.]

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020.

**28B.50.536 General educational development test—Rules—Issuance of certificate of educational competence.** Subject to rules adopted by the state board of education under RCW 28A.305.190, the state board for community and technical colleges shall adopt rules governing the eligibility of persons sixteen years of age and older to take the general educational development test, rules governing the administration of the test, and rules governing the issuance of a certificate of educational competence to persons who successfully complete the test. Certificates of educational competence issued under this section shall be issued in such form and substance as agreed upon by the state board for community and technical colleges and superintendent of public instruction. [1993 c 218 § 3.]

**28B.50.551 Leave provisions generally.** The board of trustees of each college district shall adopt for each community and technical college under its jurisdiction written policies on granting leaves to employees of the district and those

colleges, including but not limited to leaves for attendance at official or private institutions and conferences; professional leaves for personnel consistent with the provisions of RCW 28B.10.650; leaves for illness, injury, bereavement, and emergencies, consistent with RCW 28B.50.4893, and except as otherwise in this section provided, all with such compensation as the board of trustees may prescribe, except that the board shall grant to all such persons leave with full compensation for illness, injury, bereavement and emergencies as follows:

(1) For persons under contract to be employed, or otherwise employed, for at least three quarters, not more than twelve days per year, commencing with the first day on which work is to be performed; provisions of any contract in force on June 12, 1980, which conflict with requirements of this subsection shall continue in effect until contract expiration; after expiration, any new contract executed between the parties shall be consistent with this subsection;

(2)(a) Such leave entitlement may be accumulated after the first three-quarter period of employment for full-time employees, and may be taken at any time;

(b) For part-time academic employees, such leave entitlement may be accumulated after the first quarter of employment by a college district or the first quarter after June 8, 2000, whichever is later, and may be taken at any time;

(3) Leave for illness, injury, bereavement and emergencies heretofore accumulated pursuant to law, rule, regulation or policy by persons presently employed by college districts and community and technical colleges shall be added to such leave accumulated under this section;

(4) Except as otherwise provided in this section or other law, accumulated leave under this section not taken at the time such person retires or ceases to be employed by college districts or community and technical colleges shall not be compensable;

(5) Accumulated leave for illness, injury, bereavement and emergencies shall be transferred from one college district to another or between a college district and the following: Any state agency, any educational service district, any school district, or any other institution of higher education as defined in RCW 28B.10.016;

(6) Leave accumulated by a person in a college district or community and technical college prior to leaving that district or college may, under the policy of the board of trustees, be granted to such person when he or she returns to the employment of that district or college; and

(7) Employees of the Seattle Vocational Institute are exempt from this section until July 1, 1993. [2000 c 128 § 3; 1995 c 119 § 1; 1991 c 238 § 59; 1980 c 182 § 3; 1977 ex.s. c 173 § 2; 1975 1st ex.s. c 275 § 148; 1973 c 62 § 22; 1969 ex.s. c 283 § 7. Formerly RCW 28.85.551.]

**Construction—2000 c 128:** See note following RCW 28B.52.220.

**Severability—1980 c 182:** See note following RCW 41.04.340.

**Effective date—Severability—1977 ex.s. c 173:** See notes following RCW 28B.10.650.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

### **28B.50.553 Attendance incentive program.** (1)

Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Employer" means the board of trustees for each college district or the state board for community and technical colleges.

(b) "Eligible employee" means an employee of a college district or the state board for community and technical colleges who belongs to one of the following classifications:

(i) Academic employees as defined in RCW 28B.52.020;

(ii) Classified employees of technical colleges whose employment is governed under chapter 41.56 RCW;

(iii) Professional, paraprofessional, and administrative employees exempt from chapter 41.06 RCW; and

(iv) Employees of the state board for community and technical colleges who are exempt from chapter 41.06 RCW.

(2) An attendance incentive program is established for all eligible employees of a college district or the state board for community and technical colleges entitled to accumulate sick leave and for whom accurate sick leave records have been maintained. An eligible employee may not receive compensation under this section for a portion of sick leave accumulated at a rate in excess of one day per month.

(3) In January of the year following a year in which a minimum of sixty days of sick leave is accrued, and each following January, an eligible employee may exercise an option to receive remuneration for unused sick leave accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four full days of accrued sick leave in excess of sixty days. Sick leave for which compensation has been received shall be deducted from accrued sick leave at the rate of four days for every one day's monetary compensation.

(4) At the time of separation from employment with a college district or the state board for community and technical colleges due to retirement or death, an eligible employee or the employee's estate may receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days' accrued sick leave.

(5) In lieu of remuneration for unused sick leave at retirement as provided in subsection (4) of this section, an employer may, with equivalent funds, provide eligible employees with a benefit plan that provides reimbursement for medical expenses. For employees whose conditions of employment are governed by chapter 28B.52 or 41.56 RCW, such benefit plans shall be instituted only by agreement applicable to the members of a bargaining unit. A benefit plan adopted must require, as a condition of participation under the plan, that the employee sign an agreement with the employer. The agreement must include a provision to hold the employer harmless should the United States government find that the employer or the employee is in debt to the United States as a result of the employee not paying income taxes due on the equivalent funds placed into the plan, or as a result of the employer not withholding or deducting a tax, assessment, or other payment on the funds as required under federal law. The agreement must also include a provision that requires an eligible employee to forfeit remuneration under subsection (4) of this section if the employee belongs to a unit that has been designated to participate in the benefit plan per-

mitted under this subsection and the employee refuses to execute the required agreement.

(6) Remuneration or benefits received under this section are not included for the purposes of computing a retirement allowance under a public retirement system in this state.

(7) The state board for community and technical colleges shall adopt uniform rules to carry out the purposes of this section. The rules shall define categories of eligible employees. The categories of eligible employees are subject to approval by the office of financial management. The rules shall also require that each employer maintain complete and accurate sick leave records for all eligible employees.

(8) Should the legislature revoke a remuneration or benefit granted under this section, an affected employee is not then entitled to receive the benefits as a matter of contractual right. [1997 c 232 § 1.]

**Conflict with federal requirements—1997 c 232:** "If any part of section 1(5) of this act is found to be in conflict with federal tax laws or rulings or regulations of the federal internal revenue service, the conflicting part of section 1(5) of this act is inoperative solely to the extent of the conflict and such finding shall not affect the remainder of this act." [1997 c 232 § 3.]

**28B.50.600 School district bonds—Redemption of by school district to continue though facility under control of college district board.** Whenever a common school board has contracted to redeem general obligation bonds used for the construction or acquisition of facilities which are now to be under the administration, control and occupancy of the college district board, the common school board shall continue to redeem the bonds in accordance with the provisions of the bonds. [1991 c 238 § 60; 1969 ex.s. c 223 § 28B.50.600. Prior: 1967 ex.s. c 8 § 60. Formerly RCW 28.85.600.]

**28B.50.601 School district bonds—Redemption—Facilities under administration of college district board.** If a school board has contracted to redeem general obligation bonds used for the construction or acquisition of facilities which are now to be under the administration, control, and occupancy of the college district board, the school board shall continue to redeem the bonds in accordance with the provisions of the bonds. [1991 c 238 § 138.]

**28B.50.740 School district bonds—Those issued for community and technical college facilities not considered indebtedness under statutory limitations on.** Notwithstanding any other statutory provision relating to indebtedness of school districts, bonds heretofore issued by any common school district for the purpose of providing funds for community and technical college facilities shall not be considered as indebtedness in determining the maximum allowable indebtedness under any statutory limitation of indebtedness when the sum of all indebtedness therein does not exceed the maximum constitutional allowable indebtedness applied to the value of the taxable property contained in such school district: PROVIDED, That nothing contained herein shall be construed to affect the distribution of state funds under any applicable distribution formula. [1991 c 238 § 61; 1969 ex.s. c 223 § 28B.50.740. Prior: 1967 ex.s. c 8 § 74. Formerly RCW 28.85.740.]

*Forty mill limit: State Constitution Art. 7 § 2.*

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*Limitation of indebtedness prescribed: RCW 39.36.020.*

*Limitations upon municipal indebtedness: State Constitution Art. 8 § 6.*

**28B.50.835 Exceptional faculty awards—Intent.** The legislature recognizes that quality in the state's community and technical colleges would be strengthened by additional partnerships between citizens and the institutions. The legislature intends to foster these partnerships by creating a matching grant program to assist public community and technical colleges in creating endowments for funding exceptional faculty awards. [1991 c 238 § 62; 1990 c 29 § 1.]

**Severability—1990 c 29:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 29 § 8.]

**28B.50.8351 Exceptional faculty awards—"Foundation" defined.** For purposes of RCW 28B.50.835 through 28B.50.843 "foundation" means a private nonprofit corporation that: (1) Is registered under Title 24 RCW and qualified as a tax-exempt entity under section 501(c)(3) of the federal internal revenue code; (2) exists solely for the benefit of one or more community or technical colleges in this state; and (3) is registered with the attorney general's office under the charitable trust act, chapter 11.110 RCW. [1993 c 87 § 3.]

**28B.50.837 Exceptional faculty awards—Established—Community and technical college faculty awards trust fund.** (1) The Washington community and technical college exceptional faculty awards program is established. The program shall be administered by the college board. The college faculty awards trust fund hereby created shall be administered by the state treasurer.

(2) Funds appropriated by the legislature for the community and technical college exceptional faculty awards program shall be deposited in the college faculty awards trust fund. At the request of the college board, the treasurer shall release the state matching funds to the local endowment fund of the college or its foundation. No appropriation is necessary for the expenditure of moneys from the fund. Expenditures from the fund may be used solely for the exceptional faculty awards program. [2003 c 129 § 2; 2002 c 371 § 902; 1993 c 87 § 1; 1991 sp.s. c 13 §§ 108, 109; 1991 c 238 § 63; 1990 c 29 § 2.]

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Severability—1990 c 29:** See note following RCW 28B.50.835.

**28B.50.839 Exceptional faculty awards—Guidelines—Matching funds—Donations—Disbursements.** (1) In consultation with eligible community and technical colleges, the college board shall set priorities and guidelines for the program.

(2) All community and technical colleges and their foundations shall be eligible for matching trust funds. When they can match the state funds with equal cash donations from private sources, institutions and foundations may apply to the college board for grants from the fund in ten thousand dollar increments up to a maximum set by the college board. These

donations shall be made specifically to the exceptional faculty awards program and deposited by the institution or foundation in a local endowment fund or a foundation's fund. Otherwise unrestricted gifts may be deposited in the endowment fund by the institution or foundation.

(3) Once sufficient private donations are received by the institution or foundation, the institution shall inform the college board and request state matching funds. The college board shall evaluate the request for state matching funds based on program priorities and guidelines. The college board may ask the state treasurer to release the state matching funds to a local endowment fund established by the institution or a foundation's fund established by a foundation for each faculty award created.

(4) A college, by action of its board of trustees, may transfer those exceptional faculty award funds accumulated in its local endowment fund between July 1, 1991, and July 25, 1993, to its foundation's local endowment fund established as provided in subsection (2) of this section. [2003 c 129 § 1; 1994 c 234 § 3; 1993 c 87 § 2; 1991 c 238 § 64; 1990 c 29 § 3.]

**Severability—1990 c 29:** See note following RCW 28B.50.835.

**28B.50.841 Exceptional faculty awards—Name of award—Duties of institution—Use of endowment proceeds.** (1) The faculty awards are the property of the institution and may be named in honor of a donor, benefactor, or honoree of the institution, at the option of the institution. The institution shall designate the use of the award to individuals, groups, or for the improvement of faculty as a whole. The designation shall be made or renewed annually.

(2) The institution is responsible for soliciting private donations, investing and maintaining its endowment funds, administering the faculty awards, and reporting on the program to the governor, the college board, and the legislature, upon request. The institution may augment its endowment fund with additional unrestricted private donations. The principal of the invested endowment fund shall not be invaded.

(3) The proceeds from the endowment fund shall be used to pay expenses for faculty awards, which may include faculty development activities, in-service training, temporary substitute or replacement costs directly associated with faculty development programs, conferences, travel, publication and dissemination of exemplary projects; to supplement the salary of the holder or holders of a faculty award; or to pay expenses associated with the holder's program area. Funds from this program shall not be used to supplant existing faculty development funds. [2000 c 127 § 1; 1991 c 238 § 65; 1990 c 29 § 4.]

**Severability—1990 c 29:** See note following RCW 28B.50.835.

**28B.50.843 Exceptional faculty awards—Determination of award—Collective bargaining.** The process for determining local awards shall be subject to collective bargaining. Decisions regarding the amounts of individual awards and who receives them shall not be subject to collective bargaining and shall be subject to approval of the applicable board of trustees. [1991 c 238 § 66; 1990 c 29 § 5.]

**Severability—1990 c 29:** See note following RCW 28B.50.835.

**28B.50.844 Exceptional faculty awards—Eligibility of foundation for matching funds—Endowment fund management.** A foundation is not eligible to receive matching funds under RCW 28B.50.835 through 28B.50.843 unless the foundation and the board of trustees of the college for whose benefit the foundation exists have entered into a contract, approved by the attorney general, that: (1) Specifies the services to be provided by the foundation; (2) provides for protection of the community and technical college exceptional awards endowment funds under the foundation's control; and (3) provides for the college's assumption of ownership, management, and control of such funds if the foundation ceases to exist or function properly, or fails to provide the specified services in accordance with the contract.

The principal of the community and technical college exceptional awards endowment fund managed by the foundation shall not be invaded. Funds recovered by a college under this section shall be deposited into the college's local endowment fund. For purposes of this section, community and technical college exceptional awards endowment funds include the private donations, state matching funds, and any accrued interest on such donations and matching funds. [1993 c 87 § 4.]

**28B.50.850 Faculty tenure—Purpose.** It shall be the purpose of RCW 28B.50.850 through 28B.50.869 to establish a system of faculty tenure which protects the concepts of faculty employment rights and faculty involvement in the protection of those rights in the state system of community and technical colleges. RCW 28B.50.850 through 28B.50.869 shall define a reasonable and orderly process for appointment of faculty members to tenure status and the dismissal of the tenured faculty member.

Employees of the Seattle Vocational Institute are exempt from this section until July 1, 1993. [1991 c 238 § 67; 1969 ex.s. c 283 § 32. Formerly RCW 28.85.850.]

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.851 Faculty tenure—Definitions.** As used in RCW 28B.50.850 through 28B.50.869:

(1) "Tenure" shall mean a faculty appointment for an indefinite period of time which may be revoked only for adequate cause and by due process;

(2)(a) "Faculty appointment", except as otherwise provided in (b) of this subsection, shall mean full time employment as a teacher, counselor, librarian or other position for which the training, experience and responsibilities are comparable as determined by the appointing authority, except administrative appointments; "faculty appointment" shall also mean department heads, division heads and administrators to the extent that such department heads, division heads or administrators have had or do have status as a teacher, counselor, or librarian; faculty appointment shall also mean employment on a reduced work load basis when a faculty member has retained tenure under RCW 28B.50.859;

(b) "Faculty appointment" shall not mean special faculty appointment as a teacher, counselor, librarian, or other position as enumerated in (a) of this subsection, when such employment results from special funds provided to a community college district from federal moneys or other special

funds which other funds are designated as "special funds" by the college board: PROVIDED, That such "special funds" so designated by the college board for purposes of this section shall apply only to teachers, counselors and librarians hired from grants and service agreements and teachers, counselors and librarians hired in nonformula positions. A special faculty appointment resulting from such special financing may be terminated upon a reduction or elimination of funding or a reduction or elimination of program: PROVIDED FURTHER, That "faculty appointees" holding faculty appointments pursuant to subsections (1) or (2)(a) of this section who have been subsequently transferred to positions financed from "special funds" pursuant to (b) of this subsection and who thereafter lose their positions upon reduction or elimination of such "special funding" shall be entitled to be returned to previous status as faculty appointees pursuant to subsection (1) or (2)(a) of this section depending upon their status prior to the "special funding" transfer. Notwithstanding the fact that tenure shall not be granted to anyone holding a special faculty appointment, the termination of any such faculty appointment prior to the expiration of the term of such faculty member's individual contract for any cause which is not related to elimination or reduction of financing or the elimination or reduction of program shall be considered a termination for cause subject to the provisions of this chapter;

(3) "Probationary faculty appointment" shall mean a faculty appointment for a designated period of time which may be terminated without cause upon expiration of the probationer's terms of employment;

(4) "Probationer" shall mean an individual holding a probationary faculty appointment;

(5) "Administrative appointment" shall mean employment in a specific administrative position as determined by the appointing authority;

(6) "Appointing authority" shall mean the board of trustees of a college district;

(7) "Review committee" shall mean a committee composed of the probationer's faculty peers, a student representative, and the administrative staff of the community or technical college: PROVIDED, That the majority of the committee shall consist of the probationer's faculty peers. [1993 c 188 § 1; 1991 c 294 § 2; 1991 c 238 § 68; 1988 c 32 § 2; 1975 1st ex.s. c 112 § 1; 1974 ex.s. c 33 § 1; 1970 ex.s. c 5 § 3; 1969 ex.s. c 283 § 33. Formerly RCW 28.85.851.]

**Construction—1993 c 188:** "Nothing contained in this act shall be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement." [1993 c 188 § 5.]

**Effective date—1993 c 188:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 188 § 6.]

**Severability—1993 c 188:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 188 § 7.]

**Intent—1991 c 294:** "Improving the quality of instruction at our state institutions of higher education is a priority of the legislature. Recently, many efforts have been made by the legislature, the colleges, and the higher education coordinating board to assess and improve the quality of instruction received by students at our state institutions. It is the intent of the legislature that, in conjunction with these various efforts, the process for the award of faculty tenure at community colleges should allow for a thorough review of the performance of faculty appointees prior to the granting of tenure." [1991 c 294 § 1.]

(2004 Ed.)

**Construction—1991 c 294:** "Nothing contained in this act shall be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement." [1991 c 294 § 6.]

**Effective date—Application—1991 c 294:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991, and shall apply to all faculty appointments made by community colleges after June 30, 1991, but shall not apply to employees of community colleges who hold faculty appointments prior to July 1, 1991." [1991 c 294 § 7.]

**Severability—1991 c 294:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 294 § 8.]

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.852 Faculty tenure—Rules and regulations—Award of faculty tenure—Maximum probationary period.** The appointing authority shall promulgate rules and regulations implementing RCW 28B.50.850 through 28B.50.869 and shall provide for the award of faculty tenure following a probationary period not to exceed nine consecutive college quarters, excluding summer quarter and approved leaves of absence: PROVIDED, That tenure may be awarded at any time as may be determined by the appointing authority after it has given reasonable consideration to the recommendations of the review committee. Upon formal recommendation of the review committee and with the written consent of the probationary faculty member, the appointing authority may extend its probationary period for one, two, or three quarters, excluding summer quarter, beyond the maximum probationary period established herein. No such extension shall be made, however, unless the review committee's recommendation is based on its belief that the probationary faculty member needs additional time to complete satisfactorily a professional improvement plan already in progress and in the committee's further belief that the probationary faculty member will complete the plan satisfactorily. At the conclusion of any such extension, the appointing authority may award tenure unless the probationary faculty member has, in the judgment of the committee, failed to complete the professional improvement plan satisfactorily. [1991 c 294 § 3; 1969 ex.s. c 283 § 34. Formerly RCW 28.85.852.]

**Intent—Construction—Effective date, application—Severability—1991 c 294:** See notes following RCW 28B.50.851.

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.855 Faculty tenure—Written agreement embodying terms of employment furnished faculty.** The appointing authority shall provide each faculty member, immediately upon employment, with a written agreement which delineates the terms of employment including all conditions and responsibilities attached thereto. [1969 ex.s. c 283 § 35. Formerly RCW 28.85.855.]

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.856 Faculty tenure—Evaluation of probationer by review committee—Progress report, acknowledgment of receipt—Recommendation as to tenure.** The probationary faculty appointment period shall be one of con-

tinuing evaluation of a probationer by a review committee. The evaluation process shall place primary importance upon the probationer's effectiveness in his appointment. The review committee shall periodically advise each probationer, in writing, of his progress during the probationary period and receive the probationer's written acknowledgment thereof. The review committee shall at appropriate times make recommendations to the appointing authority as to whether tenure should or should not be granted to individual probationers: PROVIDED, That the final decision to award or withhold tenure shall rest with the appointing authority, after it has given reasonable consideration to the recommendations of the review committee. [1969 ex.s. c 283 § 36. Formerly RCW 28.85.856.]

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.857 Faculty tenure—Decision not to renew probationary appointment, notice by appointing authority, when.** Upon the decision not to renew a probationary faculty appointment, the appointing authority shall notify the probationer of such decision as soon as possible during the regular college year: PROVIDED, That such notice may not be given later than one complete quarter, except summer quarter, before the expiration of the probationary faculty appointment. [1991 c 294 § 4; 1969 ex.s. c 283 § 37. Formerly RCW 28.85.857.]

**Intent—Construction—Effective date, application—Severability—1991 c 294:** See notes following RCW 28B.50.851.

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.859 Faculty tenure—Tenure retained upon reduced work load assignment.** An appointing authority may allow a tenured faculty member to retain tenure upon assignment to a reduced work load. The appointing authority and the faculty member shall execute a written agreement setting forth the terms and conditions of the assignment, including the conditions, if any, under which the faculty member may return to full time employment. [1988 c 32 § 1.]

**28B.50.860 Faculty tenure—Tenure retained upon administrative appointment.** A tenured faculty member, upon appointment to an administrative appointment shall be allowed to retain his tenure. [1977 ex.s. c 282 § 7; 1969 ex.s. c 283 § 38. Formerly RCW 28.85.860.]

**Severability—1977 ex.s. c 282:** See note following RCW 28B.50.870.

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.861 Faculty tenure—Dismissal only for sufficient cause.** The tenured faculty member shall not be dismissed except for sufficient cause, nor shall a faculty member who holds a probationary faculty appointment be dismissed prior to the written terms of the appointment except for sufficient cause. [1969 ex.s. c 283 § 39. Formerly RCW 28.85.861.]

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.862 Faculty tenure—Certain grounds constituting sufficient cause.** Sufficient cause shall also include aiding and abetting or participating in: (1) Any unlawful act of violence; (2) Any unlawful act resulting in destruction of community college property; or (3) Any unlawful interference with the orderly conduct of the educational process. [1969 ex.s. c 283 § 40. Formerly RCW 28.85.862.]

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.863 Faculty tenure—Review prior to dismissal—Scope—Recommendations of review committee.** Prior to the dismissal of a tenured faculty member, or a faculty member holding an unexpired probationary faculty appointment, the case shall first be reviewed by a review committee. The review shall include testimony from all interested parties including, but not limited to, other faculty members and students. The faculty member whose case is being reviewed shall be afforded the right of cross-examination and the opportunity to defend himself. The review committee shall prepare recommendations on the action they propose be taken and submit such recommendations to the appointing authority prior to their final action. [1969 ex.s. c 283 § 41. Formerly RCW 28.85.863.]

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.864 Faculty tenure—Appeal from decision for dismissal—Procedure.** Any faculty member dismissed pursuant to RCW 28B.50.850 through 28B.50.869 shall have a right to appeal the final decision of the appointing authority in accordance with RCW 34.05.510 through 34.05.598. [1989 c 175 § 80; 1973 c 62 § 24; 1969 ex.s. c 283 § 42. Formerly RCW 28.85.864.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.867 Faculty tenure—Tenure rights upon transfer of employment to another community or technical college.** Upon transfer of employment from one community or technical college to another community or technical college within a district, a tenured faculty member shall have the right to retain tenure and the rights accruing thereto which he or she had in his or her previous employment: PROVIDED, That upon permanent transfer of employment to another college district a tenured faculty member shall not have the right to retain his tenure or any of the rights accruing thereto. [1991 c 238 § 69; 1969 ex.s. c 283 § 43. Formerly RCW 28.85.867.]

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.868 Faculty tenure—Faculty members currently employed granted tenure.** All employees of a community college district, except presidents, who were employed in the community college district at the effective date of chapter 283, Laws of 1969 ex. sess. and who hold or have held a faculty appointment with the community college

district or its predecessor school district shall be granted tenure by their appointing authority notwithstanding any other provision of RCW 28B.50.850 through 28B.50.869. [1970 ex.s. c 5 § 4; 1969 ex.s. c 283 § 44. Formerly RCW 28.85.868.]

**Reviser's note:** The various provisions of chapter 283, Laws of 1969 ex. sess. became effective on several different dates. The effective date of the provisions thereof relating to tenure appears to have been midnight August 10, 1969, see preface, Laws of 1969 ex. sess., and see also 1969 ex.s. c 283 §§ 54 and 55 (uncodified).

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.869 Faculty tenure—Review committees, composition—Selection of faculty representatives, student representative.** The review committees required by RCW 28B.50.850 through 28B.50.869 shall be composed of members of the administrative staff, a student representative, and the faculty. The representatives of the faculty shall represent a majority of the members on each review committee. The members representing the faculty on each review committee shall be selected by a majority of the faculty and faculty department heads acting in a body. The student representative, who shall be a full time student, shall be chosen by the student association of the particular community or technical college in such manner as the members thereof shall determine. [1993 c 188 § 2; 1991 c 238 § 70; 1974 ex.s. c 33 § 2; 1969 ex.s. c 283 § 45. Formerly RCW 28.85.869.]

**Construction—Effective date—Severability—1993 c 188:** See notes following RCW 28B.50.851.

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28B.50.870 Faculty tenure—For certain educational programs operated in state correctional institutions.** The district board of trustees of any college district currently operating an educational program with funds provided by another state agency, including federal funds, which program has been in existence for five or more years under the administration of one or more college districts, shall provide for the award or denial of tenure to anyone who holds a special faculty appointment in such curricular program and for as long as the program continues to be funded in such manner, utilizing the prescribed probationary processes and procedures set forth in this chapter with the exception that no student representative shall be required to serve on the review committee defined in RCW 28B.50.851: PROVIDED, That such review processes and procedures shall not be applicable to faculty members whose contracts are renewed after \*the effective date of this 1977 amendatory act and who have completed at least three consecutive years of satisfactory full time service in such program, who shall be granted tenure by the college district: PROVIDED FURTHER, That faculty members who have completed one year or more of satisfactory full time service in such program shall be credited with such service for the purposes of this section: PROVIDED, FURTHER, That provisions relating to tenure for faculty under the provisions of this section shall be distinct from provisions relating to tenure for other faculty of the college district and faculty appointed to such special curricular program shall be treated as a separate unit as respects selection, retention, reduction in force or dismissal hereunder: AND PROVIDED FURTHER,

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That the provisions of this section shall only be applicable to faculty holding a special faculty appointment in an educational program operated in a state correctional institution pursuant to a written contract with a college district. [1991 c 238 § 71; 1977 ex.s. c 282 § 1.]

**\*Reviser's note:** Phrase "the effective date of this 1977 amendatory act": Except for RCW 28B.50.100 and 28B.50.101 which were effective January 1, 1978, (see note following RCW 28B.50.100) the effective date of 1977 ex.s. c 282 (the enactment of RCW 28B.50.870, 28B.50.090, 28B.50.140, 28B.50.300, and 28B.50.860 and the repeal of RCW 28B.50.570, 28B.50.590, 28B.50.750, and 28B.56.060) was September 21, 1977.

**Severability—1977 ex.s. c 282:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 282 § 10.]

**28B.50.872 Periodic posttenure evaluation.** By June 30, 1994, each community and technical college shall establish, through the local collective bargaining process, periodic posttenure evaluation of all full-time faculty consistent with the standards of the Northwest association of schools and colleges. [1993 c 188 § 3.]

**Construction—Effective date—Severability—1993 c 188:** See notes following RCW 28B.50.851.

**28B.50.873 Reduction in force of tenured or probationary faculty members due to financial emergency—Conditions—Procedure—Rights.** The college board may declare a financial emergency under the following conditions: (1) Reduction of allotments by the governor pursuant to \*RCW 43.88.110(2), or (2) reduction by the legislature from one biennium to the next or within a biennium of appropriated funds based on constant dollars using the implicit price deflator. When a district board of trustees determines that a reduction in force of tenured or probationary faculty members may be necessary due to financial emergency as declared by the state board, written notice of the reduction in force and separation from employment shall be given the faculty members so affected by the president or district president as the case may be. Said notice shall clearly indicate that separation is not due to the job performance of the employee and hence is without prejudice to such employee and need only state in addition the basis for the reduction in force as one or more of the reasons enumerated in subsections (1) and (2) of this section.

Said tenured or probationary faculty members will have a right to request a formal hearing when being dismissed pursuant to subsections (1) and (2) of this section. The only issue to be determined shall be whether under the applicable policies, rules or collective bargaining agreement the particular faculty member or members advised of severance are the proper ones to be terminated. Said hearing shall be initiated by filing a written request therefor with the president or district president, as the case may be, within ten days after issuance of such notice. At such formal hearing the tenure review committee provided for in RCW 28B.50.863 may observe the formal hearing procedure and after the conclusion of such hearing offer its recommended decision for consideration by the hearing officer. Failure to timely request such a hearing shall cause separation from service of such faculty members

so notified on the effective date as stated in the notice, regardless of the duration of any individual employment contract.

The hearing required by this section shall be an adjudicative proceeding pursuant to chapter 34.05 RCW, the Administrative Procedure Act, conducted by a hearing officer appointed by the board of trustees and shall be concluded by the hearing officer within sixty days after written notice of the reduction in force has been issued. Ten days written notice of the formal hearing will be given to faculty members who have requested such a hearing by the president or district president as the case may be. The hearing officer within ten days after conclusion of such formal hearing shall prepare findings, conclusions of law and a recommended decision which shall be forwarded to the board of trustees for its final action thereon. Any such determination by the hearing officer under this section shall not be subject to further tenure review committee action as otherwise provided in this chapter.

Notwithstanding any other provision of this section, at the time of a faculty member or members request for formal hearing said faculty member or members may ask for participation in the choosing of the hearing officer in the manner provided in RCW 28A.405.310(4), said employee therein being a faculty member for the purposes hereof and said board of directors therein being the board of trustees for the purposes hereof: PROVIDED, That where there is more than one faculty member affected by the board of trustees' reduction in force such faculty members requesting hearing must act collectively in making such request: PROVIDED FURTHER, That costs incurred for the services and expenses of such hearing officer shall be shared equally by the community or technical college and the faculty member or faculty members requesting hearing.

When more than one faculty member is notified of termination because of a reduction in force as provided in this section, hearings for all such faculty members requesting formal hearing shall be consolidated and only one such hearing for the affected faculty members shall be held, and such consolidated hearing shall be concluded within the time frame set forth herein.

Separation from service without prejudice after formal hearing under the provisions of this section shall become effective upon final action by the board of trustees.

It is the intent of the legislature by enactment of this section and in accordance with RCW 28B.52.035, to modify any collective bargaining agreements in effect, or any conflicting board policies or rules, so that any reductions in force which take place after December 21, 1981, whether in progress or to be initiated, will comply solely with the provisions of this section: PROVIDED, That any applicable policies, rules, or provisions contained in a collective bargaining agreement related to lay-off units, seniority and re-employment rights shall not be affected by the provisions of this paragraph.

Nothing in this section shall be construed to affect the right of the board of trustees or its designated appointing authority not to renew a probationary faculty appointment pursuant to RCW 28B.50.857. [1991 c 238 § 72; 1990 c 33 § 559; 1989 c 175 § 81; 1981 2nd ex.s. c 13 § 1.]

**\*Reviser's note:** RCW 43.88.110 was amended by 1991 c 358 § 2 changing subsection (2) to subsection (3).

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1981 2nd ex.s. c 13:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 2nd ex.s. c 13 § 3.]

**28B.50.874 Transfer of administration of vocational-technical institutes to system of community and technical colleges—Personnel rights.** When the state system of community and technical colleges assumes administrative control of the vocational-technical institutes, personnel employed by the vocational-technical institutes shall:

(1) Suffer no reduction in compensation, benefits, seniority, or employment status. After September 1, 1991, classified employees shall continue to be covered by chapter 41.56 RCW and faculty members and administrators shall be covered by chapter 28B.50 RCW;

(2) To the extent applicable to faculty members, any faculty currently employed on a "continuing contract" basis under RCW 28A.405.210 be awarded tenure pursuant to RCW 28B.50.851 through 28B.50.873, except for any faculty members who are provisional employees under RCW 28A.405.220;

(3) Be eligible to participate in the health care and other insurance plans provided by the health care authority and the state employee benefits board pursuant to chapter 41.05 RCW;

(4) Be eligible to participate in old age annuities or retirement income plans under the rules of the state board for community and technical colleges pursuant to RCW 28B.10.400 or the teachers' retirement system plan 1 for personnel employed before July 1, 1977, or plan 2 for personnel employed after July 1, 1977, under chapter 41.32 RCW; however, no affected vocational-technical institute employee shall be required to choose from among any available retirement plan options prior to six months after September 1, 1991;

(5) Have transferred to their new administrative college district all accrued sick and vacation leave and thereafter shall earn and use all such leave under the rule established pursuant to RCW 28B.50.551;

(6) Be eligible to participate in the deferred compensation plan and the dependent care program pursuant to RCW 41.04.600 under the applicable rules.

An exclusive bargaining representative certified to represent a bargaining unit covering employees of a vocational technical institute on September 1, 1991, shall remain the exclusive representative of such employees thereafter until and unless such representative is replaced or decertified in accordance with state law.

Any collective bargaining agreement in effect on June 30, 1991, shall remain in effect as it applies to employees of vocational technical institutes until its expiration or renewal date or until renegotiated or renewed in accordance with chapter 28B.52 or 41.56 RCW. After the expiration date of a collective bargaining agreement, all of the terms and conditions specified in the collective bargaining agreement, as it applies to employees of vocational-technical institutes, shall remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. The board of trustees and the employees

may mutually agree to continue the terms and conditions of the agreement beyond the one year extension. However, nothing in this section shall be construed to deny any employee right granted under chapter 28B.52 or 41.56 RCW. Labor relations processes and agreements covering faculty members of vocational technical institutes after September 1, 1991, shall be governed by chapter 28B.52 RCW. Labor relations processes and agreements covering classified employees of vocational technical institutes after September 1, 1991, shall continue to be governed by chapter 41.56 RCW. [1998 c 116 § 14; 1991 c 238 § 83.]

**28B.50.8742 Technical colleges—Employee option to reenroll in public employees' benefits trust.** Employees of technical colleges who were members of the [a] public employees' benefits trust and as a result of chapter 238, Laws of 1991, were required to enroll in public employees' benefits board-sponsored plans, must decide whether to reenroll in the trust by January 1, 1996, or the expiration of the current collective bargaining agreements, whichever is later. Employees of a bargaining unit or administrative or managerial employees otherwise not included in a bargaining unit shall be required to transfer by group. Administrative or managerial employees shall transfer in accordance with rules established by the health care authority. If employee groups elect to transfer, they are eligible to reenroll in the public employees' benefits board-sponsored plans. This one-time reenrollment option in the public employees' benefits board-sponsored plans is available to be exercised in January 2001, or only every five years thereafter, until exercised. [1995 1st sp.s. c 6 § 10.]

**Effective date—1995 1st sp.s. c 6:** See note following RCW 28A.400.410.

**28B.50.8744 Technical colleges—Payment to public employees' and retirees' insurance account.** (1) In a manner prescribed by the state health care authority, technical colleges who have employees enrolled in a benefits trust shall remit to the health care authority for deposit in the public employees' and retirees' insurance account established in RCW 41.05.120 the amount specified for remittance in the omnibus appropriations act.

(2) The remittance requirements of this section do not apply to employees of a technical college who receive insurance benefits through contracts with the health care authority. [1995 1st sp.s. c 6 § 19.]

**Effective date—1995 1st sp.s. c 6:** See note following RCW 28A.400.410.

**28B.50.875 Laboratory services for the analyzing of samples, public agencies may contract with college for.** Local law enforcement agencies or such other public agencies that shall be in need of such service may contract with any community or technical college for laboratory services for the analyzing of samples that chemists associated with such colleges may be able to perform under such terms and conditions as the individual college may determine.

Employees of the Seattle Vocational Institute are exempt from this section until July 1, 1993. [1991 c 238 § 73; 1969 ex.s. c 261 § 35. Formerly RCW 28.85.875.]

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020.

(2004 Ed.)

**28B.50.877 Technical colleges—Purchase of support services from school districts.** During the period from May 17, 1991, until September 1, 1991:

(1) The executive director of the state board for community and technical colleges, or the executive director's designee, may enter into contracts, or agreements for goods, services, and personnel, on behalf of the technical college, which are effective after September 1, 1991. The executive director, or the executive director's designee, may conduct business, including budget approval, relevant to the operation of the technical college in the period subsequent to September 1, 1991.

(2) Vocational-technical institute directors may conduct business relevant to the operation of the vocational-technical institutes. School boards and superintendents may not restrict or remove powers previously delegated to the vocational-technical institute directors during the 1990-91 school year.

(3) Technical colleges' boards of trustees appointed before September 1, 1991, shall serve in an advisory capacity to the vocational-technical institute director.

As of September 1, 1991, technical colleges may, by interlocal agreement, continue to purchase from the school districts, support services within mutually agreed upon categories at a cost not to exceed the indirect rate charged during the 1990-91 school year. No employee of a technical college may be discriminated against based on actions or opinions expressed on issues surrounding chapter 238, Laws of 1991. Any dispute related to issues contained in this section shall be resolved under RCW 28B.50.302. [1991 c 238 § 143.]

**28B.50.880 Apprentices—Recommendations of the state board for community and technical colleges.** The state board for community and technical colleges shall provide recommendations to the apprenticeship council and apprenticeship programs, established under chapter 49.04 RCW, on matters of related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the qualification of teachers for such instruction. [2001 c 204 § 8; 1991 c 238 § 111.]

**28B.50.890 Apprentices—Associate degree pathway.**

(1) At the request of an apprenticeship committee pursuant to RCW 49.04.150, the community or technical college or colleges providing apprentice-related and supplemental instruction for an apprenticeship program shall develop an associate degree pathway for the apprentices in that program, if the necessary resources are available.

(2) In developing a degree program, the community or technical college or colleges shall ensure, to the extent possible, that related and supplemental instruction is credited toward the associate degree and that related and supplemental instruction and other degree requirements are not redundant.

(3) If multiple community or technical colleges provide related and supplemental instruction for a single apprenticeship committee, the colleges shall work together to the maximum extent possible to create consistent requirements for the pathway. [2003 c 128 § 3.]

**Findings—2003 c 128:** See note following RCW 49.04.150.

**28B.50.910 Severability—1969 ex.s. c 223.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 223 § 28B.50.910. Prior: 1967 ex.s. c 8 § 72. Formerly RCW 28.85.910.]

**28B.50.912 Transfer of powers from superintendent of public instruction and state board of education to state board for community and technical colleges.** All powers, duties, and functions of the superintendent of public instruction and the state board of education pertaining to projects of adult education, including the state-funded Even Start and including the adult education programs operated pursuant to 20 U.S.C. Sec. 1201 as amended by P.L. 100-297, are transferred to the state board for community and technical colleges. All references to the director or superintendent of public instruction or the state board of education in the Revised Code of Washington shall be construed to mean the director or the state board for community and technical colleges when referring to the functions transferred in this section. [1991 c 238 § 85.]

**28B.50.913 Transfer of powers from Washington institute for applied technology to Seattle Vocational Institute.** The public nonprofit corporation for the Washington institute for applied technology is hereby abolished and its powers, duties, and functions are hereby transferred to the sixth college district. The Washington institute for applied technology shall be renamed the Seattle Vocational Institute. The Seattle Vocational Institute shall become a fourth unit of the sixth college district. All references to the director or public nonprofit corporation for the Washington institute for applied technology in the Revised Code of Washington shall be construed to mean the director of the Seattle Vocational Institute. [1991 c 238 § 94.]

**28B.50.914 Transfer of powers from school districts to state board for community and technical colleges.** All powers, duties, and functions of the school district pertaining to a vocational-technical institute are transferred to the state board for community and technical colleges until the establishment of local boards of trustees with authority for the technical college. All references to the director or school district in the Revised Code of Washington shall be construed to mean the director or state board for community and technical colleges when referring to the functions transferred in this section. [1991 c 238 § 116.]

**28B.50.915 Transfer of powers from superintendent of public instruction to state board for community and technical colleges.** All powers, duties, and functions of the superintendent of public instruction pertaining to vocational-technical institutes are transferred to the state board for community and technical colleges. All references to the director or superintendent of public instruction in the Revised Code of Washington shall be construed to mean the director or state board for community and technical colleges when referring to the functions transferred in this section. [1991 c 238 § 122.]

**28B.50.917 Effective dates—1991 c 238.** Sections 1 through 7, 14 through 19, 24 through 28, 33, 76 through 81, 85 through 111, 114, 140 through 144, and 164 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions.

Sections 33, 114, and 142 through 144 of this act shall take effect immediately.

Sections 1 through 8, 14 through 19, 24 through 28, 76 through 81, 85 through 111, 140, 141, and 164 of this act shall take effect July 1, 1991.

Sections 20 through 23, 29 through 32, 34 through 75, 82 through 84, 112, 113, 115 through 139, and 145 through 158 of this act shall take effect September 1, 1991.

Sections 8 through 13 of this act shall take effect October 1, 1991. [1991 c 238 § 166.]

**28B.50.918 Severability—1991 c 238.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 238 § 167.]

## Chapter 28B.52 RCW

### COLLECTIVE BARGAINING—ACADEMIC PERSONNEL IN COMMUNITY COLLEGES

(Formerly: Negotiations by academic personnel—Community college districts)

#### Sections

- 28B.52.010 Declaration of purpose.
- 28B.52.020 Definitions.
- 28B.52.025 Right to organize or refrain from organizing.
- 28B.52.030 Representatives of employee organization—Right to collective bargaining.
- 28B.52.035 Negotiations reduced to written agreements—Provisions relating to salary increases—Restrictions.
- 28B.52.040 Negotiated agreements—Procedures for binding arbitration.
- 28B.52.045 Collective bargaining agreement—Exclusive bargaining representative—Union security provisions—Dues and fees.
- 28B.52.050 Academic employee may appear in own behalf.
- 28B.52.060 Commission—Mediation activities—Other dispute resolution procedures authorized.
- 28B.52.065 Commission's adjudication of unfair labor practices—Rules—Binding arbitration authorized.
- 28B.52.070 Discrimination prohibited.
- 28B.52.073 Unfair labor practices.
- 28B.52.078 Strikes and lockouts prohibited—Violations—Remedies.
- 28B.52.080 Commission to adopt rules and regulations—Boards may request commission services.
- 28B.52.090 Prior agreements.
- 28B.52.100 State higher education administrative procedure act not to affect.
- 28B.52.200 Scope of chapter—Limitations—When attempts to resolve dispute required.
- 28B.52.210 Scope of chapter—Community and technical colleges faculty awards trust program.
- 28B.52.220 Scope of chapter—Community and technical colleges part-time academic employees.
- 28B.52.300 Construction of chapter.
- 28B.52.900 Severability—1987 c 314.

**28B.52.010 Declaration of purpose.** It is the purpose of this chapter to strengthen methods of administering employer-employee relations through the establishment of orderly methods of communication between academic employees and the college districts by which they are employed.

It is the purpose of this chapter to promote cooperative efforts by prescribing certain rights and obligations of the employees and employers and by establishing orderly procedures governing the relationship between the employees and their employers which procedures are designed to meet the special requirements and needs of public employment in higher education. It is the intent of this chapter to promote activity that includes the elements of open communication and access to information in a timely manner, with reasonable discussion and interpretation of that information. It is the further intent that such activity shall be characterized by mutual respect, integrity, reasonableness, and a desire on the part of the parties to address and resolve the points of concern. [1991 c 238 § 145; 1987 c 314 § 1; 1971 ex.s. c 196 § 1.]

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

**28B.52.020 Definitions.** As used in this chapter:

(1) "Employee organization" means any organization which includes as members the academic employees of a college district and which has as one of its purposes the representation of the employees in their employment relations with the college district.

(2) "Academic employee" means any teacher, counselor, librarian, or department head, who is employed by any college district, whether full or part time, with the exception of the chief administrative officer of, and any administrator in, each college district.

(3) "Administrator" means any person employed either full or part time by the college district and who performs administrative functions as at least fifty percent or more of his or her assignments, and has responsibilities to hire, dismiss, or discipline other employees. Administrators shall not be members of the bargaining unit unless a majority of such administrators and a majority of the bargaining unit elect by secret ballot for such inclusion pursuant to rules as adopted in accordance with RCW 28B.52.080.

(4) "Commission" means the public employment relations commission.

(5) "Unfair labor practice" means any unfair labor practice listed in RCW 28B.52.073.

(6) "Union security provision" means a provision in a collective bargaining agreement under which some or all employees in the bargaining unit may be required, as a condition of continued employment on or after the thirtieth day following the beginning of such employment or the effective date of the provision, whichever is later, to become a member of the exclusive bargaining representative or pay an agency fee equal to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative.

(7) "Exclusive bargaining representative" means any employee organization which has:

(a) Been certified or recognized under this chapter as the representative of the employees in an appropriate collective bargaining unit; or

(b) Before July 26, 1987, been certified or recognized under a predecessor statute as the representative of the employees in a bargaining unit which continues to be appropriate under this chapter.

(2004 Ed.)

(8) "Collective bargaining" and "bargaining" mean the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times to bargain in good faith in an effort to reach agreement with respect to wages, hours, and other terms and conditions of employment, such as procedures related to nonretention, dismissal, denial of tenure, and reduction in force. Prior law, practice, or interpretation shall be neither restrictive, expansive, nor determinative with respect to the scope of bargaining. A written contract incorporating any agreements reached shall be executed if requested by either party. The obligation to bargain does not compel either party to agree to a proposal or to make a concession.

In the event of a dispute between an employer and an exclusive bargaining representative over the matters that are terms and conditions of employment, the commission shall decide which items are mandatory subjects for bargaining. [1991 c 238 § 146; 1987 c 314 § 2; 1975 1st ex.s. c 296 § 12; 1973 1st ex.s. c 205 § 1; 1971 ex.s. c 196 § 2.]

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

**Effective date—1975 1st ex.s. c 296 § 12:** See RCW 41.58.901.

**Severability—1973 1st ex.s. c 205:** "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 205 § 7.]

*Public employment relations commission: Chapter 41.58 RCW.*

**28B.52.025 Right to organize or refrain from organizing.** Employees have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing, and also have the right to refrain from any or all of these activities except to the extent that employees may be required to make payments to an exclusive bargaining representative or charitable organization under a union security provision authorized in this chapter. [1987 c 314 § 5.]

**28B.52.030 Representatives of employee organization—Right to collective bargaining.** Representatives of an employee organization, which organization shall by secret ballot have won a majority in an election to represent the academic employees within its college district, shall have the right to bargain as defined in RCW 28B.52.020(8). [1991 c 238 § 147; 1987 c 314 § 3; 1973 1st ex.s. c 205 § 2; 1971 ex.s. c 196 § 3.]

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

**Severability—1973 1st ex.s. c 205:** See note following RCW 28B.52.020.

**28B.52.035 Negotiations reduced to written agreements—Provisions relating to salary increases—Restrictions.** At the conclusion of any negotiation processes as provided for in RCW 28B.52.030, any matter upon which the parties have reached agreement shall be reduced to writing and acted upon in a regular or special meeting of the boards of trustees, and become part of the official proceedings of said board meeting. Provisions of written contracts relating to salary increases shall not exceed the amount or percentage

established by the legislature in the appropriations act and allocated to the board of trustees by the state board for community and technical colleges. The length of term of any such agreement shall be for not more than three fiscal years. Any provisions of these agreements pertaining to salary increases will not be binding upon future actions of the legislature. If any provision of a salary increase is changed by subsequent modification of the appropriations act by the legislature, both parties shall immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the modified provision. [1991 c 238 § 148; 1987 c 314 § 4; 1973 1st ex.s. c 205 § 4.]

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

**Severability—1973 1st ex.s. c 205:** See note following RCW 28B.52.020.

**28B.52.040 Negotiated agreements—Procedures for binding arbitration.** A board of trustees or an employee organization that enters into a negotiated agreement under RCW 28B.52.030 may include in the agreement procedures for binding arbitration of the disputes arising about the interpretation or application of the agreement including but not limited to nonretention, dismissal, denial of tenure, and reduction in force. [1987 c 314 § 6.]

**28B.52.045 Collective bargaining agreement—Exclusive bargaining representative—Union security provisions—Dues and fees.** (1) Upon filing with the employer the voluntary written authorization of a bargaining unit employee under this chapter, the employee organization which is the exclusive bargaining representative of the bargaining unit shall have the right to have deducted from the salary of the bargaining unit employee the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. Such employee authorization shall not be irrevocable for a period of more than one year. Such dues and fees shall be deducted from the pay of all employees who have given authorization for such deduction, and shall be transmitted by the employer to the employee organization or to the depository designated by the employee organization.

(2) A collective bargaining agreement may include union security provisions, but not a closed shop. If an agency shop or other union security provision is agreed to, the employer shall enforce any such provision by deductions from the salary of bargaining unit employees affected thereby and shall transmit such funds to the employee organization or to the depository designated by the employee organization.

(3) An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall pay to a non-religious charity or other charitable organization an amount of money equivalent to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. The charity shall be agreed upon by the employee and the employee organization to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payments have been made. If the

employee and the employee organization do not reach agreement on such matter, the commission shall designate the charitable organization. [1987 c 314 § 8.]

**28B.52.050 Academic employee may appear in own behalf.** Nothing in this chapter shall prohibit any academic employee from appearing in his or her own behalf on matters relating to his or her employment relations with the college district. [1991 c 238 § 149; 1971 ex.s. c 196 § 4.]

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

**28B.52.060 Commission—Mediation activities—Other dispute resolution procedures authorized.** The commission shall conduct mediation activities upon the request of either party as a means of assisting in the settlement of unresolved matters considered under this chapter.

In the event that any matter being jointly considered by the employee organization and the board of trustees of the college district is not settled by the means provided in this chapter, either party, twenty-four hours after serving written notice of its intended action to the other party, may, request the assistance and advice of the commission. Nothing in this section prohibits an employer and an employee organization from agreeing to substitute, at their own expense, some other impasse procedure or other means of resolving matters considered under this chapter. [1991 c 238 § 150; 1987 c 314 § 9; 1975 1st ex.s. c 296 § 13; 1973 1st ex.s. c 205 § 3; 1971 ex.s. c 196 § 5.]

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

**Effective date—1975 1st ex.s. c 296 § 13:** See RCW 41.58.901.

**Severability—1973 1st ex.s. c 205:** See note following RCW 28B.52.020.

**28B.52.065 Commission's adjudication of unfair labor practices—Rules—Binding arbitration authorized.** The commission may adjudicate any unfair labor practices alleged by a board of trustees or an employee organization and shall adopt reasonable rules to administer this section. However, the parties may agree to seek relief from unfair labor practices through binding arbitration. [1987 c 314 § 10.]

**28B.52.070 Discrimination prohibited.** Boards of trustees of college districts or any administrative officer thereof shall not discriminate against academic employees or applicants for such positions because of their membership or nonmembership in employee organizations or their exercise of other rights under this chapter. [1991 c 238 § 151; 1971 ex.s. c 196 § 6.]

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

**28B.52.073 Unfair labor practices.** (1) It shall be an unfair labor practice for an employer:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to

rules adopted by the commission, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment;

(d) To discharge or discriminate otherwise against an employee because that employee has filed charges or given testimony under this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It shall be an unfair labor practice for an employee organization:

(a) To restrain or coerce an employee in the exercise of the rights guaranteed by this chapter: PROVIDED, That this subsection shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership in the employee organization or to an employer in the selection of its representatives for the purpose of bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To discriminate against an employee because that employee has filed charges or given testimony under this chapter;

(d) To refuse to bargain collectively with an employer.

(3) The expressing of any views, arguments, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or force or promise of benefit. [1987 c 314 § 11.]

**28B.52.078 Strikes and lockouts prohibited—Violations—Remedies.** The right of college faculty to engage in any strike is prohibited. The right of a board of trustees to engage in any lockout is prohibited. Should either a strike or lockout occur, the representative of the faculty or board of trustees may invoke the jurisdiction of the superior court in the county in which the labor dispute exists and such court shall have jurisdiction to issue an appropriate order against either or both parties. In fashioning an order, the court shall take into consideration not only the elements necessary for injunctive relief but also the purpose and goals of this chapter and any mitigating factors such as the commission of an unfair labor practice by either party. [1991 c 238 § 152; 1987 c 314 § 13.]

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

**28B.52.080 Commission to adopt rules and regulations—Boards may request commission services.** The commission shall adopt reasonable rules and regulations for the administration of employer-employee relations under this chapter. The boards may request the services of the commission to assist in the conduction of certification elections as provided for in RCW 28B.52.030. [1975 1st ex.s. c 296 § 14; 1973 1st ex.s. c 205 § 5; 1971 ex.s. c 196 § 7.]

(2004 Ed.)

**Effective date—1975 1st ex.s. c 296 § 14:** See 1975-'76 2nd ex.s. c 5 § 8, RCW 41.58.901.

**Severability—1973 1st ex.s. c 205:** See note following RCW 28B.52.020.

**28B.52.090 Prior agreements.** Nothing in this chapter shall be construed to annul or modify, or to preclude the renewal or continuation of, any lawful agreement heretofore entered into between any college district and any representative of its employees. [1991 c 238 § 153; 1971 ex.s. c 196 § 8.]

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

**28B.52.100 State higher education administrative procedure act not to affect.** Contracts or agreements, or any provision thereof entered into between boards of trustees and employees organizations pursuant to this chapter shall not be affected by or be subject to chapter 34.05 RCW. [1971 ex.s. c 196 § 9.]

**28B.52.200 Scope of chapter—Limitations—When attempts to resolve dispute required.** Nothing in chapter 28B.52 RCW as now or hereafter amended shall compel either party to agree to a proposal or to make a concession, nor shall any provision in chapter 28B.52 RCW as now or hereafter amended be construed as limiting or precluding the exercise by each college board of trustees of any powers or duties authorized or provided to it by law unless such exercise is contrary to the terms and conditions of any lawful negotiated agreement, except that other than to extend the terms of a previous contract, a board of trustees shall not take unilateral action on any unresolved issue under negotiation, unless the parties have first participated in good faith mediation or some other procedure as authorized by RCW 28B.52.060 to seek resolution of the issue. [1991 c 238 § 154; 1987 c 314 § 12; 1973 1st ex.s. c 205 § 6.]

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

**Severability—1973 1st ex.s. c 205:** See note following RCW 28B.52.020.

**28B.52.210 Scope of chapter—Community and technical colleges faculty awards trust program.** With respect to the community and technical colleges faculty awards trust program, the permissible scope of collective bargaining under this chapter shall be governed by RCW 28B.50.843. [1991 c 238 § 155; 1990 c 29 § 6.]

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

**Severability—1990 c 29:** See note following RCW 28B.50.835.

**28B.52.220 Scope of chapter—Community and technical colleges part-time academic employees.** With respect to the community and technical colleges part-time academic employees, the permissible scope of collective bargaining under this chapter shall be governed by RCW 28B.50.4893 and 28B.50.489. [2000 c 128 § 4.]

**Construction—2000 c 128:** "Nothing contained in this act may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement." [2000 c 128 § 5.]

**28B.52.300 Construction of chapter.** Except as otherwise expressly provided in this chapter, this chapter shall not be construed to deny or otherwise abridge any rights, privileges, or benefits granted by law to employees. This chapter shall not be construed to interfere with the responsibilities and rights of the board of trustees as specified by federal and state law. [1987 c 314 § 7.]

**28B.52.900 Severability—1987 c 314.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 314 § 15.]

## Chapter 28B.56 RCW

### 1972 COMMUNITY COLLEGES FACILITIES AID—BOND ISSUE

#### Sections

28B.56.010	Purpose.
28B.56.020	Bonds authorized—Payment—Limitations.
28B.56.040	Proceeds from bond sale—Administration and expenditure.
28B.56.050	"Community college facilities" defined.
28B.56.070	Referral to electorate.
28B.56.080	Form, terms, conditions and manner of sale and issuance—Limitation.
28B.56.090	Anticipation notes—Authorized—Contents—Payment.
28B.56.100	Community college capital improvements bond redemption fund of 1972—Created—Tax receipts—Use of funds—Use of debt-limit general fund bond retirement account.
28B.56.110	Legislature may provide additional means of revenue.
28B.56.120	Bonds as legal investment for state and municipal corporation funds.

**28B.56.010 Purpose.** The community colleges of the state of Washington have more than doubled their enrollment since 1966, including a three hundred percent increase in occupational education. The capital fund resources of the state community college system are not adequate to meet the facility needs of today's students. Major increments of community college facilities will be needed to serve the still growing numbers of commuting youth and adults attending the community college system. A determination of the facility needs of each college has been made through the uniform application of guidelines developed by the \*state board for community college education to evaluate facility needs. [1972 ex.s. c 133 § 1.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Legislative direction—1972 ex.s. c 133:** "Upon adoption and ratification by the people as provided for in section 7 of this act, sections 1 through 12 herein shall constitute a new chapter in Title 28B RCW." [1972 ex.s. c 133 § 13.]

**28B.56.020 Bonds authorized—Payment—Limitations.** For the purpose of providing funds for the acquisition, construction and improvement of community college facilities in this state, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of fifty million dollars or so much thereof as may be required to finance the improvements defined in this chapter and all costs incidental thereto. These bonds shall be paid and discharged within twenty years of the date of issuance, or within thirty years, should Article VIII of the Constitution of

the state of Washington be amended to permit such longer term. No bonds authorized by this chapter shall be offered for sale without prior legislative appropriation of the proceeds of such bonds to be sold. [1977 ex.s. c 242 § 5; 1972 ex.s. c 133 § 2.]

**Severability—1977 ex.s. c 242:** See note following RCW 43.83A.020.

**28B.56.040 Proceeds from bond sale—Administration and expenditure.** The proceeds from the sale of bonds deposited in the community college capital improvements account shall be administered and expended by the \*state board for community college education subject to legislative appropriation. [1972 ex.s. c 133 § 4.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**28B.56.050 "Community college facilities" defined.** For the purposes of this chapter, the term "community college facilities" shall mean and include, but not be limited to, vocational facilities, including capital equipment acquisition, and such other specific projects as approved and funded for planning purposes by the legislature which shall include general education classrooms, science laboratories, faculty offices, student dining facilities, library and media facilities, offices for student personnel services and administrative personnel, and all real property and interests therein, equipment, parking facilities, utilities, appurtenances and landscaping incidental to such facilities. [1972 ex.s. c 133 § 5.]

**28B.56.070 Referral to electorate.** This chapter shall be submitted to the people for their adoption and ratification, or rejection, at the general election to be held in this state on the Tuesday next succeeding the first Monday in November, 1972, in accordance with the provisions of section 3, Article VIII of the Constitution of the state of Washington, and in accordance with the provisions of section 1, Article II of the Constitution of the state of Washington, as amended, and the laws adopted to facilitate the operation thereof. [1972 ex.s. c 133 § 7.]

**Reviser's note:** Chapter 28B.56 RCW was adopted and ratified by the people at the November 7, 1972, general election (Referendum Bill No. 31). Governor's proclamation declaring approval of measure is dated December 7, 1972.

**28B.56.080 Form, terms, conditions and manner of sale and issuance—Limitation.** The state finance committee is authorized to prescribe the form, terms, conditions and covenants of the bonds, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance. None of the bonds herein authorized shall be sold for less than their par value. [1972 ex.s. c 133 § 8.]

**28B.56.090 Anticipation notes—Authorized—Contents—Payment.** When the state finance committee has decided to issue such bonds or a portion thereof, it may, pending the issuing of such bonds, issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of such bonds, which notes shall be designated as "anticipation notes". Such portion of the proceeds of the sale of such bonds as may be required for such purpose

shall be applied to the payment of the principal of and interest on such anticipation notes which have been issued. The bonds and notes shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal and interest when due. The state finance committee may authorize the use of a printed facsimile of the seal of the state of Washington in the issuance of bonds and notes. [1972 ex.s. c 133 § 9.]

**28B.56.100 Community college capital improvements bond redemption fund of 1972—Created—Tax receipts—Use of funds—Use of debt-limit general fund bond retirement account.** The community college capital improvements bond redemption fund of 1972 is created in the state treasury. This fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by this chapter. The state finance committee shall, on or before June 30 of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements, and on July 1 of each year, the state treasurer shall deposit such amount in the community college capital improvements bond redemption fund of 1972 from moneys transmitted to the state treasurer by the department of revenue and certified by the department of revenue to be retail sales tax collections. Such amount certified by the state finance committee to the state treasurer shall be a prior charge against all retail sales tax revenues of the state of Washington, except that portion thereof heretofore pledged for the payment of bond principal and interest.

The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed herein.

If a debt-limit general fund bond retirement account is created in the state treasury by chapter 456, Laws of 1997 and becomes effective prior to the issuance of any of the bonds authorized by this chapter, the debt-limit general fund bond retirement account shall be used for the purposes of this chapter in lieu of the community college capital improvements bonds redemption fund of 1972. [1997 c 456 § 10; 1972 ex.s. c 133 § 10.]

**Severability—1997 c 456:** See RCW 43.99L.900.

**Effective date—1997 c 456 §§ 9-43:** See RCW 43.99M.901.

**28B.56.110 Legislature may provide additional means of revenue.** The legislature may provide additional means for raising moneys for the payment of the principal and interest of the bonds authorized herein, and this chapter shall not be deemed to provide an exclusive method for such payment. [1972 ex.s. c 133 § 11.]

**28B.56.120 Bonds as legal investment for state and municipal corporation funds.** The bonds herein authorized shall be a legal investment for all state funds or for funds under state control and for all funds of municipal corporations. [1972 ex.s. c 133 § 12.]

(2004 Ed.)

## Chapter 28B.57 RCW

### 1975 COMMUNITY COLLEGE SPECIAL CAPITAL PROJECTS BOND ACT

#### Sections

- 28B.57.010 State general obligation bonds in lieu of building, limited obligation bonds—"Community college capital projects" defined.
- 28B.57.020 Amount of bonds authorized.
- 28B.57.030 Projects enumerated.
- 28B.57.040 Bond anticipation notes, authorized, payment—Form, terms, conditions, sale and covenants of bonds and notes.
- 28B.57.050 Disposition of proceeds—1975 community college capital construction account, use.
- 28B.57.060 Administration of proceeds from bonds and notes.
- 28B.57.070 1975 community college capital construction bond retirement fund—Created—Purpose.
- 28B.57.080 Moneys to be transferred from community college account to state general fund—Limitation.
- 28B.57.090 Bonds as legal investment for public funds.
- 28B.57.100 Prerequisite to bond issuance.

**28B.57.010 State general obligation bonds in lieu of building, limited obligation bonds—"Community college capital projects" defined.** The legislature has previously approved by its appropriation of funds from time to time, certain capital projects for the state community colleges, which appropriations were to be funded primarily by the issuance of building, limited obligation bonds by the \*state board for community college education (hereinafter in this chapter called the "college board"). In order that any future appropriations for such approved capital projects may be funded on terms most advantageous to the state, it is hereby determined to be in the public interest to provide for the issuance of state general obligation bonds, in lieu of building, limited obligation bonds.

For purposes of this chapter, "community college capital projects" means the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets owned by the \*state board for community college education in the name of the state of Washington, and the acquisition of sites, rights of way, easements, improvements or appurtenances in relation thereto. [1985 c 390 § 61; 1975 1st ex.s. c 65 § 1.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Severability—1975 1st ex.s. c 65:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, shall in no way be affected." [1975 1st ex.s. c 65 § 13.]

**28B.57.020 Amount of bonds authorized.** For the purpose of providing funds for carrying out the community college capital projects described in RCW 28B.57.030, and to fund indebtedness and expenditures heretofore incurred for such projects, the state finance committee is hereby authorized to issue from time to time general obligation bonds of the state of Washington in the aggregate principal amount of nine million dollars, or so much thereof as may be required for such purposes, to be paid and discharged within thirty years of the date or dates of issuance, in accordance with Article VIII, section 1 of the Constitution of the state of Washington. [1975 1st ex.s. c 65 § 2.]

**Severability—1975 1st ex.s. c 65:** See note following RCW 28B.57.010.

**28B.57.030 Projects enumerated.** The community college capital projects referred to in RCW 28B.57.020 are (1) at Walla Walla Community College, for construction of vocational facilities, Phase II, at a cost of not more than two million two thousand three hundred ninety-nine dollars and (2) at Seattle Central Community College, for remodeling of Edison South High School, at a cost of not more than six million nine hundred ninety-seven thousand six hundred and one dollars, which projects were to be primarily funded, but have not heretofore been sufficiently funded, from the proceeds of general tuition fee, limited obligation bonds issued by the college board. [1975 1st ex.s. c 65 § 3.]

**Severability—1975 1st ex.s. c 65:** See note following RCW 28B.57.010.

**28B.57.040 Bond anticipation notes, authorized, payment—Form, terms, conditions, sale and covenants of bonds and notes.** When the state finance committee has determined to issue such general obligation bonds or a portion thereof, it may, pending the issuance thereof, issue in the name of the state temporary notes in anticipation of the issuance of such bonds, which notes shall be designated as "bond anticipation notes". Such portion of the proceeds of the sale of such bonds as may be required for the payment of principal and redemption premium, if any, of and interest on such notes shall be applied thereto when such bonds are issued.

The state finance committee is authorized to prescribe the form, terms, conditions and covenants of the bonds and/or the bond anticipation notes, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance.

Each such bond and bond anticipation note shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal thereof and the interest thereon when due. [1975 1st ex.s. c 65 § 4.]

**Severability—1975 1st ex.s. c 65:** See note following RCW 28B.57.010.

**28B.57.050 Disposition of proceeds—1975 community college capital construction account, use.** The proceeds from the sale of the bonds authorized herein, together with all grants, donations, transferred funds, and all other moneys which the state finance committee or the college board may direct the state treasurer to deposit therein, shall be deposited in the 1975 community college capital construction account, hereby created in the state treasury. [1991 sp.s. c 13 § 51; 1985 c 57 § 18; 1975 1st ex.s. c 65 § 5.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**Severability—1975 1st ex.s. c 65:** See note following RCW 28B.57.010.

*Disposition of proceeds from sale of bonds and notes—1977 community college capital projects bond act: RCW 28B.59B.040.*

**28B.57.060 Administration of proceeds from bonds and notes.** All proceeds of the bonds authorized in this chapter shall be administered by the college board exclusively for the purposes specified in this chapter and for the payment of the expenses incurred in connection with the sale and issu-

ance of such bonds and bond anticipation notes. [1975 1st ex.s. c 65 § 6.]

**Severability—1975 1st ex.s. c 65:** See note following RCW 28B.57.010.

**28B.57.070 1975 community college capital construction bond retirement fund—Created—Purpose.** The 1975 community college capital construction bond retirement fund is hereby created in the state treasury for the purpose of the payment of principal of and interest on the bonds authorized to be issued pursuant to this chapter.

The state finance committee, on or before June 30 of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and interest coming due on such bonds. On July 1st of each such year the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the 1975 community college capital construction bond retirement fund an amount equal to the amount certified by the state finance committee. [1975 1st ex.s. c 65 § 7.]

**Severability—1975 1st ex.s. c 65:** See note following RCW 28B.57.010.

*Disposition of proceeds from sale of bonds and notes—1977 community college capital projects bond act: RCW 28B.59B.040.*

**28B.57.080 Moneys to be transferred from community college account to state general fund—Limitation.** On or before June 30 of each year, the college board shall accumulate in the community college capital projects account from building fees and other moneys deposited therein, an amount at least equal to the amount required in the next succeeding twelve months for the payment of principal of and interest on the bonds issued pursuant to this chapter. On July 1st of each such year, the state treasurer shall withdraw said sum from the community college capital projects account and deposit said sum in the state general fund: PROVIDED, That withdrawal of building fees from the community college capital projects account for deposit into the state general fund pursuant to the provisions of this section shall be made only after provision has first been made for the payment in full of the principal of and interest on all outstanding building, limited obligation bonds of the college board coming due in the twelve months next succeeding July 1 of each such year, and for any reserve account deposits necessary for such outstanding bonds in the same period. [1985 c 390 § 63; 1975 1st ex.s. c 65 § 8.]

**Severability—1975 1st ex.s. c 65:** See note following RCW 28B.57.010.

**28B.57.090 Bonds as legal investment for public funds.** The bonds authorized in this chapter shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1975 1st ex.s. c 65 § 9.]

**Severability—1975 1st ex.s. c 65:** See note following RCW 28B.57.010.

**28B.57.100 Prerequisite to bond issuance.** The bonds authorized in this chapter shall be issued only after the college board has certified to the state finance committee that its

projected building fees revenue shall be adequate, based upon reasonable projections of student enrollments, for the college board to meet the requirements of RCW 28B.57.080, during the life of the bonds proposed to be issued. [1985 c 390 § 62; 1975 1st ex.s. c 65 § 10.]

**Severability—1975 1st ex.s. c 65:** See note following RCW 28B.57.010.

### Chapter 28B.58 RCW

## 1975 COMMUNITY COLLEGE GENERAL CAPITAL PROJECTS BOND ACT

### Sections

- 28B.58.010 State general obligation bonds in lieu of building, limited obligation bonds—"Community college capital projects" defined—Consideration for minority contractors on projects so funded.
- 28B.58.020 Amount of bonds authorized.
- 28B.58.030 Bond anticipation notes, authorized, payment—Form, term, conditions, sale and covenants of bonds and notes.
- 28B.58.040 Disposition of proceeds from sale of bonds and notes.
- 28B.58.050 Administration of proceeds from bonds and notes.
- 28B.58.060 Payment of principal and interest on bonds.
- 28B.58.070 Moneys to be transferred from community college account to state general fund—Limitation.
- 28B.58.080 Bonds as legal investment for public funds.
- 28B.58.090 Prerequisite to bond issuance.

**28B.58.010 State general obligation bonds in lieu of building, limited obligation bonds—"Community college capital projects" defined—Consideration for minority contractors on projects so funded.** The legislature has approved by its appropriation of funds from time to time, capital projects for the state community colleges, which appropriations have been funded primarily by the issuance of building, limited obligation bonds by the \*state board for community college education (hereinafter in this chapter called the "college board"). In order that any future appropriations for such approved capital projects may be funded on terms most advantageous to the state, it is hereby determined to be in the public interest to provide for the issuance of state general obligation bonds, in lieu of building, limited obligation bonds.

For purposes of this chapter, "community college capital projects" means the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets owned by the \*state board for community college education in the name of the state of Washington, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto. It is the intent of the legislature that in any decision to contract for capital projects funded as the result of this chapter, full and fair consideration shall be given to minority contractors. [1985 c 390 § 64; 1975 1st ex.s. c 236 § 1.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Severability—1975 1st ex.s. c 236:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, shall in no way be affected." [1975 1st ex.s. c 236 § 11.]

**28B.58.020 Amount of bonds authorized.** For the purpose of financing the community college capital projects as determined by the legislature in its capital appropriations act,

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chapter 276, Laws of 1975 1st ex. sess., the state finance committee is hereby authorized to issue from time to time general obligation bonds of the state of Washington in the aggregate principal amount of fourteen million seven hundred seventy-six thousand dollars, or so much thereof as may be required for such purposes, to be paid and discharged within thirty years of the date or dates of issuance, in accordance with Article VIII, section 1 of the Constitution of the state of Washington. [1975 1st ex.s. c 236 § 2.]

**Severability—1975 1st ex.s. c 236:** See note following RCW 28B.58.010.

**28B.58.030 Bond anticipation notes, authorized, payment—Form, term, conditions, sale and covenants of bonds and notes.** When the state finance committee has determined to issue such general obligation bonds, or a portion thereof, it may, pending the issuance thereof, issue in the name of the state temporary notes in anticipation of the issuance of such bonds, which notes shall be designated as "bond anticipation notes". Such portion of the proceeds of the sale of such bonds as may be required for the payment of principal and redemption premium, if any, of and interest on such notes shall be applied thereto when such bonds are issued.

The state finance committee is authorized to prescribe the form, terms, conditions and covenants of the bonds and/or the bond anticipation notes, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance.

Each such bond and bond anticipation note shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal thereof and the interest thereon when due. [1975 1st ex.s. c 236 § 3.]

**Severability—1975 1st ex.s. c 236:** See note following RCW 28B.58.010.

**28B.58.040 Disposition of proceeds from sale of bonds and notes.** Except for that portion of the proceeds required to pay bond anticipation notes pursuant to RCW 28B.58.030, the proceeds from the sale of the bonds and/or bond anticipation notes authorized in this chapter, together with all grants, donations, transferred funds, and all other moneys which the state finance committee or the college board may direct the state treasurer to deposit therein, shall be deposited in the 1975 community college capital construction account in the state general fund. [1975 1st ex.s. c 236 § 4.]

**Severability—1975 1st ex.s. c 236:** See note following RCW 28B.58.010.

*1975 community college capital construction account, created, use: RCW 28B.57.050.*

**28B.58.050 Administration of proceeds from bonds and notes.** Subject to legislative appropriation, all proceeds of the bonds authorized in this chapter shall be administered by the college board exclusively for the purposes specified in this chapter and for the payment of the expenses incurred in connection with the sale and issuance of such bonds and bond anticipation notes. [1975 1st ex.s. c 236 § 5.]

**Severability—1975 1st ex.s. c 236:** See note following RCW 28B.58.010.

**28B.58.060 Payment of principal and interest on bonds.** The 1975 community college capital construction bond retirement fund in the state treasury shall be used for the purpose of the payment of principal of and interest on the bonds authorized to be issued pursuant to this chapter.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and interest coming due on such bonds. On July 1st of each such year the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the 1975 community college capital construction bond retirement fund, an amount equal to the amount certified by the state finance committee. [1975 1st ex.s. c 236 § 6.]

**Severability—1975 1st ex.s. c 236:** See note following RCW 28B.58.010.

*1975 community college capital construction bond retirement fund—Created—Purpose: RCW 28B.57.070.*

**28B.58.070 Moneys to be transferred from community college account to state general fund—Limitation.** On or before June 30th of each year, the college board shall accumulate in the community college capital projects account from building fees and other moneys deposited therein, an amount at least equal to the amount required in the next succeeding twelve months for the payment of principal of and interest on the bonds issued pursuant to this chapter. On July 1st of each such year, the state treasurer shall withdraw said sum from the community college capital projects account and deposit said sum in the state general fund: PROVIDED, That withdrawal of building fees from the community college capital projects account for deposit into the general fund pursuant to the provisions of this section shall be made only after provision has first been made for the payment in full of the principal of and interest on all outstanding building, limited obligation bonds of the college board coming due in the twelve months next succeeding July 1st of each such year, and for any reserve account deposits necessary for such outstanding bonds in the same period. [1985 c 390 § 65; 1975 1st ex.s. c 236 § 7.]

**Severability—1975 1st ex.s. c 236:** See note following RCW 28B.58.010.

**28B.58.080 Bonds as legal investment for public funds.** The bonds authorized in this chapter shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1975 1st ex.s. c 236 § 8.]

**Severability—1975 1st ex.s. c 236:** See note following RCW 28B.58.010.

**28B.58.090 Prerequisite to bond issuance.** The bonds authorized in this chapter shall be issued only after the college board has certified to the state finance committee that its projected building fees revenue shall be adequate, based upon reasonable projections of student enrollments, for the college board to meet the requirements of RCW 28B.58.070, during the life of the bonds proposed to be issued. [1985 c 390 § 66; 1975 1st ex.s. c 236 § 9.]

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**Severability—1975 1st ex.s. c 236:** See note following RCW 28B.58.010.

## Chapter 28B.59 RCW

### 1976 COMMUNITY COLLEGE CAPITAL PROJECTS BOND ACT

#### Sections

- 28B.59.010 Purpose—"Community college capital projects" defined.
- 28B.59.020 Amount of general obligation bonds authorized.
- 28B.59.030 Bond anticipation notes, authorized, payment—Form, term, conditions, sale and covenants of bonds and notes.
- 28B.59.040 Disposition of proceeds from sale of bonds and notes.
- 28B.59.050 Administration of the proceeds from bonds and notes.
- 28B.59.060 Payment of the principal and interest on bonds.
- 28B.59.070 Moneys to be transferred from community college account to state general fund—Limitation.
- 28B.59.080 Bonds as legal investment for public funds.
- 28B.59.090 Prerequisite to bond issuance.

**28B.59.010 Purpose—"Community college capital projects" defined.** The legislature has approved by its appropriation of funds from time to time, capital projects for the state community colleges, which appropriations have been funded primarily by the issuance of building, limited obligation bonds by the \*state board for community college education (hereinafter in this chapter called the "college board"). In order that any future appropriations for such approved capital projects may be funded on terms most advantageous to the state, it is hereby determined to be in the public interest to provide for the issuance of state general obligation bonds, in lieu of building, limited obligation bonds.

For purposes of this chapter, "community college capital projects" means the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets owned by the \*state board for community college education in the name of the state of Washington, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto. [1985 c 390 § 67; 1975-'76 2nd ex.s. c 107 § 1.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Severability—1975-'76 2nd ex.s. c 107:** "If any provision of this 1976 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 107 § 11.]

**28B.59.020 Amount of general obligation bonds authorized.** For the purpose of financing the community college capital projects as determined by the legislature in its capital appropriation act, chapter 133, Laws of 1975-'76 2nd ex. sess., the state finance committee is hereby authorized to issue from time to time general obligation bonds of the state of Washington in the aggregate principal amount of twenty-six million four hundred eighty-seven thousand dollars, or so much thereof as may be required for such purposes, to be paid and discharged within thirty years of the date or dates of issuance, in accordance with Article VIII, section 1 of the Constitution of the state of Washington. [1975-'76 2nd ex.s. c 107 § 2.]

**Severability—1975-'76 2nd ex.s. c 107:** See note following RCW 28B.59.010.

**28B.59.030 Bond anticipation notes, authorized, payment—Form, term, conditions, sale and covenants of bonds and notes.** When the state finance committee has determined to issue such general obligation bonds, or a portion thereof, it may, pending the issuance thereof, issue in the name of the state temporary notes in anticipation of the issuance of such bonds, which notes shall be designated as "bond anticipation notes". Such portion of the proceeds of the sale of such bonds as may be required for the payment of principal of and redemption premium, if any, and interest on such notes shall be applied thereto when such bonds are issued.

The state finance committee is authorized to prescribe the form, terms, conditions and covenants of the bonds and/or the bond anticipation notes, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance.

Each such bond and bond anticipation note shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal thereof and the interest thereon when due. [1975-'76 2nd ex.s. c 107 § 3.]

**Severability—1975-'76 2nd ex.s. c 107:** See note following RCW 28B.59.010.

**28B.59.040 Disposition of proceeds from sale of bonds and notes.** Except for that portion of the proceeds required to pay bond anticipation notes pursuant to RCW 28B.59.030, the proceeds from the sale of the bonds and/or bond anticipation notes authorized in this chapter, together with all grants, donations, transferred funds, and all other moneys which the state finance committee or the college board may direct the state treasurer to deposit therein, shall be deposited in the 1975 community college capital construction account in the state general fund. [1975-'76 2nd ex.s. c 107 § 4.]

**Severability—1975-'76 2nd ex.s. c 107:** See note following RCW 28B.59.010.

**28B.59.050 Administration of the proceeds from bonds and notes.** Subject to legislative appropriation, all proceeds of the bonds authorized in this chapter shall be administered by the college board exclusively for the purposes specified in this chapter and for the payment of the expenses incurred in connection with the sale and issuance of such bonds and bond anticipation notes. [1975-'76 2nd ex.s. c 107 § 5.]

**Severability—1975-'76 2nd ex.s. c 107:** See note following RCW 28B.59.010.

**28B.59.060 Payment of the principal and interest on bonds.** The 1975 community college capital construction bond retirement fund in the state treasury shall be used for the purpose of the payment of the principal of and interest on the bonds authorized to be issued pursuant to this chapter.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and interest coming due on such bonds. On July 1st of each such year the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the 1975 community college

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capital construction bond retirement fund, an amount equal to the amount certified by the state finance committee. [1975-'76 2nd ex.s. c 107 § 6.]

**Severability—1975-'76 2nd ex.s. c 107:** See note following RCW 28B.59.010.

**28B.59.070 Moneys to be transferred from community college account to state general fund—Limitation.** On or before June 30th of each year, the college board shall accumulate in the community college capital projects account from building fees and other moneys deposited therein, an amount at least equal to the amount required in the next succeeding twelve months for the payment of principal of and interest on the bonds issued pursuant to this chapter. On July 1st of each such year, the state treasurer shall withdraw said sum from the community college capital projects account and deposit said sum in the state general fund: PROVIDED, That withdrawal of building fees from the community college capital projects account for deposit into the general fund pursuant to the provisions of this section shall be made only after provision has first been made for the payment in full of the principal of and interest on all outstanding building, limited obligation bonds of the college board coming due in the twelve months next succeeding July 1st of each such year, and for any reserve account deposits necessary for such outstanding bonds in the same period. [1985 c 390 § 68; 1975-'76 2nd ex.s. c 107 § 7.]

**Severability—1975-'76 2nd ex.s. c 107:** See note following RCW 28B.59.010.

**28B.59.080 Bonds as legal investment for public funds.** The bonds authorized in this chapter shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1975-'76 2nd ex.s. c 107 § 8.]

**Severability—1975-'76 2nd ex.s. c 107:** See note following RCW 28B.59.010.

**28B.59.090 Prerequisite to bond issuance.** The bonds authorized in this chapter shall be issued only after the college board has certified to the state finance committee that its projected building fees revenue shall be adequate, based upon reasonable projections of student enrollments, for the college board to meet the requirements of RCW 28B.59.070, during the life of the bonds proposed to be issued. [1985 c 390 § 69; 1975-'76 2nd ex.s. c 107 § 9.]

**Severability—1975-'76 2nd ex.s. c 107:** See note following RCW 28B.59.010.

## Chapter 28B.59B RCW

### 1977 COMMUNITY COLLEGE CAPITAL PROJECTS BOND ACT

#### Sections

- 28B.59B.010 Purpose—Bonds authorized—Amount—Conditions.
- 28B.59B.020 Bond anticipation notes—Authorized—Bond proceeds to apply to payment on.
- 28B.59B.030 Form, terms, conditions, sale, redemption and covenants of bonds and notes—Pledge of state's credit.
- 28B.59B.040 Disposition of proceeds from sale of bonds and notes.
- 28B.59B.050 Administration of proceeds from bonds and notes.
- 28B.59B.060 Payment of the principal and interest on bonds and notes.

- 28B.59B.070 Moneys to be transferred from community college account to state general fund.  
 28B.59B.080 Bonds as legal investment for public funds.  
 28B.59B.090 Prerequisite to bond issuance.

**28B.59B.010 Purpose—Bonds authorized—Amount—Conditions.** For the purpose of financing the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets owned by the \*state board for community college education in the name of the state of Washington, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto as determined by the legislature in its capital appropriations act, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of seven million five hundred thousand dollars, or so much thereof as may be required to finance such projects, and all costs incidental thereto. No bonds authorized by this chapter shall be offered for sale without prior legislative appropriation, and these bonds shall be paid and discharged within thirty years of the date of issuance in accordance with Article VIII, section 1 of the state Constitution. [1977 ex.s. c 346 § 1.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Severability—1977 ex.s. c 346:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 346 § 11.]

**28B.59B.020 Bond anticipation notes—Authorized—Bond proceeds to apply to payment on.** When the state finance committee has determined to issue such general obligation bonds, or a portion thereof, it may, pending the issuance thereof, issue in the name of the state temporary notes in anticipation of the issuance of such bonds, which notes shall be designated as "bond anticipation notes". Such portion of the proceeds of the sale of such bonds as may be required for the payment of principal of and redemption premium, if any, and interest on such notes shall be applied thereto when such bonds are issued. [1977 ex.s. c 346 § 2.]

**Severability—1977 ex.s. c 346:** See note following RCW 28B.59B.010.

**28B.59B.030 Form, terms, conditions, sale, redemption and covenants of bonds and notes—Pledge of state's credit.** The state finance committee is authorized to determine the aggregate amounts, dates, form, terms, conditions, denominations, interest rates, maturities, rights and manner of redemption prior to maturity, registration privileges, place(s) of payment and covenants of such bonds and/or the bond anticipation notes, the time or times of sale of all or any portion of them, and the conditions and manner of their sale, issuance and redemption.

Each such bond and bond anticipation note shall state that it is a general obligation of the state of Washington, shall contain a pledge of the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain the state's unconditional promise to pay such principal and interest as the same shall become due. [1977 ex.s. c 346 § 3.]

**Severability—1977 ex.s. c 346:** See note following RCW 28B.59B.010.

**28B.59B.040 Disposition of proceeds from sale of bonds and notes.** The proceeds from the sale of the bonds and/or bond anticipation notes authorized in this chapter, together with all grants, donations, transferred funds and all other moneys which the state finance committee or the college board may direct the state treasurer to deposit therein, shall be deposited in the 1975 community college capital construction account in the state general fund: PROVIDED, That such portion of the proceeds of the sale of such bonds as may be required for the payment of the principal of and interest on any outstanding bond anticipation notes, together with accrued interest on the bonds received from the purchasers upon their delivery, shall be deposited in the 1975 community college capital construction bond retirement fund. [1977 ex.s. c 346 § 4.]

**Severability—1977 ex.s. c 346:** See note following RCW 28B.59B.010.

*1975 Community college capital construction account—Created—Use: RCW 28B.57.050.*

*1975 Community college capital construction bond retirement fund—Created—Purpose: RCW 28B.57.070.*

**28B.59B.050 Administration of proceeds from bonds and notes.** Subject to legislative appropriation, all principal proceeds of the bonds and/or bond anticipation notes authorized in this chapter shall be administered by the college board exclusively for the purposes specified in this chapter and for the payment of the expenses incurred in connection with their sale and issuance. [1977 ex.s. c 346 § 5.]

**Severability—1977 ex.s. c 346:** See note following RCW 28B.59B.010.

**28B.59B.060 Payment of the principal and interest on bonds and notes.** The 1975 community college capital construction bond retirement fund in the state treasury shall be used for the purpose of the payment of the principal of and redemption premium, if any, and interest on the bonds and/or the bond anticipation notes authorized to be issued pursuant to this chapter.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and interest coming due on such bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the 1975 community college capital construction bond retirement fund an amount equal to the amount certified by the state finance committee to be due on such payment date. [1977 ex.s. c 346 § 6.]

**Severability—1977 ex.s. c 346:** See note following RCW 28B.59B.010.

**28B.59B.070 Moneys to be transferred from community college account to state general fund.** On or before June 30th of each year, the college board shall accumulate in the community college capital projects account from building

fees and other moneys deposited therein, an amount at least equal to the amount required in the next succeeding twelve months for the payment of principal of and interest on the bonds issued pursuant to this chapter. Not less than thirty days prior to the date on which any such interest or principal and interest payment is due, the state treasurer shall withdraw said sum from the community college capital projects account and deposit said sum in the state general fund. [1985 c 390 § 70; 1977 ex.s. c 346 § 7.]

**Severability—1977 ex.s. c 346:** See note following RCW 28B.59B.010.

**28B.59B.080 Bonds as legal investment for public funds.** The bonds authorized in this chapter shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1977 ex.s. c 346 § 8.]

**Severability—1977 ex.s. c 346:** See note following RCW 28B.59B.010.

**28B.59B.090 Prerequisite to bond issuance.** The bonds authorized in this chapter shall be issued only after the college board has certified to the state finance committee that its anticipated general tuition fee revenue shall be adequate, based upon reasonable projections of student enrollments, for the college board to meet the requirements of RCW 28B.59B.070 during the life of the bonds proposed to be issued. [1977 ex.s. c 346 § 9.]

**Severability—1977 ex.s. c 346:** See note following RCW 28B.59B.010.

## Chapter 28B.59C RCW

### 1979 COMMUNITY COLLEGE CAPITAL PROJECTS BOND ACT

#### Sections

28B.59C.010	Purpose—Bonds authorized—Amount—Conditions.
28B.59C.020	Bond anticipation notes—Authorized—Bond proceeds to apply to payment on.
28B.59C.030	Form, terms, conditions, sale, redemption and covenants of bonds and notes—Pledge of state's credit.
28B.59C.040	Disposition of proceeds from sale of bonds and notes.
28B.59C.050	Administration of proceeds from bonds and notes.
28B.59C.060	Payment of principal and interest on bonds and notes.
28B.59C.070	Moneys to be transferred from community college account to state general fund.
28B.59C.080	Bonds as legal investment for public funds.

**28B.59C.010 Purpose—Bonds authorized—Amount—Conditions.** For the purpose of financing the construction, reconstruction, erection, equipping, maintenance, demolition, and major alteration of buildings and other capital assets owned by the \*state board for community college education in the name of the state of Washington, and the acquisition of sites, rights of way, easements, improvements, or appurtenances in relation thereto as determined by the legislature in its capital appropriations act, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of twenty-four million dollars, or so much thereof as may be required, to finance such projects, and all costs incidental thereto. No bonds authorized by this chapter shall be offered for sale without prior legislative appropriation, and these bonds shall

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be paid and discharged within thirty years of the date of issuance in accordance with Article VIII, section 1 of the state Constitution. [1979 ex.s. c 226 § 1.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Effective date—1979 ex.s. c 226:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [June 15, 1979]." [1979 ex.s. c 226 § 13.]

**Severability—1979 ex.s. c 226:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 226 § 12.]

**28B.59C.020 Bond anticipation notes—Authorized—Bond proceeds to apply to payment on.** When the state finance committee has determined to issue the general obligation bonds, or a portion thereof, it may, pending the issuance thereof, issue in the name of the state temporary notes in anticipation of the issuance of the bonds, which notes shall be designated as "bond anticipation notes". Such portion of the proceeds of the sale of the bonds as may be required for the payment of principal of and redemption premium, if any, and interest on the notes shall be applied thereto when the bonds are issued. [1979 ex.s. c 226 § 2.]

**Effective date—Severability—1979 ex.s. c 226:** See notes following RCW 28B.59C.010.

**28B.59C.030 Form, terms, conditions, sale, redemption and covenants of bonds and notes—Pledge of state's credit.** The state finance committee is authorized to determine the aggregate amounts, dates, form, terms, conditions, denominations, interest rates, maturities, rights and manner of redemption prior to maturity, registration privileges, place(s) of payment and covenants of the bonds and/or the bond anticipation notes, the time or times of sale of all or any portion of them, and the conditions and manner of their sale, issuance, and redemption.

Each bond and bond anticipation note shall state that it is a general obligation of the state of Washington, shall contain a pledge of the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain the state's unconditional promise to pay the principal and interest as the same shall become due. [1979 ex.s. c 226 § 3.]

**Effective date—Severability—1979 ex.s. c 226:** See notes following RCW 28B.59C.010.

**28B.59C.040 Disposition of proceeds from sale of bonds and notes.** The proceeds from the sale of the bonds and/or bond anticipation notes authorized in this chapter, together with all grants, donations, transferred funds, and all other moneys which the state finance committee or the college board may direct the state treasurer to deposit therein, shall be deposited in the 1975 community college capital construction account in the state general fund: PROVIDED, That such portion of the proceeds of the sale of the bonds as may be required for the payment of the principal of and interest on any outstanding bond anticipation notes, together with accrued interest and premium, if any, on the bonds received from the purchasers upon their delivery, shall be deposited in

the 1975 community college capital construction bond retirement fund. [1979 ex.s. c 226 § 4.]

**Effective date—Severability—1979 ex.s. c 226:** See notes following RCW 28B.59C.010.

**28B.59C.050 Administration of proceeds from bonds and notes.** Subject to legislative appropriation, all principal proceeds of the bonds and/or bond anticipation notes authorized in this chapter shall be administered by the college board exclusively for the purposes specified in this chapter and for the payment of the expenses incurred in connection with their sale and issuance. [1979 ex.s. c 226 § 5.]

**Effective date—Severability—1979 ex.s. c 226:** See notes following RCW 28B.59C.010.

**28B.59C.060 Payment of principal and interest on bonds and notes.** The 1975 community college capital construction bond retirement fund in the state treasury shall be used for the purpose of the payment of the principal of and redemption premium, if any, and interest on the bonds and/or the bond anticipation notes authorized to be issued under this chapter.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the 1975 community college capital construction bond retirement fund an amount equal to the amount certified by the state finance committee to be due on the payment date. [1979 ex.s. c 226 § 6.]

**Effective date—Severability—1979 ex.s. c 226:** See notes following RCW 28B.59C.010.

**28B.59C.070 Moneys to be transferred from community college account to state general fund.** On or before June 30th of each year, the college board shall accumulate in the community college capital projects account from building fees and other moneys deposited therein, an amount at least equal to the amount required in the next succeeding twelve months for the payment of principal of and interest on the bonds issued under this chapter. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw the sum from the community college capital projects account and deposit the sum in the state general fund. [1985 c 390 § 71; 1979 ex.s. c 226 § 7.]

**Effective date—Severability—1979 ex.s. c 226:** See notes following RCW 28B.59C.010.

**28B.59C.080 Bonds as legal investment for public funds.** The bonds authorized in this chapter shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1979 ex.s. c 226 § 8.]

**Effective date—Severability—1979 ex.s. c 226:** See notes following RCW 28B.59C.010.

## Chapter 28B.59D RCW

### 1981 COMMUNITY COLLEGE CAPITAL PROJECTS BOND ACT

#### Sections

- 28B.59D.010 Purpose—Bonds authorized—Amount—Condition.
- 28B.59D.020 Bonds to pledge credit of state, promise to pay.
- 28B.59D.030 Disposition of proceeds from sale of bonds.
- 28B.59D.040 Administration and expenditure of proceeds from sale of bonds—Condition.
- 28B.59D.050 Existing fund utilized for payment of principal and interest—Committee and treasurer's duties.
- 28B.59D.060 Transfer of account moneys to general fund—College board and treasurer's duties.
- 28B.59D.070 Bonds as legal investment for public funds.

**28B.59D.010 Purpose—Bonds authorized—Amount—Condition.** For the purpose of financing the construction, reconstruction, erection, equipping, maintenance, demolition, and major alteration of buildings and other capital assets owned by the \*state board for community college education in the name of the state of Washington, and the acquisition of sites, rights of way, easements, improvements, or appurtenances in relation thereto as determined by the legislature in its capital appropriations act, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of seven million three hundred thousand dollars, or so much thereof as may be required, to finance such projects, and all costs incidental thereto. No bonds authorized by RCW 28B.59D.010 through 28B.59D.070 may be offered for sale without prior legislative appropriation. [1981 c 237 § 1.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Severability—1981 c 237:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 237 § 8.]

**28B.59D.020 Bonds to pledge credit of state, promise to pay.** Each bond shall state that it is a general obligation of the state of Washington, shall contain a pledge of the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain the state's unconditional promise to pay the principal and interest as the same shall become due. [1981 c 237 § 2.]

**Severability—1981 c 237:** See note following RCW 28B.59D.010.

**28B.59D.030 Disposition of proceeds from sale of bonds.** The proceeds from the sale of the bonds authorized in RCW 28B.59D.010 through 28B.59D.070, together with all grants, donations, transferred funds, and all other moneys which the state finance committee or the college board may direct the state treasurer to deposit therein, shall be deposited in the 1975 community college capital construction account in the state general fund. [1981 c 237 § 3.]

**Severability—1981 c 237:** See note following RCW 28B.59D.010.

**28B.59D.040 Administration and expenditure of proceeds from sale of bonds—Condition.** Subject to legislative appropriation, all principal proceeds of the bonds authorized in RCW 28B.59D.010 through 28B.59D.070 shall be administered by the college board exclusively for the pur-

poses specified in RCW 28B.59D.010 through 28B.59D.070 and for the payment of the expenses incurred in connection with their sale and issuance. [1981 c 237 § 4.]

**Severability—1981 c 237:** See note following RCW 28B.59D.010.

**28B.59D.050 Existing fund utilized for payment of principal and interest—Committee and treasurer's duties.** The 1975 community college capital construction bond retirement fund in the state treasury shall be used for the purpose of the payment of the principal of and redemption premium, if any, and interest on the bonds authorized to be issued under RCW 28B.59D.010 through 28B.59D.070.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the 1975 community college capital construction bond retirement fund an amount equal to the amount certified by the state finance committee to be due on the payment date. [1981 c 237 § 5.]

**Severability—1981 c 237:** See note following RCW 28B.59D.010.

**28B.59D.060 Transfer of account moneys to general fund—College board and treasurer's duties.** (1) On or before June 30th of each year, the college board shall accumulate in the community college capital projects account from building fees and other moneys deposited therein, to the extent the fees and moneys are available, an amount at least equal to the amount required in the next succeeding twelve months for the payment of principal of and interest on the bonds issued under RCW 28B.59D.010 through 28B.59D.070. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw this amount, to the extent available, from the community college capital projects account and deposit it in the state general fund.

(2) The state treasurer shall make withdrawals from the community college capital projects account for deposit in the general fund of amounts equal to debt service payments on state general obligation bonds issued for community college purposes pursuant to Title 28B RCW only to the extent that funds are or become actually available in the account from time to time. Any unpaid debt service payments shall be a continuing obligation against the community college capital projects account until paid. Beginning with the 1979-1981 biennium, the \*state board for community college education need not accumulate any specific amount in the community college capital projects account for purposes of these withdrawals by the state treasurer. [1985 c 390 § 72; 1981 c 237 § 6.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**Severability—1981 c 237:** See note following RCW 28B.59D.010.

**28B.59D.070 Bonds as legal investment for public funds.** The bonds authorized in RCW 28B.59D.010 through (2004 Ed.)

28B.59D.060 shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1981 c 237 § 7.]

**Severability—1981 c 237:** See note following RCW 28B.59D.010.

## Chapter 28B.63 RCW

### COMMERCIAL ACTIVITIES BY INSTITUTIONS OF HIGHER EDUCATION

#### Sections

28B.63.010	Intent.
28B.63.020	Definitions.
28B.63.030	Development of policies and mechanisms for defining and reviewing commercial activities.
28B.63.040	Criteria for developing policies.
28B.63.050	Programs and activities exempt from chapter.

**28B.63.010 Intent.** The primary mission of institutions of higher education is the creation and dissemination of knowledge. Institutions of higher education must be mindful that in providing goods and services for fees, they may be competing with local private businesses.

It is the intent of the legislature to require institutions of higher education to define the legitimate purposes under which commercial activities may be approved, and to establish a mechanism for review of such activities. [1987 c 97 § 1.]

**28B.63.020 Definitions.** For the purposes of this chapter:

- (1) "Institutions of higher education" or "institutions" mean those institutions as defined in RCW 28B.10.016(4).
- (2) "Commercial activity" means an activity which provides a product or service for a fee which could be obtained from a commercial source.
- (3) "Fees" means any fees or charges imposed for goods, services, or facilities. [1987 c 97 § 2.]

**28B.63.030 Development of policies and mechanisms for defining and reviewing commercial activities.** Institutions of higher education in consultation with local business organizations and representatives of the small business community are required to develop:

- (1) Comprehensive policies that define the legitimate purposes under which the institutions shall provide goods, services, or facilities that are practically available from private businesses;
- (2) A mechanism for reviewing current and proposed commercial activities to ensure that activities are consistent with institutional policies; and
- (3) A mechanism for receiving, reviewing, and responding to enquiries from private businesses about commercial activities carried on by institutions of higher education. [1987 c 97 § 3.]

**28B.63.040 Criteria for developing policies.** (1) The following criteria shall be considered in developing policies in regard to providing goods, services, or facilities to persons other than students, faculty, staff, patients, and invited guests:

- (a) The goods, services, or facilities represent a resource which is substantially and directly related to the institution's

instructional, research, or public service mission, which is not practically available in the private marketplace and for which there is a demand from the external community.

(b) Fees charged for the goods, services, or facilities shall take into account the full direct and indirect costs, overhead, and the price of such items in the private marketplace.

(2) The following criteria shall be considered in developing policies in regard to providing goods, services, or facilities to students, faculty, staff, patients, and invited guests:

(a) The goods, services, or facilities are substantially and directly related to the institution's instructional, research, or public service mission.

(b) Provision of the goods, services, or facilities on campus represents a special convenience to and supports the campus community, or facilitates extracurricular, public service, or on-campus residential life.

(c) Fees charged for the goods, services, or facilities shall take into account the full direct and indirect costs, including overhead.

(d) The adequacy of security procedures to ensure that the goods, services, or facilities are provided only to persons who are students, faculty, staff, patients, or invited guests. [1987 c 97 § 4.]

**28B.63.050 Programs and activities exempt from chapter.** This chapter shall not apply to the initiation of or changes in academic or vocational programs of instruction in the institutions' regular, extension, evening, or continuing education programs, or the fees therefor, fees for services provided in the practicum aspects of instruction, or research programs, and in extracurricular or residential life programs, including residence halls, food services, athletic and recreational programs, and performing arts programs. [1987 c 97 § 5.]

## Chapter 28B.65 RCW

### HIGH-TECHNOLOGY EDUCATION AND TRAINING

#### Sections

28B.65.010	Legislative findings.
28B.65.020	Definitions.
28B.65.030	Washington state high-technology education and training program established—Goals.
28B.65.040	Washington high-technology coordinating board created—Members—Travel expenses.
28B.65.050	Board—Duties—Rules—Termination of board.
28B.65.060	Board—Staff support.
28B.65.070	Board—Solicitation of private and federal support, gifts, conveyances, etc.
28B.65.080	Consortium and baccalaureate degree training programs—Board recommendations—Requirements—Coordination.
28B.65.090	Masters and doctorate level degrees in technology at University of Washington authorized.
28B.65.095	Washington technology center at University of Washington.
28B.65.100	Masters and doctorate level degrees in technology at Washington State University authorized.
28B.65.110	Statewide off-campus telecommunications system—Establishment by Washington State University for education in high-technology fields.
28B.65.900	Short title—1983 1st ex.s. c 72.
28B.65.905	Effective date—1983 1st ex.s. c 72.

**28B.65.010 Legislative findings.** The legislature finds that:

(1) A coordinated state policy is needed to stimulate the education and training of individuals in high-technology

fields, in order to improve productivity, strengthen the state's competitive position, and reindustrialize declining areas;

(2) The Washington high-technology education and training program will give persons from all backgrounds opportunities to pursue training and education programs leading to baccalaureate and graduate degrees consistent with present and future needs of high-technology industries;

(3) Incentives to stimulate increased collaboration between community colleges, regional universities, and the state universities and private-sector industrial, commercial, and labor interests are essential to the development of a pool of skilled high-technology workers; and

(4) Investment in education is the most feasible method for state assistance to the high-technology industry. [1983 1st ex.s. c 72 § 2.]

**28B.65.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Board" means the high-technology coordinating board.

(2) "High technology" or "technology" includes but is not limited to the modernization, miniaturization, integration, and computerization of electronic, hydraulic, pneumatic, laser, mechanical, robotics, nuclear, chemical, telecommunication, and other technological applications to enhance productivity in areas including but not limited to manufacturing, communications, medicine, bioengineering, and commerce. [1983 1st ex.s. c 72 § 3.]

**28B.65.030 Washington state high-technology education and training program established—Goals.** A Washington state high-technology education and training program is hereby established. The program shall be designed to:

(1) Develop the competence needed to make Washington state a leader in high-technology fields, to increase the productivity of state industries, and to improve the state's competitiveness in regional, national, and international trade;

(2) Develop degree programs to enable students to be productive in new and emerging high-technology fields by using the resources of the state's two-year community colleges, regional universities, the University of Washington, Washington State University, and The Evergreen State College; and

(3) Provide industries in the state with a highly-skilled work force capable of producing, operating, and servicing the advancing technology needed to modernize the state's industries and to revitalize the state's economy. [1983 1st ex.s. c 72 § 4.]

**28B.65.040 Washington high-technology coordinating board created—Members—Travel expenses.** (1) The Washington high-technology coordinating board is hereby created.

(2) The board shall be composed of eighteen members as follows:

(a) Eleven shall be citizen members appointed by the governor, with the consent of the senate, for four-year terms. In making the appointments the governor shall ensure that a balanced geographic representation of the state is achieved

and shall attempt to choose persons experienced in high-technology fields, including at least one representative of labor. Any person appointed to fill a vacancy occurring before a term expires shall be appointed only for the remainder of that term; and

(b) Seven of the members shall be as follows: One representative from each of the state's two research universities, one representative of the state college and regional universities, the director for the state system of community and technical colleges or the director's designee, the superintendent of public instruction or the superintendent's designee, a representative of the higher education coordinating board, and the director of the department of community, trade, and economic development or the director's designee.

(3) Members of the board shall not receive any salary for their services, but shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060 for each day actually spent in attending to duties as a member of the board.

(4) A citizen member of the board shall not be, during the term of office, a member of the governing board of any public or private educational institution, or an employee of any state or local agency. [1995 c 399 § 29. Prior: 1985 c 381 § 1; 1985 c 370 § 86; 1984 c 66 § 1; 1983 1st ex.s. c 72 § 5.]

**28B.65.050 Board—Duties—Rules—Termination of board.** (1) The board shall oversee, coordinate, and evaluate the high-technology programs.

(2) The board shall:

(a) Determine the specific high-technology occupational fields in which technical training is needed and advise the institutions of higher education and the higher education coordinating board on their findings;

(b) Identify economic areas and high-technology industries in need of technical training and research and development critical to economic development and advise the institutions of higher education and the higher education coordinating board on their findings;

(c) Oversee and coordinate the Washington high-technology education and training program to ensure high standards, efficiency, and effectiveness;

(d) Work cooperatively with the superintendent of public instruction to identify the skills prerequisite to the high-technology programs in the institutions of higher education;

(e) Work cooperatively with and provide any information or advice which may be requested by the higher education coordinating board during the board's review of new baccalaureate degree program proposals which are submitted under this chapter. Nothing in this chapter shall be construed as altering or superseding the powers or prerogatives of the higher education coordinating board over the review of new degree programs as established in \*section 6(2) of this 1985 act;

(f) Work cooperatively with the department of community, trade, and economic development to identify the high-technology education and training needs of existing Washington businesses and businesses with the potential to locate in Washington;

(g) Work towards increasing private sector participation and contributions in Washington high-technology programs;

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(h) Identify and evaluate the effectiveness of state sponsored research related to high technology; and

(i) Establish and maintain a plan, including priorities, to guide high-technology program development in public institutions of higher education, which plan shall include an assessment of current high-technology programs, steps to increase existing programs, new initiatives and programs necessary to promote high technology, and methods to coordinate and target high-technology programs to changing market opportunities in business and industry.

(3) The board may adopt rules under chapter 34.05 RCW as it deems necessary to carry out the purposes of this chapter.

(4) The board shall cease to exist on June 30, 1987, unless extended by law for an additional fixed period of time. [1998 c 245 § 22; 1995 c 399 § 30. Prior: 1985 c 381 § 2; 1985 c 370 § 87; 1983 1st ex.s. c 72 § 6.]

**\*Reviser's note:** A literal translation of "section 6(2) of this 1985 act" would be RCW 28B.80.350(2), however, material relating to new degree programs is found in RCW 28B.80.340. RCW 28B.80.340 was subsequently repealed by 2004 c 275 § 75.

**28B.65.060 Board—Staff support.** Staff support for the high-technology coordinating board shall be provided by the department of community, trade, and economic development. [1995 c 399 § 31; 1985 c 381 § 3; 1983 1st ex.s. c 72 § 7.]

**28B.65.070 Board—Solicitation of private and federal support, gifts, conveyances, etc.** The board may solicit gifts, grants, conveyances, bequests and devises, whether real or personal property, or both, in trust or otherwise, to be directed to institutions of higher education for the use or benefit of the high-technology education and training program. The board shall actively solicit support from business and industry and from the federal government for the high-technology education program. [1983 1st ex.s. c 72 § 8.]

**28B.65.080 Consortium and baccalaureate degree training programs—Board recommendations—Requirements—Coordination.** (1) The high-technology coordinating board shall make recommendations regarding:

(a) The establishment of regional consortiums for the establishment and development of high-technology education and training;

(b) The establishment of baccalaureate degree training programs in high-technology fields; and

(c) The offering of high-technology education and training programs at both community college facilities and at state colleges and regional universities.

(2) If the program is approved, the first two years of the baccalaureate degree program offered by the respective state colleges and regional universities at community college facilities shall be administered and operated by the respective community colleges. The third and fourth years of the baccalaureate degree program offered at the community college facilities shall be administered and operated by the respective state colleges and regional universities. Each community college participating in the program shall offer two-year associate degrees in high-technology fields which shall be transfer-

rable to and accepted by the state colleges and regional universities.

(3) The high-technology coordinating board shall oversee and coordinate the operation of the consortiums.

(4) Any such consortiums shall be implemented upon approval by the high-technology coordinating board: PROVIDED, That if the fiscal impact of any program recommendations exceeds existing resources plus the two hundred fifty thousand dollars appropriated in section 15, chapter 72, Laws of 1983 1st ex. sess., such programs shall require legislative approval. [1983 1st ex.s. c 72 § 9.]

**28B.65.090 Masters and doctorate level degrees in technology at University of Washington authorized.** See RCW 28B.20.280.

**28B.65.095 Washington technology center at University of Washington.** See RCW 28B.20.285.

**28B.65.100 Masters and doctorate level degrees in technology at Washington State University authorized.** See RCW 28B.30.500.

**28B.65.110 Statewide off-campus telecommunications system—Establishment by Washington State University for education in high-technology fields.** See RCW 28B.30.520.

**28B.65.900 Short title—1983 1st ex.s. c 72.** This act may be known and cited as the Washington high-technology education and training act. [1983 1st ex.s. c 72 § 1.]

**28B.65.905 Effective date—1983 1st ex.s. c 72.** This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983. [1983 1st ex.s. c 72 § 18.]

### Chapter 28B.70 RCW

## WESTERN REGIONAL HIGHER EDUCATION COMPACT

#### Sections

- 28B.70.010 Ratification of compact.
- 28B.70.020 Terms and provisions of compact.
- 28B.70.030 Formal ratification.
- 28B.70.040 Appointment, removal of commissioners.
- 28B.70.050 Exemption from nonresident tuition fees differential.

*Board to coordinate state participation within student exchange compact programs: RCW 28B.76.640 through 28B.76.650.*

**28B.70.010 Ratification of compact.** The western regional higher education compact, recommended by the western governors' conference on November 10, 1950, for adoption by the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska and Hawaii, is hereby ratified and approved and the adherence of this state to the provisions of this compact, upon its ratification and approval by any four or more of such states or territories in addition to

this state, is hereby declared. [1969 ex.s. c 223 § 28B.70.010. Prior: 1955 c 214 § 1. Formerly RCW 28.82.010.]

**28B.70.020 Terms and provisions of compact.** The terms and provisions of the compact referred to in RCW 28B.70.010 are as follows:

### WESTERN REGIONAL HIGHER EDUCATION COMPACT

#### Article I

WHEREAS, The future of this Nation and of the Western States is dependent upon the quality of the education of its youth; and

WHEREAS, Many of the Western States individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all the essential fields of technical, professional and graduate training, nor do all of the states have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

WHEREAS, It is believed that the Western States, or group of such states within the Region, cooperatively can provide acceptable and efficient educational facilities to meet the needs of the Region and of the students thereof;

NOW, THEREFORE, The States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming, and the Territories of Alaska and Hawaii, do hereby covenant and agree as follows:

#### Article II

Each of the compacting states and territories pledge to each of the other compacting states and territories faithful cooperation in carrying out all the purposes of this compact.

#### Article III

The compacting states and territories hereby create the Western Interstate Commission for Higher Education, hereinafter called the Commission. Said Commission shall be a body corporate of each compacting state and territory and an agency thereof. The Commission shall have all the powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

#### Article IV

The Commission shall consist of three resident members from each compacting state or territory. At all times one commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which he is appointed.

The commissioners from each state and territory shall be appointed by the governor thereof as provided by law in such state or territory. Any commissioner may be removed or suspended from office as provided by the law of the state or territory from which he shall have been appointed.

The term of each commissioner shall be four years: PROVIDED, HOWEVER, That the first three commissioners shall be appointed as follows: one for two years, one for

three years, and one for four years. Each commissioner shall hold office until his successor shall be appointed and qualified. If any office becomes vacant for any reason, the governor shall appoint a commissioner to fill the office for the remainder of the unexpired term.

#### Article V

Any business transacted at any meeting of the Commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

One or more commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

Each compacting state and territory represented at any meeting of the Commission is entitled to one vote.

#### Article VI

The Commission shall elect from its number a chairman and a vice-chairman, and may appoint, and at its pleasure dismiss or remove, such officers, agents and employees as may be required to carry out the purpose of this compact; and shall fix and determine their duties, qualifications and compensation, having due regard for the importance of the responsibilities involved.

The commissioners shall serve without compensation, but shall be reimbursed for their actual and necessary expenses from the funds of the Commission.

#### Article VII

The Commission shall adopt a seal and bylaws and shall adopt and promulgate rules and regulations for its management and control.

The Commission may elect such committees as it deems necessary for the carrying out of its functions.

The Commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any time, but in any event must meet at least once a year. The chairman may call such additional meetings and upon the request of a majority of the commissioners of three or more compacting states or territories shall call additional meetings.

The Commission shall submit a budget to the governor of each compacting state and territory at such time and for such period as may be required.

The Commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the Region.

On or before the fifteenth day of January of each year, the Commission shall submit to the governors and legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

The Commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the governor of any compacting state or territory or his designated representative. The Commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The Commission shall provide for an independent annual audit.

#### Article VIII

It shall be the duty of the Commission to enter into such contractual agreements with any institutions in the Region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the Commission to provide adequate services and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The Commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health and veterinary medicine, and may undertake similar activities in other professional and graduate fields.

For this purpose the Commission may enter into contractual agreements

(a) with the governing authority of any educational institution in the Region, or with any compacting state or territory to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties and

(b) with the governing authority of any educational institution in the Region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the Region providing the desired services and facilities, upon such terms and conditions as the Commission may prescribe.

It shall be the duty of the Commission to undertake studies of needs for professional and graduate educational facilities in the Region, the resources of meeting such needs, and the long-range effects of the compact on higher education; and from time to time prepare comprehensive reports on such research for presentation to the Western Governors' Conference and to the legislatures of the compacting states and territories. In conducting such studies, the Commission may confer with any national or regional planning body which may be established. The Commission shall draft and recommend to the governors of the various compacting states and territories, uniform legislation dealing with problems of higher education in the Region.

For the purposes of this compact the word "Region" shall be construed to mean the geographical limits of the several compacting states and territories.

#### Article IX

The operating costs of the Commission shall be apportioned equally among the compacting states and territories.

#### Article X

This compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska and Hawaii have duly adopted it prior to July 1, 1955. This compact shall become effective as to any additional states or territories thereafter at the time of such adoption.

#### Article XI

This compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual

manner of legislation expressing such consent by the legislature and governor of such terminating state. Any state or territory may at any time withdraw from this compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until two years after written notice thereof by the governor of the withdrawing state or territory accompanied by a certified copy of the requisite legislative action is received by the Commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the two-year period. Thereafter the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the Commission.

#### Article XII

If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights, privileges and benefits conferred by this compact or agreements hereunder, shall be suspended from the effective date of such default as fixed by the commission.

Unless such default shall be remedied within a period of two years following the effective date of such default, this compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

Any such defaulting state may be reinstated by (a) performing all acts and obligations upon which it has heretofore defaulted, and (b) application to and the approval by a majority vote of the Commission. [1969 ex.s. c 223 § 28B.70.020. Prior: 1955 c 214 § 2. Formerly RCW 28.82.020.]

**28B.70.030 Formal ratification.** Upon ratification and approval of the western regional higher education compact by any four or more of the specified states or territories in addition to this state, the governor of this state is authorized and directed to execute said compact on behalf of this state and to perform any other acts which may be deemed requisite to its formal ratification and promulgation. [1969 ex.s. c 223 § 28B.70.030. Prior: 1955 c 214 § 3. Formerly RCW 28.82.030.]

**28B.70.040 Appointment, removal of commissioners.**

(1) The governor shall appoint the members, for this state, of the Western Interstate Commission for Higher Education, which is created under the provisions of Article III of the western regional higher education compact.

(2) The qualifications and terms of office of the members of the commission for this state shall conform with the provisions of Article IV of said compact.

(3) The commissioners shall serve without compensation and they shall be reimbursed for their actual and necessary expenses by the Western Interstate Commission for Higher Education.

(4) The governor may remove a member of the commission in conformity with the provisions of RCW 43.06.070, 43.06.080 and 43.06.090. [1981 c 338 § 14; 1969 ex.s. c 223

§ 28B.70.040. Prior: 1955 c 214 § 4. Formerly RCW 28.82.040.]

**28B.70.050 Exemption from nonresident tuition fees differential.** When said compact becomes operative the governing board of each institution of higher education in this state, to the extent necessary to conform with the terms of the contractual agreement, subject to the limitations of RCW 28B.15.910, may exempt from payment all or a portion of the nonresident tuition fees differential, any student admitted to such institution under the terms of a contractual agreement entered into with the commission in accord with the provisions of Article VIII(a) of the compact. [1993 sp.s. c 18 § 33; 1992 c 231 § 30; 1969 ex.s. c 223 § 28B.70.050. Prior: 1955 c 214 § 5. Formerly RCW 28.82.050.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

### Chapter 28B.76 RCW

#### HIGHER EDUCATION COORDINATING BOARD

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## PART I - GENERAL PROVISIONS

**28B.76.010 Board created.** There is hereby created the Washington higher education coordinating board. [1985 c 370 § 1. Formerly RCW 28B.80.300.]

**28B.76.020 Definitions.** For the purposes of this chapter:

(1) "Board" means the higher education coordinating board; and

(2) "Four-year institutions" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, and The Evergreen State College. [1985 c 370 § 2. Formerly RCW 28B.80.310.]

(2004 Ed.)

**28B.76.030 Purpose.** The purpose of the board is to:

(1) Develop a statewide strategic master plan for higher education and continually monitor state and institution progress in meeting the vision, goals, priorities, and strategies articulated in the plan;

(2) Based on objective data analysis, develop and recommend statewide policies to enhance the availability, quality, efficiency, and accountability of public higher education in Washington state;

(3) Administer state and federal financial aid and other education services programs in a cost-effective manner;

(4) Serve as an advocate on behalf of students and the overall system of higher education to the governor, the legislature, and the public;

(5) Represent the broad public interest above the interests of the individual colleges and universities; and

(6) Coordinate with the governing boards of the two and four-year institutions of higher education, the state board for community and technical colleges, the work force training and education coordinating board, and the superintendent of public instruction to create a seamless system of public education for the citizens of Washington state geared toward student success. [2004 c 275 § 1.]

**Part headings not law—2004 c 275:** "Part headings used in this act are not part of the law." [2004 c 275 § 80.]

**28B.76.040 Members—Appointment.** The board shall consist of ten members, one of whom shall be a student, who are representative of the public, including women and the racial minority community. All members shall be appointed at large by the governor and approved by the senate. Following the term of the chair serving on June 13, 2002, the board shall select from its membership a chair and a vice-chair who shall each serve a one-year term. The chair and vice-chair may serve more than one term if selected to do so by the membership. [2002 c 348 § 1; 2002 c 129 § 1; 1985 c 370 § 10. Formerly RCW 28B.80.390.]

**Reviser's note:** This section was amended by 2002 c 129 § 1 and by 2002 c 348 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**28B.76.050 Members—Terms.** The members of the board, except the chair serving on June 13, 2002, and the student member, shall serve for terms of four years, the terms expiring on June 30th of the fourth year of the term except that in the case of initial members, two shall be appointed to two-year terms, three shall be appointed to three-year terms, and three shall be appointed to four-year terms. The student member shall hold his or her office for a term of one year from the first day of July. The chair serving on June 13, 2002, shall serve at the pleasure of the governor. [2004 c 275 § 3; 2002 c 129 § 2; 1985 c 370 § 11. Formerly RCW 28B.80.400.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.76.060 Members—Vacancies.** Any vacancies among board members shall be filled by the governor subject to confirmation by the senate then in session, or if not in session, at the next session. Board members appointed under this

section shall have full authority to act as such prior to the time the senate acts on their confirmation. Appointments to fill vacancies shall be only for such terms as remain unexpired. [1985 c 370 § 12. Formerly RCW 28B.80.410.]

**28B.76.070 Bylaws—Meetings.** The board shall adopt bylaws and shall meet at least four times each year and at such other times as determined by the chair who shall give reasonable prior notice to the members.

Board members are expected to consistently attend board meetings. The chair of the board may ask the governor to remove any member who misses more than two meetings in any calendar year without cause. [1985 c 370 § 13. Formerly RCW 28B.80.420.]

**28B.76.080 Members—Compensation and travel expenses.** Members of the board shall be compensated in accordance with RCW 43.03.240 and shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1985 c 370 § 16; 1984 c 287 § 65; 1975-'76 2nd ex.s. c 34 § 77; 1969 ex.s. c 277 § 12. Formerly RCW 28B.80.110, 28.89.110.]

**Legislative findings—Severability—Effective date—1984 c 287:** See notes following RCW 43.03.220.

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**28B.76.090 Director—Duties—Board use of state agencies.** The board shall employ a director and may delegate agency management to the director. The director shall serve at the pleasure of the board, shall be the executive officer of the board, and shall, under the board's supervision, administer the provisions of this chapter. The executive director shall, with the approval of the board: (1) Employ necessary deputy and assistant directors and other exempt staff under chapter 41.06 RCW who shall serve at his or her pleasure on such terms and conditions as he or she determines and (2) subject to the provisions of chapter 41.06 RCW, appoint and employ such other employees as may be required for the proper discharge of the functions of the board. The executive director shall exercise such additional powers, other than rule making, as may be delegated by the board by resolution. In fulfilling the duties under this chapter, the board shall make extensive use of those state agencies with responsibility for implementing and supporting postsecondary education plans and policies including but not limited to appropriate legislative groups, the postsecondary education institutions, the office of financial management, the work force training and education coordinating board, and the state board for community and technical colleges. Outside consulting and service agencies may also be employed. The board may compensate these groups and consultants in appropriate ways. [2004 c 275 § 4; 1987 c 330 § 301; 1985 c 370 § 14. Formerly RCW 28B.80.430.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Construction—Application of rules—Severability—1987 c 330:** See notes following RCW 28B.12.050.

**28B.76.100 Advisory council.** (1) The board shall establish an advisory council consisting of: The superinten-

dent of public instruction; a representative of the state board of education appointed by the state board of education; a representative of the two-year system of the state board for community and technical colleges appointed by the state board for community and technical colleges; a representative of the work force training and education coordinating board appointed by the work force training and education coordinating board; one representative of the research universities appointed by the president of the University of Washington and the president of Washington State University; a representative of the regional universities and The Evergreen State College appointed through a process developed by the council of presidents; a representative of the faculty for the four-year institutions appointed by the council of faculty representatives; a representative of the proprietary schools appointed by the federation of private career schools and colleges; a representative of the independent colleges appointed by the independent colleges of Washington; and a faculty member in the community and technical college system appointed by the state board for community and technical colleges in consultation with the faculty unions.

(2) The members of the advisory council shall each serve a two-year term except for the superintendent of public instruction, whose term is concurrent with his or her term of office.

(3) The board shall meet with the advisory council at least quarterly and shall seek advice from the council regarding the board's discharge of its statutory responsibilities. [2004 c 275 § 2; 1985 c 370 § 9. Formerly RCW 28B.80.380.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.76.110 Board as state commission for federal law purposes.** The higher education coordinating board is designated as the state commission as provided for in Section 1202 of the education amendments of 1972 (Public Law 92-318), as now or hereafter amended; and shall perform such functions as is necessary to comply with federal directives pertaining to the provisions of such law. [2004 c 275 § 5; 1985 c 370 § 20; 1975 1st ex.s. c 132 § 9. Formerly RCW 28B.80.200.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Effective date—1975 1st ex.s. c 132:** "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 132 § 19.]

**Severability—1975 1st ex.s. c 132:** "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 132 § 18.]

**28B.76.120 Adoption of rules.** The board shall have authority to adopt rules as necessary to implement this chapter. [1985 c 370 § 8. Formerly RCW 28B.80.370.]

## PART II - POLICY AND PLANNING

**28B.76.200 Statewide strategic master plan for higher education—Institution-level strategic plans.** (1) The board shall develop a statewide strategic master plan for

higher education that proposes a vision and identifies goals and priorities for the system of higher education in Washington state. The plan shall encompass all sectors of higher education, including the two-year system, work force training, the four-year institutions, and financial aid. The board shall also specify strategies for maintaining and expanding access, affordability, quality, efficiency, and accountability among the various institutions of higher education.

(2) In developing the statewide strategic master plan for higher education, the board shall collaborate with the four-year institutions of higher education including the council of presidents, the community and technical college system, and, when appropriate, the work force training and education coordinating board, the superintendent of public instruction, and the independent higher education institutions. The board shall identify and utilize models of regional planning and decision making before initiating a statewide planning process. The board shall also seek input from students, faculty organizations, community and business leaders in the state, members of the legislature, and the governor.

(3) As a foundation for the statewide strategic master plan for higher education, the board shall review role and mission statements for each of the four-year institutions of higher education and the community and technical college system. The purpose of the review is to ensure institutional roles and missions are aligned with the overall state vision and priorities for higher education.

(4) In assessing needs of the state's higher education system, the board may consider and analyze the following information:

(a) Demographic, social, economic, and technological trends and their impact on service delivery;

(b) The changing ethnic composition of the population and the special needs arising from those trends;

(c) Business and industrial needs for a skilled work force;

(d) College attendance, retention, transfer, and dropout rates;

(e) Needs and demands for basic and continuing education and opportunities for lifelong learning by individuals of all age groups; and

(f) Needs and demands for access to higher education by placebound students and individuals in heavily populated areas underserved by public institutions.

(5) The statewide strategic master plan for higher education shall include, but not be limited to, the following:

(a) Recommendations based on enrollment forecasts and analysis of data about demand for higher education, and policies and actions to meet those needs;

(b) State or regional priorities for new or expanded degree programs or off-campus programs, including what models of service delivery may be most cost-effective;

(c) Recommended policies or actions to improve the efficiency of student transfer and graduation or completion;

(d) State or regional priorities for addressing needs in high-demand fields where enrollment access is limited and employers are experiencing difficulty finding enough qualified graduates to fill job openings;

(e) Recommended tuition and fees policies and levels; and

(f) Priorities and recommendations on financial aid.

(6) The board shall present the vision, goals, priorities, and strategies in the statewide strategic master plan for higher education in a way that provides guidance for institutions, the governor, and the legislature to make further decisions regarding institution-level plans, policies, legislation, and operating and capital funding for higher education. In the statewide strategic master plan for higher education, the board shall recommend specific actions to be taken and identify measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities.

(7) Every four years by December 15th, beginning December 15, 2003, the board shall submit an interim statewide strategic master plan for higher education to the governor and the legislature. The interim plan shall reflect the expectations and policy directions of the legislative higher education and fiscal committees, and shall provide a timely and relevant framework for the development of future budgets and policy proposals. The legislature shall, by concurrent resolution, approve or recommend changes to the interim plan, following public hearings. The board shall submit the final plan, incorporating legislative changes, to the governor and the legislature by June of the year in which the legislature approves the concurrent resolution. The plan shall then become state higher education policy unless legislation is enacted to alter the policies set forth in the plan. The board shall report annually to the governor and the legislature on the progress being made by the institutions of higher education and the state to implement the strategic master plan.

(8) Each four-year institution shall develop an institution-level strategic plan that implements the vision, goals, priorities, and strategies within the statewide strategic master plan for higher education based on the institution's role and mission. Institutional strategic plans shall also contain measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities. The board shall review the institution-level plans to ensure the plans are aligned with and implement the statewide strategic master plan for higher education and shall periodically monitor institutions' progress toward achieving the goals and priorities within their plans.

(9) The board shall also review the comprehensive master plan prepared by the state board for community and technical colleges for the community and technical college system under RCW 28B.50.090 to ensure the plan is aligned with and implements the statewide strategic master plan for higher education. [2004 c 275 § 6; 2003 c 130 § 2. Formerly RCW 28B.80.345.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Findings—Intent—2003 c 130:** See note following RCW 28B.76.210.

**28B.76.210 Budget priorities and levels of funding—Guidelines for institutions—Review and evaluation of budget requests—Recommendations.** (1) The board shall collaborate with the four-year institutions including the council of presidents, the community and technical college system, and when appropriate the work force training and education coordinating board, the superintendent of public instruction, and the independent higher educational institutions to identify budget priorities and levels of funding for higher education, including the two and four-year institutions of

higher education and state financial aid programs. It is the intent of the legislature that recommendations from the board reflect not merely the sum of budget requests from multiple institutions, but prioritized funding needs for the overall system of higher education.

(2) By December of each odd-numbered year, the board shall distribute guidelines which outline the board's fiscal priorities to the institutions and the state board for community and technical colleges. The institutions and the state board for community and technical colleges shall submit an outline of their proposed budgets, identifying major components, to the board no later than August 1st of each even-numbered year.

(3) The board shall review and evaluate the operating and capital budget requests from four-year institutions and the community and technical college system based on how the requests align with the board's budget priorities, the missions of the institutions, and the statewide strategic master plan for higher education under RCW 28B.76.200.

(4) The board shall submit recommendations on the proposed budgets and on the board's budget priorities to the office of financial management before November 1st of each even-numbered year, and to the legislature by January 1st of each odd-numbered year.

(5) Institutions and the state board for community and technical colleges shall submit any supplemental budget requests and revisions to the board at the same time they are submitted to the office of financial management. The board shall submit recommendations on the proposed supplemental budget requests to the office of financial management by November 1st and to the legislature by January 1st. [2004 c 275 § 7; 2003 c 130 § 3; 1997 c 369 § 10; 1996 c 174 § 1; 1993 c 363 § 6; 1985 c 370 § 4. Formerly RCW 28B.80.330.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Findings—Intent—2003 c 130:** "(1) The legislature finds that:

(a) At the time the higher education coordinating board was created in 1985, the legislature wanted a board with a comprehensive mission that included planning, budget and program review authority, and program administration;

(b) Since its creation, the board has achieved numerous accomplishments, including proposals leading to creation of the branch campus system, and has made access and affordability of higher education a consistent priority;

(c) However, higher education in Washington state is currently at a crossroads. Demographic, economic, and technological changes present new and daunting challenges for the state and its institutions of higher education. As the state looks forward to the future, the legislature, the governor, and institutions need a common strategic vision to guide planning and decision making.

(2) Therefore, it is the legislature's intent to reaffirm and strengthen the strategic planning role of the higher education coordinating board. It is also the legislature's intent to examine options for reassigning or altering other roles and responsibilities to enable the board to place priority and focus on planning and coordination." [2003 c 130 § 1.]

**Findings—1993 c 363:** "The legislature finds a need to redefine the relationship between the state and its postsecondary education institutions through a compact based on trust, evidence, and a new alignment of responsibilities. As the proportion of the state budget dedicated to postsecondary education programs has continued to decrease and the opportunity for this state's citizens to participate in such programs also has declined, the state institutions of higher education have increasingly less flexibility to respond to emerging challenges through innovative management and programming. The legislature finds that this state has not provided its institutions of higher education with the ability to effectively achieve statewide goals and objectives to increase access to, improve the quality of, and enhance the accountability for its postsecondary education system.

Therefore, the legislature declares that the policy of the state of Washington is to create an environment in which the state institutions of higher education have the authority and flexibility to enhance attainment of statewide goals and objectives for the state's postsecondary education system through decisions and actions at the local level. The policy shall have the following attributes:

(1) The accomplishment of equitable and adequate enrollment by significantly raising enrollment lids, adequately funding those increases, and providing sufficient financial aid for the neediest students;

(2) The development and use of a new definition of quality measured by effective operations and clear results; the efficient use of funds to achieve well-educated students;

(3) The attainment of a new resource management relationship that removes the state from micromanagement, allows institutions greater management autonomy to focus resources on essential functions, and encourages innovation; and

(4) The development of a system of coordinated planning and sufficient feedback to assure policymakers and citizens that students are succeeding and resources are being prudently deployed." [1993 c 363 § 1.]

**Effective date—1993 c 363:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 363 § 7.]

*Industrial project of statewide significance—Defined: RCW 43.157.010.*

**28B.76.220 Prioritized capital project lists for higher education institutions.** (1) Beginning with the 2005-2007 biennial capital budget submittal, the public four-year institutions, in consultation with the council of presidents and the higher education coordinating board, shall prepare a single prioritized individual ranking of the individual projects proposed by the four-year institutions as provided in subsection (2) of this section. The public four-year institutions may aggregate minor works project requests into priority categories without separately ranking each minor project, provided that these aggregated minor works requests are ranked within the overall list. For repairs and improvements to existing facilities and systems, the rating and ranking of individual projects must be based on criteria or factors that include, but are not limited to, the age and condition of buildings or systems, the programmatic suitability of the building or system, and the activity/occupancy level supported by the building or system. For projects creating new space or capacity, the ratings and rankings of projects must be based upon criteria or factors that include, but are not limited to, measuring existing capacity and progress toward meeting increased space utilization levels as determined by the higher education coordinating board.

(2) The single prioritized four-year project list shall be approved by the governing boards of each public four-year institution and shall be submitted to the office of financial management and the higher education coordinating board concurrent with the institution's submittal of their biennial capital budget requests.

(3)(a) The higher education coordinating board, in consultation with the office of financial management and the joint legislative audit and review committee, shall develop common definitions that public four-year institutions and the state board for community and technical colleges shall use in developing their project lists under this section.

(b) As part of its duties under RCW 28B.76.210, the higher education coordinating board shall, as part of its biennial budget guidelines, disseminate, by December 1st of each odd-numbered year, the criteria framework, including general definitions, categories, and rating system, to be used by

the public four-year institutions in the development of the prioritized four-year project list. The criteria framework shall specify the general priority order of project types based on criteria determined by the board, in consultation with the public four-year institutions.

(c) Under RCW 28B.76.210, the public four-year institutions shall submit a preliminary prioritized four-year project list to the higher education coordinating board by August 1st of each even-numbered year.

(d) The state board for community and technical colleges shall, as part of its biennial capital budget request, submit a single prioritized ranking of the individual projects proposed for the community and technical colleges. The state board for community and technical colleges shall submit an outline of the prioritized community and technical college project list to the higher education coordinating board under RCW 28B.76.210 by August 1st of each even-numbered year.

(4) The higher education coordinating board, in consultation with the public four-year institutions, shall resolve any disputes or disagreements arising among the four-year institutions concerning the ranking of particular projects. Further, should one or more governing boards of the public four-year institutions fail to approve the prioritized four-year project list as required in this section, or should a prioritized project list not be submitted by the public four-year institutions concurrent with the submittal of their respective biennial capital budget requests as provided in subsection (2) of this section, the higher education coordinating board shall prepare the prioritized four-year institution project list itself.

(5) In developing any rating and ranking of capital projects proposed by the two-year and four-year public universities and colleges, the board:

(a) Shall be provided with available information by the public two-year and four-year institutions as deemed necessary by the board;

(b) May utilize independent services to verify, sample, or evaluate information provided to the board by the two-year and four-year institutions; and

(c) Shall have full access to all data maintained by the office of financial management and the joint legislative audit and review committee concerning the condition of higher education facilities.

(6) Beginning with the 2005-2007 biennial capital budget submittal, the higher education coordinating board shall, in consultation with the state board for community and technical colleges and four-year colleges and universities, submit its capital budget recommendations and the separate two-year and four-year prioritized project lists. [2004 c 275 § 8; 2003 1st sp.s. c 8 § 2. Formerly RCW 28B.80.335.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Findings—Intent—2003 1st sp.s. c 8:** "(1) The legislature finds that a capital investment in higher education facilities is needed over the next several biennia to adequately preserve, modernize, and expand the capacity of the state's public two-year and four-year colleges and universities. This investment is needed to responsibly preserve and restore existing facilities and to provide additional space for new students. Further, the legislature finds that capital appropriations will need to respond to each of these areas of need in a planned, balanced, and prioritized manner so that access to a quality system of higher education is ensured.

(2) It is the intent of the legislature that a methodology be developed that will guide capital appropriation decisions by rating and individually ranking, in sequential, priority order, all major capital projects proposed by

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the two-year and four-year public universities and colleges. Further, it is the intent of the legislature that this rating, ranking, and prioritization of capital needs will reflect the state's higher education policies and goals including the comprehensive master plan for higher education as submitted by the higher education coordinating board and as adopted by the legislature." [2003 1st sp.s. c 8 § 1.]

**28B.76.230 Needs assessment process and analysis—Activities requiring board approval.** (1) The board shall develop a comprehensive and ongoing assessment process to analyze the need for additional degrees and programs, additional off-campus centers and locations for degree programs, and consolidation or elimination of programs by the four-year institutions.

(2) As part of the needs assessment process, the board shall examine:

(a) Projections of student, employer, and community demand for education and degrees, including liberal arts degrees, on a regional and statewide basis;

(b) Current and projected degree programs and enrollment at public and private institutions of higher education, by location and mode of service delivery; and

(c) Data from the work force training and education coordinating board and the state board for community and technical colleges on the supply and demand for work force education and certificates and associate degrees.

(3) Every two years the board shall produce, jointly with the state board for community and technical colleges and the work force training and education coordinating board, an assessment of the number and type of higher education and training credentials required to match employer demand for a skilled and educated work force. The assessment shall include the number of forecasted net job openings at each level of higher education and training and the number of credentials needed to match the forecast of net job openings.

(4) The board shall determine whether certain major lines of study or types of degrees, including applied degrees or research-oriented degrees, shall be assigned uniquely to some institutions or institutional sectors in order to create centers of excellence that focus resources and expertise.

(5) The following activities are subject to approval by the board:

(a) New degree programs by a four-year institution;

(b) Creation of any off-campus program by a four-year institution;

(c) Purchase or lease of major off-campus facilities by a four-year institution or a community or technical college;

(d) Creation of higher education centers and consortia; and

(e) New degree programs and creation of off-campus programs by an independent college or university in collaboration with a community or technical college.

(6) Institutions seeking board approval under this section must demonstrate that the proposal is justified by the needs assessment developed under this section. Institutions must also demonstrate how the proposals align with or implement the statewide strategic master plan for higher education under RCW 28B.76.200.

(7) The board shall develop clear guidelines and objective decision-making criteria regarding approval of proposals under this section, which must include review and consulta-

tion with the institution and other interested agencies and individuals.

(8) The board shall periodically recommend consolidation or elimination of programs at the four-year institutions, based on the needs assessment analysis. [2004 c 275 § 9.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.76.240 Statewide transfer and articulation policies.** The board shall adopt statewide transfer and articulation policies that ensure efficient transfer of credits and courses across public two and four-year institutions of higher education. The intent of the policies is to create a statewide system of articulation and alignment between two and four-year institutions. Policies may address but are not limited to creation of a statewide system of course equivalency, creation of transfer associate degrees, statewide articulation agreements, applicability of technical courses toward baccalaureate degrees, and other issues. The institutions of higher education and the state board for community and technical colleges shall cooperate with the board in developing the statewide policies and shall provide support and staff resources as necessary to assist in maintaining the policies. The board shall submit a progress report to the higher education committees of the senate and house of representatives by December 1, 2006, by which time the legislature expects measurable improvement in alignment and transfer efficiency. [2004 c 275 § 10; 1998 c 245 § 23; 1985 c 370 § 27; 1983 c 304 § 1. Formerly RCW 28B.80.280.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.76.2401 Statewide transfer of credit policy and agreement—Requirements.** The statewide transfer of credit policy and agreement must be designed to facilitate the transfer of students and the evaluation of transcripts, to better serve persons seeking information about courses and programs, to aid in academic planning, and to improve the review and evaluation of academic programs in the state institutions of higher education. The statewide transfer of credit policy and agreement must not require or encourage the standardization of course content or prescribe course content or the credit value assigned by any institution to the course. Policies adopted by public four-year institutions concerning the transfer of lower division credit must treat students transferring from public community colleges the same as students transferring from public four-year institutions. [2004 c 55 § 5; 1983 c 304 § 2. Formerly RCW 28B.80.290.]

**Reviser's note:** RCW 28B.80.290 was repealed by 2004 c 275 § 75 without cognizance of its amendment by 2004 c 55 § 5; and subsequently recodified as RCW 28B.76.2401 by the code reviser. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**28B.76.2401 Statewide transfer of credit policy and agreement—Requirements.** [2004 c 55 § 5; 1983 c 304 § 2. Formerly RCW 28B.80.290.] Repealed by 2004 c 275 § 75; and subsequently recodified as RCW 28B.76.2401 by the code reviser.

**Reviser's note:** RCW 28B.80.290 was repealed by 2004 c 275 § 75 without cognizance of its amendment by 2004 c 55 § 5; and subsequently recodified as RCW 28B.76.2401 by the code reviser. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**28B.76.250 Transfer associate degrees—Work groups—Implementation—Progress reports.** (1) The higher education coordinating board must convene work groups to develop transfer associate degrees that will satisfy

lower division requirements at public four-year institutions of higher education for specific academic majors. Work groups must include representatives from the state board for community and technical colleges and the council of presidents, as well as faculty from two and four-year institutions. Work groups may include representatives from independent four-year institutions.

(2) Each transfer associate degree developed under this section must enable a student to complete the lower-division courses or competencies for general education requirements and preparation for the major that a direct-entry student would typically complete in the freshman and sophomore years for that academic major.

(3) Completion of a transfer associate degree does not guarantee a student admission into an institution of higher education or admission into a major, minor, or professional program at an institution of higher education that has competitive admission standards for the program based on grade point average or other performance criteria.

(4) During the 2004-05 academic year, the work groups must develop transfer degrees for elementary education, engineering, and nursing. Each year thereafter, the higher education coordinating board must convene additional groups to identify and develop additional transfer degrees. The board must give priority to majors in high demand by transfer students and majors that the general direct transfer agreement associate degree does not adequately prepare students to enter automatically upon transfer.

(5) The higher education coordinating board, in collaboration with the intercollege relations commission, must collect and maintain lists of courses offered by each community and technical college and public four-year institution of higher education that fall within each transfer associate degree.

(6) The higher education coordinating board must monitor implementation of transfer associate degrees by public four-year institutions to ensure compliance with subsection (2) of this section.

(7) Beginning January 10, 2005, the higher education coordinating board must submit a progress report on the development of transfer associate degrees to the higher education committees of the house of representatives and the senate. The first progress report must include measurable benchmark indicators to monitor the effectiveness of the initiatives in improving transfer and baseline data for those indicators before the implementation of the initiatives. Subsequent reports must be submitted by January 10 of each odd-numbered year and must monitor progress on the indicators, describe development of additional transfer associate degrees, and provide other data on improvements in transfer efficiency. [2004 c 55 § 2.]

**Findings—Intent—2004 c 55:** "(1) The legislature finds that community and technical colleges play a vital role for students obtaining baccalaureate degrees. In 2002, more than forty percent of students graduating with a baccalaureate degree had transferred from a community or technical college.

(2) The legislature also finds that demand continues to grow for baccalaureate degrees. Increased demand comes from larger numbers of students seeking access to higher education and greater expectations from employers for the knowledge and skills needed to expand the state's economy. Community and technical colleges are an essential partner in meeting this demand.

(3) However, the legislature also finds that current policies and procedures do not provide for efficient transfer of courses, credits, or prerequisites

for academic majors. Furthermore, the state's public higher education system must expand its capacity to enroll transfer students in baccalaureate education. The higher education coordinating board must take a leadership role in working with the community and technical colleges and four-year institutions to ensure efficient and seamless transfer across the state.

(4) Therefore, it is the legislature's intent to build clearer pathways to baccalaureate degrees, improve statewide coordination of transfer and articulation, and ensure long-term capacity in the state's higher education system for transfer students." [2004 c 55 § 1.]

**28B.76.260 Statewide system of course equivalency—Work group.** (1) The higher education coordinating board must create a statewide system of course equivalency for public institutions of higher education, so that courses from one institution can be transferred and applied toward academic majors and degrees in the same manner as equivalent courses at the receiving institution.

(2) The board must convene a work group including representatives from the state board for community and technical colleges and the council of presidents, as well as faculty from two and four-year institutions, to:

(a) Identify equivalent courses between community and technical colleges and public four-year institutions and among public four-year institutions, including identifying how courses meet requirements for academic majors and degrees; and

(b) Develop strategies for communicating course equivalency to students, faculty, and advisors.

(3) The work group may include representatives from independent four-year institutions. The work group must take into account the unique nature of the curriculum of The Evergreen State College in developing the course equivalency system.

(4) The higher education coordinating board must make a progress report on the development of the course equivalency system to the higher education committees of the senate and house of representatives by January 10, 2005. The report must include options and cost estimates for ongoing maintenance of the system. [2004 c 55 § 3.]

**Findings—Intent—2004 c 55:** See note following RCW 28B.76.250.

**28B.76.270 Accountability monitoring and reporting system—Institution biennial plans and performance targets—Biennial reports to the legislature.** (1) The board shall establish an accountability monitoring and reporting system as part of a continuing effort to make meaningful and substantial progress towards the achievement of long-term performance goals in higher education.

(2) Based on guidelines prepared by the board, each four-year institution and the state board for community and technical colleges shall submit a biennial plan to achieve measurable and specific improvements each academic year on statewide and institution-specific performance measures. Plans shall be submitted to the board along with the biennial budget requests from the institutions and the state board for community and technical colleges. Performance measures established for the community and technical colleges shall reflect the role and mission of the colleges.

(3) The board shall approve biennial performance targets for each four-year institution and for the community and technical college system and shall review actual achievements annually. The state board for community and technical

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colleges shall set biennial performance targets for each college or district, where appropriate.

(4) The board shall submit a report on progress towards the statewide goals, with recommendations for the ensuing biennium, to the fiscal and higher education committees of the legislature along with the board's biennial budget recommendations.

(5) The board, in collaboration with the four-year institutions and the state board for community and technical colleges, shall periodically review and update the accountability monitoring and reporting system.

(6) The board shall develop measurable indicators and benchmarks for its own performance regarding cost, quantity, quality, and timeliness and including the performance of committees and advisory groups convened under this chapter to accomplish such tasks as improving transfer and articulation, improving articulation with the K-12 education system, measuring educational costs, or developing data protocols. The board shall submit its accountability plan to the legislature concurrently with the biennial report on institution progress. [2004 c 275 § 11.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.76.280 Data collection and research—Research advisory group—Privacy protection.** (1) In consultation with the institutions of higher education and state education agencies, the board shall identify the data needed to carry out its responsibilities for policy analysis, accountability, program improvements, and public information. The primary goals of the board's data collection and research are to describe how students and other beneficiaries of higher education are being served; to support higher education accountability; and to assist state policymakers and institutions in making policy decisions.

(2) The board shall convene a research advisory group and shall collaborate with the group to identify the most cost-effective manner for the board to collect data or access existing data. The board shall work with the advisory group to develop research priorities, policies, and common definitions to maximize the reliability and consistency of data across institutions. The advisory group shall include representatives of public and independent higher education institutions and other state agencies, including the state board for community and technical colleges, the office of the superintendent of public instruction, the office of financial management, the employment security department, the work force training and education coordinating board, and other agencies as appropriate.

(3) Specific protocols shall be developed by the board and the advisory group to protect the privacy of individual student records while ensuring the availability of student data for legitimate research purposes. [2004 c 275 § 12.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.76.290 Coordination of activities with segments of higher education.** The board shall coordinate educational activities among all segments of higher education taking into account the educational programs, facilities, and other resources of both public and independent two and four-year

colleges and universities. The four-year institutions and the state board for community and technical colleges shall coordinate information and activities with the board. The board shall have the following additional responsibilities:

- (1) Promote interinstitutional cooperation;
- (2) Establish minimum admission standards for four-year institutions, including a requirement that coursework in American sign language or an American Indian language shall satisfy any requirement for instruction in a language other than English that the board or the institutions may establish as a general undergraduate admissions requirement;
- (3) Establish transfer policies;
- (4) Adopt rules implementing statutory residency requirements;
- (5) Develop and administer reciprocity agreements with bordering states and the province of British Columbia;
- (6) Review and recommend compensation practices and levels for administrative employees, exempt under \*chapter 28B.16 RCW, and faculty using comparative data from peer institutions;
- (7) Monitor higher education activities for compliance with all relevant state policies for higher education;
- (8) Arbitrate disputes between and among four-year institutions or between and among four-year institutions and community colleges at the request of one or more of the institutions involved, or at the request of the governor, or from a resolution adopted by the legislature. The decision of the board shall be binding on the participants in the dispute;
- (9) Establish and implement a state system for collecting, analyzing, and distributing information;
- (10) Recommend to the governor and the legislature ways to remove any economic incentives to use off-campus program funds for on-campus activities; and
- (11) Make recommendations to increase minority participation, and monitor and report on the progress of minority participation in higher education. [1993 c 77 § 2; 1992 c 60 § 3; 1988 c 172 § 4; 1985 c 370 § 6. Formerly RCW 28B.80.350.]

**\*Reviser's note:** Chapter 28B.16 RCW was repealed by 1993 c 281, with the exception of RCW 28B.16.015 and 28B.16.240, which was recodified as RCW 41.06.382. For exemptions to higher education personnel law see chapter 41.06 RCW. RCW 28B.16.015 and 41.06.382 were subsequently repealed by 2002 c 354 § 403, effective July 1, 2005.

**28B.76.300 State support received by students—Information.** (1) The board shall annually develop information on the approximate amount of state support that students receive. For students at state-supported colleges and universities, the information shall include the approximate level of support received by students in each tuition category. That information may include consideration of the following: Expenditures included in the educational cost formula, revenue forgiven from waived tuition and fees, state-funded financial aid awarded to students at public institutions, and all or a portion of appropriated amounts not reflected in the educational cost formula for institutional programs and services that may affect or enhance the educational experience of students at a particular institution. For students attending a private college, university, or proprietary school, the information shall include the amount of state-funded financial aid awarded to students attending the institution.

(2) Beginning July 30, 1993, the board shall annually provide information appropriate to each institution's student body to each state-supported four-year institution of higher education and to the state board for community and technical colleges for distribution to community colleges and technical colleges.

(3) Beginning July 30, 1993, the board shall annually provide information on the level of financial aid received by students at that institution to each private university, college, or proprietary school, that enrolls students receiving state-funded financial aid.

(4) Beginning with the 1997 fall academic term, each institution of higher education described in subsection (2) or (3) of this section shall provide to students at the institution information on the approximate amount that the state is contributing to the support of their education. Information provided to students at each state-supported college and university shall include the approximate amount of state support received by students in each tuition category at that institution. The amount of state support shall be based on the information provided by the board under subsections (1) through (3) of this section. The information shall be provided to students at the beginning of each academic term through one or more of the following: Registration materials, class schedules, tuition and fee billing packets, student newspapers, or via e-mail or kiosk. [2004 c 275 § 14; 1997 c 48 § 1; 1993 c 250 § 1. Formerly RCW 28B.10.044.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.76.310 Development of methods and protocols for measuring educational costs—Schedule of educational cost study reports.** (1) The board, in consultation with the house of representatives and senate committees responsible for higher education, the respective fiscal committees of the house of representatives and senate, the office of financial management, the state board for community and technical colleges, and the state institutions of higher education, shall develop standardized methods and protocols for measuring the undergraduate and graduate educational costs for the state universities, regional universities, and community colleges, including but not limited to the costs of instruction, costs to provide degrees in specific fields, and costs for precollege remediation.

(2) By December 1, 2004, the board must propose a schedule of regular cost study reports intended to meet the information needs of the governor's office and the legislature and the requirements of RCW 28B.76.300 and submit the proposed schedule to the higher education and fiscal committees of the house of representatives and the senate for their review.

(3) The institutions of higher education shall participate in the development of cost study methods and shall provide all necessary data in a timely fashion consistent with the protocols developed. [2004 c 275 § 15; 1995 1st sp.s. c 9 § 7; 1992 c 231 § 5; 1989 c 245 § 3. Prior: 1985 c 390 § 16; 1985 c 370 § 65; 1982 1st ex.s. c 37 § 16; 1981 c 257 § 3; 1977 ex.s. c 322 § 7. Formerly RCW 28B.15.070.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—Purpose—Effective date—1995 1st sp.s. c 9:** See notes following RCW 28B.15.031.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Analyses—1989 c 245:** "(1) The higher education coordinating board, with cooperation from the institutions of higher education, shall conduct a full review and analysis of the accuracy and consistency of the educational costs study. The board shall report to the legislature by December 1990, outlining its findings and making recommendations upon establishing a modified tuition fees structure based upon educational costs.

(2) The board shall conduct a full analysis and comparison of the educational costs at the University of Washington and Washington State University. The board shall also perform a comparison of the tuition fees charged at the University of Washington and Washington State University with tuition at their respective peer institutions. The board will provide recommendations on whether different levels of tuition fees should be charged at each of the state research universities." [1989 c 245 § 2.]

**Effective date—Severability—1982 1st ex.s. c 37:** See notes following RCW 28B.15.012.

**Severability—1981 c 257:** See note following RCW 28B.15.031.

**Severability—1977 ex.s. c 322:** See note following RCW 28B.15.065.

**28B.76.320 Board to transmit amounts constituting approved educational costs.** The board shall determine and transmit amounts constituting approved undergraduate and graduate educational costs to the several boards of regents and trustees of the state institutions of higher education by November 10 of each even-numbered year. [2004 c 275 § 16; 1995 1st sp.s. c 9 § 6; 1989 c 245 § 4. Prior: 1985 c 390 § 17; 1985 c 370 § 66; 1982 1st ex.s. c 37 § 17; 1981 c 257 § 4. Formerly RCW 28B.15.076.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—Purpose—Effective date—1995 1st sp.s. c 9:** See notes following RCW 28B.15.031.

**Analyses—1989 c 245:** See note following RCW 28B.76.310.

**Effective date—Severability—1982 1st ex.s. c 37:** See notes following RCW 28B.15.012.

**Severability—1981 c 257:** See note following RCW 28B.15.031.

**28B.76.330 Coordination, articulation, and transitions among systems of education—Biennial updates to legislature.** The higher education coordinating board shall work with the state board of education, the superintendent of public instruction, the state board for community and technical colleges, the work force training and education coordinating board, two and four-year institutions of higher education, and school districts to improve coordination, articulation, and transitions among the state's systems of education. The goal of improved coordination is increased student success. Topics to address include: Expansion of dual enrollment options for students; articulation agreements between institutions of higher education and high schools; improved alignment of high school preparatory curriculum and college readiness. The board, in conjunction with the other education agencies, shall submit a biennial update on the work accomplished and planned under this section to the education and higher education committees of the legislature, beginning January 15, 2005. [2004 c 275 § 17; 1994 c 222 § 3. Formerly RCW 28B.80.175.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Effective date—1994 c 222:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 222 § 4.]

ernment and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 222 § 4.]

### PART III - EDUCATION SERVICES ADMINISTRATION

**28B.76.500 Student financial aid programs, board to administer.** The board shall administer any state program or state-administered federal program of student financial aid now or hereafter established. [1985 c 370 § 23; 1975 1st ex.s. c 132 § 15. Prior: 1969 ex.s. c 263 § 7. Formerly RCW 28B.80.240, 28.90.160, 28B.81.070.]

**Effective date—Severability—1975 1st ex.s. c 132:** See notes following RCW 28B.76.110.

**28B.76.510 Board to administer certain federal programs.** The board shall administer any federal act pertaining to higher education which is not administered by another state agency. [1985 c 370 § 21; 1975 1st ex.s. c 132 § 12. Prior: 1969 ex.s. c 263 § 3. Formerly RCW 28B.80.210, 28.90.120, 28B.81.030.]

**Effective date—Severability—1975 1st ex.s. c 132:** See notes following RCW 28B.76.110.

**28B.76.520 Federal funds, private gifts or grants, board to administer.** The board is authorized to receive and expend federal funds and any private gifts or grants, such federal funds or private funds to be expended in accordance with the conditions contingent in such grant thereof. [1985 c 370 § 22; 1975 1st ex.s. c 132 § 14. Prior: 1969 ex.s. c 263 § 5. Formerly RCW 28B.80.230, 28.90.140, 28B.81.050.]

**Effective date—Severability—1975 1st ex.s. c 132:** See notes following RCW 28B.76.110.

**28B.76.530 Board may develop and administer demonstration projects.** The higher education coordinating board may develop and administer demonstration projects designed to prepare and assist persons to obtain a higher education in this state. [1989 c 306 § 2. Formerly RCW 28B.80.180.]

**28B.76.540 Administrative responsibilities.** In addition to administrative responsibilities assigned in this chapter, the board shall administer the programs set forth in the following statutes: RCW 28A.600.100 through 28A.600.150 (Washington scholars); chapter 28B.85 RCW (degree-granting institutions); chapter 28B.92 RCW (state need grant); chapter 28B.12 RCW (work study); RCW 28B.15.543 (tuition waivers for Washington scholars); RCW 28B.15.760 through 28B.15.766 (math and science loans); RCW 28B.15.100 (reciprocity agreement); RCW 28B.15.730 through 28B.15.736 (Oregon reciprocity); RCW 28B.15.750 through 28B.15.754 (Idaho reciprocity); RCW 28B.15.756 and 28B.15.758 (British Columbia reciprocity); chapter 28B.101 RCW (educational opportunity grant); chapter 28B.102 RCW (future teachers conditional scholarship); chapter 28B.108 RCW (American Indian endowed scholarship); chapter 28B.109 RCW (Washington international exchange scholarship); chapter 28B.115 RCW (health professional conditional scholarship); chapter 28B.119 RCW (Washington promise scholarship); and chapter 28B.133 RCW (gaining independence for students with dependents).

[2004 c 275 § 18; 1998 c 245 § 24; 1995 1st sp.s. c 9 § 12; 1990 c 33 § 561; 1986 c 136 § 20; 1985 c 370 § 7. Formerly RCW 28B.80.360.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—Purpose—Effective date—1995 1st sp.s. c 9:** See notes following RCW 28B.15.031.

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—Effective date—1986 c 136:** See RCW 28B.85.900 and 28B.85.902.

**28B.76.550 Distinguished professorship trust fund program—"Private donation" defined.** For the purposes of RCW 28B.76.555 through 28B.76.590, "private donation" includes assessments by commodity commissions authorized to conduct research activities including but not limited to research studies authorized under RCW 15.66.030 and 15.65.040. [2004 c 275 § 19; 1989 c 187 § 1. Formerly RCW 28B.10.859.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.76.555 Distinguished professorship trust fund program—Intent.** The legislature recognizes that quality in the state's public four-year institutions of higher education would be strengthened by additional partnerships between citizens and the institutions. The legislature intends to foster these partnerships by creating a matching grant program to assist public four-year institutions of higher education in creating endowments for funding distinguished professorships. [1987 c 8 § 1. Formerly RCW 28B.10.866.]

**Allocation of appropriated moneys—1988 c 125; 1987 c 8:** "(1) For the biennium ending June 30, 1989, all appropriations to the Washington distinguished professorship trust fund shall be allocated as provided in this section. The state treasurer shall reserve the following amounts in the trust fund for distribution to four-year higher education institutions at such time as qualifying gifts as defined in section 1, chapter 8, Laws of 1987 for distinguished professorships have been deposited:

(a) Two million two hundred fifty thousand dollars of the appropriation for the University of Washington;

(b) One million five hundred thousand dollars of the appropriation for Washington State University;

(c) One million dollars of the appropriation divided among Eastern Washington University, Central Washington University, Western Washington University, and The Evergreen State College.

(2) Distribution of funds allocated in subsection (1)(c) of this section shall be made in the following manner: Eastern Washington University, Central Washington University, Western Washington University, and The Evergreen State College are guaranteed one professorship.

(3) As of January 1, 1989, if any funds reserved in subsection (1)(a) or (b) of this section have not been designated as matching funds for qualifying gifts, any four-year institution of higher education, which has already fully utilized the professorships allocated to it by this section, and, in the case of the regional universities and The Evergreen State College, has exhausted the allocation in subsection (1)(c) of this section, may be eligible for such funds under rules promulgated by the higher education coordinating board." [1988 c 125 § 4; 1987 c 8 § 12.]

**28B.76.560 Distinguished professorship trust fund program—Establishment—Administration.** The Washington distinguished professorship trust fund program is established.

The program shall be administered by the higher education coordinating board.

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The trust fund shall be administered by the state treasurer. [1987 c 8 § 2. Formerly RCW 28B.10.867.]

**28B.76.565 Distinguished professorship trust fund program—Trust fund established.** Funds appropriated by the legislature for the distinguished professorship program shall be deposited in the distinguished professorship trust fund. At the request of the higher education coordinating board under RCW 28B.76.575, the treasurer shall release the state matching funds to the designated institution's local endowment fund. No appropriation is required for expenditures from the fund. [2004 c 275 § 20; 1991 sp.s. c 13 § 99; 1987 c 8 § 3. Formerly RCW 28B.10.868.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**28B.76.570 Distinguished professorship trust fund program—Guidelines—Allocation system.** In consultation with the eligible institutions of higher education, the higher education coordinating board shall set guidelines for the program. These guidelines may include an allocation system based on factors which include but are not limited to: The amount of money available in the trust fund; characteristics of the institutions including the size of the faculty and student body; and the number of professorships previously received.

Any allocation system shall be superseded by conditions in any act of the legislature appropriating funds for this program. [1987 c 8 § 4. Formerly RCW 28B.10.869.]

**28B.76.575 Distinguished professorship trust fund program—Matching funds—Donations or appropriations—Disbursement of funds.** All state four-year institutions of higher education shall be eligible for matching trust funds. An institution may apply to the higher education coordinating board for two hundred fifty thousand dollars from the fund when the institution can match the state funds with an equal amount of pledged or contributed private donations or with funds received through legislative appropriation specifically for the G. Robert Ross distinguished faculty award and designated as being qualified to be matched from trust fund moneys. These donations shall be made specifically to the professorship program, and shall be donated after July 1, 1985.

Upon an application by an institution, the board may designate two hundred fifty thousand dollars from the trust fund for that institution's pledged professorship. If the pledged two hundred fifty thousand dollars is not received within three years, the board shall make the designated funds available for another pledged professorship.

Once the private donation is received by the institution, the higher education coordinating board shall ask the state treasurer to release the state matching funds to a local endowment fund established by the institution for the professorship. [1988 c 125 § 3; 1987 c 8 § 5. Formerly RCW 28B.10.870.]

**Severability—1988 c 125:** See RCW 28B.106.902.

(2004 Ed.)

**28B.76.580 Distinguished professorship trust fund program—Name of professorship—Duties of institution—Use of endowment proceeds.** The professorship is the property of the institution and may be named in honor of a donor, benefactor, or honoree of the institution, at the option of the institution. Once state matching funds are released to a local endowment fund, an institution may combine two professorships to support one professorship holder.

The institution is responsible for soliciting private donations, investing and maintaining all endowment funds, administering the professorship, and reporting on the program to the governor and the legislature upon request. The institution may augment the endowment fund with additional private donations. The principal of the invested endowment fund shall not be invaded.

The proceeds from the endowment fund may be used to supplement the salary of the holder of the professorship, to pay salaries for his or her assistants, and to pay expenses associated with the holder's scholarly work. [1989 c 187 § 2; 1987 c 8 § 6. Formerly RCW 28B.10.871.]

**28B.76.585 Distinguished professorship trust fund program—Moneys not subject to collective bargaining.** Any private or public money, including all investment income, deposited in the Washington distinguished professorship trust fund or any local endowment for professorship programs shall not be subject to collective bargaining. [1987 c 8 § 7. Formerly RCW 28B.10.872.]

**28B.76.590 Distinguished professorship trust fund program—Continuation of program established under prior law.** A distinguished professorship program established under chapter 343, Laws of 1985 shall continue to operate under RCW 28B.76.555 through 28B.76.585 and the requirements of RCW 28B.76.555 through 28B.76.585 shall apply. [2004 c 275 § 21; 1987 c 8 § 8. Formerly RCW 28B.10.873.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.76.600 Graduate fellowship trust fund program—Intent.** The legislature recognizes that quality in the state's public four-year institutions of higher education would be strengthened by additional partnerships between citizens and the institutions. The legislature intends to foster these partnerships by creating a matching grant program to assist public four-year institutions of higher education in creating endowments for funding fellowships for distinguished graduate students. [1987 c 147 § 1. Formerly RCW 28B.10.880.]

**28B.76.605 Graduate fellowship trust fund program—Establishment—Administration.** The Washington graduate fellowship trust fund program is established. The program shall be administered by the higher education coordinating board. The trust fund shall be administered by the state treasurer. [1987 c 147 § 2. Formerly RCW 28B.10.881.]

**28B.76.610 Graduate fellowship trust fund—Matching funds.** Funds appropriated by the legislature for the

graduate fellowship program shall be deposited in the graduate fellowship trust fund. At the request of the higher education coordinating board under RCW 28B.76.620, the treasurer shall release the state matching funds to the designated institution's local endowment fund. No appropriation is required for expenditures from the fund. [2004 c 275 § 22; 1991 sp.s. c 13 § 88; 1987 c 147 § 3. Formerly RCW 28B.10.882.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**28B.76.615 Graduate fellowship trust fund program—Guidelines—Allocation system.** In consultation with eligible institutions of higher education, the higher education coordinating board shall set guidelines for the program. These guidelines may include an allocation system based on factors which include but are not limited to: The amount of money available in the trust fund; characteristics of the institutions including the size of the faculty and student body; and the number of fellowships previously received.

Any allocation system shall be superseded by conditions in any legislative act appropriating funds for the program. [1987 c 147 § 4. Formerly RCW 28B.10.883.]

**28B.76.620 Graduate fellowship trust fund program—Matching funds—Donations—Disbursement of funds.** (1) All state four-year institutions of higher education shall be eligible for matching trust funds. Institutions may apply to the higher education coordinating board for twenty-five thousand dollars from the fund when they can match the state funds with equal pledged or contributed private donations. These donations shall be made specifically to the graduate fellowship program, and shall be donated after July 1, 1987.

(2) Upon an application by an institution, the board may designate twenty-five thousand dollars from the trust fund for that institution's pledged graduate fellowship fund. If the pledged twenty-five thousand dollars is not received within two years, the board shall make the designated funds available for another pledged graduate fellowship fund.

(3) Once the private donation is received by the institution, the higher education coordinating board shall ask the state treasurer to release the state matching funds to a local endowment fund established by the institution for the graduate fellowships. [1987 c 147 § 5. Formerly RCW 28B.10.884.]

**28B.76.625 Graduate fellowship trust fund program—Name of fellowship—Duties of institution—Use of endowment proceeds.** (1) The fellowship is the property of the institution and may be named in honor of a donor, benefactor, or honoree of the institution, at the option of the institution.

(2) The institution is responsible for soliciting private donations, investing and maintaining all endowment funds, administering the fellowship, and reporting on the program to the governor and the legislature upon request. The institution may augment the endowment fund with additional private

donations. The principal of the invested endowment fund shall not be invaded.

(3) The proceeds from the endowment fund may be used to provide fellowship stipends to be used by the recipient for such things as tuition and fees, subsistence, research expenses, and other educationally related costs. [1987 c 147 § 6. Formerly RCW 28B.10.885.]

**28B.76.630 Graduate fellowship trust fund program—Moneys not subject to collective bargaining.** Any private or public money, including all investment income, deposited in the Washington graduate fellowship trust fund or any local endowment for fellowship programs shall not be subject to collective bargaining. [1987 c 147 § 7. Formerly RCW 28B.10.886.]

**28B.76.640 Board to coordinate state participation within student exchange compact programs—Designate certifying officer.** The board is hereby specifically directed to develop such state plans as are necessary to coordinate the state of Washington's participation within the student exchange compact programs under the auspices of the Western Interstate Commission for Higher Education, as provided by chapter 28B.70 RCW. In addition to establishing such plans the board shall designate the state certifying officer for student programs. [1985 c 370 § 17; 1974 ex.s. c 4 § 3. Formerly RCW 28B.80.150.]

**Severability—1974 ex.s. c 4:** "If any provision of this 1973 [1974] act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 4 § 6.]

**28B.76.645 Board to coordinate state participation within student exchange compact programs—Criteria—Washington interstate commission on higher education professional student exchange program trust fund.** In the development of any such plans as called for within RCW 28B.76.640, the board shall use at least the following criteria:

(1) Students who are eligible to attend compact-authorized programs in other states shall meet the Washington residency requirements of chapter 28B.15 RCW prior to being awarded tuition assistance.

(2) For recipients named after January 1, 1995, the tuition assistance shall be in the form of loans that may be completely forgiven in exchange for the student's service within the state of Washington after graduation. The requirements for such service and provisions for loan forgiveness shall be determined in rules adopted by the board.

(3) If appropriations are insufficient to fund all students qualifying under subsection (1) of this section, then the plans shall include criteria for student selection that would be in the best interest in meeting the state's educational needs, as well as recognizing the financial needs of students.

(4) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, that are paid by or on behalf of participants under this section, shall be deposited with the board and placed in an account created in this section and shall be used to cover the costs of granting the scholarships, maintaining necessary records, and making collections. The board shall maintain accurate records of these costs, and all receipts beyond those

necessary to pay such costs shall be used to grant conditional loans to eligible students.

(5) The Washington interstate commission on higher education professional student exchange program trust fund is created in the custody of the state treasurer. All receipts from loan repayment shall be deposited into the fund. Only the higher education coordinating board, or its designee, may authorize expenditures from the fund. No appropriation is required for expenditures from this fund. [2004 c 275 § 23; 1995 c 217 § 1; 1985 c 370 § 18; 1974 ex.s. c 4 § 4. Formerly RCW 28B.80.160.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Effective date—1995 c 217:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 3, 1995]." [1995 c 217 § 3.]

**Severability—1974 ex.s. c 4:** See note following RCW 28B.76.640.

**28B.76.650 Board to coordinate state participation within student exchange compact programs—Advice to governor, legislature.** The board shall periodically advise the governor and the legislature of the policy implications of the state of Washington's participation in the Western Interstate Commission for Higher Education student exchange programs as they affect long-range planning for post-secondary education, together with recommendations on the most efficient way to provide high cost or special educational programs to Washington residents. [1985 c 370 § 19; 1974 ex.s. c 4 § 5. Formerly RCW 28B.80.170.]

**Severability—1974 ex.s. c 4:** See note following RCW 28B.76.640.

**28B.76.660 Washington scholars award and Washington scholars-alternate award.** (1) Recipients of the Washington scholars award or the Washington scholars-alternate award under RCW 28A.600.100 through 28A.600.150 who choose to attend an independent college or university in this state, as defined in subsection (4) of this section, and recipients of the award named after June 30, 1994, who choose to attend a public college or university in the state may receive grants under this section if moneys are available. The higher education coordinating board shall distribute grants to eligible students under this section from moneys appropriated for this purpose. The individual grants shall not exceed, on a yearly basis, the yearly, full-time, resident, undergraduate tuition and service and activities fees in effect at the state-funded research universities. Grants to recipients attending an independent institution shall be contingent upon the institution matching on at least a dollar-for-dollar basis, either with actual money or by a waiver of fees, the amount of the grant received by the student from the state. The higher education coordinating board shall establish procedures, by rule, to disburse the awards as direct grants to the students.

(2) The higher education coordinating board shall establish rules that provide for the annual awarding of grants, if moneys are available, to three Washington scholars per legislative district; and, if not used by an original recipient, to the Washington scholars-alternate from the same legislative district.

Beginning with scholars selected in the year 2000, if the recipients of grants fail to demonstrate in a timely manner that they will enroll in a Washington institution of higher education in the fall term of the academic year following the award of the grant or are deemed by the higher education coordinating board to have withdrawn from college during the first academic year following the award, then the grant shall be considered relinquished. The higher education coordinating board may then award any remaining grant amounts to the Washington scholars-alternate from the same legislative district if the grants are awarded within one calendar year of the recipient being named a Washington scholars-alternate. Washington scholars-alternates named as recipients of the grant must also demonstrate in a timely manner that they will enroll in a Washington institution of higher education during the next available term, as determined by the higher education coordinating board. The board may accept appeals and grant waivers to the enrollment requirements of this section based on exceptional mitigating circumstances of individual grant recipients.

To maintain eligibility for the grants, recipients must maintain a minimum grade point average at the college or university equivalent to 3.30. Students shall be eligible to receive a maximum of twelve quarters or eight semesters of grants for undergraduate study and may transfer among in-state public and independent colleges and universities during that period and continue to receive the grant as provided under RCW 28B.76.665. If the student's cumulative grade point average falls below 3.30 during the first three quarters or two semesters, that student may petition the higher education coordinating board which shall have the authority to establish a probationary period until such time as the student's grade point average meets required standards.

(3) No grant shall be awarded to any student who is pursuing a degree in theology.

(4) As used in this section, "independent college or university" means a private, nonprofit educational institution, the main campus of which is permanently situated in the state, open to residents of the state, providing programs of education beyond the high school level leading at least to the baccalaureate degree, and accredited by the northwest association of schools and colleges as of June 9, 1988, and other institutions as may be developed that are approved by the higher education coordinating board as meeting equivalent standards as those institutions accredited under this section.

(5) As used in this section, "public college or university" means an institution of higher education as defined in RCW 28B.10.016. [2004 c 275 § 24; 1999 c 159 § 3; 1995 1st sp.s. c 5 § 3; 1990 c 33 § 560; 1988 c 210 § 1. Formerly RCW 28B.80.245.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Findings—Intent—1999 c 159:** See note following RCW 28A.600.150.

**Severability—Effective date—1995 1st sp.s. c 5:** See notes following RCW 28A.600.130.

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Application—1988 c 210 § 1:** "RCW 28B.80.245 shall apply to persons holding the Washington scholars award as of June 9, 1988, as well as persons holding the award after June 9, 1988." [1988 c 210 § 3.]

(2004 Ed.)

**28B.76.665 Washington scholars award waivers or grants—Transfers between colleges and universities.** Students receiving grants under RCW 28B.76.660 or waivers under RCW 28B.15.543 are entitled to transfer among in-state public and independent colleges or universities and to continue to receive award benefits, as provided in this section, in the form of a grant or waiver of tuition and services and activities fees while enrolled at such institutions during the period of eligibility. The total grants or waivers for any one student shall not exceed twelve quarters or eight semesters of undergraduate study.

(1) Scholars named to the award on or before June 30, 1994, may transfer between in-state public institutions, or from an eligible independent college or university to an in-state public institution of higher education, and are entitled to receive the waiver of tuition and services and activities fees.

(2) Scholars named to the award on or before June 30, 1994, may transfer from an in-state public institution to an eligible independent college or university, or between eligible independent colleges or universities, and continue to receive a grant contingent upon available funding.

(3) Scholars named to the award after June 30, 1994, may transfer among in-state public or private colleges and universities and continue to receive the grant contingent upon available funding.

(4) In addition, scholars who transfer to an eligible independent institution may receive the grant contingent upon the agreement of the school to match on at least a dollar-for-dollar basis, either with actual money or by a waiver of fees, the amount of the grant received by the student from the state. [2004 c 275 § 25; 1995 1st sp.s. c 5 § 4; 1988 c 210 § 2. Formerly RCW 28B.80.246.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—Effective date—1995 1st sp.s. c 5:** See notes following RCW 28A.600.130.

**28B.76.670 Washington award for vocational excellence—Grants—Definitions.** (1) Recipients of the Washington award for vocational excellence under RCW 28C.04.520 through 28C.04.550, who receive the award after June 30, 1994, may receive a grant, if funds are available. The grant shall be used to attend a postsecondary institution located in the state of Washington. Recipients may attend an institution of higher education as defined in RCW 28B.10.016, or an independent college or university, or a licensed private vocational school. The higher education coordinating board shall distribute grants to eligible students under this section from moneys appropriated for this purpose. The individual grants shall not exceed, on a yearly basis, the yearly, full-time, resident, undergraduate tuition and service and activities fees in effect at the state-funded research universities. In consultation with the work force training and education coordinating board, the higher education coordinating board shall establish procedures, by rule, to disburse the awards as direct grants to the students.

(2) To qualify for the grant, recipients shall enter the postsecondary institution within three years of high school graduation and maintain a minimum grade point average at the institution equivalent to 3.00, or, at a technical college, an above average rating. Students shall be eligible to receive a

maximum of two years of grants for undergraduate study and may transfer among in-state eligible postsecondary institutions during that period and continue to receive the grant.

(3) No grant may be awarded to any student who is pursuing a degree in theology.

(4) As used in this section, "independent college or university" means a private, nonprofit educational institution, the main campus of which is permanently situated in the state, open to residents of the state, providing programs of education beyond the high school level leading at least to the baccalaureate degree, and accredited by the Northwest association of schools and colleges as of June 9, 1988, and other institutions as may be developed that are approved by the higher education coordinating board as meeting equivalent standards as those institutions accredited under this section.

(5) As used in this section, "licensed private vocational school" means a private postsecondary institution, located in the state, licensed by the work force training and education coordinating board under chapter 28C.10 RCW, and offering postsecondary education in order to prepare persons for a vocation or profession, as defined in RCW 28C.10.020(7). [1995 1st sp.s. c 7 § 8. Formerly RCW 28B.80.272.]

**Severability—1995 1st sp.s. c 7:** See note following RCW 28C.04.520.

**28B.76.680 Border county higher education opportunity project—Findings—Intent.** (1) The legislature finds that certain tuition policies in Oregon state are more responsive to the needs of students living in economic regions that cross the state border than the Washington state policies. Under Oregon policy, students who are Washington residents may enroll at Portland State University for eight credits or less and pay the same tuition as Oregon residents. Further, the state of Oregon passed legislation in 1997 to begin providing to its community colleges the same level of state funding for students residing in bordering states as students residing in Oregon.

(2) The legislature intends to build on the recent Oregon initiatives regarding tuition policy for students in bordering states and to facilitate regional planning for higher education delivery by creating a project on resident tuition rates in Washington counties that border Oregon state. [2003 c 159 § 1; 2002 c 130 § 1; 1999 c 320 § 1. Formerly RCW 28B.80.805.]

**28B.76.685 Border county higher education opportunity project—Created.** (1) The border county higher education opportunity project is created. The purpose of the project is to allow Washington institutions of higher education that are located in counties on the Oregon border to implement tuition policies that correspond to Oregon policies. Under the border county project, Columbia Basin Community College, Clark College, Lower Columbia Community College, Grays Harbor Community College, and Walla Walla Community College may enroll students who reside in the bordering Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, and Washington at resident tuition rates. The Tri-Cities and Vancouver branches of Washington State University may enroll students who reside in the bordering Oregon counties of Columbia, Multnomah,

Clatsop, Clackamas, Morrow, Umatilla, Union, Wallowa, and Washington for eight credits or less at resident tuition rates.

(2) Washington institutions of higher education participating in the project shall give priority program enrollment to Washington residents. [2003 c 159 § 2; 2002 c 130 § 2; 2000 c 160 § 3; 1999 c 320 § 2. Formerly RCW 28B.80.806.]

*Resident tuition rates—Border county higher education opportunity project: RCW 28B.15.0139.*

**28B.76.690 Border county higher education opportunity project—Administration.** The higher education coordinating board shall administer Washington's participation in the border county higher education opportunity project. [2003 c 159 § 3; 2002 c 130 § 4; 1999 c 320 § 3. Formerly RCW 28B.80.807.]

**28B.76.700 Washington teacher training pilot program—Higher education coordinating board powers and duties—Reports.** (*Expires January 30, 2005.*) (1) The higher education coordinating board, in consultation with the state board of education has the following powers and duties in administering the pilot program established in RCW 28B.76.705:

- (a) To adopt rules necessary to carry out the program;
- (b) To establish one or more review committees to assist in the evaluation of proposals for funding. The review committee shall include individuals with significant experience in higher education in areas relevant to one or more of the funding period priorities and shall include representatives from elementary, two-year, and four-year sectors of education;
- (c) To award grants no later than September 1st in those years when funding is available by June 30th;
- (d) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals of the program. During the 1999-2001 biennium, the guidelines shall be consistent with the following desired outcomes of:
  - (i) Designing a college-level course for enrollment of selected high school seniors interested in teaching careers and students enrolled in a school-based future teachers academy;
  - (ii) Designing discipline-based lower division courses that are thematically linked to state student learning goals, essential academic learning requirements, and upper division courses in the interdisciplinary arts and science curriculum and supportive of teaching areas appropriate for prospective teachers;
  - (iii) Designing a preprofessional educational studies minor that would be pursued by prospective kindergarten through eighth grade teachers in conjunction with an interdisciplinary arts and science major;
  - (iv) Designing mentoring and service learning activities at the community college level that would provide prospective teachers with an orientation to professional education; and
  - (v) Designing a process for satisfying certification requirements that encompasses pedagogical coursework and school-based internships cognizant of the financial constraints of working students.

(2) The pilot project in this section shall conclude no later than January 1, 2005.

(3) Beginning on December 31, 2001, the higher education coordinating board shall submit an annual written report to the education and higher education committees of the legislature, the state board of education, and the office of the superintendent of public instruction on the status of the pilot project. [2004 c 275 § 26; 1999 c 177 § 2. Formerly RCW 28B.80.620.]

**Expiration date—2004 c 275 §§ 26 and 27:** "Sections 26 and 27 of this act expire January 30, 2005." [2004 c 275 § 81.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—1999 c 177:** "There is a need for a coordinated program of teacher training that will involve high schools, community colleges, and four-year institutions of higher education in a collaborative, seamless approach to developing teachers for the kindergarten through twelfth grade system. Therefore, it is the intent of the legislature that an innovative pilot project be established for teacher training and attracting teacher candidates. Furthermore, the legislature intends to establish a pilot program by creating a competitive grant program to assist educational institutions in developing teacher training programs." [1999 c 177 § 1.]

**Expiration date—1999 c 177:** "Sections 1 through 5 of this act expire January 30, 2005." [1999 c 177 § 8.]

**28B.76.705 Washington teacher training pilot program—Established. (Expires January 30, 2005.)** The Washington teacher training pilot program is established. The higher education coordinating board shall administer the program. Through this program the board may award, on a competitive basis, grants to public institutions of higher education or consortia of institutions to encourage high quality and effective teacher training programs. Grants shall not exceed a two-year period. Strong priority shall be given to proposals that involve shared facilities, shared resources, and cocurricular planning to establish the teacher training program, and to proposals that involve participants from the interdisciplinary arts and science curriculum and professional education faculty as well as classroom teachers from school districts. Institutions of higher education are encouraged to solicit nonstate funds to support this coordinated approach to teacher training. [1999 c 177 § 3. Formerly RCW 28B.80.622.]

**Intent—Expiration date—1999 c 177:** See notes following RCW 28B.76.700.

**28B.76.710 Washington teacher training pilot program—Gifts, grants, endowments. (Expires January 30, 2005.)** The higher education coordinating board may solicit and receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the program and may expend the same or any income therefrom according to the terms of the gifts, grants, or endowments. [1999 c 177 § 4. Formerly RCW 28B.80.624.]

**Intent—Expiration date—1999 c 177:** See notes following RCW 28B.76.700.

**28B.76.715 Higher education coordinating board teacher training pilot account. (Expires January 30, 2005.)** The higher education coordinating board teacher training pilot account is established in the custody of the state treasurer. The higher education coordinating board shall

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deposit in the account all moneys received under RCW 28B.76.710. Moneys in the account may be spent only for the purposes of RCW 28B.76.705. Disbursements from the account shall be on the authorization of the higher education coordinating board. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements. [2004 c 275 § 27; 1999 c 177 § 5. Formerly RCW 28B.80.626.]

**Expiration date—2004 c 275 §§ 26 and 27:** See note following RCW 28B.76.700.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—Expiration date—1999 c 177:** See notes following RCW 28B.76.700.

**28B.76.720 Transfer standards pilot project. (Expires June 30, 2006.)** (1) The higher education coordinating board, in consultation with the state board for community and technical colleges and the council of presidents, shall recruit and select institutions of higher education to participate in a pilot project to define transfer standards in selected academic disciplines on the basis of student competencies. Participants shall include one public four-year institution of higher education, two or more community or technical colleges that regularly transfer a substantial number of students to that four-year institution, and one or more private career colleges that prepare students in the academic disciplines selected under the pilot project. Such colleges shall be accredited and licensed under chapter 28C.10 RCW.

(2) The pilot project participants shall identify several academic disciplines to form the basis of the project and develop a work plan, timelines, and expected products for the project, which shall be presented by the higher education coordinating board in a preliminary report to the higher education committees of the legislature by December 1, 2004.

(3) Under the pilot project, participants shall develop standards, definitions, and procedures for quality assurance for a transfer system based on student competencies. It is the legislature's intent that under such a system, four-year institutions of higher education, in collaboration with two-year institutions of higher education, define the knowledge, skills, and abilities students should possess in order to enter an upper division program in a particular academic discipline. The two and four-year institutions providing lower division preparation for such an upper division program are responsible for certifying that a student meets the expected standards, but have flexibility to determine how to assess whether the student has obtained the necessary knowledge, skills, and abilities. Such assessments need not be based on completion of particular courses or accumulation of credits.

(4) The pilot project participants may request assistance in their work from the higher education coordinating board, the western interstate commission on higher education, the state board for community and technical colleges, or the council of presidents. The pilot project participants and the higher education coordinating board shall structure the work of the project in such a way that development costs for the project are absorbed within existing institution and agency budgets.

(5) In collaboration with the higher education coordinating board, the pilot project participants shall report to the

higher education committees of the legislature by December 1, 2005, on the progress and status of the pilot project. The report shall identify any barriers encountered by the project and make recommendations for next steps in developing a competency-based transfer system for higher education.

(6) This section expires June 30, 2006. [2003 c 131 § 2. Formerly RCW 28B.80.810.]

**Finding—Intent—2003 c 131:** "The legislature finds that the focus of transfer between institutions of higher education has been on students' accumulation of credits, where courses necessary for entry to each successive level of higher education have been individually identified and vary by institution and academic discipline. It is the legislature's intent to begin a process that will change the focus of transfer to defining and recognizing student competencies." [2003 c 131 § 1.]

## Chapter 28B.85 RCW

### DEGREE-GRANTING INSTITUTIONS

#### Sections

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**28B.85.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Board" means the higher education coordinating board.

(2) "Degree" means any designation, appellation, letters, or words including but not limited to "associate," "bachelor," "master," "doctor," or "fellow" which signify or purport to signify satisfactory completion of the requirements of an academic program of study beyond the secondary school level.

(3) "Degree-granting institution" means an entity that offers educational credentials, instruction, or services prerequisite to or indicative of an academic or professional degree beyond the secondary level. [1986 c 136 § 1.]

**28B.85.020 Board's duties—Rules—Investigations—Interagency agreements for degree and nondegree programs—Information on institutions offering substandard or fraudulent degree programs—Financial disclosure exempt from public disclosure.** (1) The board:

(a) Shall adopt by rule minimum standards for degree-granting institutions concerning granting of degrees, quality of education, unfair business practices, financial stability, and other necessary measures to protect citizens of this state against substandard, fraudulent, or deceptive practices. The rules may require that an institution be accredited or be making progress toward accreditation by an accrediting agency recognized by the United States department of education. The board shall adopt the rules in accordance with chapter 34.05 RCW;

(b) May investigate any entity the board reasonably believes to be subject to the jurisdiction of this chapter. In connection with the investigation, the board may administer oaths and affirmations, issue subpoenas and compel attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the board deems relevant or material to the investigation. The board, including its staff and any other authorized persons, may conduct site inspections, the cost of which shall be borne by the institution, and examine records of all institutions subject to this chapter;

(c) Shall develop an interagency agreement with the work force training and education coordinating board to regulate degree-granting private vocational schools with respect to degree and nondegree programs; and

(d) Shall develop and disseminate information to the public about entities that sell or award degrees without requiring appropriate academic achievement at the postsecondary level, including but not limited to, a description of the substandard and potentially fraudulent practices of these entities, and advice about how the public can recognize and avoid the entities. To the extent feasible, the information shall include links to additional resources that may assist the public in identifying specific institutions offering substandard or fraudulent degree programs.

(2) Financial disclosures provided to the board by degree-granting private vocational schools are not subject to public disclosure under chapter 42.17 RCW. [2004 c 96 § 1; 1996 c 305 § 1; 1994 c 38 § 1; 1986 c 136 § 2.]

**Severability—1996 c 305:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 305 § 5.]

**28B.85.030 Current authorization required to offer or grant degree—Penalty for violation.** (1) A degree-granting institution shall not operate and shall not grant or offer to grant any degree unless the institution has obtained current authorization from the board.

(2) Any person, group, or entity or any owner, officer, agent, or employee of such entity who willfully violates this section is guilty of a gross misdemeanor and shall be punished by a fine not to exceed one thousand dollars or by imprisonment in the county jail for a term not to exceed one year, or by both such fine and imprisonment. Each day on which a violation occurs constitutes a separate violation. The

criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the attorney general of this state. [2003 c 53 § 175; 1986 c 136 § 3.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**28B.85.040 Completion of program of study prerequisite to degree—Application of chapter.** (1) An institution or person shall not advertise, offer, sell, or award a degree or any other type of educational credential unless the student has enrolled in and successfully completed a prescribed program of study, as outlined in the institution's publications. This prohibition shall not apply to honorary credentials clearly designated as such on the front side of the diploma or certificate and awarded by institutions offering other educational credentials in compliance with state law.

(2) No exemption granted under this chapter is permanent. The board shall periodically review exempted degree-granting institutions, and continue exemptions only if an institution meets the statutory requirements for exemption in effect on the date of the review.

(3) Except as provided in subsection (1) of this section, this chapter shall not apply to:

(a) Any public college, university, community college, technical college, or institute operating as part of the public higher educational system of this state;

(b) Institutions that have been accredited by an accrediting association recognized by the agency for the purposes of this chapter: PROVIDED, That those institutions meet minimum exemption standards adopted by the agency; and PROVIDED FURTHER, That an institution, branch, extension, or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of any such accrediting association to qualify for this exemption;

(c) Institutions of a religious character, but only as to those education programs devoted exclusively to religious or theological objectives if the programs are represented in an accurate manner in institutional catalogs and other official publications;

(d) Honorary credentials clearly designated as such on the front side of the diploma or certificate awarded by institutions offering other educational credentials in compliance with state law; or

(e) Institutions not otherwise exempt which offer only workshops or seminars and institutions offering only credit-bearing workshops or seminars lasting no longer than three calendar days. [2004 c 96 § 2; 1996 c 97 § 1; 1994 c 38 § 2; 1986 c 136 § 4.]

**28B.85.045 Institutions offering teacher preparation programs—Exploration of methods to enhance awareness of teacher preparation programs.** See RCW 28B.10.032.

**28B.85.050 Board may require information.** All degree-granting institutions subject to this chapter shall file information with the board as the board may require. [1986 c 136 § 5.]

(2004 Ed.)

**28B.85.060 Fees.** The board shall impose fees on any degree-granting institution authorized to operate under this chapter. Fees shall be set and revised by the board by rule at the level necessary to approximately recover the staffing costs incurred in administering this chapter. Fees shall be deposited in the general fund. [1986 c 136 § 6.]

**28B.85.070 Surety bonds—Security in lieu of bond—Cancellation of bond—Notice—Claims.** (1) The board may require any degree-granting institution to have on file with the board an approved surety bond or other security in lieu of a bond in an amount determined by the board.

(2) In lieu of a surety bond, an institution may deposit with the board a cash deposit or other negotiable security acceptable to the board. The security deposited with the board in lieu of the surety bond shall be returned to the institution one year after the institution's authorization has expired or been revoked if legal action has not been instituted against the institution or the security deposit at the expiration of the year. The obligations and remedies relating to surety bonds authorized by this section, including but not limited to the settlement of claims procedure in subsection (5) of this section, shall apply to deposits filed with the board, as applicable.

(3) Each bond shall:

(a) Be executed by the institution as principal and by a corporate surety licensed to do business in the state;

(b) Be payable to the state for the benefit and protection of any student or enrollee of an institution, or, in the case of a minor, his or her parents or guardian;

(c) Be conditioned on compliance with all provisions of this chapter and the board's rules adopted under this chapter;

(d) Require the surety to give written notice to the board at least thirty-five days before cancellation of the bond; and

(e) Remain in effect for one year following the effective date of its cancellation or termination as to any obligation occurring on or before the effective date of cancellation or termination.

(4) Upon receiving notice of a bond cancellation, the board shall notify the institution that the authorization will be suspended on the effective date of the bond cancellation unless the institution files with the board another approved surety bond or other security. The board may suspend or revoke the authorization at an earlier date if it has reason to believe that such action will prevent students from losing their tuition or fees.

(5) If a complaint is filed under RCW 28B.85.090(1) against an institution, the board may file a claim against the surety and settle claims against the surety by following the procedure in this subsection.

(a) The board shall attempt to notify all potential claimants. If the absence of records or other circumstances makes it impossible or unreasonable for the board to ascertain the names and addresses of all the claimants, the board after exerting due diligence and making reasonable inquiry to secure that information from all reasonable and available sources, may make a demand on a bond on the basis of information in the board's possession. The board is not liable or responsible for claims or the handling of claims that may subsequently appear or be discovered.

(b) Thirty days after notification, if a claimant fails, refuses, or neglects to file with the board a verified claim, the board shall be relieved of further duty or action under this chapter on behalf of the claimant.

(c) After reviewing the claims, the board may make demands upon the bond on behalf of those claimants whose claims have been filed. The board may settle or compromise the claims with the surety and may execute and deliver a release and discharge of the bond.

(d) If the surety refuses to pay the demand, the board may bring an action on the bond in behalf of the claimants. If an action is commenced on the bond, the board may require a new bond to be filed.

(e) Within ten days after a recovery on a bond or other posted security has occurred, the institution shall file a new bond or otherwise restore its security on file to the required amount.

(6) The liability of the surety shall not exceed the amount of the bond. [1986 c 136 § 7.]

**28B.85.080 Suspension or modification of requirements authorized.** The board may suspend or modify any of the requirements under this chapter in a particular case if the board finds that:

(1) The suspension or modification is consistent with the purposes of this chapter; and

(2) The education to be offered addresses a substantial, demonstrated need among residents of the state or that literal application of this chapter would cause a manifestly unreasonable hardship. [1986 c 136 § 8.]

**28B.85.090 Claims—Complaints—Investigations—Hearings—Orders.** (1) A person claiming loss of tuition or fees as a result of an unfair business practice may file a complaint with the board. The complaint shall set forth the alleged violation and shall contain information required by the board. A complaint may also be filed with the board by an authorized staff member of the board or by the attorney general.

(2) The board shall investigate any complaint under this section and may attempt to bring about a settlement. The board may hold a hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW, in order to determine whether a violation has occurred. If the board prevails, the degree-granting institution shall pay the costs of the administrative hearing.

(3) If, after the hearing, the board finds that the institution or its agent engaged in or is engaging in any unfair business practice, the board shall issue and cause to be served upon the violator an order requiring the violator to cease and desist from the act or practice and may impose the penalties under RCW 28B.85.100. If the board finds that the complainant has suffered loss as a result of the act or practice, the board may order full or partial restitution for the loss. The complainant is not bound by the board's determination of restitution and may pursue any other legal remedy. [1989 c 175 § 82; 1986 c 136 § 9.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**28B.85.100 Violations—Civil penalties.** Any person, group, or entity or any owner, officer, agent, or employee of such entity who wilfully violates any provision of this chapter or the rules adopted under this chapter shall be subject to a civil penalty of not more than one hundred dollars for each violation. Each day on which a violation occurs constitutes a separate violation. The fine may be imposed by the higher education coordinating board or by any court of competent jurisdiction. [1986 c 136 § 10.]

**28B.85.120 Actions resulting in jurisdiction of courts.** A degree-granting institution, whether located in this state or outside of this state, that conducts business of any kind, makes any offers, advertises, solicits, or enters into any contracts in this state or with a resident of this state is subject to the jurisdiction of the courts of this state for any cause of action arising from the acts. [1986 c 136 § 12.]

**28B.85.130 Educational records—Permanent file—Protection.** If any degree-granting institution discontinues its operation, the chief administrative officer of the institution shall file with the board the original or legible true copies of all educational records required by the board. If the board determines that any educational records are in danger of being made unavailable to the board, the board may seek a court order to protect and if necessary take possession of the records. The board shall cause to be maintained a permanent file of educational records coming into its possession. [1986 c 136 § 13.]

**28B.85.140 Contracts voidable—When.** If a student or prospective student is a resident of this state at the time any contract relating to payment for education or any note, instrument, or other evidence of indebtedness relating thereto is entered into, RCW 28B.85.150 shall govern the rights of the parties to the contract or evidence of indebtedness. If a contract or evidence of indebtedness contains any of the following agreements, the contract is voidable at the option of the student or prospective student:

(1) That the law of another state shall apply;

(2) That the maker or any person liable on the contract or evidence of indebtedness consents to the jurisdiction of another state;

(3) That another person is authorized to confess judgment on the contract or evidence of indebtedness; or

(4) That fixes venue. [1986 c 136 § 14.]

**28B.85.150 Enforceability of debts—Authority to offer degree required.** A note, instrument, or other evidence of indebtedness or contract relating to payment for education for a degree is not enforceable in the courts of this state by a degree-granting institution or holder of the instrument unless the institution was authorized to offer the degree under this chapter at the time the note, instrument, or other evidence of indebtedness or contract was entered into. [1986 c 136 § 15.]

**28B.85.160 Actions to enforce chapter—Who may bring—Relief.** The attorney general or the prosecuting attorney of any county in which a degree-granting institution or agent of the institution is found may bring an action in any

court of competent jurisdiction for the enforcement of this chapter. The court may issue an injunction or grant any other appropriate form of relief. [1986 c 136 § 16.]

**28B.85.170 Injunctive relief—Board may seek.** The board may seek injunctive relief, after giving notice to the affected party, in a court of competent jurisdiction for a violation of this chapter or the rules adopted under this chapter. The board need not allege or prove that the board has no adequate remedy at law. The right of injunction provided in this section is in addition to any other legal remedy which the board has and is in addition to any right of criminal prosecution provided by law. The existence of board action with respect to alleged violations of this chapter and rules adopted under this chapter does not operate as a bar to an action for injunctive relief under this section. [1986 c 136 § 17.]

**28B.85.180 Violation of chapter unfair or deceptive practice under RCW 19.86.020.** A violation of this chapter or the rules adopted under this chapter affects the public interest and is an unfair or deceptive act or practice in violation of RCW 19.86.020 of the consumer protection act. The remedies and sanctions provided by this section shall not preclude application of other remedies and sanctions. [1986 c 136 § 18.]

**28B.85.190 Remedies and penalties in chapter non-exclusive and cumulative.** The remedies and penalties provided for in this chapter are nonexclusive and cumulative and do not affect any other actions or proceedings. [1986 c 136 § 19.]

**28B.85.900 Severability—1986 c 136.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 136 § 21.]

**28B.85.902 Effective date—1986 c 136.** This act shall take effect July 1, 1986. [1986 c 136 § 24.]

**28B.85.905 Validity of registration under prior laws.** A degree-granting institution registered under chapter 188, Laws of 1979, as amended, as of June 30, 1986, is not required to apply for authorization under chapter 28B.85 RCW until the expiration date of such registration. [1986 c 136 § 22.]

**28B.85.906 Application of chapter to foreign degree-granting institution branch campuses.** This chapter shall not apply to any approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW. [1993 c 181 § 7.]

## Chapter 28B.90 RCW FOREIGN DEGREE-GRANTING BRANCH CAMPUSES

### Sections

28B.90.005 Findings.

(2004 Ed.)

28B.90.010 Definitions.

28B.90.020 Approval of foreign degree-granting institution as branch campus.

28B.90.030 Branch campuses exempt under chapter 28B.85 RCW.

**28B.90.005 Findings.** The legislature finds that it has previously declared in \*RCW 28B.107.005 that it is important to the economic future of the state to promote international awareness and understanding, and in RCW 1.20.100, that the state's economy and economic well-being depends heavily on foreign trade and international exchange.

The legislature finds that it is appropriate that such policies should be implemented by encouraging universities and colleges domiciled in foreign countries to establish branch campuses in Washington and that it is also important to those foreign colleges and universities that their status as authorized foreign degree-granting institutions be recognized by this state to facilitate the establishment and operation of such branch campuses.

In the furtherance of such policy, the legislature adopts the foreign degree-granting institution approved branch campus act. [1995 c 335 § 404; 1993 c 181 § 1.]

**\*Reviser's note:** RCW 28B.107.005 expired June 30, 1996, pursuant to 1990 c 243 § 8.

**Part headings, table of contents not law—1995 c 335:** See note following RCW 28A.150.360.

**28B.90.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Degree" means any designation, appellation, certificate, letters or words including, but not limited to, "associate," "bachelor," "masters," "doctorate," or "fellow" that signifies, or purports to signify, satisfactory and successful completion of requirements of a postsecondary academic program of study.

(2) "Foreign degree-granting institution" means a public or private college or university, either profit or nonprofit:

(a) That is domiciled in a foreign country;

(b) That offers in its country of domicile credentials, instruction, or services prerequisite to the obtaining of an academic or professional degree granted by such college or university; and

(c) That is authorized under the laws or regulations of its country of domicile to operate a degree-granting institution in that country.

(3) "Approved branch campus" means a foreign degree-granting institution's branch campus that has been approved by the higher education coordinating board to operate in the state.

(4) "Branch campus" means an educational facility located in the state that:

(a) Is either owned and operated directly by a foreign degree-granting institution or indirectly through a Washington profit or nonprofit corporation in which the foreign degree-granting institution is the sole or controlling shareholder or member; and

(b) Provides courses solely and exclusively to students enrolled in a degree-granting program offered by the foreign degree-granting institution who:

(i) Have received academic credit for courses of study completed at the foreign degree-granting institution in its country of domicile;

(ii) Will receive academic credit towards their degree from the foreign degree-granting institution for the courses of study completed at the educational facility in the state; and

(iii) Will return to the foreign degree-granting institution in its country of domicile for completion of their degree-granting program or receipt of their degree.

(5) "Board" means the higher education coordinating board. [1993 c 181 § 2.]

**28B.90.020 Approval of foreign degree-granting institution as branch campus.** A foreign degree-granting institution that submits evidence satisfactory to the board of its authorized status in its country of domicile and its intent to establish an educational facility in the state is entitled to operate a branch campus as defined in RCW 28B.90.010. Upon receipt of the satisfactory evidence, the board may certify that the branch campus of the foreign degree-granting institution is approved to operate in the state under this chapter, for as long as the foreign degree-granting institution retains its authorized status in its country of domicile. [1999 c 85 § 1; 1993 c 181 § 3.]

**28B.90.030 Branch campuses exempt under chapter 28B.85 RCW.** A branch campus of a foreign degree-granting institution previously found by the board to be exempt from chapter 28B.85 RCW may continue to operate in the state. However, within one year of July 25, 1993, the institution shall provide evidence of authorization as required under RCW 28B.90.020. Upon receipt of the satisfactory evidence, the board shall certify that the branch campus of the foreign degree-granting institution is approved to operate in the state under this chapter. [1993 c 181 § 4.]

## Chapter 28B.92 RCW

### STATE STUDENT FINANCIAL AID PROGRAM

#### Sections

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28B.92.130	Grants, gifts, bequests and devises of property.
28B.92.140	State educational trust fund—Deposits—Expenditures.
28B.92.150	Board rules.

**28B.92.010 State need grant program established—Purpose.** The purposes of this chapter are to establish the principles upon which the state financial aid programs will be based and to establish the state of Washington state need grant program, thus assisting financially needy or disadvantaged students domiciled in Washington to obtain the oppor-

tunity of attending an accredited institution of higher education. State need grants under this chapter are available only to students who are resident students as defined in RCW 28B.15.012(2) (a) through (d). [2004 c 275 § 34; 1999 c 345 § 2; 1993 sp.s. c 18 § 2; 1969 ex.s. c 222 § 7. Formerly RCW 28B.10.800, 28.76.430.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Legislative declaration—1969 ex.s. c 222:** "The legislature hereby declares that it regards the higher education of its qualified domiciliaries to be a public purpose of great importance to the welfare and security of this state and nation; and further declares that the establishment of a student financial aid program, assisting financially needy or disadvantaged students in this state to be a desirable and economical method of furthering this purpose. The legislature has concluded that the benefit to the state in assuring the development of the talents of its qualified domiciliaries will bring tangible benefits to the state in the future.

The legislature further declares that there is an urgent need at present for the establishment of a state of Washington student financial aid program, and that the most efficient and economical way to meet this need is through the plan prescribed in this act." [1969 ex.s. c 222 § 6.]

**Severability—1969 ex.s. c 222:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 222 § 24.]

*State educational trust fund—Established—Deposits—Use:* RCW 28B.92.140.

**28B.92.020 State need grant program—Findings—Intent.** (1) The legislature finds that the higher education coordinating board, in consultation with the higher education community, has completed a review of the state need grant program. It is the intent of the legislature to endorse the board's proposed changes to the state need grant program, including:

(a) Reaffirmation that the primary purpose of the state need grant program is to assist low-income, needy, and disadvantaged Washington residents attending institutions of higher education;

(b) A goal that the base state need grant amount over time be increased to be equivalent to the rate of tuition charged to resident undergraduate students attending Washington state public colleges and universities;

(c) State need grant recipients be required to contribute a portion of the total cost of their education through self-help;

(d) State need grant recipients be required to document their need for dependent care assistance after taking into account other public funds provided for like purposes; and

(e) Institutional aid administrators be allowed to determine whether a student eligible for a state need grant in a given academic year may remain eligible for the ensuing year if the student's family income increases by no more than a marginal amount except for funds provided through the educational assistance grant program for students with dependents.

(2) The legislature further finds that the higher education coordinating board, under its authority to implement the proposed changes in subsection (1) of this section, should do so in a timely manner.

(3) The legislature also finds that:

(a) In most circumstances, need grant eligibility should not extend beyond five years or one hundred twenty-five per-

cent of the published length of the program in which the student is enrolled or the credit or clock-hour equivalent; and

(b) State financial aid programs should continue to adhere to the principle that funding follows resident students to their choice of institution of higher education. [2003 c 19 § 11; 1999 c 345 § 1. Formerly RCW 28B.10.801.]

**Finding—Intent—Short title—Captions not law—2003 c 19:** See RCW 28B.133.005, 28B.133.900, and 28B.133.901.

**28B.92.030 Definitions.** As used in this chapter:

(1) "Institution or institutions of higher education" means:

(a) Any public university, college, community college, or technical college operated by the state of Washington or any political subdivision thereof; or

(b) Any other university, college, school, or institute in the state of Washington offering instruction beyond the high school level which is a member institution of an accrediting association recognized by rule of the board for the purposes of this section: PROVIDED, That any institution, branch, extension or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of any such accrediting association, or a branch of a member institution of an accrediting association recognized by rule of the board for purposes of this section, that is eligible for federal student financial aid assistance and has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington, and has an annual enrollment of at least seven hundred full-time equivalent students: PROVIDED FURTHER, That no institution of higher education shall be eligible to participate in a student financial aid program unless it agrees to and complies with program rules and regulations adopted pursuant to RCW 28B.92.150.

(2) "Financial aid" means loans and/or grants to needy students enrolled or accepted for enrollment as a student at institutions of higher education.

(3) "Needy student" means a post high school student of an institution of higher education who demonstrates to the board the financial inability, either through the student's parents, family and/or personally, to meet the total cost of board, room, books, and tuition and incidental fees for any semester or quarter.

(4) "Disadvantaged student" means a post high school student who by reason of adverse cultural, educational, environmental, experiential, familial or other circumstances is unable to qualify for enrollment as a full time student in an institution of higher education, who would otherwise qualify as a needy student, and who is attending an institution of higher education under an established program designed to qualify the student for enrollment as a full time student.

(5) "Board" means the higher education coordinating board. [2004 c 275 § 35; 2002 c 187 § 1; 1989 c 254 § 2; 1985 c 370 § 56; 1979 ex.s. c 235 § 1; 1975 1st ex.s. c 132 § 16; 1969 ex.s. c 222 § 8. Formerly RCW 28B.10.802, 28.76.440.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—1989 c 254:** "It is the intent of the legislature that nothing in this act shall prevent or discourage an individual from making an effort to (2004 Ed.)

repay any state financial aid awarded during his or her collegiate career." [1989 c 254 § 1.]

**Effective date—Severability—1975 1st ex.s. c 132:** See notes following RCW 28B.76.110.

*Loan programs for mathematics and science teachers: RCW 28B.15.760 through 28B.15.766.*

**28B.92.040 Board, guidelines in performance of duties.** The board shall be cognizant of the following guidelines in the performance of its duties:

(1) The board shall be research oriented, not only at its inception but continually through its existence.

(2) The board shall coordinate all existing programs of financial aid except those specifically dedicated to a particular institution by the donor.

(3) The board shall take the initiative and responsibility for coordinating all federal student financial aid programs to ensure that the state recognizes the maximum potential effect of these programs, and shall design state programs that complement existing federal, state, and institutional programs. The board shall ensure that state programs continue to follow the principle that state financial aid funding follows the student to the student's choice of institution of higher education.

(4) Counseling is a paramount function of the state need grant and other state student financial aid programs, and in most cases could only be properly implemented at the institutional levels; therefore, state student financial aid programs shall be concerned with the attainment of those goals which, in the judgment of the board, are the reasons for the existence of a student financial aid program, and not solely with administration of the program on an individual basis.

(5) The "package" approach of combining loans, grants and employment for student financial aid shall be the conceptual element of the state's involvement.

(6) The board shall ensure that allocations of state appropriations for financial aid are made to individuals and institutions in a timely manner and shall closely monitor expenditures to avoid under or overexpenditure of appropriated funds. [2004 c 275 § 36; 1999 c 345 § 3; 1995 c 269 § 801; 1969 ex.s. c 222 § 10. Formerly RCW 28B.10.804, 28.76.450.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Effective date—1995 c 269:** See note following RCW 9.94A.850.

**Part headings not law—Severability—1995 c 269:** See notes following RCW 13.40.005.

**28B.92.050 Powers and duties of board.** The board shall have the following powers and duties:

(1) Conduct a full analysis of student financial aid as a means of:

(a) Fulfilling educational aspirations of students of the state of Washington, and

(b) Improving the general, social, cultural, and economic character of the state.

Such an analysis will be a continuous one and will yield current information relevant to needed improvements in the state program of student financial aid. The board will disseminate the information yielded by their analyses to all appropriate individuals and agents.

(2) Design a state program of student financial aid based on the data of the study referred to in this section. The state programs will supplement available federal and local aid programs. The state programs of student financial aid will not exceed the difference between the budgetary costs of attending an institution of higher education and the student's total resources, including family support, personal savings, employment, and federal, state, and local aid programs.

(3) Determine and establish criteria for financial need of the individual applicant based upon the consideration of that particular applicant. In making this determination the board shall consider the following:

(a) Assets and income of the student.

(b) Assets and income of the parents, or the individuals legally responsible for the care and maintenance of the student.

(c) The cost of attending the institution the student is attending or planning to attend.

(d) Any other criteria deemed relevant to the board.

(4) Set the amount of financial aid to be awarded to any individual needy or disadvantaged student in any school year.

(5) Award financial aid to needy or disadvantaged students for a school year based upon only that amount necessary to fill the financial gap between the budgetary cost of attending an institution of higher education and the family and student contribution.

(6) Review the need and eligibility of all applications on an annual basis and adjust financial aid to reflect changes in the financial need of the recipients and the cost of attending the institution of higher education. [1999 c 345 § 4; 1989 c 254 § 3; 1969 ex.s. c 222 § 11. Formerly RCW 28B.10.806, 28.76.460.]

**Intent—1989 c 254:** See note following RCW 28B.92.030.

**28B.92.060 State need grant awards.** In awarding need grants, the board shall proceed substantially as follows: PROVIDED, That nothing contained herein shall be construed to prevent the board, in the exercise of its sound discretion, from following another procedure when the best interest of the program so dictates:

(1) The board shall annually select the financial aid award recipients from among Washington residents applying for student financial aid who have been ranked according to financial need as determined by the amount of the family contribution and other considerations brought to the board's attention.

(2) The financial need of the highest ranked students shall be met by grants depending upon the evaluation of financial need until the total allocation has been disbursed. Funds from grants which are declined, forfeited or otherwise unused shall be reawarded until dispersed.

(3) A student shall be eligible to receive a state need grant for up to five years, or the credit or clock hour equivalent of five years, or up to one hundred twenty-five percent of the published length of time of the student's program. A student may not start a new associate degree program as a state need grant recipient until at least five years have elapsed since earning an associate degree as a need grant recipient, except that a student may earn two associate degrees concurrently. Qualifications for renewal will include maintaining

satisfactory academic progress toward completion of an eligible program as determined by the board. Should the recipient terminate his or her enrollment for any reason during the academic year, the unused portion of the grant shall be returned to the state educational grant fund by the institution according to the institution's own policy for issuing refunds, except as provided in RCW 28B.92.070.

(4) In computing financial need, the board shall determine a maximum student expense budget allowance, not to exceed an amount equal to the total maximum student expense budget at the public institutions plus the current average state appropriation per student for operating expense in the public institutions. [2004 c 275 § 37; 1999 c 345 § 5; 1991 c 164 § 4; 1989 c 254 § 4; 1969 ex.s. c 222 § 12. Formerly RCW 28B.10.808, 28.76.470.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—1989 c 254:** See note following RCW 28B.92.030.

**28B.92.070 Persian Gulf veterans—Limited application of RCW 28B.92.060.** Under rules adopted by the board, the provisions of RCW 28B.92.060(3) shall not apply to eligible students, as defined in RCW 28B.10.017, and eligible students shall not be required to repay the unused portions of grants received under the state student financial aid program. [2004 c 275 § 38; 1991 c 164 § 3. Formerly RCW 28B.10.8081.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.92.080 Eligibility for state need grant.** For a student to be eligible for a state need grant a student must:

(1) Be a "needy student" or "disadvantaged student" as determined by the board in accordance with RCW 28B.92.030 (3) and (4).

(2) Have been domiciled within the state of Washington for at least one year.

(3) Be enrolled or accepted for enrollment on at least a half-time basis at an institution of higher education in Washington as defined in RCW 28B.92.030(1).

(4) Have complied with all the rules and regulations adopted by the board for the administration of this chapter. [2004 c 275 § 39; 1999 c 345 § 6; 1989 c 254 § 5; 1969 ex.s. c 222 § 13. Formerly RCW 28B.10.810, 28.76.475.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—1989 c 254:** See note following RCW 28B.92.030.

**28B.92.090 Aid granted without regard to applicant's race, creed, color, religion, sex, or ancestry.** All student financial aid shall be granted by the commission without regard to the applicant's race, creed, color, religion, sex, or ancestry. [1969 ex.s. c 222 § 14. Formerly RCW 28B.10.812, 28.76.480.]

**28B.92.100 Theology student denied aid.** No aid shall be awarded to any student who is pursuing a degree in theology. [1969 ex.s. c 222 § 15. Formerly RCW 28B.10.814, 28.76.490.]

**28B.92.110 Application of award.** A state financial aid recipient under this chapter shall apply the award toward the cost of tuition, room, board, books and fees at the institution of higher education attended. [2004 c 275 § 40; 1969 ex.s. c 222 § 16. Formerly RCW 28B.10.816, 28.76.500.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.92.120 Board to determine how funds disbursed.** Funds appropriated for student financial assistance to be granted pursuant to this chapter shall be disbursed as determined by the board. [2004 c 275 § 41; 1969 ex.s. c 222 § 17. Formerly RCW 28B.10.818, 28.76.510.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.92.130 Grants, gifts, bequests and devises of property.** The board shall be authorized to accept grants, gifts, bequests, and devises of real and personal property from any source for the purpose of granting financial aid in addition to that funded by the state. [2004 c 275 § 42; 1969 ex.s. c 222 § 18. Formerly RCW 28B.10.820, 28.76.520.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.92.140 State educational trust fund—Deposits—Expenditures.** The state educational trust fund is hereby established in the state treasury. The primary purpose of the trust is to pledge statewide available college student assistance to needy or disadvantaged students, especially middle and high school youth, considered at-risk of dropping out of secondary education who participate in board-approved early awareness and outreach programs and who enter any accredited Washington institution of postsecondary education within two years of high school graduation.

The board shall deposit refunds and recoveries of student financial aid funds expended in prior fiscal periods in such account. The board may also deposit moneys that have been contributed from other state, federal, or private sources.

Expenditures from the fund shall be for financial aid to needy or disadvantaged students. The board may annually expend such sums from the fund as may be necessary to fulfill the purposes of this section, including not more than three percent for the costs to administer aid programs supported by the fund. All earnings of investments of balances in the state educational trust fund shall be credited to the trust fund. Expenditures from the fund shall not be subject to appropriation but are subject to allotment procedures under chapter 43.88 RCW. [1997 c 269 § 1; 1996 c 107 § 1; 1991 sp.s. c 13 § 12; 1985 c 57 § 10; 1981 c 55 § 1. Formerly RCW 28B.10.821.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**28B.92.150 Board rules.** The board shall adopt rules as may be necessary or appropriate for effecting the provisions of this chapter, in accordance with the provisions of chapter 34.05 RCW, the administrative procedure act. [2004 c 275 § 43; 1999 c 345 § 7; 1973 c 62 § 4; 1969 ex.s. c 222 § 19. Formerly RCW 28B.10.822, 28.76.530.]

(2004 Ed.)

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

## Chapter 28B.95 RCW

### ADVANCED COLLEGE TUITION PAYMENT PROGRAM

#### Sections

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- 28B.95.110 Refunds.
- 28B.95.150 College savings program.
- 28B.95.900 Construction of chapter—Limitations.

**28B.95.010 Washington advanced college tuition payment program—Established.** The Washington advanced college tuition payment program is established to help make higher education affordable and accessible to all citizens of the state of Washington by offering a savings incentive that will protect purchasers and beneficiaries against rising tuition costs. The program is designed to encourage savings and enhance the ability of Washington citizens to obtain financial access to institutions of higher education. In addition, the program encourages elementary and secondary school students to do well in school as a means of preparing for and aspiring to higher education attendance. This program is intended to promote a well-educated and financially secure population to the ultimate benefit of all citizens of the state of Washington. [1997 c 289 § 1.]

**28B.95.020 Definitions.** The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Academic year" means the regular nine-month, three-quarter, or two-semester period annually occurring between July 1st and June 30th.

(2) "Account" means the Washington advanced college tuition payment program account established for the deposit of all money received by the board from eligible purchasers and interest earnings on investments of funds in the account, as well as for all expenditures on behalf of eligible beneficiaries for the redemption of tuition units and for the development of any authorized college savings program pursuant to RCW 28B.95.150.

(3) "Board" means the higher education coordinating board as defined in chapter 28B.76 RCW.

(4) "Committee on advanced tuition payment" or "committee" means a committee of the following members: The state treasurer, the director of the office of financial management, the executive director of the higher education coordinating board, or their designees, and two members to be appointed by the governor, one representing program participants and one private business representative with marketing, public relations, or financial expertise.

(5) "Governing body" means the committee empowered by the legislature to administer the Washington advanced college tuition payment program.

(6) "Contractual obligation" means a legally binding contract of the state with the purchaser and the beneficiary establishing that purchases of tuition units will be worth the same number of tuition units at the time of redemption as they were worth at the time of the purchase.

(7) "Eligible beneficiary" means the person for whom the tuition unit will be redeemed for attendance at an institution of higher education. The beneficiary is that person named by the purchaser at the time that a tuition unit contract is accepted by the governing body. With the exception of tuition unit contracts purchased by qualified organizations as future scholarships, the beneficiary must reside in the state of Washington or otherwise be a resident of the state of Washington at the time the tuition unit contract is accepted by the governing body.

(8) "Eligible purchaser" means an individual or organization that has entered into a tuition unit contract with the governing body for the purchase of tuition units for an eligible beneficiary.

(9) "Full-time tuition charges" means resident tuition charges at a state institution of higher education for enrollments between ten credits and eighteen credit hours per academic term.

(10) "Institution of higher education" means an institution that offers education beyond the secondary level and is recognized by the internal revenue service under chapter 529 of the internal revenue code.

(11) "Investment board" means the state investment board as defined in chapter 43.33A RCW.

(12) "State institution of higher education" means institutions of higher education as defined in RCW 28B.10.016.

(13) "Tuition and fees" means undergraduate tuition and services and activities fees as defined in RCW 28B.15.020 and 28B.15.041 rounded to the nearest whole dollar. The maximum tuition and fees charges recognized for beneficiaries enrolled in a state technical college shall be equal to the tuition and fees for the community college system.

(14) "Tuition unit contract" means a contract between an eligible purchaser and the governing body, or a successor agency appointed for administration of this chapter, for the purchase of tuition units for a specified beneficiary that may be redeemed at a later date for an equal number of tuition units.

(15) "Unit purchase price" means the minimum cost to purchase one tuition unit for an eligible beneficiary. Generally, the minimum purchase price is one percent of the undergraduate weighted average tuition and fees for the current year, rounded to the nearest whole dollar, adjusted for the costs of administration and adjusted to ensure the actuarial soundness of the account. The analysis for price setting shall

also include, but not be limited to consideration of past and projected patterns of tuition increases, program liability, past and projected investment returns, and the need for a prudent stabilization reserve.

(16) "Weighted average tuition" shall be calculated as the sum of the undergraduate tuition and services and activities fees for each four-year state institution of higher education, multiplied by the respective full-time equivalent student enrollment at each institution divided by the sum total of undergraduate full-time equivalent student enrollments of all four-year state institutions of higher education, rounded to the nearest whole dollar.

(17) "Weighted average tuition unit" is the value of the weighted average tuition and fees divided by one hundred. The weighted average is the basis upon which tuition benefits may be calculated as the basis for any refunds provided from the program. [2004 c 275 § 59; 2001 c 184 § 1; 2000 c 14 § 1; 1997 c 289 § 2.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.95.025 Offices and personnel.** The board shall maintain appropriate offices and employ and fix compensation of such personnel as may be necessary to perform the advanced college tuition payment program duties. The board shall consult with the governing body on the selection, compensation, and other issues relating to the employment of the program director. The positions are exempt from classified service under chapter 41.06 RCW. The employees shall be employees of the higher education coordinating board. [2000 c 14 § 2; 1998 c 69 § 2.]

**Effective date—1998 c 69:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 20, 1998]." [1998 c 69 § 6.]

**28B.95.030 Administration of program—Tuition units—Promotion of program—Authority of governing body.** (1) The Washington advanced college tuition payment program shall be administered by the committee on advanced tuition payment which shall be chaired by the executive director of the board. The committee shall be supported by staff of the board.

(2)(a) The Washington advanced college tuition payment program shall consist of the sale of tuition units, which may be redeemed by the beneficiary at a future date for an equal number of tuition units regardless of any increase in the price of tuition, that may have occurred in the interval.

(b) Each purchase shall be worth a specific number of or fraction of tuition units at each state institution of higher education as determined by the governing body.

(c) The number of tuition units necessary to pay for a full year's, full-time undergraduate tuition and fee charges at a state institution of higher education shall be set by the governing body at the time a purchaser enters into a tuition unit contract.

(d) The governing body may limit the number of tuition units purchased by any one purchaser or on behalf of any one beneficiary, however, no limit may be imposed that is less than that necessary to achieve four years of full-time, undergraduate tuition charges at a state institution of higher educa-

tion. The governing body also may, at its discretion, limit the number of participants, if needed, to ensure the actuarial soundness and integrity of the program.

(3)(a) No tuition unit may be redeemed until two years after the purchase of the unit. Units may be redeemed for enrollment at any institution of higher education that is recognized by the internal revenue service under chapter 529 of the internal revenue code.

(b) Units redeemed at a nonstate institution of higher education or for graduate enrollment shall be redeemed at the rate for state public institutions in effect at the time of redemption.

(4) The governing body shall determine the conditions under which the tuition benefit may be transferred to another family member. In permitting such transfers, the governing body may not allow the tuition benefit to be bought, sold, bartered, or otherwise exchanged for goods and services by either the beneficiary or the purchaser.

(5) The governing body shall administer the Washington advanced college tuition payment program in a manner reasonably designed to be actuarially sound, such that the assets of the trust will be sufficient to defray the obligations of the trust including the costs of administration. The governing body may, at its discretion, discount the minimum purchase price for certain kinds of purchases such as those from families with young children, as long as the actuarial soundness of the account is not jeopardized.

(6) The governing body shall annually determine current value of a tuition unit and the value of the weighted average tuition unit.

(7) The governing body shall promote, advertise, and publicize the Washington advanced college tuition payment program.

(8) In addition to any other powers conferred by this chapter, the governing body may:

(a) Impose reasonable limits on the number of tuition units or units that may be used in any one year;

(b) Determine and set any time limits, if necessary, for the use of benefits under this chapter;

(c) Impose and collect administrative fees and charges in connection with any transaction under this chapter;

(d) Appoint and use advisory committees as needed to provide program direction and guidance;

(e) Formulate and adopt all other policies and rules necessary for the efficient administration of the program;

(f) Consider the addition of an advanced payment program for room and board contracts and also consider a college savings program;

(g) Purchase insurance from insurers licensed to do business in the state, to provide for coverage against any loss in connection with the account's property, assets, or activities or to further insure the value of the tuition units;

(h) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of its powers and duties under this chapter;

(i) Contract for the provision for all or part of the services necessary for the management and operation of the program with other state or nonstate entities authorized to do business in the state;

(j) Contract for other services or for goods needed by the governing body in the conduct of its business under this chapter;

(k) Contract with financial consultants, actuaries, auditors, and other consultants as necessary to carry out its responsibilities under this chapter;

(l) Solicit and accept cash donations and grants from any person, governmental agency, private business, or organization; and

(m) Perform all acts necessary and proper to carry out the duties and responsibilities of this program under this chapter. [2000 c 14 § 3; 1997 c 289 § 3.]

**28B.95.035 Committee members—Liability.** No member of the committee is liable for the negligence, default, or failure of any other person or members of the committee to perform the duties of office and no member may be considered or held to be an insurer of the funds or assets of any of the advanced college tuition payment program. [1998 c 69 § 3.]

**Effective date—1998 c 69:** See note following RCW 28B.95.025.

**28B.95.040 Purchase of tuition units by organizations—Rules—Scholarship fund.** The governing body may, at its discretion, allow an organization to purchase tuition units for future use as scholarships. Such organizations electing to purchase tuition units for this purpose must enter into a contract with the governing body which, at a minimum, ensures that the scholarship shall be freely given by the purchaser to a scholarship recipient. For such purchases, the purchaser need not name a beneficiary until four months before the date when the tuition units are first expected to be used.

The governing body shall formulate and adopt such rules as are necessary to determine which organizations may qualify to purchase tuition units for scholarships under this section. The governing body also may consider additional rules for the use of tuition units if purchased as scholarships.

The governing body may establish a scholarship fund with moneys from the Washington advanced college tuition payment program account. A scholarship fund established under this authority shall be administered by the higher education coordinating board and shall be provided to students who demonstrate financial need. Financial need is not a criterion that any other organization need consider when using tuition units as scholarships. The board also may establish its own corporate-sponsored scholarship fund under this chapter. [1997 c 289 § 4.]

**28B.95.050 Contractual obligation—Legally binding—Use of state appropriations.** The Washington advanced college tuition payment program is an essential state governmental function. Contracts with eligible participants shall be contractual obligations legally binding on the state as set forth in this chapter. If, and only if, the moneys in the account are projected to be insufficient to cover the state's contracted expenses for a given biennium, then the legislature shall appropriate to the account the amount necessary to cover such expenses.

The tuition and fees charged by an eligible institution of higher education to an eligible beneficiary for a current enrollment shall be paid by the account to the extent the beneficiary has remaining unused tuition units for the appropriate school. [2000 c 14 § 4; 1997 c 289 § 5.]

**28B.95.060 Washington advanced college tuition payment program account.** (1) The Washington advanced college tuition payment program account is created in the custody of the state treasurer. The account shall be a discrete nontreasury account retaining its interest earnings in accordance with RCW 43.79A.040.

(2) The governing body shall deposit in the account all money received for the program. The account shall be self-sustaining and consist of payments received from purchasers of tuition units and funds received from other sources, public or private. With the exception of investment and operating costs associated with the investment of money by the investment board paid under RCW 43.33A.160 and 43.84.160, the account shall be credited with all investment income earned by the account. Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW. Money used for program administration is subject to the allotment of all expenditures. However, an appropriation is not required for such expenditures. Program administration shall include, but not be limited to: The salaries and expenses of the program personnel including lease payments, travel, and goods and services necessary for program operation; contracts for program promotion and advertisement, audits, and account management; and other general costs of conducting the business of the program.

(3) The assets of the account may be spent without appropriation for the purpose of making payments to institutions of higher education on behalf of the qualified beneficiaries, making refunds, transfers, or direct payments upon the termination of the Washington advanced college tuition payment program. Disbursements from the account shall be made only on the authorization of the governing body.

(4) With regard to the assets of the account, the state acts in a fiduciary, not ownership, capacity. Therefore the assets of the program are not considered state money, common cash, or revenue to the state. [2000 c 14 § 5; 1998 c 69 § 4; 1997 c 289 § 6.]

**Effective date—1998 c 69:** See note following RCW 28B.95.025.

**28B.95.070 Washington advanced college tuition payment program account—Powers and duties of the investment board.** (1) The investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the account. All investment and operating costs associated with the investment of money shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the account.

(2) All investments made by the investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW 43.33A.140 and the investment policy established by the state investment board.

(3) As deemed appropriate by the investment board, money in the account may be commingled for investment with other funds subject to investment by the board.

(4) The authority to establish all policies relating to the account, other than the investment policies as set forth in subsections (1) through (3) of this section, resides with the governing body. With the exception of expenses of the investment board set forth in subsection (1) of this section, disbursements from the account shall be made only on the authorization of the governing body, and money in the account may be spent only for the purposes of the program as specified in this chapter.

(5) The investment board shall routinely consult and communicate with the governing body on the investment policy, earnings of the trust, and related needs of the program. [2000 c 14 § 6; 1997 c 289 § 7.]

**28B.95.080 Washington advanced college tuition payment program account—Actuarial soundness—Adjustment of tuition credit purchases.** The governing body shall annually evaluate, and cause to be evaluated by a nationally recognized actuary, the soundness of the account and determine the additional assets needed, if any, to defray the obligations of the account.

If funds are not sufficient to ensure the actuarial soundness of the account, the governing body shall adjust the price of subsequent tuition credit purchases to ensure its soundness.

If there are insufficient numbers of new purchases to ensure the actuarial soundness of the account, the governing body shall request such funds from the legislature as are required to ensure the integrity of the program. Funds may be appropriated directly to the account or appropriated under the condition that they be repaid at a later date. The repayment shall be made at such time that the account is again determined to be actuarially sound. [1997 c 289 § 8.]

**28B.95.090 Discontinuation of program—Use of units—Refunds.** (1) In the event that the state determines that the program is not financially feasible, or for any other reason, the state may declare the discontinuance of the program. At the time of such declaration, the governing body will cease to accept any further tuition unit contracts or purchases.

(2) The remaining tuition units for all beneficiaries who have either enrolled in higher education or who are within four years of graduation from a secondary school shall be honored until such tuition units have been exhausted, or for ten fiscal years from the date that the program has been discontinued, whichever comes first. All other contract holders shall receive a refund equal to the value of the current weighted average tuition units in effect at the time that the program was declared discontinued.

(3) At the end of the ten-year period, any tuition units remaining unused by currently active beneficiaries enrolled in higher education shall be refunded at the value of the current weighted average tuition unit in effect at the end of that ten-year period.

(4) At the end of the ten-year period, all other funds remaining in the account not needed to make refunds or to

pay for administrative costs shall be deposited to the state general fund.

(5) The governing body may make refunds under other exceptional circumstances as it deems fit, however, no tuition units may be honored after the end of the tenth fiscal year following the declaration of discontinuance of the program. [1997 c 289 § 9.]

**28B.95.100 Program planning—Consultation with public and private entities—Cooperation.** (1) The governing body, in planning and devising the program, shall consult with the investment board, the state treasurer, the office of financial management, and the institutions of higher education.

(2) The governing body may seek the assistance of the state agencies named in subsection (1) of this section, private financial institutions, and any other qualified party with experience in the areas of accounting, actuary, risk management, or investment management to assist with preparing an accounting of the program and ensuring the fiscal soundness of the account.

(3) State agencies and public institutions of higher education shall fully cooperate with the governing body in matters relating to the program in order to ensure the solvency of the account and ability of the governing body to meet outstanding commitments. [2000 c 14 § 7; 1997 c 289 § 10.]

**28B.95.110 Refunds.** (1) The intent of the Washington advanced college tuition payment program is to redeem tuition units for attendance at an institution of higher education. Refunds shall be issued under specific conditions that may include the following:

(a) Certification that the beneficiary, who is eighteen years of age or older, will not attend an institution of higher education, will result in a refund not to exceed the current weighted average tuition and fees in effect at the time of such certification minus a penalty at the rate established by the internal revenue service under chapter [section] 529 of the internal revenue code. No more than one hundred tuition units may be refunded per year to any individual making this certification. The refund shall be made no sooner than ninety days after such certification, less any administrative processing fees assessed by the governing body;

(b) If there is certification of the death or disability of the beneficiary, the refund shall be equal to one hundred percent of any remaining unused tuition units at the current value, as determined by the governing body, at the time that such certification is submitted to the governing body, less any administrative processing fees assessed by the governing body;

(c) If there is certification by the student of graduation or program completion, the refund shall be as great as one hundred percent of any remaining unused tuition units at the current value, as determined by the governing body, at the time that such certification is submitted to the governing body, less any administrative processing fees assessed by the governing body. The governing body may, at its discretion, impose a penalty if needed to comply with federal tax rules;

(d) If there is certification of other tuition and fee scholarships, which will cover the cost of tuition for the eligible beneficiary. The refund shall be equal to one hundred percent

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of the current value of tuition units, as determined by the governing body, in effect at the time of the refund request, less any administrative processing fees assessed by the governing body. The refund under this subsection may not exceed the value of the scholarship;

(e) Incorrect or misleading information provided by the purchaser or beneficiaries may result in a refund of the purchaser's investment, less any administrative processing fees assessed by the governing body. The value of the refund will not exceed the actual dollar value of the purchaser's contributions; and

(f) The governing body may determine other circumstances qualifying for refunds of remaining unused tuition units and may determine the value of that refund.

(2) With the exception of subsection (1)(b), (e), and (f) of this section no refunds may be made before the units have been held for two years. [2001 c 184 § 3; 2000 c 14 § 8; 1997 c 289 § 12.]

**Effective date—2001 c 184 § 3:** "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 184 § 5.]

**28B.95.150 College savings program.** (1) The committee may establish a college savings program. If such a program is established, the college savings program shall be established, in such form as may be determined by the committee, to be a qualified state tuition program as defined by the internal revenue service under section 529 of the internal revenue code, and shall be administered in a manner consistent with the Washington advanced college tuition payment program. The committee, in planning and devising the program, shall consult with the state investment board, the state treasurer, a qualified actuarial consulting firm with appropriate expertise to evaluate such plans, the legislative fiscal and higher education committees, and the institutions of higher education.

(2) Up to two hundred thousand dollars of administrative fees collected from guaranteed education tuition program participants may be applied as a loan to fund the development of a college savings program. This loan must be repaid with interest before the conclusion of the biennium in which the committee draws funds for this purpose from the advanced college tuition payment program account.

(3) If such a college savings program is established, the college savings program account is created in the custody of the state treasurer for the purpose of administering the college savings program. If created, the account shall be a discrete nontreasury account in the custody of the state treasurer. Interest earnings shall be retained in accordance with RCW 43.79A.040. Disbursements from the account, except for program administration, are exempt from appropriations and the allotment provisions of chapter 43.88 RCW. Money used for program administration is subject to the allotment provisions, but without appropriation.

(4) The committee, after consultation with the state investment board, shall determine the investment policies for the college savings program. Program contributions may be invested by the state investment board or the committee may contract with an investment company licensed to conduct business in this state to do the investing. The committee shall

keep or cause to be kept full and adequate accounts and records of the assets of each individual participant in the college savings program.

(5) Neither the state nor any eligible educational institution may be considered or held to be an insurer of the funds or assets of the individual participant accounts in the college savings program created under this section nor may any such entity be held liable for any shortage of funds in the event that balances in the individual participant accounts are insufficient to meet the educational expenses of the institution chosen by the student for which the individual participant account was intended.

(6) The committee shall adopt rules to implement this section. Such rules shall include but not be limited to administration, investment management, promotion, and marketing; compliance with internal revenue service standards; application procedures and fees; start-up costs; phasing in the savings program and withdrawals therefrom; deterrents to early withdrawals and provisions for hardship withdrawals; and reenrollment in the savings program after withdrawal.

(7) The committee may, at its discretion, determine to cease operation of the college savings program if it determines the continuation is not in the best interest of the state. The committee shall adopt rules to implement this section addressing the orderly distribution of assets. [2001 c 184 § 2.]

#### **28B.95.900 Construction of chapter—Limitations.**

This chapter shall not be construed as a promise that any beneficiary shall be granted admission to any institution of higher education, will earn any specific or minimum number of academic credits, or will graduate from any such institution. In addition, this chapter shall not be construed as a promise of either course or program availability.

Participation in this program does not guarantee an eligible beneficiary the right to resident tuition and fees. To qualify for resident and respective tuition subsidies, the eligible beneficiary must meet the applicable provisions of RCW 28B.15.011 through 28B.15.015.

This chapter shall not be construed to imply that the redemption of tuition units shall be equal to any value greater than the undergraduate tuition and services and activities fees at a state institution of higher education as computed under this chapter. Eligible beneficiaries will be responsible for payment of any other fee that does not qualify as a services and activities fee including, but not limited to, any expenses for tuition surcharges, tuition overload fees, laboratory fees, equipment fees, book fees, rental fees, room and board charges, or fines. [1997 c 289 § 11.]

### **Chapter 28B.101 RCW**

#### **EDUCATIONAL OPPORTUNITY GRANT PROGRAM—PLACEBOUND STUDENTS**

##### Sections

28B.101.005	Finding—Intent.
28B.101.010	Program created.
28B.101.020	Definition—Eligibility.
28B.101.030	Administration of program—Payments to participants.
28B.101.040	Use of grants.

**28B.101.005 Finding—Intent.** The legislature finds that many individuals in the state of Washington have attended college and received an associate of arts or associate of science degree, or the equivalent, but are placebound.

The legislature intends to establish an educational opportunity grant program for placebound students who have completed an associate of arts or associate of science degree, or the equivalent, in an effort to increase their participation in and completion of upper-division programs. [2003 c 233 § 1; 1990 c 288 § 2.]

**28B.101.010 Program created.** The educational opportunity grant program is hereby created to serve placebound financially needy students by assisting them to obtain a baccalaureate degree at public and private institutions of higher education approved for participation by the higher education coordinating board. [2003 c 233 § 2; 1990 c 288 § 3.]

**28B.101.020 Definition—Eligibility.** (1) For the purposes of this chapter, "placebound" means unable to complete a college program because of family or employment commitments, health concerns, monetary inability, or other similar factors.

(2) To be eligible for an educational opportunity grant, applicants must be placebound residents of the state of Washington as defined in RCW 28B.15.012(2) (a) through (d), who: (a) Are needy students as defined in RCW 28B.92.030(3); and (b) have completed the associate of arts or associate of science degree or the equivalent. A placebound resident is one who may be influenced by the receipt of an enhanced student financial aid award to complete a baccalaureate degree at an eligible institution. An eligible placebound applicant is further defined as a person who would be unable to complete a baccalaureate course of study but for receipt of an educational opportunity grant. [2004 c 275 § 67; 2003 c 233 § 3; 1990 c 288 § 4.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.101.030 Administration of program—Payments to participants.** The higher education coordinating board shall develop and administer the educational opportunity grant program. The board shall adopt necessary rules and guidelines and develop criteria and procedures to select eligible participants in the program. Payment shall be made directly to the eligible participant periodically upon verification of enrollment and satisfactory progress towards degree completion. [1990 c 288 § 5.]

**28B.101.040 Use of grants.** Grants may be used by eligible participants to attend any public or private college or university in the state of Washington that is accredited by an accrediting association recognized by rule of the higher education coordinating board for the program and that complies with eligibility criteria established by rule of the higher education coordinating board. The participant shall not be eligible for a grant if it will be used for any programs that include religious worship, exercise, or instruction or to pursue a degree in theology. Each participating student may receive up to two thousand five hundred dollars per academic year,

not to exceed the student's demonstrated financial need for the course of study. [2003 c 233 § 4; 2002 c 186 § 3. Prior: 1993 sp.s. c 18 § 35; 1993 c 385 § 2; 1990 c 288 § 6.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**Chapter 28B.102 RCW**  
**FUTURE TEACHERS CONDITIONAL**  
**SCHOLARSHIP AND LOAN**  
**REPAYMENT PROGRAM**

Sections

28B.102.010	Intent—Legislative findings.
28B.102.020	Definitions.
28B.102.030	Program created—Powers and duties of board.
28B.102.040	Selection of participants—Processes—Criteria.
28B.102.045	Satisfactory progress required.
28B.102.050	Award of conditional scholarships and loan repayments—Amount—Duration.
28B.102.055	Loan repayment agreements—Rules.
28B.102.060	Repayment obligation.
28B.102.080	Future teachers conditional scholarship account.

**28B.102.010 Intent—Legislative findings.** The legislature finds that encouraging outstanding students to enter the teaching profession is of paramount importance to the state of Washington. By creating the future teachers conditional scholarship and loan repayment program, the legislature intends to assist in the effort to recruit as future teachers individuals who have distinguished themselves through outstanding academic achievement or demonstrated their commitment to teaching through work as a paraprofessional in the public school system, and who can act as role models for children. The legislature urges business, industry, and philanthropic community organizations to join with state government in making this program successful. [2004 c 58 § 1; 1987 c 437 § 1.]

**28B.102.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Conditional scholarship" means a loan that is forgiven in whole or in part if the recipient renders service as a teacher in an approved education program in this state.

(2) "Institution of higher education" or "institution" means a college or university in the state of Washington that is accredited by an accrediting association recognized as such by rule of the higher education coordinating board.

(3) "Board" means the higher education coordinating board.

(4) "Eligible student" means a student who is registered for at least six credit hours or the equivalent, demonstrates high academic achievement, is a resident student as defined by RCW 28B.15.012 and 28B.15.013, and has a declared intention to complete an approved preparation program leading to initial teacher certification or required for earning an additional endorsement, and commits to teaching service in the state of Washington.

(5) "Public school" means an elementary school, a middle school, junior high school, or high school within the public school system referred to in Article IX of the state Constitution.

(2004 Ed.)

(6) "Forgiven" or "to forgive" or "forgiveness" means to render service as a teacher in an approved education program in the state of Washington in lieu of monetary repayment.

(7) "Satisfied" means paid-in-full.

(8) "Participant" means an eligible student who has received a conditional scholarship or loan repayment under this chapter.

(9) "Loan repayment" means a federal student loan that is repaid in whole or in part if the recipient renders service as a teacher in an approved education program in Washington state.

(10) "Approved education program" means an education program in the state of Washington for knowledge and skills generally learned in preschool through twelfth grade. Approved education programs may include but are not limited to:

(a) K-12 schools under Title 28A RCW; or

(b) Other K-12 educational sites in the state of Washington as designated by the board.

(11) "Equalization fee" means the additional amount added to the principal of a loan under this chapter to equate the debt to that which the student would have incurred if the loan had been received through the federal subsidized Stafford student loan program.

(12) "Teacher shortage area" means a shortage of elementary or secondary school teachers in a specific subject area, discipline, classification, or geographic area as defined by the office of the superintendent of public instruction. [2004 c 58 § 2; 1996 c 53 § 1; 1993 sp.s. c 18 § 36; 1987 c 437 § 2.]

**Effective date—1996 c 53:** "This act shall take effect July 1, 1996." [1996 c 53 § 3.]

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.10.265.

**28B.102.030 Program created—Powers and duties of board.** The future teachers conditional scholarship and loan repayment program is established. The program shall be administered by the higher education coordinating board. In administering the program, the board shall have the following powers and duties:

(1) Select students to receive conditional scholarships or loan repayments;

(2) Adopt necessary rules and guidelines;

(3) Publicize the program;

(4) Collect and manage repayments from students who do not meet their teaching obligations under this chapter; and

(5) Solicit and accept grants and donations from public and private sources for the program. [2004 c 58 § 3; 1987 c 437 § 3.]

**28B.102.040 Selection of participants—Processes—Criteria.** (1) The board may select participants based on an application process conducted by the board or the board may utilize selection processes for similar students in cooperation with the professional educator standards board or the office of the superintendent of public instruction.

(2) If the board selects participants for the program, it shall establish a selection committee for screening and selecting recipients of the conditional scholarships. The criteria shall emphasize factors demonstrating excellence including but not limited to superior scholastic achievement, leadership

ability, community contributions, bilingual ability, willingness to commit to providing teaching service in shortage areas, and an ability to act as a role model for students. Priority will be given to individuals seeking certification or an additional endorsement in math, science, technology, or special education.

Subject to enactment of chapter 58, Laws of 2004, for fiscal year 2005, additional priority shall be given to such individuals who are also bilingual. It is the intent of the legislature to develop a pool of dual-language teachers in order to meet the challenge of educating students who are dominant in languages other than English. [2004 c 276 § 905; 2004 c 275 § 68; 2004 c 58 § 4; 1987 c 437 § 4.]

**Reviser's note:** This section was amended by 2004 c 58 § 4, 2004 c 275 § 68, and by 2004 c 276 § 905, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective date—2004 c 276:** See notes following RCW 43.330.167.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.102.045 Satisfactory progress required.** To receive additional disbursements under the program under this chapter, a participant must be considered by his or her institution of higher education to be in a satisfactory progress condition. [2004 c 58 § 5; 1988 c 125 § 7.]

**Severability—1988 c 125:** See RCW 28B.106.902.

**28B.102.050 Award of conditional scholarships and loan repayments—Amount—Duration.** The board may award conditional scholarships or provide loan repayments to eligible participants from the funds appropriated to the board for this purpose, or from any private donations, or any other funds given to the board for this program. The amount of the conditional scholarship or loan repayment awarded an individual shall not exceed the amount of tuition and fees at the institution of higher education attended by the participant or resident undergraduate tuition and fees at the University of Washington per academic year for a full-time student, whichever is lower. Participants are eligible to receive conditional scholarships or loan repayments for a maximum of five years. [2004 c 58 § 6; 1987 c 437 § 5.]

**28B.102.055 Loan repayment agreements—Rules.**

(1) Upon documentation of federal student loan indebtedness, the board may enter into agreements with participants to repay all or part of a federal student loan in exchange for teaching service in an approved educational program. The ratio of loan repayment to years of teaching service for the loan repayment program shall be the same as established for the conditional scholarship program.

(2) The agreement shall specify the period of time it is in effect and detail the obligations of the board and the participant, including the amount to be paid to the participant. The agreement may also specify the geographic location and subject matter area of teaching service for which loan repayment will be provided.

(3) At the end of each school year, a participant under this section shall provide evidence to the board that the requisite teaching service has been provided. Upon receipt of the

evidence, the board shall pay the participant the agreed-upon amount for one year of full-time teaching service or a prorated amount for less than full-time teaching service. To qualify for additional loan repayments, the participant must be engaged in continuous teaching service as defined by the board.

(4) The board may, at its discretion, arrange to make the loan repayment directly to the holder of the participant's federal student loan.

(5) The board's obligations to a participant under this section shall cease when:

(a) The terms of the agreement have been fulfilled;

(b) The participant fails to maintain continuous teaching service as determined by the board; or

(c) All of the participant's federal student loans have been repaid.

(6) The board shall adopt rules governing loan repayments, including approved leaves of absence from continuous teaching service and other deferments as may be necessary. [2004 c 58 § 8.]

**28B.102.060 Repayment obligation.** (1) Participants in the conditional scholarship program incur an obligation to repay the conditional scholarship, with interest and an equalization fee, unless they teach for two years in an approved education program for each year of scholarship received, under rules adopted by the board. Participants who teach in a designated teacher shortage area shall have one year of loan canceled for each year they teach in the shortage area.

(2) The interest rate shall be determined annually by the board. Participants who fail to complete the teaching service shall incur an equalization fee based on the remaining unforgiven balance of the loan. The equalization fee shall be added to the remaining balance and repaid by the participant.

(3) The minimum payment shall be set by the board. The maximum period for repayment shall be ten years, with payments of principal and interest accruing quarterly commencing six months from the date the participant completes or discontinues the course of study. Provisions for deferral of payment shall be determined by the board.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant teaches in an approved education program until the entire repayment obligation is satisfied. Should the participant cease to teach in an approved education program in this state before the participant's repayment obligation is completed, payments on the unsatisfied portion of the principal and interest shall begin the next payment period and continue until the remainder of the participant's repayment obligation is satisfied.

(5) The board is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary. The board is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(6) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is

entitled, which are paid by or on behalf of participants under this section, shall be deposited in the future teachers conditional scholarship account and shall be used to cover the costs of granting the conditional scholarships, maintaining necessary records, and making collections under subsection (5) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant conditional scholarships to eligible students.

(7) The board shall adopt rules to define the terms of repayment, including applicable interest rates, fees, and deferments. [2004 c 58 § 7; 1996 c 53 § 2; 1993 c 423 § 1; 1991 c 164 § 6; 1987 c 437 § 6.]

**Effective date—1996 c 53:** See note following RCW 28B.102.020.

**28B.102.080 Future teachers conditional scholarship account.** (1) The future teachers conditional scholarship account is created in the custody of the state treasurer. An appropriation is not required for expenditures of funds from the account. The account is not subject to allotment procedures under chapter 43.88 RCW except for moneys used for program administration.

(2) The board shall deposit in the account all moneys received for the program. The account shall be self-sustaining and consist of funds appropriated by the legislature for the future teachers conditional scholarship and loan repayment program, private contributions to the program, and receipts from participant repayments. Beginning July 1, 2004, the board shall also deposit into the account: (a) All funds from the institution of higher education loan account that are traceable to any conditional scholarship program for teachers or prospective teachers established by the legislature before June 10, 2004; and (b) all amounts repaid by individuals under any such program.

(3) Expenditures from the account may be used solely for conditional loans and loan repayments to participants in the program established by this chapter and costs associated with program administration by the board.

(4) Disbursements from the account may be made only on the authorization of the board. [2004 c 58 § 9.]

### Chapter 28B.103 RCW NATIONAL GUARD CONDITIONAL SCHOLARSHIP PROGRAM

#### Sections

- 28B.103.010 Definitions.  
28B.103.020 Program established—Powers and duties of office.  
28B.103.030 Repayment obligation.

**28B.103.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and RCW 28B.103.020 and 28B.103.030.

(1) "Eligible student" means an enlisted member or an officer of the rank of captain or below in the Washington national guard who attends an institution of higher education that is located in this state and accredited by the Northwest Association of Schools and Colleges, and who meets any additional selection criteria adopted by the office.

(2004 Ed.)

(2) "Conditional scholarship" means a loan that is forgiven in whole or in part if the recipient renders service as a member of the Washington national guard under rules adopted by the office.

(3) "Forgiven" or "to forgive" or "forgiveness" means either to render service in the Washington national guard in lieu of monetary repayment, or to be relieved of the service obligation under rules adopted by the office.

(4) "Office" means the office of the adjutant general of the state military department.

(5) "Participant" means an eligible student who has received a conditional scholarship under this chapter.

(6) "Service obligation" means serving in the Washington national guard for one additional year for each year of conditional scholarship received under this program. [2000 c 159 § 1; 1994 c 234 § 5.]

**28B.103.020 Program established—Powers and duties of office.** The Washington state national guard conditional scholarship program is established. The program shall be administered by the office. In administering the program, the powers and duties of the office shall include, but need not be limited to:

(1) The selection of eligible students to receive conditional scholarships;

(2) The award of conditional scholarships funded by federal and state funds, private donations, or repayments from any participant who does not complete the participant's service obligation. Use of state funds is subject to available funds. The annual amount of each conditional scholarship may vary, but shall not exceed the annual cost of undergraduate tuition fees and services and activities fees at the University of Washington, plus an allowance for books and supplies;

(3) The adoption of necessary rules and guidelines;

(4) The adoption of participant selection criteria. The criteria may include but need not be limited to requirements for: Satisfactory progress, minimum grade point averages, enrollment in courses or programs that lead to a baccalaureate degree or an associate degree or a certificate, and satisfactory participation as a member of the Washington national guard;

(5) The notification of participants of their additional service obligation or required repayment of the conditional scholarship; and

(6) The collection of repayments from participants who do not meet the eligibility criteria or service obligations. [1994 c 234 § 6.]

**28B.103.030 Repayment obligation.** (1) Participants in the conditional scholarship program incur an obligation to repay the conditional scholarship, with interest, unless they serve in the Washington national guard for one additional year for each year of conditional scholarship received, under rules adopted by the office.

(2) The entire principal and interest of each yearly repayment shall be forgiven for each additional year in which a participant serves in the Washington national guard, under rules adopted by the office.

(3) If a participant elects to repay the conditional scholarship, the period of repayment shall be four years, with pay-

ments accruing quarterly commencing nine months from the date that the participant leaves the Washington national guard or withdraws from the institution of higher education, whichever comes first. The interest rate on the repayments shall be eight percent per year. Provisions for deferral and forgiveness shall be determined by the office.

(4) The office is responsible for collection of repayments made under this section. The office shall exercise due diligence in such collection, maintaining all necessary records to ensure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of law, including wage garnishment if necessary. The office is responsible to forgive all or parts of such repayments under the criteria established in this section, and shall maintain all necessary records of forgiven payments. The office may contract with the higher education coordinating board for collection of repayments under this section.

(5) Receipts from the payment of principal or interest paid by or on behalf of participants shall be deposited with the office and shall be used to cover the costs of granting the conditional scholarships, maintaining necessary records, and making collections under subsection (4) of this section. The office shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant conditional scholarships to eligible students. [1994 c 234 § 7.]

### Chapter 28B.106 RCW

#### COLLEGE SAVINGS BOND PROGRAM

##### Sections

28B.106.005	Findings—Purpose.
28B.106.010	Definitions.
28B.106.020	Bond authorization—Issuance—Requirements.
28B.106.030	Bond sale proceeds—Deposit—Use.
28B.106.040	Higher education bond retirement fund of 1988—Creation—Use—Use of debt-limit general fund bond retirement account.
28B.106.050	Additional means to raise money for bond retirement.
28B.106.060	Bonds to be legal investment.
28B.106.070	Publicity—Marketing strategies and educational programs.
28B.106.080	Interest on bonds exempt from any state income tax.
28B.106.901	Short title.
28B.106.902	Severability—1988 c 125.

**28B.106.005 Findings—Purpose.** The legislature finds it essential that this and future generations of children be allowed the fullest opportunity to learn and to develop their intellectual and mental capacities and skills at the post-secondary level. The legislature is greatly concerned about the ever-increasing costs of obtaining higher education. The purpose of this chapter is to assist Washington residents in their quest for higher education and to encourage financial planning to meet higher education costs by creating a college savings bond program. [1988 c 125 § 8.]

**28B.106.010 Definitions.** The following definitions shall apply throughout this chapter, unless the context clearly indicates otherwise:

(1) "College savings bonds" or "bonds" are Washington state general obligation bonds, issued under the authority of and in accordance with this chapter.

(2) "Board" means the higher education coordinating board, or any successor thereto. [1988 c 125 § 9.]

**28B.106.020 Bond authorization—Issuance—Requirements.** For the purpose of providing funds for the acquisition, construction, remodeling, furnishing, and equipping of state buildings and facilities for the state institutions of higher education, including facilities for the \*state community college system, and to provide for the administrative costs of such projects, including costs of bond issuance and retirement, salaries and related costs of officials and employees of the state, costs of credit enhancement agreements, and other expenses incidental to the administration of capital projects, the state finance committee is authorized to issue college savings bonds of the state of Washington in the sum of fifty million dollars, or so much thereof as may be required, to finance these projects and all costs incidental thereto.

Bonds authorized in this section shall be sold in such a manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. The bonds shall not be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. The state finance committee may obtain insurance or letters of credit and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of college savings bonds authorized in this section. Promissory notes or other obligations issued pursuant to this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the same relate.

If, and to the extent that the state finance committee determines it is economically feasible and in the best interest of the state, the bonds shall be sold at a deep discount from their par value.

College savings bonds authorized under this section shall be sold in accordance with chapter 39.42 RCW. [1988 c 125 § 10.]

**\*Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

**28B.106.030 Bond sale proceeds—Deposit—Use.** The proceeds from the sale of the bonds authorized in RCW 28B.106.020 shall be deposited in the state building construction account of the general fund in the state treasury, and shall be used exclusively for the purposes specified in RCW 28B.106.020 and for the payment of expenses incurred in the issuance and sale of the college savings bonds. [1988 c 125 § 11.]

**28B.106.040 Higher education bond retirement fund of 1988—Creation—Use—Use of debt-limit general fund bond retirement account.** The state higher education bond retirement fund of 1988 is hereby created in the state treasury, and shall be used for the payment of principal and interest on the college savings bonds.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on such bonds in accordance with the provisions of the bond proceedings. The state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state higher education bond retirement fund of 1988, such amounts and at such times as are required by the bond proceedings. If directed by the state finance committee by resolution, the state higher education bond retirement fund of 1988, or any portion thereof, may be deposited in trust with any qualified public depository.

The owner and holder of each of the college savings bonds or the trustee for the owner and holder of any of the college savings bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

If a debt-limit general fund bond retirement account is created in the state treasury by chapter 456, Laws of 1997 and becomes effective prior to the issuance of any of the bonds authorized by this chapter, the debt-limit general fund bond retirement account shall be used for the purposes of this chapter in lieu of the state higher education bond retirement fund of 1988. [1997 c 456 § 11; 1988 c 125 § 12.]

**Severability—1997 c 456:** See RCW 43.99L.900.

**Effective date—1997 c 456 §§ 9-43:** See RCW 43.99M.901.

**28B.106.050 Additional means to raise money for bond retirement.** The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the college savings bonds. RCW 28B.106.040 shall not be deemed to provide an exclusive method for the payment thereof. [1988 c 125 § 13.]

**28B.106.060 Bonds to be legal investment.** The college savings bonds shall be a legal investment for all state funds or funds under state control and for all funds of any other public body. [1988 c 125 § 14.]

**28B.106.070 Publicity—Marketing strategies and educational programs.** The board and the state finance committee shall create and implement marketing strategies and educational programs designed to publicize the college savings bond program to Washington residents. [1988 c 125 § 16.]

**28B.106.080 Interest on bonds exempt from any state income tax.** Any interest earned on the bonds shall not be income for the purposes of any state income tax. [1988 c 125 § 17.]

**28B.106.901 Short title.** This chapter may be known and cited as the college savings bond act of 1988. [1988 c 125 § 18.]

**28B.106.902 Severability—1988 c 125.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 125 § 20.]

(2004 Ed.)

## Chapter 28B.108 RCW AMERICAN INDIAN ENDOWED SCHOLARSHIP PROGRAM

### Sections

28B.108.005	Findings.
28B.108.010	Definitions.
28B.108.020	Program created—Duties of the higher education coordinating board—Screening committee.
28B.108.030	Advisory committee.
28B.108.040	Award of scholarships—Amount—Duration.
28B.108.050	Scholarship trust fund established.
28B.108.060	Scholarship endowment fund established.
28B.108.070	State matching funds.

**28B.108.005 Findings.** The legislature recognizes the benefit to our state and nation of providing equal educational opportunities for all races and nationalities. The legislature finds that American Indian students are underrepresented in Washington's colleges and universities. The legislature also finds that past discriminatory practices have resulted in this underrepresentation. Creating an endowed scholarship program to help American Indian students obtain a higher education will help to rectify past discrimination by providing a means and an incentive for American Indian students to pursue a higher education. The state will benefit from contributions made by American Indians who participate in a program of higher education. [1990 c 287 § 1.]

**28B.108.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Institution of higher education" or "institution" means a college or university in the state of Washington which is accredited by an accrediting association recognized as such by rule of the higher education coordinating board.

(2) "Board" means the higher education coordinating board.

(3) "Eligible student" or "student" means an American Indian who is a financially needy student, as defined in RCW 28B.92.030, who is a resident student, as defined by RCW 28B.15.012(2), who is a full-time student at an institution of higher education, and who promises to use his or her education to benefit other American Indians. [2004 c 275 § 69; 1991 c 228 § 10; 1990 c 287 § 2.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

### **28B.108.020 Program created—Duties of the higher education coordinating board—Screening committee.**

The American Indian endowed scholarship program is created. The program shall be administered by the higher education coordinating board. In administering the program, the board's powers and duties shall include but not be limited to:

(1) Selecting students to receive scholarships, with the assistance of a screening committee composed of persons involved in helping American Indian students to obtain a higher education. The membership of the committee may include, but is not limited to representatives of: Indian tribes, urban Indians, the governor's office of Indian affairs, the Washington state Indian education association, and institutions of higher education;

(2) Adopting necessary rules and guidelines;

- (3) Publicizing the program;
- (4) Accepting and depositing donations into the endowment fund created in RCW 28B.108.060;
- (5) Requesting and accepting from the state treasurer moneys earned from the trust fund and the endowment fund created in RCW 28B.108.050 and 28B.108.060;
- (6) Soliciting and accepting grants and donations from public and private sources for the program; and
- (7) Naming scholarships in honor of those American Indians from Washington who have acted as role models. [1990 c 287 § 3.]

**28B.108.030 Advisory committee.** The higher education coordinating board shall establish an advisory committee to assist in program design and to develop criteria for the screening and selection of scholarship recipients. The committee shall be composed of representatives of the same groups as the screening committee described in RCW 28B.108.020. The criteria shall assess the student's social and cultural ties to an American Indian community within the state. The criteria shall include a priority for upper-division or graduate students. The criteria may include a priority for students who are majoring in program areas in which expertise is needed by the state's American Indians. [1991 c 228 § 11; 1990 c 287 § 4.]

**28B.108.040 Award of scholarships—Amount—Duration.** The board may award scholarships to eligible students from moneys earned from the endowment fund created in RCW 28B.108.060, or from funds appropriated to the board for this purpose, or from any private donations, or from any other funds given to the board for this program. For an undergraduate student, the amount of the scholarship shall not exceed the student's demonstrated financial need. For a graduate student, the amount of the scholarship shall not exceed the student's demonstrated need; or the stipend of a teaching assistant, including tuition, at the University of Washington; whichever is higher. In calculating a student's need, the board shall consider the student's costs for tuition, fees, books, supplies, transportation, room, board, personal expenses, and child care. The student's scholarship awarded under this chapter shall not exceed the amount received by a student attending a state research university. A student is eligible to receive a scholarship for a maximum of five years. However, the length of the scholarship shall be determined at the discretion of the board. [1990 c 287 § 5.]

**28B.108.050 Scholarship trust fund established.** The American Indian endowed scholarship trust fund is established. The trust fund shall be administered by the state treasurer. Funds appropriated by the legislature for the trust fund shall be deposited into the fund. At the request of the higher education coordinating board, and when conditions set forth in RCW 28B.108.070 are met, the treasurer shall deposit state matching moneys in the trust fund into the American Indian endowment fund. No appropriation is required for expenditures from the trust fund. [1991 sp.s. c 13 § 107; 1990 c 287 § 6.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

[Title 28B RCW—page 212]

**28B.108.060 Scholarship endowment fund established.** The American Indian scholarship endowment fund is established. The endowment fund shall be administered by the state treasurer.

(1) Moneys received from the higher education coordinating board, private donations, state matching moneys, and funds received from any other source may be deposited into the endowment fund. Private moneys received as a gift subject to conditions may be deposited into the fund.

(2) At the request of the higher education coordinating board, the treasurer shall release earnings from the endowment fund to the board for scholarships. No appropriation is required for expenditures from the endowment fund.

(3) When notified by the higher education coordinating board or by court order that a condition attached to a gift of private moneys in the fund has failed, the treasurer shall release those moneys to the donors according to the terms of the conditional gift.

(4) The principal of the endowment fund shall not be invaded. The release of moneys under subsection (3) of this section shall not constitute an invasion of corpus.

(5) The earnings on the fund shall be used solely for the purposes set forth in RCW 28B.108.040, except when the terms of a conditional gift of private moneys in the fund require that a portion of earnings on such moneys be reinvested in the fund. [1993 c 372 § 1; 1991 sp.s. c 13 § 110; 1990 c 287 § 7.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**28B.108.070 State matching funds.** The higher education coordinating board may request that the treasurer deposit fifty thousand dollars of state matching funds into the American Indian scholarship endowment fund when the board can match the state funds with an equal amount of private cash donations, including conditional gifts. Private cash donations means moneys from nonstate sources that include, but are not limited to, federal moneys, tribal moneys, and assessments by commodity commissions authorized to conduct research activities, including but not limited to research studies authorized under RCW 15.66.030 and 15.65.040. [1993 c 372 § 2; 1991 c 228 § 12; 1990 c 287 § 8.]

## Chapter 28B.109 RCW

### WASHINGTON INTERNATIONAL EXCHANGE SCHOLARSHIP PROGRAM

#### Sections

- 28B.109.010 Definitions.
- 28B.109.020 Washington international exchange scholarship program—Administration by higher education coordinating board.
- 28B.109.030 Reciprocal agreements to attend foreign institutions.
- 28B.109.040 Washington international exchange student scholarships.
- 28B.109.050 Washington international exchange trust fund.
- 28B.109.060 Washington international exchange scholarship endowment fund.
- 28B.109.070 Washington international exchange scholarship endowment fund—State matching funds.
- 28B.109.080 Scholarship recipients—Service obligation.

**28B.109.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(2004 Ed.)

(1) "Board" means the higher education coordinating board.

(2) "Eligible participant" means an international student whose country of residence has a trade relationship with the state of Washington.

(3) "Institution of higher education" or "institution" means a college or university in the state of Washington that is accredited by an accrediting association recognized as such by rule of the board.

(4) "Service obligation" means volunteering for a minimum number of hours as established by the board based on the amount of scholarship award, to speak to or teach groups of Washington citizens, including but not limited to elementary, middle, and high schools, service clubs, and universities.

(5) "Washington international exchange scholarship program" means a scholarship award for a period not to exceed one academic year to attend a Washington institution of higher education made to an international student whose country has an established trade relationship with Washington. [1996 c 253 § 401.]

**Findings—Purpose—1996 c 253:** "(1) The legislature finds that:

(a) Educational, cultural, and business exchange programs are important in developing mutually beneficial relationships between Washington state and other countries;

(b) Enhanced international trade, cultural, and educational opportunities are developed when cities, counties, ports, and others establish sister relationships with their counterparts in other countries;

(c) It is important to the economic future of the state to promote international awareness and understanding; and

(d) The state's economy and economic well-being depend heavily on foreign trade and international exchanges.

(2) The legislature declares that the purpose of chapter 253, Laws of 1996 is to:

(a) Enhance Washington state's ability to develop relationships and contacts throughout the world enabling us to expand international education and trade opportunities for all citizens of the state;

(b) Develop and maintain an international data base of contacts in international trade markets;

(c) Encourage outstanding international students who reside in countries with existing trade relationships to attend Washington state's institutions of higher education; and

(d) Encourage Washington students to attend institutions of higher education located in countries with existing trading relationships with Washington state." [1996 c 253 § 1.]

**Severability—1996 c 253:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 253 § 504.]

**Part headings not law—1996 c 253:** "Part headings as used in this act constitute no part of the law." [1996 c 253 § 505.]

**28B.109.020 Washington international exchange scholarship program—Administration by higher education coordinating board.** The Washington international exchange scholarship program is created subject to funding under RCW 28B.109.060. The program shall be administered by the board. In administering the program, the board may:

(1) Convene an advisory committee that may include but need not be limited to representatives of the office of the superintendent of public instruction, the department of community, trade, and economic development, the secretary of state, private business, and institutions of higher education;

(2) Select students to receive the scholarship with the assistance of a screening committee composed of leaders in business, international trade, and education;

(3) Adopt necessary rules and guidelines including rules for disbursing scholarship funds to participants;

(4) Publicize the program;

(5) Solicit and accept grants and donations from public and private sources for the program;

(6) Establish and notify participants of service obligations; and

(7) Establish a formula for selecting the countries from which participants may be selected in consultation with the department of community, trade, and economic development. [1996 c 253 § 402.]

**Findings—Purpose—Severability—Part headings not law—1996 c 253:** See notes following RCW 28B.109.010.

**28B.109.030 Reciprocal agreements to attend foreign institutions.** The board may negotiate and enter into a reciprocal agreement with foreign countries that have international students attending institutions in Washington. The goal of the reciprocal agreements shall be to allow Washington students enrolled in an institution of higher education to attend an international institution under similar terms and conditions. [1996 c 253 § 403.]

**Findings—Purpose—Severability—Part headings not law—1996 c 253:** See notes following RCW 28B.109.010.

**28B.109.040 Washington international exchange student scholarships.** If funds are available, the board shall select students yearly to receive a Washington international exchange student scholarship from moneys earned from the Washington international exchange scholarship endowment fund created in RCW 28B.109.060, from funds appropriated to the board for this purpose, or from any private donations, or from any other funds given to the board for this program. [1996 c 253 § 404.]

**Findings—Purpose—Severability—Part headings not law—1996 c 253:** See notes following RCW 28B.109.010.

**28B.109.050 Washington international exchange trust fund.** The Washington international exchange trust fund is established in the custody of the state treasurer. Any funds appropriated by the legislature for the trust fund shall be deposited into the fund. At the request of the board, and when conditions set forth in RCW 28B.109.070 are met, the treasurer shall deposit state matching moneys from the Washington international exchange trust fund into the Washington international exchange scholarship endowment fund. No appropriation is required for expenditures from the trust fund. [1996 c 253 § 405.]

**Findings—Purpose—Severability—Part headings not law—1996 c 253:** See notes following RCW 28B.109.010.

**28B.109.060 Washington international exchange scholarship endowment fund.** The Washington international exchange scholarship endowment fund is established in the custody of the state treasurer. Moneys received from the private donations and funds received from any other source may be deposited into the endowment fund. At the request of the board, the treasurer shall release earnings from the endowment fund to the board for scholarships. No appropriation is required for expenditures from the endowment fund. The principal of the endowment fund shall not be

invaded. The earnings on the fund shall be used solely for the purposes in this chapter. [1996 c 253 § 406.]

**Findings—Purpose—Severability—Part headings not law—1996 c 253:** See notes following RCW 28B.109.010.

**28B.109.070 Washington international exchange scholarship endowment fund—State matching funds.**

The board may request that the treasurer deposit state matching funds into the Washington international exchange scholarship endowment fund when the board can match the state funds with an equal amount of private cash donations, including conditional gifts. [1996 c 253 § 407.]

**Findings—Purpose—Severability—Part headings not law—1996 c 253:** See notes following RCW 28B.109.010.

**28B.109.080 Scholarship recipients—Service obligation.** Each Washington international exchange scholarship recipient shall agree to complete the service obligation as defined by the board. [1996 c 253 § 408.]

**Findings—Purpose—Severability—Part headings not law—1996 c 253:** See notes following RCW 28B.109.010.

## Chapter 28B.110 RCW

### GENDER EQUALITY IN HIGHER EDUCATION

#### Sections

28B.110.010	Discrimination prohibited.
28B.110.020	Definitions.
28B.110.030	Rules and guidelines.
28B.110.040	Compliance—Reports—Community colleges.
28B.110.050	Violation of chapter.
28B.110.060	Existing law and procedures.
28B.110.070	Distribution to students.
28B.110.900	Severability—1989 c 341.

**28B.110.010 Discrimination prohibited.** Article XXXI, section 1, Amendment 61 of the Washington state Constitution requires equal treatment of all citizens, regardless of gender. Recognizing the benefit to our state and nation of equal educational opportunities for all students, discrimination on the basis of gender against any student in the institutions of higher education of Washington state is prohibited. [1989 c 341 § 1.]

**28B.110.020 Definitions.** For purposes of this chapter, "institutions of higher education" or "institutions" include the state universities, regional universities, The Evergreen State College, and the community colleges. [1989 c 341 § 2.]

**28B.110.030 Rules and guidelines.** In consultation with institutions of higher education, the higher education coordinating board shall develop rules and guidelines to eliminate possible gender discrimination to students, including sexual harassment, at institutions of higher education as defined in RCW 28B.10.016. The rules and guidelines shall include but not be limited to access to academic programs, student employment, counseling and guidance services, financial aid, recreational activities including club sports, and intercollegiate athletics.

(1) With respect to higher education student employment, all institutions shall be required to:

(a) Make no differentiation in pay scales on the basis of gender;

(b) Assign duties without regard to gender except where there is a bona fide occupational qualification as approved by the Washington human rights commission;

(c) Provide the same opportunities for advancement to males and females; and

(d) Make no difference in the conditions of employment on the basis of gender in areas including, but not limited to, hiring practices, leaves of absence, and hours of employment.

(2) With respect to admission standards, admissions to academic programs shall be made without regard to gender.

(3) Counseling and guidance services for students shall be made available to all students without regard to gender. All academic and counseling personnel shall be required to stress access to all career and vocational opportunities to students without regard to gender.

(4) All academic programs shall be available to students without regard to gender.

(5) With respect to recreational activities, recreational activities shall be offered to meet the interests of students. Institutions which provide the following shall do so with no disparities based on gender: Equipment and supplies; medical care; services and insurance; transportation and per diem allowances; opportunities to receive coaching and instruction; laundry services; assignment of game officials; opportunities for competition, publicity, and awards; and scheduling of games and practice times, including use of courts, gyms, and pools. Each institution which provides showers, toilets, lockers, or training room facilities for recreational purposes shall provide comparable facilities for both males and females.

(6) With respect to financial aid, financial aid shall be equitably awarded by type of aid, with no disparities based on gender.

(7) With respect to intercollegiate athletics, institutions that provide the following shall do so with no disparities based on gender:

(a) Benefits and services including, but not limited to, equipment and supplies; medical services; services and insurance; transportation and per diem allowances; opportunities to receive coaching and instruction; scholarships and other forms of financial aid; conditioning programs; laundry services; assignment of game officials; opportunities for competition, publicity, and awards; and scheduling of games and practice times, including use of courts, gyms, and pools. Each institution which provides showers, toilets, lockers, or training room facilities for athletic purposes shall provide comparable facilities for both males and females.

(b) Opportunities to participate in intercollegiate athletics. Institutions shall provide equitable opportunities to male and female students.

(c) Male and female coaches and administrators. Institutions shall attempt to provide some coaches and administrators of each gender to act as role models for male and female athletes.

(8) Each institution shall develop and distribute policies and procedures for handling complaints of sexual harassment. [1989 c 341 § 3.]

**28B.110.040 Compliance—Reports—Community colleges.** The executive director of the higher education coordinating board, in consultation with the council of presidents and the state board for community and technical colleges, shall monitor the compliance by institutions of higher education with this chapter.

(1) The board shall establish a timetable and guidelines for compliance with this chapter.

(2) By November 30, 1990, each institution shall submit to the board for approval a plan to comply with the requirements of RCW 28B.110.030. The plan shall contain measures to ensure institutional compliance with the provisions of this chapter by September 30, 1994. If participation in activities, such as intercollegiate athletics and matriculation in academic programs is not proportionate to the percentages of male and female enrollment, the plan should outline efforts to identify barriers to equal participation and to encourage gender equity in all aspects of college and university life.

(3) The board shall report every four years, beginning December 31, 1998, to the governor and the higher education committees of the house of representatives and the senate on institutional efforts to comply with this chapter. The report shall include recommendations on measures to assist institutions with compliance. This report may be combined with the report required in RCW 28B.15.465.

(4) The board may delegate to the state board for community and technical colleges any or all responsibility for community college compliance with the provisions of this chapter. [1997 c 5 § 5; 1989 c 341 § 4.]

**Effective date—1997 c 5:** See note following RCW 28B.15.455.

**28B.110.050 Violation of chapter.** A violation of this chapter shall constitute an unfair practice under chapter 49.60 RCW, the law against discrimination. All rights and remedies under chapter 49.60 RCW, including the right to file a complaint with the human rights commission and to bring a civil action, shall apply. [1989 c 341 § 5.]

**28B.110.060 Existing law and procedures.** This chapter shall supplement, and shall not supersede, existing law and procedures relating to unlawful discrimination based on gender. [1989 c 341 § 6.]

**28B.110.070 Distribution to students.** Institutions of higher education shall distribute copies of the provisions of this chapter to all students. [1989 c 341 § 7.]

**28B.110.900 Severability—1989 c 341.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 341 § 8.]

## Chapter 28B.115 RCW

### HEALTH PROFESSIONAL CONDITIONAL SCHOLARSHIP PROGRAM

#### Sections

28B.115.010	Legislative findings.
28B.115.020	Definitions.
28B.115.030	Program established—Duties of board.

(2004 Ed.)

28B.115.040	Technical assistance for rural communities.
28B.115.050	Planning committee—Criteria for selecting participants.
28B.115.060	Eligible credentialed health care professions—Required service obligations.
28B.115.070	Eligible credentialed health care professions—Health professional shortage areas.
28B.115.080	Annual award amount—Scholarship preferences—Required service obligations.
28B.115.090	Loan repayment and scholarship awards.
28B.115.100	Discrimination by participants prohibited—Violation.
28B.115.110	Participant obligation—Repayment obligation.
28B.115.120	Participant obligation—Scholarships.
28B.115.130	Health professional loan repayment and scholarship program fund.
28B.115.140	Transfer of program administration.
28B.115.900	Effective date—1989 1st ex.s. c 9.
28B.115.901	Severability—1989 1st ex.s. c 9.
28B.115.902	Application to scope of chapter—Captions not law—1991 c 332.

*Maternity care provider loan repayment: RCW 74.09.820.*

*Rural health access account: RCW 43.70.325.*

**28B.115.010 Legislative findings.** The legislature finds that changes in demographics, the delivery of health care services, and an escalation in the cost of educating health professionals has resulted in shortages of health professionals. A poor distribution of health care professionals has resulted in a surplus of some professionals in some areas of the state and a shortage of others in other parts of the state such as in the more rural areas. The high cost of health professional education requires that health care practitioners command higher incomes to repay the financial obligations incurred to obtain the required training. Health professional shortage areas are often areas that have troubled economies and lower per capita incomes. These areas often require more services because the health care needs are greater due to poverty or because the areas are difficult to service due to geographic circumstances. The salary potentials for shortage areas are often not as favorable when compared to nonshortage areas and practitioners are unable to serve. The legislature further finds that encouraging health professionals to serve in shortage areas is essential to assure continued access to health care for persons living in these parts of the state. [1989 1st ex.s. c 9 § 716. Formerly RCW 18.150.010.]

**28B.115.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the higher education coordinating board.

(2) "Department" means the state department of health.

(3) "Eligible education and training programs" means education and training programs approved by the department that lead to eligibility for a credential as a credentialed health care professional.

(4) "Eligible expenses" means reasonable expenses associated with the costs of acquiring an education such as tuition, books, equipment, fees, room and board, and other expenses determined by the board.

(5) "Eligible student" means a student who has been accepted into an eligible education or training program and has a declared intention to serve in a health professional shortage area upon completion of the education or training program.

(6) "Forgiven" or "to forgive" or "forgiveness" means to render health care services in a health professional shortage

area in the state of Washington in lieu of monetary repayment.

(7) "Health professional shortage areas" means those areas where credentialed health care professionals are in short supply as a result of geographic maldistribution or as the result of a short supply of credentialed health care professionals in specialty health care areas and where vacancies exist in serious numbers that jeopardize patient care and pose a threat to the public health and safety. The department shall determine health professional shortage areas as provided for in RCW 28B.115.070, or until June 1, 1992, as provided for in RCW 28B.115.060. In making health professional shortage area designations in the state the department may be guided by applicable federal standards for "health manpower shortage areas," and "medically underserved areas," and "medically underserved populations."

(8) "Credentialed health care profession" means a health care profession regulated by a disciplining authority in the state of Washington under RCW 18.130.040 or by the state board of pharmacy under chapter 18.64 RCW and designated by the department in RCW 28B.115.070, or until June 1, 1992, as established in RCW 28B.115.060 as a profession having shortages of credentialed health care professionals in the state.

(9) "Credentialed health care professional" means a person regulated by a disciplining authority in the state of Washington to practice a health care profession under RCW 18.130.040 or by the state board of pharmacy under chapter 18.64 RCW.

(10) "Loan repayment" means a loan that is paid in full or in part if the participant renders health care services in a health professional shortage area as defined by the department.

(11) "Nonshortage rural area" means a nonurban area of the state of Washington that has not been designated as a rural physician shortage area. The department shall identify the nonshortage rural areas of the state.

(12) "Participant" means a credentialed health care professional who has received a loan repayment award and has commenced practice as a credentialed health care provider in a designated health professional shortage area or an eligible student who has received a scholarship under this program.

(13) "Program" means the health professional loan repayment and scholarship program.

(14) "Required service obligation" means an obligation by the participant to provide health care services in a health professional shortage area for a period to be established as provided for in this chapter.

(15) "Rural physician shortage area" means rural geographic areas where primary care physicians are in short supply as a result of geographic maldistributions and where their limited numbers jeopardize patient care and pose a threat to public health and safety. The department shall designate rural physician shortage areas.

(16) "Satisfied" means paid-in-full.

(17) "Scholarship" means a loan that is forgiven in whole or in part if the recipient renders health care services in a health professional shortage area.

(18) "Sponsoring community" means a rural hospital or hospitals as authorized in chapter 70.41 RCW, a rural health care facility or facilities as authorized in chapter 70.175

RCW, or a city or county government or governments. [1991 c 332 § 15; 1989 1st ex.s. c 9 § 717. Formerly RCW 18.150.020.]

#### **28B.115.030 Program established—Duties of board.**

The health professional loan repayment and scholarship program is established for credentialed health professionals serving in health professional shortage areas. The program shall be administered by the higher education coordinating board. In administering this program, the board shall:

(1) Select credentialed health care professionals to participate in the loan repayment portion of the loan repayment and scholarship program and select eligible students to participate in the scholarship portion of the loan repayment and scholarship program;

(2) Adopt rules and develop guidelines to administer the program;

(3) Collect and manage repayments from participants who do not meet their service obligations under this chapter;

(4) Publicize the program, particularly to maximize participation among individuals in shortage areas and among populations expected to experience the greatest growth in the work force;

(5) Solicit and accept grants and donations from public and private sources for the program; and

(6) Develop criteria for a contract for service in lieu of the service obligation where appropriate, that may be a combination of service and payment. [1991 c 332 § 16; 1989 1st ex.s. c 9 § 718. Formerly RCW 18.150.030.]

**28B.115.040 Technical assistance for rural communities.** The department may provide technical assistance to rural communities desiring to become sponsoring communities for the purposes of identification of prospective students for the program, assisting prospective students to apply to an eligible education and training program, making formal agreements with prospective students to provide credentialed health care services in the community, forming agreements between rural communities in a service area to share credentialed health care professionals, and fulfilling any matching requirements. [1991 c 332 § 17.]

**28B.115.050 Planning committee—Criteria for selecting participants.** The board shall establish a planning committee to assist it in developing criteria for the selection of participants. The board shall include on the planning committee representatives of the department, the department of social and health services, appropriate representatives from health care facilities, provider groups, consumers, the state board for community and technical colleges, the superintendent of public instruction, and other appropriate public and private agencies and organizations. The criteria may require that some of the participants meet the definition of "needy student" under RCW 28B.92.030. [2004 c 275 § 70; 1991 c 332 § 18; 1989 1st ex.s. c 9 § 719. Formerly RCW 18.150.040.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.115.060 Eligible credentialed health care professions—Required service obligations.** Until June 1, 1992, the board, in consultation with the department, shall:

(1) Establish loan repayments for persons authorized to practice one of the following credentialed health care professions: Medicine pursuant to chapter 18.57, 18.57A, 18.71 or 18.71A RCW, nursing pursuant to \*chapter 18.78 or 18.88 RCW, or dentistry pursuant to chapter 18.32 RCW. The amount of the loan repayment shall not exceed fifteen thousand dollars per year for a maximum of five years per individual. The required service obligation in a health professional shortage area for loan repayment shall be three years;

(2) Establish a scholarship program for eligible students who have been accepted into an eligible education or training program leading to a credential in one of the following credentialed health care professions: Nursing pursuant to \*chapter 18.78 or 18.88 RCW who declare the intent to serve in a nurse shortage area as defined by the department upon completion of an education or training program and agree to a five-year service obligation. The amount of the scholarship shall not exceed three thousand dollars per year for a maximum of five years;

(3) Establish a scholarship program for eligible students who have been accepted into an eligible education or training program leading to a credential in one of the following credentialed health care professions: Medicine pursuant to chapter 18.57 or 18.71 RCW who declare an intent to serve as a primary care physician in a rural area in the state of Washington upon completion of the education program and agree to a five-year service obligation and who may receive a scholarship of no more than fifteen thousand dollars per year for five years.

In determining scholarship awards for prospective physicians, the selection criteria shall include requirements that recipients declare an interest in serving in rural areas of the state of Washington. Preference for scholarships shall be given to students who reside in a rural physician shortage area or a nonshortage rural area of the state prior to admission to the eligible education and training program in medicine. Highest preference shall be given to students seeking admission who are recommended by sponsoring communities and who declare the intent of serving as a physician in a rural area. The board may require the sponsoring community located in a nonshortage rural area to financially contribute to the eligible expenses of a medical student if the student will serve in the nonshortage rural area;

(4) Establish a scholarship program for eligible students who have been accepted into an eligible education or training program leading to a credential in one of the following credentialed health care professions: Midwifery pursuant to chapter 18.50 RCW or advanced registered nurse practitioner certified nurse midwifery under \*chapter 18.88 RCW who declare an intent to serve as a midwife in a midwifery shortage area in the state of Washington, as defined by the department, upon completion of the education program and agree to a five-year service obligation and who may receive a scholarship of no more than four thousand dollars per year for three years;

(5) Establish a scholarship program for eligible students who have been accepted into an eligible education or training program leading to a credential in the following credentialed

health care profession: Pharmacy pursuant to chapter 18.64 RCW who declare an intent to serve as a pharmacist in a pharmacy shortage area in the state of Washington, as defined by the department, upon completion of the education program and agree to a five-year service obligation and who may receive a scholarship of no more than four thousand dollars per year for three years;

(6) Honor loan repayment and scholarship contract terms negotiated between the board and participants prior to May 21, 1991, concerning loan repayment and scholarship award amounts and service obligations authorized under chapter \*\*18.150, \*\*\*28B.104, or 70.180 RCW. [1991 c 332 § 19.]

**Reviser's note:** \*(1) Chapters 18.78 and 18.88 RCW were repealed by 1994 sp.s. c 9 § 433, effective July 1, 1994.

\*\* (2) Chapter 18.150 RCW was recodified as chapter 28B.115 RCW by 1991 c 332 § 36.

\*\*\* (3) Chapter 28B.104 RCW was repealed by 1991 sp.s. c 27 § 2.

**28B.115.070 Eligible credentialed health care professions—Health professional shortage areas.** After June 1, 1992, the department, in consultation with the board and the department of social and health services, shall:

(1) Determine eligible credentialed health care professions for the purposes of the loan repayment and scholarship program authorized by this chapter. Eligibility shall be based upon an assessment that determines that there is a shortage or insufficient availability of a credentialed profession so as to jeopardize patient care and pose a threat to the public health and safety. The department shall consider the relative degree of shortages among professions when determining eligibility. The department may add or remove professions from eligibility based upon the determination that a profession is no longer in shortage. Should a profession no longer be eligible, participants or eligible students who have received scholarships shall be eligible to continue to receive scholarships or loan repayments until they are no longer eligible or until their service obligation has been completed;

(2) Determine health professional shortage areas for each of the eligible credentialed health care professions. [2003 c 278 § 3; 1991 c 332 § 20.]

**Findings—2003 c 278:** See note following RCW 28C.18.120.

**28B.115.080 Annual award amount—Scholarship preferences—Required service obligations.** After June 1, 1992, the board, in consultation with the department and the department of social and health services, shall:

(1) Establish the annual award amount for each credentialed health care profession which shall be based upon an assessment of reasonable annual eligible expenses involved in training and education for each credentialed health care profession. The annual award amount may be established at a level less than annual eligible expenses. The annual award amount shall be established by the board for each eligible health profession. The awards shall not be paid for more than a maximum of five years per individual;

(2) Determine any scholarship awards for prospective physicians in such a manner to require the recipients declare an interest in serving in rural areas of the state of Washington. Preference for scholarships shall be given to students who reside in a rural physician shortage area or a nonshortage rural area of the state prior to admission to the eligible educa-

tion and training program in medicine. Highest preference shall be given to students seeking admission who are recommended by sponsoring communities and who declare the intent of serving as a physician in a rural area. The board may require the sponsoring community located in a nonshortage rural area to financially contribute to the eligible expenses of a medical student if the student will serve in the nonshortage rural area;

(3) Establish the required service obligation for each credentialed health care profession, which shall be no less than three years or no more than five years. The required service obligation may be based upon the amount of the scholarship or loan repayment award such that higher awards involve longer service obligations on behalf of the participant;

(4) Determine eligible education and training programs for purposes of the scholarship portion of the program;

(5) Honor loan repayment and scholarship contract terms negotiated between the board and participants prior to May 21, 1991, concerning loan repayment and scholarship award amounts and service obligations authorized under chapter 28B.115, \*28B.104, or 70.180 RCW. [1993 c 492 § 271; 1991 c 332 § 21.]

**\*Reviser's note:** Chapter 28B.104 RCW was repealed by 1991 sp.s. c 27 § 2.

**Finding—1993 c 492:** "The legislature finds that the successful implementation of health care reform will depend on a sufficient supply of primary health care providers throughout the state. Many rural and medically underserved urban areas lack primary health care providers and because of this, basic health care services are limited or unavailable to populations living in these areas. The legislature has in recent years initiated new programs to address these provider shortages but funding has been insufficient and additional specific provider shortages remain." [1993 c 492 § 269.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**28B.115.090 Loan repayment and scholarship awards.** (1) The board may grant loan repayment and scholarship awards to eligible participants from the funds appropriated for this purpose, or from any private or public funds given to the board for this purpose. Participants are ineligible to receive loan repayment if they have received a scholarship from programs authorized under this chapter or chapter 70.180 RCW or are ineligible to receive a scholarship if they have received loan repayment authorized under this chapter or chapter 28B.115 RCW.

(2) Funds appropriated for the program, including reasonable administrative costs, may be used by the board for the purposes of loan repayments or scholarships. The board shall annually establish the total amount of funding to be awarded for loan repayments and scholarships and such allocations shall be established based upon the best utilization of funding for that year.

(3) One portion of the funding appropriated for the program shall be used by the board as a recruitment incentive for communities participating in the community-based recruitment and retention program as authorized by chapter 70.185 RCW; one portion of the funding shall be used by the board as a recruitment incentive for recruitment activities in state-operated institutions, county public health departments and districts, county human service agencies, federal and state

contracted community health clinics, and other health care facilities, such as rural hospitals that have been identified by the department, as providing substantial amounts of charity care or publicly subsidized health care; one portion of the funding shall be used by the board for all other awards. The board shall determine the amount of total funding to be distributed between the three portions. [2003 c 278 § 4; 1991 c 332 § 22; 1989 1st ex.s. c 9 § 720. Formerly RCW 18.150.050.]

**Findings—2003 c 278:** See note following RCW 28C.18.120.

**28B.115.100 Discrimination by participants prohibited—Violation.** In providing health care services the participant shall not discriminate against a person on the basis of the person's ability to pay for such services or because payment for the health care services provided to such persons will be made under the insurance program established under part A or B of Title XVIII of the federal social security act or under a state plan for medical assistance including Title XIX of the federal social security act or under the state medical assistance program authorized by chapter 74.09 RCW and agrees to accept assignment under section 18.42(b)(3)(B)(ii) of the federal social security act for all services for which payment may be made under part B of Title XVIII of the federal social security act and enters into an appropriate agreement with the department of social and health services for medical assistance under Title XIX of the federal social security act to provide services to individuals entitled to medical assistance under the plan and enters into appropriate agreements with the department of social and health services for medical care services under chapter 74.09 RCW. Participants found by the board or the department in violation of this section shall be declared ineligible for receiving assistance under the program authorized by this chapter. [1991 c 332 § 23.]

**28B.115.110 Participant obligation—Repayment obligation.** Participants in the health professional loan repayment and scholarship program who are awarded loan repayments shall receive payment from the program for the purpose of repaying educational loans secured while attending a program of health professional training which led to a credential as a credentialed health professional in the state of Washington.

(1) Participants shall agree to meet the required service obligation in a designated health professional shortage area.

(2) Repayment shall be limited to eligible educational and living expenses as determined by the board and shall include principal and interest.

(3) Loans from both government and private sources may be repaid by the program. Participants shall agree to allow the board access to loan records and to acquire information from lenders necessary to verify eligibility and to determine payments. Loans may not be renegotiated with lenders to accelerate repayment.

(4) Repayment of loans established pursuant to this program shall begin no later than ninety days after the individual has become a participant. Payments shall be made quarterly, or more frequently if deemed appropriate by the board, to the participant until the loan is repaid or the participant becomes ineligible due to discontinued service in a health professional

shortage area or after the required service obligation when eligibility discontinues, whichever comes first.

(5) Should the participant discontinue service in a health professional shortage area payments against the loans of the participants shall cease to be effective on the date that the participant discontinues service.

(6) Except for circumstances beyond their control, participants who serve less than the required service obligation shall be obligated to repay to the program an amount equal to twice the total amount paid by the program on their behalf in addition to any payments on the unsatisfied portion of the principal and interest. The board shall determine the applicability of this subsection.

(7) The board is responsible for the collection of payments made on behalf of participants from the participants who discontinue service before completion of the required service obligation. The board shall exercise due diligence in such collection, maintaining all necessary records to ensure that the maximum amount of payment made on behalf of the participant is recovered. Collection under this section shall be pursued using the full extent of the law, including wage garnishment if necessary.

(8) The board shall not be held responsible for any outstanding payments on principal and interest to any lenders once a participant's eligibility expires.

(9) The board shall temporarily or, in special circumstances, permanently defer the requirements of this section for eligible students as defined in RCW 28B.10.017. [1991 c 332 § 24; 1991 c 164 § 8; 1989 1st ex.s. c 9 § 721. Formerly RCW 18.150.060.]

**Reviser's note:** This section was amended by 1991 c 164 § 8 and by 1991 c 332 § 24, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

#### **28B.115.120 Participant obligation—Scholarships.**

(1) Participants in the health professional loan repayment and scholarship program who are awarded scholarships incur an obligation to repay the scholarship, with interest, unless they serve the required service obligation in a health professional shortage area in the state of Washington.

(2) The interest rate shall be eight percent for the first four years of repayment and ten percent beginning with the fifth year of repayment.

(3) The period for repayment shall coincide with the required service obligation, with payments of principal and interest accruing quarterly commencing no later than nine months from the date the participant completes or discontinues the course of study or completes or discontinues the required residency. Provisions for deferral of payment shall be determined by the board.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant serves in a health professional shortage area until the entire repayment obligation is satisfied or the borrower ceases to so serve. Should the participant cease to serve in a health professional shortage area of this state before the participant's repayment obligation is completed, payments on the unsatisfied portion of the principal and interest shall begin the next payment period and continue until the remainder of the participant's repayment obligation is satisfied.

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Except for circumstances beyond their control, participants who serve less than the required service obligation shall be obliged to repay to the program an amount equal to twice the total amount paid by the program on their behalf.

(5) The board is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to ensure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary, and shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency. The board is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(6) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited with the board and shall be used to cover the costs of granting the scholarships, maintaining necessary records, and making collections under subsection (5) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant scholarships to eligible students.

(7) Sponsoring communities who financially contribute to the eligible financial expenses of eligible medical students may enter into agreements with the student to require repayment should the student not serve the required service obligation in the community as a primary care physician. The board may develop criteria for the content of such agreements with respect to reasonable provisions and obligations between communities and eligible students.

(8) The board may make exceptions to the conditions for participation and repayment obligations should circumstances beyond the control of individual participants warrant such exceptions. [1993 c 423 § 2; 1991 c 332 § 25.]

#### **28B.115.130 Health professional loan repayment and scholarship program fund.**

(1) Any funds appropriated by the legislature for the health professional loan repayment and scholarship program or any other public or private funds intended for loan repayments or scholarships under this program shall be placed in the account created by this section.

(2) The health professional loan repayment and scholarship program fund is created in custody of the state treasurer. All receipts from the program shall be deposited into the fund. Only the higher education coordinating board, or its designee, may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [1991 c 332 § 28.]

#### **28B.115.140 Transfer of program administration.**

After consulting with the higher education coordinating board, the governor may transfer the administration of this program to another agency with an appropriate mission. [1989 1st ex.s. c 9 § 722. Formerly RCW 18.150.070.]

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**28B.115.900 Effective date—1989 1st ex.s. c 9.** See RCW 43.70.910.

**28B.115.901 Severability—1989 1st ex.s. c 9.** See RCW 43.70.920.

**28B.115.902 Application to scope of chapter—Captions not law—1991 c 332.** See notes following RCW 18.130.010.

**Chapter 28B.119 RCW**  
**WASHINGTON PROMISE**  
**SCHOLARSHIP PROGRAM**

Sections

28B.119.005	Intent—Finding.
28B.119.010	Program design—Parameters.
28B.119.020	Implementation and administration.
28B.119.030	Funding for state need grant program not impaired.
28B.119.040	Requirements for students receiving home-based instruction not affected.
28B.119.050	Washington promise scholarship account.
28B.119.900	Effective date—2002 c 204.

**28B.119.005 Intent—Finding.** The legislature intends to strengthen the link between postsecondary education and K-12 education by creating the Washington promise scholarship program for academically successful high school graduates from low and middle-income families. The legislature finds that, increasingly, an individual's economic viability is contingent on postsecondary educational opportunities, yet the state's full financial obligation is eliminated after the twelfth grade. Students who work hard in kindergarten through twelfth grade and successfully complete high school with high academic marks may not have the financial ability to attend college because they cannot obtain financial aid or the financial aid is insufficient. [2002 c 204 § 1.]

**28B.119.010 Program design—Parameters.** The higher education coordinating board shall design the Washington promise scholarship program based on the following parameters:

(1) Scholarships shall be awarded to students graduating from public and approved private high schools under chapter 28A.195 RCW, students participating in home-based instruction as provided in chapter 28A.200 RCW, and persons twenty-one years of age or younger receiving a GED certificate, who meet both an academic and a financial eligibility criteria.

(a) Academic eligibility criteria shall be defined as follows:

(i) Beginning with the graduating class of 2002, students graduating from public and approved private high schools under chapter 28A.195 RCW must be in the top fifteen percent of their graduating class, as identified by each respective high school at the completion of the first term of the student's senior year; or

(ii) Students graduating from public high schools, approved private high schools under chapter 28A.195 RCW, students participating in home-based instruction as provided in chapter 28A.200 RCW, and persons twenty-one years of age or younger receiving a GED certificate, must equal or

exceed a cumulative scholastic assessment test I score of twelve hundred on their first attempt or must equal or exceed a composite American college test score of twenty-seven on their first attempt.

(b) To meet the financial eligibility criteria, a student's family income shall not exceed one hundred thirty-five percent of the state median family income adjusted for family size, as determined by the higher education coordinating board for each graduating class. Students not meeting the eligibility requirements for the first year of scholarship benefits may reapply for the second year of benefits, but must still meet the income standard set by the board for the student's graduating class.

(2) Promise scholarships are not intended to supplant any grant, scholarship, or tax program related to postsecondary education. If the board finds that promise scholarships supplant or reduce any grant, scholarship, or tax program for categories of students, then the board shall adjust the financial eligibility criteria or the amount of scholarship to the level necessary to avoid supplanting.

(3) Within available funds, each qualifying student shall receive two consecutive annual awards, the value of each not to exceed the full-time annual resident tuition rates charged by Washington's community colleges. The higher education coordinating board shall award scholarships to as many students as possible from among those qualifying under this section.

(4) By October 15th of each year, the board shall determine the award amount of the scholarships, after taking into consideration the availability of funds.

(5) The scholarships may only be used for undergraduate coursework at accredited institutions of higher education in the state of Washington.

(6) The scholarships may be used for undergraduate coursework at Oregon institutions of higher education that are part of the border county higher education opportunity project in RCW 28B.76.685 when those institutions offer programs not available at accredited institutions of higher education in Washington state.

(7) The scholarships may be used for college-related expenses, including but not limited to, tuition, room and board, books, and materials.

(8) The scholarships may not be awarded to any student who is pursuing a degree in theology.

(9) The higher education coordinating board may establish satisfactory progress standards for the continued receipt of the promise scholarship.

(10) The higher education coordinating board shall establish the time frame within which the student must use the scholarship. [2004 c 275 § 60; 2003 c 233 § 5; 2002 c 204 § 2.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.119.020 Implementation and administration.** The higher education coordinating board, with the assistance of the office of the superintendent of public instruction, shall implement and administer the Washington promise scholarship program described in RCW 28B.119.010 as follows:

(1) The first scholarships shall be awarded to eligible students enrolling in postsecondary education in the 2002-03 academic year.

(2) The office of the superintendent of public instruction shall provide information to the higher education coordinating board that is necessary for implementation of the program. The higher education coordinating board and the office of the superintendent of public instruction shall jointly establish a timeline and procedures necessary for accurate and timely data reporting.

(a) For students meeting the academic eligibility criteria as provided in RCW 28B.119.010(1)(a), the office of the superintendent of public instruction shall provide the higher education coordinating board with student names, addresses, birth dates, and unique numeric identifiers.

(b) Public and approved private high schools under chapter 28A.195 RCW shall provide requested information necessary for implementation of the program to the office of the superintendent of public instruction within the established timeline.

(c) All student data is confidential and may be used solely for the purposes of providing scholarships to eligible students.

(3) The higher education coordinating board may adopt rules to implement this chapter. [2002 c 204 § 3.]

**28B.119.030 Funding for state need grant program not impaired.** The Washington promise scholarship program shall not be funded at the expense of the state need grant program as defined in chapter 28B.92 RCW. In administering the state need grant and promise scholarship programs, the higher education coordinating board shall first ensure that eligibility for state need grant recipients is at least fifty-five percent of state median family income. [2004 c 275 § 71; 2002 c 204 § 4.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.119.040 Requirements for students receiving home-based instruction not affected.** This chapter shall not be construed to change current state requirements for students who received home-based instruction under chapter 28A.200 RCW. [2002 c 204 § 5.]

**28B.119.050 Washington promise scholarship account.** (1) The Washington promise scholarship account is created in the custody of the state treasurer. The account shall be a nontreasury account retaining its interest earnings in accordance with RCW 43.79A.040.

(2) The higher education coordinating board shall deposit in the account all money received for the program. The account shall be self-sustaining and consist of funds appropriated by the legislature for the Washington promise scholarship program, private contributions to the program, and refunds of Washington promise scholarships.

(3) Expenditures from the account shall be used for scholarships to eligible students.

(4) With the exception of the operating costs associated with the management of the account by the treasurer's office

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as authorized in chapter 43.79A RCW, the account shall be credited with all investment income earned by the account.

(5) Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW.

(6) Disbursements from the account shall be made only on the authorization of the higher education coordinating board. [2002 c 204 § 6.]

**28B.119.900 Effective date—2002 c 204.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2002]. [2002 c 204 § 9.]

## Chapter 28B.120 RCW

### WASHINGTON FUND FOR INNOVATION AND QUALITY IN HIGHER EDUCATION PROGRAM

#### Sections

28B.120.005	Findings.
28B.120.010	Washington fund for innovation and quality in higher education program—Incentive grants.
28B.120.020	Program administration—Higher education coordinating board.
28B.120.025	Program administration—State board for community and technical colleges.
28B.120.030	Receipt of gifts, grants, and endowments.
28B.120.040	Higher education coordinating board fund for innovation and quality.
28B.120.050	Community and technical college fund for innovation and quality.
28B.120.900	Intent—1999 c 169.

**28B.120.005 Findings.** The legislature finds that encouraging collaboration among the various educational sectors to meet statewide needs will strengthen the entire educational system, kindergarten through twelfth grade and higher education. The legislature also recognizes that the most effective way to develop innovative and collaborative programs is to encourage institutions to develop them voluntarily, in line with established state goals. Through a system of competitive grants, the legislature shall encourage the development of innovative and collaborative solutions to issues of critical statewide need, including:

(1) Recognizing needs of special populations of students;

(2) Furthering the development of learner-centered, technology-assisted course delivery;

(3) Furthering the development of competency-based measurements of student achievement to be used as the basis for awarding degrees and certificates; and

(4) Increasing the collaboration among both public and private sector institutions of higher education. [1999 c 169 § 2; 1991 c 98 § 1.]

**28B.120.010 Washington fund for innovation and quality in higher education program—Incentive grants.** The Washington fund for innovation and quality in higher education program is established. The higher education coordinating board shall administer the program for the purpose of awarding grants in which a four-year institution of higher education is named as the lead institution. The state board for

community and technical colleges shall administer the program for the purpose of awarding grants in which a community or technical college is named as the lead institution. Through this program the boards may award on a competitive basis incentive grants to state public institutions of higher education or consortia of institutions to encourage cooperative programs designed to address specific system problems. Grants shall not exceed a two-year period. Each institution or consortia of institutions receiving the award shall contribute some financial support, either by covering part of the costs for the program during its implementation, or by assuming continuing support at the end of the grant period. Strong priority will be given to proposals that involve more than one sector of education, and to proposals that show substantive institutional commitment. Institutions are encouraged to solicit nonstate funds to support these cooperative programs. [1999 c 169 § 5; 1996 c 41 § 1; 1991 c 98 § 2.]

**28B.120.020 Program administration—Higher education coordinating board.** The higher education coordinating board shall have the following powers and duties in administering the program for those proposals in which a four-year institution of higher education is named as the lead institution and fiscal agent:

- (1) To adopt rules necessary to carry out the program;
- (2) To establish one or more review committees to assist in the evaluation of proposals for funding. The review committee shall include individuals with significant experience in higher education in areas relevant to one or more of the funding period priorities and shall include representatives from both the four-year and two-year sectors of higher education;
- (3) To award grants no later than September 1st in those years when funding is available by June 30th;
- (4) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals of the program and consistent with the guidelines established by the state board for community and technical colleges under RCW 28B.120.025. During the 1999-01 biennium the guidelines shall be consistent with the following desired outcomes of:
  - (a) Minority and diversity initiatives that encourage the participation of minorities in higher education, including students with disabilities;
  - (b) K-12 teacher preparation models that encourage collaboration between higher education and K-12 to improve the preparedness of teachers, including provisions for higher education faculty involved with teacher preparation to spend time teaching in K-12 schools;
  - (c) Collaborative instructional programs involving K-12, community and technical colleges, and four-year institutions of higher education to develop a three-year degree program, or reduce the time to degree;
  - (d) Contracts with public or private institutions or businesses to provide services or the development of collaborative programs;
  - (e) Articulation and transfer activities to smooth the transfer of students from K-12 to higher education, or from the community colleges and technical colleges to four-year institutions;
  - (f) Projects that further the development of learner-centered, technology-assisted course delivery; and

(g) Projects that further the development of competency-based measurements of student achievement to be used as the basis for awarding degrees and certificates.

After June 30, 2001, and each biennium thereafter, the board shall determine funding priorities for collaborative proposals for the biennium in consultation with the governor, the legislature, the office of the superintendent of public instruction, the state board for community and technical colleges, the work force training and education coordinating board, higher education institutions, educational associations, and business and community groups consistent with statewide needs;

(5) To solicit grant proposals and provide information to the institutions of higher education about the program; and

(6) To establish reporting, evaluation, accountability, monitoring, and dissemination requirements for the recipients of the grants awarded by the higher education coordinating board. [1999 c 169 § 3; 1996 c 41 § 2; 1991 c 98 § 3.]

**28B.120.025 Program administration—State board for community and technical colleges.** The state board for community and technical colleges has the following powers and duties in administering the program for those proposals in which a community or technical college is named as the lead institution and fiscal agent:

- (1) To adopt rules necessary to carry out the program;
- (2) To establish one or more review committees to assist in the evaluation of proposals for funding. The review committee shall include individuals with significant experience in higher education in areas relevant to one or more of the funding period priorities and shall include representatives from both the four-year and two-year sectors of higher education;
- (3) To award grants no later than September 1st in those years when funding is available by June 30th;
- (4) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals of the program and consistent with the guidelines established by the higher education coordinating board under RCW 28B.120.020. During the 1999-01 biennium the guidelines shall be consistent with the following desired outcomes of:
  - (a) Minority and diversity initiatives that encourage the participation of minorities in higher education, including students with disabilities;
  - (b) K-12 teacher preparation models that encourage collaboration between higher education and K-12 to improve the preparedness of teachers, including provisions for higher education faculty involved with teacher preparation to spend time teaching in K-12 schools;
  - (c) Collaborative instructional programs involving K-12, community and technical colleges, and four-year institutions of higher education to develop a three-year degree program, or reduce the time to degree;
  - (d) Contracts with public or private institutions or businesses to provide services or the development of collaborative programs;
  - (e) Articulation and transfer activities to smooth the transfer of students from K-12 to higher education, or from the community colleges and technical colleges to four-year institutions;
  - (f) Projects that further the development of learner-centered, technology-assisted course delivery; and

(g) Projects that further the development of competency-based measurements of student achievement to be used as the basis for awarding degrees and certificates;

(5) To solicit grant proposals and provide information to the community and technical colleges and private career schools; and

(6) To establish reporting, evaluation, accountability, monitoring, and dissemination requirements for the recipients of the grants awarded by the state board for community and technical colleges. [1999 c 169 § 4.]

**28B.120.030 Receipt of gifts, grants, and endowments.** The higher education coordinating board and the state board for community and technical colleges may solicit and receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the program and may expend the same or any income therefrom according to the terms of the gifts, grants, or endowments. [1999 c 169 § 6; 1991 c 98 § 4.]

**28B.120.040 Higher education coordinating board fund for innovation and quality.** The higher education coordinating board fund for innovation and quality is hereby established in the custody of the state treasurer. The higher education coordinating board shall deposit in the fund all moneys received under RCW 28B.120.030. Moneys in the fund may be spent only for the purposes of RCW 28B.120.010 and 28B.120.020. Disbursements from the fund shall be on the authorization of the higher education coordinating board. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements. [1999 c 169 § 7; 1996 c 41 § 3; 1991 c 98 § 5.]

**28B.120.050 Community and technical college fund for innovation and quality.** The community and technical college fund for innovation and quality is hereby established in the custody of the state treasurer. The state board for community and technical colleges shall deposit in the fund all moneys received under RCW 28B.120.030. Moneys in the fund may be spent only for the purposes of RCW 28B.120.010 and 28B.120.025. Disbursements from the fund shall be on the authorization of the state board for community and technical colleges. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements. [1999 c 169 § 8.]

**28B.120.900 Intent—1999 c 169.** It is the intent of the legislature to update and fund the higher education competitive grant program established by the 1991 legislature, known as the Washington fund for innovation and quality in higher education. Changes are needed so that the goals and priorities set forth for awarding grants reflect the 1999-01 goals and priorities. The legislature also intends to improve the administration of the program by separating responsibilities between the higher education coordinating board and the state board for community and technical colleges. [1999 c 169 § 1.]

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## Chapter 28B.130 RCW

### TRANSPORTATION DEMAND MANAGEMENT PROGRAMS

#### Sections

28B.130.005	Findings—Intent.
28B.130.010	Definitions.
28B.130.020	Transportation fee.
28B.130.030	Use of transportation fees.
28B.130.040	Adoption of guidelines for establishing and funding transportation demand management programs.

**28B.130.005 Findings—Intent.** Transportation demand management strategies that reduce the number of vehicles on Washington state's highways, roads, and streets, and provide attractive and effective alternatives to single-occupancy travel, can improve ambient air quality, conserve fossil fuels, and forestall the need for capital improvements to the state's transportation system. The legislature has required many public and private employers in the state's largest counties to implement transportation demand management programs to reduce the number of single-occupant vehicle travelers during the morning and evening rush hours, and has provided substantial funding for the University of Washington's UPASS program, which has been immensely successful in its first two years of implementation. The legislature finds that additional transportation demand management strategies are required to mitigate the adverse social, environmental, and economic effects of auto dependency and traffic congestion. While expensive capital improvements, including dedicated busways and commuter rail systems, may be necessary to improve the region's mobility, they are only part of the solution. All public and private entities that attract single-occupant vehicle drivers must develop imaginative and cost-effective ways to encourage walking, bicycling, carpooling, vanpooling, bus riding, and telecommuting. It is the intent of the legislature to revise those portions of state law that inhibit the application of imaginative solutions to the state's transportation mobility problems, and to encourage many more public and private institutions of higher learning to adopt effective transportation demand management strategies.

The legislature finds further that many of the institutions of higher education in the state's largest counties are responsible for significant numbers of single-occupant vehicle trips to and from their campuses. These single-occupant vehicle trips are not only contributing to the degradation of the state's environment and deterioration of its transportation system, but are also usurping parking spaces from surrounding residential communities because existing parking facilities cannot accommodate students' current demand. Therefore, it is the intent of the legislature to permit these institutions to develop and fund transportation demand management programs that reduce single-occupant vehicle travel and promote alternatives to single-occupant vehicle driving. The legislature encourages institutions of higher education to include faculty and staff in their transportation demand management programs. [1993 c 447 § 1.]

**28B.130.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Transportation fee" means the fee charged to employees and students at institutions of higher education for the purposes provided in RCW 28B.130.020.

(2) "Transportation demand management program" means the set of strategies adopted by an institution of higher education to reduce the number of single-occupant vehicles traveling to its campus. These strategies may include but are not limited to those identified in RCW 70.94.531. [1993 c 447 § 2.]

**28B.130.020 Transportation fee.** (1) The governing board of an institution of higher education as defined in RCW 28B.10.016 may impose either a voluntary or a mandatory transportation fee on employees and on students at the institution. The board of regents of Washington State University may impose either a voluntary or a mandatory transportation fee on faculty and staff working at the Riverpoint higher education park and on students attending classes there. The transportation fee shall be used solely to fund transportation demand management programs that reduce the demand for campus and neighborhood parking, and promote alternatives to single-occupant vehicle driving. If the board charges a mandatory transportation fee to students, it shall charge a mandatory transportation fee to employees. The transportation fee for employees may exceed, but shall not be lower than the transportation fee charged to students. The transportation fee for employees may be deducted from the employees' paychecks. The transportation fee for students may be imposed annually, or each academic term. For students attending community colleges and technical colleges, the mandatory transportation fee shall not exceed sixty percent of the maximum rate permitted for services and activities fees at community colleges, unless, through a vote, a majority of students consent to increase the transportation fee. For students attending four-year institutions of higher education or classes at the Riverpoint higher education park, the mandatory transportation fee shall not exceed thirty-five percent of the maximum rate permitted for services and activities fees at the institution where the student is enrolled unless, through a vote, a majority of students consents to increase the transportation fee. The board may make a limited number of exceptions to the fee based on a policy adopted by the board.

(2) The board of regents of Washington State University shall not impose a transportation fee on any student who is already paying a transportation fee to the institution of higher education in which the student is enrolled. [1998 c 344 § 7; 1997 c 273 § 2; 1993 c 447 § 3.]

**Intent—Findings—1998 c 344:** See note following RCW 28B.38.010.

**28B.130.030 Use of transportation fees.** Transportation fees shall be spent only on activities directly related to the institution of higher education's transportation demand management program. These may include, but are not limited to the following activities: Transit, carpool, and vanpool subsidies; ridesharing programs, and program advertising for carpools, vanpools, and transit service; guaranteed ride-home and telecommuting programs; and bicycle storage facilities. Funds may be spent on capital or operating costs incurred in the implementation of any of these strategies, and may be also used to contract with local or regional transit agencies

for transportation services. Funds may be used for existing programs if they are incorporated into the campus transportation demand management program. [1993 c 447 § 4.]

**28B.130.040 Adoption of guidelines for establishing and funding transportation demand management programs.** The board of trustees or board of regents of each institution of higher education imposing a transportation fee shall adopt guidelines governing the establishment and funding of transportation demand management programs supported by transportation fees. These guidelines shall establish procedures for budgeting and expending transportation fee revenue. [1993 c 447 § 5.]

## Chapter 28B.133 RCW

### GAINING INDEPENDENCE FOR STUDENTS WITH DEPENDENTS PROGRAM

#### Sections

28B.133.005	Finding—Intent.
28B.133.010	Program created.
28B.133.020	Eligibility.
28B.133.030	Students with dependents grant account.
28B.133.040	Program administration.
28B.133.050	Use of grants.
28B.133.900	Short title.
28B.133.901	Captions not law—2003 c 19.

**28B.133.005 Finding—Intent.** The legislature finds that financially needy students, especially those with dependents, are finding it increasingly difficult to stay in school due to the high costs of caring for their dependent children.

The legislature intends to establish an educational assistance grant program, funded through gifts, grants, or endowments from private sources, for students with dependents who have additional financial needs due to the care they provide for their dependents eighteen years of age or younger. [2003 c 19 § 1.]

**28B.133.010 Program created.** The educational assistance grant program for students with dependents is hereby created, subject to the availability of receipts of gifts, grants, or endowments from private sources. The program is created to serve financially needy students with dependents eighteen years of age or younger, by assisting them directly through a grant program to pursue a degree or certificate at public or private institutions of higher education, as defined in RCW 28B.92.030, that participate in the state need grant program. [2004 c 275 § 72; 2003 c 19 § 2.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.133.020 Eligibility.** To be eligible for the educational assistance grant program for students with dependents, applicants shall: (1) Be residents of the state of Washington; (2) be needy students as defined in RCW 28B.92.030(3); (3) be eligible to participate in the state need grant program as set forth under RCW 28B.92.080; and (4) have dependents eighteen years of age or younger who are under their care. [2004 c 275 § 73; 2003 c 19 § 3.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**28B.133.030 Students with dependents grant account.** (1) The students with dependents grant account is created in the custody of the state treasurer. All receipts from the program shall be deposited into the account. Only the higher education coordinating board, or its designee, may authorize expenditures from the account. Disbursements from the account are exempt from appropriations and the allotment procedures under chapter 43.88 RCW.

(2) The board may solicit and receive gifts, grants, or endowments from private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the educational assistance grant program. The executive director, or the executive director's designee, may spend gifts, grants, or endowments or income from the private sources according to their terms unless the receipt of the gifts, grants, or endowments violates RCW 42.17.710.

(3) The earnings on the account shall be used solely for the purposes in RCW 28B.133.010, except when the terms of a conditional gift of private moneys in the account require that a portion of earnings on such moneys be reinvested in the account. [2003 c 19 § 4.]

**28B.133.040 Program administration.** The higher education coordinating board shall develop and administer the educational assistance grant program for students with dependents. In administering the program, once the balance in the students with dependents grant account is five hundred thousand dollars, the board's powers and duties shall include but not be limited to:

- (1) Adopting necessary rules and guidelines;
- (2) Publicizing the program;
- (3) Accepting and depositing donations into the grant account established in RCW 28B.133.030; and
- (4) Soliciting and accepting grants and donations from private sources for the program. [2003 c 19 § 5.]

**28B.133.050 Use of grants.** The educational assistance grant program for students with dependents grants may be used by eligible participants to attend any public or private college or university in the state of Washington as defined in RCW 28B.92.030. Each participating student may receive an amount to be determined by the higher education coordinating board, with a minimum amount of one thousand dollars per academic year, not to exceed the student's documented financial need for the course of study as determined by the institution.

Educational assistance grants for students with dependents are not intended to supplant any grant scholarship or tax program related to postsecondary education. If the higher education coordinating board finds that the educational assistance grants for students with dependents supplant or reduce any grant, scholarship, or tax program for categories of students, then the higher education coordinating board shall adjust the financial eligibility criteria or the amount of the grant to the level necessary to avoid supplanting. [2004 c 275 § 74; 2003 c 19 § 6.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

(2004 Ed.)

**28B.133.900 Short title.** This chapter may be known and cited as the gaining independence for students with dependents program. [2003 c 19 § 7.]

**28B.133.901 Captions not law—2003 c 19.** Captions used in this act are not any part of the law. [2003 c 19 § 9.]

**Chapter 28B.135 RCW  
CHILD CARE FOR HIGHER  
EDUCATION STUDENTS**

Sections

28B.135.010	Washington accounts for student child care in higher education—Program established.
28B.135.020	Grants—Eligibility—Grant period.
28B.135.030	Program administration—Duties of higher education coordinating board—Duties of state board for community and technical colleges.
28B.135.040	Accounts created.

**28B.135.010 Washington accounts for student child care in higher education—Program established.** Two Washington accounts for student child care in higher education are established. The higher education coordinating board and the state board for community and technical colleges shall administer the programs. Through these programs the boards may award on a competitive basis child care grants to state institutions of higher education to encourage programs to address the need for high quality, accessible, and affordable child care for students at higher education institutions. The university or college administration and student government association, or its equivalent, of each institution receiving the award shall contribute financial support in an amount equal to the child care grant received by the institution. [1999 c 375 § 1.]

**28B.135.020 Grants—Eligibility—Grant period.** The institution of higher education shall be eligible to receive the grant for a period not exceeding two years. After the expiration of any two-year grant, the institution may reapply to receive subsequent grant awards or a continuation of the grant awarded the prior two years. [1999 c 375 § 2.]

**28B.135.030 Program administration—Duties of higher education coordinating board—Duties of state board for community and technical colleges.** The higher education coordinating board shall administer the program for four-year institutions of higher education. The state board for community and technical colleges shall administer the program for community and technical colleges. The higher education coordinating board and the state board for community and technical colleges shall have the following powers and duties in administering each program:

- (1) To adopt rules necessary to carry out the program;
- (2) To establish one or more review committees to assist in the evaluation of proposals for funding. The review committee shall include but not be limited to individuals from the Washington association for the education of young children, the child care coordinating committee, and the child care resource and referral network;
- (3) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals

of the program. During the 1999-2001 biennium the guidelines shall be consistent with the following desired outcomes of increasing access to child care for students, addressing the demand for infant and toddler care, providing affordable child care alternatives, creating more cooperative preschool programs, creating models that can be replicated at other institutions, creating a partnership between university or college administrations and student government, or its equivalent and increasing efficiency and innovation at campus child care centers;

(4) To establish guidelines for an allocation system based on factors that include but are not limited to: The amount of money available in the trust fund; characteristics of the institutions including the size of the faculty and student body; and the number of child care grants received;

(5) To solicit grant proposals and provide information to the institutions of higher education about the program; and

(6) To establish reporting, evaluation, accountability, monitoring, and dissemination requirements for the recipients of the grants. [1999 c 375 § 3.]

**28B.135.040 Accounts created.** Two accounts for student child care in higher education are established in the custody of the state treasurer. Moneys in the accounts may be spent only for the purposes of RCW 28B.135.010. Disbursements from one of the accounts shall be on the authorization of the higher education coordinating board and disbursements from the other account shall be on the authorization of the state board for community and technical colleges. The accounts are subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for disbursements. [1999 c 375 § 4.]

### Chapter 28B.140 RCW

#### FINANCING RESEARCH FACILITIES AT RESEARCH UNIVERSITIES

##### Sections

28B.140.005	Policy.
28B.140.010	Scope of authority.
28B.140.020	Financial responsibility of university—No state general fund obligation.
28B.140.030	Authority of chapter—Supplemental.
28B.140.900	Reports to the legislature.

**28B.140.005 Policy.** It is the policy of the state to encourage basic and applied scientific research by the state's research universities. The creation of knowledge is a core mission of the state's research universities, and research provides teaching and learning opportunities for students and faculty. State of the art facilities for research by research universities serve to attract the most capable students and faculty to the state and research grants from public and private institutions throughout the world. The application of such research stimulates investment and employment within Washington and the strengthening of our tax base. In order to finance research facilities, the state's research universities often use federal, state, private, and university resources and therefore require the authority to enter into financing arrangements that leverage funding sources and reduce the costs of such complex facilities to the state. [2002 c 151 § 1.]

**28B.140.010 Scope of authority.** The University of Washington and Washington State University each may:

(1) Acquire, construct, rehabilitate, equip, and operate facilities and equipment to promote basic and applied research in the sciences;

(2) Borrow money for such research purposes, including interest during construction and other incidental costs, issue revenue bonds or other evidences of indebtedness, refinance the same before or at maturity, and provide for the amortization of such indebtedness by pledging all or a component of the fees and revenues of the university available for such purpose derived from the ownership and operation of any of its facilities or conducting research that are not subject to appropriation by the legislature and that do not constitute general state revenues as defined in Article VIII, section 1 of the state Constitution;

(3) Enter into leases, with or without an option to purchase, of real and personal property to be used in basic and applied research in the sciences; and

(4) Lease all or a portion of such facilities and equipment as is deemed prudent by the university to provide for research conducted by persons or entities that are not part of the university but that provide rental income to support university research facilities or provide opportunities for the interaction of public and private research and research personnel, including students and faculty. [2002 c 151 § 2.]

**28B.140.020 Financial responsibility of university—No state general fund obligation.** The governing body of a university financing facilities and equipment under this chapter shall give due regard to the costs of maintaining and operating such facilities and equipment during the useful lives of the facilities and equipment. No state appropriated funds may be used for (1) the payment of maintenance and operation of the facilities and equipment financed under this chapter; or (2) the grant or contract-supported research activities housed in these facilities. If funding through grants or contracts for research activities housed in these facilities is reduced, eliminated, or declared insufficient, the funding deficiencies are not a state obligation to be paid from the state general fund. [2002 c 151 § 3.]

**28B.140.030 Authority of chapter—Supplemental.** The authority granted by this chapter is supplemental to any existing or future authority granted to the University of Washington and Washington State University and shall not be construed to limit the existing or future authority of these universities. [2002 c 151 § 4.]

**28B.140.900 Reports to the legislature.** Before January 31st of each year, the University of Washington and Washington State University must report to the ways and means committee of the senate and the capital budget committee of the house of representatives on the financing arrangements entered into under the authority of this chapter. [2002 c 151 § 7.]

**Chapter 28B.900 RCW**  
**CONSTRUCTION**

## Sections

28B.900.010	Repeals and savings—1969 ex.s. c 223.
28B.900.020	Moneys transferred.
28B.900.030	Continuation of existing law.
28B.900.040	Provisions to be construed in pari materia.
28B.900.050	Title, chapter, section headings not part of law.
28B.900.060	Invalidity of part of title not to affect remainder.
28B.900.070	This code defined.
28B.900.080	Effective date—1969 ex.s. c 223.

**28B.900.010 Repeals and savings—1969 ex.s. c 223.**

See 1969 ex.s. c 223 § 28B.98.010. Formerly RCW 28B.98.010.

**28B.900.020 Moneys transferred.** All moneys in the Southwestern Washington State College bond retirement fund and the Southwestern Washington State College capital projects account are hereby transferred to The Evergreen State College bond retirement fund and The Evergreen State College capital projects account respectively, which latter fund and account are created in RCW 28B.35.370. [1969 ex.s. c 223 § 28B.98.020. Formerly RCW 28B.98.020.]

**28B.900.030 Continuation of existing law.** The provisions of this title, Title 28B RCW, insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. Nothing in this 1969 code revision of Title 28 RCW shall be construed as authorizing any new bond issues or new or additional appropriations of moneys but the bond issue authorizations herein contained shall be construed only as continuations of bond issues authorized by prior laws herein repealed and reenacted, and the appropriations of moneys herein contained are continued herein for historical purposes only and this 1969 act shall not be construed as a reappropriation thereof and no appropriation contained herein shall be deemed to be extended or revived hereby and such appropriation shall lapse or shall have lapsed in accordance with the original enactment: PROVIDED, That this 1969 act shall not operate to terminate, extend, or otherwise affect any appropriation for the biennium commencing July 1, 1967 and ending June 30, 1969. [1969 ex.s. c 223 § 28B.98.030. Formerly RCW 28B.98.030.]

**28B.900.040 Provisions to be construed in pari materia.** The provisions of this title, Title 28B RCW, shall be construed in pari materia even though as a matter of prior legislative history they were not originally enacted in the same statute. The provisions of this title shall also be construed in pari materia with the provisions of Title 28A RCW, and with other laws relating to education. This section shall not operate retroactively. [1969 ex.s. c 223 § 28B.98.040. Formerly RCW 28B.98.040.]

**28B.900.050 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title, Title 28B RCW, do not constitute any part of the law. [1969 ex.s. c 223 § 28B.98.050. Formerly RCW 28B.98.050.]

**28B.900.060 Invalidity of part of title not to affect remainder.** If any provision of this title, Title 28B RCW, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 223 § 28B.98.060. Formerly RCW 28B.98.060.]

**28B.900.070 This code defined.** As used in this title, Title 28B RCW, "this code" means Titles 28A and 28B of this 1969 act. [1969 ex.s. c 223 § 28B.98.070. Formerly RCW 28B.98.070.]

**28B.900.080 Effective date—1969 ex.s. c 223.** This act shall take effect on July 1, 1970. [1969 ex.s. c 223 § 28B.98.080. Formerly RCW 28B.98.080.]

# Title 28C

## VOCATIONAL EDUCATION

### Chapters

- 28C.04 Vocational education.**
- 28C.10 Private vocational schools.**
- 28C.18 Work force training and education.**
- 28C.22 Skill centers.**

*Displaced homemaker act: Chapter 28B.04 RCW.*

*Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.*

*Vocational agriculture education—Service areas—Programs in local school districts: RCW 28A.300.090.*

### Chapter 28C.04 RCW

#### VOCATIONAL EDUCATION

##### Sections

- 28C.04.100 Career and technical education—Plans—Standards—Technical assistance—Leadership development.
- 28C.04.390 Worker retraining program funds—Work force training customer advisory committee.
- 28C.04.400 Job skills program—Legislative declaration and policy.
- 28C.04.410 Job skills program—Definitions.
- 28C.04.420 Job skills program—Grants—Reports.
- 28C.04.520 Washington award for vocational excellence—Intent.
- 28C.04.525 Washington award for vocational excellence—Establishment—Purposes.
- 28C.04.530 Washington award for vocational excellence—Board's duties.
- 28C.04.535 Washington award for vocational excellence—Granted annually—Notice—Presentation.
- 28C.04.540 Washington award for vocational excellence—Contributions.
- 28C.04.545 Washington award for vocational excellence—Fee waivers—Grants.
- 28C.04.550 Washington award for vocational excellence—When effective.
- 28C.04.600 AIDS information—Vocational schools.

*AIDS information: Chapter 70.24 RCW.*

*Vocational agriculture education—Service areas—Programs in local school districts: RCW 28A.300.090.*

**28C.04.100 Career and technical education—Plans—Standards—Technical assistance—Leadership development.** (1) To ensure high quality career and technical programs, the office of the superintendent of public instruction shall review and approve the plans of local districts for the delivery of career and technical education. Standards for career and technical programs shall be established by the office of the superintendent of public instruction. These standards should:

(a) Demonstrate how career and technical education programs will ensure academic rigor; align with the state's education reform requirements; help address the skills gap of Washington's economy; and maintain strong relationships with local career and technical education advisory councils for the design and delivery of career and technical education; and

(b) Demonstrate a strategy to align the five-year planning requirement under the federal Carl Perkins act with the state and district vocational program planning requirements that include:

(i) An assessment of equipment and technology needs to support the skills training of technical students;

(ii) An assessment of industry internships required for teachers to ensure the ability to prepare students for industry-defined standards or certifications, or both;

(iii) An assessment of the costs of supporting job shadows, mentors, community service and industry internships, and other activities for student learning in the community; and

(iv) A description of the leadership activities to be provided for technical education students.

(2) To ensure high quality career education programs and services in secondary schools, the office of the superintendent of public instruction may provide technical assistance to local districts and develop state guidelines for the delivery of career guidance in secondary schools.

(3) To ensure leadership development, the staff of the office of the superintendent of public instruction may serve as the state advisors to Washington state FFA, Washington future business leaders of America, Washington DECA, Washington SkillsUSA-VICA, Washington family, career and community leaders, and Washington technology students association, and any additional career or technical student organizations that are formed. Working with the directors or executive secretaries of these organizations, the office of the superintendent of public instruction may develop tools for the coordination of leadership activities with the curriculum of technical education programs.

(4) As used in this section, "career and technical education" means a planned program of courses and learning experiences that begins with exploration of career options; supports basic academic and life skills; and enables achievement of high academic standards, leadership, options for high skill, high wage employment preparation, and advanced and continuing education. [2001 c 336 § 2.]

**28C.04.390 Worker retraining program funds—Work force training customer advisory committee.** (1) The college board worker retraining program funds shall be used for training programs and related support services, including financial aid, counseling, referral to training resources, job referral, and job development that:

(a) Are consistent with the unified plan for work force development;

(b) Provide increased enrollments for dislocated workers;

(c) Provide customized training opportunities for dislocated workers; and

(d) Provide increased enrollments and support services, including financial aid for those students not receiving unemployment insurance benefits, that do not replace or supplant any existing enrollments, programs, support services, or funding sources.

(2) The college board shall develop a plan for use of the worker retraining program funds in conjunction with the work force training customer advisory committee established in subsection (3) of this section. In developing the plan the college board shall:

(a) Provide that applicants for worker retraining program funds shall solicit financial support for training programs and give priority in receipt of funds to those applicants which are most successful in matching public dollars with financial support;

(b) Provide that applicants for worker retraining program funds shall develop training programs in partnership with local businesses, industry associations, labor, and other partners as appropriate and give priority in receipt of funds to those applicants who develop customized training programs in partnership with local businesses, industry associations, and labor organizations;

(c) Give priority in receipt of funds to those applicants serving rural areas;

(d) Ensure that applicants receiving worker retraining program funds gather information from local work force development councils on employer work force needs, including the needs of businesses with less than twenty-five employees; and

(e) Provide for specialized vocational training at a private career school or college at the request of a recipient eligible under subsection (1)(b) of this section. Available tuition for the training is limited to the amount that would otherwise be payable per enrolled quarter to a public institution.

(3) The executive director of the college board shall appoint a work force training customer advisory committee by July 1, 1999, to:

(a) Assist in the development of the plan for the use of the college board worker retraining program funds and recommend guidelines to the college board for the operation of worker retraining programs;

(b) Recommend selection criteria for worker retraining programs and grant applicants for receipt of worker retraining program grants;

(c) Provide advice to the college board on other work force development activities of the community and technical colleges;

(d) Recommend selection criteria for job skills grants, consistent with criteria established in this chapter and chapter 121, Laws of 1999. Such criteria shall include a prioritization of job skills applicants in rural areas;

(e) Recommend guidelines to the college board for the operation of the job skills program; and

(f) Recommend grant applicants for receipt of job skills program grants.

(4) Members of the work force training customer advisory committee shall consist of three college system representatives selected by the executive director of the college board, three representatives of business selected from nominations provided by statewide business organizations, and three representatives of labor selected from nominations provided by a statewide labor organization representing a cross-section of workers in the state. [1999 c 121 § 1.]

**28C.04.400 Job skills program—Legislative declaration and policy.** The legislature declares that it is an impor-

tant function of government to increase opportunities for gainful employment, to assist in promoting a productive and expanding economy, and to encourage the flow of business and industry support to educational institutions. Therefore, the legislature finds that it is in the public interest of the state to encourage and facilitate the formation of cooperative relationships between business and industry and educational institutions which provide for the development and significant expansion of programs of skills training and education consistent with employment needs and to make interested individuals aware of the employment opportunities presented thereby. It is the policy of the state of Washington to ensure that programs of skill training are available on a regional basis and are utilized by a variety of businesses and industries. [1983 1st ex.s. c 21 § 1.]

**Severability—1983 1st ex.s. c 21:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 21 § 12.]

**28C.04.410 Job skills program—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28C.04.390 and 28C.04.420.

(1) "Applicant" means an educational institution which has made application for a job skills grant under RCW 28C.04.390 and 28C.04.420.

(2) "Business and industry" means a private corporation, institution, firm, person, group, or association concerned with commerce, trades, manufacturing, or the provision of services within the state, or a public or nonprofit hospital licensed by the department of social and health services.

(3) "Dislocated worker" means an individual who meets the definition of dislocated worker contained in P.L. 105-220, Sec. 101 on July 25, 1999.

(4) "Educational institution" means a public secondary or postsecondary institution, an independent institution, or a private career school or college within the state authorized by law to provide a program of skills training or education beyond the secondary school level. Any educational institution receiving a job skills grant under RCW 28C.04.420 through \*28C.04.480 shall be free of sectarian control or influence as set forth in Article IX, section 4 of the state Constitution.

(5) "Equipment" means tangible personal property which will further the objectives of the supported program and for which a definite value and evidence in support of the value have been provided by the donor.

(6) "Financial support" means any thing of value which is contributed by business, industry, and others to an educational institution which is reasonably calculated to support directly the development and expansion of a particular program under RCW 28C.04.390 and 28C.04.420 and represents an addition to any financial support previously or customarily provided to such educational institutions by the donor. "Financial support" includes, but is not limited to, funds, equipment, facilities, faculty, and scholarships for matriculating students and trainees.

(7) "Job skills grant" means funding that is provided to an educational institution by the commission for the development or significant expansion of a program under RCW 28C.04.390 and 28C.04.420.

(8) "Job skills program" means a program of skills training or education separate from and in addition to existing vocational education programs and which:

(a) Provides short-term training which has been designated for specific industries;

(b) Provides training for prospective employees before a new plant opens or when existing industry expands;

(c) Includes training and retraining for workers already employed by an existing industry or business where necessary to avoid dislocation or where upgrading of existing employees would create new vacancies for unemployed persons;

(d) Serves areas with high concentrations of economically disadvantaged persons and high unemployment;

(e) Serves areas with new and growing industries;

(f) Serves areas where there is a shortage of skilled labor to meet job demands; or

(g) Promotes the location of new industry in areas affected by economic dislocation.

(9) "Technical assistance" means professional and any other assistance provided by business and industry to an educational institution, which is reasonably calculated to support directly the development and expansion of a particular program and which represents an addition to any technical assistance previously or customarily provided to the educational institutions by the donor.

(10) "College board" means the state board for community and technical colleges under chapter 28B.50 RCW. [1999 c 121 § 2; 1983 1st ex.s. c 21 § 2.]

\*Reviser's note: RCW 28C.04.480 was repealed by 1999 c 121 § 4.

**Severability—1983 1st ex.s. c 21:** See note following RCW 28C.04.400.

#### **28C.04.420 Job skills program—Grants—Reports.**

The college board may, subject to appropriation from the legislature or from funds made available from any other public or private source and pursuant to rules adopted by the college board with the advice of the work force training customer advisory committee established in RCW 28C.04.390, provide job skills grants to educational institutions. The job skills grants shall be used exclusively for programs which are consistent with the job skills program. The college board shall work in collaboration with the work force training customer advisory committee established in RCW 28C.04.390 to assure that:

(1) The program is within the scope of the job skills program under this chapter and may reasonably be expected to succeed and thereby increase employment within the state;

(2) Provision has been made to use any available alternative funding from local, state, and federal sources;

(3) The job skills grant will only be used to cover the costs associated with the program;

(4) The program will not unnecessarily duplicate existing programs and could not be provided by another educational institution more effectively or efficiently;

(5) The program involves an area of skills training and education for which there is a demonstrable need;

(6) The applicant has made provisions for the use of existing federal and state resources for student financial assistance;

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(7) The job skills grant is essential to the success of the program as the resources of the applicant are inadequate to attract the technical assistance and financial support necessary for the program from business and industry;

(8) The program represents a collaborative partnership between business, industry, labor, educational institutions, and other partners, as appropriate;

(9) The commitment of financial support from business and industry shall be equal to or greater than the amount of the requested job skills grant;

(10) Binding commitments have been made to the commission by the applicant for adequate reporting of information and data regarding the program to the commission, particularly information concerning the recruitment and employment of trainees and students, and including a requirement for an annual or other periodic audit of the books of the applicant directly related to the program, and for such control on the part of the commission as it considers prudent over the management of the program, so as to protect the use of public funds, including, in the discretion of the commission and without limitation, right of access to financial and other records of the applicant directly related to the programs; and

(11) A provision has been made by the applicant to work, in cooperation with the employment security department, to identify and screen potential trainees, and that provision has been made by the applicant for the participation as trainees of low-income persons including temporary assistance for needy families recipients, dislocated workers, and persons from minority and economically disadvantaged groups to participate in the program.

Beginning October 1, 1999, and every two years thereafter, the college board shall provide the legislature and the governor with a report describing the activities and outcomes of the state job skills program. [1999 c 121 § 3; 1983 1st ex.s. c 21 § 4.]

**Severability—1983 1st ex.s. c 21:** See note following RCW 28C.04.400.

#### **28C.04.520 Washington award for vocational excellence—Intent.**

Every year community colleges, technical colleges, and high schools graduate students who have distinguished themselves by their outstanding performance in their occupational training programs. The legislature intends to recognize and honor these students by establishing a Washington award for vocational excellence. [1995 1st sp.s. c 7 § 1; 1984 c 267 § 1.]

**Severability—1995 1st sp.s. c 7:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 1st sp.s. c 7 § 9.]

#### **28C.04.525 Washington award for vocational excellence—Establishment—Purposes.**

The Washington award for vocational excellence program is established. The purposes of this annual program are to:

(1) Maximize public awareness of the achievements, leadership ability, and community contributions of the students enrolled in occupational training programs in high schools, community colleges, and technical colleges;

(2) Emphasize the dignity of work in our society;

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(3) Instill respect for those who become skilled in crafts and technology;

(4) Recognize the value of vocational education and its contribution to the economy of this state;

(5) Foster business, labor, and community involvement in vocational-technical training programs and in this award program; and

(6) Recognize the outstanding achievements of up to three vocational or technical students, at least two of whom should be graduating high school students, in each legislative district. Students who have completed at least one year of a vocational-technical program in a community college or public technical college may also be recognized. [1995 1st sp.s. c 7 § 2; 1987 c 231 § 3; 1984 c 267 § 2.]

**Severability—1995 1st sp.s. c 7:** See note following RCW 28C.04.520.

**Effective date—1987 c 231 § 3:** "Section 3 of this act shall take effect January 1, 1988." [1987 c 231 § 6.]

**28C.04.530 Washington award for vocational excellence—Board's duties.** (1) The work force training and education coordinating board shall have the responsibility for the development and administration of the Washington award for vocational excellence program. The work force training and education coordinating board shall develop the program in consultation with other state agencies and private organizations having interest and responsibility in vocational education, including but not limited to: The state board for community and technical colleges, the office of the superintendent of public instruction, a voluntary professional association of vocational educators, and representatives from business, labor, and industry.

(2) The work force training and education coordinating board shall establish a planning committee to develop the criteria for screening and selecting the students who will receive the award. This criteria shall include but not be limited to the following characteristics: Proficiency in their chosen fields, attendance, attitude, character, leadership, and civic contributions. [1995 1st sp.s. c 7 § 3; 1987 c 231 § 2; 1984 c 267 § 3.]

**Severability—1995 1st sp.s. c 7:** See note following RCW 28C.04.520.

**28C.04.535 Washington award for vocational excellence—Granted annually—Notice—Presentation.** The Washington award for vocational excellence shall be granted annually. The work force training and education coordinating board shall notify the students receiving the award, their vocational instructors, local chambers of commerce, the legislators of their respective districts, and the governor, after final selections have been made. The work force training and education coordinating board, in conjunction with the governor's office, shall prepare appropriate certificates to be presented to the selected students. Awards shall be presented in public ceremonies at times and places determined by the work force training and education coordinating board in cooperation with the office of the governor. [1995 1st sp.s. c 7 § 4; 1984 c 267 § 4.]

**Severability—1995 1st sp.s. c 7:** See note following RCW 28C.04.520.

**28C.04.540 Washington award for vocational excellence—Contributions.** The work force training and education coordinating board may accept any and all donations, grants, bequests, and devices, conditional or otherwise, or money, property, service, or other things of value which may be received from any federal, state, or local agency, any institution, person, firm, or corporation, public and private, to be held, used, or applied for the purposes of the Washington award for vocational excellence program. The work force training and education coordinating board shall encourage maximum participation from business, labor, and community groups. The work force training and education coordinating board shall also coordinate, where feasible, the contribution activities of the various participants.

The work force training and education coordinating board shall not make expenditures from funds collected under this section until February 15, 1985. [1995 1st sp.s. c 7 § 5; 1984 c 267 § 5.]

**Severability—1995 1st sp.s. c 7:** See note following RCW 28C.04.520.

**28C.04.545 Washington award for vocational excellence—Fee waivers—Grants.** (1) The respective governing boards of the public technical colleges shall provide fee waivers for a maximum of two years for those recipients of the Washington award for vocational excellence established under RCW 28C.04.520 through 28C.04.540 who received the award before June 30, 1994. To qualify for the waiver, recipients shall enter the public technical college within three years of receiving the award. An above average rating at the technical college in the first year shall be required to qualify for the second-year waiver.

(2) Students named by the work force training and education coordinating board after June 30, 1994, as recipients of the Washington award for vocational excellence under RCW 28C.04.520 through 28C.04.550 shall be eligible to receive a grant for undergraduate course work as authorized under RCW 28B.76.670.

(3)(a) Beginning with awards made during the 1998-99 academic year, recipients must complete using the award before the fall term in the sixth year following the date of the award. For these recipients, eligibility for the award is forfeited after this period.

(b) All persons awarded a Washington award for vocational excellence before the 1995-96 academic year and who have remaining eligibility on April 19, 1999, must complete using the award before September 2002. For these recipients, eligibility for the award is forfeited after this period.

(c) All persons awarded a Washington award for vocational excellence during the 1995-96, 1996-97, and 1997-98 academic years must complete using the award before September 2005. For these recipients, eligibility for the award is forfeited after this period. [2004 c 275 § 61; 1999 c 28 § 1; 1995 1st sp.s. c 7 § 6; 1987 c 231 § 4; 1984 c 267 § 7.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Effective date—1999 c 28:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 1999]." [1999 c 28 § 2.]

**Severability—1995 1st sp.s. c 7:** See note following RCW 28C.04.520.

**28C.04.550 Washington award for vocational excellence—When effective.** The Washington award for vocational excellence shall be effective commencing with the 1984-85 academic year. [1987 c 505 § 16; 1984 c 267 § 8.]

**28C.04.600 AIDS information—Vocational schools.** Each publicly operated vocational school shall make information available to all newly matriculated students on methods of transmission of the human immunodeficiency virus and prevention of acquired immunodeficiency syndrome. The curricula and materials shall be reviewed for medical accuracy by the office on AIDS in coordination with the appropriate regional AIDS service network. [1988 c 206 § 503.]

**Severability—1988 c 206:** See RCW 70.24.900.

## Chapter 28C.10 RCW

### PRIVATE VOCATIONAL SCHOOLS

#### Sections

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**28C.10.010 Intent.** It is the intent of this chapter to protect against practices by private vocational schools which are false, deceptive, misleading, or unfair, and to help ensure adequate educational quality at private vocational schools. [1986 c 299 § 1.]

**28C.10.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means the work force training and education coordinating board.

(2) "Agent" means a person owning an interest in, employed by, or representing for remuneration a private vocational school within or without this state, who enrolls or personally attempts to secure the enrollment in a private vocational school of a resident of this state, offers to award educational credentials for remuneration on behalf of a private vocational school, or holds himself or herself out to res-

idents of this state as representing a private vocational school for any of these purposes.

(3) "Degree" means any designation, appellation, letters, or words including but not limited to "associate," "bachelor," "master," "doctor," or "fellow" which signify or purport to signify satisfactory completion of an academic program of study beyond the secondary school level.

(4) "Education" includes but is not limited to, any class, course, or program of training, instruction, or study.

(5) "Educational credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers, or words which signify or appear to signify enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites for any educational program.

(6) "Entity" includes, but is not limited to, a person, company, firm, society, association, partnership, corporation, or trust.

(7) "Private vocational school" means any location where an entity is offering postsecondary education in any form or manner for the purpose of instructing, training, or preparing persons for any vocation or profession.

(8) "To grant" includes to award, issue, sell, confer, bestow, or give.

(9) "To offer" includes, in addition to its usual meanings, to advertise or publicize. "To offer" also means to solicit or encourage any person, directly or indirectly, to perform the act described.

(10) "To operate" means to establish, keep, or maintain any facility or location where, from, or through which education is offered or educational credentials are offered or granted to residents of this state, and includes contracting for the performance of any such act. [1993 c 445 § 1; 1991 c 238 § 81; 1990 c 188 § 5; 1986 c 299 § 2.]

**Effective dates—Severability—1991 c 238:** See RCW 28B.50.917 and 28B.50.918.

**Severability—1990 c 188:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 188 § 14.]

**28C.10.030 Application of chapter.** This chapter does not apply to:

(1) Bona fide trade, business, professional, or fraternal organizations sponsoring educational programs primarily for that organization's membership or offered by that organization on a no-fee basis;

(2) Entities offering education that is exclusively avocational or recreational;

(3) Education not requiring payment of money or other consideration if this education is not advertised or promoted as leading toward educational credentials;

(4) Entities that are established, operated, and governed by this state or its political subdivisions under Title 28A, 28B, or 28C RCW;

(5) Degree-granting programs in compliance with the rules of the higher education coordinating board;

(6) Any other entity to the extent that it has been exempted from some or all of the provisions of this chapter under RCW 28C.10.100;

(7) Entities not otherwise exempt that are of a religious character, but only as to those educational programs exclusively devoted to religious or theological objectives and represented accurately in institutional catalogs or other official publications;

(8) Entities offering only courses certified by the federal aviation administration;

(9) Barber and cosmetology schools licensed under chapter 18.16 RCW;

(10) Entities which only offer courses approved to meet the continuing education requirements for licensure under chapter 18.04, 18.79, or 48.17 RCW; and

(11) Entities not otherwise exempt offering only workshops or seminars lasting no longer than three calendar days. [1994 sp.s. c 9 § 723; 1990 c 188 § 6; 1986 c 299 § 3.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Severability—1990 c 188:** See note following RCW 28C.10.020.

**28C.10.040 Agency's duties—Rules—Investigations—Interagency agreements about degree and nondegree programs.** The agency:

(1) Shall maintain a list of private vocational schools licensed under this chapter;

(2) Shall adopt rules in accordance with chapter 34.05 RCW to carry out this chapter;

(3) May investigate any entity the agency reasonably believes to be subject to the jurisdiction of this chapter. In connection with the investigation, the agency may administer oaths and affirmations, issue subpoenas and compel attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the agency deems relevant or material to the investigation. The agency, including its staff and any other authorized persons, may conduct site inspections and examine records of all schools subject to this chapter;

(4) Shall develop an interagency agreement with the higher education coordinating board to regulate degree-granting private vocational schools with respect to degree and nondegree programs. [1994 c 38 § 5; 1986 c 299 § 4.]

**28C.10.050 Minimum standards—Denial, revocation, or suspension of licenses.** (1) The agency shall adopt by rule minimum standards for entities operating private vocational schools. The minimum standards shall include, but not be limited to, requirements for each school to:

(a) Disclose to the agency information about its ownership and financial position and to demonstrate that it has sufficient financial resources to fulfill its commitments to students. Financial disclosures provided to the agency shall not be subject to public disclosure under chapter 42.17 RCW;

(b) Follow a uniform statewide cancellation and refund policy as specified by the agency;

(c) Disclose through use of a school catalog, brochure, or other written material, necessary information to students so that students may make informed enrollment decisions. The agency shall specify what information is required;

(d) Use an enrollment contract or agreement that includes: (i) The cancellation and refund policy, (ii) a brief statement that the school is licensed under this chapter and

that inquiries may be made to the agency, and (iii) other necessary information as determined by the agency;

(e) Describe accurately and completely in writing to students before their enrollment prerequisites and requirements for (i) completing successfully the programs of study in which they are interested and (ii) qualifying for the fields of employment for which their education is designed;

(f) Comply with the requirements of RCW 28C.10.084;

(g) Assess the basic skills and relevant aptitudes of each potential student to determine that a potential student has the basic skills and relevant aptitudes necessary to complete and benefit from the program in which the student plans to enroll. Guidelines for such assessments shall be developed by the agency, in consultation with the schools. The method of assessment shall be reported to the agency. Assessment records shall be maintained in the student's file;

(h) Discuss with each potential student the potential student's obligations in signing any enrollment contract and/or incurring any debt for educational purposes. The discussion shall include the inadvisability of acquiring an excessive educational debt burden that will be difficult to repay given employment opportunities and average starting salaries in the potential student's chosen occupation.

(2) Any enrollment contract shall have an attachment in a format provided by the agency. The attachment shall be signed by both the school and the student. The attachment shall stipulate that the school has complied with subsection (1)(h) of this section and that the student understands and accepts his or her responsibilities in signing any enrollment contract or debt application. The attachment shall also stipulate that the enrollment contract shall not be binding for at least five days, excluding Sundays and holidays, following signature of the enrollment contract by both parties.

(3) The agency shall deny, revoke, or suspend the license of any school that does not meet or maintain the minimum standards. [2001 c 23 § 1; 1990 c 188 § 7; 1987 c 459 § 3; 1986 c 299 § 5.]

**Severability—1990 c 188:** See note following RCW 28C.10.020.

**28C.10.060 Licenses—Requirements—Renewal.**

Any entity desiring to operate a private vocational school shall apply for a license to the agency on a form provided by the agency. The agency shall issue a license if the school:

(1) Files a completed application with information satisfactory to the agency. Misrepresentation by an applicant shall be grounds for the agency, at its discretion, to deny or revoke a license.

(2) Complies with the requirements for the \*tuition recovery fund under RCW 28C.10.084.

(3) Pays the required fees.

(4) Meets the minimum standards adopted by the agency under RCW 28C.10.050.

Licenses shall be valid for one year from the date of issue unless revoked or suspended. If a school fails to file a completed renewal application at least thirty days before the expiration date of its current license the school shall be subject to payment of a late filing fee fixed by the agency. [1987 c 459 § 4; 1986 c 299 § 6.]

**\*Reviser's note:** The "tuition recovery fund" was renamed the "tuition recovery trust fund" by 1993 c 445.

**28C.10.070 Fees.** The agency shall establish fees by rule at a level necessary to approximately recover the staffing costs incurred in administering this chapter. All fees collected under this section shall be deposited in the state general fund. [1986 c 299 § 7.]

**28C.10.082 \*Tuition recovery fund—Created—State treasurer custodian.** The \*tuition recovery fund is hereby established in the custody of the state treasurer. The agency shall deposit in the fund all moneys received under RCW 28C.10.084. Moneys in the fund may be spent only for the purposes under RCW 28C.10.084. Disbursements from the fund shall be on authorization of the agency. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements. [1991 sp.s. c 13 § 85; 1987 c 459 § 2.]

**\*Reviser's note:** The "tuition recovery fund" was renamed the "tuition recovery trust fund" by 1993 c 445.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**28C.10.084 Tuition recovery trust fund—Deposits—Operation—Claims.** (1) The agency shall establish, maintain, and administer a tuition recovery trust fund. All funds collected for the tuition recovery trust fund are payable to the state for the benefit and protection of any student or enrollee of a private vocational school licensed under this chapter, or, in the case of a minor, his or her parents or guardian, for purposes including but not limited to the settlement of claims related to school closures under subsection (10) of this section and the settlement of claims under RCW 28C.10.120. The fund shall be liable for settlement of claims and costs of administration but shall not be liable to pay out or recover penalties assessed under RCW 28C.10.130 or 28C.10.140. No liability accrues to the state of Washington from claims made against the fund.

(2) By June 30, 1998, a minimum operating balance of one million dollars shall be achieved in the fund and maintained thereafter. If disbursements reduce the operating balance below two hundred thousand dollars at any time before June 30, 1998, or below one million dollars thereafter, each participating owner shall be assessed a pro rata share of the deficiency created, based upon the incremental scale created under subsection (6) of this section for each private vocational school. The agency shall adopt schedules of times and amounts for effecting payments of assessment.

(3) In order for a private vocational school to be and remain licensed under this chapter each owner shall, in addition to other requirements under this chapter, make cash deposits on behalf of the school into a tuition recovery trust fund as a means to assure payment of claims brought under this chapter.

(4) The amount of liability that can be satisfied by this fund on behalf of each private vocational school licensed under this chapter shall be the amount of unearned prepaid tuition in possession of the owner.

(5) The fund's liability with respect to each participating private vocational school commences on the date of the initial deposit into the fund made on its behalf and ceases one year from the date the school is no longer licensed under this chapter.

(6) The agency shall adopt by rule a matrix for calculating the deposits into the fund on behalf of each vocational school. Proration shall be determined by factoring the school's share of liability in proportion to the aggregated liability of all participants under the fund by grouping such prorations under the incremental scale created by subsection (4) of this section. Expressed as a percentage of the total liability, that figure determines the amount to be contributed when factored into a fund containing one million dollars. The total amount of its prorated share, minus the amount paid for initial capitalization, shall be payable in up to twenty increments over a ten-year period, commencing with the sixth month after the initial capitalization deposit has been made on behalf of the school. Additionally, the agency shall require deposits for initial capitalization, under which the amount each owner deposits is proportionate to the school's share of two hundred thousand dollars, employing the matrix developed under this subsection.

(7) No vested right or interests in deposited funds is created or implied for the depositor, either at any time during the operation of the fund or at any such future time that the fund may be dissolved. All funds deposited are payable to the state for the purposes described under this section. The agency shall maintain the fund, serve appropriate notices to affected owners when scheduled deposits are due, collect deposits, and make disbursements to settle claims against the fund. When the aggregated deposits total five million dollars and the history of disbursements justifies such modifications, the agency may at its own option reduce the schedule of deposits whether as to time, amount, or both and the agency may also entertain proposals from among the licensees with regard to disbursing surplus funds for such purposes as vocational scholarships.

(8) Based on annual financial data supplied by the owner, the agency shall determine whether the increment assigned to that private vocational school on the incremental scale established under subsection (6) of this section has changed. If an increase or decrease in gross annual tuition income has occurred, a corresponding change in the school's incremental position and contribution schedule shall be made before the date of the owner's next scheduled deposit into the fund. Such adjustments shall only be calculated and applied annually.

(9) If the majority ownership interest in a private vocational school is conveyed through sale or other means into different ownership, all contributions made to the date of transfer remain in the fund. The new owner shall continue to make contributions to the fund until the original ten-year cycle is completed. All tuition recovery trust fund contributions shall remain with the private vocational school transferred, and no additional cash deposits may be required beyond the original ten-year contribution cycle.

(10) To settle claims adjudicated under RCW 28C.10.120 and claims resulting when a private vocational school ceases to provide educational services, the agency may make disbursements from the fund. Students enrolled under a training contract executed between a school and a public or private agency or business are not eligible to make a claim against the fund. In addition to the processes described for making reimbursements related to claims under

RCW 28C.10.120, the following procedures are established to deal with reimbursements related to school closures:

(a) The agency shall attempt to notify all potential claimants. The unavailability of records and other circumstances surrounding a school closure may make it impossible or unreasonable for the agency to ascertain the names and whereabouts of each potential claimant but the agency shall make reasonable inquiries to secure that information from all likely sources. The agency shall then proceed to settle the claims on the basis of information in its possession. The agency is not responsible or liable for claims or for handling claims that may subsequently appear or be discovered.

(b) Thirty days after identified potential claimants have been notified, if a claimant refuses or neglects to file a claim verification as requested in such notice, the agency shall be relieved of further duty or action on behalf of the claimant under this chapter.

(c) After verification and review, the agency may disburse funds from the tuition recovery trust fund to settle or compromise the claims. However, the liability of the fund for claims against the closed school shall not exceed the amount of unearned prepaid tuition in the possession of the owner.

(d) In the instance of claims against a closed school, the agency shall seek to recover such disbursed funds from the assets of the defaulted owner, including but not limited to asserting claims as a creditor in bankruptcy proceedings.

(11) When funds are disbursed to settle claims against a licensed private vocational school, the agency shall make demand upon the owner for recovery. The agency shall adopt schedules of times and amounts for effecting recoveries. An owner's failure to perform subjects the school's license to suspension or revocation under RCW 28C.10.050 in addition to any other available remedies.

(12) For purposes of this section, "owner" includes, but is not limited to, a person, company, firm, society, association, partnership, corporation, or trust having a controlling ownership interest in a private vocational school. [2001 c 23 § 2; 1999 c 321 § 3; 1993 c 445 § 2; 1990 c 188 § 8; 1987 c 459 § 1.]

**Intent—1999 c 321:** See note following RCW 28B.15.100.

**Severability—1990 c 188:** See note following RCW 28C.10.020.

**28C.10.090 Actions prohibited without license.** A private vocational school, whether located in this state or outside of this state, shall not conduct business of any kind, make any offers, advertise or solicit, or enter into any contracts unless the private vocational school is licensed under this chapter. [1986 c 299 § 9.]

**28C.10.100 Suspension or modification of requirements of chapter.** The executive director of the agency may suspend or modify any of the requirements under this chapter in a particular case if the agency finds that:

(1) The suspension or modification is consistent with the purposes of this chapter; and

(2) The education to be offered addresses a substantial, demonstrated need among residents of the state or that literal application of this chapter would cause a manifestly unreasonable hardship. [1986 c 299 § 10.]

**28C.10.110 Unfair business practices.** It is an unfair business practice for an entity operating a private vocational school or an agent employed by a private vocational school to:

(1) Fail to comply with the terms of a student enrollment contract or agreement;

(2) Use an enrollment contract form, catalog, brochure, or similar written material affecting the terms and conditions of student enrollment other than that previously submitted to the agency and authorized for use;

(3) Advertise in the help wanted section of a newspaper or otherwise represent falsely, directly or by implication, that the school is an employment agency, is making an offer of employment or otherwise is attempting to conceal the fact that what is being represented are course offerings of a school;

(4) Represent falsely, directly or by implication, that an educational program is approved by a particular industry or that successful completion of the program qualifies a student for admission to a labor union or similar organization or for the receipt of a state license in any business, occupation, or profession;

(5) Represent falsely, directly or by implication, that a student who successfully completes a course or program of instruction may transfer credit for the course or program to any institution of higher education;

(6) Represent falsely, directly or by implication, in advertising or in any other manner, the school's size, location, facilities, equipment, faculty qualifications, or the extent or nature of any approval received from an accrediting association;

(7) Represent that the school is approved, recommended, or endorsed by the state of Washington or by the agency, except the fact that the school is authorized to operate under this chapter may be stated;

(8) Provide prospective students with any testimonial, endorsement, or other information which has the tendency to mislead or deceive prospective students or the public regarding current practices of the school, current conditions for employment opportunities, or probable earnings in the occupation for which the education was designed;

(9) Designate or refer to sales representatives as "counselors," "advisors," or similar terms which have the tendency to mislead or deceive prospective students or the public regarding the authority or qualifications of the sales representatives;

(10) Make or cause to be made any statement or representation in connection with the offering of education if the school or agent knows or reasonably should have known the statement or representation to be false, substantially inaccurate, or misleading;

(11) Engage in methods of advertising, sales, collection, credit, or other business practices which are false, deceptive, misleading, or unfair, as determined by the agency by rule; or

(12) Attempt to recruit students in or within forty feet of a building that contains a welfare or unemployment office. Recruiting includes, but is not limited to canvassing and surveying. Recruiting does not include leaving materials at or near an office for a person to pick up of his or her own accord, or handing a brochure or leaflet to a person provided that no attempt is made to obtain a name, address, telephone number,

or other data, or to otherwise actively pursue the enrollment of the individual.

It is a violation of this chapter for an entity operating a private vocational school to engage in an unfair business practice. The agency may deny, revoke, or suspend the license of any entity that is found to have engaged in a substantial number of unfair business practices or that has engaged in significant unfair business practices. [2001 c 23 § 3; 1990 c 188 § 9; 1986 c 299 § 11.]

**Severability—1990 c 188:** See note following RCW 28C.10.020.

**28C.10.120 Complaints—Investigations—Hearings—Remedies.** (1) Complaints may be filed under this chapter only by a person claiming loss of tuition or fees as a result of an unfair business practice. The complaint shall set forth the alleged violation and shall contain information required by the agency on forms provided for that purpose. A complaint may also be filed with the agency by an authorized staff member of the agency or by the attorney general.

(2) The agency shall investigate any complaint under this section and shall first attempt to bring about a negotiated settlement. The agency director or the director's designee may conduct an informal hearing with the affected parties in order to determine whether a violation has occurred.

(3) If the agency finds that the private vocational school or its agent engaged in or is engaging in any unfair business practice, the agency shall issue and cause to be served upon the violator an order requiring the violator to cease and desist from the act or practice and may impose the penalties provided under RCW 28C.10.130. If the agency finds that the complainant has suffered loss as a result of the act or practice, the agency may order the violator to pay full or partial restitution of any amounts lost. The loss may include any money paid for tuition, required or recommended course materials, and any reasonable living expenses incurred by the complainant during the time the complainant was enrolled at the school.

(4) The complainant is not bound by the agency's determination of restitution. The complainant may reject that determination and may pursue any other legal remedy.

(5) The violator may, within twenty days of being served any order described under subsection (3) of this section, file an appeal under the administrative procedure act, chapter 34.05 RCW. Timely filing stays the agency's order during the pendency of the appeal. If the agency prevails, the appellant shall pay the costs of the administrative hearing. [1993 c 445 § 3; 1990 c 188 § 10; 1989 c 175 § 83; 1986 c 299 § 12.]

**Severability—1990 c 188:** See note following RCW 28C.10.020.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**28C.10.130 Violations—Civil penalties.** Any private vocational school or agent violating RCW 28C.10.060, 28C.10.090, or 28C.10.110 or the applicable agency rules is subject to a civil penalty of not more than one hundred dollars for each separate violation. Each day on which a violation occurs constitutes a separate violation. Multiple violations on a single day may be considered separate violations. The fine may be imposed by the agency under RCW 28C.10.120, or in any court of competent jurisdiction. [1986 c 299 § 13.]

(2004 Ed.)

**28C.10.140 Violations—Criminal sanctions.** Any entity or any owner, officer, agent, or employee of such entity who wilfully violates RCW 28C.10.060 or 28C.10.090 is guilty of a gross misdemeanor and, upon conviction, shall be punished by a fine of not to exceed one thousand dollars or by imprisonment in the county jail for not to exceed one year, or by both such fine and imprisonment.

Each day on which a violation occurs constitutes a separate violation. The criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the attorney general of this state. [1986 c 299 § 14.]

**28C.10.150 Actions resulting in jurisdiction of courts.** A private vocational school, whether located in this state or outside of this state, that conducts business of any kind, makes any offers, advertises, solicits, or enters into any contracts in this state or with a resident of this state is subject to the jurisdiction of the courts of this state for any cause of action arising from the acts. [1986 c 299 § 15.]

**28C.10.160 Educational records—Permanent file—Protection.** If any private vocational school discontinues its operation, the chief administrative officer of the school shall file with the agency the original or legible true copies of all educational records required by the agency. If the agency determines that any educational records are in danger of being made unavailable to the agency, the agency may seek a court order to protect and if necessary take possession of the records. The agency shall cause to be maintained a permanent file of educational records coming into its possession. [1986 c 299 § 16.]

**28C.10.170 Contracts voidable—When.** If a student or prospective student is a resident of this state at the time any contract relating to payment for education or any note, instrument, or other evidence of indebtedness relating thereto is entered into, RCW 28C.10.180 shall govern the rights of the parties to the contract or evidence of indebtedness. If a contract or evidence of indebtedness contains any of the following agreements, the contract is voidable at the option of the student or prospective student:

- (1) That the law of another state shall apply;
- (2) That the maker or any person liable on the contract or evidence of indebtedness consents to the jurisdiction of another state;
- (3) That another person is authorized to confess judgment on the contract or evidence of indebtedness; or
- (4) That fixes venue. [1986 c 299 § 17.]

**28C.10.180 Enforceability of debts—Authority to offer degree required.** A note, instrument, or other evidence of indebtedness or contract relating to payment for education is not enforceable in the courts of this state by a private vocational school or holder of the instrument unless the private vocational school was licensed under this chapter at the time the note, instrument, or other evidence of indebtedness or contract was entered into. [1986 c 299 § 18.]

**28C.10.190 Actions to enforce chapter—Who may bring—Relief.** The attorney general or the prosecuting attorney

ney of any county in which a private vocational school or agent of the school is found may bring an action in any court of competent jurisdiction for the enforcement of this chapter. The court may issue an injunction or grant any other appropriate form of relief. [1986 c 299 § 19.]

**28C.10.200 Injunctive relief—Agency may seek.** The agency may seek injunctive relief, after giving notice to the affected party, in a court of competent jurisdiction for a violation of this chapter or the rules adopted under this chapter. The agency need not allege or prove that the agency has no adequate remedy at law. The right of injunction provided in this section is in addition to any other legal remedy which the agency has and is in addition to any right of criminal prosecution provided by law. The existence of agency action with respect to alleged violations of this chapter and rules adopted under this chapter does not operate as a bar to an action for injunctive relief under this section. [1986 c 299 § 20.]

**28C.10.210 Violation of chapter unfair or deceptive practice under RCW 19.86.020.** A violation of this chapter or the rules adopted under this chapter affects the public interest and is an unfair or deceptive act or practice in violation of RCW 19.86.020 of the consumer protection act. The remedies and sanctions provided by this section shall not preclude application of other remedies and sanctions. [1986 c 299 § 21.]

**28C.10.220 Remedies and penalties in chapter non-exclusive and cumulative.** The remedies and penalties provided for in this chapter are nonexclusive and cumulative and do not affect any other actions or proceedings. [1986 c 299 § 22.]

**28C.10.900 Severability—1986 c 299.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 299 § 27.]

**28C.10.902 Effective date—1986 c 299.** This act shall take effect July 1, 1986. [1986 c 299 § 31.]

## Chapter 28C.18 RCW

### WORK FORCE TRAINING AND EDUCATION

#### Sections

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28C.18.120 State strategic plan for supply of health care personnel—Reports.

28C.18.900 Effective dates—Severability—1991 c 238.

**28C.18.005 Findings.** The legislature finds that the state's system of work force training and education is inadequate for meeting the needs of the state's workers, employers, and economy. A growing shortage of skilled workers is already hurting the state's economy. There is a shortage of available workers and too often prospective employees lack the skills and training needed by employers. Moreover, with demographic changes in the state's population employers will need to employ a more culturally diverse work force in the future.

The legislature further finds that the state's current work force training and education system is fragmented among numerous agencies, councils, boards, and committees, with inadequate overall coordination. No comprehensive strategic plan guides the different parts of the system. There is no single point of leadership and responsibility. There is insufficient guidance from employers and workers built into the system to ensure that the system is responsive to the needs of its customers. Adult work force education lacks a uniform system of governance, with an inefficient division in governance between community colleges and vocational technical institutes, and inadequate local authority. The parts of the system providing adult basic skills and literacy education are especially uncoordinated and lack sufficient visibility to adequately address the needs of the large number of adults in the state who are functionally illiterate. The work force training and education system's data and evaluation methods are inconsistent and unable to provide adequate information for determining how well the system is performing on a regular basis so that the system may be held accountable for the outcomes it produces. Much of the work force training and education system provides inadequate opportunities to meet the needs of people from culturally diverse backgrounds. Finally, our public and private educational institutions are not producing the number of people educated in vocational/technical skills needed by employers.

The legislature recognizes that we must make certain that our public and private institutions of education place appropriate emphasis on the needs of employers and on the needs of the approximately eighty percent of our young people who enter the world of work without completing a four-year program of higher education. We must make our work force education and training system better coordinated, more efficient, more responsive to the needs of business and workers and local communities, more accountable for its performance, and more open to the needs of a culturally diverse population. [1996 c 99 § 1; 1991 c 238 § 1.]

**28C.18.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Board" means the work force training and education coordinating board.

(2) "Director" means the director of the work force training and education coordinating board.

(3) "Training system" means programs and courses of secondary vocational education, technical college programs

and courses, community college vocational programs and courses, private career school and college programs and courses, employer-sponsored training, adult basic education programs and courses, programs and courses funded by the job training partnership act, programs and courses funded by the federal vocational act, programs and courses funded under the federal adult education act, publicly funded programs and courses for adult literacy education, and apprenticeships, and programs and courses offered by private and public nonprofit organizations that are representative of communities or significant segments of communities and provide job training or adult literacy services.

(4) "Work force skills" means skills developed through applied learning that strengthen and reinforce an individual's academic knowledge, critical thinking, problem solving, and work ethic and, thereby, develop the employability, occupational skills, and management of home and work responsibilities necessary for economic independence.

(5) "Vocational education" means organized educational programs offering a sequence of courses which are directly related to the preparation or retraining of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning which contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. Such term also includes applied technology education.

(6) "Adult basic education" means instruction designed to achieve mastery of skills in reading, writing, oral communication, and computation at a level sufficient to allow the individual to function effectively as a parent, worker, and citizen in the United States, commensurate with that individual's actual ability level, and includes English as a second language and preparation and testing service for the general education development exam. [1996 c 99 § 2; 1991 c 238 § 2.]

**28C.18.020 Work force training and education coordinating board.** (1) There is hereby created the work force training and education coordinating board as a state agency and as the successor agency to the state board for vocational education. Once the coordinating board has convened, all references to the state board for vocational education in the Revised Code of Washington shall be construed to mean the work force training and education coordinating board, except that reference to the state board for vocational education in RCW 49.04.030 shall mean the state board for community and technical colleges.

(2)(a) The board shall consist of nine voting members appointed by the governor with the consent of the senate, as follows: Three representatives of business, three representatives of labor, and, serving as ex officio members, the superintendent of public instruction, the executive director of the state board for community and technical colleges, and the commissioner of the employment security department. The chair of the board shall be a nonvoting member selected by the governor with the consent of the senate, and shall serve at the pleasure of the governor. In selecting the chair, the gover-

nor shall seek a person who understands the future economic needs of the state and nation and the role that the state's training system has in meeting those needs. Each voting member of the board may appoint a designee to function in his or her place with the right to vote. In making appointments to the board, the governor shall seek to ensure geographic, ethnic, and gender diversity and balance. The governor shall also seek to ensure diversity and balance by the appointment of persons with disabilities.

(b) The business representatives shall be selected from among nominations provided by a statewide business organization representing a cross-section of industries. However, the governor may request, and the organization shall provide, an additional list or lists from which the governor shall select the business representatives. The nominations and selections shall reflect the cultural diversity of the state, including women, people with disabilities, and racial and ethnic minorities, and diversity in sizes of businesses.

(c) The labor representatives shall be selected from among nominations provided by statewide labor organizations. However, the governor may request, and the organizations shall provide, an additional list or lists from which the governor shall select the labor representatives. The nominations and selections shall reflect the cultural diversity of the state, including women, people with disabilities, and racial and ethnic minorities.

(d) Each business member may cast a proxy vote or votes for any business member who is not present and who authorizes in writing the present member to cast such vote.

(e) Each labor member may cast a proxy vote for any labor member who is not present and who authorizes in writing the present member to cast such vote.

(f) The chair shall appoint to the board one nonvoting member to represent racial and ethnic minorities, women, and people with disabilities. The nonvoting member appointed by the chair shall serve for a term of four years with the term expiring on June 30th of the fourth year of the term.

(g) The business members of the board shall serve for terms of four years, the terms expiring on June 30th of the fourth year of the term except that in the case of initial members, one shall be appointed to a two-year term and one appointed to a three-year term.

(h) The labor members of the board shall serve for terms of four years, the terms expiring on June 30th of the fourth year of the term except that in the case of initial members, one shall be appointed to a two-year term and one appointed to a three-year term.

(i) Any vacancies among board members representing business or labor shall be filled by the governor with nominations provided by statewide organizations representing business or labor, respectively.

(j) The board shall adopt bylaws and shall meet at least bimonthly and at such other times as determined by the chair who shall give reasonable prior notice to the members or at the request of a majority of the voting members.

(k) Members of the board shall be compensated in accordance with RCW 43.03.040 and shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(l) The board shall be formed and ready to assume its responsibilities under this chapter by October 1, 1991.

(m) The director of the board shall be appointed by the governor from a list of three names submitted by a committee made up of the business and labor members of the board. However, the governor may request, and the committee shall provide, an additional list or lists from which the governor shall select the director. The lists compiled by the committee shall not be subject to public disclosure. The governor may dismiss the director only with the approval of a majority vote of the board. The board, by a majority vote, may dismiss the director with the approval of the governor.

(3) The state board for vocational education is hereby abolished and its powers, duties, and functions are hereby transferred to the work force training and education coordinating board. All references to the director or the state board for vocational education in the Revised Code of Washington shall be construed to mean the director or the work force training and education coordinating board. [1991 c 238 § 3.]

**28C.18.030 Purpose of the board.** The purpose of the board is to provide planning, coordination, evaluation, monitoring, and policy analysis for the state training system as a whole, and advice to the governor and legislature concerning the state training system, in cooperation with the state training system and the higher education coordinating board. [1996 c 99 § 3; 1991 c 238 § 4.]

**28C.18.040 Director's duties.** (1) The director shall serve as chief executive officer of the board who shall administer the provisions of this chapter, employ such personnel as may be necessary to implement the purposes of this chapter, and utilize staff of existing operating agencies to the fullest extent possible.

(2) The director shall not be the chair of the board.

(3) Subject to the approval of the board, the director shall appoint necessary deputy and assistant directors and other staff who shall be exempt from the provisions of chapter 41.06 RCW. The director's appointees shall serve at the director's pleasure on such terms and conditions as the director determines but subject to chapter 42.52 RCW.

(4) The director shall appoint and employ such other employees as may be required for the proper discharge of the functions of the board.

(5) The director shall, as permissible under P.L. 101-392, as amended, integrate the staff of the council on vocational education, and contract with the state board for community and technical colleges for assistance for adult basic skills and literacy policy development and planning as required by P.L. 100-297, as amended. [1994 c 154 § 307; 1991 c 238 § 5.]

**Parts and captions not law—Effective date—Severability—1994 c 154:** See RCW 42.52.902, 42.52.904, and 42.52.905.

**28C.18.050 Board designation and functions for federal purposes—Monitoring state plans for consistency.**

(1) The board shall be designated as the state board of vocational education as provided for in P.L. 98-524, as amended, and shall perform such functions as is necessary to comply with federal directives pertaining to the provisions of such law.

(2) The board shall perform the functions of the human resource investment council as provided for in the federal job training partnership act, P.L. 97-300, as amended.

(3) The board shall provide policy advice for any federal act pertaining to work force development that is not required by state or federal law to be provided by another state body.

(4) Upon enactment of new federal initiatives relating to work force development, the board shall advise the governor and the legislature on mechanisms for integrating the federal initiatives into the state's work force development system and make recommendations on the legislative or administrative measures necessary to streamline and coordinate state efforts to meet federal guidelines.

(5) The board shall monitor for consistency with the state comprehensive plan for work force training and education the policies and plans established by the state job training coordinating council, the advisory council on adult education, and the Washington state plan for adult basic education, and provide guidance for making such policies and plans consistent with the state comprehensive plan for work force training and education. [1995 c 130 § 3; 1991 c 238 § 6.]

**28C.18.060 Board's duties.** The board, in cooperation with the operating agencies of the state training system and private career schools and colleges shall:

(1) Concentrate its major efforts on planning, coordination evaluation, policy analysis, and recommending improvements to the state's training system.

(2) Advocate for the state training system and for meeting the needs of employers and the work force for work force education and training.

(3) Establish and maintain an inventory of the programs of the state training system, and related state programs, and perform a biennial assessment of the vocational education, training, and adult basic education and literacy needs of the state; identify ongoing and strategic education needs; and assess the extent to which employment, training, vocational and basic education, rehabilitation services, and public assistance services represent a consistent, integrated approach to meet such needs.

(4) Develop and maintain a state comprehensive plan for work force training and education, including but not limited to, goals, objectives, and priorities for the state training system, and review the state training system for consistency with the state comprehensive plan. In developing the state comprehensive plan for work force training and education, the board shall use, but shall not be limited to: Economic, labor market, and population trends reports in office of financial management forecasts; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome, net-impact and cost-benefit evaluations; the needs of employers as evidenced in formal employer surveys and other employer input; and the needs of program participants and workers as evidenced in formal surveys and other input from program participants and the labor community.

(5) In consultation with the higher education coordinating board, review and make recommendations to the office of financial management and the legislature on operating and capital facilities budget requests for operating agencies of the

state training system for purposes of consistency with the state comprehensive plan for work force training and education.

(6) Provide for coordination among the different operating agencies and components of the state training system at the state level and at the regional level.

(7) Develop a consistent and reliable data base on vocational education enrollments, costs, program activities, and job placements from publicly funded vocational education programs in this state.

(8) Establish standards for data collection and maintenance for the operating agencies of the state training system in a format that is accessible to use by the board. The board shall require a minimum of common core data to be collected by each operating agency of the state training system.

The board shall develop requirements for minimum common core data in consultation with the office of financial management and the operating agencies of the training system.

(9) Establish minimum standards for program evaluation for the operating agencies of the state training system, including, but not limited to, the use of common survey instruments and procedures for measuring perceptions of program participants and employers of program participants, and monitor such program evaluation.

(10) Every two years administer scientifically based outcome evaluations of the state training system, including, but not limited to, surveys of program participants, surveys of employers of program participants, and matches with employment security department payroll and wage files. Every five years administer scientifically based net-impact and cost-benefit evaluations of the state training system.

(11) In cooperation with the employment security department, provide for the improvement and maintenance of quality and utility in occupational information and forecasts for use in training system planning and evaluation. Improvements shall include, but not be limited to, development of state-based occupational change factors involving input by employers and employees, and delineation of skill and training requirements by education level associated with current and forecasted occupations.

(12) Provide for the development of common course description formats, common reporting requirements, and common definitions for operating agencies of the training system.

(13) Provide for effectiveness and efficiency reviews of the state training system.

(14) In cooperation with the higher education coordinating board, facilitate transfer of credit policies and agreements between institutions of the state training system, and encourage articulation agreements for programs encompassing two years of secondary work force education and two years of postsecondary work force education.

(15) In cooperation with the higher education coordinating board, facilitate transfer of credit policies and agreements between private training institutions and institutions of the state training system.

(16) Participate in the development of coordination criteria for activities under the job training partnership act with related programs and services provided by state and local education and training agencies.

(17) Make recommendations to the commission of student assessment, the state board of education, and the superintendent of public instruction, concerning basic skill competencies and essential core competencies for K-12 education. Basic skills for this purpose shall be reading, writing, computation, speaking, and critical thinking, essential core competencies for this purpose shall be English, math, science/technology, history, geography, and critical thinking. The board shall monitor the development of and provide advice concerning secondary curriculum which integrates vocational and academic education.

(18) Establish and administer programs for marketing and outreach to businesses and potential program participants.

(19) Facilitate the location of support services, including but not limited to, child care, financial aid, career counseling, and job placement services, for students and trainees at institutions in the state training system, and advocate for support services for trainees and students in the state training system.

(20) Facilitate private sector assistance for the state training system, including but not limited to: Financial assistance, rotation of private and public personnel, and vocational counseling.

(21) Facilitate programs for school-to-work transition that combine classroom education and on-the-job training in industries and occupations without a significant number of apprenticeship programs.

(22) Encourage and assess progress for the equitable representation of racial and ethnic minorities, women, and people with disabilities among the students, teachers, and administrators of the state training system. Equitable, for this purpose, shall mean substantially proportional to their percentage of the state population in the geographic area served. This function of the board shall in no way lessen more stringent state or federal requirements for representation of racial and ethnic minorities, women, and people with disabilities.

(23) Participate in the planning and policy development of governor set-aside grants under P.L. 97-300, as amended.

(24) Administer veterans' programs, licensure of private vocational schools, the job skills program, and the Washington award for vocational excellence.

(25) Allocate funding from the state job training trust fund.

(26) Work with the director of community, trade, and economic development to ensure coordination between work force training priorities and that department's economic development efforts.

(27) Adopt rules as necessary to implement this chapter.

The board may delegate to the director any of the functions of this section. [1996 c 99 § 4; 1993 c 280 § 17; 1991 c 238 § 7.]

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**28C.18.070 Intent—"Program" clarified.** (1) The legislature continues to recognize the vital role that work force development efforts play in equipping the state's workers with the skills they need to succeed in an economy that requires higher levels of skill and knowledge. The legislature also recognizes that businesses are increasingly relying on

the state's work force development programs and expect them to be responsive to their changing skill requirements. The state benefits from a work force development system that allows firms and workers to be highly competitive in global markets.

(2) The establishment of the work force training and education coordinating board was an integral step in developing a strategic approach to work force development. For the coordinating board to carry out its intended role, the board must be able to give unambiguous guidance to operating agencies, the governor, and the legislature. It is the intent of chapter 130, Laws of 1995, to clarify the preeminent role intended for the work force training and education coordinating board in coordination and policy development of the state's work force development efforts.

(3) In the event that federal work force development funds are block granted to the state, it is the intent of the legislature to seek the broadest possible input, from local and statewide organizations concerned with work force development, on the allocation of the federal funds.

(4) For purposes of RCW 28C.18.080 through 28C.18.110, the term "program" shall not refer to the activities of individual institutions such as individual community or technical colleges, common schools, service delivery areas, or job service centers; nor shall it refer to individual fields of study or courses. [1995 c 130 § 1.]

**28C.18.080 Comprehensive plan—Contents—Updates—Agency operating plans—Reports to the legislature.** (1) The state comprehensive plan for work force training and education shall be updated every two years and presented to the governor and the appropriate legislative policy committees. Following public hearings, the legislature shall, by concurrent resolution, approve or recommend changes to the initial plan and the updates. The plan shall then become the state's work force training policy unless legislation is enacted to alter the policies set forth in the plan.

(2) The comprehensive plan shall include work force training role and mission statements for the work force development programs of operating agencies represented on the board and sufficient specificity regarding expected actions by the operating agencies to allow them to carry out actions consistent with the comprehensive plan.

(3) Operating agencies represented on the board shall have operating plans for their work force development efforts that are consistent with the comprehensive plan and that provide detail on implementation steps they will take to carry out their responsibilities under the plan. Each operating agency represented on the board shall provide an annual progress report to the board.

(4) The comprehensive plan shall include recommendations to the legislature and the governor on the modification, consolidation, initiation, or elimination of work force training and education programs in the state.

(5) The comprehensive plan shall address how the state's work force development system will meet the needs of employers hiring for industrial projects of statewide significance.

(6) The board shall report to the appropriate legislative policy committees by December 1 of each year on its progress in implementing the comprehensive plan and on the

progress of the operating agencies in meeting their obligations under the plan. [1997 c 369 § 5; 1995 c 130 § 2.]

*Industrial project of statewide significance—Defined: RCW 43.157.010.*

**28C.18.090 Additional board duties—Program evaluation by operating agencies.** (1) The board shall specify, by December 31, 1995, the common core data to be collected by the operating agencies of the state training system and the standards for data collection and maintenance required in RCW 28C.18.060(8).

(2) The minimum standards for program evaluation by operating agencies required in RCW 28C.18.060(9) shall include biennial program evaluations; the first of such evaluations shall be completed by the operating agencies July 1, 1996. The program evaluation of adult basic skills education shall be provided by the advisory council on adult education.

(3) The board shall complete, by January 1, 1996, its first outcome-based evaluation and, by September 1, 1996, its nonexperimental net-impact and cost-benefit evaluations of the training system. The outcome, net-impact, and cost-benefit evaluations shall for the first evaluations, include evaluations of each of the following programs: Secondary vocational-technical education, work-related adult basic skills education, postsecondary work force training, job training partnership act titles II and III, as well as of the system as a whole.

(4) The board shall use the results of its outcome, net-impact, and cost-benefit evaluations to develop and make recommendations to the legislature and the governor for the modification, consolidation, initiation, or elimination of work force training and education programs in the state.

The board shall perform the requirements of this section in cooperation with the operating agencies. [1995 c 130 § 4.]

**28C.18.100 Assessments by board—Biennial report to legislature and governor.** The board shall, by January 1, 1996, and biennially thereafter: (1) Assess the total demand for training from the perspective of workers, and from the perspective of employers; (2) assess the available supply of publicly and privately provided training which workers and employers are demanding; (3) assess the costs to the state of meeting the demand; and (4) present the legislature and the governor with a strategy for bridging the gap between the supply and the demand for training services. [1995 c 130 § 5.]

**28C.18.110 Identification of policies and methods to promote efficiency and sharing of resources—Report to governor and legislature.** The board shall, in cooperation with the operating agencies, by January 1, 1996:

(1) Identify policies to reduce administrative and other barriers to efficient operation of the state's work force development system and barriers to improved coordination of work force development in the state. These policies shall include waivers of statutory requirements and administrative rules, as well as implementation of one-stop access to work force development services and school-to-work transition;

(2) Identify ways for operating agencies to share resources, instructors, and curricula through collaboration

with other public and private entities to increase training opportunities and reduce costs; and

(3) Report to the governor and the appropriate legislative committees its recommendations for any statutory changes necessary to enhance operational efficiencies or improve coordination. The board shall work with the operating agencies of the state's work force development system to reduce administrative barriers that do not require statutory changes. [1995 c 130 § 6.]

**28C.18.120 State strategic plan for supply of health care personnel—Reports.** The board shall:

(1) Facilitate ongoing collaboration among stakeholders in order to address the health care personnel shortage;

(2) In collaboration with stakeholders, establish and maintain a state strategic plan for ensuring an adequate supply of health care personnel that safeguards the ability of the health care delivery system in Washington state to provide quality, accessible health care to residents of Washington; and

(3) Report to the governor and legislature by December 31, 2003, and annually thereafter, on progress on the state plan and make additional recommendations as necessary. [2003 c 278 § 2.]

**Findings—2003 c 278:** "The legislature finds and declares:

(1) There is a severe shortage of health care personnel in Washington state;

(2) The shortage contributes to increased costs in health care and threatens the ability of the health care system to provide adequate and accessible services;

(3) The current shortage of health care personnel is structural rather than the cyclical shortages of the past, and this is due to demographic changes that will increase demand for health care services;

(4) An increasing proportion of the population will reach retirement age, and an increasing proportion of health care personnel will also reach retirement age; and

(5) There should be continuing collaboration among health care work force stakeholders to address the shortage of health care personnel." [2003 c 278 § 1.]

**28C.18.900 Effective dates—Severability—1991 c 238.** See RCW 28B.50.917 and 28B.50.918.

## Chapter 28C.22 RCW SKILL CENTERS

### Sections

28C.22.005 Findings.

28C.22.010 Skill center program operation.

28C.22.020 Contracts with community colleges—Enrollment lid—Fees.

**28C.22.005 Findings.** As retraining becomes a common part of adult work life, it is important that all vocational education opportunities be used to the maximum extent possible. Skill centers established to provide vocational training for high school students are used during the morning and early afternoon. These facilities are idle during the late afternoon and evening hours. At the same time, community colleges have more students applying than they can accommodate. To assure that we meet the needs of our citizens in seeking training or retraining, all vocational training facilities should be used to the maximum extent possible. [1993 c 380 § 1.]

(2004 Ed.)

**28C.22.010 Skill center program operation.** Skill centers, to the extent funds are available, are encouraged to operate afternoon and evening programs. [1993 c 380 § 2.]

**28C.22.020 Contracts with community colleges—Enrollment lid—Fees.** The community colleges are encouraged to contract with skill centers to use the skill center facilities. The community colleges shall not be required to count the enrollments under these agreements toward the community college enrollment lid. Skill centers may charge fees to adult students under RCW 28A.225.220. [1993 c 380 § 3.]

# Title 29A

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#### DEFINITIONS

**29A.04.001 Scope of definitions.** Words and phrases as defined in this chapter, wherever used in Title 29A RCW, shall have the meaning as in this chapter ascribed to them, unless where used the context thereof shall clearly indicate to the contrary or unless otherwise defined in the chapter of which they are a part. [2003 c 111 § 101. Prior: 1965 c 9 §

29.01.005. For like prior law see 1907 c 209 § 1, part; RRS § 5177, part. Formerly RCW 29.01.005.]

**29A.04.008 Ballot and related terms.** As used in this title:

(1) "Ballot" means, as the context implies, either:

(a) The issues and offices to be voted upon in a jurisdiction or portion of a jurisdiction at a particular primary, general election, or special election;

(b) A facsimile of the contents of a particular ballot whether printed on a paper ballot or ballot card or as part of a voting machine or voting device;

(c) A physical or electronic record of the choices of an individual voter in a particular primary, general election, or special election; or

(d) The physical document on which the voter's choices are to be recorded;

(2) "Paper ballot" means a piece of paper on which the ballot for a particular election or primary has been printed, on which a voter may record his or her choices for any candidate or for or against any measure, and that is to be tabulated manually;

(3) "Ballot card" means any type of card or piece of paper of any size on which a voter may record his or her choices for any candidate and for or against any measure and that is to be tabulated on a vote tallying system;

(4) "Sample ballot" means a printed facsimile of all the issues and offices on the ballot in a jurisdiction and is intended to give voters notice of the issues, offices, and candidates that are to be voted on at a particular primary, general election, or special election;

(5) "Provisional ballot" means a ballot issued to a voter at the polling place on election day by the precinct election board, for one of the following reasons:

(a) The voter's name does not appear in the poll book;

(b) There is an indication in the poll book that the voter has requested an absentee ballot, but the voter wishes to vote at the polling place;

(c) There is a question on the part of the voter concerning the issues or candidates on which the voter is qualified to vote;

(6) "Party ballot" means a primary election ballot specific to a particular major political party that lists all partisan offices to be voted on at that primary, and the candidates for those offices who affiliate with that same major political party;

(7) "Nonpartisan ballot" means a primary election ballot that lists all nonpartisan races and ballot measures to be voted on at that primary. [2004 c 271 § 102.]

**29A.04.013 Canvassing.** "Canvassing" means the process of examining ballots or groups of ballots, subtotals, and cumulative totals in order to determine the official returns of a primary or general election and includes the tabulation of any votes that were not tabulated at the precinct or in a counting center on the day of the primary or election. [2003 c 111 § 103; 1990 c 59 § 3. Formerly RCW 29.01.008.]

**Intent—1990 c 59:** "By this act the legislature intends to unify and simplify the laws and procedures governing filing for elective office, ballot layout, ballot format, voting equipment, and canvassing." [1990 c 59 § 1.]

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**Effective date—1990 c 59:** "Sections 1 through 6, 8 through 96, and 98 through 112 of this act shall take effect July 1, 1992." [1990 c 59 § 113.]

**29A.04.019 Counting center.** "Counting center" means the facility or facilities designated by the county auditor to count and canvass mail ballots, absentee ballots, and polling place ballots that are transferred to a central site to be counted, rather than being counted by a poll-site ballot counting device, on the day of a primary or election. [2003 c 111 § 104. Prior: 1999 c 158 § 1; 1990 c 59 § 4. Formerly RCW 29.01.042.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.04.025 County auditor.** "County auditor" means the county auditor in a noncharter county or the officer, irrespective of title, having the overall responsibility to maintain voter registration and to conduct state and local elections in a charter county. [2003 c 111 § 105; 1984 c 106 § 1. Formerly RCW 29.01.043.]

**29A.04.031 Date of mailing.** For registered voters voting by absentee or mail ballot, "date of mailing" means the date of the postal cancellation on the envelope in which the ballot is returned to the election official by whom it was issued. For all nonregistered absentee voters, "date of mailing" means the date stated by the voter on the envelope in which the ballot is returned to the election official by whom it was issued. [2003 c 111 § 106; 1987 c 346 § 3. Formerly RCW 29.01.045.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**29A.04.037 Disabled voter.** "Disabled voter" means any registered voter who qualifies for special parking privileges under RCW 46.16.381, or who is defined as blind under RCW 74.18.020, or who qualifies to require assistance with voting under RCW 29A.44.240. [2003 c 111 § 107. Prior: 1987 c 346 § 4. Formerly RCW 29.01.047.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**29A.04.043 Election.** "Election" when used alone means a general election except where the context indicates that a special election is included. "Election" when used without qualification does not include a primary. [2003 c 111 § 108. Prior: 1990 c 59 § 5; 1965 c 9 § 29.01.050; prior: 1907 c 209 § 1, part; RRS § 5177(c). See also 1950 ex.s. c 14 § 3. Formerly RCW 29.01.050.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.04.049 Election board.** "Election board" means a group of election officers serving one precinct or a group of precincts in a polling place. [2003 c 111 § 109; 1986 c 167 § 1. Formerly RCW 29.01.055.]

**Severability—1986 c 167:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 167 § 26.]

(2004 Ed.)

**29A.04.055 Election officer.** "Election officer" includes any officer who has a duty to perform relating to elections under the provisions of any statute, charter, or ordinance. [2003 c 111 § 110. Prior: 1965 c 9 § 29.01.060. Formerly RCW 29.01.060.]

**29A.04.061 Elector.** "Elector" means any person who possesses all of the qualifications to vote under Article VI of the state Constitution. [2003 c 111 § 111. Prior: 1987 c 346 § 2. Formerly RCW 29.01.065.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**29A.04.067 Filing officer.** "Filing officer" means the county or state officer with whom declarations of candidacy for an office are required to be filed under this title. [2003 c 111 § 112. Prior: 1990 c 59 § 77. Formerly RCW 29.01.068.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.04.073 General election.** "General election" means an election required to be held on a fixed date recurring at regular intervals. [2003 c 111 § 113. Prior: 1965 c 9 § 29.01.070. Formerly RCW 29.01.070.]

**29A.04.079 Infamous crime.** An "infamous crime" is a crime punishable by death in the state penitentiary or imprisonment in a state correctional facility. [2003 c 111 § 114. Prior: 1992 c 7 § 31; 1965 c 9 § 29.01.080; prior: Code 1881 § 3054; 1865 p 25 § 5; RRS § 5113. Formerly RCW 29.01.080.]

*Contests, conviction of felony without reversal or restoration of civil rights as grounds for:* RCW 29A.68.020.

*Denial of civil rights for conviction of infamous crime: State Constitution Art. 6 § 3.*

**29A.04.086 Major political party.** "Major political party" means a political party of which at least one nominee for president, vice president, United States senator, or a state-wide office received at least five percent of the total vote cast at the last preceding state general election in an even-numbered year. A political party qualifying as a major political party under this section retains such status until the next even-year election at which a candidate of that party does not achieve at least five percent of the vote for one of the previously specified offices. If none of these offices appear on the ballot in an even-year general election, the major party retains its status as a major party through that election. However, a political party of which no nominee received at least ten percent of the total vote cast may forgo its status as a major political party by filing with the secretary of state an appropriate party rule within sixty days of attaining major party status under this section, or within fifteen days of June 10, 2004, whichever is later. [2004 c 271 § 103.]

**29A.04.091 Measures.** "Measure" includes any proposition or question submitted to the voters. [2003 c 111 § 117; 1965 c 9 § 29.01.110. Formerly RCW 29.01.110.]

(2004 Ed.)

**29A.04.097 Minor political party.** "Minor political party" means a political organization other than a major political party. [2003 c 111 § 116. Prior: 1965 c 9 § 29.01.100; prior: 1955 c 102 § 8; prior: 1907 c 209 § 26, part; RRS § 5203, part. Formerly RCW 29.01.100.]

*Minor party convention:* RCW 29A.20.110 through 29A.20.200.

*Political parties:* Chapter 29A.80 RCW.

**29A.04.103 Out-of-state voter.** "Out-of-state voter" means any elector of the state of Washington outside the state but not outside the territorial limits of the United States or the District of Columbia. [2003 c 111 § 118. Prior: 1987 c 346 § 5. Formerly RCW 29.01.113.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**29A.04.109 Overseas voter.** "Overseas voter" means any elector of the state of Washington outside the territorial limits of the United States or the District of Columbia. [2003 c 111 § 119. Prior: 1987 c 346 § 6. Formerly RCW 29.01.117.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**29A.04.115 Poll-site ballot counting devices.** "Poll-site ballot counting device" means a device programmed to accept voted ballots at a polling place for the purpose of tallying and storing the ballots on election day. [2003 c 111 § 120. Prior: 1999 c 158 § 2. Formerly RCW 29.01.119.]

**29A.04.121 Precinct.** "Precinct" means a geographical subdivision for voting purposes that is established by a county legislative authority. [2003 c 111 § 121; 1965 c 9 § 29.01.120. Prior: 1933 c 1 § 2; RRS § 5114-2; prior: 1915 c 16 § 1; RRS § 5114. Formerly RCW 29.01.120.]

**29A.04.128 Primary.** "Primary" or "primary election" means a statutory procedure for nominating candidates to public office at the polls. [2004 c 271 § 152.]

**29A.04.133 Qualified.** "Qualified" when pertaining to a winner of an election means that for such election:

- (1) The results have been certified;
- (2) A certificate has been issued;
- (3) Any required bond has been posted; and
- (4) The winner has taken and subscribed an oath or affirmation in compliance with the appropriate statute, or if none is specified, that he or she will faithfully and impartially discharge the duties of the office to the best of his or her ability. This oath or affirmation shall be administered and certified by any officer or notary public authorized to administer oaths, without charge therefor. [2003 c 111 § 123. Prior: 1979 ex.s. c 126 § 2. Formerly RCW 29.01.135.]

**Purpose—1979 ex.s. c 126:** RCW 29A.20.040(1).

**29A.04.139 Recount.** "Recount" means the process of retabulating ballots and producing amended election returns based on that retabulation, even if the vote totals have not changed. [2003 c 111 § 124. Prior: 2001 c 225 § 1. Formerly RCW 29.01.136.]

**29A.04.145 Registered voter.** "Registered voter" means any elector who has completed the statutory registration procedures established by this title. The terms "registered voter" and "qualified elector" are synonymous. [2003 c 111 § 125; 1987 c 346 § 7. Formerly RCW 29.01.137.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**29A.04.151 Residence.** "Residence" for the purpose of registering and voting means a person's permanent address where he or she physically resides and maintains his or her abode. However, no person gains residence by reason of his or her presence or loses his or her residence by reason of his or her absence:

- (1) While employed in the civil or military service of the state or of the United States;
- (2) While engaged in the navigation of the waters of this state or the United States or the high seas;
- (3) While a student at any institution of learning;
- (4) While confined in any public prison.

Absence from the state on business shall not affect the question of residence of any person unless the right to vote has been claimed or exercised elsewhere. [2003 c 111 § 126; 1971 ex.s. c 178 § 1; 1965 c 9 § 29.01.140. Prior: 1955 c 181 § 1; prior: (i) Code 1881 § 3051; 1865 p 25 § 2; RRS § 5110. (ii) Code 1881 § 3053; 1866 p 8 § 11; 1865 p 25 § 4; RRS § 5111. Formerly RCW 29.01.140.]

*Residence, contingencies affecting: State Constitution Art. 6 § 4.*

**29A.04.157 September primary.** "September primary" means the primary election held in September to nominate candidates to be voted for at the ensuing election. [2003 c 111 § 128. Prior: 1965 c 9 § 29.01.160; prior: 1907 c 209 § 1, part; RRS § 5177(b). Formerly RCW 29.01.160.]

**29A.04.158 September primary.** "September primary" means the primary election held in September to nominate candidates to be voted for at the ensuing election. [2004 c 271 § 187.]

**29A.04.163 Service voter.** "Service voter" means any elector of the state of Washington who is a member of the armed forces under 42 U.S.C. Sec. 1973 ff-6 while in active service, is a student or member of the faculty at a United States military academy, is a member of the merchant marine of the United States, is a program participant as defined in RCW 40.24.020, or is a member of a religious group or welfare agency officially attached to and serving with the armed forces of the United States. [2003 c 111 § 127. Prior: 1991 c 23 § 13; 1987 c 346 § 8. Formerly RCW 29.01.155.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**29A.04.169 Short term.** "Short term" means the brief period of time starting upon the completion of the certification of election returns and ending with the start of the full term and is applicable only when the office concerned is being held by an appointee to fill a vacancy. The vacancy must have occurred after the last election at which such office could have been voted upon for an unexpired term. Short term elections are always held in conjunction with elections

for the full term for the office. [2003 c 111 § 130; 1975-'76 2nd ex.s. c 120 § 14. Formerly RCW 29.01.180.]

**Severability—1975-'76 2nd ex.s. c 120:** See note following RCW 29A.52.210.

**29A.04.175 Special election.** "Special election" means any election that is not a general election and may be held in conjunction with a general election or primary. [2003 c 111 § 129; 1965 c 9 § 29.01.170. Prior: Code 1881 § 3056; 1865 p 27 § 2; RRS § 5155. Formerly RCW 29.01.170.]

## GENERAL PROVISIONS

**29A.04.205 State policy.** It is the policy of the state of Washington to encourage every eligible person to register to vote and to participate fully in all elections, and to protect the integrity of the electoral process by providing equal access to the process while guarding against discrimination and fraud. The election registration laws and the voting laws of the state of Washington must be administered without discrimination based upon race, creed, color, national origin, sex, or political affiliation. [2003 c 111 § 132; 2001 c 41 § 1. Formerly RCW 29.04.001.]

**29A.04.210 Registration required—Exception.** Only a registered voter shall be permitted to vote:

- (1) At any election held for the purpose of electing persons to public office;
- (2) At any recall election of a public officer;
- (3) At any election held for the submission of a measure to any voting constituency;
- (4) At any primary election.

This section does not apply to elections where being registered to vote is not a prerequisite to voting. [2003 c 111 § 133; 1965 c 9 § 29.04.010. Prior: 1955 c 181 § 8; prior: (i) 1933 c 1 § 22, part; RRS § 5114-22, part. (ii) 1933 c 1 § 23; RRS § 5114-23. See also 1935 c 26 § 3; RRS § 5189. Formerly RCW 29.04.010.]

*Out-of-state, overseas, service voters, same ballots as registered voters: RCW 29A.40.010.*

*Subversive activities, disqualification from voting: RCW 9.81.040.*

**29A.04.216 County auditor—Duties—Exceptions.** The county auditor of each county shall be ex officio the supervisor of all primaries and elections, general or special, and it shall be the county auditor's duty to provide places for holding such primaries and elections; to appoint the precinct election officers and to provide for their compensation; to provide the supplies and materials necessary for the conduct of elections to the precinct election officers; and to publish and post notices of calling such primaries and elections in the manner provided by law. The notice of a primary held in an even-numbered year must indicate that the office of precinct committee officer will be on the ballot. The auditor shall also apportion to each city, town, or district, and to the state of Washington in the odd-numbered year, its share of the expense of such primaries and elections. This section does not apply to general or special elections for any city, town, or district that is not subject to RCW 29A.04.321 and 29A.04.330, but all such elections must be held and conducted at the time, in the manner, and by the officials (with

such notice, requirements for filing for office, and certifications by local officers) as provided and required by the laws governing such elections. [2004 c 271 § 104.]

**29A.04.220 County auditor—Public notice of availability of services.** The county auditor shall provide public notice of the availability of registration and voting aids, assistance to elderly and disabled persons, and procedures for voting by absentee ballot calculated to reach elderly and disabled persons not later than public notice of the closing of registration for a primary or election. [2003 c 111 § 135; 1999 c 298 § 18; 1985 c 205 § 10. Formerly RCW 29.57.140.]

**Effective dates—1985 c 205:** See note following RCW 29A.16.140.

**29A.04.225 Public disclosure reports.** Each county auditor or county elections official shall ensure that reports filed pursuant to chapter 42.17 RCW are arranged, handled, indexed, and disclosed in a manner consistent with the rules of the public disclosure commission adopted under RCW 42.17.375. [2003 c 111 § 136. Prior: 1983 c 294 § 2. Formerly RCW 29.04.025.]

**29A.04.230 Secretary of state as chief election officer.** The secretary of state through the election division shall be the chief election officer for all federal, state, county, city, town, and district elections that are subject to this title. The secretary of state shall keep records of elections held for which he or she is required by law to canvass the results, make such records available to the public upon request, and coordinate those state election activities required by federal law. [2003 c 111 § 137; 1994 c 57 § 4; 1965 c 9 § 29.04.070. Prior: 1963 c 200 § 23; 1949 c 161 § 12; Rem. Supp. 1949 § 5147-2. Formerly RCW 29.04.070.]

**Severability—1994 c 57:** See note following RCW 10.64.021.

**29A.04.235 Election laws for county auditors.** The secretary of state shall ensure that each county auditor is provided with the most recent version of the election laws of the state, as contained in this title. Where amendments have been enacted after the last compilation of the election laws, he or she shall ensure that each county auditor receives a copy of those amendments before the next primary or election. The county auditor shall ensure that any statutory information necessary for the precinct election officers to perform their duties is supplied to them in a timely manner. [2003 c 111 § 138; 1965 c 9 § 29.04.060. Prior: (i) 1907 c 209 § 16; RRS § 5193. (ii) 1889 p 413 § 34; RRS § 5299. Formerly RCW 29.04.060.]

**29A.04.240 Information in foreign languages.** In order to encourage the broadest possible voting participation by all eligible citizens, the secretary of state shall produce voter registration information in the foreign languages required of state agencies. [2003 c 111 § 139; 2001 c 41 § 3. Formerly RCW 29.04.085.]

**29A.04.245 Voter guide.** The secretary of state shall cause to be produced a "voter guide" detailing what constitutes voter fraud and discrimination under state election laws.

(2004 Ed.)

This voter guide must be provided to every county election officer and auditor, and any other person upon request. [2003 c 111 § 140; 2001 c 41 § 4. Formerly RCW 29.04.088.]

**29A.04.250 Toll-free media and web page.** The secretary of state shall provide a toll-free media and web page designed to allow voter communication with the office of the secretary of state. [2003 c 111 § 141. Prior: 2001 c 41 § 5. Formerly RCW 29.04.091.]

**29A.04.255 Electronic facsimile documents—Acceptance.** The secretary of state or a county auditor shall accept and file in his or her office electronic facsimile transmissions of the following documents:

- (1) Declarations of candidacy;
- (2) County canvass reports;
- (3) Voters' pamphlet statements;
- (4) Arguments for and against ballot measures that will appear in a voters' pamphlet;
- (5) Requests for recounts;
- (6) Certification of candidates and measures by the secretary of state;
- (7) Direction by the secretary of state for the conduct of a mandatory recount;
- (8) Requests for absentee ballots;
- (9) Any other election related document authorized by rule adopted by the secretary of state under \*RCW 29A.04.610.

The acceptance by the secretary of state or the county auditor is conditional upon the document being filed in a timely manner, being legible, and otherwise satisfying the requirements of state law or rules with respect to form and content.

If the original copy of a document must be signed and a copy of the document is filed by facsimile transmission under this section, the original copy must be subsequently filed with the official with whom the facsimile was filed. The original copy must be filed by a deadline established by the secretary by rule. The secretary may by rule require that the original of any document, a copy of which is filed by facsimile transmission under this section, also be filed by a deadline established by the secretary by rule. [2004 c 266 § 5; 2003 c 111 § 142; 1991 c 186 § 1. Formerly RCW 29.04.230.]

**\*Reviser's note:** RCW 29A.04.610 was amended by 2004 c 267 § 702 and repealed by 2004 c 271 § 193. Also cf. RCW 29A.04.611.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

## TIMES FOR HOLDING ELECTIONS

**29A.04.311 Primaries.** Nominating primaries for general elections to be held in November, and the election of precinct committee officers, must be held on the third Tuesday of the preceding September or on the seventh Tuesday immediately preceding such general election, whichever occurs first. [2004 c 271 § 105.]

**29A.04.321 State and local general elections—State-wide general election—Exceptions—Special county elections.** (1) All state, county, city, town, and district general elections for the election of federal, state, legislative, judicial,

county, city, town, and district officers, and for the submission to the voters of the state, county, city, town, or district of any measure for their adoption and approval or rejection, shall be held on the first Tuesday after the first Monday of November, in the year in which they may be called. A statewide general election shall be held on the first Tuesday after the first Monday of November of each year. However, the statewide general election held in odd-numbered years shall be limited to (a) city, town, and district general elections as provided for in RCW 29A.04.330, or as otherwise provided by law; (b) the election of federal officers for the remainder of any unexpired terms in the membership of either branch of the Congress of the United States; (c) the election of state and county officers for the remainder of any unexpired terms of offices created by or whose duties are described in Article II, section 15, Article III, sections 16, 17, 19, 20, 21, 22, and 23, and Article IV, sections 3 and 5 of the state Constitution and RCW 2.06.080; (d) the election of county officers in any county governed by a charter containing provisions calling for general county elections at this time; and (e) the approval or rejection of state measures, including proposed constitutional amendments, matters pertaining to any proposed constitutional convention, initiative measures and referendum measures proposed by the electorate, referendum bills, and any other matter provided by the legislature for submission to the electorate.

(2) A county legislative authority may, if it deems an emergency to exist, call a special county election by presenting a resolution to the county auditor at least forty-five days prior to the proposed election date. Except as provided in subsection (4) of this section, a special election called by the county legislative authority shall be held on one of the following dates as decided by such governing body:

- (a) The first Tuesday after the first Monday in February;
- (b) The second Tuesday in March;
- (c) The fourth Tuesday in April;
- (d) The third Tuesday in May;
- (e) The day of the primary as specified by RCW 29A.04.311; or
- (f) The first Tuesday after the first Monday in November.

(3) In addition to the dates set forth in subsection (2)(a) through (f) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God. Such county special election shall be noticed and conducted in the manner provided by law.

(4) In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29A.56 RCW, the date on which a special election may be called by the county legislative authority under subsection (2) of this section during the month of that primary is the date of the presidential primary.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections except for those elections held pursuant to a home-rule charter adopted under Article XI, section 4 of the state Constitution. This section shall not be construed as fix-

ing the time for holding primary elections, or elections for the recall of any elective public officer. [2004 c 271 § 106.]

**29A.04.330 City, town, and district general and special elections—Exceptions.** (1) All city, town, and district general elections shall be held throughout the state of Washington on the first Tuesday following the first Monday in November in the odd-numbered years.

This section shall not apply to:

(a) Elections for the recall of any elective public officer;

(b) Public utility districts, conservation districts, or district elections at which the ownership of property within those districts is a prerequisite to voting, all of which elections shall be held at the times prescribed in the laws specifically applicable thereto;

(c) Consolidation proposals as provided for in RCW 28A.315.235 and nonhigh capital fund aid proposals as provided for in chapter 28A.540 RCW.

(2) The county auditor, as ex officio supervisor of elections, upon request in the form of a resolution of the governing body of a city, town, or district, presented to the auditor at least forty-five days prior to the proposed election date, may, if the county auditor deems an emergency to exist, call a special election in such city, town, or district, and for the purpose of such special election he or she may combine, unite, or divide precincts. Except as provided in subsection (3) of this section, such a special election shall be held on one of the following dates as decided by the governing body:

- (a) The first Tuesday after the first Monday in February;
- (b) The second Tuesday in March;
- (c) The fourth Tuesday in April;
- (d) The third Tuesday in May;
- (e) The day of the primary election as specified by \*RCW 29A.04.310; or
- (f) The first Tuesday after the first Monday in November.

(3) In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29A.56 RCW, the date on which a special election may be called under subsection (2) of this section during the month of that primary is the date of the presidential primary.

(4) In addition to subsection (2)(a) through (f) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God, except that no special election may be held between the first day for candidates to file for public office and the last day to certify the returns of the general election other than as provided in subsection (2)(e) and (f) of this section. Such special election shall be conducted and notice thereof given in the manner provided by law.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections. [2004 c 266 § 6; 2003 c 111 § 145; 2002 c 43 § 2; 1994 c 142 § 2; 1992 c 37 § 2; 1990 c 33 § 562; 1989 c 4 § 10 (Initiative Measure No. 99); 1986 c 167 § 6; 1980 c 3 § 2; 1975-'76 2nd ex.s. c 111 § 2; 1965 c 123 § 3; 1965 c 9 § 29.13.020. Prior: 1963 c 200 § 1; 1955 c 55 § 1; 1951 c 101

§ 1; 1949 c 161 § 1; 1927 c 182 § 1; 1923 c 53 § 2; 1921 c 61 § 2; Rem. Supp. 1949 § 5144. Formerly RCW 29.13.020.]

**\*Reviser's note:** RCW 29A.04.310 was repealed by 2004 c 271 § 193. For date of primary election, see RCW 29A.04.311.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Intent—2002 c 43:** "The legislature finds that there are conflicting interpretations as to the intent of the legislature in the enactment of chapter 305, Laws of 1999. The purpose of this act is to make statutory changes that further clarify this intent.

It is the intent of the legislature that elections of conservation district supervisors continue to be conducted under procedures in the conservation district statutes, chapter 89.08 RCW, and that such elections not be conducted under the general election laws contained in Title 29 RCW. Further, it is the intent of the legislature that there be no change made with regard to applicability of the public disclosure act, chapter 42.17 RCW, to conservation district supervisors from those that existed before the enactment of chapter 305, Laws of 1999." [2002 c 43 § 1.]

**Effective date—2002 c 43:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2002]." [2002 c 43 § 6.]

**Effective date—1994 c 142:** "This act shall take effect January 1, 1995." [1994 c 142 § 3.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—1986 c 167:** See note following RCW 29A.04.049.

**Severability—1975-'76 2nd ex.s. c 111:** "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 111 § 3.]

## ELECTION COSTS

**29A.04.410 Costs borne by constituencies.** Every city, town, and district is liable for its proportionate share of the costs when such elections are held in conjunction with other elections held under RCW \*29A.04.320 and 29A.04.330.

Whenever any city, town, or district holds any primary or election, general or special, on an isolated date, all costs of such elections must be borne by the city, town, or district concerned.

The purpose of this section is to clearly establish that the county is not responsible for any costs involved in the holding of any city, town, or district election.

In recovering such election expenses, including a reasonable pro-ration of administrative costs, the county auditor shall certify the cost to the county treasurer with a copy to the clerk or auditor of the city, town, or district concerned. Upon receipt of such certification, the county treasurer shall make the transfer from any available and appropriate city, town, or district funds to the county current expense fund or to the county election reserve fund if such a fund is established. Each city, town, or district must be promptly notified by the county treasurer whenever such transfer has been completed. However, in those districts wherein a treasurer, other than the county treasurer, has been appointed such transfer procedure does not apply, but the district shall promptly issue its warrant for payment of election costs. [2003 c 111 § 146; 1965 c 123 § 5; 1965 c 9 § 29.13.045. Prior: 1963 c 200 § 7; 1951 c 257 § 5. Formerly RCW 29.13.045.]

**\*Reviser's note:** RCW 29A.04.320 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.04.321.

*County, municipality, or special district facilities as polling places, payment for:* RCW 29A.16.120.

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*Diking districts, election to authorize, costs:* RCW 85.38.060.

*Diking or drainage district, reorganization into improvement district 1917 act, election to authorize:* RCW 85.38.060.  
*1933 act, election to authorize:* RCW 85.38.060.

*Expense of printing and distributing ballot materials:* RCW 29A.36.220.

*Port districts, formation of, election on, expense of:* RCW 53.04.070.

*Public utility district elections, expense of:* RCW 54.08.041.

*Reclamation districts of one million acres, election to form, expense:* RCW 89.30.115.

*Soil and water conservation district, election to form, expense:* RCW 89.08.140.

*Water-sewer districts*

*annexation of territory by, election on, expense:* RCW 57.24.050.

*formation of, expense:* RCW 57.04.055.

**29A.04.420 State share.** (1) Whenever state officers or measures are voted upon at a state primary or general election held in an odd-numbered year under \*RCW 29A.04.320, the state of Washington shall assume a prorated share of the costs of that state primary or general election.

(2) Whenever a primary or vacancy election is held to fill a vacancy in the position of United States senator or United States representative under chapter 29A.28 RCW, the state of Washington shall assume a prorated share of the costs of that primary or vacancy election.

(3) The county auditor shall apportion the state's share of these expenses when prorating election costs under RCW 29A.04.410 and shall file such expense claims with the secretary of state.

(4) The secretary of state shall include in his or her biennial budget requests sufficient funds to carry out this section. Reimbursements for election costs shall be from appropriations specifically provided by law for that purpose. [2003 c 111 § 147. Prior: 1985 c 45 § 2; 1977 ex.s. c 144 § 4; 1975-'76 2nd ex.s. c 4 § 1; 1973 c 4 § 2. Formerly RCW 29.13.047.]

**\*Reviser's note:** RCW 29A.04.320 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.04.321.

**Legislative intent—1985 c 45:** "It is the intention of the legislature that sections 2 through 7 of this act shall provide an orderly and predictable election procedure for filling vacancies in the offices of United States representative and United States senator." [1985 c 45 § 1.]

**29A.04.430 Interest on reimbursement.** For any reimbursement of election costs under RCW 29A.04.420, the secretary of state shall pay interest at an annual rate equal to two percentage points in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in San Francisco on the fifteenth day of the month immediately preceding the payment for any period of time in excess of thirty days after the receipt of a properly executed and documented voucher for such expenses and the entry of an allotment from specifically appropriated funds for this purpose. The secretary of state shall promptly notify any county that submits an incomplete or inaccurate voucher for reimbursement under RCW 29A.04.420. [2003 c 111 § 148; 1986 c 167 § 7. Formerly RCW 29.13.048.]

**Severability—1986 c 167:** See note following RCW 29A.04.049.

**29A.04.440 Election account.** (1) The election account is created in the state treasury.

(2) The following receipts must be deposited into the account:

Amounts received from the federal government under Public Law 107-252 (October 29, 2002), known as the "Help America Vote Act of 2002," including any amounts received under subsequent amendments to the act; amounts appropriated or otherwise made available by the state legislature for the purposes of carrying out activities for which federal funds are provided to the state under Public Law 107-252, including any amounts received under subsequent amendments to the act; and such other amounts as may be appropriated by the legislature to the account.

(3) Moneys in the account may be spent only after appropriation. Expenditures from the account may be made only to facilitate the implementation of Public Law 107-252. [2004 c 266 § 2. Prior: 2003 c 48 § 1. Formerly RCW 29.04.260.]

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Effective date—2003 c 48:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2003]." [2003 c 48 § 3.]

**29A.04.450 Local government grant program.** The secretary of state shall establish a competitive local government grant program to solicit and prioritize project proposals from county election offices. Potential projects [project] proposals must be new projects designed to help the county election office comply with the requirements of the Help America Vote Act (P.L. 107-252). Grant funds will not be allocated to fund existing statutory functions of local elections [election] offices, and in order to be eligible for a grant, local election offices must maintain an elections budget at or above the local elections budget by July 1, 2004. [2004 c 267 § 201.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.04.460 Grant program—Administration.** The secretary of state will administer the grant program and disburse funds from the election account established in the state treasury by the legislature in chapter 48, Laws of 2003. Only grant proposals from local government election offices will be reviewed. The secretary of state and any local government grant recipient shall enter into an agreement outlining the terms of the grant and a payment schedule. The payment schedule may allow the secretary of state to make payments directly to vendors contracted by the local government election office from Help America Vote Act (P.L. 107-252) funds. The secretary of state shall adopt any rules necessary to facilitate this section. [2004 c 267 § 202.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.04.470 Grant program—Advisory committee.** (1) The secretary of state shall create an advisory committee and adopt rules governing project eligibility, evaluation, awarding of grants, and other criteria for administering the local government grant program, which may include a preference for grants that include a match of local funds.

(2) The advisory committee shall review grant proposals and establish a prioritized list of projects to be considered for funding by the third Tuesday in May of each year beginning

in 2004 and continuing as long as funds in the election account established by chapter 48, Laws of 2003 [RCW 29A.04.440] are available. The grant award may have an effective date other than the date the project is placed on the prioritized list, including money spent previously by the county that would qualify for reimbursement under the Help America Vote Act (P.L. 107-252).

(3) Examples of projects that would be eligible for local government grant funding include, but are not limited to the following:

(a) Replacement or upgrade of voting equipment, including the replacement of punchcard voting systems;

(b) Purchase of additional voting equipment, including the purchase of equipment to meet the disability requirements of the Help America Vote Act (P.L. 107-252);

(c) Purchase of new election management system hardware and software capable of integrating with the statewide voter registration system required by the Help America Vote Act (P.L. 107-252);

(d) Development and production of poll worker recruitment and training materials;

(e) Voter education programs;

(f) Publication of a local voters' pamphlet;

(g) Toll-free access system to provide notice of the outcome of provisional ballots; and

(h) Training for local election officials. [2004 c 267 § 203.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

## ADMINISTRATION

**29A.04.510 Election administration and certification board—Generally.** (1) The Washington state election administration and certification board is established and has the responsibilities and authorities prescribed by this chapter. The board is composed of the following members:

(a) The secretary of state or the secretary's designee;

(b) The state director of elections or the director's designee;

(c) Four county auditors appointed by the Washington state association of county auditors or their alternates who are county auditors designated by the association to serve as such alternates, each appointee and alternate to serve at the pleasure of the association;

(d) One member from each of the two largest political party caucuses of the house of representatives designated by and serving at the pleasure of the legislative leader of the respective caucus;

(e) One member from each of the two largest political party caucuses of the senate designated by and serving at the pleasure of the legislative leader of the respective caucus; and

(f) One representative from each major political party, designated by and serving at the pleasure of the chair of the party's state central committee.

(2) The board shall elect a chair from among its number; however, neither the secretary of state nor the state director of elections nor their designees may serve as the chair of the board. A majority of the members appointed to the board constitutes a quorum for conducting the business of the board. Chapter 42.30 RCW, the Open Public Meetings Act,

and RCW 42.32.030 regarding minutes of meetings, apply to the meetings of the board.

(3) Members of the board shall serve without compensation. The secretary of state shall reimburse members of the board, other than those who are members of the legislature, for travel expenses in accordance with RCW 43.03.050 and 43.03.060. Members of the board who are members of the legislature shall be reimbursed as provided in chapter 44.04 RCW. [2003 c 111 § 149; 1992 c 163 § 3. Formerly RCW 29.60.010.]

**29A.04.520 Appeals.** The board created in RCW 29A.04.510 shall review appeals filed under RCW 29A.04.550 or 29A.04.570. A decision of the board regarding the appeal must be supported by not less than a majority of the members appointed to the board. A decision of the board regarding an appeal filed under RCW 29A.04.570 concerning an election review conducted under that section is final. If a decision of the board regarding an appeal filed under RCW 29A.04.550 includes a recommendation that a certificate be issued, the secretary of state, upon the recommendation of the board, shall issue the certificate. [2003 c 111 § 150.]

**29A.04.525 Complaint procedures.** The state-based administrative complaint procedures required in the Help America Vote Act (P.L. 107-252) and detailed in administrative rule apply to all primary, general, and special elections administered under this title. [2004 c 267 § 401.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.04.530 Duties of secretary of state.** The secretary of state shall:

(1) Establish and operate, or provide by contract, training and certification programs for state and county elections administration officials and personnel, including training on the various types of election law violations and discrimination, and training programs for political party observers which conform to the rules for such programs established under RCW 29A.04.630;

(2) Administer tests for state and county officials and personnel who have received such training and issue certificates to those who have successfully completed the training and passed such tests;

(3) Maintain a record of those individuals who have received such training and certificates; and

(4) Provide the staffing and support services required by the board created under RCW 29A.04.510. [2003 c 111 § 151. Prior: 2001 c 41 § 11; 1992 c 163 § 5. Formerly RCW 29.60.030.]

**Effective date—1992 c 163 §§ 5-13:** "Sections 5 through 13 of this act shall take effect July 1, 1993." [1992 c 163 § 15.]

**29A.04.540 Training of administrators.** A person having responsibility for the administration or conduct of elections, other than precinct election officers, shall, within eighteen months of undertaking those responsibilities, receive general training regarding the conduct of elections and specific training regarding their responsibilities and duties as prescribed by this title or by rules adopted by the

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secretary of state under this title. Included among those persons for whom such training is mandatory are the following:

(1) Secretary of state elections division personnel;

(2) County elections administrators under RCW 36.22.220;

(3) County canvassing board members;

(4) Persons officially designated by each major political party as elections observers; and

(5) Any other person or group charged with election administration responsibilities if the person or group is designated by rule adopted by the secretary of state as requiring the training.

The secretary of state shall reimburse election observers in accordance with RCW 43.03.050 and 43.03.060 for travel expenses incurred to receive training required under subsection (4) of this section.

Neither this section nor RCW 29A.04.530 may be construed as requiring an elected official to receive training or a certificate of training as a condition for seeking or holding elective office or as a condition for carrying out constitutional duties. [2003 c 111 § 152; 1992 c 163 § 6. Formerly RCW 29.60.040.]

**Effective date—1992 c 163 §§ 5-13:** See note following RCW 29A.04.530.

**29A.04.550 Denial of certification—Review and appeal.** (1) A decision of the secretary of state to deny certification under RCW 29A.04.530 must be entered in the manner specified for orders under the Administrative Procedure Act, chapter 34.05 RCW. Such a decision is not effective for a period of twenty days following the date of the decision, during which time the person denied certification may file a petition with the secretary of state requesting the secretary to reconsider the decision and to grant certification. The petitioner shall include in the petition, an explanation of the reasons why the initial decision is incorrect and certification should be granted, and may include a request for a hearing on the matter. The secretary of state shall reconsider the matter if the petition is filed in a proper and timely manner. If a hearing is requested, the secretary of state shall conduct the hearing within sixty days after the date on which the petition is filed. The secretary of state shall render a final decision on the matter within ninety days after the date on which the petition is filed.

(2) Within twenty days after the date on which the secretary of state makes a final decision denying a petition under this section, the petitioner may appeal the denial to the board created in RCW 29A.04.510. In deciding appeals, the board shall restrict its review to the record established when the matter was before the secretary of state. The board shall affirm the decision if it finds that the record supports the decision and that the decision is not inconsistent with other decisions of the secretary of state in which the same standards were applied and certification was granted. Similarly, the board shall reverse the decision and recommend to the secretary of state that certification be granted if the board finds that such support is lacking or that such inconsistency exists.

(3) Judicial review of certification decisions will be as prescribed under RCW 34.05.510 through 34.05.598, but is limited to the review of board decisions denying certification.

[2003 c 111 § 153; 1992 c 163 § 7. Formerly RCW 29.60.050.]

**Effective date—1992 c 163 §§ 5-13:** See note following RCW 29A.04.530.

**29A.04.560 Election review section.** An election review section is established in the elections division of the office of the secretary of state. Permanent staff of the elections division, trained and certified as required by RCW 29A.04.540, shall perform the election review functions prescribed by RCW 29A.04.570. The staff may also be required to assist in training, certification, and other duties as may be assigned by the secretary of state to ensure the uniform and orderly conduct of elections in this state. [2003 c 111 § 154. Prior: 1992 c 163 § 8. Formerly RCW 29.60.060.]

**Effective date—1992 c 163 §§ 5-13:** See note following RCW 29A.04.530.

**29A.04.570 Review of county election procedures.**

(1)(a) The election review staff of the office of the secretary of state shall conduct a review of election-related policies, procedures, and practices in an affected county or counties:

(i) If the unofficial returns of a primary or general election for a position in the state legislature indicate that a mandatory recount is likely for that position; or

(ii) If unofficial returns indicate a mandatory recount is likely in a statewide election or an election for federal office.

Reviews conducted under (ii) of this subsection shall be performed in as many selected counties as time and staffing permit. Reviews conducted as a result of mandatory recounts shall be performed between the time the unofficial returns are complete and the time the recount is to take place, if possible.

(b) In addition to conducting reviews under (a) of this subsection, the election review staff shall also conduct such a review in a county periodically, in conjunction with a county primary or special or general election, at the direction of the secretary of state or at the request of the county auditor. If any resident of this state believes that an aspect of a primary or election has been conducted inappropriately in a county, the resident may file a complaint with the secretary of state. The secretary shall consider such complaints in scheduling periodic reviews under this section.

(c) Before an election review is conducted in a county, the secretary of state shall provide the county auditor of the affected county and the chair of the state central committee of each major political party with notice that the review is to be conducted. When a periodic review is to be conducted in a county at the direction of the secretary of state under (b) of this subsection, the secretary shall provide the affected county auditor not less than thirty days' notice.

(2) Reviews shall be conducted in conformance with rules adopted under RCW 29A.04.630. In performing a review in a county under this chapter, the election review staff shall evaluate the policies and procedures established for conducting the primary or election in the county and the practices of those conducting it. As part of the review, the election review staff shall issue to the county auditor and the members of the county canvassing board a report of its findings and recommendations regarding such policies, procedures, and practices. A review conducted under this chapter shall not include any evaluation, finding, or recommendation

regarding the validity of the outcome of a primary or election or the validity of any canvass of returns nor does the election review staff have any jurisdiction to make such an evaluation, finding, or recommendation under this title.

(3) The county auditor of the county in which a review is conducted under this section or a member of the canvassing board of the county may appeal the findings or recommendations of the election review staff regarding the review by filing an appeal with the board created under RCW 29A.04.510. [2003 c 111 § 155. Prior: 1997 c 284 § 1; 1992 c 163 § 9. Formerly RCW 29.60.070.]

**Effective date—1992 c 163 §§ 5-13:** See note following RCW 29A.04.530.

**29A.04.575 Visits to elections offices, facilities.** The secretary of state, or any staff of the elections division of the office of secretary of state, may make unannounced on-site visits to county election offices and facilities to observe the handling, processing, counting, or tabulation of ballots. [2004 c 266 § 1. Prior: 2003 c 109 § 1. Formerly RCW 29.04.075.]

**Effective date—2004 c 266:** "This act takes effect July 1, 2004." [2004 c 266 § 25.]

**29A.04.580 County auditor and review staff.** The county auditor may designate any person who has been certified under this chapter, other than the auditor, to participate in a review conducted in the county under this chapter. Each county auditor and canvassing board shall cooperate fully during an election review by making available to the reviewing staff any material requested by the staff. The reviewing staff shall have full access to ballot pages, absentee voting materials, any other election material normally kept in a secure environment after the election, and other requested material. If ballots are reviewed by the staff, they shall be reviewed in the presence of the canvassing board or its designees. Ballots shall not leave the custody of the canvassing board. During the review and after its completion, the review staff may make appropriate recommendations to the county auditor or canvassing board, or both, to bring the county into compliance with the training required under this chapter, and the laws or rules of the state of Washington, to safeguard election material or to preserve the integrity of the elections process. [2003 c 111 § 156. Prior: 1992 c 163 § 10. Formerly RCW 29.60.080.]

**Effective date—1992 c 163 §§ 5-13:** See note following RCW 29A.04.530.

**29A.04.590 Election assistance and clearinghouse program.** The secretary of state shall establish within the elections division an election assistance and clearinghouse program, which shall provide regular communication between the secretary of state, local election officials, and major and minor political parties regarding newly enacted elections legislation, relevant judicial decisions affecting the administration of elections, and applicable attorney general opinions, and which shall respond to inquiries from elections administrators, political parties, and others regarding election information. This section does not empower the secretary of state to offer legal advice or opinions, but the secretary may discuss the construction or interpretation of election law, case

law, or legal opinions from the attorney general or other competent legal authority. [2003 c 111 § 157. Prior: 1992 c 163 § 11. Formerly RCW 29.60.090.]

**Effective date—1992 c 163 §§ 5-13:** See note following RCW 29A.04.530.

### RULE-MAKING AUTHORITY

**29A.04.610 Rules by secretary of state.** The secretary of state as chief election officer shall make reasonable rules in accordance with chapter 34.05 RCW not inconsistent with the federal and state election laws to effectuate any provision of this title and to facilitate the execution of its provisions in an orderly, timely, and uniform manner relating to any federal, state, county, city, town, and district elections. To that end the secretary shall assist local election officers by devising uniform forms and procedures.

In addition to the rule-making authority granted otherwise by this section, the secretary of state shall make rules governing the following provisions:

- (1) The maintenance of voter registration records;
- (2) The preparation, maintenance, distribution, review, and filing of precinct maps;
- (3) Standards for the design, layout, and production of ballots;
- (4) The examination and testing of voting systems for certification;
- (5) The source and scope of independent evaluations of voting systems that may be relied upon in certifying voting systems for use in this state;
- (6) Standards and procedures for the acceptance testing of voting systems by counties;
- (7) Standards and procedures for testing the programming of vote tallying software for specific primaries and elections;
- (8) Standards and procedures for the preparation and use of each type of certified voting system including procedures for the operation of counting centers where vote tallying systems are used;
- (9) Standards and procedures to ensure the accurate tabulation and canvassing of ballots;
- (10) Consistency among the counties of the state in the preparation of ballots, the operation of vote tallying systems, and the canvassing of primaries and elections;
- (11) Procedures to ensure the secrecy of a voter's ballot when a small number of ballots are counted at the polls or at a counting center;
- (12) The use of substitute devices or means of voting when a voting device at the polling place is found to be defective, the counting of votes cast on the defective device, the counting of votes cast on the substitute device, and the documentation that must be submitted to the county auditor regarding such circumstances;
- (13) Procedures for the transportation of sealed containers of voted ballots or sealed voting devices;
- (14) The acceptance and filing of documents via electronic facsimile;
- (15) Voter registration applications and records;
- (16) The use of voter registration information in the conduct of elections;
- (17) The coordination, delivery, and processing of voter registration records accepted by driver licensing agents or the department of licensing;
- (18) The coordination, delivery, and processing of voter registration records accepted by agencies designated by the governor to provide voter registration services;
- (19) Procedures to receive and distribute voter registration applications by mail;
- (20) Procedures for a voter to change his or her voter registration address within a county by telephone;
- (21) Procedures for a voter to change the name under which he or she is registered to vote;
- (22) Procedures for canceling dual voter registration records and for maintaining records of persons whose voter registrations have been canceled;
- (23) Procedures for the electronic transfer of voter registration records between county auditors and the office of the secretary of state;
- (24) Procedures and forms for declarations of candidacy;
- (25) Procedures and requirements for the acceptance and filing of declarations of candidacy by electronic means;
- (26) Procedures for the circumstance in which two or more candidates have a name similar in sound or spelling so as to cause confusion for the voter;
- (27) Filing for office;
- (28) The order of positions and offices on a ballot;

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- (29) Sample ballots;
  - (30) Independent evaluations of voting systems;
  - (31) The testing, approval, and certification of voting systems;
  - (32) The testing of vote tallying software programming;
  - (33) Standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of absentee ballots and mail ballots;
  - (34) Standards and procedures to guarantee the secrecy of absentee ballots and mail ballots;
  - (35) Uniformity among the counties of the state in the conduct of absentee voting and mail ballot elections;
  - (36) Standards and procedures to accommodate out-of-state voters, overseas voters, and service voters;
  - (37) The tabulation of paper ballots before the close of the polls;
  - (38) The accessibility of polling places and registration facilities that are accessible to elderly and disabled persons;
  - (39) The aggregation of precinct results if reporting the results of a single precinct could jeopardize the secrecy of a person's ballot;
  - (40) Procedures for conducting a statutory recount;
  - (41) Procedures for filling vacancies in congressional offices if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met;
  - (42) Procedures for the statistical sampling of signatures for purposes of verifying and canvassing signatures on initiative, referendum, and recall election petitions;
  - (43) Standards and deadlines for submitting material to the office of the secretary of state for the voters' pamphlet;
  - (44) Deadlines for the filing of ballot titles for referendum bills and constitutional amendments if none have been provided by the legislature;
  - (45) Procedures for the publication of a state voters' pamphlet;
  - (46) Procedures for conducting special elections regarding nuclear waste sites if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met;
  - (47) Standards and procedures for the proper conduct of voting during the early voting period to provide accessibility for the blind or visually impaired;
  - (48) Standards for voting technology and systems used by the state or any political subdivision to be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as other voters;
  - (49) All data formats for transferring voter registration data on electronic or machine-readable media for the purpose of administering the statewide voter registration list required by the Help America Vote Act (P.L. 107-252);
  - (50) Defining the interaction of electronic voter registration election management systems employed by each county auditor to maintain a local copy of each county's portion of the official state list of registered voters;
  - (51) Provisions and procedures to implement the state-based administrative complaint procedure as required by the Help America Vote Act (P.L. 107-252); and
  - (52) Facilitating the payment of local government grants to local government election officers or vendors. [2004 c 267 § 702; 2003 c 111 § 161; 1971 ex.s. c 202 § 2; 1965 c 9 § 29.04.080. Prior: 1963 c 200 § 24; 1949 c 161 § 13; Rem. Supp. 1949 § 5147-3. Formerly RCW 29.04.080.]
- Reviser's note:** RCW 29A.04.610 was also repealed by 2004 c 271 § 193 without cognizance of its amendment by 2004 c 267 § 702. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.
- Effective dates—2004 c 267:** See note following RCW 29A.08.651.
- Absentee voters, secretary of state duties regarding:* RCW 29A.40.150.
- Forms*
- statement of change in residence of voter, design by secretary of state—Availability to public:* RCW 29A.08.850.
- statement registered voter is deceased, design by secretary of state:* RCW 29A.08.510.

**29A.04.610 Rules by secretary of state.** [2003 c 111 § 161; 1971 ex.s. c 202 § 2; 1965 c 9 § 29.04.080. Prior: 1963 c 200 § 24; 1949 c 161 § 13; Rem. Supp. 1949 § 5147-3. Formerly RCW 29.04.080.] Repealed by 2004 c 271 § 193.

**Reviser's note:** RCW 29A.04.610 was also amended by 2004 c 267 § 702 without cognizance of its repeal by 2004 c 271 § 193. For rule of con-

struction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**29A.04.611 Rules by secretary of state.** The secretary of state as chief election officer shall make reasonable rules in accordance with chapter 34.05 RCW not inconsistent with the federal and state election laws to effectuate any provision of this title and to facilitate the execution of its provisions in an orderly, timely, and uniform manner relating to any federal, state, county, city, town, and district elections. To that end the secretary shall assist local election officers by devising uniform forms and procedures.

In addition to the rule-making authority granted otherwise by this section, the secretary of state shall make rules governing the following provisions:

- (1) The maintenance of voter registration records;
- (2) The preparation, maintenance, distribution, review, and filing of precinct maps;
- (3) Standards for the design, layout, and production of ballots;
- (4) The examination and testing of voting systems for certification;
- (5) The source and scope of independent evaluations of voting systems that may be relied upon in certifying voting systems for use in this state;
- (6) Standards and procedures for the acceptance testing of voting systems by counties;
- (7) Standards and procedures for testing the programming of vote tallying software for specific primaries and elections;
- (8) Standards and procedures for the preparation and use of each type of certified voting system including procedures for the operation of counting centers where vote tallying systems are used;
- (9) Standards and procedures to ensure the accurate tabulation and canvassing of ballots;
- (10) Consistency among the counties of the state in the preparation of ballots, the operation of vote tallying systems, and the canvassing of primaries and elections;
- (11) Procedures to ensure the secrecy of a voter's ballot when a small number of ballots are counted at the polls or at a counting center;
- (12) The use of substitute devices or means of voting when a voting device at the polling place is found to be defective, the counting of votes cast on the defective device, the counting of votes cast on the substitute device, and the documentation that must be submitted to the county auditor regarding such circumstances;
- (13) Procedures for the transportation of sealed containers of voted ballots or sealed voting devices;
- (14) The acceptance and filing of documents via electronic facsimile;
- (15) Voter registration applications and records;
- (16) The use of voter registration information in the conduct of elections;
- (17) The coordination, delivery, and processing of voter registration records accepted by driver licensing agents or the department of licensing;
- (18) The coordination, delivery, and processing of voter registration records accepted by agencies designated by the governor to provide voter registration services;

(19) Procedures to receive and distribute voter registration applications by mail;

(20) Procedures for a voter to change his or her voter registration address within a county by telephone;

(21) Procedures for a voter to change the name under which he or she is registered to vote;

(22) Procedures for canceling dual voter registration records and for maintaining records of persons whose voter registrations have been canceled;

(23) Procedures for the electronic transfer of voter registration records between county auditors and the office of the secretary of state;

(24) Procedures and forms for declarations of candidacy;

(25) Procedures and requirements for the acceptance and filing of declarations of candidacy by electronic means;

(26) Procedures for the circumstance in which two or more candidates have a name similar in sound or spelling so as to cause confusion for the voter;

(27) Filing for office;

(28) The order of positions and offices on a ballot;

(29) Sample ballots;

(30) Independent evaluations of voting systems;

(31) The testing, approval, and certification of voting systems;

(32) The testing of vote tallying software programming;

(33) Standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of absentee ballots and mail ballots;

(34) Standards and procedures to guarantee the secrecy of absentee ballots and mail ballots;

(35) Uniformity among the counties of the state in the conduct of absentee voting and mail ballot elections;

(36) Standards and procedures to accommodate out-of-state voters, overseas voters, and service voters;

(37) The tabulation of paper ballots before the close of the polls;

(38) The accessibility of polling places and registration facilities that are accessible to elderly and disabled persons;

(39) The aggregation of precinct results if reporting the results of a single precinct could jeopardize the secrecy of a person's ballot;

(40) Procedures for conducting a statutory recount;

(41) Procedures for filling vacancies in congressional offices if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met;

(42) Procedures for the statistical sampling of signatures for purposes of verifying and canvassing signatures on initiative, referendum, and recall election petitions;

(43) Standards and deadlines for submitting material to the office of the secretary of state for the voters' pamphlet;

(44) Deadlines for the filing of ballot titles for referendum bills and constitutional amendments if none have been provided by the legislature;

(45) Procedures for the publication of a state voters' pamphlet;

(46) Procedures for conducting special elections regarding nuclear waste sites if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met;

(47) Procedures for conducting partisan primary elections;

(48) Standards and procedures for the proper conduct of voting during the early voting period to provide accessibility for the blind or visually impaired;

(49) Standards for voting technology and systems used by the state or any political subdivision to be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as other voters;

(50) All data formats for transferring voter registration data on electronic or machine-readable media for the purpose of administering the statewide voter registration list required by the Help America Vote Act (P.L. 107-252);

(51) Defining the interaction of electronic voter registration election management systems employed by each county auditor to maintain a local copy of each county's portion of the official state list of registered voters;

(52) Provisions and procedures to implement the state-based administrative complaint procedure as required by the Help America Vote Act (P.L. 107-252); and

(53) Facilitating the payment of local government grants to local government election officers or vendors. [2004 c 271 § 151.]

**29A.04.620 Rules.** The secretary of state as chief election officer may make rules in accordance with chapter 34.05 RCW to facilitate the operation, accomplishment, and purpose of the presidential primary authorized in RCW 29A.56.010 through 29A.56.060. The secretary of state shall adopt rules consistent with this chapter to comply with national or state political party rules. [2003 c 111 § 162; 1995 1st sp.s. c 20 § 4; 1989 c 4 § 7 (Initiative Measure No. 99). Formerly RCW 29.19.070.]

**Effective date—1995 1st sp.s. c 20:** See note following RCW 29A.56.020.

**29A.04.630 Joint powers and duties with board.** (1) The secretary of state and the board created in RCW 29A.04.510 shall jointly adopt rules, in the manner specified for the adoption of rules under the Administrative Procedure Act, chapter 34.05 RCW, governing:

(a) The training of persons officially designated by major political parties as elections observers under this title, and the training and certification of election administration officials and personnel;

(b) The policies and procedures for conducting election reviews under RCW 29A.04.570; and

(c) The policies and standards to be used by the board in reviewing and rendering decisions regarding appeals filed under RCW 29A.04.570.

(2) The board created in RCW 29A.04.510 may adopt rules governing its procedures. [2003 c 111 § 163; 1992 c 163 § 4. Formerly RCW 29.60.020.]

CONSTRUCTION

**29A.04.900 Continuation of existing law.** The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to

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the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [2003 c 111 § 158. Prior: 1965 c 9 § 29.98.010. Formerly RCW 29.98.010.]

**29A.04.901 Headings and captions not part of law.** Chapter headings, part, subpart, and section or subsection captions, as used in this title do not constitute any part of the law. [2003 c 111 § 159; 1965 c 9 § 29.98.020. Formerly RCW 29.98.020.]

**29A.04.902 Invalidity of part not to affect remainder.** If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [2003 c 111 § 160. Prior: 1965 c 9 § 29.98.030. Formerly RCW 29.98.030.]

**29A.04.903 Effective date—2003 c 111.** This act takes effect July 1, 2004. [2003 c 111 § 2405.]

**29A.04.904 Severability—2004 c 271.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2004 c 271 § 204.]

**29A.04.905 Effective date—2004 c 271.** Except for sections 102 through 193 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2004]. [2004 c 271 § 205.]

**Reviser's note:** Sections 1 through 57 and 101 were vetoed by the governor. Sections 102 through 193 took effect June 10, 2004.

Chapter 29A.08 RCW

VOTERS AND REGISTRATION

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## DEFINITIONS

**29A.08.010 "Information required for voter registration."** (*Effective until January 1, 2006.*) As used in this chapter: "Information required for voter registration" means the minimum information provided on a voter registration application that is required by the county auditor in order to place a voter registration applicant on the voter registration rolls. This information includes the applicant's name, complete residence address, date of birth, and a signature attesting to the truth of the information provided on the application. All other information supplied is ancillary and not to be

used as grounds for not registering an applicant to vote. [2003 c 111 § 201; 1994 c 57 § 9. Formerly RCW 29.07.005.]

**Severability—1994 c 57:** See note following RCW 10.64.021.

**29A.08.010 "Information required for voter registration."** (*Effective January 1, 2006.*) As used in this chapter: "Information required for voter registration" means the minimum information provided on a voter registration application that is required by the county auditor in order to place a voter registration applicant on the voter registration rolls. This information includes the applicant's name, complete residence address, date of birth, Washington state driver's license number, Washington state identification card, or the last four digits of the applicant's social security number, a signature attesting to the truth of the information provided on the application, and a check or indication in the box confirming the individual is a United States citizen. If the individual does not have a driver's license or social security number the registrant must be issued a unique voter registration number and placed on the voter registration rolls. All other information supplied is ancillary and not to be used as grounds for not registering an applicant to vote. Modification of the language of the official Washington state voter registration form by the voter will not be accepted and will cause the rejection of the registrant's application. [2004 c 267 § 102; 2003 c 111 § 201; 1994 c 57 § 9. Formerly RCW 29.07.005.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1994 c 57:** See note following RCW 10.64.021.

**29A.08.020 Mailing, date and method.** The definitions set forth in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "By mail" means delivery of a completed original voter registration application by mail to the office of the secretary of state.

(2) For voter registration applicants, "date of mailing" means the date of the postal cancellation on the voter registration application. This date will also be used as the date of application for the purpose of meeting the registration cutoff deadline. If the postal cancellation date is illegible then the date of receipt by the elections official is considered the date of application. If an application is received by the elections official by the close of business on the fifth day after the cutoff date for voter registration and the postal cancellation date is illegible, the application will be considered to have arrived by the cutoff date for voter registration. [2004 c 267 § 103; 2003 c 111 § 204; 1994 c 57 § 30; 1993 c 434 § 1. Formerly RCW 29.08.010.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1994 c 57:** See note following RCW 10.64.021.

**29A.08.030 Notices, various.** The definitions set forth in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Verification notice" means a notice sent by the county auditor or secretary of state to a voter registration applicant and is used to verify or collect information about the applicant in order to complete the registration.

(2) "Acknowledgement notice" means a notice sent by nonforwardable mail by the county auditor or secretary of state to a registered voter to acknowledge a voter registration transaction, which can include initial registration, transfer, or reactivation of an inactive registration. An acknowledgement notice may be a voter registration card.

(3) "Confirmation notice" means a notice sent to a registered voter by first class forwardable mail at the address indicated on the voter's permanent registration record and to any other address at which the county auditor or secretary of state could reasonably expect mail to be received by the voter in order to confirm the voter's residence address. The confirmation notice must be designed so that the voter may update his or her current residence address. [2004 c 267 § 104; 2003 c 111 § 203. Prior: 1994 c 57 § 33. Formerly RCW 29.10.011.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.040 "Person," "political purpose."** For purposes of this chapter, the following words have the following meanings:

(1) "Person" means an individual, partnership, joint venture, public or private corporation, association, state or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(2) "Political purpose" means a purpose concerned with the support of or opposition to any candidate for any partisan or nonpartisan office or concerned with the support of or opposition to any ballot proposition or issue; "political purpose" includes, but is not limited to, such activities as the advertising for or against any candidate or ballot measure or the solicitation of financial support. [2003 c 111 § 202; 1973 1st ex.s. c 111 § 1. Formerly RCW 29.04.095.]

## GENERAL PROVISIONS

**29A.08.105 County auditor, duties—Registration assistants.** (*Effective until January 1, 2006.*) (1) In all counties, the county auditor shall be the chief registrar of voters for every precinct within the county. The auditor may appoint registration assistants to assist in registering persons residing in the county. Each registration assistant holds office at the pleasure of the county auditor and must be a registered voter.

(2) The county auditor shall be the custodian of the official registration records of the county. The county auditor shall ensure that mail-in voter registration application forms are readily available to the public at locations to include but not limited to the elections office, and all common schools, fire stations, and public libraries. [2003 c 111 § 205; 1999 c 298 § 4; 1994 c 57 § 8; 1984 c 211 § 3; 1980 c 48 § 1; 1971 ex.s. c 202 § 4; 1965 c 9 § 29.07.010. Prior: 1957 c 251 § 4; prior: 1939 c 15 § 1, part; 1933 c 1 § 3, part; RRS § 5114-3, part; prior: 1891 c 104 §§ 1, part, 2, part; RRS §§ 5116, part, 5117, part. Formerly RCW 29.07.010.]

**Severability—1994 c 57:** See note following RCW 10.64.021.

**Intent—1984 c 211:** See note following RCW 29A.08.310.

**29A.08.105 Official list, secretary of state—County auditor, duties—Registration assistants.** (*Effective January 1, 2006.*) (1) In compliance with the Help America Vote Act (P.L. 107-252), the centralized statewide voter registration list maintained by the secretary of state is the official list of eligible voters for all elections.

(2) In all counties, the county auditor shall be the chief registrar of voters for every precinct within the county. The auditor may appoint registration assistants to assist in registering persons residing in the county. Each registration assistant holds office at the pleasure of the county auditor and must be a registered voter.

(3) The county auditor shall ensure that mail-in voter registration application forms are readily available to the public at locations to include but not limited to the elections office, and all common schools, fire stations, and public libraries. [2004 c 267 § 105; 2003 c 111 § 205; 1999 c 298 § 4; 1994 c 57 § 8; 1984 c 211 § 3; 1980 c 48 § 1; 1971 ex.s. c 202 § 4; 1965 c 9 § 29.07.010. Prior: 1957 c 251 § 4; prior: 1939 c 15 § 1, part; 1933 c 1 § 3, part; RRS § 5114-3, part; prior: 1891 c 104 §§ 1, part, 2, part; RRS §§ 5116, part, 5117, part. Formerly RCW 29.07.010.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1994 c 57:** See note following RCW 10.64.021.

**Intent—1984 c 211:** See note following RCW 29A.08.310.

**29A.08.107 Review by secretary of state.** (*Effective January 1, 2006.*) (1) The secretary of state must review the information provided by each voter registration applicant to ensure that either the driver's license number or the last four digits of the social security number match the information maintained by the Washington department of licensing or the social security administration. If a match cannot be made the secretary of state must correspond with the applicant to resolve the discrepancy.

(2) If the applicant fails to respond to any correspondence required in this section to confirm information provided on a voter registration application, within thirty days the secretary of state shall forward the application to the appropriate county auditor for document storage.

(3) Only after the secretary of state has confirmed that an applicant's driver's license number or the last four digits of the applicant's social security number match existing records with the Washington department of licensing or the social security administration or determined that the applicant does not have either a driver's license number or social security number may the applicant be placed on the official list of registered voters. [2004 c 267 § 106.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.110 Auditor's procedure.** (*Effective until January 1, 2006.*) (1) On receipt of an application for voter registration under this chapter, the county auditor shall review the application to determine whether the information supplied is complete. An application that contains the applicant's name, complete valid residence address, date of birth, and signature attesting to the truth of the information provided on the application is complete. If it is not complete, the

auditor shall promptly mail a verification notice of the deficiency to the applicant. This verification notice shall require the applicant to provide the missing information. If the verification notice is not returned by the applicant or is returned as undeliverable the auditor shall not place the name of the applicant on the county voter list. If the applicant provides the required information, the applicant shall be registered to vote as of the date of mailing of the original voter registration application.

(2) If the information is complete, the applicant is considered to be registered to vote as of the date of mailing. The auditor shall record the appropriate precinct identification, taxing district identification, and date of registration on the voter's record. Within forty-five days after the receipt of an application but no later than seven days before the next primary, special election, or general election, the auditor shall send to the applicant, by first class mail, an acknowledgement notice identifying the registrant's precinct and containing such other information as may be required by the secretary of state. The postal service shall be instructed not to forward a voter registration card to any other address and to return to the auditor any card which is not deliverable. If the applicant has indicated that he or she is registered to vote in another county in Washington but has also provided an address within the auditor's county that is for voter registration purposes, the auditor shall send, on behalf of the registrant, a registration cancellation notice to the auditor of that other county and the auditor receiving the notice shall cancel the registrant's voter registration in that other county. If the registrant has indicated on the form that he or she is registered to vote within the county but has provided a new address within the county that is for voter registration purposes, the auditor shall transfer the voter's registration.

(3) If an acknowledgement notice card is properly mailed as required by this section to the address listed by the voter as being the voter's mailing address and the notice is subsequently returned to the auditor by the postal service as being undeliverable to the voter at that address, the auditor shall promptly send the voter a confirmation notice. The auditor shall place the voter's registration on inactive status pending a response from the voter to the confirmation notice. [2003 c 111 § 206. Prior: 1994 c 57 § 32; 1993 c 434 § 6. Formerly RCW 29.08.060.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.110 Auditor's procedure. (Effective January 1, 2006.)** (1) On receipt of an application for voter registration, the county auditor shall review the application to determine whether the information supplied is complete. An application is considered complete only if it contains the applicant's name, complete valid residence address, date of birth, and signature attesting to the truth of the information provided and an indication the license information or social security number has been confirmed by the secretary of state. If it is not complete, the auditor shall promptly mail a verification notice of the deficiency to the applicant. This verification notice shall require the applicant to provide the missing information. If the verification notice is not returned by the applicant or is returned as undeliverable the auditor shall not place the name of the applicant on the county voter list. If the

applicant provides the required verified information, the applicant shall be registered to vote as of the date of mailing of the original voter registration application.

(2) In order to prevent duplicate registration records, all complete voter registration applications must be screened against existing voter registration records in the official state-wide voter registration list. If a match of an existing record is found in the official list the record must be updated with the new information provided on the application. If the new information indicates that the voter has changed his or her county of residence, the application must be forwarded to the voter's new county of residence for processing. If the new information indicates that the voter remains in the same county of residence or if the applicant is a new voter the application must be processed by the county of residence.

(3) If the information required in subsection (1) of this section is complete, the applicant is considered to be registered to vote as of the date of mailing. The auditor shall record the appropriate precinct identification, taxing district identification, and date of registration on the voter's record in the state voter registration list. Within forty-five days after the receipt of an application but no later than seven days before the next primary, special election, or general election, the auditor shall send to the applicant, by first class mail, an acknowledgement notice identifying the registrant's precinct and containing such other information as may be required by the secretary of state. The postal service shall be instructed not to forward a voter registration card to any other address and to return to the auditor any card which is not deliverable. If the registrant has indicated on the form that he or she is registered to vote within the county but has provided a new address within the county that is for voter registration purposes, the auditor shall transfer the voter's registration.

(4) If an acknowledgement notice card is properly mailed as required by this section to the address listed by the voter as being the voter's mailing address and the notice is subsequently returned to the auditor by the postal service as being undeliverable to the voter at that address, the auditor shall promptly send the voter a confirmation notice. The auditor shall place the voter's registration on inactive status pending a response from the voter to the confirmation notice. [2004 c 267 § 107; 2003 c 111 § 206. Prior: 1994 c 57 § 32; 1993 c 434 § 6. Formerly RCW 29.08.060.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.115 Registration assistants. (Effective until January 1, 2006.)** Every registration assistant shall keep registration supplies at his or her usual place of residence or usual place of business. A person or organization collecting voter registration application forms must transmit the forms to the secretary of state or a designee at least once weekly. [2003 c 111 § 207; 1971 ex.s. c 202 § 15; 1965 c 9 § 29.07.110. Prior: 1957 c 251 § 11; prior: 1947 c 68 § 1, part; 1945 c 95 § 1, part; 1933 c 1 § 6, part; Rem. Supp. 1947 § 5114-6, part; prior: 1919 c 163 § 6, part; 1915 c 16 § 6, part; 1901 c 135 § 5, part; 1893 c 45 § 1, part; 1889 p 415 § 6, part; RRS § 5124, part. Formerly RCW 29.07.110.]

**29A.08.115 Transmittal of forms to secretary of state.** (*Effective January 1, 2006.*) A person or organization collecting voter registration application forms must transmit the forms to the secretary of state or a designee at least once weekly. [2004 c 267 § 108; 2003 c 111 § 207; 1971 ex.s. c 202 § 15; 1965 c 9 § 29.07.110. Prior: 1957 c 251 § 11; prior: 1947 c 68 § 1, part; 1945 c 95 § 1, part; 1933 c 1 § 6, part; Rem. Supp. 1947 § 5114-6, part; prior: 1919 c 163 § 6, part; 1915 c 16 § 6, part; 1901 c 135 § 5, part; 1893 c 45 § 1, part; 1889 p 415 § 6, part; RRS § 5124, part. Formerly RCW 29.07.110.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.120 Registration by mail.** (*Effective until January 1, 2006.*) Any elector of this state may register to vote by mail under this chapter. [2003 c 111 § 208. Prior: 1993 c 434 § 3. Formerly RCW 29.08.030.]

**29A.08.120 Registration by mail.** (*Effective January 1, 2006.*) Any elector of this state may register to vote by mail under this title. [2004 c 267 § 109; 2003 c 111 § 208. Prior: 1993 c 434 § 3. Formerly RCW 29.08.030.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.125 Computer file of voter registration records.** (*Effective until January 1, 2006.*) Each county auditor shall maintain a computer file containing the records of all registered voters within the county. The auditor may provide for the establishment and maintenance of such files by private contract or through interlocal agreement as provided by chapter 39.34 RCW. The computer file must include, but not be limited to, each voter's last name, first name, middle initial, date of birth, residence address, gender, date of registration, applicable taxing district and precinct codes, and the last date on which the individual voted. The county auditor shall subsequently record each consecutive date upon which the individual has voted and retain at least the last five such consecutive dates. If the voter has not voted at least five times since establishing his or her current registration record, only the available dates will be included. [2003 c 111 § 209; 1993 c 408 § 11; 1991 c 81 § 22; 1974 ex.s. c 127 § 12. Formerly RCW 29.07.220.]

**Severability—Effective dates—1993 c 408:** See notes following RCW 2.36.054.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.08.125 County copy of voter registration records.** (*Effective January 1, 2006.*) Each county auditor shall maintain a computer file containing a copy of each record of all registered voters within the county contained on the official statewide voter registration list for that county. The computer file must include, but not be limited to, each voter's last name, first name, middle initial, date of birth, residence address, gender, date of registration, applicable taxing district and precinct codes, and the last date on which the individual voted. The county auditor shall subsequently record each consecutive date upon which the individual has voted and retain all such consecutive dates. [2004 c 267 § 110; 2003 c 111 § 209; 1993 c 408 § 11; 1991 c 81 § 22; 1974 ex.s. c 127 § 12. Formerly RCW 29.07.220.]

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**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective dates—1993 c 408:** See notes following RCW 2.36.054.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.08.130 Count of registered voters.** (1) Except as otherwise specified by this title, registered voters include those assigned to active and inactive status by the county auditor.

(2) Election officials shall not include inactive voters in the count of registered voters for the purpose of dividing precincts, creating vote-by-mail precincts, determining voter turnout, or other purposes in law for which the determining factor is the number of registered voters. Election officials shall not include persons who are ongoing absentee voters under RCW 29A.40.040 in determining the maximum permissible size of vote-by-mail precincts or in determining the maximum permissible size of precincts. Nothing in this subsection may be construed as altering the vote tallying requirements of RCW 29A.60.230. [2003 c 111 § 210; 1994 c 57 § 40. Formerly RCW 29.10.081.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.135 Updating information.** (*Effective until January 1, 2006.*) The county auditor shall acknowledge each new voter registration or transfer by providing or sending the voter a card identifying his or her current precinct and containing such other information as may be prescribed by the secretary of state. When a person who has previously registered to vote in a jurisdiction applies for voter registration in a new jurisdiction, the person shall provide on the registration form, all information needed to cancel any previous registration. The county auditor shall forward any information pertaining to the voter's prior voter registration to the county where the voter was previously registered, so that registration may be canceled. If the prior voter registration is in another state, the notification must be made to the state elections office of that state. A county auditor receiving official information that a voter has registered to vote in another jurisdiction shall immediately cancel that voter's registration. [2003 c 111 § 211; 2001 c 41 § 6; 1975 1st ex.s. c 184 § 1; 1973 c 153 § 2. Formerly RCW 29.07.092.]

**Severability—1975 1st ex.s. c 184:** "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 184 § 5.]

**29A.08.135 Updating information.** (*Effective January 1, 2006.*) The county auditor shall acknowledge each new voter registration or transfer by providing or sending the voter a card identifying his or her current precinct and containing such other information as may be prescribed by the secretary of state. When a person who has previously registered to vote in another state applies for voter registration, the person shall provide on the registration form, all information needed to cancel any previous registration. Notification must be made to the state elections office of the applicant's previous state of registration. A county auditor receiving official information that a voter has registered to vote in another state shall immediately cancel that voter's registration on the offi-

cial state voter registration list. [2004 c 267 § 111; 2003 c 111 § 211; 2001 c 41 § 6; 1975 1st ex.s. c 184 § 1; 1973 c 153 § 2. Formerly RCW 29.07.092.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1975 1st ex.s. c 184:** "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 184 § 5.]

**29A.08.140 Closing files—Notice. (Effective until January 1, 2006.)** The registration files of all precincts shall be closed against original registration or transfers for thirty days immediately preceding every primary, special election, and general election to be held in such precincts.

The county auditor shall give notice of the closing of the precinct files for original registration and transfer and notice of the special registration and voting procedure provided by RCW 29A.08.145 by one publication in a newspaper of general circulation in the county at least five days before the closing of the precinct files.

No person may vote at any primary, special election, or general election in a precinct polling place unless he or she has registered to vote at least thirty days before that primary or election. If a person, otherwise qualified to vote in the state, county, and precinct in which he or she applies for registration, does not register at least thirty days before any primary, special election, or general election, he or she may register and vote by absentee ballot for that primary or election under RCW 29A.08.145. [2003 c 111 § 212. Prior: 1993 c 383 § 2; 1980 c 3 § 4; 1974 ex.s. c 127 § 4; 1971 ex.s. c 202 § 20; 1965 c 9 § 29.07.160; prior: 1947 c 68 § 2; 1933 c 1 § 9; Rem. Supp. 1947 § 5114-9. Formerly RCW 29.07.160.]

**29A.08.140 Closing files—Notice. (Effective January 1, 2006.)** The registration files of all precincts shall be closed against original registration or transfers for thirty days immediately preceding every primary, special election, and general election to be held in such precincts.

The county auditor shall give notice of the closing of the precinct files for original registration and transfer and notice of the special registration and voting procedure provided by RCW 29A.08.145 by one publication in a newspaper of general circulation in the county at least five days before the closing of the precinct files.

No person may vote at any primary, special election, or general election in a precinct polling place unless he or she has registered to vote at least thirty days before that primary or election and appears on the official statewide voter registration list. If a person, otherwise qualified to vote in the state, county, and precinct in which he or she applies for registration, does not register at least thirty days before any primary, special election, or general election, he or she may register and vote by absentee ballot for that primary or election under RCW 29A.08.145. [2004 c 267 § 112; 2003 c 111 § 212. Prior: 1993 c 383 § 2; 1980 c 3 § 4; 1974 ex.s. c 127 § 4; 1971 ex.s. c 202 § 20; 1965 c 9 § 29.07.160; prior: 1947 c 68 § 2; 1933 c 1 § 9; Rem. Supp. 1947 § 5114-9. Formerly RCW 29.07.160.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.145 Late registration—Special procedure. (Effective until January 1, 2006.)** This section establishes a special procedure which an elector may use to register to vote during the period beginning after the closing of registration for voting at the polls under RCW 29A.08.140 and ending on the fifteenth day before a primary, special election, or general election. A qualified elector in the county may register to vote in person in the office of the county auditor or at a voter registration location specifically designated for this purpose by the county auditor of the county in which the applicant resides, and apply for an absentee ballot for that primary or election. The auditor or registration assistant shall register that individual in the manner provided in this chapter. The application for an absentee ballot executed by the newly registered voter for the primary or election that follows the execution of the registration shall be promptly transmitted to the auditor with the completed voter registration form. [2003 c 111 § 213; 1993 c 383 § 1. Formerly RCW 29.07.152.]

**29A.08.145 Late registration—Special procedure. (Effective January 1, 2006.)** This section establishes a special procedure which an elector may use to register to vote or transfer a voter registration by changing his or her address during the period beginning after the closing of registration for voting at the polls under RCW 29A.08.140 and ending on the fifteenth day before a primary, special election, or general election. A qualified elector in the state may register to vote or change his or her registration address in person in the office of the county auditor or at a voter registration location specifically designated for this purpose by the county auditor of the county in which the applicant resides, and apply for an absentee ballot for that primary or election. The auditor or registration assistant shall register that individual in the manner provided in this chapter. The application for an absentee ballot executed by the newly registered or transferred voter for the primary or election that follows the execution of the registration shall be promptly transmitted to the auditor with the completed voter registration form. [2004 c 267 § 113; 2003 c 111 § 213; 1993 c 383 § 1. Formerly RCW 29.07.152.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.150 Expense of registration.** The expense of registration in all rural precincts must be paid by the county. The expense of registration in all precincts lying wholly within a city or town must be paid by the city or town. Registration expenses for this section include both active and inactive voters. [2003 c 111 § 214; 1965 c 9 § 29.07.030. Prior: 1939 c 82 § 1, part; 1933 c 1 § 4, part; RRS § 5114-4, part; prior: 1891 c 104 § 4; RRS § 5119. Formerly RCW 29.07.030.]

**29A.08.155 Payment for maintenance of electronic records. (Effective until January 1, 2006.)** To compensate counties with fewer than ten thousand registered voters at the time of the most recent state general election for unrecoverable costs incident to the maintenance of voter registration records on electronic data processing systems, the secretary of state shall, in June of each year, pay such counties an amount equal to thirty cents for each registered voter in the

county at the time of the most recent state general election. [2003 c 111 § 215. Prior: 1980 c 32 § 6; 1974 ex.s. c 127 § 13. Formerly RCW 29.07.230.]

**29A.08.155 Payment for maintenance of electronic records.** (*Effective January 1, 2006.*) To compensate counties with fewer than ten thousand registered voters at the time of the most recent state general election for unrecoverable costs incident to the maintenance of voter registration records on electronic data processing systems, the secretary of state shall, in June of each year, pay such counties an amount equal to one dollar for each registered voter in the county at the time of the most recent state general election, as long as funds provided for elections by the Help America Vote Act of 2002 (P.L. 107-252) are available. [2004 c 267 § 114; 2003 c 111 § 215. Prior: 1980 c 32 § 6; 1974 ex.s. c 127 § 13. Formerly RCW 29.07.230.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.161 No link between voter and ballot choice.** No record may be created or maintained by a state or local governmental agency or a political organization that identifies a voter with the information marked on the voter's ballot, including the choice that a voter makes on a partisan primary ballot regarding political party affiliation. [2004 c 271 § 107.]

*Record of participation:* RCW 29A.44.231.

**29A.08.166 Party affiliation not required.** Under no circumstances may an individual be required to affiliate with, join, adhere to, express faith in, or declare a preference for, a political party or organization upon registering to vote. [2004 c 271 § 108.]

## FORMS

**29A.08.210 Application—Information required—Warning.** An applicant for voter registration shall complete an application providing the following information concerning his or her qualifications as a voter in this state:

- (1) The address of the last former registration of the applicant as a voter in the state;
- (2) The applicant's full name;
- (3) The applicant's date of birth;
- (4) The address of the applicant's residence for voting purposes;
- (5) The mailing address of the applicant if that address is not the same as the address in subsection (4) of this section;
- (6) The sex of the applicant;
- (7) A declaration that the applicant is a citizen of the United States;
- (8) The applicant's signature; and
- (9) Any other information that the secretary of state determines is necessary to establish the identity of the applicant and prevent duplicate or fraudulent voter registrations.

This information shall be recorded on a single registration form to be prescribed by the secretary of state.

If the applicant fails to provide the information required for voter registration, the auditor shall send the applicant a verification notice. The auditor shall not register the appli-

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cant until the required information is provided. If a verification notice is returned as undeliverable or the applicant fails to respond to the notice within forty-five days, the auditor shall not register the applicant to vote.

The following warning shall appear in a conspicuous place on the voter registration form:

"If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to five years, or by a fine of up to ten thousand dollars, or both imprisonment and fine." [2003 c 111 § 216; 1994 c 57 § 11; 1990 c 143 § 7; 1973 1st ex.s. c 21 § 3; 1971 ex.s. c 202 § 9; 1965 c 9 § 29.07.070. Prior: 1947 c 68 § 3, part; 1933 c 1 § 11, part; Rem. Supp. 1947 § 5114-11, part; prior: 1921 c 177 § 7, part; 1915 c 16 § 8, part; 1901 c 135 § 4, part; 1893 c 45 § 3, part; 1889 p 416 § 8, part; RRS § 5126, part. Formerly RCW 29.07.070.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Effective date—1990 c 143 §§ 1-8:** See note following RCW 29A.08.340.

*Civil disabilities of wife abolished:* RCW 26.16.160.

*Civil rights*

*loss of:* State Constitution Art. 6 § 3, RCW 29A.08.520.

*restoration of:* RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

*Copy of instrument restoring civil rights as evidence:* RCW 5.44.090.

*Qualifications of electors:* State Constitution Art. 6 § 1 (Amendment 5).

*Residence defined:* RCW 29A.04.151.

*Subversive activities as disqualification for voting:* RCW 9.81.040.

**29A.08.220 Application—Format—Production.** (1) The secretary of state shall specify by rule the format of all voter registration applications. These applications shall be compatible with existing voter registration records. An applicant for voter registration shall be required to complete only one application and to provide the required information other than his or her signature no more than one time. These applications shall also contain information for the voter to transfer his or her registration.

Any application format specified by the secretary for use in registering to vote in state and local elections shall satisfy the requirements of the National Voter Registration Act of 1993 (P.L. 103-31) and the Help America Vote Act of 2002 (P.L. 107-252) for registering to vote in federal elections.

(2) All registration applications required under RCW 29A.08.210 and 29A.08.340 shall be produced and furnished by the secretary of state to the county auditors and the department of licensing. [2004 c 267 § 115; 2003 c 111 § 217. Prior: 1994 c 57 § 18; 1990 c 143 § 9; 1973 1st ex.s. c 21 § 7; 1971 ex.s. c 202 § 18; 1965 c 9 § 29.07.140; prior: (i) 1933 c 1 § 30; RRS § 5114-30. (ii) 1933 c 1 § 13, part; RRS § 5114-13, part. Formerly RCW 29.07.140.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1994 c 57:** See note following RCW 10.64.021.

**29A.08.230 Oath of applicant.** For all voter registrations, the registrant shall sign the following oath:

"I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am not presently denied my civil rights as a result of being convicted of a felony, I will have lived in Washington at this address for thirty days immediately before the next election at which I vote, and I will be at least eighteen years old when I vote." [2003 c 111 § 218; 1994 c 57 § 12; 1990 c 143 § 8; 1973 1st ex.s. c 21 § 4; 1971 ex.s. c 202 § 10; 1965 c 9 § 29.07.080. Prior: 1933 c 1 § 12; RRS § 5114-12. Formerly RCW 29.07.080.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Effective date—1990 c 143 §§ 1-8:** See note following RCW 29A.08.340.

*Civil rights*

*loss of:* State Constitution Art. 6 § 3, RCW 29A.08.520.

*restoration of:* RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

**29A.08.240 Signature card. (Expires January 1, 2006.)** (1) Until January 1, 2006, at the time of registering, a voter shall sign his or her name upon a signature card to be transmitted to the secretary of state. The voter shall also provide his or her first name followed by the last name or names and the name of the county in which he or she is registered. Once each week the county auditor shall transmit all such cards to the secretary of state. The secretary of state may exempt a county auditor who is providing electronic voter registration and electronic voter signature information to the secretary of state from the requirements of this section.

(2) This section expires January 1, 2006. [2004 c 267 § 116; 2003 c 111 § 219; 1994 c 57 § 13; 1973 1st ex.s. c 21 § 5; 1971 ex.s. c 202 § 11; 1965 c 9 § 29.07.090. Prior: 1933 c 1 § 13, part; RRS § 5114-13, part. Formerly RCW 29.07.090.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1994 c 57:** See note following RCW 10.64.021.

*Signature cards—File for checking initiative and referendum petitions:* RCW 29A.72.220.

**29A.08.240 Signature card. (Effective January 1, 2006.)** At the time of registering, a voter shall sign his or her name upon a signature card to be transmitted to the secretary of state. The voter shall also provide his or her first name followed by the last name or names and the name of the county in which he or she is registered. Once each week the county auditor shall transmit all such cards to the secretary of state. The secretary of state may exempt a county auditor who is providing electronic voter registration and electronic voter signature information to the secretary of state from the requirements of this section. [2003 c 111 § 219; 1994 c 57 § 13; 1973 1st ex.s. c 21 § 5; 1971 ex.s. c 202 § 11; 1965 c 9 § 29.07.090. Prior: 1933 c 1 § 13, part; RRS § 5114-13, part. Formerly RCW 29.07.090.]

**Severability—1994 c 57:** See note following RCW 10.64.021.

*Signature cards—File for checking initiative and referendum petitions:* RCW 29A.72.220.

**29A.08.250 Supplied without cost—Citizenship, identification information.** The secretary of state shall furnish registration forms necessary to carry out the registration of voters as provided by this chapter without cost to the

respective counties. All voter registration forms must include clear and conspicuous language, designed to draw an applicant's attention, stating that the applicant must be a United States citizen in order to register to vote. Voter registration application forms must also contain a space for the applicant to provide his or her driver's license number or the last four digits of his or her social security number as well as check boxes intended to allow the voter to indicate age and United States citizenship eligibility under the Help America Vote Act of 2002 (P.L. 107-252). [2004 c 267 § 117; 2003 c 111 § 220; 2001 c 41 § 8; 1999 c 298 § 7; 1993 c 434 § 8. Formerly RCW 29.08.080.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.260 Supply and distribution.** The county auditor shall distribute forms by which a person may register to vote by mail and transfer any previous registration in this state. The county auditor shall keep a supply of voter registration forms in his or her office at all times for political parties and others interested in assisting in voter registration, and shall make every effort to make these forms generally available to the public. The county auditor shall provide voter registration forms to city and town clerks, state offices, schools, fire stations, and any other locations considered appropriate by the auditor or secretary of state for extending registration opportunities to all areas of the county. After the initial distribution of voter registration forms to a given location, a representative designated by the official in charge of that location shall notify the county auditor of the need for additional voter registration supplies. [2004 c 267 § 118; 2003 c 111 § 221. Prior: 1993 c 434 § 4. Formerly RCW 29.08.040.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

#### MOTOR VOTER AND REGISTRATION AT STATE AGENCIES

**29A.08.310 Voter registration in state offices, colleges.** (1) The governor, in consultation with the secretary of state, shall designate agencies to provide voter registration services in compliance with federal statutes.

(2) Each state agency designated shall provide voter registration services for employees and the public within each office of that agency.

(3) The secretary of state shall design and provide a standard notice informing the public of the availability of voter registration, which notice shall be posted in each state agency where such services are available.

(4) The secretary of state shall design and provide standard voter registration forms for use by these state agencies.

(5) Each institution of higher education shall put in place an active prompt on its course registration web site, or similar web site that students actively and regularly use, that, if selected, will link the student to the secretary of state's voter registration web site. The prompt must ask the student if he or she wishes to register to vote. [2003 c 111 § 222; 2002 c 185 § 3; 1994 c 57 § 10; 1984 c 211 § 2. Formerly RCW 29.07.025.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Intent—1984 c 211:** "It is the intention of the legislature, in order to encourage the broadest possible participation in the electoral process by the

citizens of the state of Washington, to make voter registration services available in state offices which have significant contact with the public." [1984 c 211 § 1.]

**29A.08.320 Registration or transfer at designated agencies—Form and application.** (1) A person may register to vote or transfer a voter registration when he or she applies for service or assistance and with each renewal, recertification, or change of address at agencies designated under RCW 29A.08.310.

(2) A prospective applicant shall initially be offered a form approved by the secretary of state designed to determine whether the person wishes to register to vote. The form must comply with all applicable state and federal statutes regarding content.

The form shall also contain a box that may be checked by the applicant to indicate that he or she declines to register.

If the person indicates an interest in registering or has made no indication as to a desire to register or not register to vote, the person shall be given a mail-in voter registration application or a prescribed agency application as provided by RCW 29A.08.330. [2004 c 267 § 119; 2004 c 266 § 7; 2003 c 111 § 223. Prior: 1994 c 57 § 27. Formerly RCW 29.07.430.]

**Reviser's note:** This section was amended by 2004 c 266 § 7 and by 2004 c 267 § 119, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.330 Registration at designated agencies—Procedures.** (1) The secretary of state shall prescribe the method of voter registration for each designated agency. The agency shall use either the state voter registration by mail form with a separate declination form for the applicant to indicate that he or she declines to register at this time, or the agency may use a separate form approved for use by the secretary of state.

(2) The person providing service at the agency shall offer voter registration services to every client whenever he or she applies for service or assistance and with each renewal, recertification, or change of address. The person providing service shall give the applicant the same level of assistance with the voter registration application as is offered to fill out the agency's forms and documents, including information about age and citizenship requirements for voter registration.

(3) If an agency uses a computerized application process, it may, in consultation with the secretary of state, develop methods to capture simultaneously the information required for voter registration during a person's computerized application process.

(4) Each designated agency shall provide for the voter registration application forms to be collected from each agency office at least once each week. The agency shall then forward the application forms to the secretary of state each week. The secretary of state shall forward the forms to the county in which the applicant has registered to vote no later than ten days after the date on which the forms were received

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by the secretary of state. [2003 c 111 § 224. Prior: 2001 c 41 § 7; 1994 c 57 § 28. Formerly RCW 29.07.440.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.340 Registration with driver's license application or renewal.** (1) A person may register to vote, transfer a voter registration, or change his or her name for voter registration purposes when he or she applies for or renews a driver's license or identification card under chapter 46.20 RCW.

(2) To register to vote, transfer his or her voter registration, or change his or her name for voter registration purposes under this section, the applicant shall provide the information required by RCW 29A.08.210.

(3) The driver licensing agent shall record that the applicant has requested to register to vote or transfer a voter registration. [2003 c 111 § 225; 2001 c 41 § 16; 1999 c 298 § 6; 1994 c 57 § 21; 1990 c 143 § 1. Formerly RCW 29.07.260.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Effective date—1990 c 143 §§ 1-8:** "Sections 1 through 8 of this act shall take effect January 1, 1992." [1990 c 143 § 13.]

*Civil rights*

*loss of:* State Constitution Art. 6 § 3, RCW 29A.08.520.

*restoration of:* RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

*Driver licensing agents duties regarding voter registration:* RCW 46.20.155.

**29A.08.350 Duties of secretary of state, department of licensing, county auditors—Information update. (Effective until January 1, 2006.)** (1) The secretary of state shall provide for the voter registration forms submitted under RCW 29A.08.340 to be collected from each driver's licensing facility within five days of their completion.

(2) The department of licensing shall produce and transmit to the secretary of state a machine-readable file containing the following information from the records of each individual who requested a voter registration or transfer at a driver's license facility during each period for which forms are transmitted under subsection (1) of this section: The name, address, date of birth, gender of the applicant, the driver's license number, the date on which the application for voter registration or transfer was submitted, and the location of the office at which the application was submitted.

(3) The voter registration forms from the driver's licensing facilities must be forwarded to the county in which the applicant has registered to vote no later than ten days after the date on which the forms were to be collected.

(4) For a voter registration application where the address for voting purposes is different from the address in the machine-readable file received from the department of licensing, the secretary of state shall amend the record of that application in the machine-readable file to reflect the county in which the applicant has registered to vote.

(5) The secretary of state shall sort the records in the machine-readable file according to the county in which the applicant registered to vote and produce a file of voter registration transactions for each county. The records of each county may be transmitted on or through whatever medium the county auditor determines will best facilitate the incorpo-

ration of these records into the existing voter registration files of that county.

(6) The secretary of state shall produce a list of voter registration transactions for each county and transmit a copy of this list to that county with each file of voter registration transactions no later than ten days after the date on which that information was to be transmitted under subsection (1) of this section.

(7) If a registrant has indicated on the voter registration application form that he or she is registered to vote in another county in Washington but has also provided an address within the auditor's county that is for voter registration purposes, the auditor shall send, on behalf of the registrant, a registration cancellation notice to the auditor of that other county and the auditor receiving the notice shall cancel the registrant's voter registration in that other county. If the registrant has indicated on the form that he or she is registered to vote within the county but has provided a new address within the county that is for voter registration purposes, the auditor shall transfer the voter's registration. [2003 c 111 § 226; 1994 c 57 § 22; 1990 c 143 § 2. Formerly RCW 29.07.270.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Effective date—1990 c 143 §§ 1-8:** See note following RCW 29A.08.340.

**29A.08.350 Duties of secretary of state, department of licensing, county auditors. (Effective January 1, 2006.)**

(1) The secretary of state shall provide for the voter registration forms submitted under RCW 29A.08.340 to be collected from each driver's licensing facility within five days of their completion.

(2) The department of licensing shall produce and transmit to the secretary of state a machine-readable file containing the following information from the records of each individual who requested a voter registration or transfer at a driver's license facility during each period for which forms are transmitted under subsection (1) of this section: The name, address, date of birth, gender of the applicant, the driver's license number, the date on which the application for voter registration or transfer was submitted, and the location of the office at which the application was submitted.

(3) The voter registration forms from the driver's licensing facilities must be forwarded to the county in which the applicant has registered to vote no later than ten days after the date on which the forms were to be collected.

(4) For a voter registration application where the address for voting purposes is different from the address in the machine-readable file received from the department of licensing, the secretary of state shall amend the record of that application in the machine-readable file to reflect the county in which the applicant has registered to vote.

(5) The secretary of state shall sort the records in the machine-readable file according to the county in which the applicant registered to vote and produce a file of voter registration transactions for each county. The records of each county may be transmitted on or through whatever medium the county auditor determines will best facilitate the incorporation of these records into the existing voter registration files of that county.

(6) The secretary of state shall produce a list of voter registration transactions for each county and transmit a copy of this list to that county with each file of voter registration transactions no later than ten days after the date on which that information was to be transmitted under subsection (1) of this section. [2004 c 267 § 120; 2003 c 111 § 226; 1994 c 57 § 22; 1990 c 143 § 2. Formerly RCW 29.07.270.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Effective date—1990 c 143 §§ 1-8:** See note following RCW 29A.08.340.

**29A.08.360 Address changes at department of licensing. (Effective until January 1, 2006.)**

(1) The department of licensing shall provide information on all persons changing their address on change of address forms submitted to the department unless the voter has indicated that the address change is not for voting purposes. This information will be transmitted to the secretary of state each week in a machine-readable file containing the following information on persons changing their address: The name, address, date of birth, gender of the applicant, the applicant's driver's license number, the applicant's former address, the county code for the applicant's former address, and the date that the request for address change was received.

(2) The secretary of state shall forward this information to the appropriate county each week. When the information indicates that the voter has moved within the county, the county auditor shall use the change of address information to transfer the voter's registration and send the voter an acknowledgement notice of the transfer. If the information indicates that the new address is outside the voter's original county, the county auditor shall send the voter a registration by mail form at the voter's new address and advise the voter of the need to reregister in the new county. The auditor shall then place the voter on inactive status. [2003 c 111 § 227.]

**29A.08.360 Address changes at department of licensing. (Effective January 1, 2006.)**

(1) The department of licensing shall provide information on all persons changing their address on change of address forms submitted to the department unless the voter has indicated that the address change is not for voting purposes. This information will be transmitted to the secretary of state each week in a machine-readable file containing the following information on persons changing their address: The name, address, date of birth, gender of the applicant, the applicant's driver's license number, the applicant's former address, the county code for the applicant's former address, and the date that the request for address change was received.

(2) The secretary of state shall forward this information to the appropriate county each week. When the information indicates that the voter has moved, the county auditor shall use the change of address information to transfer the voter's registration and send the voter an acknowledgement notice of the transfer. [2004 c 267 § 121; 2003 c 111 § 227.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

## TRANSFERS AND NAME CHANGES

**29A.08.410 Address change within county—Transfer by telephone.** To maintain a valid voter registration, a registered voter who changes his or her residence from one address to another within the same county shall transfer his or her registration to the new address in one of the following ways: (1) Sending to the county auditor a signed request stating the voter's present address and the address from which the voter was last registered; (2) appearing in person before the auditor and signing such a request; (3) transferring the registration in the manner provided by RCW 29A.08.430; or (4) telephoning the county auditor to transfer the registration. The telephone call transferring a registration by telephone must be received by the auditor before the precinct registration files are closed to new registrations for the next primary or special or general election in which the voter participates. [2003 c 111 § 228; 1994 c 57 § 35; 1991 c 81 § 23; 1975 1st ex.s. c 184 § 2; 1971 ex.s. c 202 § 24; 1965 c 9 § 29.10.020. Prior: 1955 c 181 § 4; prior: 1933 c 1 § 14, part; RRS § 5114-14, part; prior: 1919 c 163 § 9, part; 1915 c 16 § 9, part; 1889 p 417 § 12, part; RRS § 5129, part. Formerly RCW 29.10.020.]

**Severability—1994 c 57:** See note following RCW 10.64.021.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Severability—1975 1st ex.s. c 184:** See note following RCW 29A.08.135.

**29A.08.420 Reregistration on transfer to another county.** (*Effective until January 1, 2006.*) A registered voter who changes his or her residence from one county to another county, shall be required to register anew. The voter shall sign an authorization to cancel his or her current registration. An authorization to cancel a voter's registration must be forwarded promptly to the county auditor of the county in which the voter was previously registered. The county auditor of the county where the previous registration was made shall cancel the registration of the voter if it appears that the signatures in the registration record and on the cancellation authorization form were made by the same person. [2003 c 111 § 229; 1999 c 100 § 3; 1994 c 57 § 36; 1991 c 81 § 24; 1977 ex.s. c 361 § 26; 1971 ex.s. c 202 § 26; 1965 c 9 § 29.10.040. Prior: 1933 c 1 § 15; RRS § 5114-15. Formerly RCW 29.10.040.]

**Severability—1994 c 57:** See note following RCW 10.64.021.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.08.420 Transfer to another county.** (*Effective January 1, 2006.*) A registered voter who changes his or her residence from one county to another county must do so in writing using a prescribed voter registration form. The county auditor of the voter's new county shall transfer the voter's registration from the county of the previous registration. [2004 c 267 § 122; 2003 c 111 § 229; 1999 c 100 § 3; 1994 c 57 § 36; 1991 c 81 § 24; 1977 ex.s. c 361 § 26; 1971 ex.s. c 202 § 26; 1965 c 9 § 29.10.040. Prior: 1933 c 1 § 15; RRS § 5114-15. Formerly RCW 29.10.040.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

(2004 Ed.)

**Severability—1994 c 57:** See note following RCW 10.64.021.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.04.007.

**29A.08.430 Transfer on election day.** (*Effective until January 1, 2006.*) (1) A person who is registered to vote in this state may transfer his or her voter registration on the day of a special or general election or primary under the following procedures:

(a) The voter may complete, at the polling place, a registration transfer form designed by the secretary of state and supplied by the county auditor; or

(b) The voter may write in his or her new residential address in the precinct list of registered voters.

The county auditor shall determine which of these two procedures are to be used in the county or may determine that both procedures are to be available to voters for use in the county.

(2) A voter who transfers his or her registration in the manner authorized by this section shall vote in the precinct in which he or she was previously registered.

(3) The auditor shall, within ninety days, mail to each voter who has transferred a registration under this section a notice of his or her current precinct and polling place. [2003 c 111 § 230. Prior: 1991 c 81 § 28; 1979 c 96 § 1. Formerly RCW 29.10.170.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.08.430 Transfer on election day.** (*Effective January 1, 2006.*) (1) A person who is registered to vote in this state may transfer his or her voter registration on the day of a special or general election or primary under the following procedures:

(a) The voter may complete, at the polling place, a voter registration form designed by the secretary of state and supplied by the county auditor; or

(b) For a change within the county, the voter may write in his or her new residential address in the precinct list of registered voters.

The county auditor shall determine which of these two procedures are to be used in the county or may determine that both procedures are to be available to voters for use in the county.

(2) A voter who transfers his or her registration in the manner authorized by this section shall vote in the precinct in which he or she was previously registered.

(3) The auditor shall, within sixty days, mail to each voter who has transferred a registration under this section, an acknowledgement notice detailing his or her current precinct and polling place. [2004 c 267 § 123; 2003 c 111 § 230. Prior: 1991 c 81 § 28; 1979 c 96 § 1. Formerly RCW 29.10.170.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.08.440 Voter name change.** To maintain a valid voter registration, a person who changes his or her name shall notify the county auditor regarding the name change in one of the following ways: (1) By sending the auditor a notice

clearly identifying the name under which he or she is registered to vote, the voter's new name, and the voter's residence. Such a notice must be signed by the voter using both this former name and the voter's new name; (2) by appearing in person before the auditor or a registration assistant and signing such a change-of-name notice; (3) by signing such a change-of-name notice at the voter's precinct polling place on the day of a primary or special or general election; (4) by properly executing a name change on a mail-in registration application or a prescribed state agency application.

A properly registered voter who files a change-of-name notice at the voter's precinct polling place during a primary or election and who desires to vote at that primary or election shall sign the poll book using the voter's former and new names in the same manner as is required for the change-of-name notice. [2003 c 111 § 231; 1994 c 57 § 37; 1991 c 81 § 25. Formerly RCW 29.10.051.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

### CANCELLATIONS

#### **29A.08.510 Death. (Effective until January 1, 2006.)**

In addition to case-by-case maintenance under RCW 29A.08.620 and 29A.08.630 and the general program of maintenance of voter registration lists under RCW 29A.08.605, deceased voters will be canceled from voter registration lists as follows:

(1) Every month, the registrar of vital statistics of the state shall prepare a separate list of persons who resided in each county, for whom a death certificate was transmitted to the registrar and was not included on a previous list, and shall supply the appropriate list to each county auditor.

A county auditor shall compare this list with the registration records and cancel the registrations of deceased voters within at least forty-five days before the next primary or election held in the county after the auditor receives the list.

(2) In addition, the county auditor may also use newspaper obituary articles as a source of information in order to cancel a voter's registration. The auditor must verify the identity of the voter by matching the voter's date of birth or an address. The auditor shall record the date and source of the obituary in the cancellation records.

(3) In addition, any registered voter may sign a statement, subject to the penalties of perjury, to the effect that to his or her personal knowledge or belief another registered voter is deceased. This statement may be filed with the county auditor. Upon the receipt of such signed statement, the county auditor shall cancel the registration records concerned and so notify the secretary of state. [2003 c 111 § 232; 1999 c 100 § 1; 1994 c 57 § 41; 1983 c 110 § 1; 1971 ex.s. c 202 § 29; 1965 c 9 § 29.10.090. Prior: 1961 c 32 § 1; 1933 c 1 § 20; RRS § 5114-20. Formerly RCW 29.10.090.]

**Severability—1994 c 57:** See note following RCW 10.64.021.

**29A.08.510 Death. (Effective January 1, 2006.)** In addition to case-by-case maintenance under RCW 29A.08.620 and 29A.08.630 and the general program of maintenance of voter registration lists under RCW

29A.08.605, deceased voters will be canceled from voter registration lists as follows:

(1) Periodically, the registrar of vital statistics of the state shall prepare a list of persons who resided in each county, for whom a death certificate was transmitted to the registrar and was not included on a previous list, and shall supply the list to the secretary of state.

The secretary of state shall compare this list with the registration records and cancel the registrations of deceased voters within at least forty-five days before the next primary or election.

(2) In addition, each county auditor may also use newspaper obituary articles as a source of information in order to cancel a voter's registration from the official state voter registration list. The auditor must verify the identity of the voter by matching the voter's date of birth or an address. The auditor shall record the date and source of the obituary in the cancellation records.

(3) In addition, any registered voter may sign a statement, subject to the penalties of perjury, to the effect that to his or her personal knowledge or belief another registered voter is deceased. This statement may be filed with the county auditor or the secretary of state. Upon the receipt of such signed statement, the county auditor or the secretary of state shall cancel the registration records concerned from the official state voter registration list. [2004 c 267 § 124; 2003 c 111 § 232; 1999 c 100 § 1; 1994 c 57 § 41; 1983 c 110 § 1; 1971 ex.s. c 202 § 29; 1965 c 9 § 29.10.090. Prior: 1961 c 32 § 1; 1933 c 1 § 20; RRS § 5114-20. Formerly RCW 29.10.090.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1994 c 57:** See note following RCW 10.64.021.

**29A.08.515 Incapacitation, guardianship. (Effective January 1, 2006.)** Upon receiving official notice that a court has imposed a guardianship for an incapacitated person and has determined that the person is incompetent for the purpose of rationally exercising the right to vote, under chapter 11.88 RCW, if the incapacitated person is a registered voter in the county, the county auditor shall cancel the incapacitated person's voter registration. [2004 c 267 § 125.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.520 Felony conviction. (Effective until January 1, 2006.)** Upon receiving official notice of a person's conviction of a felony in either state or federal court, if the convicted person is a registered voter in the county, the county auditor shall cancel the defendant's voter registration. [2003 c 111 § 233. Prior: 1994 c 57 § 42. Formerly RCW 29.10.097.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

*Restoration of civil rights: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.*

**29A.08.520 Felony conviction. (Effective January 1, 2006.)** Upon receiving official notice of a person's conviction of a felony in either state or federal court, if the convicted person is a registered voter in the county, the county auditor shall cancel the defendant's voter registration. Additionally,

the secretary of state in conjunction with the department of corrections shall arrange for a periodic comparison of a list of known felons with the statewide voter registration list. If a person is found on the department of corrections felon list and the statewide voter registration list, the secretary of state or county auditor shall confirm the match through a date of birth comparison and cancel the voter registration from the official state voter registration list. The canceling authority shall send notice of the proposed cancellation to the person at his or her last known voter registration address. [2004 c 267 § 126; 2003 c 111 § 233. Prior: 1994 c 57 § 42. Formerly RCW 29.10.097.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

*Restoration of civil rights: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.*

**29A.08.540 Record of cancellations.** (*Effective until January 1, 2006.*) Every county auditor shall carefully preserve in a separate file or list the registration records of persons whose voter registrations have been canceled as authorized under this title. The files or lists shall be kept in the manner prescribed by rule by the secretary of state. Information from such canceled registration records is available for public inspection and copying to the same extent established by RCW 29A.08.710 for other voter registration information.

The county auditor may destroy the voter registration information and records of any person whose voter registration has been canceled for a period of two years or more. [2003 c 111 § 235. Prior: 1991 c 81 § 26; 1971 ex.s. c 202 § 32; 1965 ex.s. c 156 § 1; 1965 c 9 § 29.10.110; prior: 1961 c 32 § 2; 1947 c 85 § 5; 1933 c 1 § 21; Rem. Supp. 1947 § 5114-21. Formerly RCW 29.10.110.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.08.540 Records preservation.** (*Effective January 1, 2006.*) Registration records of persons whose voter registrations have been canceled as authorized under this title must be preserved in the manner prescribed by rule by the secretary of state. Information from such canceled registration records is available for public inspection and copying to the same extent established by RCW 29A.08.710 for other voter registration information. [2004 c 267 § 127; 2003 c 111 § 235. Prior: 1991 c 81 § 26; 1971 ex.s. c 202 § 32; 1965 ex.s. c 156 § 1; 1965 c 9 § 29.10.110; prior: 1961 c 32 § 2; 1947 c 85 § 5; 1933 c 1 § 21; Rem. Supp. 1947 § 5114-21. Formerly RCW 29.10.110.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

#### LIST MAINTENANCE

**29A.08.605 Registration list maintenance.** (*Effective until January 1, 2006.*) In addition to the case-by-case maintenance required under RCW 29A.08.620 and 29A.08.630 and the canceling of registrations under RCW 29A.08.510, the county auditor shall establish a general program of voter registration list maintenance. This program must be a thorough review that is applied uniformly throughout the county

(2004 Ed.)

and must be nondiscriminatory in its application. Any program established must be completed at least once every two years and not later than ninety days before the date of a primary or general election for federal office. The county may fulfill its obligations under this section in one of the following ways:

(1) The county auditor may enter into one or more contracts with the United States postal service, or its licensee, which permit the auditor to use postal service change-of-address information. If the auditor receives change of address information from the United States postal service that indicates that a voter has changed his or her residence address within the county, the auditor shall transfer the registration of that voter and send a confirmation notice informing the voter of the transfer to the new address. If the auditor receives postal change of address information indicating that the voter has moved out of the county, the auditor shall send a confirmation notice to the voter and advise the voter of the need to reregister in the new county. The auditor shall place the voter's registration on inactive status;

(2) A direct, nonforwardable, nonprofit or first-class mailing to every registered voter within the county bearing the postal endorsement "Return Service Requested." If address correction information for a voter is received by the county auditor after this mailing, the auditor shall place that voter on inactive status and shall send to the voter a confirmation notice;

(3) Any other method approved by the secretary of state. [2003 c 111 § 236. Prior: 1999 c 100 § 2; 1994 c 57 § 44; prior: 1993 c 434 § 10; 1993 c 417 § 8; 1991 c 363 § 31; 1989 c 261 § 1; 1987 c 359 § 1. Formerly RCW 29.10.180.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**29A.08.605 Registration list maintenance.** (*Effective January 1, 2006.*) In addition to the case-by-case maintenance required under RCW 29A.08.620 and 29A.08.630 and the canceling of registrations under RCW 29A.08.510, the secretary of state and the county auditor shall cooperatively establish a general program of voter registration list maintenance. This program must be a thorough review that is applied uniformly throughout the county and must be nondiscriminatory in its application. Any program established must be completed at least once every two years and not later than ninety days before the date of a primary or general election for federal office. This obligation may be fulfilled in one of the following ways:

(1) The secretary of state may enter into one or more contracts with the United States postal service, or its licensee, which permit the use of postal service change-of-address information. If the change of address information is received from the United States postal service that indicates that a voter has changed his or her residence address within the state, the auditor shall transfer the registration of that voter and send a confirmation notice informing the voter of the transfer to the new address;

(2) A direct, nonforwardable, nonprofit or first-class mailing to every registered voter bearing the postal endorsement "Return Service Requested." If address correction

information for a voter is received by the county auditor after this mailing, the auditor shall place that voter on inactive status and shall send to the voter a confirmation notice;

(3) Any other method approved by the secretary of state. [2004 c 267 § 128; 2003 c 111 § 236. Prior: 1999 c 100 § 2; 1994 c 57 § 44; prior: 1993 c 434 § 10; 1993 c 417 § 8; 1991 c 363 § 31; 1989 c 261 § 1; 1987 c 359 § 1. Formerly RCW 29.10.180.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**29A.08.610 Dual registration or voting detection.** (*Effective until January 1, 2006.*) In addition to the case-by-case cancellation procedure required in RCW 29A.08.420, the county auditor, in conjunction with the office of the secretary of state, shall participate in an annual list maintenance program designed to detect persons registered in more than one county or voting in more than one county in an election. This program must be applied uniformly throughout the county and must be nondiscriminatory in its application. The program must be completed not later than thirty days before the date of a primary or general election.

The office of the secretary of state shall cause to be created a list of registered voters with the same date of birth and similar names who appear on two or more county lists of registered voters. The office of the secretary of state shall forward this list to each county auditor so that they may properly cancel the previous registration of voters who have subsequently registered in a different county. The county auditor of the county where the previous registration was made shall cancel the registration of the voter if it appears that the signatures in the registration and the signature provided to the new county on the voter's new registration were made by the same person.

If a voter is suspected of voting in two or more counties in an election, the county auditors in each county shall cooperate without delay to determine the voter's county of residence. The county auditor of the county of residence of the voter suspected of voting in two or more counties shall take action under RCW 29A.84.010 without delay. [2003 c 111 § 237; 2001 c 41 § 10; 1999 c 100 § 4. Formerly RCW 29.10.185.]

**29A.08.610 Dual registration or voting detection.** (*Effective January 1, 2006.*) In addition to the case-by-case cancellation procedure required in RCW 29A.08.420, the secretary of state, shall conduct an ongoing list maintenance program designed to detect persons registered in more than one county or voting in more than one county in an election. This program must be applied uniformly throughout the state and must be nondiscriminatory in its application. The program must be completed not later than thirty days before the date of a primary or general election.

The office of the secretary of state shall search the statewide voter registration list to find registered voters with the same date of birth and similar names. The secretary of state shall compare the signatures on each voter registration record

and after confirming that a duplicate registration exists properly resolve the duplication.

If a voter is suspected of voting in two or more counties in an election, the county auditors in each county shall cooperate without delay to determine the voter's county of residence. The county auditor of the county of residence of the voter suspected of voting in two or more counties shall take action under RCW 29A.84.010 without delay. [2004 c 267 § 129; 2003 c 111 § 237; 2001 c 41 § 10; 1999 c 100 § 4. Formerly RCW 29.10.185.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.615 "Active," "inactive" registered voters.** Registered voters are divided into two categories, "active" and "inactive." All registered voters are classified as active, unless assigned to inactive status by the county auditor. [2003 c 111 § 238. Prior: 1994 c 57 § 34. Formerly RCW 29.10.015.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.620 Assignment of voter to inactive status—Confirmation notice.** (*Effective until January 1, 2006.*) (1) A county auditor shall assign a registered voter to inactive status and shall send the voter a confirmation notice if any of the following documents are returned by the postal service as undeliverable:

- (a) An acknowledgement of registration;
- (b) An acknowledgement of transfer to a new address;
- (c) A vote-by-mail ballot, absentee ballot, or application for a ballot;
- (d) Notification to a voter after precinct reassignment;
- (e) Notification to serve on jury duty; or
- (f) Any other document other than a confirmation notice, required by statute, to be mailed by the county auditor to the voter.

(2) A county auditor shall also assign a registered voter to inactive status and shall send the voter a confirmation notice:

- (a) Whenever change of address information received from the department of licensing under RCW 29A.08.350, or by any other agency designated to provide voter registration services under RCW 29A.08.310, indicates that the voter has moved to an address outside the county; or
- (b) If the auditor receives postal change of address information under RCW 29A.08.605, indicating that the voter has moved out of the county. [2004 c 266 § 8; 2003 c 111 § 239. Prior: 1994 c 57 § 38. Formerly RCW 29.10.071.]

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.620 Assignment of voter to inactive status—Confirmation notice.** (*Effective January 1, 2006.*) (1) A county auditor shall assign a registered voter to inactive status and shall send the voter a confirmation notice if any of the following documents are returned by the postal service as undeliverable:

- (a) An acknowledgement of registration;
- (b) An acknowledgement of transfer to a new address;

- (c) A vote-by-mail ballot, absentee ballot, or application for a ballot;
- (d) Notification to a voter after precinct reassignment;
- (e) Notification to serve on jury duty; or
- (f) Any other document other than a confirmation notice, required by statute, to be mailed by the county auditor to the voter.

(2) A county auditor shall also assign a registered voter to inactive status and shall send the voter a confirmation notice:

(a) Whenever change of address information received from the department of licensing under RCW 29A.08.350, or by any other agency designated to provide voter registration services under RCW 29A.08.310, indicates that the voter has moved to an address outside the state; or

(b) If the auditor receives postal change of address information under RCW 29A.08.605, indicating that the voter has moved out of the state. [2004 c 267 § 130; 2004 c 266 § 8; 2003 c 111 § 239. Prior: 1994 c 57 § 38. Formerly RCW 29.10.071.]

**Reviser's note:** This section was amended by 2004 c 266 § 8 and by 2004 c 267 § 130, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

#### **29A.08.625 Voting by inactive or canceled voters.** (1)

A voter whose registration has been made inactive under this chapter and who offers to vote at an ensuing election before two federal elections have been held must be allowed to vote a regular ballot and the voter's registration restored to active status.

(2) A voter whose registration has been properly canceled under this chapter shall vote a provisional ballot. The voter shall mark the provisional ballot in secrecy, the ballot placed in a security envelope, the security envelope placed in a provisional ballot envelope, and the reasons for the use of the provisional ballot noted.

(3) Upon receipt of such a voted provisional ballot the auditor shall investigate the circumstances surrounding the original cancellation. If he or she determines that the cancellation was in error, the voter's registration must be immediately reinstated, and the voter's provisional ballot must be counted. If the original cancellation was not in error, the voter must be afforded the opportunity to reregister at his or her correct address, and the voter's provisional ballot must not be counted. [2003 c 111 § 240; 1994 c 57 § 47. Formerly RCW 29.10.220.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.630 Return of inactive voter to active status—Cancellation of registration.** (*Effective until January 1, 2006.*) The county auditor shall return an inactive voter to active voter status if, during the period beginning on the date the voter was assigned to inactive status and ending on the day of the second general election for federal office that occurs after the date that the voter was sent a confirmation

notice, the voter: Notifies the auditor of a change of address within the county; responds to a confirmation notice with information that the voter continues to reside at the registration address; votes or attempts to vote in a primary or a special or general election and resides within the county; or signs any petition authorized by statute for which the signatures are required by law to be verified by the county auditor. If the inactive voter fails to provide such a notice or take such an action within that period, the auditor shall cancel the person's voter registration. [2003 c 111 § 241. Prior: 1994 c 57 § 39. Formerly RCW 29.10.075.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.630 Return of inactive voter to active status—Cancellation of registration.** (*Effective January 1, 2006.*) The county auditor shall return an inactive voter to active voter status if, during the period beginning on the date the voter was assigned to inactive status and ending on the day of the second general election for federal office that occurs after the date that the voter was sent a confirmation notice, the voter: Notifies the auditor of a change of address within the county; responds to a confirmation notice with information that the voter continues to reside at the registration address; votes or attempts to vote in a primary or a special or general election and resides within the county; or signs any petition authorized by statute for which the signatures are required by law to be verified by the county auditor or secretary of state. If the inactive voter fails to provide such a notice or take such an action within that period, the auditor shall cancel the person's voter registration. [2004 c 267 § 131; 2003 c 111 § 241. Prior: 1994 c 57 § 39. Formerly RCW 29.10.075.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

#### **29A.08.635 Confirmation notices—Form, contents.**

Confirmation notices must be on a form prescribed by, or approved by, the secretary of state and must request that the voter confirm that he or she continues to reside at the address of record and desires to continue to use that address for voting purposes. The notice must inform the voter that if the voter does not respond to the notice and does not vote in either of the next two federal elections, his or her voter registration will be canceled. [2003 c 111 § 242. Prior: 1994 c 57 § 45. Formerly RCW 29.10.200.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.640 Confirmation notice—Response, auditor's action.** (*Effective until January 1, 2006.*) If the response to the confirmation notice provides the county auditor with the information indicating that the voter has moved within the county, the auditor shall transfer the voter's registration. If the response indicates that the voter has left the county, the auditor shall cancel the voter's registration. [2003 c 111 § 243. Prior: 1994 c 57 § 46. Formerly RCW 29.10.210.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.640 Confirmation notice—Response, auditor's action.** (*Effective January 1, 2006.*) If the response to the confirmation notice provides the county auditor with the information indicating that the voter has moved within the county, the auditor shall transfer the voter's registration. If the response indicates a move out of a county, but within the state, the auditor shall place the registration in inactive status for transfer pending acceptance by the county indicated by the new address. The auditor shall immediately notify the auditor of the county with the new address. If the response indicates that the voter has left the state, the auditor shall cancel the voter's registration on the official state voter registration list. [2004 c 267 § 132; 2003 c 111 § 243. Prior: 1994 c 57 § 46. Formerly RCW 29.10.210.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.651 Voter registration data base.** (*Effective January 1, 2006.*) (1) The office of the secretary of state shall create and maintain a statewide voter registration data base. This data base must be a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state.

(2) The computerized list must serve as the single system for storing and maintaining the official list of registered voters throughout the state.

(3) The computerized list must contain the name and registration information of every legally registered voter in the state.

(4) Under the computerized list, a unique identifier is assigned to each legally registered voter in the state.

(5) The computerized list must be coordinated with other agency data bases within the state, including but not limited to the department of corrections, the department of licensing, and the department of health.

(6) Any election officer in the state, including any local election officer, may obtain immediate electronic access to the information contained in the computerized list.

(7) All voter registration information obtained by any local election officer in the state must be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local officer.

(8) The chief state election officer shall provide support, as may be required, so that local election officers are able to enter information as described in subsection (3) of this section.

(9) The computerized list serves as the official voter registration list for the conduct of all elections.

(10) The secretary of state has data authority on all voter registration data.

(11) The voter registration data base must be designed to accomplish at a minimum, the following:

(a) Comply with the Help America Vote Act of 2002 (P.L. 107-252);

(b) Identify duplicate voter registrations;

(c) Identify suspected duplicate voters;

(d) Screen against the department of corrections data base to aid in the cancellation of voter registration of felons;

(e) Provide up-to-date signatures of voters for the purposes of initiative signature checking;

(f) Provide for a comparison between the voter registration data base and the department of licensing change of address data base;

(g) Provide online access for county auditors with the goal of real time duplicate checking and update capabilities; and

(h) Provide for the cancellation of voter registration for persons who have moved to other states and surrendered their Washington state drivers' licenses. [2004 c 267 § 101.]

**Effective dates—2004 c 267:** "(1) Sections 103, 104, and 115 through 118 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 31, 2004].

(2) Sections 119, 140, 201 through 203, 321, 401, 501, and 702 of this act take effect July 1, 2004.

(3) Sections 301 through 320 of this act take effect January 1, 2005.

(4) Sections 101, 102, 105 through 114, 120 through 139, 601, 701, and 704 of this act take effect January 1, 2006." [2004 c 267 § 707.]

## PUBLIC ACCESS TO REGISTRATION RECORDS

**29A.08.710 Originals and automated files.** (*Effective until January 1, 2006.*) (1) The county auditor shall have custody of the voter registration records for each county. The original voter registration form must be filed without regard to precinct and is considered confidential and unavailable for public inspection and copying. An automated file of all registered voters must be maintained pursuant to RCW 29A.08.125. An auditor may maintain the automated file in lieu of filing or maintaining the original voter registration forms if the automated file includes all of the information from the original voter registration forms including, but not limited to, a retrievable facsimile of each voter's signature.

(2) The following information contained in voter registration records or files regarding a voter or a group of voters is available for public inspection and copying: The voter's name, gender, voting record, date of registration, and registration number. The address and political jurisdiction of a registered voter are available for public inspection and copying except as provided by chapter 40.24 RCW. No other information from voter registration records or files is available for public inspection or copying. [2003 c 111 § 246; 1994 c 57 § 17; 1991 c 81 § 21; 1971 ex.s. c 202 § 17; 1965 c 9 § 29.07.130. Prior: 1933 c 1 § 13, part; RRS § 5114-13, part. Formerly RCW 29.07.130.]

**Severability—1994 c 57:** See note following RCW 10.64.021.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.08.710 Originals and automated files.** (*Effective January 1, 2006.*) (1) The county auditor shall have custody of the original voter registration records for each county. The original voter registration form must be filed without regard to precinct and is considered confidential and unavailable for public inspection and copying. An automated file of all registered voters must be maintained pursuant to RCW 29A.08.125. An auditor may maintain the automated file in lieu of filing or maintaining the original voter registration forms if the automated file includes all of the information

from the original voter registration forms including, but not limited to, a retrievable facsimile of each voter's signature.

(2) The following information contained in voter registration records or files regarding a voter or a group of voters is available for public inspection and copying: The voter's name, gender, voting record, date of registration, and registration number. The address and political jurisdiction of a registered voter are available for public inspection and copying except as provided by chapter 40.24 RCW. No other information from voter registration records or files is available for public inspection or copying. [2004 c 267 § 133; 2003 c 111 § 246; 1994 c 57 § 17; 1991 c 81 § 21; 1971 ex.s. c 202 § 17; 1965 c 9 § 29.07.130. Prior: 1933 c 1 § 13, part; RRS § 5114-13, part. Formerly RCW 29.07.130.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1994 c 57:** See note following RCW 10.64.021.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.08.720 Registration, voting records—As public records—Information furnished—Restrictions, confidentiality.** (1) In the case of voter registration records received through the department of licensing, the identity of the office at which any particular individual registered to vote is not available for public inspection and shall not be disclosed to the public. In the case of voter registration records received through an agency designated under RCW 29A.08.310, the identity of the agency at which any particular individual registered to vote is not available for public inspection and shall not be disclosed to the public. Any record of a particular individual's choice not to register to vote at an office of the department of licensing or a state agency designated under RCW 29A.08.310 is not available for public inspection and any information regarding such a choice by a particular individual shall not be disclosed to the public.

(2) All poll books or current lists of registered voters, except original voter registration forms or their images, shall be public records and be made available for inspection under such reasonable rules and regulations as the county auditor may prescribe. The county auditor shall promptly furnish current lists or mailing labels of registered voters in his or her possession, at actual reproduction cost, to any person requesting such information. The lists and labels shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. However, the lists and labels may be used for any political purpose. [2004 c 266 § 9; 2003 c 111 § 247; 1994 c 57 § 5; 1975-'76 2nd ex.s. c 46 § 1; 1974 ex.s. c 127 § 2; 1973 1st ex.s. c 111 § 2; 1971 ex.s. c 202 § 3; 1965 ex.s. c 156 § 6. Formerly RCW 29.04.100.]

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Severability—1994 c 57:** See note following RCW 10.64.021.

*Forms, secretary of state to design—Availability to public:* RCW 29A.08.850.

*Signature required to vote—Procedure if voter unable to sign name:* RCW 29A.44.210.

**29A.08.730 Registration, voting—Furnishing data upon request—Cost—Use restricted.** Except original voter

(2004 Ed.)

registration forms or their images, a reproduction of any form of data storage, in the custody of the county auditor, including poll books and precinct lists of registered voters, magnetic tapes or discs, punched cards, and any other form of storage of such books and lists, shall at the written request of any person be furnished to him or her by the county auditor pursuant to such reasonable rules and regulations as the county auditor may prescribe, and at a cost equal to the county's actual cost in reproducing such form of data storage. Any data contained in a form of storage furnished under this section shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product or service or for the purpose of mailing or delivering any solicitation for money, services or anything of value. However, the data may be used for any political purpose. Whenever the county auditor furnishes any form of data storage under this section, he or she shall also furnish the person receiving the same with a copy of RCW 29A.08.740. [2003 c 111 § 248; 1994 c 57 § 6; 1973 1st ex.s. c 111 § 3. Formerly RCW 29.04.110.]

**Severability—1994 c 57:** See note following RCW 10.64.021.

**29A.08.740 Violations of restricted use of registered voter data—Penalties—Liabilities.** (1) Any person who uses registered voter data furnished under RCW 29A.08.720 or 29A.08.730 for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value is guilty of a class C felony punishable by imprisonment in a state correctional facility for a period of not more than five years or a fine of not more than ten thousand dollars or both such fine and imprisonment, and is liable to each person provided such advertisement or solicitation, without the person's consent, for the nuisance value of such person having to dispose of it, which value is herein established at five dollars for each item mailed or delivered to the person's residence. However, a person who mails or delivers any advertisement, offer, or solicitation for a political purpose is not liable under this section unless the person is liable under subsection (2) of this section. For purposes of this subsection, two or more attached papers or sheets or two or more papers that are enclosed in the same envelope or container or are folded together are one item. Merely having a mailbox or other receptacle for mail on or near the person's residence is not an indication that the person consented to receive the advertisement or solicitation. A class action may be brought to recover damages under this section, and the court may award a reasonable attorney's fee to any party recovering damages under this section.

(2) Each person furnished data under RCW 29A.08.720 or 29A.08.730 shall take reasonable precautions designed to assure that the data is not used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. However, the data may be used for any political purpose. Where failure to exercise due care in carrying out this responsibility results in the data being used for such purposes, then such person is jointly and severally liable

for damages under subsection (1) of this section along with any other person liable under subsection (1) of this section for the misuse of such data. [2003 c 111 § 249; 2003 c 53 § 176; 1999 c 298 § 2; 1992 c 7 § 32; 1974 ex.s. c 127 § 3; 1973 1st ex.s. c 111 § 4. Formerly RCW 29.04.120.]

**Reviser's note:** This section was amended by 2003 c 53 § 176 and by 2003 c 111 § 249, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**29A.08.750 Computer file of registered voters—County records to secretary of state—Reimbursement. (Effective until January 1, 2006.)** (1) No later than June 15th or November 15th, any political party organization or any other individual may request in writing from the secretary of state to receive a copy of the subsequent statewide computer file of registered voters compiled under subsection (2) of this section. At the time it makes this request, the political party or individual shall deposit sufficient funds with the secretary of state to pay for the cost of assembling, compiling, and distributing the computer file of registered voters and shall agree to the statutory restrictions regarding the commercial use of this data.

(2) Not earlier than January 1st or July 1st subsequent to the receipt of a request and deposit under subsection (1) of this section, each county auditor shall provide to the secretary of state, or a data processing agency designated by the secretary of state, a duplicate computer tape or data file of the records of the registered voters in that county, containing the information specified in RCW 29A.08.125. The secretary of state shall reimburse each county for the actual cost of reproduction and mailing of the duplicate computer tape or data file. [2003 c 111 § 250. Prior: 1993 c 441 § 1; 1975-'76 2nd ex.s. c 46 § 2. Formerly RCW 29.04.150.]

**Effective date—1993 c 441:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 441 § 3.]

**29A.08.760 Computer file—Duplicate copy—Restrictions and penalties. (Effective until January 1, 2006.)** As soon as any or all of the voter registration data from the counties has been received under RCW 29A.08.750 and processed, the secretary of state shall provide a duplicate copy of this data to the political party organization or other individual making the request, at cost, shall provide a duplicate copy of the master statewide computer tape or data file of registered voters to the statute law committee without cost, and shall provide a duplicate copy of the master statewide computer tape or electronic data file of registered voters to the department of information services for purposes of creating the jury source list without cost. Restrictions as to the commercial use of the information on the statewide computer tape or data file of registered voters, and penalties for its misuse, shall be the same as provided in RCW 29A.08.730 and 29A.08.740. [2003 c 111 § 251; 1995 c 135 § 2. Prior: 1993 c 441 § 2; 1993 c 408 § 10; 1977 ex.s. c 226 § 1; 1975-'76 2nd ex.s. c 46 § 3. Formerly RCW 29.04.160.]

**Intent—1995 c 135:** "The only intent of the legislature in this act is to correct multiple amendments and delete obsolete provisions. It is not the

intent of the legislature to change the substance or effect of any presently effective statute." [1995 c 135 § 1.]

**Effective date—1993 c 441:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 441 § 3.]

**Severability—Effective dates—1993 c 408:** See notes following RCW 2.36.054.

**29A.08.760 Computer file—Duplicate copy—Restrictions and penalties. (Effective January 1, 2006.)**

The secretary of state shall provide a duplicate copy of the master statewide computer file or electronic data file of registered voters to the department of information services for purposes of creating the jury source list without cost. Restrictions as to the commercial use of the information on the statewide computer tape or data file of registered voters, and penalties for its misuse, shall be the same as provided in RCW 29A.08.730 and 29A.08.740. [2004 c 267 § 134; 2003 c 111 § 251; 1995 c 135 § 2. Prior: 1993 c 441 § 2; 1993 c 408 § 10; 1977 ex.s. c 226 § 1; 1975-'76 2nd ex.s. c 46 § 3. Formerly RCW 29.04.160.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Intent—1995 c 135:** "The only intent of the legislature in this act is to correct multiple amendments and delete obsolete provisions. It is not the intent of the legislature to change the substance or effect of any presently effective statute." [1995 c 135 § 1.]

**Effective date—1993 c 441:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 441 § 3.]

**Severability—Effective dates—1993 c 408:** See notes following RCW 2.36.054.

**29A.08.770 Records concerning accuracy and currency of voters lists. (Effective until January 1, 2006.)**

Each county auditor shall maintain for at least two years and shall make available for public inspection and copying all records concerning the implementation of programs and activities conducted for the purpose of insuring the accuracy and currency of official lists of eligible voters. These records must include lists of the names and addresses of all persons to whom notices are sent and information concerning whether or not each person has responded to the notices. These records must contain lists of all persons removed from the list of eligible voters and the reasons why the voters were removed. [2003 c 111 § 252. Prior: 1994 c 57 § 7. Formerly RCW 29.04.240.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.770 Records concerning accuracy and currency of voters lists. (Effective January 1, 2006.)**

The secretary of state and each county auditor shall maintain for at least two years and shall make available for public inspection and copying all records concerning the implementation of programs and activities conducted for the purpose of insuring the accuracy and currency of official lists of eligible voters. These records must include lists of the names and addresses of all persons to whom notices are sent and information concerning whether or not each person has responded to the notices. These records must contain lists of all persons removed from the list of eligible voters and the reasons why

the voters were removed. [2004 c 267 § 135; 2003 c 111 § 252. Prior: 1994 c 57 § 7. Formerly RCW 29.04.240.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.775 Use and maintenance of statewide list.** (*Effective January 1, 2006.*) Only voters who appear on the official statewide voter registration list are eligible to participate in elections. Each county shall maintain a copy of that county's portion of the state list. The county must ensure that data used for the production of poll lists and other lists and mailings done in the administration of each election are drawn from the official statewide voter registration list. [2004 c 267 § 136.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.780 State and county list interchange.** (*Effective January 1, 2006.*) Each county shall ensure complete freedom of electronic access and information transfer between the county's election management and voter registration system and the secretary of state's official statewide voter registration list. [2004 c 267 § 137.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.785 Information services board, consultation.** In developing the technical standards of data formats for transferring voter registration data, the secretary shall consult with the information services board. The board shall review and make recommendations regarding proposed technical standards prior to implementation. [2004 c 267 § 140.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

## CHALLENGES

**29A.08.810 Initiation.** Registration of a person as a voter is presumptive evidence of his or her right to vote at any primary or election, general or special. A person's right to vote may be challenged at the polls only by a precinct judge or inspector. A challenge may be made only upon the belief or knowledge of the challenging officer that the voter is unqualified. The challenge must be supported by evidence or testimony given to the county canvassing board under RCW 29A.08.820 and may not be based on unsupported allegations or allegations by anonymous third parties. The identity of the challenger, and any third person involved in the challenge, shall be public record and shall be announced at the time the challenge is made.

Challenges initiated by a registered voter must be filed not later than the day before any primary or election, general or special, at the office of the appropriate county auditor. A challenged voter may properly transfer or reregister until three days before the primary or election, general or special, by applying personally to the county auditor. Challenges may also be initiated by the office of the county prosecuting attorney and must be filed in the same manner as challenges initiated by a registered voter. [2003 c 111 § 253. Prior: 2001 c 41 § 9; 1987 c 288 § 1; 1983 1st ex.s. c 30 § 2. Formerly RCW 29.10.125.]

*Right to vote*

(2004 Ed.)

*loss of: State Constitution Art. 6 § 3, RCW 11.88.010, 11.88.090.*

*restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.*

**29A.08.820 Voting by person challenged—Burden of proof, procedures.** When the right of a person has been challenged under RCW 29A.08.810 or 29A.08.830(2), the challenged person shall be permitted to vote a ballot which shall be placed in a sealed envelope separate from other voted ballots. In precincts where voting machines are used, any person whose right to vote is challenged under RCW 29A.08.810 or 29A.08.830(2) shall be furnished a paper ballot, which shall be placed in a sealed envelope after being marked. Included with the challenged ballot shall be (1) an affidavit filed under RCW 29A.08.830 challenging the person's right to vote or (2) an affidavit signed by the precinct election officer and any third party involved in the officer's challenge and stating the reasons the voter is being challenged. The sealed ballots of challenged voters shall be transmitted at the close of the election to the canvassing board or other authority charged by law with canvassing the returns of the particular primary or election. The county auditor shall notify the challenger and the challenged voter, by certified mail, of the time and place at which the county canvassing board will meet to rule on challenged ballots. If the challenge is made by a precinct election officer under RCW 29A.08.810, the officer must appear in person before the board unless he or she has received written authorization from the canvassing board to submit an affidavit supporting the challenge. If the challenging officer has based his or her challenge upon evidence provided by a third party, that third party must appear with the challenging officer before the canvassing board, unless he or she has received written authorization from the canvassing board to submit an affidavit supporting the challenge. If the challenge is filed under RCW 29A.08.830, the challenger must either appear in person before the board or submit an affidavit supporting the challenge. The challenging party must prove to the canvassing board by clear and convincing evidence that the challenged voter's registration is improper. If the challenging party fails to meet this burden, the challenged ballot shall be accepted as valid and counted. The canvassing board shall give the challenged voter the opportunity to present testimony, either in person or by affidavit, and evidence to the canvassing board before making their determination. All challenged ballots must be determined no later than the time of canvassing for the particular primary or election. The decision of the canvassing board or other authority charged by law with canvassing the returns shall be final. Challenges of absentee ballots shall be determined according to RCW 29A.40.140. [2003 c 111 § 254; 1987 c 288 § 2; 1983 1st ex.s. c 30 § 3. Formerly RCW 29.10.127.]

*Right to vote*

*loss of: State Constitution Art. 6 § 3, RCW 11.88.010, 11.88.090.*

*restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.*

**29A.08.830 Affidavit—Administration, notice of challenge.** (1) Any registered voter may request that the registration of another voter be canceled if he or she believes that the voter does not meet the requirements of Article VI, section 1 of the state Constitution or that voter no longer main-

tains a legal voting residence at the address shown on his or her registration record. The challenger shall file with the county auditor a signed affidavit subject to the penalties of perjury, to the effect that to his or her personal knowledge and belief another registered voter does not actually reside at the address as given on his or her registration record or is otherwise not a qualified voter and that the voter in question is not protected by the provisions of Article VI, section 4, of the Constitution of the state of Washington. The person filing the challenge must furnish the address at which the challenged voter actually resides.

(2) Any such challenge of a voter's registration and right to vote made less than thirty days before a primary or election, special or general, shall be administered under RCW 29A.08.820. The county auditor shall notify the challenged voter and the precinct election officers in the voter's precinct that a challenge has been filed, provide the name of the challenger, and instruct both the precinct election officers and the voter that, in the event the challenged voter desires to vote at the ensuing primary or election, a challenged ballot will be provided. The voter shall also be informed that the status of his or her registration and the disposition of any challenged ballot will be determined by the county canvassing board in the manner provided by RCW 29A.08.820. If the challenged voter does not vote at the ensuing primary or election, the challenge shall be processed in the same manner as challenges made more than thirty days prior to the primary or election under RCW 29A.08.840. [2003 c 111 § 255. Prior: 1987 c 288 § 3; 1983 1st ex.s. c 30 § 4; 1967 c 225 § 2; 1965 ex.s. c 156 § 2. Formerly RCW 29.10.130.]

**29A.08.840 Procedure before cancellation.** All challenges of voter registration under RCW 29A.08.830 made thirty days or more before a primary or election, general or special, shall be delivered to the appropriate county auditor who shall notify the challenged voter, by certified mail, that his or her voter registration has been challenged.

The notification shall be mailed to the address at which the challenged voter is registered, any address provided by the challenger under RCW 29A.08.830, and to any other address at which the individual whose registration is being challenged is alleged to reside or at which the county auditor would reasonably expect that individual to receive notice of the challenge of his or her voter registration. Included in the notification shall be a request that the challenged voter appear at a hearing to be held within ten days of the mailing of the request, at the place, day, and hour stated, in order to determine the validity of his or her registration. The challenger shall be provided with a copy of this notification and request. If either the challenger or the challenged voter is unable to appear in person, he or she may file a reply by means of an affidavit stating under oath the reasons he or she believes the registration to be invalid or valid.

If both the challenger and the challenged voter file affidavits instead of appearing in person, an evaluation of the affidavits by the county auditor constitutes a hearing for the purposes of this section.

The county auditor shall hold a hearing at which time both parties may present their facts and arguments. After reviewing the facts and arguments, including any evidence submitted by either side, the county auditor shall rule as to the

validity or invalidity of the challenged registration. His or her ruling is final subject only to a petition for judicial review by the superior court under chapter 34.05 RCW. If either party, or both parties, fail to appear at the meeting or fail to file an affidavit, the county auditor shall determine the status of the registration based on his or her evaluation of the available facts. [2003 c 111 § 256. Prior: 1987 c 288 § 4; 1983 1st ex.s. c 30 § 5; 1971 ex.s. c 202 § 34; 1967 c 225 § 3; 1965 ex.s. c 156 § 3. Formerly RCW 29.10.140.]

**29A.08.850 Challenge of registration—Forms, availability.** The secretary of state as chief elections officer shall cause appropriate forms to be designed to carry out the provisions of RCW 29A.08.830 and 29A.08.840. The county auditors and registration assistants shall have such forms available. Further, a reasonable supply of such forms shall be at each polling place on the day of a primary or election, general or special. [2003 c 111 § 257; 1991 c 81 § 27; 1971 ex.s. c 202 § 35; 1965 ex.s. c 156 § 4. Formerly RCW 29.10.150.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

## Chapter 29A.12 RCW VOTING SYSTEMS

### Sections

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**29A.12.005 "Voting system."** (*Effective January 1, 2006.*) As used in this chapter, "voting system" means:

(1) The total combination of mechanical, electromechanical, or electronic equipment including, but not limited to, the software, firmware, and documentation required to program, control, and support the equipment, that is used:

- (a) To define ballots;
- (b) To cast and count votes;
- (c) To report or display election results from the voting system;
- (d) To maintain and produce any audit trail information; and

(2) The practices and associated documentation used:

- (a) To identify system components and versions of such components;

- (b) To test the system during its development and maintenance;

- (c) To maintain records of system errors and defects;
- (d) To determine specific system changes to be made to a system after the initial qualification of the system; and

(e) To make available any materials to the voter such as notices, instructions, forms, or paper ballots. [2004 c 267 § 601.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.12.010 Authority for use.** At any primary or election in any county, votes may be cast, registered, recorded, or counted by means of voting systems that have been approved under RCW 29A.12.020. [2003 c 111 § 301. Prior: 1990 c 59 § 17; 1967 ex.s. c 109 § 12; 1965 c 9 § 29.33.020; prior: (i) 1913 c 58 § 1, part; RRS § 5300, part. (ii) 1913 c 58 § 18; RRS § 5318. Formerly RCW 29.33.020.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.12.020 Inspection and test by secretary of state—Report.** The secretary of state shall inspect, evaluate, and publicly test all voting systems or components of voting systems that are submitted for review under RCW 29A.12.030. The secretary of state shall determine whether the voting systems conform with all of the requirements of this title, the applicable rules adopted in accordance with this title, and with generally accepted safety requirements. The secretary of state shall transmit a copy of the report of any examination under this section, within thirty days after completing the examination, to the county auditor of each county. [2003 c 111 § 302. Prior: 1990 c 59 § 18; 1982 c 40 § 1. Formerly RCW 29.33.041.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Severability—1982 c 40:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 40 § 11.]

**29A.12.030 Submitting system or component for examination.** The manufacturer or distributor of a voting system or component of a voting system may submit that system or component to the secretary of state for examination under RCW 29A.12.020. [2003 c 111 § 303. Prior: 1990 c 59 § 19; 1982 c 40 § 2. Formerly RCW 29.33.051.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Severability—1982 c 40:** See note following RCW 29A.12.020.

**29A.12.040 Independent evaluation.** (1) The secretary of state may rely on the results of independent design, engineering, and performance evaluations in the examination under RCW 29A.12.020 if the source and scope of these independent evaluations are specified by rule.

(2) The secretary of state may contract with experts in mechanical or electrical engineering or data processing to assist in examining a voting system or component. The manufacturer or distributor who has submitted a voting system for testing under RCW 29A.12.030 shall pay the secretary of state a deposit to reimburse the cost of any contract for consultation under this section and for any other unrecoverable costs associated with the examination of a voting system or component by the manufacturer or distributor who submitted the voting system or component for examination. [2003 c

(2004 Ed.)

111 § 304. Prior: 1990 c 59 § 20; 1982 c 40 § 3. Formerly RCW 29.33.061.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Severability—1982 c 40:** See note following RCW 29A.12.020.

**29A.12.050 Approval required—Modification.** If voting systems or devices or vote tallying systems are to be used for conducting a primary or election, only those that have the approval of the secretary of state or had been approved under this chapter or the former chapter 29.34 RCW before March 22, 1982, may be used. Any modification, change, or improvement to any voting system or component of a system that does not impair its accuracy, efficiency, or capacity or extend its function, may be made without reexamination or reapproval by the secretary of state under RCW 29A.12.020. [2003 c 111 § 305; 1990 c 59 § 21; 1982 c 40 § 4. Formerly RCW 29.33.081.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Severability—1982 c 40:** See note following RCW 29A.12.020.

**29A.12.060 Maintenance and operation.** The county auditor of a county in which voting systems are used is responsible for the preparation, maintenance, and operation of those systems and may employ and direct persons to perform some or all of these functions. [2003 c 111 § 306. Prior: 1990 c 59 s 22; 1965 c 9 § 29.33.130; prior: 1955 c 323 § 2; prior: 1935 c 85 § 1, part; 1919 c 163 § 23, part; 1915 c 114 § 5, part; 1913 c 58 § 10, part; RRS § 5309, part. Formerly RCW 29.33.130.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.12.070 Acceptance test.** An agreement to purchase or lease a voting system or a component of a voting system is subject to that system or component passing an acceptance test sufficient to demonstrate that the equipment is the same as that certified by the secretary of state and that the equipment is operating correctly as delivered to the county. [2003 c 111 § 307. Prior: 1998 c 58 § 1; 1990 c 59 § 23. Formerly RCW 29.33.145.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.12.080 Requirements for approval.** No voting device shall be approved by the secretary of state unless it:

- (1) Secures to the voter secrecy in the act of voting;
- (2) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;
- (3) Permits the voter to vote for all the candidates of one party or in part for the candidates of one or more other parties;
- (4) Correctly registers all votes cast for any and all persons and for or against any and all measures;
- (5) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for president and vice president of the United States; and
- (6) Except for functions or capabilities unique to this state, has been tested, certified, and used in at least one other

state or election jurisdiction. [2003 c 111 § 308. Prior: 1990 c 59 § 26; 1982 c 40 § 6; 1977 ex.s. c 361 § 66; 1971 ex.s. c 6 § 1; 1967 ex.s. c 109 § 18. Formerly RCW 29.33.300, 29.34.080.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Severability—1982 c 40:** See note following RCW 29A.12.020.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**Severability—1971 ex.s. c 6:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 6 § 3.]

*Voting devices, machines—Recording requirements: RCW 29A.12.150.*

**29A.12.090 Single district and precinct.** The ballot on a single voting device shall not contain the names of candidates for the offices of United States representative, state senator, state representative, county council, or county commissioner in more than one district. In all general elections, primaries, and special elections, in each polling place the voting devices containing ballots for candidates from each congressional, legislative, or county council or commissioner district shall be grouped together and physically separated from those devices containing ballots for other districts. Each voter shall be directed by the precinct election officers to the correct group of voting devices. [2003 c 111 § 309. Prior: 1990 c 59 § 27; 1989 c 155 § 1; 1987 c 295 § 8; 1983 c 143 § 1. Formerly RCW 29.33.310, 29.34.085.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.12.101 Requirements of tallying systems for approval.** The secretary of state shall not approve a vote tallying system unless it:

(1) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(2) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(3) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each issue of the ballot in that precinct;

(4) Produces precinct and cumulative totals in printed form; and

(5) Except for functions or capabilities unique to this state, has been tested, certified, and used in at least one other state or election jurisdiction. [2004 c 271 § 109.]

**29A.12.110 Record of ballot format—Devices sealed.** In preparing a voting device for a primary or election, a record shall be made of the ballot format installed in each device and the precinct or portion of a precinct for which that device has been prepared. Except where provided by a rule adopted under \*RCW 29A.04.610, after being prepared for a primary or election, each device shall be sealed with a uniquely numbered seal and provided to the inspector of the appropriate polling place. [2003 c 111 § 311; 1990 c 59 § 25. Formerly RCW 29.33.330.]

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**\*Reviser's note:** RCW 29A.04.610 was amended by 2004 c 267 § 702 and repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.04.611.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.12.120 Election officials—Instruction, compensation, requirements.** (1) Before each state primary or general election at which voting systems are to be used, the county auditor shall instruct all precinct election officers appointed under RCW 29A.44.410, counting center personnel, and political party observers designated under RCW 29A.60.170 in the proper conduct of their duties.

(2) The county auditor may waive instructional requirements for precinct election officers, counting center personnel, and political party observers who have previously received instruction and who have served for a sufficient length of time to be fully qualified to perform their duties. The county auditor shall keep a record of each person who has received instruction and is qualified to serve at the subsequent primary or election.

(3) As compensation for the time spent in receiving instruction, each precinct election officer who qualifies and serves at the subsequent primary or election shall receive an additional two hours compensation, to be paid at the same time and in the same manner as compensation is paid for services on the day of the primary or election.

(4) Except for the appointment of a precinct election officer to fill a vacancy under RCW 29A.44.440, no inspector or judge may serve at any primary or election at which voting systems are used unless he or she has received the required instruction and is qualified to perform his or her duties in connection with the voting devices. No person may work in a counting center at a primary or election at which a vote tallying system is used unless that person has received the required instruction and is qualified to perform his or her duties in connection with the handling and tallying of ballots for that primary or election. No person may serve as a political party observer unless that person has received the required instruction and is familiar with the operation of the counting center and the vote tallying system and the procedures to be employed to verify the accuracy of the programming for that vote tallying system. [2003 c 111 § 312. Prior: 1990 c 59 § 29; 1977 ex.s. c 361 § 69. Formerly RCW 29.33.340, 29.34.143.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.12.130 Tallying systems—Programming tests.** At least three days before each state primary or general election, the office of the secretary of state shall provide for the conduct of tests of the programming for each vote tallying system to be used at that primary or general election. The test must verify that the system will correctly count the vote cast for all candidates and on all measures appearing on the ballot at that primary or general election. The test shall verify the capability of the vote tallying system to perform all of the functions that can reasonably be expected to occur during conduct of that particular primary or election. If any error is detected, the cause shall be determined and corrected, and an

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errorless total shall be produced before the primary or election.

Such tests shall be observed by at least one representative from each major political party, if representatives have been appointed by the respective major political parties and are present at the test, and shall be open to candidates, the press, and the public. The county auditor and any political party observers shall certify that the test has been conducted in accordance with this section. Copies of this certification shall be retained by the secretary of state and the county auditor. All programming materials, test results, and test ballots shall be securely sealed until the day of the primary or general election. [2003 c 111 § 313; 1998 c 58 § 2; 1990 c 59 § 32; 1977 ex.s. c 361 § 73. Formerly RCW 29.33.350, 29.34.163.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.12.140 Operating procedures.** The secretary of state may publish recommended procedures for the operation of the various vote tallying systems that have been approved. These procedures allow the office of the secretary of state to restrict or define the use of approved systems in elections. [2003 c 111 § 314. Prior: 1998 c 58 § 3; 1990 c 59 § 34; 1977 ex.s. c 361 § 75; 1967 ex.s. c 109 § 32. Formerly RCW 29.33.360, 29.34.170.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.12.150 Recording requirements.** (1) No voting device or machine may be used in a county with a population of seventy thousand or more to conduct a primary or general or special election in this state unless it correctly records on a separate ballot the votes cast by each elector for any person and for or against any measure and such separate ballots are available for audit purposes after such a primary or election.

(2) The secretary of state shall not certify under this title any voting device or machine for use in conducting a primary or general or special election in this state unless the device or machine correctly records on a separate ballot the votes cast by each elector for any person and for or against any measure and such separate ballots are available for audit purposes after such a primary or election. [2003 c 111 § 315; 1998 c 245 § 26; 1991 c 363 § 30; 1990 c 184 § 1. Formerly RCW 29.04.200.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**29A.12.160 Disabled voter accessibility.** (*Effective until January 1, 2006.*) (1) The secretary of state shall adopt rules and establish standards for voting technology and systems used by the state or any political subdivision to be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as other voters.

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(2) At each polling location, at least one voting unit certified by the secretary of state shall provide access to individuals who are blind or visually impaired.

(3) Compliance with this provision in regard to voting technology and systems purchased prior to July 27, 2003, shall be achieved at the time of procurement of an upgrade of technology compatible with nonvisual voting methods or replacement of existing voting equipment or systems.

(4) Compliance with subsections (2) and (3) of this section is contingent on available funds to implement this provision.

(5) For purposes of this section, the following definitions apply:

(a) "Accessible" includes receiving, using, selecting, and manipulating voter data and controls.

(b) "Nonvisual" includes synthesized speech, Braille, and other output methods.

(c) "Blind and visually impaired" excludes persons who are both deaf and blind.

(6) This section does not apply to voting by absentee ballot. [2004 c 266 § 3. Prior: 2003 c 110 § 1. Formerly RCW 29.33.305.]

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**29A.12.160 Blind or visually impaired voter accessibility.** (*Effective January 1, 2006.*) (1) At each polling location, at least one voting unit certified by the secretary of state shall provide access to individuals who are blind or visually impaired.

(2) Compliance with this provision in regard to voting technology and systems purchased prior to July 27, 2003, shall be achieved at the time of procurement of an upgrade of technology compatible with nonvisual voting methods or replacement of existing voting equipment or systems.

(3) Compliance with subsection (2) of this section is contingent on available funds to implement this provision.

(4) For purposes of this section, the following definitions apply:

(a) "Accessible" includes receiving, using, selecting, and manipulating voter data and controls.

(b) "Nonvisual" includes synthesized speech, Braille, and other output methods.

(c) "Blind and visually impaired" excludes persons who are both deaf and blind.

(5) This section does not apply to voting by absentee ballot. [2004 c 267 § 701; 2004 c 266 § 3. Prior: 2003 c 110 § 1. Formerly RCW 29.33.305.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**29A.12.170 Consultation with information services board.** In developing technical standards for voting technology and systems to be accessible for individuals with disabilities, the secretary shall consult with the information services board. The board shall review and make recommendations regarding proposed technical standards prior to implementation. [2004 c 267 § 321.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

## Chapter 29A.16 RCW

PRECINCT AND POLLING PLACE  
DETERMINATION AND ACCESSIBILITY

## Sections

29A.16.010	Intent—Duties of county auditors.
29A.16.020	Alternative polling places or procedures.
29A.16.030	Costs for modifications—Alternatives—Election costs.
29A.16.040	Precincts—Number of voters—Dividing, altering, or combining—Creating new precincts.
29A.16.050	Precincts—Restrictions on precinct boundaries—Designated by number.
29A.16.060	Combining or dividing precincts, election boards.
29A.16.110	Polling place—May be located outside precinct.
29A.16.120	Polling place—Use of county, municipality, or special district facilities.
29A.16.130	Public buildings as polling places.
29A.16.140	Inaccessible polling places—Auditors' list.
29A.16.150	Polling places—Accessibility required, exceptions.
29A.16.160	Review by and recommendations of disabled voters.
29A.16.170	County auditors—Notice of accessibility.

**29A.16.010 Intent—Duties of county auditors.** (*Effective until January 1, 2005.*) The intent of this chapter is to require state and local election officials to designate and use polling places in all elections and permanent registration locations which are accessible to elderly and disabled persons. County auditors shall:

(1) Make modifications such as installation of temporary ramps or relocation of polling places within buildings, where appropriate;

(2) Designate new, accessible polling places to replace those that are inaccessible; and

(3) Continue to use polling places and voter registration locations which are accessible to elderly and disabled persons. [2003 c 111 § 401; 1999 c 298 § 13; 1985 c 205 § 1; 1979 ex.s. c 64 § 1. Formerly RCW 29.57.010.]

**29A.16.010 Intent—Duties of county auditors.** (*Effective January 1, 2005.*) The intent of this chapter is to require state and local election officials to designate and use polling places and disability access voting locations in all elections and permanent registration locations which are accessible to elderly and disabled persons. County auditors shall:

(1) Make modifications such as installation of temporary ramps or relocation of polling places within buildings, where appropriate;

(2) Designate new, accessible polling places to replace those that are inaccessible; and

(3) Continue to use polling places and voter registration locations which are accessible to elderly and disabled persons. [2004 c 267 § 315; 2003 c 111 § 401; 1999 c 298 § 13; 1985 c 205 § 1; 1979 ex.s. c 64 § 1. Formerly RCW 29.57.010.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.16.020 Alternative polling places or procedures.** The secretary of state shall establish procedures to assure that, in any primary or election, any disabled or elderly voter assigned to an inaccessible polling place will, upon advance request of that voter, either be permitted to vote at an alternative accessible polling place not overly inconvenient to that voter or be provided with an alternative means of casting a ballot on the day of the primary or election. The county audi-

tor shall make any accommodations in voting procedures necessary to allow the use of alternative polling places by elderly or disabled voters under this section. [2003 c 111 § 402; 1999 c 298 § 15; 1985 c 205 § 5. Formerly RCW 29.57.090.]

**Effective dates—1985 c 205:** See note following RCW 29A.16.140.

**29A.16.030 Costs for modifications—Alternatives—Election costs.** (1) County auditors shall seek alternative polling places or other low-cost alternatives including, but not limited to, procedural changes and assistance from local disabled groups, service organizations, and other private sources before incurring costs for modifications under this chapter.

(2) The cost of those modifications to buildings or other facilities, including signs designating disabled accessible parking and entrances, that are necessary to permit the use of those facilities for polling places under this chapter or any procedures established under RCW 29A.16.020 shall be treated as election costs and prorated under RCW 29A.04.410. [2003 c 111 § 403; 1999 c 298 § 20; 1985 c 205 § 12. Formerly RCW 29.57.160.]

**Effective dates—1985 c 205:** See note following RCW 29A.16.140.

**29A.16.040 Precincts—Number of voters—Dividing, altering, or combining—Creating new precincts.** The county legislative authority of each county in the state hereafter formed shall, at their first session, divide their respective counties into election precincts and establish the boundaries of the precincts. The county auditor shall thereupon designate the voting place for each such precinct or whether the precinct is a vote by mail precinct.

(1) Precinct boundaries may be altered at any time as long as sufficient time exists prior to a given election for the necessary procedural steps to be honored. Except as permitted under subsection (5) of this section, no precinct boundaries may be changed during the period starting on the thirtieth day prior to the first day for candidates to file for the primary election and ending with the day of the general election.

(2) The county legislative authority may establish by ordinance a limitation on the maximum number of active registered voters in each precinct within its jurisdiction. The limitation may be different for precincts based upon the method of voting used for such precincts and the number may be less than the number established by law, but in no case may the number exceed that authorized by law.

(3) Precincts in which voting machines or electronic voting devices are used may contain as many as nine hundred active registered voters. The number of poll-site ballot counting devices at each polling place is at the discretion of the auditor. The number of devices must be adequate to meet the expected voter turnout.

(4) On petition of twenty-five or more voters resident more than ten miles from any polling site, the county legislative authority shall establish a separate voting precinct therefor.

(5) The county auditor shall temporarily adjust precinct boundaries when a city or town annexes unincorporated territory to the city or town, or whenever unincorporated territory is incorporated as a city or town. The adjustment must be

made as soon as possible after the approval of the annexation or incorporation. The temporary adjustment must be limited to the minimum changes necessary to accommodate the addition of the territory to the city or town, or to establish the eligible voters within the boundaries of the new city or town, and remains in effect only until precinct boundary modifications reflecting the annexation or incorporation are adopted by the county legislative authority.

(6) In determining the number of active registered voters for the purposes of this section, persons who are ongoing absentee voters under RCW 29A.40.040 shall not be counted. Nothing in this subsection may be construed as altering the vote tallying requirements of RCW 29A.60.230. [2004 c 266 § 10; 2003 c 111 § 404; 1999 c 158 § 3; 1994 c 57 § 3; 1986 c 167 § 2; 1980 c 107 § 3. Prior: 1977 ex.s. c 361 § 4; 1977 ex.s. c 128 § 1; 1975-'76 2nd ex.s. c 129 § 3; 1967 ex.s. c 109 § 1; 1965 c 9 § 29.04.040; prior: (i) 1921 c 178 § 1, part; 1915 c 11 § 1, part; 1907 c 130 § 1, part; 1889 p 402 § 7, part; Code 1881 § 3067, part; 1865 p 30 § 1, part; RRS § 5171, part. (ii) 1907 c 130 § 2, part; 1889 p 408 § 21, part; RRS § 5278, part. (iii) Code 1881 § 2679; 1854 p 65 § 4, part; No RRS. Formerly RCW 29.04.040.]

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Severability—1986 c 167:** See note following RCW 29A.04.049.

**Effective date—1977 ex.s. c 361:** "This 1977 amendatory act shall take effect January 1, 1978." [1977 ex.s. c 361 § 113.]

**Severability—1977 ex.s. c 361:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 361 § 112.]

**Severability—1977 ex.s. c 128:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 128 § 6.]

**Effective date—Severability—1975-'76 2nd ex.s. c 129:** See notes following RCW 29A.76.040.

*"Precinct" defined:* RCW 29A.04.121.

**29A.16.050 Precincts—Restrictions on precinct boundaries—Designated by number.** (1) Every voting precinct must be wholly within a single congressional district, a single legislative district, a single district of a county legislative authority, and, if applicable, a single city.

(2) Every voting precinct shall be composed, as nearly as practicable, of contiguous and compact areas.

(3) Except as provided in this subsection, changes to the boundaries of any precinct shall follow visible, physical features delineated on the most current maps provided by the United States census bureau. A change need not follow such visible, physical features if (a) it is necessitated by an annexation or incorporation and the proposed precinct boundary is identical to an exterior boundary of the annexed or incorporated area which does not follow a visible, physical feature; or (b) doing so would substantially impair election administration in the involved area.

(4) After a change to precinct boundaries is adopted by the county legislative authority, if the change does not follow visible physical features, the county auditor shall send to the secretary of state an electronic or paper copy of the description, a map or maps of the changes, and a statement of the

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applicable exception under subsection (3) of this section. For boundary changes made pursuant to subsection (3)(b) of this section, the auditor shall include a statement of the reasons why following visible, physical features would have substantially impaired election administration.

(5) Every voting precinct within each county shall be designated by number for the purpose of preparation of maps and the tabulation of population for apportionment purposes. These precincts may be identified with names or other numbers for other election purposes.

(6) After a change to precinct boundaries in a city or town, the county auditor shall send one copy of the map or maps delineating the new precinct boundaries within that city or town to the city or town clerk.

(7) Precinct maps are public records and shall be available for inspection by the public during normal office hours in the offices where they are kept. Copies shall be made available to the public for a fee necessary to cover the cost of reproduction. [2003 c 111 § 405; 1999 c 298 § 1; 1989 c 278 § 1; 1977 ex.s. c 128 § 2; 1965 c 9 § 29.04.050. Prior: 1921 c 178 § 1, part; 1915 c 11 § 1, part; 1907 c 130 § 1, part; 1889 p 402 § 7, part; Code 1881 § 3067, part; 1865 p 30 § 1, part; RRS § 5171, part. Formerly RCW 29.04.050.]

**Severability—1977 ex.s. c 128:** See note following RCW 29A.16.040.

**29A.16.060 Combining or dividing precincts, election boards.** At any special election or primary, the county auditor may combine, unite, or divide precincts and may combine or unite election boards for the purpose of holding such election. At any general election, the county auditor may combine or unite election boards for the purpose of holding such election, but shall report all election returns by individual precinct. [2003 c 111 § 406. Prior: 2001 c 241 § 22; 1986 c 167 § 3; 1977 ex.s. c 361 § 5; 1974 ex.s. c 127 § 1; 1965 c 9 § 29.04.055; prior: 1963 c 200 § 22; 1951 c 70 § 1. Formerly RCW 29.04.055.]

**Severability—1986 c 167:** See note following RCW 29A.04.049.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.16.110 Polling place—May be located outside precinct.** Polling places for the various voting precincts may be located outside the boundaries of the respective precincts, when the officers conducting the primary or election shall deem it feasible. However, such polling places must be located within a reasonable distance of their respective precincts. The purpose of this section is to furnish adequate voting facilities at readily accessible and identifiable locations, and nothing in this section affects the number, method of selection, or duties of precinct election officers. [2003 c 111 § 407; 1965 c 9 § 29.48.005. Prior: 1951 c 123 § 1. Formerly RCW 29.48.005.]

**29A.16.120 Polling place—Use of county, municipality, or special district facilities.** The legislative authority of each county, municipality, and special district shall, at the request of the county auditor, make their facilities available for use as polling places for primaries, special elections, and state general elections held within that county. When, in the judgment of the county auditor, a facility of a county, munic-

ipality, or special district would provide a location for a polling place that would best satisfy the requirements of this chapter, he or she shall notify the legislative authority of that county, municipality, or district of the number of facilities needed for use as polling places. Payment for polling places and any other conditions or obligations regarding these polling places shall be provided for by contract between the county auditor and the county, municipality, or district. [2003 c 111 § 408. Prior: 1985 c 205 § 14; 1965 c 9 § 29.48.007; prior: 1955 c 201 § 1. Formerly RCW 29.48.007.]

**Effective dates—1985 c 205:** See note following RCW 29A.16.140.

**29A.16.130 Public buildings as polling places.** (*Effective until January 1, 2005.*) Each state agency and entity of local government shall permit the use of any of its buildings and the most suitable locations therein as polling places when required by a county auditor to provide accessible places in each precinct. [2003 c 111 § 409. Prior: 1979 ex.s. c 64 § 4. Formerly RCW 29.57.040.]

**29A.16.130 Public buildings as polling places.** (*Effective January 1, 2005.*) Each state agency and entity of local government shall permit the use of any of its buildings and the most suitable locations therein as polling places or disability access voting locations when required by a county auditor to provide accessible places in each precinct. [2004 c 267 § 316; 2003 c 111 § 409. Prior: 1979 ex.s. c 64 § 4. Formerly RCW 29.57.040.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.16.140 Inaccessible polling places—Auditors' list.** No later than April 1st of each even-numbered year, each county auditor shall submit to the secretary of state a list showing the number of polling places in the county and specifying any that have been found inaccessible. The auditor shall indicate the reasons for inaccessibility, and what efforts have been made pursuant to this chapter to locate alternative polling places or to make the existing facilities temporarily accessible.

If a county auditor's list shows, for two consecutive reporting periods, that no polling places have been found inaccessible, the auditor need not submit further reports unless the secretary of state specifically reinstates the requirement for that county. Notice of reinstatement must be in writing and delivered at least sixty days before the reporting date. [2003 c 111 § 410. Prior: 1999 c 298 § 14; 1985 c 205 § 3. Formerly RCW 29.57.070.]

**Effective dates—1985 c 205:** "(1) Sections 1, 2, and 13 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

(2) Sections 15 and 16 of this act shall take effect as provided by Article II, section 1(c) of the state Constitution.

(3) Sections 3 through 12 and 14 of this act shall take effect on January 1, 1986." [1985 c 205 § 18.]

**29A.16.150 Polling places—Accessibility required, exceptions.** Each polling place must be accessible unless:

(1) The county auditor has determined that it is inaccessible, that no alternative accessible polling place is available,

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that no temporary modification of that polling place or any alternative polling place is possible, and that the county auditor has complied with the procedures established under RCW 29A.16.020; or

(2) The secretary of state determines that a state of emergency exists that would otherwise interfere with the efficient administration of the primary or election. [2003 c 111 § 411. Prior: 1999 c 298 § 16; 1985 c 205 § 6. Formerly RCW 29.57.100.]

**Effective dates—1985 c 205:** See note following RCW 29A.16.140.

**29A.16.160 Review by and recommendations of disabled voters.** County auditors shall, as feasible, solicit and use the assistance of disabled voters in reviewing sites and recommending inexpensive remedies to improve accessibility. [2003 c 111 § 412. Prior: 1979 ex.s. c 64 § 5. Formerly RCW 29.57.050.]

**29A.16.170 County auditors—Notice of accessibility.** Each county auditor shall include a notice of the accessibility of polling places in the notice of election published under \*RCW 29A.52.310 and 29A.52.350. [2003 c 111 § 413. Prior: 1999 c 298 § 19; 1985 c 205 § 11. Formerly RCW 29.57.150.]

\***Reviser's note:** RCW 29A.52.310 and 29A.52.350 were repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.52.311 and 29A.52.351.

**Effective dates—1985 c 205:** See note following RCW 29A.16.140.

## Chapter 29A.20 RCW

### QUALIFICATIONS, TERMS, AND REQUIREMENTS FOR ELECTIVE OFFICES

#### Sections

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29A.20.111	Definitions—"Convention" and "election jurisdiction."
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29A.20.201	Declarations of candidacy required, exceptions—Payment of fees.

#### GENERAL

**29A.20.010 Preservation of declarations of candidacy.** The secretary of state and each county auditor shall preserve all declarations of candidacy filed in their respective offices for six months. All declarations of candidacy must be

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open to public inspection. [2003 c 111 § 501; 1965 c 9 § 29.27.090. Prior: 1921 c 178 § 1, part; 1915 c 11 § 1, part; 1907 c 130 § 1, part; 1889 p 402 § 7, part; Code 1881 § 3067, part; 1865 p 30 § 1, part; RRS § 5171, part. Formerly RCW 29.27.090.]

**29A.20.021 Qualifications for filing, appearance on ballot.** (1) A person filing a declaration of candidacy for an office shall, at the time of filing, be a registered voter and possess the qualifications specified by law for persons who may be elected to the office.

(2) Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, no person may file for more than one office.

(3) The name of a candidate for an office shall not appear on a ballot for that office unless, except as provided in RCW 3.46.067 and 3.50.057, the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in the geographic area represented by the office. For the purposes of this section, each geographic area in which registered voters may cast ballots for an office is represented by that office. If a person elected to an office must be nominated from a district or similar division of the geographic area represented by the office, the name of a candidate for the office shall not appear on a primary ballot for that office unless the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in that district or division. The officer with whom declarations of candidacy must be filed under this title shall review each such declaration filed regarding compliance with this subsection.

(4) The requirements of voter registration and residence within the geographic area of a district do not apply to candidates for congressional office. Qualifications for the United States congress are specified in the United States Constitution. [2004 c 271 § 153.]

**29A.20.030 Local officers, beginning of terms—Organization of district boards of directors.** The term of every city, town, and district officer elected to office on the first Tuesday following the first Monday in November of the odd-numbered years begins in accordance with RCW 29A.20.040. However, a person elected to less than a full term shall assume office as soon as the election returns have been certified and he or she is qualified in accordance with RCW 29A.04.133.

Each board of directors of every district shall be organized at the first meeting held after one or more newly elected directors take office. [2003 c 111 § 503; 1979 ex.s. c 126 § 14; 1965 c 123 § 6; 1965 c 9 § 29.13.050. Prior: 1963 c 200 § 8; 1959 c 86 § 1; prior: 1951 c 257 § 6. (i) 1949 c 161 § 9; Rem. Supp. 1949 § 5146-1. (ii) 1949 c 163 § 1; 1921 c 61 § 4; Rem. Supp. 1949 § 5146. Formerly RCW 29.13.050.]

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**29A.20.040 Local elected officials, commencement of term of office—Purpose.** (1) The legislature finds that certain laws are in conflict governing the assumption of office of various local officials. The purpose of this section is to provide a common date for the assumption of office for all the

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elected officials of counties, cities, towns, and special purpose districts other than school districts where the ownership of property is not a prerequisite of voting. A person elected to the office of school director begins his or her term of office at the first official meeting of the board of directors after certification of the election results. It is also the purpose of this section to remove these conflicts and delete old statutory language concerning such elections which is no longer necessary.

(2) For elective offices of counties, cities, towns, and special purpose districts other than school districts where the ownership of property is not a prerequisite of voting, the term of incumbents ends and the term of successors begins after the successor is elected and qualified, and the term commences immediately after December 31st following the election, except as follows:

(a) Where the term of office varies from this standard according to statute; and

(b) If the election results have not been certified prior to January 1st after the election, in which event the time of commencement for the new term occurs when the successor becomes qualified in accordance with RCW 29A.04.133.

(3) For elective offices governed by this section, the oath of office must be taken as the last step of qualification as defined in RCW 29A.04.133 but may be taken either:

(a) Up to ten days prior to the scheduled date of assuming office; or

(b) At the last regular meeting of the governing body of the applicable county, city, town, or special district held before the winner is to assume office. [2003 c 111 § 504; 1999 c 298 § 3; 1980 c 35 § 7; 1979 ex.s. c 126 § 1. Formerly RCW 29.04.170.]

**Severability—1980 c 35:** See note following RCW 28A.343.300.

#### MINOR PARTY AND INDEPENDENT CANDIDATE NOMINATIONS

**29A.20.110 Definitions—"Convention" and "election jurisdiction."** A "convention" for the purposes of this chapter, is an organized assemblage of registered voters representing an independent candidate or candidates or a new or minor political party, organization, or principle. As used in this chapter, the term "election jurisdiction" shall mean the state or any political subdivision or jurisdiction of the state from which partisan officials are elected. This term shall include county commissioner districts or council districts for members of a county legislative authority, counties for county officials who are nominated and elected on a county-wide basis, legislative districts for members of the legislature, congressional districts for members of Congress, and the state for president and vice president, members of the United States senate, and state officials who are elected on a statewide basis. [2003 c 111 § 505; 1977 ex.s. c 329 § 1; 1965 c 9 § 29.24.010. Prior: 1955 c 102 § 2; prior: 1937 c 94 § 2, part; RRS § 5168, part. Formerly RCW 29.24.010.]

*Minor political party defined:* RCW 29A.04.097.

*Voter registration:* Chapter 29A.08 RCW.

**29A.20.111 Definitions—"Convention" and "election jurisdiction."** A "convention" for the purposes of this

chapter, is an organized assemblage of registered voters representing an independent candidate or candidates or a new or minor political party, organization, or principle. As used in this chapter, the term "election jurisdiction" shall mean the state or any political subdivision or jurisdiction of the state from which partisan officials are elected. This term shall include county commissioner districts or council districts for members of a county legislative authority, counties for county officials who are nominated and elected on a county-wide basis, legislative districts for members of the legislature, congressional districts for members of Congress, and the state for president and vice president, members of the United States senate, and state officials who are elected on a statewide basis. [2004 c 271 § 188.]

**29A.20.121 Nomination by convention or write-in—Dates—Special filing period.** (1) Any nomination of a candidate for partisan public office by other than a major political party may be made only: (a) In a convention held not earlier than the last Saturday in June and not later than the first Saturday in July or during any of the seven days immediately preceding the first day for filing declarations of candidacy as fixed in accordance with RCW 29A.28.041; (b) as provided by RCW 29A.60.021; or (c) as otherwise provided in this section. Minor political party and independent candidates may appear only on the general election ballot.

(2) Nominations of candidates for president and vice president of the United States other than by a major political party may be made either at a convention conducted under subsection (1) of this section, or at a similar convention taking place not earlier than the first Sunday in July and not later than seventy days before the general election. Conventions held during this time period may not nominate candidates for any public office other than president and vice president of the United States, except as provided in subsection (3) of this section.

(3) If a special filing period for a partisan office is opened under RCW 29A.24.211, candidates of minor political parties and independent candidates may file for office during that special filing period. The names of those candidates may not appear on the general election ballot unless they are nominated by convention held no later than five days after the close of the special filing period and a certificate of nomination is filed with the filing officer no later than three days after the convention. The requirements of RCW 29A.20.131 do not apply to such a convention.

(4) A minor political party may hold more than one convention but in no case shall any such party nominate more than one candidate for any one partisan public office or position. For the purpose of nominating candidates for the offices of president and vice president, United States senator, United States representative, or a statewide office, a minor party or independent candidate holding multiple conventions may add together the number of signatures of different individuals from each convention obtained in support of the candidate or candidates in order to obtain the number required by RCW 29A.20.141. For all other offices for which nominations are made, signatures of the requisite number of registered voters must be obtained at a single convention. [2004 c 271 § 110.]

**29A.20.130 Convention—Notice.** Each minor party or independent candidate must publish a notice in a newspaper of general circulation within the county in which the party or the candidate intends to hold a convention. The notice must appear at least ten days before the convention is to be held, and shall state the date, time, and place of the convention. Additionally, it shall include the mailing address of the person or organization sponsoring the convention. [2003 c 111 § 507. Prior: 1989 c 215 § 1. Formerly RCW 29.24.025.]

**29A.20.131 Convention—Notice.** Each minor party or independent candidate must publish a notice in a newspaper of general circulation within the county in which the party or the candidate intends to hold a convention. The notice must appear at least ten days before the convention is to be held, and shall state the date, time, and place of the convention. Additionally, it shall include the mailing address of the person or organization sponsoring the convention. [2004 c 271 § 189.]

**29A.20.141 Convention—Requirements for validity.** (1) To be valid, a convention must be attended by at least one hundred registered voters.

(2) In order to nominate candidates for the offices of president and vice president of the United States, United States senator, United States representative, or any statewide office, a nominating convention shall obtain and submit to the filing officer the signatures of at least one thousand registered voters of the state of Washington. In order to nominate candidates for any other office, a nominating convention shall obtain and submit to the filing officer the signatures of one hundred persons who are registered to vote in the jurisdiction of the office for which the nominations are made. [2004 c 271 § 111.]

**29A.20.151 Nominating petition—Requirements.** A nominating petition submitted under this chapter shall clearly identify the name of the minor party or independent candidate convention as it appears on the certificate of nomination as required by RCW 29A.20.161(3). The petition shall also contain a statement that the person signing the petition is a registered voter of the state of Washington and shall have a space for the voter to sign his or her name and to print his or her name and address. No person may sign more than one nominating petition under this chapter for an office for an election. [2004 c 271 § 112.]

**29A.20.161 Certificate of nomination—Requisites.** A certificate evidencing nominations made at a convention must:

- (1) Be in writing;
- (2) Contain the name of each person nominated, his or her residence, and the office for which he or she is named, and if the nomination is for the offices of president and vice president of the United States, a sworn statement from both nominees giving their consent to the nomination;
- (3) Identify the minor political party or the independent candidate on whose behalf the convention was held;
- (4) Be verified by the oath of the presiding officer and secretary;

(5) Be accompanied by a nominating petition or petitions bearing the signatures and addresses of registered voters equal in number to that required by RCW 29A.20.141;

(6) Contain proof of publication of the notice of calling the convention; and

(7) Be submitted to the appropriate filing officer not later than one week following the adjournment of the convention at which the nominations were made. If the nominations are made only for offices whose jurisdiction is entirely within one county, the certificate and nominating petitions must be filed with the county auditor. If a minor party or independent candidate convention nominates any candidates for offices whose jurisdiction encompasses more than one county, all nominating petitions and the convention certificates must be filed with the secretary of state. [2004 c 271 § 154.]

**29A.20.171 Multiple certificates of nomination.** (1) If two or more valid certificates of nomination are filed purporting to nominate different candidates for the same position using the same party name, the filing officer must give effect to both certificates. If conflicting claims to the party name are not resolved either by mutual agreement or by a judicial determination of the right to the name, the candidates must be treated as independent candidates. Disputes over the right to the name must not be permitted to delay the printing of either ballots or a voters' pamphlet. Other candidates nominated by the same conventions may continue to use the partisan affiliation unless a court of competent jurisdiction directs otherwise.

(2) A person affected may petition the superior court of the county in which the filing officer is located for a judicial determination of the right to the name of a minor political party, either before or after documents are filed with the filing officer. The court shall resolve the conflict between competing claims to the use of the same party name according to the following principles: (a) The prior established public use of the name during previous elections by a party composed of or led by the same individuals or individuals in documented succession; (b) prior established public use of the name earlier in the same election cycle; (c) the nomination of a more complete slate of candidates for a number of offices or in a number of different regions of the state; (d) documented affiliation with a national or statewide party organization with an established use of the name; (e) the first date of filing of a certificate of nomination; and (f) such other indicia of an established right to use of the name as the court may deem relevant. If more than one filing officer is involved, and one of them is the secretary of state, the petition must be filed in the superior court for Thurston county. Upon resolving the conflict between competing claims, the court may also address any ballot designation for the candidate who does not prevail. [2004 c 271 § 155.]

**29A.20.181 Presidential electors—Selection at convention.** A minor political party or independent candidate convention nominating candidates for the offices of president and vice president of the United States shall, not later than ten days after the adjournment of the convention, submit a list of presidential electors to the office of the secretary of state. The list shall contain the names and the mailing addresses of

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the persons selected and shall be verified by the presiding officer of the convention. [2004 c 271 § 156.]

**29A.20.191 Certificate of nomination—Checking signatures—Appeal of determination.** Upon the receipt of the certificate of nomination, the officer with whom it is filed shall check the certificate and canvass the signatures on the accompanying nominating petitions to determine if the requirements of RCW 29A.20.141 have been met. Once the determination has been made, the filing officer shall notify the presiding officer of the convention and any other persons requesting the notification, of his or her decision regarding the sufficiency of the certificate or the nominating petitions. Any appeal regarding the filing officer's determination must be filed with the superior court of the county in which the certificate or petitions were filed not later than five days from the date the determination is made, and shall be heard and finally disposed of by the court within five days of the filing. Nominating petitions shall not be available for public inspection or copying. [2004 c 271 § 157.]

**29A.20.200 Declarations of candidacy required, exceptions—Payment of fees.** Not later than the Friday immediately preceding the first day for candidates to file, the secretary of state shall notify the county auditors of the names and designations of all minor party and independent candidates who have filed valid convention certificates and nominating petitions with that office. Except for the offices of president and vice president, persons nominated under this chapter shall file declarations of candidacy as provided by RCW \*29A.24.030 and 29A.24.070. The name of a candidate nominated at a convention shall not be printed upon the primary ballot unless he or she pays the fee required by law to be paid by candidates for the same office to be nominated at a primary. [2003 c 111 § 514; 1990 c 59 § 103; 1989 c 215 § 8; 1977 ex.s. c 329 § 7; 1965 c 9 § 29.24.070. Prior: 1955 c 102 § 7; prior: (i) 1937 c 94 § 7, part; RRS § 5170-3, part. (ii) 1907 c 209 § 26, part; RRS § 5203, part. Formerly RCW 29.24.070.]

**\*Reviser's note:** RCW 29A.24.030 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.24.031.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.20.201 Declarations of candidacy required, exceptions—Payment of fees.** Not later than the Friday immediately preceding the first day for candidates to file, the secretary of state shall notify the county auditors of the names and designations of all minor party and independent candidates who have filed valid convention certificates and nominating petitions with that office. Except for the offices of president and vice president, persons nominated under this chapter shall file declarations of candidacy as provided by RCW 29A.24.031 and 29A.24.070. The name of a candidate nominated at a convention shall not be printed upon the general election ballot unless he or she pays the fee required by law to be paid by candidates for the same office to be nominated at a primary. [2004 c 271 § 113.]

**Chapter 29A.24 RCW**  
**FILING FOR OFFICE**

## Sections

## GENERAL

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## WRITE-IN CANDIDATES

29A.24.311	Write-in voting—Candidates, declaration.
29A.24.320	Write-in candidates—Notice to auditors, ballot counters.

## GENERAL

**29A.24.010 Officials to designate position numbers, when—Effect.** Not less than thirty days before the first day for filing declarations of candidacy under RCW 29A.24.050 for legislative, judicial, county, city, town, or district office, where more than one position with the same name, district number, or title will be voted upon at the succeeding election, the filing officer shall designate the positions to be filled by number.

The positions so designated shall be dealt with as separate offices for all election purposes. With the exception of the office of justice of the supreme court, the position numbers shall be assigned, whenever possible, to reflect the position numbers that were used to designate the same positions at the last full-term election for those offices. [2003 c 111 § 601. Prior: 1990 c 59 § 79; 1965 c 52 § 1. Formerly RCW 29.15.130, 29.18.015.]

**29A.24.020 Designation of short terms, full terms, and unexpired terms—Filing declarations—Election to both short and full terms.** If at the same election there are short terms or full terms and unexpired terms of office to be filled, the filing officer shall distinguish them and designate the short term, the full term, and the unexpired term, as such, or by use of the words "short term," "unexpired two year term," or "four year term," as the case may be.

In filing the declaration of candidacy in such cases the candidate shall specify that the candidacy is for the short term, the full term, or the unexpired term. When both a short

term and a full term for the same position are scheduled to be voted upon, or when a short term is created after the close of the filing period, a single declaration of candidacy accompanied by a single filing fee shall be construed as a filing for both the short term and the full term and the name of such candidate shall appear upon the ballot for the position sought with the designation "short term and full term." The candidate elected to both such terms shall be sworn into and assume office for the short term as soon as the election returns have been certified and shall again be sworn into office on the second Monday in January following the election to assume office for the full term. [2003 c 111 § 602. Prior: 1990 c 59 § 92; 1975-'76 2nd ex.s. c 120 § 4; 1965 c 9 § 29.21.140; prior: (i) 1927 c 155 § 1, part; 1925 ex.s. c 68 § 1, part; 1921 c 116 § 1, part; 1919 c 85 § 1, part; 1911 c 101 § 1, part; 1909 c 82 § 11, part; 1907 c 209 § 38, part; RRS § 5212, part. (ii) 1933 c 85 § 1, part; RRS § 5213-1, part. Formerly RCW 29.15.140, 29.21.140.]

**Severability—1975-'76 2nd ex.s. c 120:** See note following RCW 29A.52.210.

*Term of person elected to fill vacancy:* RCW 42.12.030.

*Vacancies in public office, how filled:* RCW 42.12.010.

**29A.24.031 Declaration of candidacy.** A candidate who desires to have his or her name printed on the ballot for election to an office other than president of the United States, vice president of the United States, or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration of candidacy. The secretary of state shall adopt, by rule, a declaration of candidacy form for the office of precinct committee officer and a separate standard form for candidates for all other offices filing under this chapter. Included on the standard form shall be:

(1) A place for the candidate to declare that he or she is a registered voter within the jurisdiction of the office for which he or she is filing, and the address at which he or she is registered;

(2) A place for the candidate to indicate the position for which he or she is filing;

(3) A place for the candidate to indicate a party designation, if applicable;

(4) A place for the candidate to indicate the amount of the filing fee accompanying the declaration of candidacy or for the candidate to indicate that he or she is filing a nominating petition in lieu of the filing fee under RCW 29A.24.091;

(5) A place for the candidate to sign the declaration of candidacy, stating that the information provided on the form is true and swearing or affirming that he or she will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

In the case of a declaration of candidacy filed electronically, submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitutions and laws of the United States and the state of Washington, and that he or she agrees to electronic payment of the filing fee established in RCW 29A.24.091.

The secretary of state may require any other information on the form he or she deems appropriate to facilitate the filing process. [2004 c 271 § 158.]

**29A.24.040 Declaration of candidacy—Electronic filing.** A candidate may file his or her declaration of candidacy for an office by electronic means on a system specifically designed and authorized by a filing officer to accept filings.

(1) Filings that are received electronically must capture all information specified in \*RCW 29A.24.030 (1) through (4).

(2) Electronic filing may begin at 9:00 a.m. the fourth Monday in July and continue through 4:00 p.m. the following Friday.

(3) In case of special filing periods established in this chapter, electronic filings may be accepted beginning at 9:00 a.m. on the first day of the special filing period through 4:00 p.m. the last day of the special filing period. [2003 c 111 § 604. Prior: 2002 c 140 § 2. Formerly RCW 29.15.044.]

**\*Reviser's note:** RCW 29A.24.030 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.24.031.

**Implementation—2002 c 140:** "The secretary of state may take the necessary steps to ensure that this act is implemented on its effective date." [2002 c 140 § 5.]

**Captions not law—2002 c 140:** "Section captions used in this act are not part of the law." [2002 c 140 § 6.]

**29A.24.050 Declaration of candidacy—Certain offices, when filed.** Except where otherwise provided by this title, declarations of candidacy for the following offices shall be filed during regular business hours with the filing officer no earlier than the fourth Monday in July and no later than the following Friday in the year in which the office is scheduled to be voted upon:

(1) Offices that are scheduled to be voted upon for full terms or both full terms and short terms at, or in conjunction with, a state general election; and

(2) Offices where a vacancy, other than a short term, exists that has not been filled by election and for which an election to fill the vacancy is required in conjunction with the next state general election.

This section supersedes all other statutes that provide for a different filing period for these offices. [2003 c 111 § 605. Prior: 1990 c 59 § 81; 1986 c 167 § 8; 1984 c 142 § 2. Formerly RCW 29.15.020, 29.18.025.]

**Severability—1986 c 167:** See note following RCW 29A.04.049.

**Intent—1984 c 142:** "It is the intention of the legislature that this act shall provide an equitable qualifying procedure for candidates who, at the time of filing, lack sufficient assets or income to pay the filing fees otherwise required of candidates for public office." [1984 c 142 § 1.]

**29A.24.060 Candidates' names—Nicknames.** When filing for office, a candidate may indicate the manner in which he or she desires his or her name to be printed on the ballot. For filing purposes, a candidate may use a nickname by which he or she is commonly known as his or her first name, but the last name shall be the name under which he or she is registered to vote.

No candidate may:

(1) Use a nickname that denotes present or past occupation, including military rank;

(2) Use a nickname that denotes the candidate's position on issues or political affiliation;

(3) Use a nickname designed intentionally to mislead voters. [2003 c 111 § 606; 1990 c 59 § 83. Formerly RCW 29.15.090.]

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**29A.24.070 Declaration of candidacy—Where filed—Copy to public disclosure commission.** Declarations of candidacy shall be filed with the following filing officers:

(1) The secretary of state for declarations of candidacy for statewide offices, United States senate, and United States house of representatives;

(2) The secretary of state for declarations of candidacy for the state legislature, the court of appeals, and the superior court when voters from a district comprising more than one county vote upon the candidates;

(3) The county auditor for all other offices. For any non-partisan office, other than judicial offices and school director in joint districts, where voters from a district comprising more than one county vote upon the candidates, a declaration of candidacy shall be filed with the county auditor of the county in which a majority of the registered voters of the district reside. For school directors in joint school districts, the declaration of candidacy shall be filed with the county auditor of the county designated by the state board of education as the county to which the joint school district is considered as belonging under RCW 28A.323.040.

Each official with whom declarations of candidacy are filed under this section, within one business day following the closing of the applicable filing period, shall transmit to the public disclosure commission the information required in \*RCW 29A.24.030 (1) through (4) for each declaration of candidacy filed in his or her office during such filing period or a list containing the name of each candidate who files such a declaration in his or her office during such filing period together with a precise identification of the position sought by each such candidate and the date on which each such declaration was filed. Such official, within three days following his or her receipt of any letter withdrawing a person's name as a candidate, shall also forward a copy of such withdrawal letter to the public disclosure commission. [2003 c 111 § 607; 2002 c 140 § 4; 1998 c 22 § 1; 1990 c 59 § 84; 1977 ex.s. c 361 § 30; 1975-'76 2nd ex.s. c 112 § 1; 1965 c 9 § 29.18.040. Prior: 1907 c 209 § 7; RRS § 5184. Formerly RCW 29.15.030, 29.18.040.]

**\*Reviser's note:** RCW 29A.24.030 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.24.031.

**Implementation—Captions not law—2002 c 140:** See notes following RCW 29A.24.040.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**Construction—1975-'76 2nd ex.s. c 112:** RCW 42.17.945.

**Severability—1975-'76 2nd ex.s. c 112:** RCW 42.17.912.

*Public disclosure—Campaign finances, lobbying, records: Chapter 42.17 RCW.*

**29A.24.081 Declaration—Filing by mail.** Any candidate may mail his or her declaration of candidacy for an office to the filing officer. Such declarations of candidacy shall be processed by the filing officer in the following manner:

(1) Any declaration received by the filing officer by mail before the tenth business day immediately preceding the first day for candidates to file for office shall be returned to the candidate submitting it, together with a notification that the declaration of candidacy was received too early to be pro-

cessed. The candidate shall then be permitted to resubmit his or her declaration of candidacy during the filing period.

(2) Any properly executed declaration of candidacy received by mail on or after the tenth business day immediately preceding the first day for candidates to file for office and before the close of business on the last day of the filing period shall be included with filings made in person during the filing period. In partisan and judicial elections the filing officer shall determine by lot the order in which the names of those candidates shall appear upon sample and absentee primary ballots.

(3) Any declaration of candidacy received by the filing officer after the close of business on the last day for candidates to file for office shall be rejected and returned to the candidate attempting to file it. [2004 c 271 § 159.]

**29A.24.091 Declaration—Fees and petitions.** A filing fee of one dollar shall accompany each declaration of candidacy for precinct committee officer; a filing fee of ten dollars shall accompany the declaration of candidacy for any office with a fixed annual salary of one thousand dollars or less; a filing fee equal to one percent of the annual salary of the office at the time of filing shall accompany the declaration of candidacy for any office with a fixed annual salary of more than one thousand dollars per annum. No filing fee need accompany a declaration of candidacy for any office for which compensation is on a per diem or per meeting attended basis.

A candidate who lacks sufficient assets or income at the time of filing to pay the filing fee required by this section shall submit with his or her declaration of candidacy a nominating petition. The petition shall contain not less than a number of signatures of registered voters equal to the number of dollars of the filing fee. The signatures shall be of voters registered to vote within the jurisdiction of the office for which the candidate is filing.

When the candidacy is for:

(1) A legislative or judicial office that includes territory from more than one county, the fee shall be paid to the secretary of state for equal division between the treasuries of the counties comprising the district.

(2) A city or town office, the fee shall be paid to the county auditor who shall transmit it to the city or town clerk for deposit in the city or town treasury. [2004 c 271 § 160.]

**29A.24.101 Nominating petition—Form.** (1) The nominating petition authorized by RCW 29A.24.091 must be printed on sheets of uniform color and size, must include a place for each individual to sign and print his or her name and the address, city, and county at which he or she is registered to vote, and must contain no more than twenty numbered lines.

(2) For candidates for nonpartisan office and candidates of a major political party for partisan office, the nominating petition must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

We, the undersigned registered voters of (the state of Washington or the political subdivision for which the nomi-

nation is made), hereby petition that the name of (candidate's name) be printed on the official primary ballot for the office of (insert name of office).

(3) For independent candidates and candidates of a minor political party for partisan office, the nominating petition must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

We, the undersigned registered voters of (the state of Washington or the political subdivision for which the nomination is made), hereby petition that the name of (candidate's name) be printed on the official general election ballot for the office of (insert name of office). [2004 c 271 § 114.]

**29A.24.111 Petitions—Rejection—Acceptance, canvass of signatures—Judicial review.** Nominating petitions may be rejected for the following reasons:

- (1) The petition is not in the proper form;
- (2) The petition clearly bears insufficient signatures;
- (3) The petition is not accompanied by a declaration of candidacy;
- (4) The time within which the petition and the declaration of candidacy could have been filed has expired.

If the petition is accepted, the officer with whom it is filed shall canvass the signatures contained on it and shall reject the signatures of those persons who are not registered voters and the signatures of those persons who are not registered to vote within the jurisdiction of the office for which the nominating petition is filed. He or she shall additionally reject any signature that appears on the nominating petitions of two or more candidates for the same office and shall also reject, each time it appears, the name of any person who signs the same petition more than once.

If the officer with whom the petition is filed refuses to accept the petition or refuses to certify the petition as bearing sufficient valid signatures, the person filing the petition may appeal that action to the superior court. The application for judicial review shall take precedence over other cases and matters and shall be speedily heard and determined. [2004 c 271 § 161.]

**29A.24.120 Date for withdrawal—Notice.** Each person who files a declaration of candidacy for an elected office of a city, town, or special district shall be given written notice of the date by which a candidate may withdraw his or her candidacy under \*RCW 29A.24.130. [2003 c 111 § 612. Prior: 1994 c 223 § 7. Formerly RCW 29.15.125.]

\*Reviser's note: RCW 29A.24.130 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.24.131.

**29A.24.131 Withdrawal of candidacy.** A candidate may withdraw his or her declaration of candidacy at any time before the close of business on the Thursday following the last day for candidates to file under RCW 29A.24.050 by filing, with the officer with whom the declaration of candidacy was filed, a signed request that his or her name not be printed on the ballot. There shall be no withdrawal period for declarations of candidacy filed during special filing periods held

under this title. The filing officer may permit the withdrawal of a filing for the office of precinct committee officer at the request of the candidate at any time if no absentee ballots have been issued for that office and the ballots for that precinct have not been printed. The filing officer may permit the withdrawal of a filing for any elected office of a city, town, or special district at the request of the candidate at any time before a primary if the primary ballots for that city, town, or special district have not been ordered. No filing fee may be refunded to any candidate who withdraws under this section. Notice of the deadline for withdrawal of candidacy and that the filing fee is not refundable shall be given to each candidate at the time he or she files. [2004 c 271 § 115.]

**29A.24.141 Void in candidacy—Exception.** A void in candidacy for a nonpartisan office occurs when an election for such office, except for the short term, has been scheduled and no valid declaration of candidacy has been filed for the position or all persons filing such valid declarations of candidacy have died or been disqualified. [2004 c 271 § 162.]

**29A.24.151 Notice of void in candidacy.** The election officer with whom declarations of candidacy are filed shall give notice of a void in candidacy for a nonpartisan office, by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law. The notice shall state the office, and the time and place for filing declarations of candidacy. [2004 c 271 § 163.]

**29A.24.161 Filings to fill void in candidacy—How made.** Filings to fill a void in candidacy for nonpartisan office must be made in the same manner and with the same official as required during the regular filing period for such office, except that nominating signature petitions that may be required of candidates filing for certain district offices during the normal filing period may not be required of candidates filing during the special three-day filing period. [2004 c 271 § 164.]

**29A.24.171 Reopening of filing—Before sixth Tuesday before primary.** Filings for a nonpartisan office shall be reopened for a period of three normal business days, such three-day period to be fixed by the election officer with whom such declarations of candidacy are filed and notice thereof given by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law whenever before the sixth Tuesday prior to a primary:

- (1) A void in candidacy occurs;
- (2) A vacancy occurs in any nonpartisan office leaving an unexpired term to be filled by an election for which filings have not been held; or
- (3) A nominee for judge of the superior court entitled to a certificate of election pursuant to Article 4, section 29, Amendment 41 of the state Constitution, dies or is disqualified.

Candidacies validly filed within said three-day period shall appear on the ballot as if made during the earlier filing period. [2004 c 271 § 165.]

(2004 Ed.)

**29A.24.181 Reopening of filing—After sixth Tuesday before primary.** Filings for a nonpartisan office (other than judge of the supreme court or superintendent of public instruction) shall be reopened for a period of three normal business days, such three-day period to be fixed by the election officer with whom such declarations of candidacy are filed and notice thereof given by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law, when:

(1) A void in candidacy for such nonpartisan office occurs on or after the sixth Tuesday prior to a primary but prior to the sixth Tuesday before an election; or

(2) A nominee for judge of the superior court eligible after a contested primary for a certificate of election by Article 4, section 29, Amendment 41 of the state Constitution, dies or is disqualified within the ten-day period immediately following the last day allotted for a candidate to withdraw; or

(3) A vacancy occurs in any nonpartisan office on or after the sixth Tuesday prior to a primary but prior to the sixth Tuesday before an election leaving an unexpired term to be filled by an election for which filings have not been held.

The candidate receiving a plurality of the votes cast for that office in the general election shall be deemed elected. [2004 c 271 § 166.]

**29A.24.191 Scheduled election lapses, when.** A scheduled election shall be lapsed, the office deemed stricken from the ballot, no purported write-in votes counted, and no candidate certified as elected, when:

(1) In an election for judge of the supreme court or superintendent of public instruction, a void in candidacy occurs on or after the sixth Tuesday prior to a primary, public filings and the primary being an indispensable phase of the election process for such offices;

(2) Except as otherwise specified in RCW 29A.24.181, a nominee for judge of the superior court entitled to a certificate of election pursuant to Article 4, section 29, Amendment 41 of the state Constitution dies or is disqualified on or after the sixth Tuesday prior to a primary;

(3) In other elections for nonpartisan office a void in candidacy occurs or a vacancy occurs involving an unexpired term to be filled on or after the sixth Tuesday prior to an election. [2004 c 271 § 167.]

**29A.24.200 Lapse of election when no filing for single positions—Effect.** If after both the normal filing period and special three day filing period as provided by \*RCW 29A.24.170 and 29A.24.180 have passed, no candidate has filed for any single city, town, or district position to be filled, the election for such position shall be deemed lapsed, the office deemed stricken from the ballot and no write-in votes counted. In such instance, the incumbent occupying such position shall remain in office and continue to serve until a successor is elected at the next election when such positions are voted upon. [2003 c 111 § 620. Prior: 1994 c 223 § 8; 1975-'76 2nd ex.s. c 120 § 13. Formerly RCW 29.15.200, 29.21.385.]

\*Reviser's note: RCW 29A.24.170 and 29A.24.180 were repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.24.171 and 29A.24.181.

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29A.52.210.

**29A.24.201 Lapse of election when no filing for single positions—Effect.** If after both the normal filing period and special three-day filing period as provided by RCW 29A.24.171 and 29A.24.181 have passed, no candidate has filed for any single city, town, or district position to be filled, the election for such position shall be deemed lapsed, the office deemed stricken from the ballot and no write-in votes counted. In such instance, the incumbent occupying such position shall remain in office and continue to serve until a successor is elected at the next election when such positions are voted upon. [2004 c 271 § 190.]

**29A.24.210 Vacancy in partisan elective office—Special filing period.** Filings for a partisan elective office shall be opened for a period of three normal business days whenever, on or after the first day of the regular filing period and before the sixth Tuesday prior to a primary, a vacancy occurs in that office, leaving an unexpired term to be filled by an election for which filings have not been held.

Any such special three-day filing period shall be fixed by the election officer with whom declarations of candidacy for that office are filed. The election officer shall give notice of the special three-day filing period by notifying the press, radio, and television in the county or counties involved, and by such other means as may be required by law.

Candidacies validly filed within the special three-day filing period shall appear on the primary ballot as if filed during the regular filing period. [2003 c 111 § 621. Prior: 2001 c 46 § 3; 1981 c 180 § 2. Formerly RCW 29.15.230, 29.18.032.]

**Severability—1981 c 180:** See note following RCW 42.12.040.

*Vacancy in partisan elective office, successor elected, when:* RCW 42.12.040.

*Vacancy in United States senate, special filing period in 1983: Chapter 1, Laws of 1983 3rd ex. sess. (uncodified).*

*Vacancy on major party ticket:* RCW 29A.28.010.

**29A.24.211 Vacancy in partisan elective office—Special filing period.** Filings for a partisan elective office shall be opened for a period of three normal business days whenever, on or after the first day of the regular filing period and before the sixth Tuesday prior to a primary, a vacancy occurs in that office, leaving an unexpired term to be filled by an election for which filings have not been held.

Any such special three-day filing period shall be fixed by the election officer with whom declarations of candidacy for that office are filed. The election officer shall give notice of the special three-day filing period by notifying the press, radio, and television in the county or counties involved, and by such other means as may be required by law.

Candidacies validly filed within the special three-day filing period shall appear on the ballot as if filed during the regular filing period. [2004 c 271 § 116.]

## WRITE-IN CANDIDATES

**29A.24.311 Write-in voting—Candidates, declaration.** Any person who desires to be a write-in candidate and have such votes counted at a primary or election may file a declaration of candidacy with the officer designated in RCW 29A.24.070 not later than the day before the primary or elec-

tion. Declarations of candidacy for write-in candidates must be accompanied by a filing fee in the same manner as required of other candidates filing for the office as provided in RCW 29A.24.091.

Votes cast for write-in candidates who have filed such declarations of candidacy and write-in votes for persons appointed by major political parties pursuant to RCW 29A.28.021 need only specify the name of the candidate in the appropriate location on the ballot in order to be counted. Write-in votes cast for any other candidate, in order to be counted, must designate the office sought and position number or political party, if the manner in which the write-in is done does not make the office or position clear.

No person may file as a write-in candidate where:

(1) At a general election, the person attempting to file either filed as a write-in candidate for the same office at the preceding primary or the person's name appeared on the ballot for the same office at the preceding primary;

(2) The person attempting to file as a write-in candidate has already filed a valid write-in declaration for that primary or election, unless one or the other of the two filings is for the office of precinct committeeperson;

(3) The name of the person attempting to file already appears on the ballot as a candidate for another office, unless one of the two offices for which he or she is a candidate is precinct committeeperson.

The declaration of candidacy shall be similar to that required by RCW 29A.24.031. No write-in candidate filing under this section may be included in any voter's pamphlet produced under chapter 29A.32 RCW unless that candidate qualifies to have his or her name printed on the general election ballot. The legislative authority of any jurisdiction producing a local voter's pamphlet under chapter 29A.32 RCW may provide, by ordinance, for the inclusion of write-in candidates in such pamphlets. [2004 c 271 § 117.]

**29A.24.320 Write-in candidates—Notice to auditors, ballot counters.** The secretary of state shall notify each county auditor of any declarations filed with the secretary under \*RCW 29A.24.310 for offices appearing on the ballot in that county. The county auditor shall ensure that those persons charged with counting the ballots for a primary or election are notified of all valid write-in candidates before the tabulation of those ballots. [2003 c 111 § 623. Prior: 1988 c 181 § 2. Formerly RCW 29.04.190.]

**\*Reviser's note:** RCW 29A.24.310 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.24.311.

## Chapter 29A.28 RCW VACANCIES

### Sections

29A.28.010	Major party ticket.
29A.28.011	Major party ticket.
29A.28.020	Death or disqualification—Correcting ballots—Counting votes already cast.
29A.28.021	Death or disqualification—Correcting ballots—Counting votes already cast.
29A.28.030	United States senate.
29A.28.041	Congress—Special election.
29A.28.050	Congress—Notices of special primary and election.
29A.28.061	Congress—General, primary election laws to apply—Time deadlines, modifications.

29A.28.071 Precinct committee officer.

**29A.28.010 Major party ticket.** If a place on the ticket of a major political party is vacant because no person has filed for nomination as the candidate of that major political party, after the last day allowed for candidates to withdraw as provided by \*RCW 29A.24.130, and if the vacancy is for a state or county office to be voted on solely by the electors of a single county, the county central committee of the major political party may select and certify a candidate to fill the vacancy. If the vacancy is for any other office the state central committee of the major political party may select and certify a candidate to fill the vacancy. The certificate must set forth the cause of the vacancy, the name of the person nominated, the office for which the person is nominated, and other pertinent information required in an ordinary certificate of nomination and be filed in the proper office no later than the first Friday after the last day allowed for candidates to withdraw, together with the candidate's fee applicable to that office and a declaration of candidacy. [2003 c 111 § 701; 1990 c 59 § 102; 1977 ex.s. c 329 § 12; 1965 c 9 § 29.18.150. Prior: 1961 c 130 § 17; prior: (i) 1933 c 21 § 1, part; 1919 c 163 § 24, part; RRS § 5200, part. (ii) 1889 p 404 § 12; RRS § 5176. Formerly RCW 29.18.150.]

**\*Reviser's note:** RCW 29A.24.130 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.24.131.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.28.011 Major party ticket.** If a place on the ticket of a major political party is vacant because no person has filed for nomination as the candidate of that major political party, after the last day allowed for candidates to withdraw as provided by RCW 29A.24.131, and if the vacancy is for a state or county office to be voted on solely by the electors of a single county, the county central committee of the major political party may select and certify a candidate to fill the vacancy. If the vacancy is for any other office the state central committee of the major political party may select and certify a candidate to fill the vacancy. The certificate must set forth the cause of the vacancy, the name of the person nominated, the office for which the person is nominated, and other pertinent information required in an ordinary certificate of nomination and be filed in the proper office no later than the first Friday after the last day allowed for candidates to withdraw, together with the candidate's fee applicable to that office and a declaration of candidacy. [2004 c 271 § 191.]

**29A.28.020 Death or disqualification—Correcting ballots—Counting votes already cast.** A vacancy caused by the death or disqualification of any candidate or nominee of a major or minor political party may be filled at any time up to and including the day prior to the election for that position. For state partisan offices in any political subdivision voted on solely by electors of a single county, an individual shall be appointed to fill such vacancy by the county central committee in the case of a major political party or by the state central committee or comparable governing body in the case of a minor political party. For other partisan offices, including federal or statewide offices, an individual shall be appointed to fill such vacancy by the state central committee

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or comparable governing body of the appropriate political party.

If the vacancy occurs no later than the sixth Tuesday prior to the state primary or general election concerned and the ballots have been printed, it shall be mandatory that they be corrected by the appropriate election officers. In making such correction, it shall not be necessary to reprint complete ballots if any other less expensive technique can be used and the resulting correction is reasonably clear.

If the vacancy occurs after the sixth Tuesday prior to the state primary or general election and time does not exist in which to correct ballots (including absentee ballots), either in total or in part, then the votes cast or recorded for the person who has died or become disqualified shall be counted for the person who has been named to fill such vacancy.

When the secretary of state is the person with whom the appointment by the major or minor political party is filed, the secretary shall, in certifying candidates or nominations to the various county officers insert the name of the person appointed to fill a vacancy.

If the secretary of state has already sent forth the certificate when the appointment to fill a vacancy is filed, the secretary shall forthwith certify to the county auditors of the proper counties the name and place of residence of the person appointed to fill a vacancy, the office for which the person is a candidate or nominee, the party the person represents, and all other pertinent facts pertaining to the vacancy. [2003 c 111 § 702; 2001 c 46 § 4; 1977 ex.s. c 329 § 13. Formerly RCW 29.18.160.]

**29A.28.021 Death or disqualification—Correcting ballots—Counting votes already cast.** A vacancy caused by the death or disqualification of any candidate or nominee of a major or minor political party may be filled at any time up to and including the day prior to the election for that position. For state partisan offices in any political subdivision voted on solely by electors of a single county, an individual shall be appointed to fill such vacancy by the county central committee in the case of a major political party or by the state central committee or comparable governing body in the case of a minor political party. For other partisan offices, including federal or statewide offices, an individual shall be appointed to fill such vacancy by the state central committee or comparable governing body of the appropriate political party.

If the vacancy occurs no later than the sixth Tuesday prior to the state primary or general election concerned and the ballots have been printed, it shall be mandatory that they be corrected by the appropriate election officers. In making such correction, it shall not be necessary to reprint complete ballots if any other less expensive technique can be used and the resulting correction is reasonably clear.

If the vacancy occurs after the sixth Tuesday prior to the state primary or general election and time does not exist in which to correct ballots (including absentee ballots), either in total or in part, then the votes cast or recorded for the person who has died or become disqualified shall be counted for the person who has been named to fill such vacancy.

When the secretary of state is the person with whom the appointment by the major or minor political party is filed, the secretary shall, in certifying candidates or nominations to the

various county officers insert the name of the person appointed to fill a vacancy.

If the secretary of state has already sent forth the certificate when the appointment to fill a vacancy is filed, the secretary shall forthwith certify to the county auditors of the proper counties the name and place of residence of the person appointed to fill a vacancy, the office for which the person is a candidate or nominee, the party the person represents, and all other pertinent facts pertaining to the vacancy. [2004 c 271 § 192.]

**29A.28.030 United States senate.** When a vacancy occurs in the representation of this state in the senate of the United States, the governor shall make a temporary appointment to that office until the people fill the vacancy by election as provided in this chapter. [2003 c 111 § 703. Prior: 1985 c 45 § 3; 1965 c 9 § 29.68.070; prior: 1921 c 33 § 1; RRS § 3798. Formerly RCW 29.68.070.]

**Legislative intent—1985 c 45:** See note following RCW 29A.04.420.

*Special procedures for primary for United States senate vacancy in 1983: Chapter 1, Laws of 1983 3rd ex. sess. (uncodified).*

*Vacancies in public office, how caused: RCW 42.12.010.*

**29A.28.041 Congress—Special election.** (1) Whenever a vacancy occurs in the United States house of representatives or the United States senate from this state, the governor shall order a special election to fill the vacancy. Minor political party candidates and independent candidates may be nominated through the convention procedures provided in chapter 29A.20 RCW.

(2) Within ten days of such vacancy occurring, he or she shall issue a writ of election fixing a date for the special vacancy election not less than ninety days after the issuance of the writ, fixing a date for the primary for nominating major political party candidates for the special vacancy election not less than thirty days before the day fixed for holding the special vacancy election, fixing the dates for the special filing period, and designating the term or part of the term for which the vacancy exists. If the vacancy is in the office of United States representative, the writ of election shall specify the congressional district that is vacant.

(3) If the vacancy occurs less than six months before a state general election and before the second Friday following the close of the filing period for that general election, the special primary, special vacancy election, and minor party and independent candidate nominating conventions must be held in concert with the state primary and state general election in that year.

(4) If the vacancy occurs on or after the first day for filing under RCW 29A.24.050 and on or before the second Friday following the close of the filing period, a special filing period of three normal business days shall be fixed by the governor and notice thereof given to all media, including press, radio, and television within the area in which the vacancy election is to be held, to the end that, insofar as possible, all interested persons will be aware of such filing period. The last day of the filing period shall not be later than the third Tuesday before the primary at which major political party candidates are to be nominated. The names of major political party candidates who have filed valid declarations of

candidacy during this three-day period shall appear on the approaching primary ballot. The requirements of RCW 29A.20.131 do not apply to a minor political party or independent candidate convention held under this subsection.

(5) If the vacancy occurs later than the second Friday following the close of the filing period, a special primary, special vacancy election, and the minor party and independent candidate conventions to fill the position shall be held after the next state general election but, in any event, no later than the ninetieth day following the November election. [2004 c 271 § 118.]

**29A.28.050 Congress—Notices of special primary and election.** After calling a special primary and special vacancy election to fill a vacancy in the United States house of representatives or the United States senate from this state, the governor shall immediately notify the secretary of state who shall, in turn, immediately notify the county auditor of each county wholly or partly within which the vacancy exists.

Each county auditor shall publish notices of the special primary and the special vacancy election at least once in any legal newspaper published in the county, as provided by \*RCW 29A.52.310 and 29A.52.350 respectively. [2003 c 111 § 705; 1985 c 45 § 5; 1973 2nd ex.s. c 36 § 5; 1965 c 9 § 29.68.100. Prior: 1909 ex.s. c 25 § 2, part; RRS § 3800, part. Formerly RCW 29.68.100.]

**\*Reviser's note:** RCW 29A.52.310 and 29A.52.350 were repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.52.311 and 29A.52.351.

**Legislative intent—1985 c 45:** See note following RCW 29A.04.420.

**29A.28.061 Congress—General, primary election laws to apply—Time deadlines, modifications.** The general election laws and laws relating to partisan primaries shall apply to the special primaries and vacancy elections provided for in chapter 29A.28 RCW to the extent that they are not inconsistent with the provisions of these sections. Minor political party and independent candidates may appear only on the general election ballot. Statutory time deadlines relating to availability of absentee ballots, certification, canvassing, and related procedures that cannot be met in a timely fashion may be modified for the purposes of a specific primary or vacancy election under this chapter by the secretary of state through emergency rules adopted under RCW 29A.04.611. [2004 c 271 § 119.]

**29A.28.071 Precinct committee officer.** If a vacancy occurs in the office of precinct committee officer by reason of death, resignation, or disqualification of the incumbent, or because of failure to elect, the respective county chair of the county central committee shall fill the vacancy by appointment. However, in a legislative district having a majority of its precincts in a county with a population of one million or more, the appointment may be made only upon the recommendation of the legislative district chair. The person so appointed must have the same qualifications as candidates when filing for election to the office for that precinct. When a vacancy in the office of precinct committee officer exists because of failure to elect at a state primary, the vacancy may not be filled until after the organization meeting of the county

central committee and the new county chair has been selected as provided by RCW 29A.80.030. [2004 c 271 § 120.]

## Chapter 29A.32 RCW VOTERS' PAMPHLETS

### Sections

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#### STATE VOTERS' PAMPHLET

**29A.32.010 Printing and distribution.** The secretary of state shall, whenever at least one statewide measure or office is scheduled to appear on the general election ballot, print and distribute a voters' pamphlet.

The secretary of state shall distribute the voters' pamphlet to each household in the state, to public libraries, and to any other locations he or she deems appropriate. The secretary of state shall also produce taped or Braille transcripts of the voters' pamphlet, publicize their availability, and mail without charge a copy to any person who requests one.

The secretary of state may make the material required to be distributed by this chapter available to the public in electronic form. The secretary of state may provide the material in electronic form to computer bulletin boards, print and broadcast news media, community computer networks, and similar services at the cost of reproduction or transmission of the data. [2003 c 111 § 801. Prior: 1999 c 260 § 1. Formerly RCW 29.81.210.]

**29A.32.020 Prohibition against deceptively similar campaign materials.** No person or entity may publish or distribute any campaign material that is deceptively similar in design or appearance to a voters' pamphlet that was published by the secretary of state during the ten-year period before the publication or distribution of the campaign material by the person or entity. The secretary of state shall take reasonable measures to prevent or to stop violations of this section. Such measures may include, among others, petitioning the superior court for a temporary restraining order or other appropriate injunctive relief. In addition, the secretary may request the

superior court to impose a civil fine on a violator of this section. The court is authorized to levy on and recover from each violator a civil fine not to exceed the greater of: (1) Two dollars for each copy of the deceptive material distributed, or (2) one thousand dollars. In addition, the violator is liable for the state's legal expenses and other costs resulting from the violation. Any funds recovered under this section must be transmitted to the state treasurer for deposit in the general fund. [2003 c 111 § 802; 1984 c 41 § 1. Formerly RCW 29.04.035.]

**29A.32.031 Contents.** The voters' pamphlet must contain:

(1) Information about each ballot measure initiated by or referred to the voters for their approval or rejection as required by RCW 29A.32.070;

(2) In even-numbered years, statements, if submitted, advocating the candidacies of nominees for the office of president and vice president of the United States, United States senator, United States representative, governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, commissioner of public lands, superintendent of public instruction, insurance commissioner, state senator, state representative, justice of the supreme court, judge of the court of appeals, or judge of the superior court. Candidates may also submit a campaign mailing address and telephone number and a photograph not more than five years old and of a size and quality that the secretary of state determines to be suitable for reproduction in the voters' pamphlet;

(3) In odd-numbered years, if any office voted upon statewide appears on the ballot due to a vacancy, then statements and photographs for candidates for any vacant office listed in subsection (2) of this section must appear;

(4) In even-numbered years, a section explaining how voters may participate in the election campaign process; the address and telephone number of the public disclosure commission established under RCW 42.17.350; and a summary of the disclosure requirements that apply when contributions are made to candidates and political committees;

(5) In even-numbered years the name, address, and telephone number of each political party with nominees listed in the pamphlet, if filed with the secretary of state by the state committee of a major political party or the presiding officer of the convention of a minor political party;

(6) In each odd-numbered year immediately before a year in which a president of the United States is to be nominated and elected, information explaining the precinct caucus and convention process used by each major political party to elect delegates to its national presidential candidate nominating convention. The pamphlet must also provide a description of the statutory procedures by which minor political parties are formed and the statutory methods used by the parties to nominate candidates for president;

(7) An application form for an absentee ballot;

(8) A brief statement explaining the deletion and addition of language for proposed measures under RCW 29A.32.080;

(9) Any additional information pertaining to elections as may be required by law or in the judgment of the secretary of state is deemed informative to the voters. [2004 c 271 § 121.]

**29A.32.036 Even year primary contents.** If the secretary of state prints and distributes a voters' pamphlet for a primary in an even-numbered year, it must contain:

(1) A description of the office of precinct committee officer and its duties;

(2) An explanation that, for partisan offices, only voters who choose to affiliate with a major political party may vote in that party's primary election, and that voters must limit their participation in a partisan primary to one political party; and

(3) An explanation that minor political party candidates and independent candidates will appear only on the general election ballot. [2004 c 271 § 122.]

**29A.32.040 Explanatory statements.** (1) Explanatory statements prepared by the attorney general under RCW 29A.32.070 (3) and (4) must be written in clear and concise language, avoiding legal and technical terms when possible, and filed with the secretary of state.

(2) When the explanatory statement for a measure initiated by petition is filed with the secretary of state, the secretary of state shall immediately provide the text of the explanatory statement to the person proposing the measure and any others who have made written request for notification of the exact language of the explanatory statement. When the explanatory statement for a measure referred to the ballot by the legislature is filed with the secretary of state, the secretary of state shall immediately provide the text of the explanatory statement to the presiding officer of the senate and the presiding officer of the house of representatives and any others who have made written request for notification of the exact language of the explanatory statement.

(3) A person dissatisfied with the explanatory statement may appeal to the superior court of Thurston County within five days of the filing date. A copy of the petition and a notice of the appeal must be served on the secretary of state and the attorney general. The court shall examine the measure, the explanatory statement, and objections, and may hear arguments. The court shall render its decision and certify to and file with the secretary of state an explanatory statement it determines will meet the requirements of this chapter.

The decision of the superior court is final, and its explanatory statement is the established explanatory statement. The appeal must be heard without costs to either party. [2003 c 111 § 804. Prior: 1999 c 260 § 3. Formerly RCW 29.81.230.]

**29A.32.050 Notice of constitutional amendments and state measures—Explanatory statement.** The attorney general shall, by the first day of July preceding each general election, prepare the explanatory statements required in RCW 29A.52.340. Such statements shall be prepared in clear and concise language and shall avoid the use of legal and other technical terms insofar as possible. Any person dissatisfied with the explanatory statement so prepared may at any time within ten days from the filing thereof in the office of the secretary of state appeal to the superior court of Thurston county by petition setting forth the proposed state measure, the explanatory statement prepared by the attorney general, and his or her objection thereto and praying for the amendment thereof. A copy of the petition and a notice of such

appeal shall be served on the secretary of state and the attorney general. The court shall, upon filing of the petition, examine the proposed state measure, the explanatory statement, and the objections thereto and may hear argument thereon and shall, as soon as possible, render its decision and certify to and file with the secretary of state such explanatory statement as it determines will meet the requirement of RCW 29A.52.330, 29A.52.340, and this section. The decision of the superior court shall be final and its explanatory statement shall be the established explanatory statement. Such appeal shall be heard without costs to either party. [2003 c 111 § 805; 1967 c 96 § 3; 1965 c 9 § 29.27.076. Prior: 1961 c 176 § 3. Formerly RCW 29.27.076.]

**29A.32.060 Arguments.** Committees shall write and submit arguments advocating the approval or rejection of each statewide ballot issue and rebuttals of those arguments. The secretary of state, the presiding officer of the senate, and the presiding officer of the house of representatives shall appoint the initial two members of each committee. In making these committee appointments the secretary of state and presiding officers of the senate and house of representatives shall consider legislators, sponsors of initiatives and referendums, and other interested groups known to advocate or oppose the ballot measure.

The initial two members may select up to four additional members, and the committee shall elect a chairperson. The remaining committee member or members may fill vacancies through appointment.

After the committee submits its initial argument statements to the secretary of state, the secretary of state shall transmit the statements to the opposite committee. The opposite committee may then prepare rebuttal arguments. Rebuttals may not interject new points.

The voters' pamphlet may contain only argument statements prepared according to this section. Arguments may contain graphs and charts supported by factual statistical data and pictures or other illustrations. Cartoons or caricatures are not permitted. [2003 c 111 § 806. Prior: 1999 c 260 § 4. Formerly RCW 29.81.240.]

**29A.32.070 Format, layout, contents.** The secretary of state shall determine the format and layout of the voters' pamphlet. The secretary of state shall print the pamphlet in clear, readable type on a size, quality, and weight of paper that in the judgment of the secretary of state best serves the voters. The pamphlet must contain a table of contents. Federal and state offices must appear in the pamphlet in the same sequence as they appear on the ballot. Measures and arguments must be printed in the order specified by RCW 29A.72.290.

The voters' pamphlet must provide the following information for each statewide issue on the ballot:

(1) The legal identification of the measure by serial designation or number;

(2) The official ballot title of the measure;

(3) A statement prepared by the attorney general explaining the law as it presently exists;

(4) A statement prepared by the attorney general explaining the effect of the proposed measure if it becomes law;

(5) The fiscal impact statement prepared under \*RCW 29.79.075;

(6) The total number of votes cast for and against the measure in the senate and house of representatives, if the measure has been passed by the legislature;

(7) An argument advocating the voters' approval of the measure together with any statement in rebuttal of the opposing argument;

(8) An argument advocating the voters' rejection of the measure together with any statement in rebuttal of the opposing argument;

(9) Each argument or rebuttal statement must be followed by the names of the committee members who submitted them, and may be followed by a telephone number that citizens may call to obtain information on the ballot measure;

(10) The full text of each measure. [2003 c 111 § 807. Prior: 2002 c 139 § 2; 1999 c 260 § 5. Formerly RCW 29.81.250.]

**\*Reviser's note:** RCW 29.79.075 was recodified as RCW 29A.72.025 pursuant to 2004 c 266 § 24, effective July 1, 2004.

**29A.32.080 Amendatory style.** Statewide ballot measures that amend existing law must be printed in the voters' pamphlet so that language proposed for deletion is enclosed by double parentheses and has a line through it. Proposed new language must be underlined. A statement explaining the deletion and addition of language must appear as follows: "Any language in double parentheses with a line through it is existing state law and will be taken out of the law if this measure is approved by voters. Any underlined language does not appear in current state law but will be added to the law if this measure is approved by voters." [2003 c 111 § 808. Prior: 1999 c 260 § 6. Formerly RCW 29.81.260.]

**29A.32.090 Arguments—Rejection, dispute.** (1) If in the opinion of the secretary of state any argument or statement offered for inclusion in the voters' pamphlet in support of or opposition to a measure or candidate contains obscene matter or matter that is otherwise prohibited by law from distribution through the mail, the secretary may petition the superior court of Thurston County for a judicial determination that the argument or statement may be rejected for publication or edited to delete the matter. The court shall not enter such an order unless it concludes that the matter is obscene or otherwise prohibited for distribution through the mail.

(2)(a) A person who believes that he or she may be defamed by an argument or statement offered for inclusion in the voters' pamphlet in support of or opposition to a measure or candidate may petition the superior court of Thurston County for a judicial determination that the argument or statement may be rejected for publication or edited to delete the defamatory statement.

(b) The court shall not enter such an order unless it concludes that the statement is untrue and that the petitioner has a very substantial likelihood of prevailing in a defamation action.

(c) An action under this subsection (2) must be filed and served no later than the tenth day after the deadline for the submission of the argument or statement to the secretary of state.

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(d) If the secretary of state notifies a person named or identified in an argument or statement of the contents of the argument or statement within three days after the deadline for submission to the secretary, then neither the state nor the secretary is liable for damages resulting from publication of the argument or statement unless the secretary publishes the argument or statement in violation of an order entered under this section. Nothing in this section creates a duty on the part of the secretary of state to identify, locate, or notify the person.

(3) Parties to a dispute under this section may agree to resolve the dispute by rephrasing the argument or statement, even if the deadline for submission to the secretary has elapsed, unless the secretary determines that the process of publication is too far advanced to permit the change. The secretary shall promptly provide any such revision to any committee entitled to submit a rebuttal argument. If that committee has not yet submitted its rebuttal, its deadline to submit a rebuttal is extended by five days. If it has submitted a rebuttal, it may revise it to address the change within five days of the filing of the revised argument with the secretary.

(4) In an action under this section the committee or candidate must be named as a defendant, and may be served with process by certified mail directed to the address contained in the secretary's records for that party. The secretary of state shall be a nominal party to an action brought under subsection (2) of this section, solely for the purpose of determining the content of the voters' pamphlet. The superior court shall give such an action priority on its calendar. [2003 c 111 § 809. Prior: 1999 c 260 § 8. Formerly RCW 29.81.280.]

**29A.32.100 Arguments—Public inspection.** (1) An argument or statement submitted to the secretary of state for publication in the voters' pamphlet is not available for public inspection or copying until:

(a) In the case of candidate statements, (i) all statements by all candidates who have filed for a particular office have been received, except those who informed the secretary that they will not submit statements, or (ii) the deadline for submission of statements has elapsed;

(b) In the case of arguments supporting or opposing a measure, (i) the arguments on both sides have been received, unless a committee was not appointed for one side, or (ii) the deadline for submission of arguments has elapsed; and

(c) In the case of rebuttal arguments, (i) the rebuttals on both sides have been received, unless a committee was not appointed for one side, or (ii) the deadline for submission of arguments has elapsed.

(2) Nothing in this section prohibits the secretary from releasing information under RCW 29A.32.090(2)(d). [2003 c 111 § 810. Prior: 1999 c 260 § 9. Formerly RCW 29.81.290.]

**29A.32.110 Photographs.** All photographs of candidates submitted for publication must conform to standards established by the secretary of state by rule. No photograph may reveal clothing or insignia suggesting the holding of a public office. [2003 c 111 § 811. Prior: 1999 c 260 § 10. Formerly RCW 29.81.300.]

**29A.32.121 Candidates' statements—Length.** (1) The maximum number of words for statements submitted by candidates is as follows: State representative, one hundred words; state senator, judge of the superior court, judge of the court of appeals, justice of the supreme court, and all state offices voted upon throughout the state, except that of governor, two hundred words; president and vice president, United States senator, United States representative, and governor, three hundred words.

(2) Arguments written by committees under RCW 29A.32.060 may not exceed two hundred fifty words in length.

(3) Rebuttal arguments written by committees may not exceed seventy-five words in length.

(4) The secretary of state shall allocate space in the pamphlet based on the number of candidates or nominees for each office. [2004 c 271 § 168.]

#### LOCAL VOTERS' PAMPHLET

**29A.32.210 Authorization—Contents—Format.** At least ninety days before any primary or general election, or at least forty days before any special election held under RCW \*29A.04.320 or 29A.04.330, the legislative authority of any county or first-class or code city may adopt an ordinance authorizing the publication and distribution of a local voters' pamphlet. The pamphlet shall provide information on all measures within that jurisdiction and may, if specified in the ordinance, include information on candidates within that jurisdiction. If both a county and a first-class or code city within that county authorize a local voters' pamphlet for the same election, the pamphlet shall be produced jointly by the county and the first-class or code city. If no agreement can be reached between the county and first-class or code city, the county and first-class or code city may each produce a pamphlet. Any ordinance adopted authorizing a local voters' pamphlet may be for a specific primary, special election, or general election or for any future primaries or elections. The format of any local voters' pamphlet shall, whenever applicable, comply with the provisions of this chapter regarding the publication of the state candidates' and voters' pamphlets. [2003 c 111 § 813; 1984 c 106 § 3. Formerly RCW 29.81A.010.]

\*Reviser's note: RCW 29A.04.320 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.04.321.

**29A.32.220 Notice of production—Local governments' decision to participate.** (1) Not later than ninety days before the publication and distribution of a local voters' pamphlet by a county, the county auditor shall notify each city, town, or special taxing district located wholly within that county that a pamphlet will be produced.

(2) If a voters' pamphlet is published by the county for a primary or general election, the pamphlet shall be published for the elective offices and ballot measures of the county and for the elective offices and ballot measures of each unit of local government located entirely within the county which will appear on the ballot at that primary or election. However, the offices and measures of a first class or code city shall not be included in the pamphlet if the city publishes and distributes its own voters' pamphlet for the primary or elec-

tion for its offices and measures. The offices and measures of any other town or city are not required to appear in the county's pamphlet if the town or city is obligated by ordinance or charter to publish and distribute a voters' pamphlet for the primary or election for its offices and measures and it does so.

If the required appearance in a county's voters' pamphlet of the offices or measures of a unit of local government would create undue financial hardship for the unit of government, the legislative authority of the unit may petition the legislative authority of the county to waive this requirement. The legislative authority of the county may provide such a waiver if it does so not later than sixty days before the publication of the pamphlet and it finds that the requirement would create such hardship.

(3) If a city, town, or district is located within more than one county, the respective county auditors may enter into an interlocal agreement to permit the distribution of each county's local voters' pamphlet into those parts of the city, town, or district located outside of that county.

(4) If a first-class or code city authorizes the production and distribution of a local voters' pamphlet, the city clerk of that city shall notify any special taxing district located wholly within that city that a pamphlet will be produced. Notification shall be provided in the manner required or provided for in subsection (1) of this section.

(5) A unit of local government located within a county and the county may enter into an interlocal agreement for the publication of a voters' pamphlet for offices or measures not required by subsection (2) of this section to appear in a county's pamphlet. [2003 c 111 § 814; 1994 c 191 § 1; 1984 c 106 § 4. Formerly RCW 29.81A.020.]

**29A.32.230 Administrative rules.** The county auditor or, if applicable, the city clerk of a first-class or code city shall, in consultation with the participating jurisdictions, adopt and publish administrative rules necessary to facilitate the provisions of any ordinance authorizing production of a local voters' pamphlet. Any amendment to such a rule shall also be adopted and published. Copies of the rules shall identify the date they were adopted or last amended and shall be made available to any person upon request. One copy of the rules adopted by a county auditor and one copy of any amended rules shall be submitted to the county legislative authority. One copy of the rules adopted by a city clerk and one copy of any amended rules shall be submitted to the city legislative authority. These rules shall include but not be limited to the following:

(1) Deadlines for decisions by cities, towns, or special taxing districts on being included in the pamphlet;

(2) Limits on the length and deadlines for submission of arguments for and against each measure;

(3) The basis for rejection of any explanatory or candidates' statement or argument deemed to be libelous or otherwise inappropriate. Any statements by a candidate shall be limited to those about the candidate himself or herself;

(4) Limits on the length and deadlines for submission of candidates' statements;

(5) An appeal process in the case of the rejection of any statement or argument. [2003 c 111 § 815. Prior: 1984 c 106 § 5. Formerly RCW 29.81A.030.]

**29A.32.241 Contents.** The local voters' pamphlet shall include but not be limited to the following:

(1) Appearing on the cover, the words "official local voters' pamphlet," the name of the jurisdiction producing the pamphlet, and the date of the election or primary;

(2) A list of jurisdictions that have measures or candidates in the pamphlet;

(3) Information on how a person may register to vote and obtain an absentee ballot;

(4) The text of each measure accompanied by an explanatory statement prepared by the prosecuting attorney for any county measure or by the attorney for the jurisdiction submitting the measure if other than a county measure. All explanatory statements for city, town, or district measures not approved by the attorney for the jurisdiction submitting the measure shall be reviewed and approved by the county prosecuting attorney or city attorney, when applicable, before inclusion in the pamphlet;

(5) The arguments for and against each measure submitted by committees selected pursuant to RCW 29A.32.280; and

(6) For partisan primary elections, information on how to vote the applicable ballot format and an explanation that minor political party candidates and independent candidates will appear only on the general election ballot. [2004 c 271 § 123.]

**29A.32.250 Candidates, when included.** If the legislative authority of a county or first-class or code city provides for the inclusion of candidates in the local voters' pamphlet, the pamphlet shall include the statements from candidates and may also include those candidates' photographs. [2003 c 111 § 817. Prior: 1984 c 106 § 7. Formerly RCW 29.81A.050.]

**29A.32.260 Mailing.** As soon as practicable before the primary, special election, or general election, the county auditor, or if applicable, the city clerk of a first-class or code city, as appropriate, shall mail the local voters' pamphlet to every residence in each jurisdiction that has included information in the pamphlet. The county auditor or city clerk, as appropriate, may choose to mail the pamphlet to each registered voter in each jurisdiction that has included information in the pamphlet, if in his or her judgment, a more economical and effective distribution of the pamphlet would result. If the county or city chooses to mail the pamphlet to each residence, no notice of election otherwise required by \*RCW 29A.52.350 need be published. [2003 c 111 § 818. Prior: 1984 c 106 § 8. Formerly RCW 29.81A.060.]

\*Reviser's note: RCW 29A.52.350 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.52.351.

**29A.32.270 Cost.** The cost of a local voters' pamphlet shall be considered an election cost to those local jurisdictions included in the pamphlet and shall be prorated in the manner provided in RCW 29A.04.410. [2003 c 111 § 819. Prior: 1984 c 106 § 9. Formerly RCW 29.81A.070.]

**29A.32.280 Arguments advocating approval or disapproval—Preparation by committees.** For each measure from a unit of local government that is included in a local vot-

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ers' pamphlet, the legislative authority of that jurisdiction shall, not later than forty-five days before the publication of the pamphlet, formally appoint a committee to prepare arguments advocating voters' approval of the measure and shall formally appoint a committee to prepare arguments advocating voters' rejection of the measure. The authority shall appoint persons known to favor the measure to serve on the committee advocating approval and shall, whenever possible, appoint persons known to oppose the measure to serve on the committee advocating rejection. Each committee shall have not more than three members, however, a committee may seek the advice of any person or persons. If the legislative authority of a unit of local government fails to make such appointments by the prescribed deadline, the county auditor shall whenever possible make the appointments. [2003 c 111 § 820. Prior: 1994 c 191 § 2; 1984 c 106 § 10. Formerly RCW 29.81A.080.]

## Chapter 29A.36 RCW

### BALLOTS AND OTHER VOTING FORMS

#### Sections

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*No link between voter and ballot choice: RCW 29A.08.161.*

**29A.36.011 Certifying primary candidates.** On or before the day following the last day for major political parties to fill vacancies in the ticket as provided by RCW 29A.28.011, the secretary of state shall certify to each county auditor a list of the candidates who have filed declarations of candidacy in his or her office for the primary. For each office, the certificate shall include the name of each candidate, his or her address, and his or her party designation, if any. Minor political party and independent candidates may appear only on the general election ballot. [2004 c 271 § 124.]

**29A.36.020 Constitutional measures—Ballot title—Formulation, ballot display, certification.** (1) When a proposed constitutional amendment is to be submitted to the

people of the state for statewide popular vote, the ballot title consists of: (a) A statement of the subject of the amendment; (b) a concise description of the amendment; and (c) a question in the form prescribed in this section. The statement of the subject of a constitutional amendment must be sufficiently broad to reflect the nature of the amendment, sufficiently precise to give notice of the amendment's subject matter, and not exceed ten words. The concise description must contain no more than thirty words, give a true and impartial description of the amendment's essential contents, clearly identify the amendment to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the amendment.

The ballot title for a proposed constitutional amendment must be displayed on the ballot substantially as follows:

"The legislature has proposed a constitutional amendment on (statement of subject). This amendment would (concise description). Should this constitutional amendment be:

Approved .....   
Rejected .....

(2) When a proposed new constitution is submitted to the people of the state by a constitutional convention for statewide popular vote, the ballot title consists of: (a) A concise description of the new constitution; and (b) a question in the form prescribed in this section. The concise description must contain no more than thirty words, give a true and impartial description of the new constitution's essential contents, clearly identify the proposed constitution to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the new constitution.

The ballot title for a proposed new constitution must be displayed on the ballot substantially as follows:

"The constitutional convention approved a new proposed state constitution that (concise description). Should this proposed constitution be:

Approved .....   
Rejected .....

(3) The legislature may specify the statement of subject or concise description, or both, in a constitutional amendment that it submits to the people. If the legislature fails to specify the statement of subject or concise description, or both, the attorney general shall prepare the material that was not specified. The statement of subject and concise description as so provided must be included as part of the ballot title unless changed on appeal.

The attorney general shall specify the concise description for a proposed new constitution that is submitted to the people by a constitutional convention, and the concise description as so provided must be included as part of the ballot title unless changed on appeal.

(4) The secretary of state shall certify to the county auditors the ballot title for a proposed constitution, constitutional amendment, or other statewide question at the same time and in the same manner as the ballot titles to initiatives and referendums. [2003 c 111 § 902. Prior: 2000 c 197 § 7. Formerly RCW 29.27.057.]

**Part headings not law—2000 c 197:** See note following RCW 29A.72.050.

**29A.36.030 Constitutional measures—Ballot title—Filing.** The ballot title for a constitutional amendment or proposed constitution must be filed with the secretary of state in the same manner as the ballot title and summary for a state initiative or referendum are filed. [2003 c 111 § 903. Prior: 2000 c 197 § 8. Formerly RCW 29.27.061.]

**Part headings not law—2000 c 197:** See note following RCW 29A.72.050.

**29A.36.040 Constitutional, statewide questions—Notice of ballot title and summary.** Upon the filing of a ballot title under RCW 29A.36.020 or 29A.36.050, the secretary of state shall provide notice of the exact language of the ballot title and summary to the chief clerk of the house of representatives, the secretary of the senate, and the prime sponsor of measure. [2003 c 111 § 904. Prior: 2000 c 197 § 9; 1993 c 256 § 11; 1965 c 9 § 29.27.065; prior: 1953 c 242 § 3. Formerly RCW 29.27.065.]

**Part headings not law—2000 c 197:** See note following RCW 29A.72.050.

**Severability—Effective date—1993 c 256:** See notes following RCW 29A.84.280.

**29A.36.050 Statewide question—Ballot title—Formulation, ballot display.** (1) If the legislature submits a question to the people for a statewide popular vote that is not governed by RCW 29A.72.050 or 29A.36.020, the ballot title on the question consists of: (a) A description of the subject; and (b) a question in the form prescribed in this section. The statement of the subject of the question must be sufficiently broad to reflect the subject of the question, sufficiently precise to give notice of the question's subject matter, and not exceed ten words. The question must contain no more than thirty words.

The ballot title for such a question must be displayed on the ballot substantially as follows:

"The following question concerning (description of subject) has been submitted to the voters: (Question as submitted).

Yes .....   
No .....

(2) The legislature may specify the statement of subject for a question and shall specify the question that it submits to the people. If the legislature fails to specify the statement of subject, the attorney general shall prepare the statement of subject. The statement of subject and question as so provided must be included as part of the ballot title unless changed on appeal. [2003 c 111 § 905. Prior: 2000 c 197 § 10. Formerly RCW 29.27.0653.]

**Part headings not law—2000 c 197:** See note following RCW 29A.72.050.

**29A.36.060 Constitutional, statewide questions—Ballot title—Appeal.** If any persons are dissatisfied with the ballot title for a proposed constitution, constitutional amendment, or question submitted under RCW 29A.36.050, they may at any time within ten days from the time of the filing of

the ballot title and summary, not including Saturdays, Sundays, or legal holidays, appeal to the superior court of Thurston county by petition setting forth the measure, the ballot title objected to, their objections to it, and praying for amendment of the ballot title. The time of the filing of the ballot title, as used in this section for establishing the time for appeal, is the time the ballot title is first filed with the secretary of state.

A copy of the petition on appeal together with a notice that an appeal has been taken must be served upon the secretary of state, the attorney general, the chief clerk of the house of representatives, and the secretary of the senate. Upon the filing of the petition on appeal, the court shall immediately, or at the time to which a hearing may be adjourned by consent of the appellants, examine the proposed measure, the ballot title filed, and the objections to it and may hear arguments on it, and shall as soon as possible render its decision and certify to and file with the secretary of state a ballot title that it determines will meet the requirements of this chapter. The decision of the superior court is final, and the ballot title so certified will be the established ballot title. The appeal must be heard without cost to either party. [2003 c 111 § 906. Prior: 2000 c 197 § 11. Formerly RCW 29.27.0655.]

**Part headings not law—2000 c 197:** See note following RCW 29A.72.050.

**29A.36.071 Local measures—Ballot title—Formulation—Advertising.** (1) Except as provided to the contrary in RCW 82.14.036, 82.46.021, or 82.80.090, the ballot title of any referendum filed on an enactment or portion of an enactment of a local government and any other question submitted to the voters of a local government consists of three elements: (a) An identification of the enacting legislative body and a statement of the subject matter; (b) a concise description of the measure; and (c) a question. The ballot title must conform with the requirements and be displayed substantially as provided under RCW 29A.72.050, except that the concise description must not exceed seventy-five words. If the local governmental unit is a city or a town, the concise statement shall be prepared by the city or town attorney. If the local governmental unit is a county, the concise statement shall be prepared by the prosecuting attorney of the county. If the unit is a unit of local government other than a city, town, or county, the concise statement shall be prepared by the prosecuting attorney of the county within which the majority area of the unit is located.

(2) A referendum measure on the enactment of a unit of local government shall be advertised in the manner provided for nominees for elective office.

(3) Subsection (1) of this section does not apply if another provision of law specifies the ballot title for a specific type of ballot question or proposition. [2004 c 271 § 169.]

**29A.36.080 Local measures—Ballot title—Notice.** Upon the filing of a ballot title of a question to be submitted to the people of a county or municipality, the county auditor shall provide notice of the exact language of the ballot title to the persons proposing the measure, the county or municipality, and to any other person requesting a copy of the ballot title. [2003 c 111 § 908. Prior: 2000 c 197 § 13. Formerly RCW 29.27.0665.]

(2004 Ed.)

**Part headings not law—2000 c 197:** See note following RCW 29A.72.050.

**29A.36.090 Local measures—Ballot title—Appeal.** If any persons are dissatisfied with the ballot title for a local ballot measure that was formulated by the city attorney or prosecuting attorney preparing the same, they may at any time within ten days from the time of the filing of the ballot title, not including Saturdays, Sundays, and legal holidays, appeal to the superior court of the county where the question is to appear on the ballot, by petition setting forth the measure, the ballot title objected to, their objections to it, and praying for amendment of it. The time of the filing of the ballot title, as used in this section in determining the time for appeal, is the time the ballot title is first filed with the county auditor.

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the county auditor and the official preparing the ballot title. Upon the filing of the petition on appeal, the court shall immediately, or at the time to which a hearing may be adjourned by consent of the appellants, examine the proposed measure, the ballot title filed, and the objections to it and may hear arguments on it, and shall as soon as possible render its decision and certify to and file with the county auditor a ballot title that it determines will meet the requirements of this chapter. The decision of the superior court is final, and the ballot title or statement so certified will be the established ballot title. The appeal must be heard without cost to either party. [2003 c 111 § 909. Prior: 2000 c 197 § 14; 1993 c 256 § 12; 1965 c 9 § 29.27.067; prior: 1953 c 242 § 4. Formerly RCW 29.27.067.]

**Part headings not law—2000 c 197:** See note following RCW 29A.72.050.

**Severability—Effective date—1993 c 256:** See notes following RCW 29A.84.280.

**29A.36.101 Names on primary ballot.** Except for the candidates for the positions of president and vice president, for a partisan or nonpartisan office for which no primary is required, or for independent or minor party candidates, the names of all candidates who, under this title, filed a declaration of candidacy or were certified as a candidate to fill a vacancy on a major party ticket will appear on the appropriate ballot at the primary throughout the jurisdiction in which they are to be nominated. [2004 c 271 § 125.]

**29A.36.104 Partisan primary ballots—Formats.** Partisan primaries must be conducted using either:

(1) A consolidated ballot format that includes a major political party identification check-off box that allows a voter to select from a list of the major political parties the major political party with which the voter chooses to affiliate. The consolidated ballot must include all partisan races, nonpartisan races, and ballot measures to be voted on at that primary; or

(2) A physically separate ballot format that includes both party ballots and a nonpartisan ballot. A party ballot must be specific to a particular major political party and may include only the partisan offices to be voted on at that primary and the names of candidates for those partisan offices who desig-

nated that same major political party in their declarations of candidacy. The nonpartisan ballot must include all nonpartisan races and ballot measures to be voted on at that primary. [2004 c 271 § 126.]

**29A.36.106 Partisan primary ballots—Required statements.** (1) If the consolidated ballot format is used, the major political party identification check-off box must appear on the primary ballot before all offices and ballot measures. Clear and concise instructions to the voter must be prominently displayed immediately before the list of major political parties, and must include:

(a) A question asking the voter to indicate the major political party with which the voter chooses to affiliate;

(b) A statement that, for a major political party candidate, only votes cast by voters who choose to affiliate with that same major political party will be tabulated and reported;

(c) A statement that votes cast for a major political party candidate by a voter who chooses to affiliate with a different major political party will not be tabulated or reported;

(d) A statement that votes cast for a major political party candidate by a voter who fails to select a major political party affiliation will not be tabulated or reported;

(e) A statement that votes cast for a major political party candidate by a voter who selects more than one major political party with which to affiliate will not be tabulated or reported; and

(f) A statement that the party identification option will not affect votes cast for candidates for nonpartisan offices, or for or against ballot measures.

(2) If the physically separate ballot format is used, clear and concise instructions to the voter must be prominently displayed, and must include:

(a) A statement explaining that only one party ballot and one nonpartisan ballot may be voted;

(b) A statement explaining that if more than one party ballot is voted, none of the party ballots will be tabulated or reported;

(c) A statement explaining that a voter's affiliation with a major political party will be inferred from the act of voting the party ballot for that major political party; and

(d) A statement explaining that every eligible registered voter may vote a nonpartisan ballot, regardless of any party affiliation on the part of the voter. [2004 c 271 § 127.]

**29A.36.111 Uniformity, arrangement, contents required.** Every ballot for a single combination of issues, offices, and candidates shall be uniform within a precinct and shall identify the type of primary or election, the county, and the date of the primary or election, and the ballot or voting device shall contain instructions on the proper method of recording a vote, including write-in votes. Each position, together with the names of the candidates for that office, shall be clearly separated from other offices or positions in the same jurisdiction. The offices in each jurisdiction shall be clearly separated from each other. No paper ballot or ballot card may be marked in any way that would permit the identification of the person who voted that ballot. [2004 c 271 § 128.]

**29A.36.121 Order of offices and issues—Party indication.** (1)(a) The positions or offices on a primary consolidated ballot shall be arranged in substantially the following order: United States senator; United States representative; governor; lieutenant governor; secretary of state; state treasurer; state auditor; attorney general; commissioner of public lands; superintendent of public instruction; insurance commissioner; state senator; state representative; county officers; justices of the supreme court; judges of the court of appeals; judges of the superior court; and judges of the district court. For all other jurisdictions on the primary consolidated ballot, the offices in each jurisdiction shall be grouped together and be in the order of the position numbers assigned to those offices, if any.

(b)(i) The positions or offices on a primary party ballot must be arranged in substantially the following order: United States senator; United States representative; governor; lieutenant governor; secretary of state; state treasurer; state auditor; attorney general; commissioner of public lands; insurance commissioner; state senator; state representative; and partisan county officers. For all other jurisdictions on the primary party ballot, the offices in each jurisdiction must be grouped together and be in the order of the position numbers assigned to those offices, if any.

(ii) The positions or offices on a primary nonpartisan ballot must be arranged in substantially the following order: Superintendent of public instruction; justices of the supreme court; judges of the court of appeals; judges of the superior court; and judges of the district court. For all other jurisdictions on the primary nonpartisan ballot, the offices in each jurisdiction must be grouped together and be in the order of the position numbers assigned to those offices, if any.

(2) The order of the positions or offices on an election ballot shall be substantially the same as on a primary consolidated ballot except that state ballot issues must be placed before all offices. The offices of president and vice president of the United States shall precede all other offices on a presidential election ballot. The positions on a ballot to be assigned to ballot measures regarding local units of government shall be established by the secretary of state by rule.

(3) The political party or independent candidacy of each candidate for partisan office shall be indicated next to the name of the candidate on the primary and election ballot. A candidate shall file a written notice with the filing officer within three business days after the close of the filing period designating the political party to be indicated next to the candidate's name on the ballot if either: (a) The candidate has been nominated by two or more minor political parties or independent conventions; or (b) the candidate has both filed a declaration of candidacy declaring an affiliation with a major political party and been nominated by a minor political party or independent convention. If no written notice is filed the filing officer shall give effect to the party designation shown upon the first document filed. A candidate may be deemed nominated by a minor party or independent convention only if all documentation required by chapter 29A.20 RCW has been timely filed. [2004 c 271 § 129.]

**29A.36.131 Order of candidates on ballots.** After the close of business on the last day for candidates to file for office, the filing officer shall, from among those filings made

in person and by mail, determine by lot the order in which the names of those candidates will appear on all primary, sample, and absentee ballots. The determination shall be done publicly and may be witnessed by the media and by any candidate. If no primary is required for any nonpartisan office under RCW 29A.52.011 or 29A.52.220, or if any independent or minor party candidate files a declaration of candidacy, the names shall appear on the general election ballot in the order determined by lot. [2004 c 271 § 130.]

**29A.36.151 Sample ballots.** Except in each county with a population of one million or more, on or before the fifteenth day before a primary or election, the county auditor shall prepare a sample ballot which shall be made readily available to members of the public. The secretary of state shall adopt rules governing the preparation of sample ballots in counties with a population of one million or more. The rules shall permit, among other alternatives, the preparation of more than one sample ballot by a county with a population of one million or more for a primary or election, each of which lists a portion of the offices and issues to be voted on in that county. The position of precinct committee officer shall be shown on the sample ballot for the primary, but the names of candidates for the individual positions need not be shown. [2004 c 271 § 131.]

**29A.36.161 Arrangement of instructions, measures, offices—Order of candidates—Numbering of ballots.** (1) On the top of each ballot must be printed clear and concise instructions directing the voter how to mark the ballot, including write-in votes. On the top of each primary ballot must be printed the instructions required by this chapter.

(2) The questions of adopting constitutional amendments or any other state measure authorized by law to be submitted to the voters at that election must appear after the instructions and before any offices.

(3) In a year that president and vice president appear on the general election ballot, the names of candidates for president and vice president for each political party must be grouped together with a single response position for a voter to indicate his or her choice.

(4) On a general election ballot, the candidate or candidates of the major political party that received the highest number of votes from the electors of this state for the office of president of the United States at the last presidential election must appear first following the appropriate office heading. The candidate or candidates of the other major political parties will follow according to the votes cast for their nominees for president at the last presidential election, and independent candidates and the candidate or candidates of all other parties will follow in the order of their qualification with the secretary of state.

(5) All paper ballots and ballot cards used at a polling place must be sequentially numbered in such a way to permit removal of such numbers without leaving any identifying marks on the ballot. [2004 c 271 § 132.]

**29A.36.171 Nonpartisan candidates qualified for general election.** (1) Except as provided in RCW 29A.36.180 and in subsection (2) of this section, on the ballot

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at the general election for a nonpartisan office for which a primary was held, only the names of the candidate who received the greatest number of votes and the candidate who received the next greatest number of votes for that office shall appear under the title of that office, and the names shall appear in that order. If a primary was conducted, no candidate's name may be printed on the subsequent general election ballot unless he or she receives at least one percent of the total votes cast for that office at the preceding primary. On the ballot at the general election for any other nonpartisan office for which no primary was held, the names of the candidates shall be listed in the order determined under RCW 29A.36.131.

(2) On the ballot at the general election for the office of justice of the supreme court, judge of the court of appeals, judge of the superior court, judge of the district court, or state superintendent of public instruction, if a candidate in a contested primary receives a majority of all the votes cast for that office or position, only the name of that candidate may be printed under the title of the office for that position. [2004 c 271 § 170.]

**29A.36.180 Disqualified candidates in nonpartisan elections—Special procedures for conduct of election.** This section applies if a candidate for an elective office of a city, town, or special purpose district would, under this chapter, otherwise qualify to have his or her name printed on the general election ballot for the office, but the candidate has been declared to be unqualified to hold the office by a court of competent jurisdiction.

(1) In a case in which a primary is conducted for the office:

(a) If ballots for the general election for the office have not been ordered by the county auditor, the candidate who received the third greatest number of votes for the office at the primary shall qualify as a candidate for general election and that candidate's name shall be printed on the ballot for the office in lieu of the name of the disqualified candidate.

(b) If general election ballots for the office have been so ordered, votes cast for the disqualified candidate at the general election for the office shall not be counted for that office.

(2) In a case in which a primary is not conducted for the office:

(a) If ballots for the general election for the office have not been ordered by the county auditor, the name of the disqualified candidate shall not appear on the general election ballot for the office.

(b) If general election ballots for the office have been so ordered, votes cast for the disqualified candidate at the general election for the office shall not be counted for that office.

(3) If the disqualified candidate is the only candidate to have filed for the office during a regular or special filing period for the office, a void in candidacy for the office exists. [2003 c 111 § 918. Prior: 1992 c 181 § 1. Formerly RCW 29.30.086.]

**Effective date—1992 c 181:** "This act shall take effect July 1, 1992." [1992 c 181 § 3.]

**29A.36.190 Partisan candidates qualified for general election.** The name of a candidate for a partisan office for which a primary was conducted shall not be printed on the

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ballot for that office at the subsequent general election unless the candidate receives a number of votes equal to at least one percent of the total number cast for all candidates for that position sought and a plurality of the votes cast for the candidates of his or her party for that office at the preceding primary. [2003 c 111 § 919. Prior: 1990 c 59 § 96. Formerly RCW 29.30.095.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.36.191 Partisan candidates qualified for general election.** The name of a candidate for a partisan office for which a primary was conducted shall not be printed on the ballot for that office at the subsequent general election unless, at the preceding primary, the candidate receives a number of votes equal to at least one percent of the total number of votes cast for all candidates for that office and a plurality of the votes cast by voters affiliated with that party for candidates for that office affiliated with that party. [2004 c 271 § 133.]

**29A.36.201 Names qualified to appear on election ballot.** The names of the persons certified as nominees by the secretary of state or the county canvassing board shall be printed on the ballot at the ensuing election.

No name of any candidate whose nomination at a primary is required by law shall be placed upon the ballot at a general or special election unless it appears upon the certificate of either (1) the secretary of state, or (2) the county canvassing board, or (3) a minor party convention or the state or county central committee of a major political party to fill a vacancy on its ticket under RCW 29A.28.021.

Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, a candidate's name shall not appear more than once upon a ballot for a position regularly nominated or elected at the same election. [2004 c 271 § 171.]

**29A.36.210 Property tax levies—Ballot form.** (1) The ballot proposition authorizing a taxing district to impose the regular property tax levies authorized in RCW 36.69.145, 67.38.130, 84.52.069, or 84.52.135 shall contain in substance the following:

"Shall the . . . . (insert the name of the taxing district) be authorized to impose regular property tax levies of . . . . (insert the maximum rate) or less per thousand dollars of assessed valuation for each of . . . . (insert the maximum number of years allowable) consecutive years?

Yes . . . . .   
No . . . . .

Each voter shall indicate either "Yes" or "No" on his or her ballot in accordance with the procedures established under this title.

(2) The ballot proposition authorizing a taxing district to impose a permanent regular tax levy under RCW 84.52.069 shall contain the following:

"Shall the . . . . (insert the name of the taxing district) be authorized to impose a PERMANENT regular property levy of . . . . (insert the maximum rate) or less per thousand dollars of assessed valuation?

Yes . . . . .   
No . . . . .

[2004 c 80 § 2; 2003 c 111 § 921. Prior: 1999 c 224 § 2; 1984 c 131 § 3. Formerly RCW 29.30.111.]

**Effective date—2004 c 80:** See note following RCW 84.52.135.

**Application—1999 c 224:** See note following RCW 84.52.069.

**Purpose—1984 c 131 §§ 3-9:** "The purpose of sections 3 through 6 of this act is to clarify requirements necessary for voters to authorize certain local governments to impose regular property tax levies for a series of years. Sections 3 through 9 of this act only clarify the existing law to avoid credence being given to an erroneous opinion that has been rendered by the attorney general. As cogently expressed in Attorney General Opinion, Number 14, Addendum, opinions rendered by the attorney general are advisory only and are merely a "prediction of the outcome if the matter were to be litigated." Nevertheless, confusion has arisen from this erroneous opinion." [1984 c 131 § 2.]

**29A.36.220 Expense of printing and distributing ballot materials.** The cost of printing ballots, ballot cards, and instructions and the delivery of this material to the precinct election officers shall be an election cost that shall be borne as determined under RCW 29A.04.410 and 29A.04.420, as appropriate. [2003 c 111 § 922. Prior: 1990 c 59 § 16; 1965 c 9 § 29.30.130; prior: 1889 p 400 § 1; RRS § 5269. Formerly RCW 29.30.130.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

### Chapter 29A.40 RCW ABSENTEE VOTING

#### Sections

- 29A.40.010 When permitted.
- 29A.40.020 Request for single ballot.
- 29A.40.030 Request on behalf of family member.
- 29A.40.040 Ongoing status—Request—Termination.
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- 29A.40.140 Challenges.
- 29A.40.150 Out-of-state, overseas, service voters.

**29A.40.010 When permitted.** Any registered voter of the state or any out-of-state voter, overseas voter, or service voter may vote by absentee ballot in any general election, special election, or primary in the manner provided in this chapter. Out-of-state voters, overseas voters, and service voters are authorized to cast the same ballots, including those for special elections, as a registered voter of the state would receive under this chapter. [2003 c 111 § 1001. Prior: 2001 c 241 § 1; 1991 c 81 § 29; 1987 c 346 § 9; 1986 c 167 § 14; 1985 c 273 § 1; 1984 c 27 § 1; 1977 ex.s. c 361 § 76; 1974 ex.s. c 35 § 1; 1971 ex.s. c 202 § 37; 1965 c 9 § 29.36.010; prior: 1963 ex.s. c 23 § 1; 1955 c 167 § 2; prior: (i) 1950 ex.s. c 8 § 1; 1943 c 72 § 1; 1933 ex.s. c 41 § 1; 1923 c 58 § 1; 1921 c 143 § 1; 1917 c 159 § 1; 1915 c 189 § 1; Rem. Supp. 1943 § 5280. (ii) 1933 ex.s. c 41 § 2, part; 1923 c 58 § 2, part; 1921 c 143 § 2, part; 1917 c 159 § 2, part; 1915 c 189 § 2,

part; RRS § 5281, part. Formerly RCW 29.36.210, 29.36.010.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Legislative intent—1987 c 346:** "By this act the legislature intends to combine and unify the laws and procedures governing absentee voting. These amendments are intended: (1) To clarify and incorporate into a single chapter of the Revised Code of Washington the preexisting statutes under which electors of this state qualify for absentee ballots under state law, federal law, or a combination of both state and federal law, and (2) to insure uniformity in the application, issuance, receipt, and canvassing of these absentee ballots. Nothing in this act is intended to impose any new requirement on the ability of the registered voters or electors of this state to qualify for, receive, or cast absentee ballots in any primary or election." [1987 c 346 § 1.]

**Effective date—1987 c 346:** "This act shall take effect on January 1, 1988." [1987 c 346 § 25.]

**Severability—1986 c 167:** See note following RCW 29A.04.049.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.40.020 Request for single ballot.** (1) Except as otherwise provided by law, a registered voter or out-of-state voter, overseas voter, or service voter desiring to cast an absentee ballot at a single election or primary must request the absentee ballot from his or her county auditor no earlier than ninety days nor later than the day before the election or primary at which the person seeks to vote. Except as otherwise provided by law, the request may be made orally in person, by telephone, electronically, or in writing. An application or request for an absentee ballot made under the authority of a federal statute or regulation will be considered and given the same effect as a request for an absentee ballot under this chapter.

(2) A voter requesting an absentee ballot for a primary may also request an absentee ballot for the following general election. A request by an out-of-state voter, overseas voter, or service voter for an absentee ballot for a primary election will be considered as a request for an absentee ballot for the following general election.

(3) In requesting an absentee ballot, the voter shall state the address to which the absentee ballot should be sent. A request for an absentee ballot from an out-of-state voter, overseas voter, or service voter must include the address of the last residence in the state of Washington and either a written application or the oath on the return envelope must include a declaration of the other qualifications of the applicant as an elector of this state. A request for an absentee ballot from any other voter must state the address at which that voter is currently registered to vote in the state of Washington or the county auditor shall verify that information from the voter registration records of the county.

(4) A request for an absentee ballot from a registered voter who is within this state must be made directly to the auditor of the county in which the voter is registered. An absentee ballot request from a registered voter who is temporarily outside this state or from an out-of-state voter, overseas voter, or service voter may be made either to the appropriate county auditor or to the secretary of state, who shall promptly forward the request to the appropriate county auditor.

(5) No person, organization, or association may distribute absentee ballot applications within this state that contain a return address other than that of the appropriate county

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auditor. [2003 c 111 § 1002; 2001 c 241 § 2. Formerly RCW 29.36.220.]

**29A.40.030 Request on behalf of family member.** A member of a registered voter's family may request an absentee ballot on behalf of and for use by the voter. As a means of ensuring that a person who requests an absentee ballot is requesting the ballot for only that person or a member of the person's immediate family, an auditor may require a person who requests an absentee ballot to identify the date of birth of the voter for whom the ballot is requested and deny a request that is not accompanied by this information. [2003 c 111 § 1003. Prior: 2001 c 241 § 3. Formerly RCW 29.36.230.]

**29A.40.040 Ongoing status—Request—Termination.** Any registered voter may apply, in writing, for status as an ongoing absentee voter. Each qualified applicant shall automatically receive an absentee ballot for each ensuing election or primary for which the voter is entitled to vote and need not submit a separate request for each election. Ballots received from ongoing absentee voters shall be validated, processed, and tabulated in the same manner as other absentee ballots.

Status as an ongoing absentee voter shall be terminated upon any of the following events:

- (1) The written request of the voter;
- (2) The death or disqualification of the voter;
- (3) The cancellation of the voter's registration record;
- (4) The return of an ongoing absentee ballot as undeliverable; or

(5) Upon placing a voter on inactive status under RCW 29A.08.620. [2003 c 111 § 1004. Prior: 2001 c 241 § 4; 1999 c 298 § 12; 1993 c 418 § 1; 1991 c 81 § 30; 1987 c 346 § 10; 1986 c 22 § 1; 1985 c 273 § 2. Formerly RCW 29.36.240, 29.36.013.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**29A.40.050 Special ballots.** (1) As provided in this section, county auditors shall provide special absentee ballots to be used for state primary or state general elections. An auditor shall provide a special absentee ballot only to a registered voter who completes an application stating that she or he will be unable to vote and return a regular absentee ballot by normal mail delivery within the period provided for regular absentee ballots.

The application for a special absentee ballot may not be filed earlier than ninety days before the applicable state primary or general election. The special absentee ballot will list the offices and measures, if known, scheduled to appear on the state primary or general election ballot. The voter may use the special absentee ballot to write in the name of any eligible candidate for each office and vote on any measure.

(2) With any special absentee ballot issued under this section, the county auditor shall include a listing of any candidates who have filed before the time of the application for offices that will appear on the ballot at that primary or election and a list of any issues that have been referred to the ballot before the time of the application.

(3) Write-in votes on special absentee ballots must be counted in the same manner provided by law for the counting of other write-in votes. The county auditor shall process and canvass the special absentee ballots provided under this section in the same manner as other absentee ballots under this chapter and chapter 29A.60 RCW.

(4) A voter who requests a special absentee ballot under this section may also request an absentee ballot under RCW 29A.40.020(4). If the regular absentee ballot is properly voted and returned, the special absentee ballot is void, and the county auditor shall reject it in whole when special absentee ballots are canvassed. [2003 c 111 § 1005; 2001 c 241 § 5; 1991 c 81 § 35; 1987 c 346 § 21. Formerly RCW 29.36.250, 29.36.170.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

#### **29A.40.061 Issuance of ballot and other materials.**

(1) The county auditor shall issue an absentee ballot for the primary or election for which it was requested, or for the next occurring primary or election when ongoing absentee status has been requested if the information contained in a request for an absentee ballot or ongoing absentee status received by the county auditor is complete and correct and the applicant is qualified to vote under federal or state law. Otherwise, the county auditor shall notify the applicant of the reason or reasons why the request cannot be accepted. Whenever two or more candidates have filed for the position of precinct committee officer for the same party in the same precinct, the contest for that position must be presented to absentee voters from that precinct by either including the contest on the regular absentee ballot or a separate absentee ballot. The ballot must provide space designated for writing in the name of additional candidates.

(2) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, by mail, electronically, or in person. The county auditor shall keep a record of each replacement ballot provided under this subsection.

(3) A copy of the state voters' pamphlet must be sent to registered voters temporarily outside the state, out-of-state voters, overseas voters, and service voters along with the absentee ballot if such a pamphlet has been prepared for the primary or election and is available to the county auditor at the time of mailing. The county auditor shall mail all absentee ballots and related material to voters outside the territorial limits of the United States and the District of Columbia under 39 U.S.C. 3406. [2004 c 271 § 134.]

**29A.40.070 Date ballots available, mailed.** (1) Except where a recount or litigation under \*RCW 29A.68.010 is pending, the county auditor shall have sufficient absentee ballots available for absentee voters of that county at least twenty days before any primary, general election, or special election. The county auditor must mail absentee ballots to each voter for whom the county auditor has received a request nineteen days before the primary or election at least eighteen days before the primary or election. For a request for an absentee ballot received after the nineteenth day before

the primary or election, the county auditor shall make every effort to mail ballots within one business day, and shall mail the ballots within two business days.

(2) The county auditor shall make every effort to mail ballots to overseas and service voters earlier than eighteen days before a primary or election.

(3) Each county auditor shall certify to the office of the secretary of state the dates the ballots prescribed in subsection (1) of this section were available and mailed.

(4) If absentee ballots will not be available or mailed as prescribed in subsection (1) of this section, the county auditor shall immediately certify to the office of the secretary of state when absentee ballots will be available and mailed. Copies of this certification must be provided to the county canvassing board, the press, jurisdictions with issues on the ballot in the election, and any candidates.

(5) If absentee ballots were not available or mailed as prescribed in subsection (1) of this section, for a reason other than a recount or litigation, the county auditor, in consultation with the certification and training program of the office of the secretary of state, shall submit a report to the office of the secretary of state outlining why the deadline was missed and what corrective actions will be taken in future elections to ensure that absentee ballots are available and mailed as prescribed in subsection (1) of this section.

(6) Failure to have absentee ballots available and mailed as prescribed in subsection (1) of this section does not by itself provide a basis for an election contest or other legal challenge to the results of a primary, general election, or special election. [2004 c 266 § 13. Prior: 2003 c 162 § 2; 2003 c 111 § 1007; prior: 1987 c 54 § 1; 1977 ex.s. c 361 § 56; 1965 ex.s. c 103 § 5; 1965 c 9 § 29.30.075; prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.36.270, 29.30.075.]

**\*Reviser's note:** RCW 29A.68.010 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.68.011.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Policy—2003 c 162:** "It is the policy of the state of Washington that individuals voting absentee and mail ballots receive their ballots in a timely and consistent manner before each election. Since many voters in Washington state have come to rely upon absentee and mail voting, mailing the ballots in a timely manner is critical in order to maximize participation by every eligible voter." [2003 c 162 § 1.]

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.40.080 Delivery of ballot, qualifications for.** The delivery of an absentee ballot for any primary or election shall be subject to the following qualifications:

(1) Only the registered voter personally, or a member of the registered voter's immediate family may pick up an absentee ballot for the voter at the office of the issuing officer unless the voter is a resident of a health care facility, as defined by RCW 70.37.020(3), on election day and applies by messenger for an absentee ballot. In this latter case, the messenger may pick up the voter's absentee ballot.

(2) Except as noted in subsection (1) of this section, the issuing officer shall mail or deliver the absentee ballot directly to each applicant. [2003 c 111 § 1008. Prior: 2001 c 241 § 7; 1984 c 27 § 2; 1965 c 9 § 29.36.035; prior: 1963 ex.s. c 23 § 4. Formerly RCW 29.36.280, 29.36.035.]

**29A.40.091 Envelopes and instructions.** The county auditor shall send each absentee voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The instructions that accompany an absentee ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The larger return envelope must contain a declaration by the absentee voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The return envelope must provide space for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. For out-of-state voters, overseas voters, and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. The voter must be instructed to either return the ballot to the county auditor by whom it was issued or attach sufficient first class postage, if applicable, and mail the ballot to the appropriate county auditor no later than the day of the election or primary for which the ballot was issued.

If the county auditor chooses to forward absentee ballots, he or she must include with the ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the information is not included, the envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed. [2004 c 271 § 135.]

**29A.40.100 Observers.** County auditors must request that observers be appointed by the major political parties to be present during the processing of absentee ballots. The absence of the observers will not prevent the processing of absentee ballots if the county auditor has requested their presence. [2003 c 111 § 1010. Prior: 2001 c 241 § 9. Formerly RCW 29.36.300.]

**29A.40.110 Processing incoming ballots.** (1) The opening and subsequent processing of return envelopes for any primary or election may begin on or after the tenth day before the primary or election. The tabulation of absentee ballots must not commence until after 8:00 p.m. on the day of the primary or election.

(2) After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until after 8:00 p.m. of the day of the primary or election. Absentee ballots that are to be tabulated on an electronic vote tallying system may be taken from the inner envelopes and all

the normal procedural steps may be performed to prepare these ballots for tabulation.

(3) Before opening a returned absentee ballot, the canvassing board, or its designated representatives, shall examine the postmark, statement, and signature on the return envelope that contains the security envelope and absentee ballot. They shall verify that the voter's signature on the return envelope is the same as the signature of that voter in the registration files of the county. For registered voters casting absentee ballots, the date on the return envelope to which the voter has attested determines the validity, as to the time of voting for that absentee ballot if the postmark is missing or is illegible. For out-of-state voters, overseas voters, and service voters, the date on the return envelope to which the voter has attested determines the validity as to the time of voting for that absentee ballot. For any absentee ballot, a variation between the signature of the voter on the return envelope and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same. [2003 c 111 § 1011. Prior: 2001 c 241 § 10; 1991 c 81 § 32; 1987 c 346 § 14; 1977 ex.s. c 361 § 78; 1973 c 140 § 1; 1965 c 9 § 29.36.060; prior: 1963 ex.s. c 23 § 5; 1955 c 167 § 7; 1955 c 50 § 2; prior: 1933 ex.s. c 41 § 5, part; 1921 c 143 § 6, part; 1917 c 159 § 4, part; 1915 c 189 § 4, part; RRS § 5285, part. Formerly RCW 29.36.310, 29.36.060.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

*County canvassing board, meeting to process absentee ballots, canvass returns: RCW 29A.60.160.*

**29A.40.120 Report of count.** The absentee ballots must be reported at a minimum on a congressional and legislative district basis. Absentee ballots may be counted by congressional or legislative district or by individual precinct, except as required under RCW 29A.60.230(2).

These returns must be added to the total of the votes cast at the polling places. [2003 c 111 § 1012. Prior: 2001 c 241 § 11; 1990 c 262 § 2; 1987 c 346 § 15; 1974 ex.s. c 73 § 2; 1965 c 9 § 29.36.070; prior: 1955 c 50 § 3; prior: 1933 ex.s. c 41 § 5, part; 1921 c 143 § 6, part; 1917 c 159 § 4, part; 1915 c 189 § 4, part; RRS § 5285, part. Formerly RCW 29.36.320, 29.36.070.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**29A.40.130 Record of requests—Public access.** Each county auditor shall maintain in his or her office, open for public inspection, a record of the requests he or she has received for absentee ballots under this chapter.

The information from the requests shall be recorded and lists of this information shall be available no later than twenty-four hours after their receipt.

This information about absentee voters shall be available according to the date of the requests and by legislative district. It shall include the name of each applicant, the address and precinct in which the voter maintains a voting residence, the date on which an absentee ballot was issued to this voter,

if applicable, the type of absentee ballot, and the address to which the ballot was or is to be mailed, if applicable.

The auditor shall make copies of these records available to the public for the actual cost of production or copying. [2003 c 111 § 1013. Prior: 1991 c 81 § 33; 1987 c 346 § 17; 1973 1st ex.s. c 61 § 1. Formerly RCW 29.36.340, 29.36.097.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**29A.40.140 Challenges.** The qualifications of any absentee voter may be challenged at the time the signature on the return envelope is verified and the ballot is processed by the canvassing board. The board has the authority to determine the legality of any absentee ballot challenged under this section. Challenged ballots must be handled in accordance with chapter 29A.08 RCW. [2003 c 111 § 1014. Prior: 2001 c 241 § 13; 1987 c 346 § 18; 1965 c 9 § 29.36.100; prior: 1917 c 159 § 5; 1915 c 189 § 5; RRS § 5286. Formerly RCW 29.36.350, 29.36.100.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

#### 29A.40.150 Out-of-state, overseas, service voters.

The secretary of state shall produce and furnish envelopes and instructions for out-of-state voters, overseas voters, and service voters to the county auditors. [2003 c 111 § 1015; 1993 c 417 § 7; 1987 c 346 § 19; 1983 1st ex.s. c 71 § 8. Formerly RCW 29.36.360, 29.36.150.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

### Chapter 29A.44 RCW

#### POLLING PLACE ELECTIONS AND POLL WORKERS

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##### GENERAL PROVISIONS

**29A.44.010 Interference with voter prohibited.** No person may interfere with a voter in any way within the polling place. This does not prevent the voter from receiving assistance in preparing his or her ballot as provided in RCW 29A.44.240. [2003 c 111 § 1101. Prior: 1990 c 59 § 39; 1965 c 9 § 29.51.010; prior: 1907 c 130 § 2, part; 1889 p 408 § 21, part; RRS § 5278, part. Formerly RCW 29.51.010.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.44.020 List of who has and who has not voted.** At any election, general or special, or at any primary, any political party or committee may designate a person other than a precinct election officer, for each polling place to check a list of registered voters of the precinct to determine who has and who has not voted. The lists must be furnished by the party or committee concerned. [2003 c 111 § 1102; 1977 ex.s. c 361 § 83; 1965 c 9 § 29.51.125. Prior: 1963 ex.s. c 24 § 1. Formerly RCW 29.51.125.]

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

*"Major political party" defined:* RCW 29A.04.086.

*Poll books—As public records—Copies to representatives of major political parties:* RCW 29A.08.720.

**29A.44.030 Taking papers into voting booth.** (*Effective until January 1, 2005.*) Any voter may take into the voting booth or voting device any printed or written material to assist in casting his or her vote. The voter shall not use this material to electioneer and shall remove the material when he or she leaves the polls. [2003 c 111 § 1103. Prior: 1990 c 59 § 47; 1965 c 9 § 29.51.180; prior: 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. Formerly RCW 29.51.180.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.44.030 Taking papers into voting booth.** (*Effective January 1, 2005.*) Any voter may take into the voting booth or voting device any printed or written material to assist in casting his or her vote. The voter shall not use this material to electioneer and shall remove the material when he or she leaves the polls or the disability access voting location. [2004 c 267 § 317; 2003 c 111 § 1103. Prior: 1990 c 59 § 47; 1965 c 9 § 29.51.180; prior: 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. Formerly RCW 29.51.180.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.44.040 Official ballots—Vote only once—Incorrectly marked ballots.** (*Effective until January 1, 2005.*) No ballots may be used in any polling place other than those prepared by the county auditor. No voter is entitled to vote more than once at a primary or a general or special election, except that if a voter incorrectly marks a ballot, he or she may return it and be issued a new ballot. The precinct election officers shall void the incorrectly marked ballot and return it to the county auditor. [2003 c 111 § 1104. Prior: 1990 c 59 § 48; 1965 c 9 § 29.51.190; prior: (i) 1889 p 410 § 25; RRS § 5290. (ii) 1935 c 26 § 3, part; 1921 c 177 § 1, part; 1919 c 163 § 15, part; 1917 c 71 § 2, part; 1909 c 82 § 4, part; 1907 c 209 § 12, part; RRS § 5189, part. (iii) 1895 c 156 § 7, part; 1889 p 409 § 22, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5279, part. (iv) 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part. (v) 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. Formerly RCW 29.51.190.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.44.040 Official ballots—Vote only once—Incorrectly marked ballots.** (*Effective January 1, 2005.*) No ballots may be used in any polling place or disability access voting location other than those prepared by the county auditor. No voter is entitled to vote more than once at a primary or a general or special election, except that if a voter incorrectly marks a ballot, he or she may return it and be issued a new ballot. The precinct election officers shall void the incorrectly marked ballot and return it to the county auditor. [2004 c 267 § 318; 2003 c 111 § 1104. Prior: 1990 c 59 § 48; 1965 c 9 § 29.51.190; prior: (i) 1889 p 410 § 25; RRS § 5290. (ii) 1935 c 26 § 3, part; 1921 c 177 § 1, part; 1919 c 163 § 15, part; 1917 c 71 § 2, part; 1909 c 82 § 4, part; 1907 c 209 § 12, part; RRS § 5189, part. (iii) 1895 c 156 § 7, part; 1889 p 409 § 22, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5279, part. (iv) 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part. (v) 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. Formerly RCW 29.51.190.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.44.050 Ballot pick up, delivery, and transportation.** (1) At the direction of the county auditor, a team or teams composed of a representative of at least two major political parties shall stop at designated polling places and pick up the sealed containers of voted, untallied ballots for delivery to the counting center. There may be more than one

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delivery from each polling place. Two precinct election officials, representing two major political parties, shall seal the voted ballots in containers furnished by the county auditor and properly identified with his or her address with uniquely prenumbered seals.

(2) At the counting center or the collection stations where the sealed ballot containers are delivered by the designated representatives of the major political parties, the county auditor or a designated representative of the county auditor shall receive the sealed ballot containers, record the time, date, precinct name or number, and seal number of each ballot container. [2003 c 111 § 1105. Prior: 1999 c 158 § 10; 1990 c 59 § 31; 1977 ex.s. c 361 § 72. Formerly RCW 29.54.037, 29.34.157.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.44.060 Voting booths.** The county auditor shall provide in each polling place a sufficient number of voting booths or voting devices along with any supplies necessary to enable the voter to mark or register his or her choices on the ballot and within which the voters may cast their votes in secrecy. [2003 c 111 § 1106. Prior: 1999 c 158 § 4; 1994 c 57 § 51; 1990 c 59 § 35; 1965 c 9 § 29.48.010; prior: 1907 c 130 § 2, part; 1889 p 408 § 21, part; RRS § 5278, part. Formerly RCW 29.48.010.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.44.070 Opening and closing polls.** At all primaries and elections, general or special, in all counties the polls must be kept open from seven o'clock a.m. to eight o'clock p.m. All qualified electors who are at the polling place at eight o'clock p.m., shall be allowed to cast their votes. [2003 c 111 § 1107. Prior: 1973 c 78 § 1; 1965 ex.s. c 101 § 13; 1965 c 9 § 29.13.080; prior: (i) 1921 c 61 § 7; RRS § 5149. (ii) 1921 c 170 § 5; RRS § 5154. (iii) 1921 c 178 § 7; 1907 c 235 § 1; 1889 p 413 § 35; RRS § 5319. (iv) 1919 c 163 § 16, part; 1907 c 209 § 17, part; RRS § 5194, part. Formerly RCW 29.13.080.]

*District elections, hours, see particular districts.*

*Employer's duty to provide time to vote: RCW 49.28.120.*

**29A.44.080 Polls open continuously—Announcement of closing.** The polls for a precinct shall remain open continuously until the time specified under RCW 29A.44.070. At that time, the precinct election officers shall announce that the polls for that precinct are closed. [2003 c 111 § 1108. Prior: 1990 c 59 § 50; 1965 c 9 § 29.51.240; prior: 1919 c 163 § 16, part; 1907 c 209 § 17, part; RRS § 5194, part. Formerly RCW 29.51.240.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.44.090 Double voting prohibited.** A registered voter shall not be allowed to vote in the precinct in which he or she is registered at any election or primary for which that

voter has cast an absentee ballot. A registered voter who has requested an absentee ballot for a primary or special or general election but chooses to vote at the voter's precinct polling place in that primary or election shall cast a provisional ballot. The canvassing board shall not count the ballot if it finds that the voter has also voted by absentee ballot in that primary or election. [2003 c 111 § 1109; 1987 c 346 § 13; 1965 c 9 § 29.36.050. Prior: 1955 c 167 § 6; prior: 1933 ex.s. c 41 § 4; 1921 c 143 § 5; RRS § 5284. Formerly RCW 29.51.185, 29.36.050.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

## PROCEDURES

**29A.44.110 Delivery of supplies.** No later than the day before a primary or election, the county auditor shall provide to the inspector or one of the judges of each precinct or to one of the inspectors of a polling place where more than one precinct will be voting, all of the ballots, precinct lists of registered voters, and other supplies necessary for conducting the election or primary. [2003 c 111 § 1110. Prior: 1990 c 59 § 36; 1977 ex.s. c 361 § 81; 1971 ex.s. c 202 § 40; 1965 c 9 § 29.48.030; prior: (i) 1921 c 178 § 8; Code 1881 § 3078; 1865 p 34 § 3; RRS § 5322. (ii) 1919 c 163 § 20, part; 1895 c 156 § 9, part; 1889 p 411 § 28, part; RRS § 5293, part. (iii) 1907 c 209 § 20; RRS § 5196. (iv) 1913 c 138 § 29, part; RRS § 5425, part. (v) 1915 c 124 § 1; 1895 c 156 § 5; 1893 c 91 § 1; 1889 p 407 § 18; RRS § 5275. (vi) 1921 c 68 § 1, part; RRS § 5320, part. (vii) 1895 c 156 § 6, part; 1889 p 407 § 20; RRS § 5277, part. (viii) 1895 c 156 § 2, part; Code 1881 § 3074; 1865 p 32 § 8; RRS § 5164, part. (ix) 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. (x) 1935 c 20 § 5, part; 1921 c 178 § 6, part; 1915 c 114 § 2, part; 1913 c 58 § 7, part; RRS § 5306, part. (xi) 1854 p 67 § 16; No RRS. (xii) 1854 p 67 § 17, part; No RRS. (xiii) 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part. (xiv) 1915 c 14 § 6, part; 1913 c 58 § 11, part; RRS § 5311, part. (xv) 1933 c 1 § 10, part; RRS § 5114-10, part. (xvi) Code 1881 § 3093, part; RRS § 5338, part. (xvii) 1903 c 85 § 1, part; RRS § 3339, part. Formerly RCW 29.48.030.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.44.120 Delivery of precinct lists to polls.** Upon closing of the registration files preceding an election, the county auditor shall deliver the precinct lists of registered voters to the inspector or one of the judges of each precinct or group of precincts located at the polling place before the polls open. [2003 c 111 § 1111. Prior: 1994 c 57 § 19; 1971 ex.s. c 202 § 21; 1965 c 9 § 29.07.170; prior: 1957 c 251 § 8; prior: 1933 c 1 § 10, part; RRS § 5114-10, part; prior: 1919 c 163 § 11, part; 1915 c 16 § 13, part; 1905 c 171 § 4, part; 1889 p 417 § 13, part; RRS § 5131, part. Formerly RCW 29.07.170.]

**Severability—1994 c 57:** See note following RCW 10.64.021.

**29A.44.130 Additional supplies for paper ballots.** In precincts where votes are cast on paper ballots, the following

supplies, in addition to those specified in RCW 29A.44.110, must be provided:

(1) Two tally books in which the names of the candidates will be listed in the order in which they appear on the sample ballots and in each case have the proper party designation at the head thereof;

(2) Two certificates or two sample ballots prepared as blanks, for recording of the unofficial results by the precinct election officers. [2003 c 111 § 1112; 1977 ex.s. c 361 § 82. Formerly RCW 29.48.035.]

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.44.140 Voting and registration instructions and information.** (1) Each county auditor shall provide voting and registration instructions, printed in large type, to be conspicuously displayed at each polling place and permanent registration facility.

(2) The county auditor shall make information available for deaf persons throughout the state by telecommunications. [2003 c 111 § 1113. Prior: 1999 c 298 § 17; 1985 c 205 § 9. Formerly RCW 29.57.130.]

**Effective dates—1985 c 205:** See note following RCW 29A.16.140.

**29A.44.150 Time for arrival of officers.** The precinct election officers for each precinct shall meet at the designated polling place at the time set by the county auditor. [2003 c 111 § 1114. Prior: 1977 ex.s. c 361 § 80; 1965 c 9 § 29.48.020; prior: 1957 c 195 § 6; prior: 1913 c 58 § 12, part; RRS § 5312, part. Formerly RCW 29.48.020.]

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.44.160 Inspection of voting equipment.** Before opening the polls for a precinct, the voting equipment shall be inspected to determine if it has been properly prepared for voting. If the voting equipment is capable of direct tabulation of each voter's choices, the precinct election officers shall verify that no votes have been registered for any issue or office to be voted on at that primary or election. Any ballot box shall be carefully examined by the judges of election to determine that it is empty. The ballot box shall then be sealed or locked. The ballot box shall not be opened before the certification of the primary or election except in the manner and for the purposes provided under this title. [2003 c 111 § 1115. Prior: 1990 c 59 § 37; 1965 c 9 § 29.48.070; prior: 1854 p 67 § 17, part; No RRS. Formerly RCW 29.48.070.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.44.170 Flag.** At all primaries and elections the flag of the United States shall be conspicuously displayed in front of each polling place. [2003 c 111 § 1116. Prior: 1965 c 9 § 29.48.090; prior: 1921 c 68 § 1, part; RRS § 5320, part. Formerly RCW 29.48.090.]

**29A.44.180 Opening the polls.** The precinct election officers, immediately before they start to issue ballots or permit a voter to vote, shall announce at the place of voting that the polls for that precinct are open. [2003 c 111 § 1117.]

Prior: 1990 c 59 § 38; 1965 c 9 § 29.48.100; prior: Code 1881 § 3077; 1865 p 34 § 2; RRS § 5321. Formerly RCW 29.48.100.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

#### **29A.44.190 Voting devices—Periodic examination.**

The precinct election officers shall periodically examine the voting devices to determine if they have been tampered with. [2003 c 111 § 1118. Prior: 1990 c 59 § 45; 1965 c 9 § 29.51.150; prior: 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part. Formerly RCW 29.51.150.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

#### **29A.44.201 Issuing ballot to voter—Challenge.**

A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth or to operate a voting device. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter must be issued a nonpartisan ballot and each party ballot. The number of the ballot or the voter must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter. [2004 c 271 § 136.]

**29A.44.210 Signature required—Procedure if voter unable to sign name.** Any person desiring to vote at any primary or election is required to sign his or her name on the appropriate precinct list of registered voters. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter.

The precinct election officers shall then record the voter's name. [2003 c 111 § 1120; 1990 c 59 § 41; 1971 ex.s. c 202 § 41; 1967 ex.s. c 109 § 9; 1965 ex.s. c 156 § 5; 1965 c 9 § 29.51.060. Prior: 1933 c 1 § 24; RRS § 5114-24. Formerly RCW 29.51.060.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

*Forms, secretary of state to design—Availability to public:* RCW 29A.08.850.

*Poll books—As public records—Copies furnished, uses restricted:* RCW 29A.08.720.

**29A.44.220 Casting vote.** (Effective January 1, 2005.) On signing the precinct list of registered voters or being issued a ballot, the voter shall, without leaving the polling place or disability access location, proceed to one of the voting booths or voting devices to cast his or her vote. When county election procedures so provide, the election officers may tear off and retain the numbered stub from the ballot before delivering the ballot to the voter. If an election officer has not already done so, when the voter has finished, he or she shall either (1) remove the numbered stub from the ballot, place the ballot in the ballot box, and return the number to the election officers, or (2) deliver the entire ballot to the election officers, who shall remove the numbered stub from the ballot and place the ballot in the ballot box. If poll-site ballot counting devices are used, the voter shall put the ballot in the device. [2004 c 267 § 319; 2003 c 111 § 1121; 1990 c 59 § 43; 1988 c 181 § 4; 1965 ex.s. c 101 § 15; 1965 c 9 § 29.51.100. Prior: (i) 1947 c 77 § 2, part; 1895 c

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156 § 8, part; 1889 p 409 § 23, part; Rem. Supp. 1947 § 5288, part. (ii) 1889 p 410 § 24, part; RRS § 5289, part. Formerly RCW 29.51.100.]

**Reviser's note:** RCW 29A.44.220 was also repealed by 2004 c 271 § 193 without cognizance of its amendment by 2004 c 267 § 319. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.007.

**29A.44.220 Casting vote.** [2003 c 111 § 1121; 1990 c 59 § 43; 1988 c 181 § 4; 1965 ex.s. c 101 § 15; 1965 c 9 § 29.51.100. Prior: (i) 1947 c 77 § 2, part; 1895 c 156 § 8, part; 1889 p 409 § 23, part; Rem. Supp. 1947 § 5288, part. (ii) 1889 p 410 § 24, part; RRS § 5289, part. Formerly RCW 29.51.100.] Repealed by 2004 c 271 § 193.

**Reviser's note:** RCW 29A.44.220 was also amended by 2004 c 267 § 319 without cognizance of its repeal by 2004 c 271 § 193. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**29A.44.221 Casting vote.** On signing the precinct list of registered voters or being issued a ballot, the voter shall, without leaving the polling place or disability access location, proceed to one of the voting booths or voting devices to cast his or her vote. When county election procedures so provide, the election officers may tear off and retain the numbered stub from the ballot before delivering it to the voter. If an election officer has not already done so, when the voter has finished, he or she shall either (1) remove the numbered stub from the ballot, place the ballot in the ballot box, and return the number to the election officers, or (2) deliver the entire ballot to the election officers, who shall remove the numbered stub from the ballot and place the ballot in the ballot box. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter shall also return unvoted party ballots to the precinct election officers, who shall void the unvoted party ballots and return them to the county auditor. If poll-site ballot counting devices are used, the voter shall put the ballot in the device. [2004 c 271 § 137.]

**29A.44.231 Record of participation.** As each voter casts his or her vote, the precinct election officers shall insert in the poll books or precinct list of registered voters opposite that voter's name, a notation to credit the voter with having participated in that primary or election. No record may be made of a voter's party affiliation in a partisan primary. The precinct election officers shall record the voter's name so that a separate record is kept. [2004 c 271 § 138.]

*No link between voter and ballot choice:* RCW 29A.08.161.

**29A.44.240 Disabled voters.** (1) Voting shall be secret except to the extent necessary to assist sensory or physically disabled voters.

(2) If any voter declares in the presence of the election officers that because of sensory or physical disability he or she is unable to register or record his or her vote, he or she may designate a person of his or her choice or two election officers from opposite political parties to enter the voting machine booth with him or her and record his or her vote as he or she directs.

(3) A person violating this section is guilty of a misdemeanor. [2003 c 111 § 1123; 2003 c 53 § 180; 1981 c 34 § 1;

1965 ex.s. c 101 § 17; 1965 c 9 § 29.51.200. Prior: (i) 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part. (ii) 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. Former law: 1901 c 135 § 6; 1889 p 410 § 26. Formerly RCW 29.51.200.]

**Reviser's note:** This section was amended by 2003 c 53 § 180 and by 2003 c 111 § 1123, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

*Disabled voters, accessibility of polling places: Chapter 29A.16 RCW.*

**29A.44.250 Tabulation of paper ballots before close of polls.** (1) Paper ballots may be tabulated at the precinct polling place before the closing of the polls. The tabulation of ballots, paper or otherwise, shall be open to the public, but no persons except those employed and authorized by the county auditor may touch a ballot card or ballot container or operate vote tallying equipment.

(2) The results of the tabulation of paper ballots at the polls shall be delivered to the county auditor as soon as the tabulation is complete. [2003 c 111 § 1124; 1990 c 59 § 54. Formerly RCW 29.54.018.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

*Divulging ballot count: RCW 29A.84.730.*

**29A.44.260 Voters in polling place at closing time.** If at the time of closing the polls, there are any voters in the polling place who have not voted, they shall be allowed to vote after the polls have been closed. [2003 c 111 § 1125. Prior: 1990 c 59 § 51; 1965 c 9 § 29.51.250; prior: 1919 c 163 § 16, part; 1907 c 209 § 17, part; RRS § 5194, part. Formerly RCW 29.51.250.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.44.265 Provisional ballot after polls close.** (1) An individual who votes in an election for federal office as a result of a federal or state court order or any other order extending the time for closing the polls, may vote in that election only by casting a provisional ballot. As to court orders extending the time for closing the polls, this section does not apply to any voters who were present in the polling place at the statutory closing time and as a result are permitted to vote under RCW 29A.44.070. This section does not, by itself, authorize any court to order that any individual be permitted to vote or to extend the time for closing the polls, but this section is intended to comply with 42 U.S.C. Sec. 15482(c) with regard to federal elections.

(2) Any ballot cast under subsection (1) of this section must be separated and held apart from other provisional ballots cast by those not affected by the order. [2004 c 267 § 501.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.44.270 Unused ballots.** At each precinct immediately after the last qualified voter has cast his or her vote, the precinct election officers shall render unusable and secure in a container all unused ballots for that precinct and return

them to the county auditor. [2003 c 111 § 1126; 1990 c 59 § 52; 1977 ex.s. c 361 § 84; 1965 ex.s. c 101 § 6; 1965 c 9 § 29.54.010. Prior: 1893 c 91 § 2; RRS § 5332. Formerly RCW 29.54.010.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.44.280 Duties of election officers after unused ballots secure.** Immediately after the unused ballots are secure, the precinct election officers shall count the number of voted ballots and make a record of any discrepancy between this number and the number of voters who signed the poll book for that precinct or polling place, complete the certifications in the poll book, prepare the ballots for transfer to the counting center if necessary, and seal the voting devices. [2003 c 111 § 1127; 1990 c 59 § 53. Formerly RCW 29.54.015.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.44.290 Return of precinct lists after election—Public records.** The precinct list of registered voters for each precinct or group of precincts delivered to the precinct election officers for use on the day of an election held in that precinct shall be returned by them to the county auditor upon the completion of the count of the votes cast in the precinct at that election. While in possession of the county auditor they shall be open to public inspection under such reasonable rules and regulations as may be prescribed therefor. [2003 c 111 § 1128. Prior: 1994 c 57 § 20; 1971 ex.s. c 202 § 22; 1965 c 9 § 29.07.180; prior: 1933 c 1 § 8, part; RRS § 5114-8, part; prior: 1919 c 163 § 7, part; 1915 c 16 § 7, part; 1905 c 171 § 3, part; 1901 c 135 § 3, part; 1893 c 45 § 2, part; 1889 p 415 § 7, part; RRS § 5125, part. Formerly RCW 29.07.180.]

**Severability—1994 c 57:** See note following RCW 10.64.021.

## POLL-SITE BALLOT COUNTING DEVICES

**29A.44.310 Initialization.** In precincts where poll-site ballot counting devices are used the election officers, before initializing the device for voting, shall proceed as follows:

(1) They shall see that the device is placed where it can be conveniently attended by the election officers and conveniently operated by the voters;

(2) They shall see whether the number or other designating mark on the device's seal agrees with the control number provided by the elections department. If they do not agree they shall at once notify the elections department and delay initializing the device. The polls may be opened pending reexamination of the device;

(3) If the numbers do agree, they shall proceed to initialize the device and see whether the public counter registers "000." If the counter is found to register a number other than "000," one of the judges shall at once set the counter at "000" and confirm that the ballot box is empty;

(4) Before processing any ballots through a poll-site ballot counting device a zero report must be produced. The inspector and at least one of the judges shall carefully verify that zero ballots have been run through the poll-site ballot

counting device and that all vote totals for each office are zero. If the totals are not zero, the inspector shall either reset the device to zero or contact the elections department to reset the device and allow voting to continue using the auxiliary or emergency device. [2003 c 111 § 1129. Prior: 1999 c 158 § 6; 1965 c 9 § 29.48.080; prior: 1957 c 195 § 7; prior: 1913 c 58 § 12, part; RRS § 5312, part. Formerly RCW 29.48.080.]

**29A.44.320 Delivery and sealing.** Whenever poll-site ballot counting devices are used, the devices may either be included with the supplies required in RCW 29A.44.110 or they may be delivered to the polling place separately. All poll-site ballot counting devices must be sealed with a unique numbered seal at the time of final preparation and logic and accuracy testing. A log must be made of all seal numbers and device numbers used. [2003 c 111 § 1130. Prior: 1999 c 158 § 5. Formerly RCW 29.48.045.]

**29A.44.330 Memory packs.** The programmed memory pack for each poll-site ballot counting device must be sealed into the device during final preparation and logic and accuracy testing. Except in the case of a device breakdown, the memory pack must remain sealed in the device until after the polls have closed and all reports and telephonic or electronic transfer of results are completed. After all reporting is complete the precinct election officers responsible for transferring the sealed voted ballots under RCW 29A.60.110 shall ensure that the memory pack is returned to the elections department. If the entire poll-site ballot counting device is returned, the memory pack must remain sealed in the device. If the poll-site ballot counting device is to remain at the polling place, the precinct election officer shall break the seal on the device and remove the memory pack and seal and return it along with the irregularly voted ballots and special ballots to the elections department on election day. [2003 c 111 § 1131. Prior: 1999 c 158 § 11. Formerly RCW 29.54.093.]

*Results from poll-site ballot counting devices: RCW 29A.60.060.*

**29A.44.340 Incorrectly marked ballots.** Each poll-site ballot counting device must be programmed to return all blank ballots and overvoted ballots to the voter for private reexamination. The election officer shall take whatever steps are necessary to ensure that the secrecy of the ballot is maintained. The precinct election officer shall provide information and instruction on how to properly mark the ballot. The voter may remark the original ballot, may request a new ballot under RCW 29A.44.040, or may choose to complete a special ballot envelope and return the ballot as a special ballot. [2003 c 111 § 1132. Prior: 1999 c 158 § 7. Formerly RCW 29.51.115.]

**29A.44.350 Failure of device.** (*Effective until January 1, 2005.*) If a poll-site ballot counting device fails to operate at any time during polling hours, voting must continue, and the ballots must be deposited for later tabulation in a secure ballot compartment separate from the tabulated ballots. [2003 c 111 § 1133. Prior: 1999 c 158 § 8. Formerly RCW 29.51.155.]

(2004 Ed.)

**29A.44.350 Failure of device.** (*Effective January 1, 2005.*) If a poll-site ballot counting device fails to operate at any time during polling hours or disability access voting hours, voting must continue, and the ballots must be deposited for later tabulation in a secure ballot compartment separate from the tabulated ballots. [2004 c 267 § 320; 2003 c 111 § 1133. Prior: 1999 c 158 § 8. Formerly RCW 29.51.155.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

## POLL WORKERS

### **29A.44.410 Appointment of judges and inspector.**

(1) At least ten days prior to any primary or election, general or special, the county auditor shall appoint one inspector and two judges of election for each precinct (or each combination of precincts temporarily consolidated as a single precinct for that primary or election), other than those precincts designated as vote-by-mail precincts pursuant to RCW 29A.48.010. Except as provided in subsection (3) of this section, the persons appointed shall be among those whose names are contained on the lists furnished under RCW 29A.44.430 by the chairpersons of the county central committees of the political parties entitled to representation thereon. Such precinct election officers, whenever possible, should be residents of the precinct in which they serve.

(2) The county auditor may delete from the lists of names submitted to the auditor by the chairpersons of the county central committees under RCW 29A.44.430: (a) The names of those persons who indicate to the auditor that they cannot or do not wish to serve as precinct election officers for the primary or election or who otherwise cannot so serve; and (b) the names of those persons who lack the ability to conduct properly the duties of an inspector or judge of election after training in that proper conduct has been made available to them by the auditor. The lists which are submitted to the auditor in a timely manner under RCW 29A.44.430, less the deletions authorized by this subsection, constitute the official nomination lists for inspectors and judges of election.

(3) If the number of persons whose names are on the official nomination list for a political party is not sufficient to satisfy the requirements of subsection (4) of this section as it applies to that political party or is otherwise insufficient to provide the number of precinct election officials required from that political party, the auditor shall notify the chair of the party's county central committee regarding the deficiency. The chair may, within five business days of being notified by the auditor, add to the party's nomination list the names of additional persons belonging to that political party who are qualified to serve on the election boards. To the extent that, following this procedure, the number of persons whose names appear on the official nomination lists of the political parties is insufficient to provide the number of election inspectors and judges required for a primary or election, the auditor may appoint a properly trained person whose name does not appear on such a list as an inspector or judge of election for a precinct.

(4) The county auditor shall designate the inspector and one judge in each precinct from that political party which polled the highest number of votes in the county for its candidate for president at the last preceding presidential election and one judge from that political party polling the next high-

est number of votes in the county for its candidate for president at the same election. The provisions of this subsection apply only if the number of names on the official nomination list for inspectors and judges of election for a political party is sufficient to satisfy the requirements imposed by this subsection.

(5) Except as provided in RCW 29A.44.440 for the filling of vacancies, this shall be the exclusive method for the appointment of inspectors and judges to serve as precinct election officers at any primary or election, general or special, and shall supersede the provisions of any and all other statutes, whether general or special in nature, having different requirements. [2003 c 111 § 1134; 1991 c 106 § 1; 1983 1st ex.s. c 71 § 7; 1965 ex.s. c 101 § 1; 1965 c 9 § 29.45.010. Prior: (i) 1935 c 165 § 2, part; RRS § 5147-1, part. (ii) Code 1881 § 3068, part; 1865 p 30 § 2, part; RRS § 5158, part. (iii) 1907 c 209 § 15, part; RRS § 5192, part. (iv) 1895 c 156 § 6, part; 1889 p 407 § 20, part; RRS § 5277, part. (v) 1947 c 182 § 1, part; Rem. Supp. 1947 § 5166-10, part; prior: 1945 c 164 § 3, part; 1941 c 180 § 1, part; 1935 c 5 § 1, part; 1933 ex.s. c 29 § 1, part; prior: 1933 c 79 § 1, part; 1927 c 279 § 2, part; 1923 c 53 § 3, part; 1921 c 61 § 5, part; Rem. Supp. 1945 § 5147, part. Formerly RCW 29.45.010.]

**29A.44.420 Appointment of clerks—Party representation—Hour to report.** At the same time the officer having jurisdiction of the election appoints the inspector and two judges as provided in RCW 29A.44.410, he or she may appoint one or more persons to act as clerks if in his or her judgment such additional persons are necessary, except that in precincts in which voting machines are used, the judges of election shall perform the duties required to be performed by clerks.

Each clerk appointed shall represent a major political party. The political party representation of a single set of precinct election officers shall, whenever possible, be equal but, in any event, no single political party shall be represented by more than a majority of one at each polling place.

The election officer having jurisdiction of the election may designate at what hour the clerks shall report for duty. The hour may vary among the precincts according to the judgment of the appointing officer. [2003 c 111 § 1135; 1965 ex.s. c 101 § 2; 1965 c 9 § 29.45.020. Prior: 1955 c 168 § 4; prior: (i) 1915 c 114 § 4, part; 1913 c 58 § 9, part; RRS § 5308, part. (ii) 1895 c 156 § 1, part; Code 1881 § 3069, part; 1865 p 31 § 3, part; RRS § 5159, part. Formerly RCW 29.45.020.]

**29A.44.430 Nomination.** The precinct committee officer of each major political party shall certify to the officer's county chair a list of those persons belonging to the officer's political party qualified to act upon the election board in the officer's precinct.

By the first day of June each year, the chair of the county central committee of each major political party shall certify to the officer having jurisdiction of the election a list of those persons belonging to the county chair's political party in each precinct who are qualified to act on the election board therein.

The county chair shall compile this list from the names certified by the various precinct committee officers unless no names or not a sufficient number of names have been certified from a precinct, in which event the county chair may include therein the names of qualified members of the county chair's party selected by the county chair. The county chair shall also have the authority to substitute names of persons recommended by the precinct committee officers if in the judgment of the county chair such persons are not qualified to serve as precinct election officers. [2003 c 111 § 1136; 1991 c 106 § 2; 1987 c 295 § 16; 1965 ex.s. c 101 § 3; 1965 c 9 § 29.45.030. Prior: (i) 1907 c 209 § 15, part; RRS § 5192, part. (ii) 1935 c 165 § 2, part; RRS § 5147-1, part. Formerly RCW 29.45.030.]

**29A.44.440 Vacancies—How filled—Inspector's authority.** If no election officers have been appointed for a precinct, or if at the hour for opening the polls none of those appointed is present at the polling place therein, the voters present may appoint the election board for that precinct. One of the judges may perform the duties of clerk of election. The inspector shall have the power to fill any vacancy that may occur in the board of judges, or by absence or refusal to serve of either of the clerks after the polls shall have been opened. [2003 c 111 § 1137. Prior: 1965 c 9 § 29.45.040; prior: (i) Code 1881 § 3075, part; 1865 p 32 § 9, part; RRS § 5165, part. (ii) Code 1881 § 3068, part; 1865 p 30 § 2, part; RRS § 5158, part. (iii) 1907 c 209 § 15, part; RRS § 5192, part. Formerly RCW 29.45.040.]

**29A.44.450 One set of precinct election officers, exceptions—Counting board—Receiving board.** There shall be but one set of election officers at any one time in each precinct except as provided in this section.

In every precinct using paper ballots having two hundred or more registered voters there shall be appointed, and in every precinct having less than two hundred registered voters there may be appointed, at a state primary or state general election, two or more sets of precinct election officers as provided in RCW \*29A.04.215 and 29A.44.410. The officer in charge of the election may appoint one or more counting boards at his or her discretion, when he or she decides that because of a long or complicated ballot or because of the number of expected voters, there is need of additional counting board or boards to improve the speed and accuracy of the count.

In making such appointments, one or more sets of precinct election officers shall be designated as the counting board or boards, the first of which shall consist of an inspector, two judges, and a clerk and the second set, if activated, shall consist of two judges and two clerks. The duties of the counting board or boards shall be the count of ballots cast and the return of the election records and supplies to the officer having jurisdiction of the election.

One set of precinct election officers shall be designated as the receiving board which shall have all other powers and duties imposed by law for such elections. Nothing in this section prevents the county auditor from appointing relief or replacement precinct election officers at any time during election day. Relief or replacement precinct election officers

must be of the same political party as the officer they are relieving or replacing. [2003 c 111 § 1138; 1994 c 223 § 91; 1973 c 102 § 2; 1965 ex.s. c 101 § 4; 1965 c 9 § 29.45.050. Prior: 1955 c 148 § 2; prior: (i) 1923 c 53 § 4, part; 1921 c 61 § 6, part; RRS § 5148, part. (ii) 1921 c 170 § 4, part; RRS § 5153, part. Formerly RCW 29.45.050.]

**\*Reviser's note:** RCW 29A.04.215 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.04.216.

**29A.44.460 Duties—Generally.** The inspector and judges of election in each precinct shall conduct the elections therein and receive, deposit, and count the ballots cast thereat and make returns to the proper canvassing board or officer except that when two or more sets of precinct election officers are appointed as provided in RCW 29A.44.450, the ballots shall be counted by the counting board or boards as provided in RCW 29A.44.250, 29A.44.280, and 29A.84.730. [2003 c 111 § 1139. Prior: 1990 c 59 § 74; 1973 c 102 § 3; 1965 ex.s. c 101 § 5; 1965 c 9 § 29.45.060; prior: 1955 c 148 § 3; prior: (i) 1923 c 53 § 4, part; 1921 c 61 § 6, part; RRS § 5148, part. (ii) 1921 c 170 § 4, part; RRS § 5153, part. Formerly RCW 29.45.060.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.44.470 Application to other primaries or elections.** All of the provisions of RCW 29A.44.450 and 29A.44.460 relating to counting boards may be applied on an optional basis to any other primary or election, regular or special, at the discretion of the officer in charge of the election. [2003 c 111 § 1140. Prior: 1973 c 102 § 5. Formerly RCW 29.45.065.]

**29A.44.480 Inspector as chair—Authority.** The inspector shall be the chair of the board and after its organization administer all necessary oaths that may be required in the progress of the election. [2003 c 111 § 1141; 1965 c 9 § 29.45.070. Prior: Code 1881 § 3075, part; 1865 p 32 § 9, part; RRS § 5165, part. Formerly RCW 29.45.070.]

**29A.44.490 Oaths of officers required.** The inspector, judges, and clerks of election, before entering upon the duties of their offices, shall take and subscribe the prescribed oath or affirmation which shall be administered to them by any person authorized to administer oaths and verified under the hand of the person by whom such oath or affirmation is administered. If no such person is present, the inspector shall administer the same to the judges and clerks, and one of the judges shall administer the oath to the inspector.

The county auditor shall furnish two copies of the proper form of oath to each precinct election officer, one copy thereof, after execution, to be placed and transmitted with the election returns. [2003 c 111 § 1142. Prior: 1965 c 9 § 29.45.080; prior: (i) Code 1881 § 3070; 1865 p 31 § 4; RRS § 5160. (ii) 1895 c 156 § 2, part; Code 1881 § 3074, part; 1865 p 32 § 8, part; RRS § 5164, part. Formerly RCW 29.45.080.]

(2004 Ed.)

**29A.44.500 Oath of inspectors, form.** The following shall be the form of the oath or affirmation to be taken by each inspector:

"I, A B, do swear (or affirm) that I will duly attend to the ensuing election, during the continuance thereof, as an inspector, and that I will not receive any ballot or vote from any person other than such as I firmly believe to be entitled to vote at such election, without requiring such evidence of the right to vote as is directed by law; nor will I vexatiously delay the vote of, or refuse to receive, a ballot from any person whom I believe to be entitled to vote; but that I will in all things truly, impartially, and faithfully perform my duty therein to the best of my judgment and abilities; and that I am not, directly nor indirectly, interested in any bet or wager on the result of this election." [2003 c 111 § 1143. Prior: 1965 c 9 § 29.45.090; prior: Code 1881 § 3071; 1865 p 31 § 5; RRS § 5161. Formerly RCW 29.45.090.]

**29A.44.510 Oath of judges, form.** The following shall be the oath or affirmation of each judge:

"We, A B, do swear (or affirm) that we will as judges duly attend the ensuing election, during the continuance thereof, and faithfully assist the inspector in carrying on the same; that we will not give our consent to the receipt of any vote or ballot from any person, other than one whom we firmly believe to be entitled to vote at such election; and that we will make a true and perfect return of the said election and will in all things truly, impartially, and faithfully perform our duty respecting the same to the best of our judgment and abilities; and that we are not directly nor indirectly interested in any bet or wager on the result of this election." [2003 c 111 § 1144. Prior: 1965 c 9 § 29.45.100; prior: Code 1881 § 3072; 1865 p 31 § 6; RRS § 5162. Formerly RCW 29.45.100.]

**29A.44.520 Oath of clerks, form.** The following shall be the form of the oath to be taken by the clerks:

"We, and each of us, A B, do swear (or affirm) that we will impartially and truly write down the name of each elector who votes at the ensuing election, and also the name of the county and precinct wherein the elector resides; that we will carefully and truly write down the number of votes given for each candidate at the election as often as his name is read to us by the inspector and in all things truly and faithfully perform our duty respecting the same to the best of our judgment and abilities, and that we are not directly nor indirectly interested in any bet or wager on the result of this election." [2003 c 111 § 1145. Prior: 1965 c 9 § 29.45.110; prior: Code 1881 § 3073; 1865 p 32 § 7; RRS § 5163. Formerly RCW 29.45.110.]

**29A.44.530 Compensation.** The fees of officers of election shall be as follows:

To the judges and clerks of an election not less than the minimum hourly wage per hour as provided under RCW 49.46.020, the exact amount to be fixed by the respective boards of county commissioners for each county. To inspectors, the rate paid to judges and clerks plus an additional two hours' compensation. The precinct election officer picking up the election supplies and returning the election returns to the county auditor shall be entitled to additional compensa-

tion, the exact amount to be determined by the respective boards of county commissioners for each county. [2003 c 111 § 1146; 1971 ex.s. c 124 § 2; 1965 c 9 § 29.45.120. Prior: 1961 c 43 § 1; 1951 c 67 § 1; 1945 c 186 § 1; 1919 c 163 § 13; 1895 c 20 § 1; Code 1881 § 3151; 1866 p 8 § 9; 1865 p 52 § 12; Rem. Supp. 1945 § 5166. See also 1907 c 209 § 15; RRS § 5192. Formerly RCW 29.45.120.]

**Severability—1971 ex.s. c 124:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 124 § 3.]

## Chapter 29A.46 RCW

### DISABILITY ACCESS VOTING

#### Sections

29A.46.010	"Disability access voting location."
29A.46.020	"Disability access voting period."
29A.46.030	"In-person disability access voting."
29A.46.110	When allowed—Multiple voting prevention.
29A.46.120	Locations and hours.
29A.46.130	Compliance with federal and state requirements.
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29A.46.150	Prohibitions—Penalty.
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29A.46.220	Opening and closing locations.
29A.46.230	Voters in location at closing time.
29A.46.240	Procedures after closing.
29A.46.250	Handling of ballots after closing.

**29A.46.010 "Disability access voting location."** (*Effective January 1, 2005.*) "Disability access voting location" means a location designated by the county auditor for the conduct of in-person disability access voting. [2004 c 267 § 301.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.46.020 "Disability access voting period."** (*Effective January 1, 2005.*) "Disability access voting period" means the period of time starting twenty days before an election until one day before the election. [2004 c 267 § 302.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.46.030 "In-person disability access voting."** (*Effective January 1, 2005.*) "In-person disability access voting" means a procedure in which a voter may come in person to a disability access location and cast a ballot during the disability access voting period. [2004 c 267 § 303.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.46.110 When allowed—Multiple voting prevention.** (*Effective January 1, 2005.*) At the discretion of the county auditor, in-person disability access voting may take place during the period starting twenty days before the day of a primary or election and ending the day before the election. The auditor shall maintain a system or systems to prevent multiple voting. The end of the disability access voting period in each county will be determined by the auditor's need and ability to print and distribute poll books to the polls in order to prevent multiple voting. [2004 c 267 § 304.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.46.120 Locations and hours.** (*Effective January 1, 2005.*) The county auditor has sole discretion for determining locations within the county and operating hours for disability access voting locations. [2004 c 267 § 305.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.46.130 Compliance with federal and state requirements.** (*Effective January 1, 2005.*) In-person disability access voting must be conducted using disability access voting devices at locations that are acceptable and comply with federal and state access requirements. [2004 c 267 § 306.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.46.140 Interference, assistance.** (*Effective January 1, 2005.*) No person may interfere with a voter in any way within the disability access voting location. This does not prevent the voter from receiving assistance in preparing his or her ballot as provided in this chapter. [2004 c 267 § 307.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.46.150 Prohibitions—Penalty.** (*Effective January 1, 2005.*) (1) During posted disability access voting hours, no person may, within the voting location, or in any public area within three hundred feet of an entrance to the voting location:

- (a) Suggest or persuade or attempt to suggest or persuade a voter to vote for or against a candidate or ballot measure;
- (b) Circulate cards or handbills of any kind;
- (c) Solicit signatures to any kind of petition; or
- (d) Engage in a practice that interferes with the freedom of voters to exercise their franchise or disrupts the administration of the early voting location.

(2) No person may obstruct the doors or entries to a building containing the voting location or prevent free access to and from the voting location. Any sheriff, deputy sheriff, or municipal law enforcement officer shall prevent the obstruction, and may arrest a person creating such an obstruction.

(3) No person may:

- (a) Except as provided in RCW 29A.44.050, remove a ballot from the disability access voting location before the closing of the polls; or
  - (b) Solicit a voter to show his or her ballot.
- (4) No person other than a voting election official may receive from a voter a voted ballot or deliver a blank ballot to the voter.

(5) A violation of this section is a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, and the person convicted may be ordered to pay the costs of prosecution. [2004 c 267 § 308.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.46.210 Procedures for voting.** (*Effective January 1, 2005.*) A voter desiring to vote at a disability access voting site shall give his or her name to the voting election officer who has the precinct list of registered voters. This officer shall announce the name to the election officer who

has the copy of the list of voters. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth and operate a voting device. The number of the ballot or the voter must be recorded by the election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter. [2004 c 267 § 310.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.46.220 Opening and closing locations.** (*Effective January 1, 2005.*) Disability access voting locations must remain open continuously until the time specified in the notice of disability access voting. At the time of closing, the election officers shall announce that the disability access voting location is closed. [2004 c 267 § 311.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.46.230 Voters in location at closing time.** (*Effective January 1, 2005.*) If at the time of closing the disability access voting location, there are voters in the location who have not voted, they must be allowed to vote after the location has been closed. [2004 c 267 § 312.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.46.240 Procedures after closing.** (*Effective January 1, 2005.*) Immediately after the daily close of the disability access voting location and the completion of voting, the election officers shall count the number of votes cast and make a record of any discrepancy between this number and the number of voters who signed the poll book for that day, complete the certifications in the poll book, prepare the ballots for transfer to the counting center if necessary, and seal the voting devices. [2004 c 267 § 313.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.46.250 Handling of ballots after closing.** (*Effective January 1, 2005.*) (1) At the direction of the county auditor, a team or teams composed of a representative of at least two major political parties shall stop at disability access voting locations and pick up the sealed containers of ballots or electronic ballot media for delivery to the counting center. This process must occur daily at the closing hour for the voting location. Two election officials, representing two major political parties, shall seal the containers furnished by the county auditor and properly identified with his or her address with uniquely prenumbered seals.

(2) At the counting center or the collection stations where the sealed ballot containers are delivered by the designated representatives of the major political parties, the county auditor or a designated representative of the county auditor shall receive the sealed ballot containers, record the time, date, voting location, and seal number of each ballot container. [2004 c 267 § 314.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

(2004 Ed.)

## Chapter 29A.48 RCW VOTE BY MAIL BALLOTS

### Sections

29A.48.010	Mail ballot precincts.
29A.48.020	Special elections.
29A.48.030	Odd-year primaries.
29A.48.040	Depositing ballots—Replacement ballots.
29A.48.050	Return of voted ballot.
29A.48.060	Ballot contents—Counting.

**29A.48.010 Mail ballot precincts.** The county auditor may designate any precinct having fewer than two hundred active registered voters at the time of closing of voter registration as provided in RCW 29A.08.140 as a mail ballot precinct. The county auditor shall notify each registered voter by mail that for all future primaries and elections the voting in his or her precinct will be by mail ballot only. In determining the number of registered voters in a precinct for the purposes of this section, persons who are ongoing absentee voters under RCW 29A.40.040 shall not be counted. Nothing in this section may be construed as altering the vote tallying requirements of RCW 29A.60.230.

The auditor shall mail each active voter a ballot at least eighteen days before a primary, general election, or special election. The auditor shall send each inactive voter either a ballot or an application to receive a ballot at least eighteen days before a primary, general election, or special election. The auditor shall determine which of the two is to be sent. If the inactive voter returns a voted ballot, the ballot shall be counted and the voter's status restored to active. If the inactive voter completes and returns an application, a ballot shall be sent and the voter's status restored to active. The requirements regarding certification, reporting, and the mailing of overseas and military ballots in \*RCW 29.36.270 apply to mail ballot precincts.

If the precinct exceeds two hundred registered voters, or the auditor determines to return to a polling place election environment, the auditor shall notify each registered voter, by mail, of this and shall provide the address of the polling place to be used. [2004 c 266 § 14. Prior: 2003 c 162 § 3; 2003 c 111 § 1201; prior: 2001 c 241 § 15; prior: 1994 c 269 § 1; 1994 c 57 § 48; 1993 c 417 § 1; 1983 1st ex.s. c 71 § 1; 1974 ex.s. c 35 § 2; 1967 ex.s. c 109 § 6. Formerly RCW 29.38.010, 29.36.120.]

**\*Reviser's note:** RCW 29.36.270 was recodified as RCW 29A.40.070 by 2003 c 111 § 2401.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Policy—2003 c 162:** See note following RCW 29A.40.070.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.48.020 Special elections.** At any nonpartisan special election not being held in conjunction with a state primary or general election, the county, city, town, or district requesting the election pursuant to RCW \*29A.04.320 or 29A.04.330 may also request that the special election be conducted by mail ballot. The county auditor may honor the request or may determine that the election is not to be conducted by mail ballot. The decision of the county auditor in this regard is final.

For all special elections not being held in conjunction with a state primary or state general election where voting is conducted by mail ballot, the county auditor shall, not less than eighteen days before the date of such election, mail to each registered voter a mail ballot. The auditor shall handle inactive voters in the same manner as inactive voters in mail ballot precincts. The requirements regarding certification, reporting, and the mailing of overseas and military ballots in **\*RCW 29.36.270** apply to mail ballot elections. [2004 c 266 § 15. Prior: 2003 c 162 § 4; 2003 c 111 § 1202; prior: 2001 c 241 § 16; 1994 c 57 § 49; 1993 c 417 § 2. Formerly RCW 29.38.020, 29.36.121.]

**Reviser's note:** \*(1) RCW 29A.04.320 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.04.321.

\*\* (2) RCW 29.36.270 was recodified as RCW 29A.40.070 by 2003 c 111 § 2401.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Policy—2003 c 162:** See note following RCW 29A.40.070.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.48.030 Odd-year primaries.** In an odd-numbered year, the county auditor may conduct a primary or a special election by mail ballot concurrently with the primary:

- (1) For an office or ballot measure of a special purpose district that is entirely within the county;
- (2) For an office or ballot measure of a special purpose district that lies in the county and one or more other counties if the auditor first secures the concurrence of the county auditors of those other counties to conduct the primary in this manner district-wide; and
- (3) For a ballot measure or nonpartisan office of a county, city, or town if the auditor first secures the concurrence of the legislative authority of the county, city, or town involved.

The county auditor shall notify an election jurisdiction for which a primary is to be held that the primary will be conducted by mail ballot.

A primary in an odd-numbered year may not be conducted by mail ballot in a precinct with two hundred or more active registered voters if a partisan office or state office or state ballot measure is to be voted upon at that primary in the precinct.

To the extent they are not inconsistent with other provisions of law, the laws governing the conduct of mail ballot special elections apply to nonpartisan primaries conducted by mail ballot. [2003 c 111 § 1203. Prior: 2001 c 241 § 17. Formerly RCW 29.38.030.]

**29A.48.040 Depositing ballots—Replacement ballots.** (1) If a county auditor conducts an election by mail, the county auditor shall designate one or more places for the deposit of ballots not returned by mail. The places designated under this section shall be open on the date of the election for a period of thirteen hours, beginning at 7:00 a.m. and ending at 8:00 p.m.

(2) A registered voter may obtain a replacement ballot as provided in this subsection. A voter may request a replacement mail ballot in person, by mail, by telephone, or by other electronic transmission for himself or herself and for any member of his or her immediate family. The request must be

received by the auditor before 8:00 p.m. on election day. The county auditor shall keep a record of each replacement ballot issued, including the date of the request. Replacement mail ballots may be counted in the final tabulation of ballots only if the original ballot is not received by the county auditor and the replacement ballot meets all requirements for tabulation necessary for the tabulation of regular mail ballots. [2003 c 111 § 1204; 2001 c 241 § 18; 1983 1st ex.s. c 71 § 3. Formerly RCW 29.38.040, 29.36.124.]

**29A.48.050 Return of voted ballot.** The voter shall return the ballot to the county auditor in the return identification envelope. If mailed, a ballot must be postmarked not later than the date of the primary or election. Otherwise, the ballot must be deposited at the office of the county auditor or the designated place of deposit not later than 8:00 p.m. on the date of the primary or election. [2003 c 111 § 1205. Prior: 2001 c 241 § 19; 1993 c 417 § 4; 1983 1st ex.s. c 71 § 4. Formerly RCW 29.38.050, 29.36.126.]

**29A.48.060 Ballot contents—Counting.** All mail ballots authorized by RCW 29A.48.010, 29A.48.020, or 29A.48.030 must contain the same offices, names of nominees or candidates, and propositions to be voted upon, including precinct offices, as if the ballot had been voted in person at the polling place. Except as otherwise provided by law, mail ballots must be treated in the same manner as absentee ballots issued at the request of the voter. If electronic vote tallying devices are used, political party observers must be given the opportunity to be present, and a test of the equipment must be performed as required by RCW 29A.12.130 before tabulating ballots. Political party observers may select at random ballots to be counted manually as provided by RCW 29A.60.170. [2003 c 111 § 1206; 2001 c 241 § 20; 1993 c 417 § 5; 1990 c 59 § 76; 1983 1st ex.s. c 71 § 5; 1967 ex.s. c 109 § 7. Formerly RCW 29.38.060, 29.36.130.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Chapter 29A.52 RCW  
PRIMARIES AND ELECTIONS**

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*No link between voter and ballot choice: RCW 29A.08.161.*

GENERAL

**29A.52.011 Elections to fill unexpired term—No primary, when.** Whenever it shall be necessary to hold a special election in an odd-numbered year to fill an unexpired term of any office which is scheduled to be voted upon for a full term in an even-numbered year, no September primary election shall be held in the odd-numbered year if, after the last day allowed for candidates to withdraw, either of the following circumstances exist:

(1) No more than one candidate of each qualified political party has filed a declaration of candidacy for the same partisan office to be filled; or

(2) No more than two candidates have filed a declaration of candidacy for a single nonpartisan office to be filled.

In either event, the officer with whom the declarations of candidacy were filed shall immediately notify all candidates concerned and the names of the candidates that would have been printed upon the September primary ballot, but for the provisions of this section, shall be printed as nominees for the positions sought upon the November general election ballot. [2004 c 271 § 172.]

**29A.52.106 Intent.** It is the intent of the legislature to create a primary for all partisan elected offices, except for president and vice president, precinct committee officer, and offices exempted from the primary under \*RCW 29A.52.011, that:

- (1) Allows each voter to participate;
- (2) Preserves the privacy of each voter's party affiliation;
- (3) Rejects mandatory voter registration by political party;
- (4) Protects ballot access for all candidates, including minor political party and independent candidates;
- (5) Maintains a candidate's right to self-identify with any major political party; and
- (6) Upholds a political party's First Amendment right of association. [2004 c 271 § 140.]

\*Reviser's note: Offices exempted from partisan primaries are found in RCW 29A.52.111.

PARTISAN PRIMARIES

**29A.52.111 Application of chapter—Exceptions.** Candidates for the following offices shall be nominated at partisan primaries held pursuant to the provisions of this chapter:

- (1) Congressional offices;
- (2) All state offices except (a) judicial offices and (b) the office of superintendent of public instruction;
- (3) All county offices except (a) judicial offices and (b) those offices where a county home rule charter provides otherwise. [2004 c 271 § 173.]

(2004 Ed.)

**29A.52.116 Application of chapter—Exceptions.** Major political party candidates for all partisan elected offices, except for president and vice president, precinct committee officer, and offices exempted from the primary under \*RCW 29A.52.011, must be nominated at primaries held under this chapter. [2004 c 271 § 139.]

\*Reviser's note: Offices exempted from the primary are found in RCW 29A.52.111.

**29A.52.121 General election laws govern primaries.** So far as applicable, the provisions of this title relating to conducting general elections govern the conduct of primaries. [2004 c 271 § 143.]

**29A.52.130 Blanket primary authorized.** Except as provided otherwise in chapter 29A.56 RCW, all properly registered voters may vote for their choice at any primary held under this title, for any candidate for each office, regardless of political affiliation and without a declaration of political faith or adherence on the part of the voter. [2003 c 111 § 1304. Prior: 1990 c 59 § 88; 1965 c 9 § 29.18.200; prior: 1935 c 26 § 5, part; No RRS. Formerly RCW 29.18.200.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.52.141 Instructions.** Instructions for voting a consolidated ballot or a physically separate ballot, whichever is applicable, must appear, at the very least, in:

- (1) Any primary voters' pamphlet prepared by the secretary of state or a local government if a partisan office will appear on the ballot;
- (2) Instructions that accompany any partisan primary ballot;
- (3) Any notice of a partisan primary published in compliance with RCW 29A.52.311;
- (4) A sample ballot prepared by a county auditor under RCW 29A.36.151 for a partisan primary;
- (5) The web site of the office of the secretary of state and any existing web site of a county auditor's office; and
- (6) Every polling place. [2004 c 271 § 141.]

**29A.52.151 Ballot format—Procedures.** (1) Under a consolidated ballot format:

- (a) Votes for a major political party candidate will only be tabulated and reported if cast by voters who choose to affiliate with that same major political party;
- (b) Votes cast for a major political party candidate by a voter who chooses to affiliate with a different major political party may not be tabulated or reported;
- (c) Votes cast for a major political party candidate by a voter who fails to select a major political party affiliation may not be tabulated or reported;
- (d) Votes cast for a major political party candidate by a voter who selects more than one major political party with which to affiliate may not be tabulated or reported; and
- (e) Votes properly cast may not be affected by votes improperly cast for other races.

(2) Under a physically separate ballot format:

- (a) Only one party ballot and one nonpartisan ballot may be voted;

(b) If more than one party ballot is voted, none of the ballots will be tabulated or reported;

(c) A voter's affiliation with a major political party will be inferred from the act of voting the party ballot for that major political party; and

(d) Every eligible registered voter may vote a nonpartisan ballot. [2004 c 271 § 142.]

**29A.52.161 One vote.** Nothing in this chapter may be construed to mean that a voter may cast more than one vote for candidates for a given office. [2004 c 271 § 144.]

#### NONPARTISAN PRIMARIES

**29A.52.210 Local primaries.** All city and town primaries shall be nonpartisan. Primaries for special purpose districts, except those districts that require ownership of property within the district as a prerequisite to voting, shall be nonpartisan. City, town, and district primaries shall be held as provided in \*RCW 29A.04.310.

The purpose of this section is to establish the holding of a primary, subject to the exemptions in RCW 29A.52.220, as a uniform procedural requirement to the holding of city, town, and district elections. These provisions supersede any and all other statutes, whether general or special in nature, having different election requirements. [2003 c 111 § 1305. Prior: 1990 c 59 § 89; 1977 c 53 § 3; 1975-'76 2nd ex.s. c 120 § 1; 1965 c 123 § 7; 1965 c 9 § 29.21.010; prior: 1951 c 257 § 7; 1949 c 161 § 3; Rem. Supp. 1949 § 5179-1. Formerly RCW 29.21.010.]

**\*Reviser's note:** RCW 29A.04.310 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.04.311.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Severability—1975-'76 2nd ex.s. c 120:** "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 120 § 16.]

**29A.52.220 When no local primary permitted—Procedure.** (1) No primary may be held for any single position in any city, town, district, or district court, as required by RCW 29A.52.210, if, after the last day allowed for candidates to withdraw, there are no more than two candidates filed for the position. The county auditor shall, as soon as possible, notify all the candidates so affected that the office for which they filed will not appear on the primary ballot.

(2) No primary may be held for the office of commissioner of a park and recreation district or for the office of cemetery district commissioner.

(3) Names of candidates for offices that do not appear on the primary ballot shall be printed upon the general election ballot in the manner specified by \*RCW 29A.36.130. [2003 c 111 § 1306. Prior: 1998 c 19 § 1; 1996 c 324 § 1; 1990 c 59 § 90; 1975-'76 2nd ex.s. c 120 § 2; 1965 c 9 § 29.21.015; prior: 1955 c 101 § 2; 1955 c 4 § 1. Formerly RCW 29.21.015.]

**\*Reviser's note:** RCW 29A.36.130 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.36.131.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Severability—1975-'76 2nd ex.s. c 120:** See note following RCW 29A.52.210.

**29A.52.231 Nonpartisan offices specified.** The offices of superintendent of public instruction, justice of the supreme court, judge of the court of appeals, judge of the superior court, and judge of the district court shall be nonpartisan and the candidates therefor shall be nominated and elected as such.

All city, town, and special purpose district elective offices shall be nonpartisan and the candidates therefor shall be nominated and elected as such. [2004 c 271 § 174.]

**29A.52.240 Special election to fill unexpired term.** Whenever it is necessary to hold a special election to fill an unexpired term of an elective office of any city, town, or district, the special election must be held in concert with the next general election that is to be held by the respective city, town, or district concerned for the purpose of electing officers to full terms. This section does not apply to any city of the first class whose charter provision relating to elections to fill unexpired terms are inconsistent with this section. [2003 c 111 § 1308; 1972 ex.s. c 61 § 7. Formerly RCW 29.21.410]

**Severability—1972 ex.s. c 61:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 61 § 8.]

#### NOTICES AND CERTIFICATES

**29A.52.311 Notice of primary.** Not more than ten nor less than three days before the primary the county auditor shall publish notice of such primary in one or more newspapers of general circulation within the county. The notice must contain the proper party designations, the names and addresses of all persons who have filed a declaration of candidacy to be voted upon at that primary, instructions for voting the applicable ballot, as provided in chapter 29A.36 RCW, the hours during which the polls will be open, and the polling places for each precinct, giving the address of each polling place. The names of all candidates for nonpartisan offices must be published separately with designation of the offices for which they are candidates but without party designation. This is the only notice required for the holding of any primary. [2004 c 271 § 145.]

**29A.52.321 Certification of nominees.** No later than the day following the certification of the returns of any primary, the secretary of state shall certify to the appropriate county auditors the names of all persons nominated for offices at a primary, or at an independent candidate or minor party convention. [2004 c 271 § 146.]

**29A.52.330 Constitutional amendments and state measures—Notice method.** Subject to the availability of funds appropriated specifically for that purpose, the secretary of state shall publish notice of the proposed constitutional amendments and other state measures that are to be submitted to the people at a state general election up to four times during the four weeks immediately preceding that election in every legal newspaper in the state. The secretary of state

shall supplement this publication with an equivalent amount of radio and television advertisements. [2003 c 111 § 1311. Prior: 1997 c 405 § 1; 1967 c 96 § 1; 1965 c 9 § 29.27.072; prior: 1961 c 176 § 1. Formerly RCW 29.27.072.]

**29A.52.340 Constitutional amendments and state measures—Notice contents.** The newspaper and broadcast notice required by Article XXIII, section 1, of the state Constitution and RCW 29A.52.330 may set forth all or some of the following information:

- (1) A legal identification of the state measure to be voted upon.
- (2) The official ballot title of such state measure.
- (3) A brief statement explaining the constitutional provision or state law as it presently exists.
- (4) A brief statement explaining the effect of the state measure should it be approved.
- (5) The total number of votes cast for and against the measure in both the state senate and house of representatives.

No individual candidate or incumbent public official may be referred to or identified in these notices or advertisements. [2003 c 111 § 1312. Prior: 1997 c 405 § 2; 1967 c 96 § 2; 1965 c 9 § 29.27.074; prior: 1961 c 176 § 2. Formerly RCW 29.27.074.]

**29A.52.351 Election—Certification of measures.** Except as provided in RCW 29A.32.260, notice for any state, county, district, or municipal election, whether special or general, must be given by at least one publication not more than ten nor less than three days before the election by the county auditor or the officer conducting the election as the case may be, in one or more newspapers of general circulation within the county. The legal notice must contain the title of each office under the proper party designation, the names and addresses of all officers who have been nominated for an office to be voted upon at that election, together with the ballot titles of all measures, the hours during which the polls will be open, and the polling places for each precinct, giving the address of each polling place. The names of all candidates for nonpartisan offices must be published separately with designation of the offices for which they are candidates but without party designation. This is the only notice required for a state, county, district, or municipal general or special election and supersedes the provisions of any and all other statutes, whether general or special in nature, having different requirements for the giving of notice of any general or special elections. [2004 c 271 § 175.]

**29A.52.360 Certificates of election to officers elected in single county or less.** Immediately after the ascertainment of the result of an election for an office to be filled by the voters of a single county, or of a precinct, or of a constituency within a county for which the county auditor serves as supervisor of elections, the county auditor shall notify the person elected, and issue to the person a certificate of election. [2003 c 111 § 1314; 1965 c 9 § 29.27.100. Prior: 1961 c 130 § 8; prior: Code 1881 § 3096, part; 1866 p 6 § 2, part; 1865 p 39 § 7, part; RRS § 5343, part. Formerly RCW 29.27.100.]

(2004 Ed.)

### 29A.52.370 Certificates of election to other officers.

Except as provided in the state Constitution, the governor shall issue certificates of election to those elected as senator or representative in the Congress of the United States and to state offices. The secretary of state shall issue certificates of election to those elected to the office of judge of the superior court in judicial districts comprising more than one county and to those elected to either branch of the state legislature in legislative districts comprising more than one county. [2003 c 111 § 1315; 1965 c 9 § 29.27.110. Prior: (i) 1933 c 92 § 1; RRS § 5343-1. (ii) Code 1881 § 3100, part; No RRS. Formerly RCW 29.27.110.]

*Judges of their own election and qualification—Quorum: State Constitution Art. 2 § 8.*

*Returns of elections, canvass, etc.: State Constitution Art. 3 § 4.*

## Chapter 29A.56 RCW

### SPECIAL CIRCUMSTANCES ELECTIONS

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### PRESIDENTIAL PRIMARY

**29A.56.010 Intent.** The people of the state of Washington declare that:

(1) The current presidential nominating caucus system in Washington state is unnecessarily restrictive of voter participation in that it discriminates against the elderly, the infirm, women, the disabled, evening workers, and others who are unable to attend caucuses and therefore unable to fully participate in this most important quadrennial event that occurs in our democratic system of government.

(2) It is the intent of this chapter to make the presidential selection process more open and representative of the will of the people of our state.

(3) A presidential primary will afford the maximum opportunity for voter access at regular polling places during the daytime and evening hours convenient to the most people.

(4) This state's participation in the selection of presidential candidates shall be in accordance with the will of the people as expressed in a presidential preference primary.

(5) It is the intent of this chapter, to the maximum extent practicable, to continue to reserve to the political parties the right to conduct their delegate selection as prescribed by party rules insofar as it reflects the will of the people as expressed in a presidential primary election conducted every four years in the manner described by this chapter. [2003 c 111 § 1401; 1989 c 4 § 1 (Initiative Measure No. 99). Formerly RCW 29.19.010.]

**29A.56.020 Date. (Expires January 1, 2005.)** (1) On the fourth Tuesday in May of each year in which a president of the United States is to be nominated and elected, a presidential primary shall be held at which voters may vote for the nominee of a major political party for the office of president. The secretary of state may propose an alternative date for the primary no later than the first day of August of the year before the year in which a president is to be nominated and elected.

(2) No later than the first day of September of the year before the year in which a presidential nominee is selected, the state committee of any major political party that will use the primary results for candidates of that party may propose an alternative date for that primary.

(3) If an alternative date is proposed under subsection (1) or (2) of this section, a committee consisting of the chair and the vice-chair of the state committee of each major political party, the secretary of state, the majority leader and minority leader of the senate, and the speaker and the minority leader of the house of representatives shall meet and, if affirmed by a two-thirds vote of the members of the committee, the date of the primary shall be changed. The committee shall meet and decide on the proposed alternate date not later than the first day of October of the year before the year in which a presidential nominee is selected. The secretary of state shall convene and preside over the meeting of the committee. A committee member other than a legislator may appoint, in writing, a designee to serve on his or her behalf. A legislator who is a member of the committee may appoint, in writing, another legislator to serve on his or her behalf.

(4) If an alternate date is approved under this section, the secretary of state shall adopt rules under RCW 29A.04.620 to adjust the deadlines in RCW 29A.56.030 and related provisions of this chapter to correspond with the date that has been approved.

(5) No presidential primary may be held in 2004. [2003 3rd sp.s. c 1 § 2; (2003 3rd sp.s. c 1 § 1 expired July 1, 2004); 2003 c 111 § 1402. Prior: 1995 1st sp.s. c 20 § 1; 1989 c 4 § 2 (Initiative Measure No. 99). Formerly RCW 29.19.020.]

**Effective date—2003 3rd sp.s. c 1 § 2:** "Section 2 of this act takes effect July 1, 2004." [2003 3rd sp.s. c 1 § 5.]

**Expiration date—2003 3rd sp.s. c 1 § 2:** "Section 2 of this act expires January 1, 2005." [2003 3rd sp.s. c 1 § 6.]

**Expiration date—2003 3rd sp.s. c 1 § 1:** "Section 1 of this act expires July 1, 2004." [2003 3rd sp.s. c 1 § 4.]

**Effective date—2003 3rd sp.s. c 1 § 1:** "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [December 9, 2003]." [2003 3rd sp.s. c 1 § 3.]

**Effective date—1995 1st sp.s. c 20:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 1995]." [1995 1st sp.s. c 20 § 7.]

**29A.56.020 Date. (Effective January 1, 2005.)** (1) On the fourth Tuesday in May of each year in which a president of the United States is to be nominated and elected, a presidential primary shall be held at which voters may vote for the nominee of a major political party for the office of president. The secretary of state may propose an alternative date for the primary no later than the first day of August of the year before the year in which a president is to be nominated and elected.

(2) No later than the first day of September of the year before the year in which a presidential nominee is selected, the state committee of any major political party that will use the primary results for candidates of that party may propose an alternative date for that primary.

(3) If an alternative date is proposed under subsection (1) or (2) of this section, a committee consisting of the chair and the vice-chair of the state committee of each major political party, the secretary of state, the majority leader and minority leader of the senate, and the speaker and the minority leader of the house of representatives shall meet and, if affirmed by a two-thirds vote of the members of the committee, the date of the primary shall be changed. The committee shall meet and decide on the proposed alternate date not later than the first day of October of the year before the year in which a presidential nominee is selected. The secretary of state shall convene and preside over the meeting of the committee. A committee member other than a legislator may appoint, in writing, a designee to serve on his or her behalf. A legislator who is a member of the committee may appoint, in writing, another legislator to serve on his or her behalf.

(4) If an alternate date is approved under this section, the secretary of state shall adopt rules under RCW 29A.04.620 to adjust the deadlines in RCW 29A.56.030 and related provisions of this chapter to correspond with the date that has been approved. [2003 c 111 § 1402; (2003 3rd sp.s. c 1 § 1 expired July 1, 2004). Prior: 1995 1st sp.s. c 20 § 1; 1989 c 4 § 2 (Initiative Measure No. 99). Formerly RCW 29.19.020.]

**Expiration date—2003 3rd sp.s. c 1 § 1:** "Section 1 of this act expires July 1, 2004." [2003 3rd sp.s. c 1 § 4.]

**Effective date—2003 3rd sp.s. c 1 § 1:** "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [December 9, 2003]." [2003 3rd sp.s. c 1 § 3.]

**Effective date—1995 1st sp.s. c 20:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 1995]." [1995 1st sp.s. c 20 § 7.]

**29A.56.030 Ballot—Names included.** The name of any candidate for a major political party nomination for president of the United States shall be printed on the presidential preference primary ballot of a major political party only:

(1) By direction of the secretary of state, who in the secretary's sole discretion has determined that the candidate's candidacy is generally advocated or is recognized in national news media; or

(2) If members of the political party of the candidate have presented a petition for nomination of the candidate that has attached to the petition a sheet or sheets containing the signatures of at least one thousand registered voters who declare themselves in the petition as being affiliated with the same political party as the presidential candidate. The petition shall be filed with the secretary of state not later than the thirty-ninth day before the presidential preference primary. The signature sheets shall also contain the residence address and name or number of the precinct of each registered voter whose signature appears thereon and shall be certified in the manner prescribed in RCW 29A.72.230 and 29A.72.240.

The secretary of state shall place the name of the candidate on the ballot unless the candidate, at least thirty-five days before the presidential preference primary, executes and files with the secretary of state an affidavit stating without qualification that he or she is not now and will not become a candidate for the office of president of the United States at the forthcoming presidential election. The secretary of state shall certify the names of all candidates who will appear on the presidential preference primary ballot to the respective county auditors on or before the fourth Tuesday in April of each presidential election year. [2003 c 111 § 1403. Prior: 1989 c 4 § 3 (Initiative Measure No. 99). Formerly RCW 29.19.030.]

**29A.56.040 Procedures—Ballot form and arrangement.** (1) Except where necessary to accommodate the national or state rules of a major political party or where this chapter specifically provides otherwise, the presidential primary must be conducted in substantially the same manner as a state partisan primary under this title.

(2) Except as provided under this chapter or by rule of the secretary of state adopted under RCW 29A.04.620, the arrangement and form of presidential primary ballots must be substantially as provided for a partisan primary under this title. Whenever requested by a major political party, a separate ballot containing only the candidates of that party who have qualified under RCW 29A.56.030 must be provided for a voter who requests a ballot of that party. A primary ballot, containing the names of all the candidates who have qualified for a place on the ballot under RCW 29A.56.030, must be provided for nonaffiliated voters.

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(3) The ballot must list alphabetically the names of all candidates for the office of president. The ballot must indicate the political party of each candidate adjacent to the name of that candidate. Each ballot must include a blank space to allow the voter to write in the name of any other candidate.

(4) A presidential primary ballot with votes for more than one candidate is void, and notice to this effect, stated in clear, simple language and printed in large type, must appear on the face of each presidential primary ballot or on or about each voting device. [2003 c 111 § 1404. Prior: 1995 1st sp.s. c 20 § 2. Formerly RCW 29.19.045.]

**Effective date—1995 1st sp.s. c 20:** See note following RCW 29A.56.020.

**29A.56.050 Allocation of delegates—Party declarations.** (1) A major political party may, under national or state party rules, base the allocation of delegates from this state to the national nominating convention of that party in whole or in part on the participation in precinct caucuses and conventions conducted under the rules of that party.

(2) If requested by a major political party, the secretary of state shall adopt rules under RCW 29A.04.620 to provide for any declaration required by that party.

(3) Voters who subscribe to a specific political party declaration under this section must be given ballots that are readily distinguishable from those given to other voters. Votes cast by persons making these declarations must be tabulated and reported separately from other votes cast at the primary and may be used by a major political party in its allocation of delegates under the rules of that party.

(4) For a political party that requires a specific voter declaration under this section, the secretary of state shall prescribe rules for providing, to the state and county committees of that political party, a copy of the declarations or a list of the voters who participated in the presidential nominating process of that party. [2003 c 111 § 1405. Prior: 1995 1st sp.s. c 20 § 3. Formerly RCW 29.19.055.]

**Effective date—1995 1st sp.s. c 20:** See note following RCW 29A.56.020.

**29A.56.060 Costs.** Subject to available funds specifically appropriated for this purpose, whenever a presidential primary is held as provided by this chapter, the state of Washington shall assume all costs of holding the primary if it is held alone. If any other election or elections are held at the same time, the state is liable only for a prorated share of the costs. The county auditor shall determine the costs, including the state's prorated share, if applicable, in the same manner as provided under RCW 29A.04.410 and shall file a certified claim with the secretary of state. The secretary of state shall include in his or her biennial budget requests sufficient funds to carry out this section. Reimbursements for primary costs must be from appropriations specifically provided by law for that purpose. [2003 c 111 § 1406. Prior: 1995 1st sp.s. c 20 § 5; 1989 c 4 § 8 (Initiative Measure No. 99). Formerly RCW 29.19.080]

**Effective date—1995 1st sp.s. c 20:** See note following RCW 29A.56.020.

## RECALL

**29A.56.110 Initiating proceedings—Statement—Contents—Verification—Definitions.** Whenever any legal voter of the state or of any political subdivision thereof, either individually or on behalf of an organization, desires to demand the recall and discharge of any elective public officer of the state or of such political subdivision, as the case may be, under the provisions of sections 33 and 34 of Article 1 of the Constitution, the voter shall prepare a typewritten charge, reciting that such officer, naming him or her and giving the title of the office, has committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated the oath of office, or has been guilty of any two or more of the acts specified in the Constitution as grounds for recall. The charge shall state the act or acts complained of in concise language, give a detailed description including the approximate date, location, and nature of each act complained of, be signed by the person or persons making the charge, give their respective post office addresses, and be verified under oath that the person or persons believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based.

For the purposes of this chapter:

(1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;

(a) Additionally, "misfeasance" in office means the performance of a duty in an improper manner; and

(b) Additionally, "malfeasance" in office means the commission of an unlawful act;

(2) "Violation of the oath of office" means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law. [2003 c 111 § 1407; 1984 c 170 § 1; 1975-'76 2nd ex.s. c 47 § 1; 1965 c 9 § 29.82.010. Prior: 1913 c 146 § 1; RRS § 5350. Former part of section: 1913 c 146 § 2; RRS § 5351, now codified in RCW 29.82.015. Formerly RCW 29.82.010.]

**Severability—1975-'76 2nd ex.s. c 47:** "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 47 § 3.]

**29A.56.120 Petition—Where filed.** Any person making a charge shall file it with the elections officer whose duty it is to receive and file a declaration of candidacy for the office concerning the incumbent of which the recall is to be demanded. The officer with whom the charge is filed shall promptly (1) serve a copy of the charge upon the officer whose recall is demanded, and (2) certify and transmit the charge to the preparer of the ballot synopsis provided in RCW 29A.56.130. The manner of service shall be the same as for the commencement of a civil action in superior court. [2003 c 111 § 1408. Prior: 1984 c 170 § 2; 1975-'76 2nd ex.s. c 47 § 2; 1965 c 9 § 29.82.015; prior: 1913 c 146 § 2; RRS § 5351. Formerly RCW 29.82.010, part. Formerly RCW 29.82.015.]

**Severability—1975-'76 2nd ex.s. c 47:** See note following RCW 29A.56.110.

**29A.56.130 Ballot synopsis.** (1) Within fifteen days after receiving a charge, the officer specified below shall formulate a ballot synopsis of the charge of not more than two hundred words.

(a) Except as provided in (b) of this subsection, if the recall is demanded of an elected public officer whose political jurisdiction encompasses an area in more than one county, the attorney general shall be the preparer, except if the recall is demanded of the attorney general, the chief justice of the supreme court shall be the preparer.

(b) If the recall is demanded of an elected public officer whose political jurisdiction lies wholly in one county, or if the recall is demanded of an elected public officer of a district whose jurisdiction encompasses more than one county but whose declaration of candidacy is filed with a county auditor in one of the counties, the prosecuting attorney of that county shall be the preparer, except that if the prosecuting attorney is the officer whose recall is demanded, the attorney general shall be the preparer.

(2) The synopsis shall set forth the name of the person charged, the title of the office, and a concise statement of the elements of the charge. Upon completion of the ballot synopsis, the preparer shall certify and transmit the exact language of the ballot synopsis to the persons filing the charge and the officer subject to recall. The preparer shall additionally certify and transmit the charges and the ballot synopsis to the superior court of the county in which the officer subject to recall resides and shall petition the superior court to approve the synopsis and to determine the sufficiency of the charges. [2003 c 111 § 1409; 1984 c 170 § 3. Formerly RCW 29.82.021.]

**29A.56.140 Determination by superior court—Correction of ballot synopsis.** Within fifteen days after receiving the petition, the superior court shall have conducted a hearing on and shall have determined, without cost to any party, (1) whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed, and (2) the adequacy of the ballot synopsis. The clerk of the superior court shall notify the person subject to recall and the person demanding recall of the hearing date. Both persons may appear with counsel. The court may hear arguments as to the sufficiency of the charges and the adequacy of the ballot synopsis. The court shall not consider the truth of the charges, but only their sufficiency. An appeal of a sufficiency decision shall be filed in the supreme court as specified by RCW 29A.56.270. The superior court shall correct any ballot synopsis it deems inadequate. Any decision regarding the ballot synopsis by the superior court is final. The court shall certify and transmit the ballot synopsis to the officer subject to recall, the person demanding the recall, and either the secretary of state or the county auditor, as appropriate. [2003 c 111 § 1410. Prior: 1984 c 170 § 4. Formerly RCW 29.82.023.]

**29A.56.150 Filing supporting signatures—Time limitations.** (1) The sponsors of a recall demanded of any public officer shall stop circulation of and file all petitions with the appropriate elections officer not less than six months before the next general election in which the officer whose recall is demanded is subject to reelection.

(2) The sponsors of a recall demanded of an officer elected to a statewide position shall have a maximum of two hundred seventy days, and the sponsors of a recall demanded of any other officer shall have a maximum of one hundred eighty days, in which to obtain and file supporting signatures after the issuance of a ballot synopsis by the superior court. If the decision of the superior court regarding the sufficiency of the charges is not appealed, the one hundred eighty or two hundred seventy day period for the circulation of signatures begins on the sixteenth day following the decision of the superior court. If the decision of the superior court regarding the sufficiency of the charges is appealed, the one hundred eighty or two hundred seventy day period for the circulation of signatures begins on the day following the issuance of the decision by the supreme court. [2003 c 111 § 1411; 1984 c 170 § 5; 1971 ex.s. c 205 § 2. Formerly RCW 29.82.025.]

**Severability—1971 ex.s. c 205:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 205 § 6.]

**29A.56.160 Petition—Form.** Recall petitions must be printed on single sheets of paper of good writing quality (including but not limited to newsprint) not less than eleven inches in width and not less than fourteen inches in length. No petition may be circulated or signed prior to the first day of the one hundred eighty or two hundred seventy day period established by RCW 29A.56.150 for that recall petition. The petitions must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

Petition for the recall of (here insert the name of the office and of the person whose recall is petitioned for) to the Honorable (here insert the name and title of the officer with whom the charge is filed).

We, the undersigned citizens and legal voters of (the state of Washington or the political subdivision in which the recall is to be held), respectfully direct that a special election be called to determine whether or not (here insert the name of the person charged and the office which he or she holds) be recalled and discharged from his or her office, for and on account of (his or her having committed the act or acts of malfeasance or misfeasance while in office, or having violated his or her oath of office, as the case may be), in the following particulars: (here insert the synopsis of the charge); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington in the precinct and city (or town) and county written after my name, and my residence address is correctly stated, and to my knowledge, have signed this petition only once.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote. [2003 c 111 § 1412; 1984 c 170 § 6; 1971 ex.s. c 205 § 4; 1965 c 9 § 29.82.030. Prior: 1913 c 146 § 4; RRS § 5353. Formerly RCW 29.82.030.]

**Severability—1971 ex.s. c 205:** See note following RCW 29A.56.150.

**29A.56.170 Petition—Size.** Each recall petition at the time of circulating, signing, and filing with the officer with

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whom it is to be filed, must consist of not more than five sheets with numbered lines for not more than twenty signatures on each sheet, with the prescribed warning, title, and form of petition on each sheet, and a full, true, and correct copy of the original statement of the charges against the officer referred to therein, printed on sheets of paper of like size and quality as the petition, firmly fastened together. [2003 c 111 § 1413; 1965 c 9 § 29.82.040. Prior: 1913 c 146 § 6; RRS § 5355. Formerly RCW 29.82.040.]

**29A.56.180 Number of signatures required.** When the person, committee, or organization demanding the recall of a public officer has secured sufficient signatures upon the recall petition the person, committee, or organization may submit the same to the officer with whom the charge was filed for filing in his or her office. The number of signatures required shall be as follows:

(1) In the case of a state officer, an officer of a city of the first class, a member of a school board in a city of the first class, or a county officer of a county with a population of forty thousand or more—signatures of legal voters equal to twenty-five percent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election.

(2) In the case of an officer of any political subdivision, city, town, township, precinct, or school district other than those mentioned in subsection (1) of this section, and in the case of a state senator or representative—signatures of legal voters equal to thirty-five percent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election. [2003 c 111 § 1414. Prior: 1991 c 363 § 36; 1965 c 9 § 29.82.060; prior: 1913 c 146 § 8, part; RRS § 5357, part. Formerly RCW 29.82.060.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

*Recall of elective officers—Percentages required: State Constitution Art. I § 34 (Amendment 8).*

**29A.56.190 Canvassing signatures—Time of—Notice.** Upon the filing of a recall petition, the officer with whom the charge was filed shall stamp on each petition the date of filing, and shall notify the persons filing them and the officer whose recall is demanded of the date when the petitions will be canvassed, which date must be not less than five or more than ten days from the date of its filing. [2003 c 111 § 1415; 1965 c 9 § 29.82.080. Prior: 1913 c 146 § 9, part; RRS § 5358, part. Formerly RCW 29.82.080.]

**29A.56.200 Verification and canvass of signatures—Procedure—Statistical sampling.** (1) Upon the filing of a recall petition, the elections officer shall proceed to verify and canvass the names of legal voters on the petition.

(2) The verification and canvass of signatures on the petition may be observed by persons representing the advocates and opponents of the proposed recall so long as they make no record of the names, addresses, or other information on the petitions or related records during the verification process except upon the order of the superior court. The elections officer may limit the number of observers to not fewer than two on each side, if in his or her opinion a greater num-

ber would cause undue delay or disruption of the verification process. Any such limitation shall apply equally to both sides. If the elections officer finds the same name signed to more than one petition, he or she shall reject all but the first such valid signature.

(3) Where the recall of a statewide elected official is sought, the secretary of state may use any statistical sampling techniques for verification and canvassing which have been adopted by rule for canvassing initiative petitions under RCW 29A.72.230. No petition will be rejected on the basis of any statistical method employed. No petition will be accepted on the basis of any statistical method employed if such method indicates that the petition contains less than the number of signatures of legal voters required by Article I, section 33 (Amendment 8) of the state Constitution. [2003 c 111 § 1416. Prior: 1984 c 170 § 7; 1977 ex.s. c 361 § 107; 1965 c 9 § 29.82.090; prior: 1913 c 146 § 9, part; RRS § 5358, part. Formerly RCW 29.82.090.]

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

#### **29A.56.210 Fixing date for recall election—Notice.**

If, at the conclusion of the verification and canvass, it is found that a petition for recall bears the required number of signatures of certified legal voters, the officer with whom the petition is filed shall promptly certify the petitions as sufficient and fix a date for the special election to determine whether or not the officer charged shall be recalled and discharged from office. The special election shall be held not less than forty-five nor more than sixty days from the certification and, whenever possible, on one of the dates provided in RCW 29A.04.330, but no recall election may be held between the date of the primary and the date of the general election in any calendar year. Notice shall be given in the manner as required by law for special elections in the state or in the political subdivision, as the case may be. [2003 c 111 § 1417. Prior: 1984 c 170 § 8; 1977 ex.s. c 361 § 108; 1971 ex.s. c 205 § 5; 1965 c 9 § 29.82.100; prior: 1913 c 146 § 9, part; RRS § 5358, part. Formerly RCW 29.82.100.]

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**Severability—1971 ex.s. c 205:** See note following RCW 29A.56.150.

**29A.56.220 Response to petition charges.** When a date for a special recall election is set the certifying officer shall serve a notice of the date of the election to the officer whose recall is demanded and the person demanding recall. The manner of service shall be the same as for the commencement of a civil action in superior court. After having been served a notice of the date of the election and the ballot synopsis, the officer whose recall is demanded may submit to the certifying officer a response, not to exceed two hundred fifty words in length, to the charge contained in the ballot synopsis. Such response shall be submitted by the seventh consecutive day after service of the notice. The certifying officer shall promptly send a copy of the response to the person who filed the petition. [2003 c 111 § 1418. Prior: 1984 c 170 § 9; 1980 c 42 § 1. Formerly RCW 29.82.105.]

#### **29A.56.230 Destruction of insufficient recall petition.**

If it is found that the recall petition does not contain the req-

uisite number of signatures of certified legal voters, the officer shall so notify the persons filing the petition, and at the expiration of thirty days from the conclusion of the count the officer shall destroy the petitions unless prevented therefrom by the injunction or mandate of a court. [2003 c 111 § 1419; 1965 c 9 § 29.82.110. Prior: 1913 c 146 § 9, part; RRS § 5358, part. Formerly RCW 29.82.110.]

**29A.56.240 Fraudulent names—Record of.** The officer making the canvass of a recall petition shall keep a record of all names appearing on it that are not certified to be legal voters of the state or of the political subdivision, as the case may be, and of all names appearing more than once, and shall report the same to the prosecuting attorneys of the respective counties where the names appear to have been signed, to the end that prosecutions may be had for the violation of this chapter. [2003 c 111 § 1420; 1965 c 9 § 29.82.120. Prior: 1913 c 146 § 10; RRS § 5359. Formerly RCW 29.82.120.]

#### **29A.56.250 Conduct of election—Contents of ballot.**

The special election for the recall of an officer shall be conducted in the same manner as a special election for that jurisdiction. The county auditor shall conduct the recall election. The ballots at any recall election shall contain a full, true, and correct copy of the ballot synopsis of the charge and the officer's response to the charge if one has been filed. [2003 c 111 § 1421. Prior: 1990 c 59 § 71; 1980 c 42 § 2; 1965 c 9 § 29.82.130; prior: 1913 c 146 § 11; RRS § 5360. See also RCW 29.48.040. Formerly RCW 29.82.130.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.56.260 Ascertaining the result—When recall effective.** The votes on a recall election must be counted, canvassed, and the results certified in the manner provided by law for counting, canvassing, and certifying the results of an election for the office from which the officer is being recalled. However, if the officer whose recall is demanded is the officer to whom, under the law, returns of elections are made, the returns must be made to the officer with whom the charge is filed, and who called the special election. In the case of an election for the recall of a state officer, the county canvassing boards of the various counties shall canvass and return the result of the election to the officer calling the special election. If a majority of all votes cast at the recall election is for the recall of the officer charged, the officer is thereupon recalled and discharged from the office, and the office thereupon is vacant. [2003 c 111 § 1422; 1977 ex.s. c 361 § 109; 1965 c 9 § 29.82.140. Prior: 1913 c 146 § 12; RRS § 5361. Formerly RCW 29.82.140.]

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

*Canvassing the returns: Chapter 29A.60 RCW.*

**29A.56.270 Enforcement provisions—Mandamus—Appellate review.** The superior court of the county in which the officer subject to recall resides has original jurisdiction to compel the performance of any act required of any public

officer or to prevent the performance by any such officer of any act in relation to the recall not in compliance with law.

The supreme court has like original jurisdiction in relation to state officers and revisory jurisdiction over the decisions of the superior courts. Any proceeding to compel or prevent the performance of any such act shall be begun within ten days from the time the cause of complaint arises, and shall be considered an emergency matter of public concern and take precedence over other cases, and be speedily heard and determined. Appellate review of a decision of any superior court shall be begun and perfected within fifteen days after its decision in a recall election case and shall be considered an emergency matter of public concern by the supreme court, and heard and determined within thirty days after the decision of the superior court. [2003 c 111 § 1423. Prior: 1988 c 202 § 30; 1984 c 170 § 10; 1965 c 9 § 29.82.160; prior: 1913 c 146 § 14; RRS § 5363. Formerly RCW 29.82.160.]

**Rules of court:** *Writ procedure superseded by RAP 2.1(b), 16.2, 18.22.*

**Severability—1988 c 202:** See note following RCW 2.24.050.

## PRESIDENTIAL ELECTORS

**29A.56.310 Date of election—Number.** On the Tuesday after the first Monday of November in the year in which a president of the United States is to be elected, there shall be elected as many electors of president and vice president of the United States as there are senators and representatives in Congress allotted to this state. [2003 c 111 § 1424; 1965 c 9 § 29.71.010. Prior: 1891 c 148 § 1; RRS § 5138. Formerly RCW 29.71.010.]

**29A.56.320 Nomination—Pledge by electors—What names on ballots—How counted.** In the year in which a presidential election is held, each major political party and each minor political party or independent candidate convention held under chapter 29A.20 RCW that nominates candidates for president and vice president of the United States shall nominate presidential electors for this state. The party or convention shall file with the secretary of state a certificate signed by the presiding officer of the convention at which the presidential electors were chosen, listing the names and addresses of the presidential electors. Each presidential elector shall execute and file with the secretary of state a pledge that, as an elector, he or she will vote for the candidates nominated by that party. The names of presidential electors shall not appear on the ballots. The votes cast for candidates for president and vice president of each political party shall be counted for the candidates for presidential electors of that political party. [2003 c 111 § 1425. Prior: 1990 c 59 § 69; 1977 ex.s. c 238 § 1; 1965 c 9 § 29.71.020; prior: 1935 c 20 § 1; RRS § 5138-1. Formerly RCW 29.71.020.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.56.330 Counting and canvassing the returns.** The votes for candidates for president and vice president must be canvassed under chapter 29A.60 RCW. The secretary of state shall prepare three lists of names of electors elected and affix the seal of the state. The lists must be signed

by the governor and secretary of state and by the latter delivered to the college of electors at the hour of their meeting. [2003 c 111 § 1426; 1965 c 9 § 29.71.030. Prior: 1935 c 20 § 2; RRS § 5139; prior: 1891 c 148 § 2. Formerly RCW 29.71.030.]

**29A.56.340 Meeting—Time—Procedure—Voting for nominee of other party, penalty.** The electors of the president and vice president shall convene at the seat of government on the day fixed by federal statute, at the hour of twelve o'clock noon of that day. If there is any vacancy in the office of an elector occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill it by voice vote, and plurality of votes. When all of the electors have appeared and the vacancies have been filled they shall constitute the college of electors of the state of Washington, and shall proceed to perform the duties required of them by the Constitution and laws of the United States. Any elector who votes for a person or persons not nominated by the party of which he or she is an elector is subject to a civil penalty of up to one thousand dollars. [2003 c 111 § 1427; 1977 ex.s. c 238 § 2; 1965 c 9 § 29.71.040. Prior: 1909 c 22 § 1; 1891 c 148 § 3; RRS § 5140. Formerly RCW 29.71.040.]

**29A.56.350 Compensation.** Every presidential elector who attends at the time and place appointed, and gives his or her vote for president and vice president, is entitled to receive from this state, five dollars for each day's attendance at the meeting of the college of electors, and ten cents per mile for travel by the usually traveled route in going to and returning from the place where the electors meet. [2003 c 111 § 1428; 1965 c 9 § 29.71.050. Prior: 1891 c 148 § 4; RRS § 5141. Formerly RCW 29.71.050.]

**29A.56.360 Slate of presidential electors.** In a year in which the president and vice president of the United States are to be elected, the secretary of state shall include in the certification prepared under \*RCW 29A.52.320 the names of all candidates for president and vice president who, at least fifty days before the general election, have certified a slate of electors to the secretary of state under RCW 29A.56.320 and have been nominated either (1) by a major political party, as certified by the appropriate authority under party rules, or (2) by a minor party or as independent candidates under chapter 29A.20 RCW. Major or minor political parties or independent presidential candidates may substitute a different candidate for vice president for the one whose name appears on the party's certification or nominating petition at any time before forty-five days before the general election, by certifying the change to the secretary of state. Substitutions must not be permitted to delay the printing of either ballots or a voters' pamphlet. Substitutions are valid only if submitted under oath and signed by the same individual who originally certified the nomination, or his or her documented successor, and only if the substitute candidate consents in writing. [2003 c 111 § 1429. Prior: 2001 c 30 § 1. Formerly RCW 29.27.140.]

**\*Reviser's note:** RCW 29A.52.320 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.52.321.

## CONSTITUTIONAL AMENDMENT CONVENTIONS

**29A.56.410 Governor's proclamation calling convention—When.** Within thirty days after the state is officially notified that the Congress of the United States has submitted to the several states a proposed amendment to the Constitution of the United States to be ratified or rejected by a convention, the governor shall issue a proclamation fixing the time and place for holding the convention and fixing the time for holding an election to elect delegates to the convention. [2003 c 111 § 1430; 1965 c 9 § 29.74.010. Prior: 1933 c 181 § 1, part; RRS § 5249-1, part. Formerly RCW 29.74.010.]

**29A.56.420 Governor's proclamation calling convention—Publication.** The proclamation shall be published once each week for two successive weeks in one newspaper published and of general circulation in each of the congressional districts of the state. The first publication of the proclamation shall be within thirty days of the receipt of official notice by the state of the submission of the amendment. [2003 c 111 § 1431. Prior: 1965 c 9 § 29.74.020; prior: 1933 c 181 § 1, part; RRS § 5249-1, part. Formerly RCW 29.74.020.]

**29A.56.430 Election of convention delegates—Date.** The date for holding the election of delegates must be not less than one month nor more than six weeks before the date of holding the convention. If a general election is to be held not more than six months nor less than three months from the date of official notice of submission to the state of the proposed amendment, the governor must fix the date of the general election as the date for the election of delegates to the convention. [2003 c 111 § 1432; 1965 c 9 § 29.74.030. Prior: (i) 1933 c 181 § 1, part; RRS § 5249-1, part. (ii) 1933 c 181 § 9; RRS § 5249-9. Formerly RCW 29.74.030.]

**29A.56.440 Time and place for convention.** The convention shall be held not less than five nor more than eight months from the date of the first publication of the proclamation provided for in RCW 29A.56.420. It shall be held in the chambers of the state house of representatives unless the governor shall select some other place at the state capitol. [2003 c 111 § 1433. Prior: 1965 c 9 § 29.74.040; prior: 1933 c 181 § 1, part; RRS § 5249-1, part. Formerly RCW 29.74.040.]

**29A.56.450 Delegates—Number and qualifications.** Each state representative district shall be entitled to as many delegates in the convention as it has members in the house of representatives of the state legislature. No person shall be qualified to act as a delegate in said convention who does not possess the qualifications required of representatives in the state legislature from the same district. [2003 c 111 § 1434. Prior: 1965 c 9 § 29.74.050; prior: 1933 c 181 § 2; RRS § 5249-2. Formerly RCW 29.74.050.]

*Qualifications of legislators: State Constitution Art. 2 § 7.*

*Subversive activities, disqualification from holding public office: RCW 9.81.040.*

**29A.56.460 Delegates—Declarations of candidacy.** Anyone desiring to file as a candidate for election as a dele-

gate to the convention shall, not less than thirty nor more than sixty days before the date fixed for holding the election, file a declaration of candidacy with the secretary of state. Filing must be made on a form to be prescribed by the secretary of state and include a sworn statement of the candidate as being either for or against the amendment that will be submitted to a vote of the convention and that the candidate will, if elected as a delegate, vote in accordance with the declaration. The form must be so worded that the candidate must give a plain unequivocal statement of his or her views as either for or against the proposal upon which he or she will, if elected, be called upon to vote. No candidate may in any such filing make any statement or declaration as to party politics or political faith or beliefs. The fee for filing as a candidate is ten dollars and must be transmitted to the secretary of state with the filing papers and be by the secretary of state transmitted to the state treasurer for the use of the general fund. [2003 c 111 § 1435; 1965 c 9 § 29.74.060. Prior: 1933 c 181 § 3; RRS § 5249-3. Formerly RCW 29.74.060.]

**29A.56.470 Election of delegates—Administration.** The election of delegates to the convention must as far as practicable, be administered, except as otherwise provided in this chapter, in the same manner as a general election under the election laws of this state. [2003 c 111 § 1436; 1965 c 9 § 29.74.070. Prior: 1933 c 181 § 4, part; RRS § 5249-4, part. Formerly RCW 29.74.070.]

**29A.56.480 Election of delegates—Ballots.** The issue shall be identified as, "Delegates to a convention for ratification or rejection of a proposed amendment to the United States Constitution, relating . . . . . (stating briefly the substance of amendment proposed for adoption or rejection)." The names of all candidates who have filed in a district shall be printed on the ballots for that district in two separate groups under the headings, "For the amendment" and "Against the amendment." The names of the candidates in each group shall be printed in alphabetical order. [2003 c 111 § 1437. Prior: 1990 c 59 § 70; 1965 c 9 § 29.74.080; prior: 1933 c 181 § 4, part; RRS § 5249-4, part. Formerly RCW 29.74.080.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

*Ballots: Chapter 29A.36 RCW.*

**29A.56.490 Election of delegates—Ascertaining result.** The election officials shall count and determine the number of votes cast for each individual; and shall also count and determine the aggregate number of votes cast for all candidates whose names appear under each of the respective headings. Where more than the required number have been voted for, the ballot must be rejected. The figures determined by the various counts must be entered in the poll books of the respective precincts. The vote must be canvassed in each county by the county canvassing board, and certificate of results must within fifteen days after the election be transmitted to the secretary of state. Upon receiving the certificate, the secretary of state may require returns or poll books from any county precinct to be forwarded for the secretary's examination.

Where a district embraces precincts of more than one county, the secretary of state shall combine the votes from all the precincts included in each district. The delegates elected in each district will be the number of candidates corresponding to the number of state representatives from the district, who receive the highest number of votes in the group (either "for" or "against") that received an aggregate number of votes for all candidates in the group greater than the aggregate number of votes for all the candidates in the other group. The secretary of state shall issue certificates of election to the delegates so elected. [2003 c 111 § 1438; 1965 c 9 § 29.74.100. Prior: 1933 c 181 § 6; RRS § 5249-6. Formerly RCW 29.74.100.]

**29A.56.500 Meeting—Organization.** The convention shall meet at the time and place fixed in the governor's proclamation. The secretary of state shall call it to order, who shall then call the roll of the delegates and preside over the convention until its president is elected. The chief justice of the supreme court shall administer the oath of office to the delegates. As far as practicable, the convention shall proceed under the rules adopted by the last preceding session of the state senate. The convention shall elect a president and a secretary and shall thereafter and thereupon proceed with a publicly recorded voice vote upon the proposition submitted by the Congress of the United States. [2003 c 111 § 1439; 1965 c 9 § 29.74.110. Prior: 1933 c 181 § 7, part; RRS § 5249-7, part. Formerly RCW 29.74.110.]

**29A.56.510 Quorum—Proceedings—Record.** Two-thirds of the elected members of said convention shall constitute a quorum to do business, and a majority of those elected shall be sufficient to adopt or reject any proposition coming before the convention. If such majority votes in favor of the ratification of the amendment submitted to the convention, the said amendment shall be deemed ratified by the state of Washington; and if a majority votes in favor of rejecting or not ratifying the amendment, the same shall be deemed rejected by the state of Washington. [2003 c 111 § 1440. Prior: 1965 c 9 § 29.74.120; prior: 1933 c 181 § 8, part; RRS § 5249-8, part. Formerly RCW 29.74.120.]

**29A.56.520 Certification and transmittal of result.** The vote of each member shall be recorded in the journal of the convention, which shall be preserved by the secretary of state as a public document. The action of the convention shall be enrolled, signed by its president and secretary and filed with the secretary of state and it shall be the duty of the secretary of state to properly certify the action of the convention to the Congress of the United States as provided by general law. [2003 c 111 § 1441; 1965 c 9 § 29.74.130. Prior: (i) 1933 c 181 § 7, part; RRS § 5249-7, part. (ii) 1933 c 181 § 8, part; RRS § 5249-8, part. Formerly RCW 29.74.130.]

**29A.56.530 Expenses—How paid—Delegates receive filing fee.** The delegates attending the convention shall be paid the amount of their filing fee, upon vouchers approved by the president and secretary of the convention and state warrants issued thereon and payable from the general fund of the state treasury. The delegates shall receive no other com-

pensation or mileage. All other necessary expenses of the convention shall be payable from the general fund of the state upon vouchers approved by the president and secretary of the convention. [2003 c 111 § 1442. Prior: 1965 c 9 § 29.74.140; prior: 1933 c 181 § 10; RRS § 5249-10. Formerly RCW 29.74.140.]

**29A.56.540 Federal statutes controlling.** If a congressional measure, which submits to the several states an amendment to the Constitution of the United States for ratification or rejection, provides for or requires a different method of calling and holding conventions to ratify or reject said amendment, the requirements of said congressional measure shall be followed so far as they conflict with the provisions of this chapter. [2003 c 111 § 1443. Prior: 1965 c 9 § 29.74.150; prior: 1933 c 181 § 11; RRS § 5249-11. Formerly RCW 29.74.150.]

## Chapter 29A.60 RCW CANVASSING

### Sections

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**29A.60.010 Conduct of elections—Canvass.** All elections, whether special or general, held under RCW \*29A.04.320 and 29A.04.330 must be conducted by the county auditor as ex officio county supervisor of elections and, except as provided in RCW 29A.60.240, the returns canvassed by the county canvassing board. [2003 c 111 § 1501; 1965 c 123 § 4; 1965 c 9 § 29.13.040. Prior: 1963 c 200 § 6; 1955 c 55 § 3; 1951 c 257 § 4; 1951 c 101 § 4; 1949 c 161 § 5; Rem. Supp. 1949 § 5153-1. Formerly RCW 29.13.040.]

\*Reviser's note: RCW 29A.04.320 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.04.321.

**29A.60.021 Write-in voting—Declaration of candidacy—Counting of vote.** (1) For any office at any election

or primary, any voter may write in on the ballot the name of any person for an office who has filed as a write-in candidate for the office in the manner provided by RCW 29A.24.311 and such vote shall be counted the same as if the name had been printed on the ballot and marked by the voter. For a partisan primary in a jurisdiction using the physically separate ballot format, a voter may write in on a party ballot only the names of write-in candidates who affiliate with that major political party. No write-in vote made for any person who has not filed a declaration of candidacy pursuant to RCW 29A.24.311 is valid if that person filed for the same office, either as a regular candidate or a write-in candidate, at the preceding primary. Any abbreviation used to designate office, position, or political party shall be accepted if the canvassing board can determine, to their satisfaction, the voter's intent.

(2) The number of write-in votes cast for each office must be recorded and reported with the canvass for the election.

(3) Write-in votes cast for an individual candidate for an office need not be tallied if the total number of write-in votes and under votes recorded by the vote tabulation system for the office is not greater than the number of votes cast for the candidate apparently nominated or elected, and the write-in votes could not have altered the outcome of the primary or election. In the case of write-in votes for statewide office or for any office whose jurisdiction encompasses more than one county, write-in votes for an individual candidate must be tallied whenever the county auditor is notified by either the office of the secretary of state or another auditor in a multi-county jurisdiction that it appears that the write-in votes could alter the outcome of the primary or election.

(4) In the case of statewide offices or jurisdictions that encompass more than one county, if the total number of write-in votes and under votes recorded by the vote tabulation system for an office within a county is greater than the number of votes cast for a candidate apparently nominated or elected in a primary or election, the auditor shall tally all write-in votes for individual candidates for that office and notify the office of the secretary of state and the auditors of the other counties within the jurisdiction, that the write-in votes for individual candidates should be tallied. [2004 c 271 § 147.]

**29A.60.030 Tabulation continuous.** Except as provided by rule under \*RCW 29A.04.610, on the day of the primary or election, the tabulation of ballots at the polling place or at the counting center shall proceed without interruption or adjournment until all of the ballots cast at the polls at that primary or election have been tabulated. [2004 c 266 § 16; 2003 c 111 § 1503. Prior: 1990 c 59 § 58. Formerly RCW 29.54.042.]

**\*Reviser's note:** RCW 29A.04.610 was amended by 2004 c 267 § 702 and repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.04.611.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.60.040 Rejection of ballots or parts—Write-in votes.** A ballot is invalid and no votes on that ballot may be

counted if it is found folded together with another ballot or it is marked so as to identify the voter.

Those parts of a ballot are invalid and no votes may be counted for those issues or offices where more votes are cast for the office or issue than are permitted by law; write-in votes do not contain all of the information required under \*RCW 29A.60.020; or that issue or office is not marked with sufficient definiteness to determine the voter's choice or intention. No write-in vote may be rejected due to a variation in the form of the name if the election board or the canvassing board can determine the issue for or against which or the person and the office for which the voter intended to vote. [2003 c 111 § 1504. Prior: 1999 c 158 § 13; 1999 c 157 § 4; 1990 c 59 § 56; 1977 ex.s. c 361 § 88; 1973 1st ex.s. c 121 § 2; 1965 ex.s. c 101 § 11; 1965 c 9 § 29.54.050; prior: (i) Code 1881 § 3091; 1865 p 38 § 2; RRS § 5336. (ii) 1895 c 156 § 10; 1889 p 411 § 29; RRS § 5294. (iii) 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. (iv) 1895 c 156 § 11, part; 1886 p 128 § 1, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5323, part. Formerly RCW 29.54.050.]

**\*Reviser's note:** RCW 29A.60.020 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.60.021.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.60.050 Questions on legality of ballot—Preservation and return.** Whenever the precinct election officers or the counting center personnel have a question about the validity of a ballot or the votes for an office or issue that they are unable to resolve, they shall prepare and sign a concise record of the facts in question or dispute. These ballots shall be delivered to the canvassing board for processing. All ballots shall be preserved in the same manner as valid ballots for that primary or election. [2003 c 111 § 1505. Prior: 1990 c 59 § 57; 1977 ex.s. c 361 § 89; 1965 c 9 § 29.54.060; prior: Code 1881 § 3080, part; 1865 p 34 § 5, part; RRS § 5324, part. Formerly RCW 29.54.060.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.60.060 Poll-site ballot counting devices—Results.** After the close of the polls, counties employing poll-site ballot counting devices may telephonically or electronically transmit the accumulated tally for each device to a central reporting location. Before making a telephonic or electronic transmission the precinct election officer must create a printed record of the results of the election for that poll site. During the canvassing period the results transmitted telephonically or electronically must be considered unofficial until a complete reconciliation of the results has been performed. This reconciliation may be accomplished by a direct loading of the results from the memory pack into the central accumulator, or a comparison of the report produced at the poll site on election night with the results received by the central accumulating device. [2003 c 111 § 1506. Prior: 1999 c 158 § 12. Formerly RCW 29.54.097.]

*Memory pack from poll-site counting device: RCW 29A.44.330.*

**29A.60.070 Returns, precinct and cumulative—Delivery to canvassing board.** The county auditor shall produce cumulative and precinct returns for each primary and election and deliver them to the canvassing board for verification and certification. The precinct and cumulative returns of any primary or election are public records under chapter 42.17 RCW. [2003 c 111 § 1507. Prior: 1990 c 59 § 60. Formerly RCW 29.54.105.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.60.080 Sealing of voting devices—Exceptions.** Except for reopening to make a recanvass, the registering mechanism of each mechanical voting device used in any primary or election shall remain sealed until ten days after the completion of the canvass of that primary or election in that county. Except where provided by a rule adopted under \*RCW 29A.04.610, voting devices used in a primary or election shall remain sealed until ten days after the completion of the canvass of that primary or election in that county. [2004 c 266 § 17; 2003 c 111 § 1508. Prior: 1990 c 59 § 24; 1965 c 9 § 29.33.230; prior: 1917 c 7 § 1, part; 1913 c 58 § 15, part; RRS § 5315, part. Formerly RCW 29.54.121, 29.33.230.]

**\*Reviser's note:** RCW 29A.04.610 was amended by 2004 c 267 § 702 and repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.04.611.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.60.090 Voting systems—Maintenance of documents.** In counties using voting systems, the county auditor shall maintain the following documents for at least sixty days after the primary or election:

- (1) Sample ballot formats together with a record of the format or formats assigned to each precinct;
- (2) All programming material related to the control of the vote tallying system for that primary or election; and
- (3) All test materials used to verify the accuracy of the tabulating equipment as required by RCW 29A.12.130. [2003 c 111 § 1509. Prior: 1990 c 59 § 61; 1977 ex.s. c 361 § 94. Formerly RCW 29.54.170.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.60.100 Votes by stickers, printed labels, rejected.** Votes cast by stickers or printed labels are not valid for any purpose and shall be rejected. Votes cast by sticker or label shall not affect the validity of other offices or issues on the voter's ballot. [2003 c 111 § 1510. Prior: 1990 c 59 § 46; 1965 ex.s. c 101 § 16. Formerly RCW 29.51.175.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.60.110 Ballot containers, sealing, opening.** Immediately after their tabulation, all ballots counted at a ballot counting center must be sealed in containers that identify the primary or election and be retained for at least sixty days or according to federal law, whichever is longer. All ballots

tallied by poll-site ballot counting devices must be returned to the elections department in sealed ballot containers on election day. Counties composed entirely of islands or portions of counties composed of islands shall collect the ballots within twenty-four hours of the close of the polls.

Ballots tabulated in poll-site ballot counting devices must be sealed by two of the election precinct officers at the polling place, and a log of the seal and the names of the people sealing the container must be completed. One copy of this log must be retained by the inspector, one copy must be placed in the ballot transfer case, and one copy must be transported with the ballots to the elections department, where the seal number must be verified by the county auditor or a designated representative. Ballots may be transported by one election employee if the container is sealed at the poll and then verified when returned to the elections department. Auditors using poll-site ballot counting devices may conduct early pickup of counted ballots on election day.

In the presence of major party observers who are available, ballots may be removed from the sealed containers at the elections department and consolidated into one sealed container for storage purposes. The containers may only be opened by the canvassing board as part of the canvass, or to conduct recounts, or under RCW 29A.60.170(3), or by order of the superior court in a contest or election dispute. If the canvassing board opens a ballot container, it shall make a full record of the additional tabulation or examination made of the ballots. This record must be added to any other record of the canvassing process in that county. [2003 c 111 § 1511; 1999 c 158 § 14; 1990 c 59 § 59. Formerly RCW 29.54.075.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.60.120 Counting ballots—Official returns.** (1) The ballots picked up from the precincts during the polling hours may be counted only at the counting center before the polls have closed. Election returns from the count of these ballots must be held in secrecy until the polls have been closed.

(2) Upon breaking the seals and opening the ballot containers from the precincts, all voted ballots must be manually inspected for damage, write-in votes, and incorrect or incomplete marks. If it is found that any ballot is damaged so that it cannot properly be counted by the vote tallying system, a true duplicate copy must be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. All damaged ballots must be kept by the county auditor until sixty days after the primary or election or according to federal law, whichever is longer.

(3) The returns produced by the vote tallying system, to which have been added the counts of questioned ballots, write-in votes, and absentee votes, constitute the official returns of the primary or election in that county. [2003 c 111 § 1512; 1999 c 158 § 15; 1990 c 59 § 33; 1977 ex.s. c 361 § 74. Formerly RCW 29.54.085, 29.34.167.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.60.130 Certificate not withheld for informality in returns.** No certificate shall be withheld on account of any defect or informality in the returns of any election, if it can with reasonable certainty be ascertained from such return what office is intended, and who is entitled to such certificate, nor shall any commission be withheld by the governor on account of any defect or informality of any return made to the office of the secretary of state. [2003 c 111 § 1513. Prior: 1965 c 9 § 29.27.120; prior: Code 1881 § 3102; 1865 p 41 § 13; RRS § 5347. Formerly RCW 29.27.120.]

**29A.60.140 Canvassing board—Membership—Authority—Delegation of authority—Rule making.** (1) Members of the county canvassing board are the county auditor, who is the chair, the county prosecuting attorney, and the chair of the county legislative body. If a member of the board is not available to carry out the duties of the board, then the auditor may designate a deputy auditor, the prosecutor may designate a deputy prosecuting attorney, and the chair of the county legislative body may designate another member of the county legislative body. Any such designation may be made on an election-by-election basis or may be on a permanent basis until revoked by the designating authority. Any such designation must be in writing, and if for a specific election, must be filed with the county auditor not later than the day before the first day duties are to be undertaken by the canvassing board. If the designation is permanent until revoked by the designating authority, then the designation must be on file in the county auditor's office no later than the day before the first day the designee is to undertake the duties of the canvassing board.

(2) The county canvassing board may adopt rules that delegate in writing to the county auditor or the county auditor's staff the performance of any task assigned by law to the canvassing board.

(3) The county canvassing board may not delegate the responsibility of certifying the returns of a primary or election, of determining the validity of challenged ballots, or of determining the validity of provisional ballots referred to the board by the county auditor.

(4) The county canvassing board shall adopt administrative rules to facilitate and govern the canvassing process in that jurisdiction.

(5) Meetings of the county canvassing board are public meetings under chapter 42.30 RCW. All rules adopted by the county canvassing board must be adopted in a public meeting under chapter 42.30 RCW, and once adopted must be available to the public to review and copy under chapter 42.17 RCW. [2003 c 111 § 1514.]

**29A.60.150 Procedure when member a candidate.** The members of the county canvassing board may not include individuals who are candidates for an office to be voted upon at the primary or election. If no individual is available to serve on the canvassing board who is not a candidate at the primary or election the individual who is a candidate must not make decisions regarding the determination of a voter's intent with respect to a vote cast for that specific office; the decision must be made by the other two members of the board. If the two disagree, the vote must not be counted unless the number of those votes could affect the

result of the primary or election, in which case the secretary of state or a designee shall make the decision on those votes. This section does not restrict participation in decisions as to the acceptance or rejection of entire ballots, unless the office in question is the only one for which the voter cast a vote. [2003 c 111 § 1515; 1995 c 139 § 3; 1965 c 9 § 29.62.030. Prior: 1957 c 195 § 16; prior: (i) Code 1881 § 3098; 1865 p 39 § 8; RRS § 5345. (ii) 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. Formerly RCW 29.62.030.]

**29A.60.160 Absentee ballots.** At least every third day after a primary or election and before certification of the election results, except Sundays and legal holidays, the county auditor, as delegated by the county canvassing board, shall process absentee ballots and canvass the votes cast at that primary or election, if the county auditor is in possession of more than twenty-five ballots that have yet to be canvassed. The county auditor, as delegated by the county canvassing board, may use his or her discretion in determining when to process the remaining absentee ballots and canvass the votes during the final four days before the certification of election results in order to protect the secrecy of any ballot. In counties where this process has not been delegated to the county auditor, the county auditor shall convene the county canvassing board to process absentee ballots and canvass the votes cast at the primary or election as set forth in this section.

Each absentee ballot previously not canvassed that was received by the county auditor two days or more before processing absentee ballots and canvassing the votes as delegated by or processed by the county canvassing board, that either was received by the county auditor before the closing of the polls on the day of the primary or election for which it was issued, or that bears a postmark on or before the primary or election for which it was issued, must be processed at that time. The tabulation of votes that results from that day's canvass must be made available to the general public immediately upon completion of the canvass. [2003 c 111 § 1516; 1999 c 259 § 4; 1995 c 139 § 2; 1987 c 54 § 2; 1965 c 9 § 29.62.020. Prior: 1957 c 195 § 15; prior: 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. Formerly RCW 29.62.020.]

*Absentee ballots, canvassing: RCW 29A.40.110.*

**29A.60.170 Counting center, direction and observation of proceedings—Manual count of certain precincts.**

(1) The counting center in a county using voting systems is under the direction of the county auditor and must be observed by one representative from each major political party, if representatives have been appointed by the respective major political parties and these representatives are present while the counting center is operating. The proceedings must be open to the public, but no persons except those employed and authorized by the county auditor may touch any ballot or ballot container or operate a vote tallying system.

(2) In counties in which ballots are not counted at the polling place, the official political party observers, upon mutual agreement, may request that a precinct be selected at random on receipt of the ballots from the polling place and

that a manual count be made of the number of ballots and of the votes cast on any office or issue. The ballots for that precinct must then be counted by the vote tallying system, and this result will be compared to the results of the manual count. This may be done as many as three times during the tabulation of ballots on the day of the primary or election.

(3) In counties using poll-site ballot counting devices, the political party observers, upon mutual agreement, may choose as many as three precincts and request that a manual count be made of the number of ballots and the votes cast on any office or issue. The results of this count will be compared to the count of the precinct made by the poll-site ballot counting device. These selections must be made no later than thirty minutes after the close of the polls. The manual count must be completed within forty-eight hours after the close of the polls. The process must take place at a location designated by the county auditor for that purpose. The political party observers must receive timely notice of the time and location, and have the right to be present. However, the process must proceed as scheduled if the observers are unable to attend. [2003 c 111 § 1517; 1999 c 158 § 9; 1990 c 59 § 30; 1977 ex.s. c 361 § 71. Formerly RCW 29.54.025, 29.34.153.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

#### **29A.60.180 Credit for voting—Retention of ballots.**

Each registered voter casting an absentee ballot will be credited with voting on his or her voter registration record. Absentee ballots must be retained for the same length of time and in the same manner as ballots cast at the precinct polling places. [2003 c 111 § 1518. Prior: 2001 c 241 § 12; 1988 c 181 § 3; 1987 c 346 § 16; 1983 c 136 § 1; 1965 c 9 § 29.36.075; prior: 1961 c 78 § 1. Formerly RCW 29.36.330, 29.36.075.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

#### **29A.60.190 Certification of election results—Unofficial returns.**

(1) On the tenth day after a special election or primary and on the fifteenth day after a general election, the county canvassing board shall complete the canvass and certify the results. Each absentee ballot that was returned before the closing of the polls on the date of the primary or election for which it was issued, and each absentee ballot with a post-mark on or before the date of the primary or election for which it was issued and received on or before the date on which the primary or election is certified, must be included in the canvass report.

(2) At the request of a caucus of the state legislature, the county auditor shall transmit copies of all unofficial returns of state and legislative primaries or elections prepared by or for the county canvassing board to either the secretary of the senate or the chief clerk of the house of representatives. [2004 c 266 § 18; 2003 c 111 § 1519.]

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

#### **29A.60.200 Canvassing board—Canvassing procedure—Penalty.**

Before canvassing the returns of a primary

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or election, the chair of the county legislative authority or the chair's designee shall administer an oath to the county auditor or the auditor's designee attesting to the authenticity of the information presented to the canvassing board. This oath must be signed by the county auditor or designee and filed with the returns of the primary or election.

The county canvassing board shall proceed to verify the results from the precincts and the absentee ballots. The board shall execute a certificate of the results of the primary or election signed by all members of the board or their designees. Failure to certify the returns, if they can be ascertained with reasonable certainty, is a crime under RCW 29A.84.720. [2003 c 111 § 1520; 1990 c 59 § 63; 1965 c 9 § 29.62.040. Prior: 1957 c 195 § 17; prior: (i) 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. (ii) 1893 c 112 § 2; RRS § 5342. (iii) 1903 c 85 § 1, part; Code 1881 § 3094, part; 1865 p 38 § 4, part; RRS § 5339, part. Formerly RCW 29.62.040.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.60.210 Recanvass—Generally.** Whenever the canvassing board finds that there is an apparent discrepancy or an inconsistency in the returns of a primary or election, the board may recanvass the ballots or voting devices in any precincts of the county. The canvassing board shall conduct any necessary recanvass activity on or before the last day to certify the primary or election and correct any error and document the correction of any error that it finds. [2003 c 111 § 1521; 1990 c 59 § 64; 1965 c 9 § 29.62.050. Prior: 1951 c 193 § 1; 1917 c 7 § 1, part; 1913 c 58 § 15, part; RRS § 5315, part. Formerly RCW 29.62.050.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

*Voting systems: Chapter 29A.12 RCW.*

**29A.60.221 Tie in primary or final election.** (1) If the requisite number of any federal, state, county, city, or district offices have not been nominated in a primary by reason of two or more persons having an equal and requisite number of votes for being placed on the general election ballot, the official empowered by state law to certify candidates for the general election ballot shall give notice to the several persons so having the equal and requisite number of votes to attend at the appropriate office at the time designated by that official, who shall then and there proceed publicly to decide by lot which of those persons will be declared nominated and placed on the general election ballot.

(2) If the requisite number of any federal, state, county, city, district, or precinct officers have not been elected by reason of two or more persons having an equal and highest number of votes for one and the same office, the official empowered by state law to issue the original certificate of election shall give notice to the several persons so having the highest and equal number of votes to attend at the appropriate office at the time to be appointed by that official, who shall then and there proceed publicly to decide by lot which of those persons will be declared duly elected, and the official shall make out and deliver to the person thus duly declared elected a certificate of election. [2004 c 271 § 176.]

**29A.60.230 Abstract by election officer—Transmittal to secretary of state.** (1) Immediately after the official results of a state primary or general election in a county are ascertained, the county auditor or other election officer shall make an abstract of the number of registered voters in each precinct and of all the votes cast in the county at such state primary or general election for and against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The cumulative report of the election and a copy of the certificate of the election must be transmitted to the secretary of state immediately, through electronic means and mailed with the abstract of votes no later than the next business day following the certification by the county canvassing board.

(2) After each general election, the county auditor or other election officer shall provide to the secretary of state a report of the number of absentee ballots cast in each precinct for and against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The report may be included in the abstract required by this section or may be transmitted to the secretary of state separately, but in no event later than March 31st of the year following the election. Absentee ballot results may be incorporated into votes cast at the polls for each precinct or may be reported separately on a precinct-by-precinct basis.

(3) If absentee ballot results are not incorporated into votes cast at the polls, the county auditor or other election official may aggregate results from more than one precinct if the auditor, pursuant to rules adopted by the secretary of state, finds that reporting a single precinct's absentee ballot results would jeopardize the secrecy of a person's ballot. To the extent practicable, precincts for which absentee results are aggregated must be contiguous. [2003 c 111 § 1523; 2001 c 225 § 2; 1999 c 298 § 21; 1990 c 262 § 1; 1977 ex.s. c 361 § 96; 1965 c 9 § 29.62.090. Prior: (i) 1895 c 156 § 12; Code 1881 § 3101; 1865 p 40 § 12; RRS § 5346. (ii) Code 1881 § 3103; 1865 p 41 § 14; RRS § 5348. Formerly RCW 29.62.090.]

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.60.240 Secretary of state—Primary returns—State offices, etc.** The secretary of state shall, as soon as possible but in any event not later than the third Tuesday following the primary, canvass and certify the returns of all primary elections as to candidates for state offices, United States senators and representatives in Congress, and all other candidates whose district extends beyond the limits of a single county. [2003 c 111 § 1524; 1977 ex.s. c 361 § 97; 1965 c 9 § 29.62.100. Prior: 1961 c 130 § 11; prior: 1907 c 209 § 24, part; RRS § 5201, part. Formerly RCW 29.62.100.]

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.60.250 Secretary of state—Final returns—Scope.** As soon as the returns have been received from all the counties of the state, but not later than the thirtieth day after the election, the secretary of state shall make a canvass of such of the returns as are not required to be canvassed by the

legislature and make out a statement thereof, file it in his or her office, and transmit a certified copy to the governor. [2003 c 111 § 1525; 1965 c 9 § 29.62.120. Prior: Code 1881 § 3100, part; No RRS. Formerly RCW 29.62.120.]

**29A.60.260 Canvass on statewide measures.** The votes on proposed amendments to the state Constitution, recommendations for the calling of constitutional conventions and other questions submitted to the people must be counted, canvassed, and returned by each county canvassing board in the manner provided by law for counting, canvassing, and returning votes for candidates for state offices. The secretary of state shall, in the presence of the governor, within thirty days after the election, canvass the votes upon each question and certify to the governor the result. The governor shall forthwith issue a proclamation giving the whole number of votes cast in the state for and against such measure and declaring the result. If the vote cast upon an initiative or referendum measure is equal to less than one-third of the total vote cast at the election, the governor shall proclaim the measure to have failed. [2003 c 111 § 1526; 1965 c 9 § 29.62.130. Prior: (i) 1913 c 138 § 30; RRS § 5426. (ii) 1917 c 23 § 1; RRS § 5341. Formerly RCW 29.62.130.]

## Chapter 29A.64 RCW

### RECOUNTS

#### Sections

29A.64.011	Application—Requirements—Application of chapter.
29A.64.021	Mandatory.
29A.64.030	Deposit of fees—Notice—Public proceeding.
29A.64.041	Procedure—Observers—Request to stop.
29A.64.050	Partial recount requiring complete recount.
29A.64.061	Amended abstracts.
29A.64.070	Limitation.
29A.64.081	Expenses—Charges.
29A.64.090	Statewide measures—When mandatory—Cost at state expense.
29A.64.100	Statewide measures—Funds for additional expenses.

**29A.64.011 Application—Requirements—Application of chapter.** An officer of a political party or any person for whom votes were cast in a primary who was not declared nominated may file a written application for a recount of the votes or a portion of the votes cast at that primary for all persons for whom votes were cast for nomination to that office.

An officer of a political party or any person for whom votes were cast at any election may file a written application for a recount of the votes or a portion of the votes cast at that election for all candidates for election to that office.

Any group of five or more registered voters may file a written application for a recount of the votes or a portion of the votes cast upon any question or issue. They shall designate one of the members of the group as chair and shall indicate the voting residence of each member of the group.

An application for a recount of the votes cast for an office or on a ballot measure must be filed with the officer with whom filings are made for the jurisdiction.

An application for a recount must specify whether the recount will be done manually or by the vote tally system. A recount done by the vote tally system must use programming that recounts and reports only the office or ballot measure in

question. The county shall also provide for a test of the logic and accuracy of that program.

An application for a recount must be filed within three business days after the county canvassing board or secretary of state has declared the official results of the primary or election for the office or issue for which the recount is requested.

This chapter applies to the recounting of votes cast by paper ballots and to the recounting of votes recorded on ballots counted by a vote tally system. [2004 c 271 § 177.]

**29A.64.021 Mandatory.** (1) If the official canvass of all of the returns for any office at any primary or election reveals that the difference in the number of votes cast for a candidate apparently nominated or elected to any office and the number of votes cast for the closest apparently defeated opponent is less than two thousand votes and also less than one-half of one percent of the total number of votes cast for both candidates, the county canvassing board shall conduct a recount of all votes cast on that position.

(a) Whenever such a difference occurs in the number of votes cast for candidates for a position the declaration of candidacy for which was filed with the secretary of state, the secretary of state shall, within three business days of the day that the returns of the primary or election are first certified by the canvassing boards of those counties, direct those boards to recount all votes cast on the position.

(b) If the difference in the number of votes cast for the apparent winner and the closest apparently defeated opponent is less than one hundred fifty votes and also less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually or as provided in subsection (3) of this section.

(2) A mandatory recount shall be conducted in the manner provided by RCW 29A.64.030, 29A.64.041, and 29A.64.061. No cost of a mandatory recount may be charged to any candidate.

(3) The apparent winner and closest apparently defeated opponent for an office for which a manual recount is required under subsection (1)(b) of this section may select an alternative method of conducting the recount. To select such an alternative, the two candidates shall agree to the alternative in a signed, written statement filed with the election official for the office. The recount shall be conducted using the alternative method if: It is suited to the balloting system that was used for casting the votes for the office; it involves the use of a vote tallying system that is approved for use in this state by the secretary of state; and the vote tallying system is readily available in each county required to conduct the recount. If more than one balloting system was used in casting votes for the office, an alternative to a manual recount may be selected for each system. [2004 c 271 § 178.]

**29A.64.030 Deposit of fees—Notice—Public proceeding.** An application for a recount shall state the office for which a recount is requested and whether the request is for all or only a portion of the votes cast in that jurisdiction of that office. The person filing an application for a manual recount shall, at the same time, deposit with the county canvassing board or secretary of state, in cash or by certified check, a sum equal to twenty-five cents for each ballot cast in

the jurisdiction or portion of the jurisdiction for which the recount is requested as security for the payment of any costs of conducting the recount. If the application is for a machine recount, the deposit must be equal to fifteen cents for each ballot. These charges shall be determined by the county canvassing board or boards under \*RCW 29A.64.080.

The county canvassing board shall determine a time and a place or places at which the recount will be conducted. This time shall be less than three business days after the day upon which: The application was filed with the board; the request for a recount or directive ordering a recount was received by the board from the secretary of state; or the returns are certified which indicate that a recount is required under \*RCW 29A.64.020 for an issue or office voted upon only within the county. Not less than two days before the date of the recount, the county auditor shall mail a notice of the time and place of the recount to the applicant or affected parties and, if the recount involves an office, to any person for whom votes were cast for that office. The county auditor shall also notify the affected parties by either telephone, fax, e-mail, or other electronic means at the time of mailing. At least three attempts must be made over a two-day period to notify the affected parties or until the affected parties have received the notification. Each attempt to notify affected parties must request a return response indicating that the notice has been received. Each person entitled to receive notice of the recount may attend, witness the recount, and be accompanied by counsel.

Proceedings of the canvassing board are public under chapter 42.30 RCW. Subject to reasonable and equitable guidelines adopted by the canvassing board, all interested persons may attend and witness a recount. [2003 c 111 § 1603. Prior: 2001 c 225 § 5; 1991 c 81 § 36; 1987 c 54 § 5; 1977 ex.s. c 361 § 99; 1965 c 9 § 29.64.020; prior: 1961 c 50 § 2; 1955 c 215 § 2. Formerly RCW 29.64.020.]

**\*Reviser's note:** RCW 29A.64.080 and 29A.64.020 were repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.64.081 and 29A.64.021.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.64.041 Procedure—Observers—Request to stop.** (1) At the time and place established for a recount, the canvassing board or its duly authorized representatives, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and shall recount the votes for the offices or issues for which the recount has been ordered. Ballots shall be handled only by the members of the canvassing board or their duly authorized representatives.

Witnesses shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. The canvassing board shall not permit the tabulation of votes for any nomination, election, or issue other than the ones for which a recount was applied for or required.

(2) At any time before the ballots from all of the precincts listed in the application for the recount have been recounted, the applicant may file with the board a written request to stop the recount.

(3) The recount may be observed by persons representing the candidates affected by the recount or the persons representing both sides of an issue that is being recounted. The observers may not make a record of the names, addresses, or other information on the ballots, poll books, or applications for absentee ballots unless authorized by the superior court. The secretary of state or county auditor may limit the number of observers to not less than two on each side if, in his or her opinion, a greater number would cause undue delay or disruption of the recount process. [2004 c 271 § 179.]

**29A.64.050 Partial recount requiring complete recount.** When a partial recount of votes cast for an office or issue changes the result of the election, the canvassing board or the secretary of state, if the office or issue is being recounted at his or her direction, shall order a complete recount of all ballots cast for the office or issue for the jurisdiction in question.

This recount will be conducted in a manner consistent with \*RCW 29A.64.020. [2003 c 111 § 1605. Prior: 2001 c 225 § 7. Formerly RCW 29.64.035.]

**\*Reviser's note:** RCW 29A.64.020 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.64.021.

**29A.64.061 Amended abstracts.** Upon completion of the canvass of a recount, the canvassing board shall prepare and certify an amended abstract showing the votes cast in each precinct for which the recount was conducted. Copies of the amended abstracts must be transmitted to the same officers who received the abstract on which the recount was based.

If the nomination, election, or issue for which the recount was conducted was submitted only to the voters of a county, the canvassing board shall file the amended abstract with the original results of that election or primary.

If the nomination, election, or issue for which a recount was conducted was submitted to the voters of more than one county, the secretary of state shall canvass the amended abstracts and shall file an amended abstract with the original results of that election. An amended abstract certified under this section supersedes any prior abstract of the results for the same offices or issues at the same primary or election. [2004 c 271 § 180.]

**29A.64.070 Limitation.** After the original count, canvass, and certification of results, the votes cast in any single precinct may not be recounted and the results recertified more than twice. [2003 c 111 § 1607. Prior: 2001 c 225 § 9; 1991 c 90 § 3. Formerly RCW 29.64.051.]

**Finding, purpose—1991 c 90:** "The legislature finds that it is in the public interest to determine the winner of close contests for elective offices as expeditiously and as accurately as possible. It is the purpose of this act to provide procedures which promote the prompt and accurate recounting of votes for elective offices and which provide closure to the recount process." [1991 c 90 § 1.]

**29A.64.081 Expenses—Charges.** The canvassing board shall determine the expenses for conducting a recount of votes.

The cost of the recount shall be deducted from the amount deposited by the applicant for the recount at the time

of filing the request for the recount, and the balance shall be returned to the applicant. If the costs of the recount exceed the deposit, the applicant shall pay the difference. No charges may be deducted by the canvassing board from the deposit for a recount if the recount changes the result of the nomination or election for which the recount was ordered. [2004 c 271 § 181.]

**29A.64.090 Statewide measures—When mandatory—Cost at state expense.** When the official canvass of returns of any election reveals that the difference in the number of votes cast for the approval of a statewide measure and the number of votes cast for the rejection of such measure is less than two thousand votes and also less than one-half of one percent of the total number of votes cast on such measure, the secretary of state shall direct that a recount of all votes cast on such measure be made on such measure, in the manner provided by \*RCW 29A.64.040 and 29A.64.060, and the cost of such recount will be at state expense. [2003 c 111 § 1609. Prior: 2001 c 225 § 11; 1973 c 82 § 1. Formerly RCW 29.64.080.]

**\*Reviser's note:** RCW 29A.64.040 and 29A.64.060 were repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.64.041 and 29A.64.061.

**29A.64.100 Statewide measures—Funds for additional expenses.** Each county auditor shall file with the secretary of state a statement listing only the additional expenses incurred whenever a mandatory recount of the votes cast on a state measure is made as provided in RCW 29A.64.090. The secretary of state shall include in his or her biennial budget request a provision for sufficient funds to carry out the provisions of this section. Payments hereunder shall be from appropriations specifically provided for such purpose by law. [2003 c 111 § 1610; 1977 ex.s. c 144 § 5; 1973 c 82 § 2. Formerly RCW 29.64.090.]

## Chapter 29A.68 RCW CONTESTING AN ELECTION

### Sections

29A.68.011	Prevention and correction of election frauds and errors.
29A.68.020	Commencement by registered voter—Causes for.
29A.68.030	Affidavit of error or omission—Time for filing—Contents—Witnesses.
29A.68.040	Hearing date—Issuance of citation—Service.
29A.68.050	Witnesses to attend—Hearing of contest—Judgment.
29A.68.060	Costs, how awarded.
29A.68.070	Misconduct of board—Irregularity material to result.
29A.68.080	Misconduct of board—Number of votes affected—Enough to change result.
29A.68.090	Illegal votes—Allegation of.
29A.68.100	Illegal votes—List required for testimony.
29A.68.110	Illegal votes—Number of votes affected—Enough to change result.
29A.68.120	Election set aside—Appeal period.

**29A.68.011 Prevention and correction of election frauds and errors.** Any justice of the supreme court, judge of the court of appeals, or judge of the superior court in the proper county shall, by order, require any person charged with error, wrongful act, or neglect to forthwith correct the error, desist from the wrongful act, or perform the duty and to do as the court orders or to show cause forthwith why the error should not be corrected, the wrongful act desisted from,

or the duty or order not performed, whenever it is made to appear to such justice or judge by affidavit of an elector that:

- (1) An error or omission has occurred or is about to occur in printing the name of any candidate on official ballots; or
- (2) An error other than as provided in subsections (1) and (3) of this section has been committed or is about to be committed in printing the ballots; or
- (3) The name of any person has been or is about to be wrongfully placed upon the ballots; or
- (4) A wrongful act other than as provided for in subsections (1) and (3) of this section has been performed or is about to be performed by any election officer; or
- (5) Any neglect of duty on the part of an election officer other than as provided for in subsections (1) and (3) of this section has occurred or is about to occur; or
- (6) An error or omission has occurred or is about to occur in the issuance of a certificate of election.

An affidavit of an elector under subsections (1) and (3) above when relating to a primary election must be filed with the appropriate court no later than the second Friday following the closing of the filing period for nominations for such office and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsections (1) and (3) of this section when relating to a general election must be filed with the appropriate court no later than three days following the official certification of the primary election returns and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsection (6) of this section shall be filed with the appropriate court no later than ten days following the issuance of a certificate of election. [2004 c 271 § 182.]

**29A.68.020 Commencement by registered voter—Causes for.** Any registered voter may contest the right of any person declared elected to an office to be issued a certificate of election for any of the following causes:

- (1) For misconduct on the part of any member of any precinct election board involved therein;
- (2) Because the person whose right is being contested was not at the time the person was declared elected eligible to that office;
- (3) Because the person whose right is being contested was previous to the election convicted of a felony by a court of competent jurisdiction, the conviction not having been reversed nor the person's civil rights restored after the conviction;
- (4) Because the person whose right is being contested gave a bribe or reward to a voter or to an inspector or judge of election for the purpose of procuring the election, or offered to do so;
- (5) On account of illegal votes.
  - (a) Illegal votes include but are not limited to the following:
    - (i) More than one vote cast by a single voter;
    - (ii) A vote cast by a person disqualified under Article VI, section 3 of the state Constitution.
  - (b) Illegal votes do not include votes cast by improperly registered voters who were not properly challenged under RCW 29A.08.810 and 29A.08.820.

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All election contests must proceed under \*RCW 29A.68.010. [2003 c 111 § 1702; 1983 1st ex.s. c 30 § 6; 1977 ex.s. c 361 § 101; 1965 c 9 § 29.65.010. Prior: 1959 c 329 § 26; prior: (i) Code 1881 § 3105; 1865 p 42 § 1; RRS § 5366. (ii) Code 1881 § 3109; 1865 p 43 § 5; RRS § 5370. Formerly RCW 29.65.010.]

\*Reviser's note: RCW 29A.68.010 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.68.011.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

*Civil rights*

*loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.*

*restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.*

**29A.68.030 Affidavit of error or omission—Time for filing—Contents—Witnesses.** An affidavit of an elector with respect to \*RCW 29A.68.010(6) must be filed with the appropriate court no later than ten days following the issuance of a certificate of election and must set forth specifically:

- (1) The name of the contestant and that he or she is a registered voter in the county, district or precinct, as the case may be, in which the office is to be exercised;
- (2) The name of the person whose right is being contested;
- (3) The office;
- (4) The particular causes of the contest.

No statement of contest may be dismissed for want of form if the particular causes of contest are alleged with sufficient certainty. The person charged with the error or omission must be given the opportunity to call any witness, including the candidate to whom he or she has issued or intends to issue the certificate of election. [2003 c 111 § 1703; 1977 ex.s. c 361 § 102; 1965 c 9 § 29.65.020. Prior: (i) Code 1881 § 3110; 1865 p 43 § 6; RRS § 5371. (ii) Code 1881 § 3112; 1865 p 44 § 8; RRS § 5373. Formerly RCW 29.65.020.]

\*Reviser's note: RCW 29A.68.010 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.68.011.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.68.040 Hearing date—Issuance of citation—Service.** Upon such affidavit being filed, the clerk shall inform the judge of the appropriate court, who may give notice, and order a session of the court to be held at the usual place of holding the court, on some day to be named by the judge, not less than ten nor more than twenty days from the date of the notice, to hear and determine such contested election. If no session is called for the purpose, the contest must be determined at the first regular session of court after the statement is filed.

The clerk of the court shall also at the time issue a citation for the person charged with the error or omission, to appear at the time and place specified in the notice. The citation must be delivered to the sheriff and be served upon the party in person; or if the person cannot be found, by leaving a copy thereof at the house where the person last resided. [2003 c 111 § 1704; 1977 ex.s. c 361 § 103; 1965 c 9 § 29.65.040. Prior: (i) Code 1881 § 3113; 1865 p 44 § 9; RRS

§ 5374. (ii) Code 1881 § 3114; 1865 p 45 § 10; RRS § 5375. Formerly RCW 29.65.040.]

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.68.050 Witnesses to attend—Hearing of contest—Judgment.** The clerk shall issue subpoenas for witnesses in such contested election at the request of either party, which shall be served by the sheriff or constable, as other subpoenas, and the superior court shall have full power to issue attachments to compel the attendance of witnesses who shall have been duly subpoenaed to attend if they fail to do so.

The court shall meet at the time and place designated to determine such contested election by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable, and may dismiss the proceedings if the statement of the cause or causes of contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the court shall pronounce judgment in the premises, either confirming or annulling and setting aside such election, according to the law and right of the case.

If in any such case it shall appear that another person than the one returned has the highest number of legal votes, said court shall declare such person duly elected. [2003 c 111 § 1705. Prior: 1965 c 9 § 29.65.050; prior: (i) Code 1881 § 3115; 1865 p 45 § 11; RRS § 5376. (ii) Code 1881 § 3116; 1865 p 45 § 12; RRS § 5377. (iii) Code 1881 § 3117; 1865 p 45 § 13; RRS § 5378. FORMER PARTS OF SECTION: (i) Code 1881 § 3119; 1865 p 45 § 15; RRS § 5379, now codified in RCW 29.65.055. (ii) Code 1881 § 3120; 1865 p 45 § 16; RRS § 5380, now codified in RCW 29.65.055. Formerly RCW 29.65.050.]

**29A.68.060 Costs, how awarded.** If the proceedings are dismissed for insufficiency, want of prosecution, or the election is by the court confirmed, judgment shall be rendered against the party contesting such election for costs, in favor of the party charged with error or omission.

If such election is annulled and set aside, judgment for costs shall be rendered against the party charged with the error or omission and in favor of the party alleging the same. [2003 c 111 § 1706. Prior: 1977 ex.s. c 361 § 104; 1965 c 9 § 29.65.055; prior: (i) Code 1881 § 3119; 1865 p 45 § 15; RRS § 5379; formerly RCW 29.65.050, part. (ii) Code 1881 § 3120; 1865 p 45 § 16; RRS § 5380, formerly RCW 29.65.050, part. Formerly RCW 29.65.055.]

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.68.070 Misconduct of board—Irregularity material to result.** No irregularity or improper conduct in the proceedings of any election board or any member of the board amounts to such misconduct as to annul or set aside any election unless the irregularity or improper conduct was such as to procure the person whose right to the office may be contested, to be declared duly elected although the person did not receive the highest number of legal votes. [2003 c 111 § 1707; 1965 c 9 § 29.65.060. Prior: Code 1881 § 3106; 1865 p 43 § 2; RRS § 5367. Formerly RCW 29.65.060.]

**29A.68.080 Misconduct of board—Number of votes affected—Enough to change result.** When any election for an office exercised in and for a county is contested on account of any misconduct on the part of any election board, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct or precincts will change the result as to such office in the remaining vote of the county. [2003 c 111 § 1708. Prior: 1965 c 9 § 29.65.070; prior: Code 1881 § 3107; 1865 p 43 § 3; RRS § 5368. Formerly RCW 29.65.070.]

**29A.68.090 Illegal votes—Allegation of.** When the reception of illegal votes is alleged as a cause of contest, it is sufficient to state generally that illegal votes were cast, that, if given to the person whose election is contested in the specified precinct or precincts, will, if taken from that person, reduce the number of the person's legal votes below the number of legal votes given to some other person for the same office. [2003 c 111 § 1709; 1965 c 9 § 29.65.080. Prior: Code 1881 § 3111, part; 1865 p 44 § 7, part; RRS § 5372, part. Formerly RCW 29.65.080.]

**29A.68.100 Illegal votes—List required for testimony.** No testimony may be received as to any illegal votes unless the party contesting the election delivers to the opposite party, at least three days before trial, a written list of the number of illegal votes and by whom given, that the contesting party intends to prove at the trial. No testimony may be received as to any illegal votes, except as to such as are specified in the list. [2003 c 111 § 1710; 1965 c 9 § 29.65.090. Prior: Code 1881 § 3111, part; 1865 p 44 § 7, part; RRS § 5372, part. Formerly RCW 29.65.090.]

**29A.68.110 Illegal votes—Number of votes affected—Enough to change result.** No election may be set aside on account of illegal votes, unless it appears that an amount of illegal votes has been given to the person whose right is being contested, that, if taken from that person, would reduce the number of the person's legal votes below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes that may be shown to have been given to the other person. [2003 c 111 § 1711; 1965 c 9 § 29.65.100. Prior: Code 1881 § 3108; 1865 p 43 § 4; RRS § 5369. Formerly RCW 29.65.100.]

**29A.68.120 Election set aside—Appeal period.** If an election is set aside by the judgment of the superior court and if no appeal is taken therefrom within ten days, the certificate issued shall be thereby rendered void. [2003 c 111 § 1712; 1965 c 9 § 29.65.120. Prior: Code 1881 § 3123, part; 1865 p 46 § 19, part; RRS § 5382, part. Formerly RCW 29.65.120.]

## Chapter 29A.72 RCW

### STATE INITIATIVE AND REFERENDUM

#### Sections

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**29A.72.010 Filing proposed measures with secretary of state.** If any legal voter of the state, either individually or on behalf of an organization, desires to petition the legislature to enact a proposed measure, or submit a proposed initiative measure to the people, or order that a referendum of all or part of any act, bill, or law, passed by the legislature be submitted to the people, he or she shall file with the secretary of state a legible copy of the measure proposed, or the act or part of such act on which a referendum is desired, accompanied by an affidavit that the sponsor is a legal voter and a filing fee prescribed under RCW 43.07.120. [2003 c 111 § 1802; 1982 c 116 § 1; 1965 c 9 § 29.79.010. Prior: 1913 c 138 § 1, part; RRS § 5397, part. Formerly RCW 29.79.010.]

**29A.72.020 Review of proposed initiatives—Certificate required.** Upon receipt of a proposed initiative measure, and before giving it a serial number, the secretary of state shall submit a copy thereof to the office of the code reviser and give notice to the sponsor of such transmittal. Upon receipt of the measure, the assistant code reviser to whom it has been assigned may confer with the sponsor and shall within seven working days from its receipt, review the proposal and recommend to the sponsor such revision or alteration of the measure as may be deemed necessary and appropriate. The recommendations of the code reviser's office are advisory only, and the sponsor may accept or reject them in whole or in part. The code reviser shall issue a certificate of review certifying that he or she has reviewed the measure and that any recommendations have been communicated to the sponsor. The certificate must be issued whether or not the sponsor accepts such recommendations. Within fifteen working days after notification of submittal of the proposed measure to the code reviser's office, the sponsor, if he or she desires to proceed with sponsorship, shall file the measure together with the certificate of review with the secretary of state for assignment of a serial number, and the secretary of state shall then submit to the code reviser's office a certi-

fied copy of the measure filed. Upon submission of the proposal to the secretary of state for assignment of a serial number, the secretary of state shall refuse to make such assignment unless the proposal is accompanied by a certificate of review. [2003 c 111 § 1803; 1982 c 116 § 2; 1973 c 122 § 2. Formerly RCW 29.79.015.]

**Legislative finding—1973 c 122:** "The legislature finds that the initiative process reserving to the people the power to propose bills, laws and to enact or reject the same at the polls, independent of the legislature, is finding increased popularity with citizens of our state. The exercise of this power concomitant with the power of the legislature requires coordination to avoid the duplication and confusion of laws. This legislation is enacted especially to facilitate the operation of the initiative process." [1973 c 122 § 1.]

**29A.72.025 Fiscal impact statements.** The office of financial management, in consultation with the secretary of state, the attorney general, and any other appropriate state or local agency, shall prepare a fiscal impact statement for each of the following state ballot measures: (1) An initiative to the people that is certified to the ballot; (2) an initiative to the legislature that will appear on the ballot; (3) an alternative measure appearing on the ballot that the legislature proposes to an initiative to the legislature; (4) a referendum bill referred to voters by the legislature; and (5) a referendum measure appearing on the ballot. Fiscal impact statements must be written in clear and concise language and avoid legal and technical terms when possible, and may include easily understood graphics.

A fiscal impact statement must describe any projected increase or decrease in revenues, costs, expenditures, or indebtedness that the state or local governments will experience if the ballot measure were approved by state voters. Where appropriate, a fiscal impact statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. A fiscal impact statement must include both a summary of not to exceed one hundred words and a more detailed statement that includes the assumptions that were made to develop the fiscal impacts.

Fiscal impact statements must be available online from the secretary of state's web site and included in the state voters' pamphlet. [2004 c 266 § 4. Prior: 2002 c 139 § 1. Formerly RCW 29.79.075.]

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**29A.72.030 Time for filing various types.** Initiative measures proposed to be submitted to the people must be filed with the secretary of state within ten months prior to the election at which they are to be submitted, and the signature petitions must be filed with the secretary of state not less than four months before the next general statewide election.

Initiative measures proposed to be submitted to the legislature must be filed with the secretary of state within ten months prior to the next regular session of the legislature at which they are to be submitted, and the signature petitions must be filed with the secretary of state not less than ten days before such regular session of the legislature.

A referendum measure petition ordering that any act or part of an act passed by the legislature be referred to the people must be filed with the secretary of state within ninety days after the final adjournment of the legislative session at which the act was passed. It may be submitted at the next general

statewide election or at a special election ordered by the legislature.

A proposed initiative or referendum measure may be filed no earlier than the opening of the secretary of state's office for business pursuant to RCW 42.04.060 on the first day filings are permitted, and any initiative or referendum petition must be filed not later than the close of business on the last business day in the specified period for submission of signatures. If a filing deadline falls on a Saturday, the office of the secretary of state must be open for the transaction of business under this section from 8:00 a.m. to 5:00 p.m. on that Saturday. [2003 c 111 § 1804; 1987 c 161 § 1; 1965 c 9 § 29.79.020. Prior: (i) 1913 c 138 § 1, part; RRS § 5397, part. (ii) 1913 c 138 § 6, part; RRS § 5402, part. (iii) 1913 c 138 § 5, part; RRS § 5401, part. (iv) 1913 c 138 § 7, part; RRS § 5403, part. Formerly RCW 29.79.020.]

Initiative, referendum, time for filing: State Constitution Art. 2 § 1 (a) and (d) (Amendment 7).

Petitions—Time for filing: RCW 29A.72.160.

**29A.72.040 Numbering—Transmittal to attorney general.** The secretary of state shall give a serial number to each initiative, referendum bill, or referendum measure, using a separate series for initiatives to the legislature, initiatives to the people, referendum bills, and referendum measures, and forthwith transmit one copy of the measure proposed bearing its serial number to the attorney general. Thereafter a measure shall be known and designated on all petitions, ballots, and proceedings as "Initiative Measure No. . . .," "Referendum Bill No. . . .," or "Referendum Measure No. . . ." [2003 c 111 § 1805; 1982 c 116 § 3; 1965 c 9 § 29.79.030. Prior: 1913 c 138 § 1, part; RRS § 5397, part. Formerly RCW 29.79.030.]

**29A.72.050 Ballot title—Formulation, ballot display.**

(1) The ballot title for an initiative to the people, an initiative to the legislature, a referendum bill, or a referendum measure consists of: (a) A statement of the subject of the measure; (b) a concise description of the measure; and (c) a question in the form prescribed in this section for the ballot measure in question. The statement of the subject of a measure must be sufficiently broad to reflect the subject of the measure, sufficiently precise to give notice of the measure's subject matter, and not exceed ten words. The concise description must contain no more than thirty words, be a true and impartial description of the measure's essential contents, clearly identify the proposition to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the measure.

(2) For an initiative to the people, or for an initiative to the legislature for which the legislature has not proposed an alternative, the ballot title must be displayed on the ballot substantially as follows:

"Initiative Measure No. . . . concerns (statement of subject). This measure would (concise description). Should this measure be enacted into law?

Yes .....   
No .....

(3) For an initiative to the legislature for which the legislature has proposed an alternative, the ballot title must be displayed on the ballot substantially as follows:

"Initiative Measure Nos. . . . and . . .B concern (statement of subject).

Initiative Measure No. . . . would (concise description).

As an alternative, the legislature has proposed Initiative Measure No. . . .B, which would (concise description).

1. Should either of these measures be enacted into law?

Yes .....   
No .....

2. Regardless of whether you voted yes or no above, if one of these measures is enacted, which one should it be?

Measure No. ....   
or  
Measure No. ....

(4) For a referendum bill submitted to the people by the legislature, the ballot issue must be displayed on the ballot substantially as follows:

"The legislature has passed . . . Bill No. . . . concerning (statement of subject). This bill would (concise description). Should this bill be:

Approved .....   
Rejected .....

(5) For a referendum measure by state voters on a bill the legislature has passed, the ballot issue must be displayed on the ballot substantially as follows:

"The legislature passed . . . Bill No. . . . concerning (statement of subject) and voters have filed a sufficient referendum petition on this bill. This bill would (concise description). Should this bill be:

Approved .....   
Rejected .....

(6) The legislature may specify the statement of subject or concise description, or both, in a referendum bill that it refers to the people. The legislature may specify the concise description for an alternative it submits for an initiative to the legislature. If the legislature fails to specify these matters, the attorney general shall prepare the material that was not specified. The statement of subject and concise description as so provided must be included as part of the ballot title unless changed on appeal.

The attorney general shall specify the statement of subject and concise description for an initiative to the people, an initiative to the legislature, and a referendum measure. The statement of subject and concise description as so provided must be included as part of the ballot title unless changed on appeal. [2003 c 111 § 1806. Prior: 2000 c 197 § 1. Formerly RCW 29.79.035.]

**Part headings not law—2000 c 197:** "Part headings used in this act are not part of the law." [2000 c 197 § 17.]

**29A.72.060 Ballot title and summary by attorney general.** Within five days after the receipt of an initiative or referendum the attorney general shall formulate the ballot title, or portion of the ballot title that the legislature has not provided, required by RCW 29A.72.050 and a summary of the measure, not to exceed seventy-five words, and transmit the serial number for the measure, complete ballot title, and summary to the secretary of state. Saturdays, Sundays, and legal holidays are not counted in calculating the time limits in this section. [2003 c 111 § 1807. Prior: 2000 c 197 § 2; 1993 c 256 § 9; 1982 c 116 § 4; 1973 1st ex.s. c 118 § 2; 1965 c 9 § 29.79.040; prior: 1953 c 242 § 2; 1913 c 138 § 2; RRS § 5398. Formerly RCW 29.79.040.]

**Part headings not law—2000 c 197:** See note following RCW 29A.72.050.

**Severability—Effective date—1993 c 256:** See notes following RCW 29A.84.280.

*Ballot titles to other state and local measures: RCW 29A.36.020 through 29A.36.090.*

**29A.72.070 Ballot title and summary—Notice.** Upon the filing of the ballot title and summary for a state initiative or referendum measure in the office of secretary of state, the secretary of state shall notify by telephone and by mail, and, if requested, by other electronic means, the person proposing the measure, the prime sponsor of a referendum bill or alternative to an initiative to the legislature, the chief clerk of the house of representatives, the secretary of the senate, and any other individuals who have made written request for such notification of the exact language of the ballot title and summary. [2003 c 111 § 1808. Prior: 2000 c 197 § 3; 1982 c 116 § 5; 1973 1st ex.s. c 118 § 3; 1965 c 9 § 29.79.050; prior: 1913 c 138 § 3, part; RRS § 5399, part. Formerly RCW 29.79.050.]

**Part headings not law—2000 c 197:** See note following RCW 29A.72.050.

**29A.72.080 Ballot title and summary—Appeal to superior court.** Any persons, including the attorney general or either or both houses of the legislature, dissatisfied with the ballot title or summary for a state initiative or referendum may, within five days from the filing of the ballot title in the office of the secretary of state appeal to the superior court of Thurston county by petition setting forth the measure, the ballot title or summary, and their objections to the ballot title or summary and requesting amendment of the ballot title or summary by the court. Saturdays, Sundays, and legal holidays are not counted in calculating the time limits contained in this section.

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the secretary of state, upon the attorney general, and upon the person proposing the measure if the appeal is initiated by someone other than that person. Upon the filing of the petition on appeal or at the time to which the hearing may be adjourned by consent of the appellant, the court shall accord first priority to examining the proposed measure, the ballot title or summary, and the objections to that ballot title or summary,

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may hear arguments, and shall, within five days, render its decision and file with the secretary of state a certified copy of such ballot title or summary as it determines will meet the requirements of RCW 29A.72.060. The decision of the superior court shall be final. Such appeal shall be heard without costs to either party. [2003 c 111 § 1809. Prior: 2000 c 197 § 4; 1982 c 116 § 6; 1965 c 9 § 29.79.060; prior: 1913 c 138 § 3, part; RRS § 5399, part. Formerly RCW 29.79.060.]

**Part headings not law—2000 c 197:** See note following RCW 29A.72.050.

**29A.72.090 Ballot title and summary—Mailed to proponents and other persons—Appearance on petitions.** When the ballot title and summary are finally established, the secretary of state shall file the instrument establishing it with the proposed measure and transmit a copy thereof by mail to the person proposing the measure, the chief clerk of the house of representatives, the secretary of the senate, and to any other individuals who have made written request for such notification. Thereafter such ballot title shall be the title of the measure in all petitions, ballots, and other proceedings in relation thereto. The summary shall appear on all petitions directly following the ballot title. [2003 c 111 § 1810. Prior: 2000 c 197 § 5; 1982 c 116 § 7; 1965 c 9 § 29.79.070; prior: 1913 c 138 § 4, part; RRS § 5400, part. Formerly RCW 29.79.070.]

**Part headings not law—2000 c 197:** See note following RCW 29A.72.050.

**29A.72.100 Petitions—Paper—Size—Contents.** The person proposing the measure shall print blank petitions upon single sheets of paper of good writing quality (including but not limited to newsprint) not less than eleven inches in width and not less than fourteen inches in length. Each petition at the time of circulating, signing, and filing with the secretary of state must consist of not more than one sheet with numbered lines for not more than twenty signatures, with the prescribed warning and title, be in the form required by RCW 29A.72.110, 29A.72.120, or 29A.72.130, and have a readable, full, true, and correct copy of the proposed measure printed on the reverse side of the petition. [2003 c 111 § 1811; 1982 c 116 § 8; 1973 1st ex.s. c 118 § 4; 1965 c 9 § 29.79.080. Prior: (i) 1913 c 138 § 4, part; RRS § 5400, part. (ii) 1913 c 138 § 9; RRS § 5405. Formerly RCW 29.79.080.]

**29A.72.110 Petitions to legislature—Form.** Petitions for proposing measures for submission to the legislature at its next regular session must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

INITIATIVE PETITION FOR SUBMISSION  
TO THE LEGISLATURE

To the Honorable . . . . ., Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that this petition and the

proposed measure known as Initiative Measure No. . . . and entitled (here set forth the established ballot title of the measure), a full, true, and correct copy of which is printed on the reverse side of this petition, be transmitted to the legislature of the State of Washington at its next ensuing regular session, and we respectfully petition the legislature to enact said proposed measure into law; and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote. [2003 c 111 § 1812; 1982 c 116 § 9; 1965 c 9 § 29.79.090. Prior: 1913 c 138 § 5, part; RRS § 5401, part. Formerly RCW 29.79.090.]

**29A.72.120 Petitions to people—Form.** Petitions for proposing measures for submission to the people for their approval or rejection at the next ensuing general election must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

INITIATIVE PETITION FOR SUBMISSION  
TO THE PEOPLE

To the Honorable . . . . ., Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that the proposed measure known as Initiative Measure No. . . . ., entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is printed on the reverse side of this petition, be submitted to the legal voters of the State of Washington for their approval or rejection at the general election to be held on the . . . . day of November, (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote. [2003 c 111 § 1813; 1982 c 116 § 10; 1965 c 9 § 29.79.100. Prior: 1913 c 138 § 6, part; RRS § 5402, part. Formerly RCW 29.79.100.]

**29A.72.130 Referendum petitions—Form.** Petitions ordering that acts or parts of acts passed by the legislature be referred to the people at the next ensuing general election, or special election ordered by the legislature, must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

[Title 29A RCW—page 96]

PETITION FOR REFERENDUM

To the Honorable . . . . ., Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully order and direct that Referendum Measure No. . . . ., filed to revoke a (or part or parts of a) bill that (concise statement required by \*RCW 29A.36.070) and that was passed by the . . . . legislature of the State of Washington at the last regular (special) session of said legislature, shall be referred to the people of the state for their approval or rejection at the regular (special) election to be held on the . . . day of November, (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote. [2003 c 111 § 1814; 1993 c 256 § 10; 1982 c 116 § 11; 1965 c 9 § 29.79.110. Prior: 1913 c 138 § 7, part; RRS § 5403, part. Formerly RCW 29.79.110.]

**\*Reviser's note:** RCW 29A.36.070 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.36.071.

**Severability—Effective date—1993 c 256:** See notes following RCW 29A.84.280.

**29A.72.140 Warning statement—Further requirements.** The word "warning" and the following warning statement regarding signing petitions must appear on petitions as prescribed by this title and must be printed on each petition sheet such that they occupy not less than four square inches of the front of the petition sheet.

WARNING

Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter, or makes any false statement on this petition may be punished by fine or imprisonment or both.

[2003 c 111 § 1815; 1993 c 256 § 5. Formerly RCW 29.79.115.]

**Severability—Effective date—1993 c 256:** See notes following RCW 29A.84.280.

**29A.72.150 Petitions—Signatures—Number necessary.** When the person proposing any initiative measure has obtained signatures of legal voters equal to or exceeding eight percent of the votes cast for the office of governor at the last regular gubernatorial election prior to the submission of the signatures for verification, or when the person or organization demanding any referendum of an act or part of an act of the legislature has obtained a number of signatures of legal voters equal to or exceeding four percent of the votes cast for the office of governor at the last regular gubernatorial election prior to the submission of the signatures for verification, the petition containing the signatures may be submitted to the secretary of state for filing. [2003 c 111 § 1816; 1982 c 116

§ 12; 1965 c 9 § 29.79.120. Prior: 1913 c 138 § 11, part; RRS § 5407, part. See also State Constitution Art. 2 § 1A (Amendment 30), (L. 1955, p. 1860, S.J.R. No. 4). Formerly RCW 29.79.120.]

**29A.72.160 Petitions—Time for filing.** The time for submitting initiative or referendum petitions to the secretary of state for filing is as follows:

(1) A referendum petition ordering and directing that the whole or some part or parts of an act passed by the legislature be referred to the people for their approval or rejection at the next ensuing general election or a special election ordered by the legislature, must be submitted not more than ninety days after the final adjournment of the session of the legislature which passed the act;

(2) An initiative petition proposing a measure to be submitted to the people for their approval or rejection at the next ensuing general election, must be submitted not less than four months before the date of such election;

(3) An initiative petition proposing a measure to be submitted to the legislature at its next ensuing regular session must be submitted not less than ten days before the commencement of the session. [2003 c 111 § 1817. Prior: 1965 c 9 § 29.79.140; prior: 1913 c 138 § 12, part; RRS § 5408, part. Formerly RCW 29.79.140.]

*Initiative, referendum, time for filing: State Constitution Art. 2 § 1 (a) and (d) (Amendment 7).*

*Measures, petitions, time for filing various types: RCW 29A.72.030.*

**29A.72.170 Petitions—Acceptance or rejection by secretary of state.** The secretary of state may refuse to file any initiative or referendum petition being submitted upon any of the following grounds:

(1) That the petition does not contain the information required by RCW 29A.72.110, 29A.72.120, or 29A.72.130.

(2) That the petition clearly bears insufficient signatures.

(3) That the time within which the petition may be filed has expired.

In case of such refusal, the secretary of state shall endorse on the petition the word "submitted" and the date, and retain the petition pending appeal.

If none of the grounds for refusal exists, the secretary of state must accept and file the petition. [2003 c 111 § 1818; 1982 c 116 § 13; 1965 c 9 § 29.79.150. Prior: (i) 1913 c 138 § 11, part; RRS § 5407, part. (ii) 1913 c 138 § 12, part; RRS § 5408, part. Formerly RCW 29.79.150.]

**29A.72.180 Petitions—Review of refusal to file.** If the secretary of state refuses to file an initiative or referendum petition when submitted for filing, the persons submitting it for filing may, within ten days after the refusal, apply to the superior court of Thurston county for an order requiring the secretary of state to bring the petitions before the court, and for a writ of mandate to compel the secretary of state to file it. The application takes precedence over other cases and matters and must be speedily heard and determined.

If the court issues the citation, and determines that the petition is legal in form and apparently contains the requisite number of signatures and was submitted for filing within the time prescribed in the Constitution, it shall issue its mandate

requiring the secretary of state to file it as of the date of submission for filing.

The decision of the superior court granting a writ of mandate is final. [2003 c 111 § 1819; 1965 c 9 § 29.79.160. Prior: 1913 c 138 § 13, part; RRS § 5409, part. Formerly RCW 29.79.160.]

*Initiative, referendum, time for filing: State Constitution Art. 2 § 1 (a) and (d) (Amendment 7).*

**29A.72.190 Petitions—Appellate review.** The decision of the superior court refusing to grant a writ of mandate may be reviewed by the supreme court within five days after the decision of the superior court. The review must be considered an emergency matter of public concern, and be heard and determined with all convenient speed. If the supreme court decides that the petitions are legal in form and apparently contain the requisite number of signatures of legal voters, and were filed within the time prescribed in the Constitution, it shall issue its mandate directing the secretary of state to file the petition as of the date of submission. [2003 c 111 § 1820; 1988 c 202 § 28; 1965 c 9 § 29.79.170. Prior: 1913 c 138 § 13, part; RRS § 5409, part. Formerly RCW 29.79.170.]

**Rules of court:** *Writ procedure superseded by RAP 2.1(b), 2.2, 18.22.*

**Severability—1988 c 202:** See note following RCW 2.24.050.

**29A.72.200 Petitions—Destruction on final refusal.** If no appeal is taken from the refusal of the secretary of state to file a petition within the time prescribed, or if an appeal is taken and the secretary of state is not required to file the petition by the mandate of either the superior or the supreme court, the secretary of state shall destroy it. [2003 c 111 § 1821. Prior: 1965 c 9 § 29.79.180; prior: 1913 c 138 § 13, part; RRS § 5409, part. Formerly RCW 29.79.180.]

**29A.72.210 Petitions—Consolidation into volumes.** If the secretary of state accepts and files an initiative or referendum petition upon its being submitted for filing or if he or she is required to file it by the court, he or she shall, in the presence of the person submitting such petition for filing if he or she desires to be present, arrange and assemble the sheets containing the signatures into such volumes as will be most convenient for verification and canvassing and shall consecutively number the volumes and stamp the date of filing on each volume. [2003 c 111 § 1822. Prior: 1982 c 116 § 14; 1965 c 9 § 29.79.190; prior: 1913 c 138 § 14; RRS § 5410. Formerly RCW 29.79.190.]

**29A.72.220 Petitions—Signature checking—Registration information file.** The cards required by RCW 29A.08.240 must be kept on file in the office of the secretary of state in the manner that will be most convenient for, and for the sole purpose of, checking initiative and referendum petitions. The secretary may maintain an automated file of voter registration information for any county or counties in lieu of filing or maintaining these voter registration cards if the automated file includes all of the information from the cards including, but not limited to, a retrievable facsimile of the signature of each voter of that county or counties. The

automated file may be used only for the purpose authorized for the use of the cards. [2003 c 111 § 1801.]

**29A.72.230 Petitions—Verification and canvass of signatures, observers—Statistical sampling—Initiatives to legislature, certification of.** Upon the filing of an initiative or referendum petition, the secretary of state shall proceed to verify and canvass the names of the legal voters on the petition. The verification and canvass of signatures on the petition may be observed by persons representing the advocates and opponents of the proposed measure so long as they make no record of the names, addresses, or other information on the petitions or related records during the verification process except upon the order of the superior court of Thurston county. The secretary of state may limit the number of observers to not less than two on each side, if in his or her opinion, a greater number would cause undue delay or disruption of the verification process. Any such limitation shall apply equally to both sides. The secretary of state may use any statistical sampling techniques for this verification and canvass which have been adopted by rule as provided by chapter 34.05 RCW. No petition will be rejected on the basis of any statistical method employed, and no petition will be accepted on the basis of any statistical method employed if such method indicates that the petition contains fewer than the requisite number of signatures of legal voters. If the secretary of state finds the same name signed to more than one petition, he or she shall reject all but the first such valid signature. For an initiative to the legislature, the secretary of state shall transmit a certified copy of the proposed measure to the legislature at the opening of its session and, as soon as the signatures on the petition have been verified and canvassed, the secretary of state shall send to the legislature a certificate of the facts relating to the filing, verification, and canvass of the petition. [2003 c 111 § 1823. Prior: 1993 c 368 § 1; 1982 c 116 § 15; 1977 ex.s. c 361 § 105; 1969 ex.s. c 107 § 1; 1965 c 9 § 29.79.200; prior: 1933 c 144 § 1; 1913 c 138 § 15; RRS § 5411. Formerly RCW 29.79.200.]

**Effective date—1993 c 368:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 368 § 2.]

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.72.240 Petitions to legislature—Count of signatures—Review.** Any citizen dissatisfied with the determination of the secretary of state that an initiative or referendum petition contains or does not contain the requisite number of signatures of legal voters may, within five days after such determination, apply to the superior court of Thurston county for a citation requiring the secretary of state to submit the petition to said court for examination, and for a writ of mandate compelling the certification of the measure and petition, or for an injunction to prevent the certification thereof to the legislature, as the case may be. Such application and all proceedings had thereunder shall take precedence over other cases and shall be speedily heard and determined.

The decision of the superior court granting or refusing to grant the writ of mandate or injunction may be reviewed by the supreme court within five days after the decision of the

superior court, and if the supreme court decides that a writ of mandate or injunction, as the case may be, should issue, it shall issue the writ directed to the secretary of state; otherwise, it shall dismiss the proceedings. The clerk of the supreme court shall forthwith notify the secretary of state of the decision of the supreme court. [2003 c 111 § 1824. Prior: 1988 c 202 § 29; 1965 c 9 § 29.79.210; prior: 1913 c 138 § 17; RRS § 5413. Formerly RCW 29.79.210.]

**Rules of court:** *Writ procedure superseded by RAP 2.1(b), 2.2, 18.22.*

**Severability—1988 c 202:** See note following RCW 2.24.050.

**29A.72.250 Initiatives and referenda to voters—Certificates of sufficiency.** If a referendum or initiative petition for submission of a measure to the people is found sufficient, the secretary of state shall at the time and in the manner that he or she certifies to the county auditors of the various counties the names of candidates for state and district officers certify to each county auditor the serial numbers and ballot titles of the several initiative and referendum measures to be voted upon at the next ensuing general election or special election ordered by the legislature. [2003 c 111 § 1825; 1965 c 9 § 29.79.230. Prior: 1913 c 138 § 19; RRS § 5415. Formerly RCW 29.79.230.]

**29A.72.260 Rejected initiative to legislature treated as referendum bill.** Whenever any measure proposed by initiative petition for submission to the legislature is rejected by the legislature or the legislature takes no action thereon before the end of the regular session at which it is submitted, the secretary of state shall certify the serial number and ballot title thereof to the county auditors for printing on the ballots at the next ensuing general election in like manner as initiative measures for submission to the people are certified. [2003 c 111 § 1826. Prior: 1965 c 9 § 29.79.270; prior: 1913 c 138 § 21; RRS § 5417. Formerly RCW 29.79.270.]

**29A.72.270 Substitute for rejected initiative treated as referendum bill.** If the legislature, having rejected a measure submitted to it by initiative petition, proposes a different measure dealing with the same subject, the secretary of state shall give that measure the same number as that borne by the initiative measure followed by the letter "B." Such measure so designated as "Alternative Measure No. . . . B," together with the ballot title thereof, when ascertained, shall be certified by the secretary of state to the county auditors for printing on the ballots for submission to the voters for their approval or rejection in like manner as initiative measures for submission to the people are certified. [2003 c 111 § 1827. Prior: 1965 c 9 § 29.79.280; prior: 1913 c 138 § 22, part; RRS § 5418, part. Formerly RCW 29.79.280.]

**29A.72.280 Substitute for rejected initiative—Concise description.** For a measure designated as "Alternative Measure No. . . . B," the secretary of state shall obtain from the measure adopting the alternative, or otherwise the attorney general, a concise description of the alternative measure that differs from the concise description of the original initiative and indicates as clearly as possible the essential differences between the two measures. [2003 c 111 § 1828. Prior:

2000 c 197 § 6; 1965 c 9 § 29.79.290; prior: 1913 c 138 § 22, part; RRS § 5418, part. Formerly RCW 29.79.290.]

**Part headings not law—2000 c 197:** See note following RCW 29A.72.050.

**29A.72.290 Printing ballot titles on ballots—Order and form.** The county auditor of each county shall print on the official ballots for the election at which initiative and referendum measures are to be submitted to the people for their approval or rejection, the serial numbers and ballot titles certified by the secretary of state. They must appear under separate headings in the order of the serial numbers as follows:

(1) Measures proposed for submission to the people by initiative petition will be under the heading, "Proposed by Initiative Petition";

(2) Bills passed by the legislature and ordered referred to the people by referendum petition will be under the heading, "Passed by the Legislature and Ordered Referred by Petition";

(3) Bills passed and referred to the people by the legislature will be under the heading, "Proposed to the People by the Legislature";

(4) Measures proposed to the legislature and rejected or not acted upon will be under the heading, "Proposed to the Legislature and Referred to the People";

(5) Measures proposed to the legislature and alternative measures passed by the legislature in lieu thereof will be under the heading, "Initiated by Petition and Alternative by Legislature." [2003 c 111 § 1829; 1965 c 9 § 29.79.300. Prior: 1913 c 138 § 23; RRS § 5419. Formerly RCW 29.79.300.]

## Chapter 29A.76 RCW REDISTRICTING

### Sections

- 29A.76.010 Counties, municipal corporations, and special purpose districts.  
29A.76.020 Boundary information.  
29A.76.030 Precinct boundary change—Registration transfer.  
29A.76.040 Maps and census correspondence lists—Apportionment—Duties of secretary of state.

**29A.76.010 Counties, municipal corporations, and special purpose districts.** (1) It is the responsibility of each county, municipal corporation, and special purpose district with a governing body comprised of internal director, council, or commissioner districts not based on statutorily required land ownership criteria to periodically redistrict its governmental unit, based on population information from the most recent federal decennial census.

(2) Within forty-five days after receipt of federal decennial census information applicable to a specific local area, the commission established in RCW 44.05.030 shall forward the census information to each municipal corporation, county, and district charged with redistricting under this section.

(3) No later than eight months after its receipt of federal decennial census data, the governing body of the municipal corporation, county, or district shall prepare a plan for redistricting its internal or director districts.

(4) The plan shall be consistent with the following criteria:

(a) Each internal director, council, or commissioner district shall be as nearly equal in population as possible to each and every other such district comprising the municipal corporation, county, or special purpose district.

(b) Each district shall be as compact as possible.

(c) Each district shall consist of geographically contiguous area.

(d) Population data may not be used for purposes of favoring or disfavoring any racial group or political party.

(e) To the extent feasible and if not inconsistent with the basic enabling legislation for the municipal corporation, county, or district, the district boundaries shall coincide with existing recognized natural boundaries and shall, to the extent possible, preserve existing communities of related and mutual interest.

(5) During the adoption of its plan, the municipal corporation, county, or district shall ensure that full and reasonable public notice of its actions is provided. The municipal corporation, county, or district shall hold at least one public hearing on the redistricting plan at least one week before adoption of the plan.

(6)(a) Any registered voter residing in an area affected by the redistricting plan may request review of the adopted local plan by the superior court of the county in which he or she resides, within forty-five days of the plan's adoption. Any request for review must specify the reason or reasons alleged why the local plan is not consistent with the applicable redistricting criteria. The municipal corporation, county, or district may be joined as respondent. The superior court shall thereupon review the challenged plan for compliance with the applicable redistricting criteria set out in subsection (4) of this section.

(b) If the superior court finds the plan to be consistent with the requirements of this section, the plan shall take effect immediately.

(c) If the superior court determines the plan does not meet the requirements of this section, in whole or in part, it shall remand the plan for further or corrective action within a specified and reasonable time period.

(d) If the superior court finds that any request for review is frivolous or has been filed solely for purposes of harassment or delay, it may impose appropriate sanctions on the party requesting review, including payment of attorneys' fees and costs to the respondent municipal corporation, county, or district. [2003 c 111 § 1901. Prior: 1984 c 13 § 4; 1983 c 16 § 15; 1982 c 2 § 27. Formerly RCW 29.70.100.]

**Severability—1984 c 13:** See RCW 44.05.902.

**Contingent effective date—Severability—1983 c 16:** See RCW 44.05.900 and 44.05.901.

**29A.76.020 Boundary information.** (1) The legislative authority of each county and each city, town, and special purpose district which lies entirely within the county shall provide the county auditor accurate information describing its geographical boundaries and the boundaries of its director, council, or commissioner districts and shall ensure that the information provided to the auditor is kept current.

(2) A city, town, or special purpose district that lies in more than one county shall provide the secretary of state accurate information describing its geographical boundaries and the boundaries of its director, council, or commissioner

districts and shall ensure that the information provided to the secretary is kept current. The secretary of state shall promptly transmit to each county in which a city, town, or special purpose district is located information regarding the boundaries of that jurisdiction which is provided to the secretary. [2003 c 111 § 1902. Prior: 1991 c 178 § 2. Formerly RCW 29.15.026, 29.04.220.]

**29A.76.030 Precinct boundary change—Registration transfer.** If the boundaries of any city, township, or rural precinct are changed in the manner provided by law, the county auditor shall transfer the registration cards of every registered voter whose place of residence is affected thereby to the files of the proper precinct, noting thereon the name or number of the new precinct, or change the addresses, the precinct names or numbers, and the special district designations for those registered voters on the voter registration lists of the county. It shall not be necessary for any registered voter whose residence has been changed from one precinct to another, by a change of boundary, to apply to the registration officer for a transfer of registration. The county auditor shall mail to each registrant in the new precinct a notice that his or her precinct has been changed from . . . . . to . . . . ., and that thereafter the registrant will be entitled to vote in the new precinct, giving the name or number. [2003 c 111 § 1903; 1971 ex.s. c 202 § 27; 1965 c 9 § 29.10.060. Prior: 1933 c 1 § 17; RRS § 5114-17. Formerly RCW 29.10.060.]

**29A.76.040 Maps and census correspondence lists—Apportionment—Duties of secretary of state.** (1) With regard to functions relating to census, apportionment, and the establishment of legislative and congressional districts, the secretary of state shall:

(a) Coordinate and monitor precinct mapping functions of the county auditors and county engineers;

(b) Maintain official state base maps and correspondence lists and maintain an index of all such maps and lists;

(c) Furnish to the United States bureau of the census as needed for the decennial census of population, current, accurate, and easily readable versions of maps of all counties, cities, towns, and other areas of this state, which indicate current precinct boundaries together with copies of the census correspondence lists.

(2) The secretary of state shall serve as the state liaison with the United States bureau of census on matters relating to the preparation of maps and the tabulation of population for apportionment purposes. [2003 c 111 § 1904; 1989 c 278 § 2; 1977 ex.s. c 128 § 4; 1975-'76 2nd ex.s. c 129 § 2. Formerly RCW 29.04.140.]

**Severability—1977 ex.s. c 128:** See note following RCW 29A.16.040.

**Effective date—1975-'76 2nd ex.s. c 129:** "This 1976 amendatory act shall take effect on February 1, 1977." [1975-'76 2nd ex.s. c 129 § 5.]

**Severability—1975-'76 2nd ex.s. c 129:** "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 129 § 6.]

## Chapter 29A.76A RCW CONGRESSIONAL DISTRICTS AND APPORTIONMENT

**Reviser's note:** The following material represents the congressional portion of the redistricting plan filed with the legislature by the Washington State Redistricting Commission on January 2, 2002. For state legislative districts, see chapter 44.07D RCW.

### WASHINGTON STATE REDISTRICTING COMMISSION REDISTRICTING PLAN

A PLAN Relating to the portion of the plan for the redistricting of congressional districts.

BE IT APPROVED BY THE REDISTRICTING COMMISSION OF THE STATE OF WASHINGTON:

Sec. 1. It is the intent of the commission to redistrict the congressional districts of the state of Washington in accordance with the Constitution and laws of the United States and the state of Washington.

Sec. 2. The definitions set forth in RCW 44.05.020 apply throughout this plan, unless the context requires otherwise.

Sec. 3. In every case the population of the congressional districts described by this plan has been ascertained on the basis of the total number of persons found inhabiting such areas as of April 1, 2000, in accordance with the 2000 federal decennial census data submitted pursuant to P.L. 94-171.

Sec. 4. (a) Any area not specifically included within the boundaries of any of the districts as described in this plan and that is completely surrounded by a particular district, shall be a part of that district. Any such area not completely surrounded by a particular district shall be a part of the district having the smallest number of inhabitants and having territory contiguous to such area.

(b) Any area described in this plan as specifically embraced in two or more noninclusive districts shall be a part of the adjacent district having the smallest number of inhabitants and shall not be a part of the other district or districts.

(c) Any area specifically mentioned as embraced within a district but separated from such district by one or more other districts, shall be assigned as though it had not been included in any district specifically described.

(d) The 2000 United States federal decennial census data submitted pursuant to P.L. 94-171 shall be used for determining the number of inhabitants under this plan.

Sec. 5. For purposes of this plan, districts shall be described in terms of:

(1) Official United States census bureau tracts, block groups, or blocks established by the United States bureau of the census in the 2000 federal decennial census;

(2) Counties, municipalities, or other political subdivisions as they existed on January 1, 2000;

(3) Any natural or artificial boundaries or monuments including but not limited to rivers, streams, or lakes as they existed on January 1, 2000;

(4) Roads, streets, or highways as they existed on January 1, 2000.

Sec. 6. Pursuant to the most recent certificate of entitlement from the Clerk of the U.S. House of Representatives as required by 2 U.S.C. section 2a, the territory of the state shall be divided into nine congressional districts. The congressional districts described by this plan shall be those recorded electronically as "JOINTSUB-C 01", maintained in computer files designated as FINAL-CONG-2001, which are public records of the commission. As soon as practicable after approval and submission of this plan to the legislature, the commission shall publish "JOINTSUB-C 01".

Sec. 7. This commission intends that this plan supersede the district boundaries established by chapter 29.69B RCW.

Sec. 8. If any provision of this plan or its application to any person or circumstance is held invalid, the remainder of the plan or its application to other persons or circumstances is not affected.

**District 1:** King County (Part) - Tracts: 4.01, 201.00, 202.00, 203.00, 204.02, 207.00, 208.00, 209.00, 215.00, 216.00, 217.00, 218.02, 218.03,

218.04, 219.03, 219.04, 219.05, 219.06, 220.01, 220.03, 220.05, 220.06, 221.01, 221.02, 222.01, 222.02, 222.03, 223.00, 224.00, 225.00, 226.03, 226.04, 226.05, 226.06, 227.02, 228.02, 323.07, 323.09, 323.11, 323.19, 323.20, 323.21, 323.22, 323.23, 323.24, 323.25, King County (Part) - Block Groups Tract 3.00; Block Group 3, Tract 4.02; Block Group 1, Tract 204.01; Block Group 2, Tract 204.01; Block Group 4, Tract 206.00; Block Group 4, Tract 210.00; Block Group 3, Tract 210.00; Block Group 4, Tract 227.01; Block Group 1, Tract 227.03; Block Group 2, Tract 228.03; Block Group 1, Tract 323.12; Block Group 1, Tract 323.12; Block Group 3, King County (Part) - Blocks: Tract 3.00; Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2018, Block 2019, Block 2020, Block 2021, Tract 4.02; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Tract 5.00; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1999, Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 3005, Block 3006, Block 3007, Block 3011, Tract 6.00; Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1019, Block 1020, Block 1021, Tract 14.00; Block 5999, Tract 204.01; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1015, Block 1016, Block 3009, Block 3010, Block 3011, Tract 205.00; Block 6000, Tract 206.00; Block 1003, Block 1004, Block 3001, Block 3002, Block 3003, Block 3007, Block 3008, Tract 210.00; Block 2003, Block 2004, Block 2009, Block 5002, Block 5003, Block 5004, Block 5005, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Tract 214.00; Block 1000, Block 1001, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 3000, Tract 227.01; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2008, Block 2999, Tract 227.03; Block 1000, Block 1001, Block 1002, Block 1008, Block 1011, Tract 228.03; Block 2000, Block 2001, Block 2002, Block 2006, Block 2007, Block 2008, Tract 242.00; Block 2999, Tract 323.12; Block 2006, Block 2007, Block 2008, Block 5001, Block 5002, Tract 323.13; Block 3008, Block 3009, Block 3010, Block 3011, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Kitsap County (Part) - Tracts: 901.01, 901.02, 902.00, 903.00, 904.00, 905.00, 906.01, 906.02, 907.00, 908.00, 909.00, 910.00, 911.00, 912.01, 912.03, 912.04, 913.01, 913.02, Kitsap County (Part) - Block Groups Tract 914.00; Block Group 1, Tract 915.00; Block Group 2, Tract 916.00; Block Group 2, Tract 917.00; Block Group 1, Tract 920.00; Block Group 1, Kitsap County (Part) - Blocks: Tract 809.00; Block 2011, Tract 914.00; Block 2009, Block 2010, Block 2011, Block 2999, Tract 915.00; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1022, Block 1023, Block 1024, Block 1025, Tract 916.00; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Tract 917.00; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2008, Block 2999, Tract 918.00; Block 1000, Block 1001, Block 1998, Tract 920.00; Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2043, Block 2044, Block 2047, Block 2048, Block 2052, Block 2124, Block 2125, Block 2126, Block 2997, Snohomish County (Part) - Tracts: 416.07, 416.08, 417.02, 418.04, 418.07, 419.05, 420.01, 420.03, 420.04, 420.05, 420.06, 501.01, 501.02, 502.00, 503.00, 504.01, 504.02, 505.00, 506.00, 507.00, 508.00, 509.00, 510.00, 511.00, 512.00, 513.00, 514.00, 515.00, 516.01, 516.02, 517.01, 517.02, 518.01, 518.02, 519.05, 519.09, 519.11, 519.12, 519.13, 519.14, 519.15, 519.16, 519.17, 519.18, 519.19, 519.20, 520.03, 520.04, 520.05, 520.06, 520.07, 521.07, 521.08, 521.10, 521.11, 521.12, Snohomish County (Part) - Block Groups Tract 416.01; Block Group 3, Tract 416.06; Block Group 2, Tract 416.06; Block Group 3, Tract 416.06; Block Group 4, Tract 417.01; Block Group 2, Tract 418.06; Block Group 1, Tract 418.06; Block Group 3, Tract 418.08; Block Group 2, Tract 418.08; Block Group 3, Tract 419.01; Block Group 2, Tract 419.01; Block Group 3, Tract 521.13; Block Group 3, Tract 522.04; Block Group 2, Tract 522.04; Block Group 3, Tract 522.05; Block Group 1, Tract 522.05; Block Group 4, Snohomish County (Part) - Blocks: Tract 416.01; Block 1000, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2007, Block 2008, Block 2009, Block 2010, Block 2016, Block 2017, Block 2019, Block 4008, Block 4009, Tract 416.05; Block 1000, Block 1001, Block

(2004 Ed.)

1002, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1011, Block 1012, Block 2000, Block 2001, Block 2002, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Tract 416.06; Block 1000, Block 1002, Tract 417.01; Block 1003, Block 1004, Block 1006, Block 1007, Block 1008, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Tract 418.05; Block 1014, Tract 418.06; Block 2005, Block 2006, Block 2007, Tract 418.08; Block 1005, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Tract 419.01; Block 1001, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1016, Block 1017, Block 1018, Block 1019, Tract 419.03; Block 2007, Tract 521.05; Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2994, Block 2995, Block 2996, Block 2998, Tract 521.13; Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2021, Block 2999, Tract 522.04; Block 1013, Block 1014, Block 1015, Block 1016, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Tract 522.05; Block 2003, Block 2004, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2021, Block 2999, Tract 522.04; Block 1013, Block 1014, Block 1015, Block 1016, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Tract 522.05; Block 2003, Block 2004, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Tract 538.01; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2997.

**District 2:** Island County, King County (Part) - Blocks: Tract 328.00; Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2996, Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3076, Block 3077, Block 3078, Block 3079, Block 3080, Block 3081, Block 3082, Block 3083, Block 3084, Block 3085, Block 3086, Block 3087, Block 3088, Block 3089, Block 3090, Block 3091, Block 3154, Block 3155, Block 3156, Block 3157, Block 3158, Block 3159, Block 3160, Block 3212, Block 3213, Block 3214, Block 3215, Block 3216, Block 3217, Block 3218, Block 3219, Block 3220, Block 3221, Block 3222, Block 3223, Block 3224, Block 3225, Block 3226, Block 3227, Block 3228, Block 3229, Block 3230, Block 3231, Block 3232, Block 3233, Block 3234, Block 3235, Block 3236, Block 3237, Block 3238, Block 3239, Block 3240, Block 3241, Block 3242, Block 3243, Block 3244, Block 3245, Block 3246, Block 3247, Block 3248, Block 3249, Block 3250, Block 3251, Block 3252, Block 3253, Block 3254, Block 3255, Block 3256, Block 3257, Block 3258, Block 3259, Block 3260, Block 3261, Block 3262, Block 3263, Block 3264, Block 3265, Block 3266, Block 3267, Block 3268, Block 3269, Block 3270, Block 3271, Block 3272, Block 3273, Block 3274, Block 3275, Block 3276, Block 3277, Block 3278, Block 3279, Block 3280, Block 3281, Block 3282, Block 3283, Block 3284, Block 3285, Block 3286, Block 3287, Block 3288, Block 3289, Block 3290, Block 3291, Block 3292, Block 3293, Block 3294, Block 3295, Block 3296, Block 3297, Block 3298, Block 3299, Block 3300, Block 3301, Block 3302, Block 3303, Block 3304, Block 3305, Block 3306, Block 3307, Block 3308, Block 3309, Block 3310, Block 3311, Block 3312, Block 3313, Block 3314, Block 3315, Block 3316, Block 3317, Block 3318, Block 3319, Block 3320, Block 3321, Block 3322, Block 3323, Block 3324, Block 3325, Block 3326, Block 3327, Block 3328, Block 3329, Block 3330, Block 3331, Block 3332, Block 3333, Block 3334, Block 3335, Block 3336, Block 3337, Block 3338, Block 3339, Block 3340, Block 3341, Block 3342, Block 3343, Block 3344, Block 3345, Block 3346, Block 3347, Block 3348, Block 3349, Block 3350, Block 3351, Block 3352, Block 3353, Block 3354, Block 3355, Block 3356, Block 3357, Block 3358, Block 3359, Block 3360, Block 3361, Block 3362, Block 3363, Block 3364, Block 3365, Block 3366, Block 3367, Block 3368, Block 3369, Block 3370, Block 3371, Block 3372, Block 3373, Block 3375, Block 3376, Block 3377, Block 3378, Block 3380, Block 3381,



Block 2023, Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016, Tract 9505.00; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Benton County, Chelan County, Douglas County, Franklin County, Grant County, Kittitas County, Klickitat County, Skamania County (Part) -Block Groups Tract 9504.00; Block Group 2, Skamania County (Part) - Blocks: Tract 9504.00; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1046, Block 1051, Block 1995, Block 1996, Block 1997, Block 1999, Tract 9505.00; Block 1054, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 2000, Block 2001, Block 2002, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Yakima County.

**District 5:** Adams County (Part) - Tracts: 9501.00, 9502.00, Adams County (Part) - Blocks: Tract 9503.00; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1021, Block 1022, Block 1023, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100, Block 1101, Block 1102, Block 1103, Block 1104, Block 1105, Block 1106, Block 1107, Block 1108, Block 1109, Block 1110, Block 1111, Block 1112, Block 1113, Block 1114, Block 1115, Block 1116, Block 1117, Block 1118, Block 1119, Block 1120, Block 1121, Block 1122, Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2020, Block 6000, Block 6001, Tract 9505.00; Block 1046, Block 1047, Asotin County, Columbia County, Ferry County, Garfield County, Lincoln County, Okanogan County, Pend Oreille County, Spokane County, Stevens County, Walla Walla County, Whitman County.

**District 6:** Clallam County, Grays Harbor County, Jefferson County, Kitsap County (Part) - Tracts: 801.01, 801.02, 802.00, 803.00, 804.00, 805.00, 806.00, 807.00, 808.00, 810.00, 811.00, 812.00, 814.00, 919.00, 921.00, 922.00, 923.00, 924.00, 925.00, 926.00, 927.00, 928.01, 928.02, 928.03, 929.01, 929.02, Kitsap County (Part) - Block Groups Tract 809.00; Block Group 1, Tract 917.00; Block Group 3, Tract 918.00; Block Group 2, Kitsap County (Part) - Blocks: Tract 809.00; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2999, Tract 914.00; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2997, Block 2998, Tract 915.00; Block 1021, Tract 916.00; Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Tract 917.00; Block 2006, Block 2007, Block

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Block Group 2, Tract 606.00; Block Group 3, Tract 606.00; Block Group 4, Tract 606.00; Block Group 5, Tract 606.00; Block Group 6, Tract 621.00; Block Group 2, Tract 621.00; Block Group 3, Tract 633.00; Block Group 3, Tract 633.00; Block Group 4, Tract 633.00; Block Group 5, Tract 715.05; Block Group 1, Tract 716.02; Block Group 1, Tract 719.01; Block Group 1, Tract 719.01; Block Group 2, Tract 719.01; Block Group 3, Tract 719.02; Block Group 3, Tract 721.05; Block Group 2, Tract 721.06; Block Group 1, Tract 721.06; Block Group 2, Tract 723.08; Block Group 1, Tract 723.08; Block Group 2, Tract 723.08; Block Group 4, Tract 726.03; Block Group 1, Tract 726.03; Block Group 2, Pierce County (Part) -Blocks: Tract 606.00; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1999, Tract 616.02; 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Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1031, Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4999, Tract 715.05; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Tract 716.02; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2037, Tract 718.06; Block 1000, Block 1001, Block 1004, Block 1005, Block 1006, Block 1008, Block 2000, Block 2001, Tract 719.01; Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4010, Tract 719.02; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2998, Block 4000, Tract 721.05; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 3000, Block 3001, Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Tract 723.08; Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3995, Block 3996, Block 3997, Block 3998, Block 3999, Tract 729.01; Block 1001.

**District 7:** King County (Part) - Tracts: 1.00, 2.00, 7.00, 8.00, 9.00, 10.00, 11.00, 12.00, 13.00, 15.00, 16.00, 17.00, 18.00, 19.00, 20.00, 21.00, 22.00, 24.00, 25.00, 26.00, 27.00, 28.00, 29.00, 30.00, 31.00, 32.00, 33.00, 34.00, 35.00, 36.00, 38.00, 39.00, 40.00, 41.00, 42.00, 43.00, 44.00, 45.00, 46.00, 47.00, 48.00, 49.00, 50.00, 51.00, 52.00, 53.01, 53.02, 54.00, 56.00, 57.00, 58.01, 58.02, 59.00, 60.00, 61.00, 62.00, 63.00, 64.00, 65.00, 66.00, 67.00, 68.00, 69.00, 70.00, 71.00, 72.00, 73.00, 74.00, 75.00, 76.00, 77.00, 78.00, 79.00, 80.01, 80.02, 81.00, 82.00, 83.00, 84.00, 85.00, 86.00, 87.00, 88.00, 89.00, 90.00, 91.00, 92.00, 93.00, 94.00, 95.00, 96.00, 97.01, 97.02, 98.00, 99.00, 100.00, 101.00, 102.00, 103.00, 104.00, 105.00, 106.00, 107.00, 108.00, 109.00, 110.00, 111.01, 111.02, 112.00, 113.00, 114.00, 115.00, 116.00, 117.00, 118.00, 119.00, 120.00, 121.00, 211.00, 213.00, 260.01, 263.00, 264.00, 265.00, 266.00, 267.00, 268.01, 268.02, 269.00, 270.00, 271.00, 272.00, 274.00, 275.00, 277.01, 277.02, King County (Part) - Block Groups Tract 3.00; Block Group 1, Tract 4.02; Block Group 3, Tract 4.02; Block Group 4, Tract 6.00; Block Group 2, Tract 6.00; Block Group 3, Tract 6.00; Block Group 4, Tract 6.00; Block Group 5, Tract 6.00; Block Group 6, Tract 14.00; Block Group 1, Tract 14.00; Block Group 2, Tract 14.00; Block Group 3, Tract 14.00; Block Group 4, Tract 14.00; Block Group 5, Tract 14.00; Block Group 6, Tract 205.00; Block Group 1, Tract 205.00; Block Group 2, Tract 205.00; Block Group 3, Tract 205.00; Block Group 4, Tract 205.00; Block Group 5, Tract 205.00; Block Group 7, Tract 206.00; Block Group 2, Tract 210.00; Block Group 1, Tract 214.00; Block Group 2, Tract 260.02; Block Group 3, Tract 261.00; Block Group 1, Tract 261.00; Block Group 2, Tract 261.00; Block Group 3, Tract 261.00; Block Group 5, Tract 261.00; Block Group 6, Tract 273.00; Block Group 1, Tract 273.00; Block Group 3, Tract 273.00; Block Group 4, Tract 273.00; Block Group 5, Tract 276.00; Block Group 1, Tract 276.00; Block Group 2, King County (Part) -Blocks: Tract 3.00; Block 2000, Block 2001, Block 2015, Block 2016, Block 2017, Tract 4.02; Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Tract 5.00; Block 1014, Block 1015, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3008, Block 3009, Block 3010, Block 3012, Block 3013, Block 3014, Block 3015, Tract 6.00; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1015, Block 1016, Block 1017, Block 1018, Tract 14.00; Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Tract 204.01; Block 1014, Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3012, Block 3013, Block 3014, Tract 205.00; Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Tract 206.00; Block 1000, Block 1001, Block 1002, Block 1005, Block 1006, Block 3000, Block 3004, Block 3005, Block 3006, Tract 210.00; Block 2000, Block 2001, Block 2002, Block 2005, Block 2006, Block 2007, Block 2008, Block 2010, Block 2011, Block

5000, Block 5001, Block 5006, Block 5007, Block 5008, Block 5009, Block 5016, Block 5017, Block 5018, Tract 214.00; Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1019, Block 1020, Block 1021, Block 1022, Block 1998, Block 1999, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Tract 253.00; Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5997, Block 5998, Block 5999, Tract 260.02; Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1026, Block 1027, Block 2010, Block 2011, Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 5000, Block 5001, Block 5002, Block 5003, Block 5012, Block 5018, Block 5019, Block 5022, Tract 261.00; Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Tract 273.00; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2010, Block 2011, Tract 276.00; Block 4000, Block 4001, Block 4999.

**District 8:** King County (Part) - Tracts: 228.01, 229.01, 229.02, 230.00, 231.00, 232.01, 232.02, 233.00, 234.01, 234.02, 235.00, 236.01, 236.03, 236.04, 237.00, 238.01, 238.02, 239.00, 240.00, 241.00, 243.00, 244.00, 245.00, 246.01, 246.02, 247.01, 247.02, 248.00, 249.01, 249.02, 249.03, 250.01, 250.03, 250.04, 251.01, 251.02, 252.00, 254.00, 255.00, 293.06, 293.07, 294.05, 294.06, 294.08, 295.02, 295.04, 296.01, 311.00, 312.02, 312.04, 312.06, 313.01, 313.02, 314.00, 315.01, 315.02, 316.01, 316.02, 316.03, 317.02, 317.03, 317.04, 318.00, 319.03, 319.04, 319.06, 319.07, 319.08, 319.09, 320.02, 320.03, 320.05, 320.06, 320.07, 320.08, 320.09, 321.02, 321.03, 321.04, 322.03, 322.07, 322.08, 322.09, 322.10, 322.11, 322.12, 323.14, 323.15, 323.16, 323.17, 323.18, 324.01, 324.02, 325.00, 326.01, 326.02, 327.02, 327.03, 327.04, King County (Part) - Block Groups Tract 228.03; Block Group 3, Tract 242.00; Block Group 1, Tract 242.00; Block Group 3, Tract 242.00; Block Group 4, Tract 253.00; Block Group 1, Tract 256.00; Block Group 1, Tract 256.00; Block Group 2, Tract 256.00; Block Group 4, Tract 256.00; Block Group 5, Tract 293.03; Block Group 4, Tract 293.04; Block Group 2, Tract 293.04; Block Group 4, Tract 294.03; Block Group 2, Tract 294.03; Block Group 3, Tract 294.07; Block Group 3, Tract 295.03; Block Group 4, Tract 295.03; Block Group 5, Tract 296.02; Block Group 2, Tract 306.00; Block Group 1, Tract 308.02; Block Group 1, Tract 312.05; Block Group 1, Tract 312.05; Block Group 3, Tract 312.05; Block Group 4, Tract 323.12; Block Group 4, Tract 323.13; Block Group 1, Tract 323.13; Block Group 2, Tract 328.00; Block Group 1, King County (Part) - Blocks: Tract 227.01; Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2998, Tract 227.03; Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Tract 228.03; Block 2003, Block 2004, Block 2005, Tract 242.00; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2997, Block 2998, Tract 253.00; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 3000, Block 3001, Block 3998, Block 3999, Tract 256.00; Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3017, Block 3018, Block 3019, Block 3020, Tract 257.02; Block 2006, Block 2010, Tract 293.04; Block 1000, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1012, Block 3004, Block 3005, Block 3006, Block 3008, Tract 294.07; Block 1000, Block 1001, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Tract 295.03; Block 3000, Block 3005, Block 3006, Block 3007, Tract 296.02; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Tract 297.00; Block 2000, Block 2014, Block 2015, Block 2016, Block 2017, Block 2022, Block 2023, Block 2024, Block 5000, Tract 306.00; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Tract 307.00; Block 2009, Tract 308.01; Block 1000, Block 2018, Block 2019, Block 2020,



4021, Tract 273.00; Block 2009, Tract 276.00; Block 4002, Block 4003, Block 4004, Block 4005, Tract 293.04; Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 3000, Block 3001, Block 3002, Block 3003, Block 3007, Tract 294.07; Block 1002, Tract 295.03; Block 3001, Block 3002, Block 3003, Block 3004, Tract 296.02; Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Tract 297.00; Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2018, Block 2019, Block 2020, Block 2021, Block 2025, Block 2026, Block 2027, Block 2028, Block 5001, Tract 306.00; Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Tract 307.00; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2010, Block 2011, Block 2012, Block 2013, Tract 308.01; 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Block Group 1, Tract 712.10; Block Group 1, Tract 713.05; Block Group 2, Tract 714.06; Block Group 1, Tract 714.06; Block Group 2, Tract 714.07; Block Group 2, Tract 714.07; Block Group 3, Tract 715.03; Block Group 2, Tract 715.03; Block Group 3, Tract 715.05; Block Group 3, Tract 715.05; Block Group 4, Tract 719.02; Block Group 1, Tract 719.02; Block Group 5, Tract 721.05; Block Group 5, Tract 721.06; Block Group 3, Tract 721.06; Block Group 4, Tract 721.06; Block Group 5, Tract 726.03; Block Group 3, Tract 730.06; Block Group 2, Pierce County (Part) -Blocks: Tract 606.00; Block 1998, Tract 616.02; Block 1032, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1069, Block 1070, Block 1071, Block 1076, Block 1077, Block 1078, Tract 621.00; Block 1002, Tract 633.00; Block 1032, Block 2000, Block 2028, Block 2029, Tract 703.03; Block 1013, Block 1014, Block 1018, Block 2018, Block 2019, Block 2020, Block 2021, Tract 703.06; Block 1036, Tract 704.01; Block 1010, Tract 710.00; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2007, Block 2008, Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6011, Block 6012, Block 6013, Block 6014, Block 6015, Tract 711.00; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Tract 712.07; Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Tract 712.08; Block 1001, Block 1002, Tract 712.10; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2010, Block 2011, Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3020, Tract 713.04; 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Block 3015, Block 3016, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Tract 714.07; Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1017, Tract 715.03; Block 1022, Block 1028, Block 1029, Block 1030, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4998, Tract 715.05; Block 2008, Block 2009, Block 2010, Block 2011, Tract 716.02; Block 2035, Block 2036, Tract 718.06; Block 1002, Block 1003, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Tract 719.01; Block 4008, Block 4009, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Tract 719.02; Block 2999, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4998, Block 4999, Tract 723.08; Block 3007, Block 3994, Tract 729.01; Block 1000, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1999, Tract 730.06; Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100, Block 1101, Block 1102, Block 1103, Block 1104, Block 1105, Block 1106, Block 1107, Block 1108, Block 1109, Block 1110, Block 1111, Block 1112, Block 1113, Block 1114, Block 1115, Block 1116, Block 1117, Block 1118, Block 1119, Block 1120, Block 1993, Block 1994, Block 1995, Block 1996, Block 1997, Block 1998, Tract 731.08; Block 1015, Thurston County (Part) - Tracts: 114.10, 114.20, 115.00, 116.10, 121.00, 122.20, 123.10, 123.20, 123.30, 124.10, Thurston County (Part) - Block Groups Tract 112.00; Block Group 3, Tract 113.00; Block Group 2, Tract 113.00; Block Group 3, Tract 113.00; Block Group 4, Tract 116.20; Block Group 2, Tract 122.10; Block Group 1, Tract 122.10; Block Group 2, Tract 122.10; Block Group 4, Tract 122.10; Block Group 5, Tract 124.20; Block Group 1, Tract 125.00; Block Group 6, Thurston County (Part) - Blocks: Tract 102.00; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1025, Block 1026, Block 1027, Block 1028, Block 1998, Block 1999, Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3034, Block 3035, Tract 103.00; Block 3000, Block 3001, Block 3002, Block 3017, Block 3018, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Tract 112.00; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046,

Block 1047, Block 1999, Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Tract 113.00; Block 1000, Block 1003, Block 1004, Block 1005, Tract 116.20; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4999, Tract 122.10; Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Tract 124.20; Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Tract 125.00; Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1023, Block 1024, Block 1024, Block 1050, Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2013, Block 2014, Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3025, Block 3046, Block 3047, Block 3048, Block 3049, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3996, Block 3997, Block 3998, Block 3999, Block 4018, Block 4019, Block 4020, Block 4185, Block 4186, Block 4187.

## Chapter 29A.80 RCW POLITICAL PARTIES

### Sections

29A.80.011	Authority—Generally.
29A.80.020	State committee.
29A.80.030	County central committee—Organization meetings.
29A.80.041	Precinct committee officer, eligibility.
29A.80.051	Precinct committee officer—Election—Term.
29A.80.061	Legislative district chair—Election—Term—Removal.

*No link between voter and ballot choice: RCW 29A.08.161.*

*Party affiliation not required: RCW 29A.08.166.*

**29A.80.011 Authority—Generally.** (1) Each political party organization may:

- (a) Make its own rules and regulations; and
- (b) Perform all functions inherent in such an organization.

(2) Only major political parties may designate candidates to appear on the state primary ballot as provided in RCW 29A.28.011. [2004 c 271 § 183.]

**29A.80.020 State committee.** The state committee of each major political party consists of one committeeman and one committeewoman from each county elected by the county central committee at its organization meeting. It must have a chair and vice-chair of opposite sexes. This committee shall meet during January of each odd-numbered year for the purpose of organization at a time and place designated by a notice mailed at least one week before the date of the meeting to all the newly elected state committeemen and committeewomen by the authorized officers of the retiring commit-

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tee. At its organizational meeting it shall elect its chair and vice-chair, and such officers as its bylaws may provide, and adopt bylaws, rules, and regulations. It may:

(1) Call conventions at such time and place and under such circumstances and for such purposes as the call to convention designates. The manner, number, and procedure for selection of state convention delegates is subject to the committee's rules and regulations duly adopted;

(2) Provide for the election of delegates to national conventions;

(3) Fill vacancies on the ticket for any federal or state office to be voted on by the electors of more than one county;

(4) Provide for the nomination of presidential electors; and

(5) Perform all functions inherent in such an organization.

Notwithstanding any provision of this chapter, the committee may not adopt rules governing the conduct of the actual proceedings at a party state convention. [2003 c 111 § 2002; 1987 c 295 § 11; 1972 ex.s. c 45 § 1; 1965 c 9 § 29.42.020. Prior: 1961 c 130 § 3; prior: 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part. Formerly RCW 29.42.020.]

**29A.80.030 County central committee—Organization meetings.** The county central committee of each major political party consists of the precinct committee officers of the party from the several voting precincts of the county. Following each state general election held in even-numbered years, this committee shall meet for the purpose of organization at an easily accessible location within the county, subsequent to the certification of precinct committee officers by the county auditor and no later than the second Saturday of the following January. The authorized officers of the retiring committee shall cause notice of the time and place of the meeting to be mailed to each precinct committee officer at least seventy-two hours before the date of the meeting.

At its organization meeting, the county central committee shall elect a chair and vice-chair of opposite sexes. [2003 c 111 § 2003; 1987 c 295 § 12; 1973 c 85 § 1; 1973 c 4 § 5; 1965 c 9 § 29.42.030. Prior: 1961 c 130 § 4; prior: 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part. Formerly RCW 29.42.030.]

*Precinct election officers, appointment: RCW 29A.44.410 and 29A.44.430.*

**29A.80.041 Precinct committee officer, eligibility.** Any member of a major political party who is a registered voter in the precinct may upon payment of a fee of one dollar file his or her declaration of candidacy as prescribed under RCW 29A.24.031 with the county auditor for the office of precinct committee officer of his or her party in that precinct. When elected at the primary, the precinct committee officer shall serve so long as the committee officer remains an eligible voter in that precinct. [2004 c 271 § 148.]

**29A.80.051 Precinct committee officer—Election—Term.** The statutory requirements for filing as a candidate at the primaries apply to candidates for precinct committee

officer. The office must be voted upon at the primaries, and the names of all candidates must appear under the proper party and office designations on the ballot for the primary for each even-numbered year, and the one receiving the highest number of votes will be declared elected. However, to be declared elected, a candidate must receive at least ten percent of the number of votes cast for the candidate of the candidate's party receiving the greatest number of votes in the precinct. The term of office of precinct committee officer is two years, commencing the first day of December following the primary. [2004 c 271 § 149.]

**29A.80.061 Legislative district chair—Election—Term—Removal.** Within forty-five days after the statewide general election in even-numbered years, the county chair of each major political party shall call separate meetings of all elected precinct committee officers in each legislative district for the purpose of electing a legislative district chair in such district. The district chair shall hold office until the next legislative district reorganizational meeting two years later, or until a successor is elected.

The legislative district chair may be removed only by the majority vote of the elected precinct committee officers in the chair's district. [2004 c 271 § 150.]

## Chapter 29A.84 RCW CRIMES AND PENALTIES

### Sections

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- 29A.84.010 Voting, registration irregularities.
- 29A.84.020 Violations by officers.
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- 29A.84.670 Unlawful acts by voters (*as amended by 2003 c 111*).
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*Disability access voting, prohibitions: RCW 29A.46.150.*

*No link between voter and ballot choices: RCW 29A.08.161.*

*Party affiliation not required: RCW 29A.08.166.*

### GENERAL PROVISIONS

**29A.84.010 Voting, registration irregularities.** (1) A county auditor who suspects a person of fraudulent voter registration, vote tampering, or irregularities in voting shall transmit his or her suspicions and observations without delay to the canvassing board.

(2) The county auditor shall make a good faith effort to contact the person in question without delay. If the county auditor is unable to contact the person, or if, after contacting the person, the auditor still suspects fraudulent voter registration, vote tampering, or irregularities in voting, the auditor shall refer the issue to the county prosecuting attorney to determine if further action is warranted.

(3) When a complaint providing information concerning fraudulent voter registration, vote tampering, or irregularities in voting is presented to the office of the prosecuting attorney, that office shall file charges in all cases where warranted. [2003 c 111 § 2101; 2001 c 41 § 12. Formerly RCW 29.85.245.]

**29A.84.020 Violations by officers.** Every officer who willfully violates RCW 29A.56.110 through 29A.56.270, for the violation of which no penalty is prescribed in this title or who willfully fails to comply with the provisions of this chapter is guilty of a gross misdemeanor. [2003 c 111 § 2102; 1965 c 9 § 29.82.210. Prior: 1953 c 113 § 1; prior: 1913 c 146 § 16, part; RRS § 5365, part. Formerly RCW 29.82.210.]

**29A.84.030 Penalty.** A person who willfully violates any provision of this title regarding the conduct of mail ballot primaries or elections is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2103; 2001 c 241 § 21. Formerly RCW 29.38.070.]

**29A.84.040 Political advertising, removing or defacing.** A person who removes or defaces lawfully placed political advertising including yard signs or billboards without authorization is guilty of a misdemeanor punishable to the same extent as a misdemeanor that is punishable under RCW

9A.20.021. The defacement or removal of each item constitutes a separate violation. [2003 c 111 § 2104. Prior: 1991 c 81 § 19; 1984 c 216 § 5. Formerly RCW 29.85.275.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

*Political advertising*

generally: RCW 42.17.510 through 42.17.540.

rates for candidates: RCW 65.16.095.

## REGISTRATION

**29A.84.110 Officials' violations.** If any county auditor or registration assistant:

(1) Willfully neglects or refuses to perform any duty required by law in connection with the registration of voters; or

(2) Willfully neglects or refuses to perform such duty in the manner required by voter registration law; or

(3) Enters or causes or permits to be entered on the voter registration records the name of any person in any other manner or at any other time than as prescribed by voter registration law or enters or causes or permits to be entered on such records the name of any person not entitled to be thereon; or

(4) Destroys, mutilates, conceals, changes, or alters any registration record in connection therewith except as authorized by voter registration law,

he or she is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2105. Prior: 1994 c 57 § 24; 1991 c 81 § 11; 1965 c 9 § 29.85.190; prior: 1933 c 1 § 26; RRS § 5114-26; prior: 1889 p 418 § 15; RRS § 5133. Formerly RCW 29.07.400, 29.85.190.]

**Severability—1994 c 57:** See note following RCW 10.64.021.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.84.120 Disenfranchisement or discrimination.**

An election officer or a person who intentionally disenfranchises an eligible citizen or discriminates against a person eligible to vote by denying voter registration is guilty of a misdemeanor punishable under RCW 9A.20.021. [2003 c 111 § 2106. Prior: 2001 c 41 § 2. Formerly RCW 29.07.405.]

**29A.84.130 Voter violations.** Any person who:

(1) Knowingly provides false information on an application for voter registration under any provision of this title;

(2) Knowingly makes or attests to a false declaration as to his or her qualifications as a voter;

(3) Knowingly causes or permits himself or herself to be registered using the name of another person;

(4) Knowingly causes himself or herself to be registered under two or more different names;

(5) Knowingly causes himself or herself to be registered in two or more counties;

(6) Offers to pay another person to assist in registering voters, where payment is based on a fixed amount of money per voter registration;

(7) Accepts payment for assisting in registering voters, where payment is based on a fixed amount of money per voter registration; or

(8) Knowingly causes any person to be registered or causes any registration to be transferred or canceled except as authorized under this title,

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is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2107. Prior: 1994 c 57 § 25; 1991 c 81 § 12; 1990 c 143 § 12; 1977 ex.s. c 361 § 110; 1965 c 9 § 29.85.200; prior: 1933 c 1 § 27; RRS § 5114-27; prior: 1893 c 45 § 5; 1889 p 418 § 16; RRS § 5136. Formerly RCW 29.07.410, 29.85.200.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.84.140 Unqualified registration.** A person who knows that he or she does not possess the legal qualifications of a voter and who registers to vote is guilty of a misdemeanor punishable under RCW 9A.20.021. [2003 c 111 § 2108. Prior: 2001 c 41 § 13. Formerly RCW 29.85.249.]

**29A.84.150 Misuse, alteration of registration data base.** (*Effective January 1, 2006.*) Any state or local election officer, or a designee, who has access to any county or statewide voter registration data base who knowingly uses or alters information in the data base inconsistent with the performance of his or her duties is guilty of a class C felony, punishable under RCW 9A.20.021. [2004 c 267 § 138.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

## PETITIONS AND SIGNATURES

**29A.84.210 Violations by officers.** Every officer who willfully violates any of the provisions of chapter 29A.72 RCW or RCW 29A.32.010 through \*29A.32.120, for the violation of which no penalty is herein prescribed, or who willfully fails to comply with the provisions of chapter 29A.72 RCW or RCW 29A.32.010 through \*29A.32.120, is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2109; 1993 c 256 § 3; 1965 c 9 § 29.79.480. Prior: 1913 c 138 § 32, part; RRS § 5428, part. Formerly RCW 29.79.480.]

**\*Reviser's note:** RCW 29A.32.120 was repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.32.121.

**Severability—Effective date—1993 c 256:** See notes following RCW 29A.84.280.

**29A.84.220 Violations—Corrupt practices.** Every person is guilty of a gross misdemeanor, who:

(1) For any consideration, compensation, gratuity, reward, or thing of value or promise thereof, signs or declines to sign any recall petition; or

(2) Advertises in any newspaper, magazine or other periodical publication, or in any book, pamphlet, circular, or letter, or by means of any sign, signboard, bill, poster, handbill, or card, or in any manner whatsoever, that he or she will either for or without compensation or consideration circulate, solicit, procure, or obtain signatures upon, or influence or induce or attempt to influence or induce persons to sign or not to sign any recall petition or vote for or against any recall; or

(3) For pay or any consideration, compensation, gratuity, reward, or thing of value or promise thereof, circulates, or

solicits, procures, or obtains or attempts to procure or obtain signatures upon any recall petition; or

(4) Pays or offers or promises to pay, or gives or offers or promises to give any consideration, compensation, gratuity, reward, or thing of value to any person to induce him or her to sign or not to sign, or to circulate or solicit, procure, or attempt to procure or obtain signatures upon any recall petition, or to vote for or against any recall; or

(5) By any other corrupt means or practice or by threats or intimidation interferes with or attempts to interfere with the right of any legal voter to sign or not to sign any recall petition or to vote for or against any recall; or

(6) Receives, accepts, handles, distributes, pays out, or gives away, directly or indirectly, any money, consideration, compensation, gratuity, reward, or thing of value contributed by or received from any person, firm, association, or corporation whose residence or principal office is, or the majority of whose stockholders are nonresidents of the state of Washington, for any service, work, or assistance of any kind done or rendered for the purpose of aiding in procuring signatures upon any recall petition or the adoption or rejection of any recall. [2003 c 111 § 2110; 1984 c 170 § 12; 1965 c 9 § 29.82.220. Prior: 1953 c 113 § 2; prior: 1913 c 146 § 16, part; RRS § 5365, part. Formerly RCW 29.82.220.]

*Misconduct in signing a petition: RCW 9.44.080.*

**29A.84.230 Violations by signers.** (1) Every person who signs an initiative or referendum petition with any other than his or her true name is guilty of a class C felony punishable under RCW 9A.20.021.

(2) Every person who knowingly signs more than one petition for the same initiative or referendum measure or who signs an initiative or referendum petition knowing that he or she is not a legal voter or who makes a false statement as to his or her residence on any initiative or referendum petition, is guilty of a gross misdemeanor. [2003 c 111 § 2111; 2003 c 53 § 182; 1993 c 256 § 2; 1965 c 9 § 29.79.440. Prior: 1913 c 138 § 31; RRS § 5427. Formerly RCW 29.79.440, 29.79.450, 29.79.460, 29.79.470.]

**Reviser's note:** This section was amended by 2003 c 53 § 182 and by 2003 c 111 § 2111, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Severability—Effective date—1993 c 256:** See notes following RCW 29A.84.280.

*Misconduct in signing a petition: RCW 9.44.080.*

*Only registered voters may vote—Exception: RCW 29A.04.210.*

*Registration, information from voter as to qualifications: RCW 29A.08.210.*

*Residence*

*contingencies affecting: State Constitution Art. 6 § 4.  
defined: RCW 29A.04.151.*

**29A.84.240 Violations by signers, officers—Penalty.**

(1) Every person who signs a recall petition with any other than his or her true name is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Every person who knowingly (a) signs more than one petition for the same recall, (b) signs a recall petition when he or she is not a legal voter, or (c) makes a false statement as to

residence on any recall petition is guilty of a gross misdemeanor.

(3) Every registration officer who makes any false report or certificate on any recall petition is guilty of a gross misdemeanor. [2004 c 266 § 19. Prior: 2003 c 111 § 2112; 2003 c 53 § 183; 1984 c 170 § 11; 1965 c 9 § 29.82.170; prior: 1913 c 146 § 15; RRS § 5364. Formerly RCW 29.82.170, 29.82.180, 29.82.190, 29.82.200.]

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

*Misconduct in signing a petition: RCW 9.44.080.*

**29A.84.250 Violations—Corrupt practices.** Every person is guilty of a gross misdemeanor who:

(1) For any consideration or gratuity or promise thereof, signs or declines to sign any initiative or referendum petition; or

(2) Provides or receives consideration for soliciting or procuring signatures on an initiative or referendum petition if any part of the consideration is based upon the number of signatures solicited or procured, or offers to provide or agrees to receive such consideration any of which is based on the number of signatures solicited or procured; or

(3) Gives or offers any consideration or gratuity to any person to induce him or her to sign or not to sign or to vote for or against any initiative or referendum measure; or

(4) Interferes with or attempts to interfere with the right of any voter to sign or not to sign an initiative or referendum petition or with the right to vote for or against an initiative or referendum measure by threats, intimidation, or any other corrupt means or practice; or

(5) Receives, handles, distributes, pays out, or gives away, directly or indirectly, money or any other thing of value contributed by or received from any person, firm, association, or corporation whose residence or principal office is, or the majority of whose members or stockholders have their residence outside, the state of Washington, for any service rendered for the purpose of aiding in procuring signatures upon any initiative or referendum petition or for the purpose of aiding in the adoption or rejection of any initiative or referendum measure. This subsection does not apply to or prohibit any activity that is properly reported in accordance with the applicable provisions of chapter 42.17 RCW.

A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2113; 1993 c 256 § 4; 1975-'76 2nd ex.s. c 112 § 2; 1965 c 9 § 29.79.490. Prior: 1913 c 138 § 32, part; RRS § 5428, part. Formerly RCW 29.79.490]

**Severability—Effective date—1993 c 256:** See notes following RCW 29A.84.280.

**Construction—Severability—1975-'76 2nd ex.s. c 112:** See RCW 42.17.945 and 42.17.912.

*Misconduct in signing a petition: RCW 9.44.080.*

**29A.84.261 Petitions—Improperly signing.** The following apply to persons signing nominating petitions prescribed by RCW 29A.24.101:

(1) A person who signs a petition with any other than his or her name shall be guilty of a misdemeanor.

(2) A person shall be guilty of a misdemeanor if the person knowingly: Signs more than one petition for any single candidacy of any single candidate; signs the petition when he or she is not a legal voter; or makes a false statement as to his or her residence. [2004 c 271 § 184.]

**29A.84.270 Duplication of names—Conspiracy—Criminal and civil liability.** Any person who with intent to mislead or confuse the electors conspires with another person who has a surname similar to an incumbent seeking reelection to the same office, or to an opponent for the same office whose political reputation has been well established, by persuading such other person to file for such office with no intention of being elected, but to defeat the incumbent or the well known opponent, is guilty of a class B felony punishable according to chapter 9A.20 RCW. In addition, all conspirators are subject to a suit for civil damages, the amount of which may not exceed the salary that the injured person would have received had he or she been elected or reelected. [2004 c 266 § 20. Prior: 2003 c 111 § 2115; 2003 c 53 § 178; 1965 c 9 § 29.18.080; prior: 1943 c 198 § 6; Rem. Supp. 1943 § 5213-15. Formerly RCW 29.15.110, 29.18.080.]

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**29A.84.280 Paid petition solicitors—Finding.** The legislature finds that paying a worker, whose task it is to secure the signatures of voters on initiative or referendum petitions, on the basis of the number of signatures the worker secures on the petitions encourages the introduction of fraud in the signature gathering process. Such a form of payment may act as an incentive for the worker to encourage a person to sign a petition which the person is not qualified to sign or to sign a petition for a ballot measure even if the person has already signed a petition for the measure. Such payments also threaten the integrity of the initiative and referendum process by providing an incentive for misrepresenting the nature or effect of a ballot measure in securing petition signatures for the measure. [2003 c 111 § 2116. Prior: 1993 c 256 § 1. Formerly RCW 29.79.500.]

**Severability—1993 c 256:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 256 § 15.]

**Effective date—1993 c 256:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 256 § 16.]

#### FILING FOR OFFICE, DECLARATIONS, AND NOMINATIONS

**29A.84.311 Candidacy declarations, nominating petitions.** Every person who:

- (1) Knowingly provides false information on his or her declaration of candidacy or petition of nomination; or
- (2) Conceals or fraudulently defaces or destroys a certificate that has been filed with an elections officer under chapter 29A.20 RCW or a declaration of candidacy or petition of nomination that has been filed with an elections officer, or any part of such a certificate, declaration, or petition, is guilty

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of a class C felony punishable under RCW 9A.20.021. [2004 c 271 § 185.]

**29A.84.320 Duplicate, nonexistent, untrue names—Penalty.** A person is guilty of a class B felony punishable according to chapter 9A.20 RCW who files a declaration of candidacy for any public office of:

- (1) A nonexistent or fictitious person; or
- (2) The name of any person not his or her true name; or
- (3) A name similar to that of an incumbent seeking reelection to the same office with intent to confuse and mislead the electors by taking advantage of the public reputation of the incumbent; or
- (4) A surname similar to one who has already filed for the same office, and whose political reputation is widely known, with intent to confuse and mislead the electors by capitalizing on the public reputation of the candidate who had previously filed. [2003 c 111 § 2118; 2003 c 53 § 177; 1965 c 9 § 29.18.070. Prior: (i) 1943 c 198 § 2; Rem. Supp. 1943 § 5213-11. (ii) 1943 c 198 § 3; Rem. Supp. 1943 § 5213-12. Formerly RCW 29.15.100, 29.18.070.]

**Reviser's note:** This section was amended by 2003 c 53 § 177 and by 2003 c 111 § 2118, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

#### BALLOTS

**29A.84.410 Unlawful appropriation, printing, or distribution.** Any person who is retained or employed by any officer authorized by the laws of this state to procure the printing of any official ballot or who is engaged in printing official ballots is guilty of a gross misdemeanor if the person knowingly:

- (1) Appropriates any official ballot to himself or herself; or
- (2) Gives or delivers any official ballot to or permits any official ballot to be taken by any person other than the officer authorized by law to receive it; or
- (3) Prints or causes to be printed any official ballot: (a) In any other form than that prescribed by law or as directed by the officer authorized to procure the printing thereof; or (b) with any other names thereon or with the names spelled otherwise than as directed by such officer, or the names or printing thereon arranged in any other way than that authorized and directed by law.

A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2119. Prior: 1991 c 81 § 3; 1965 c 9 § 29.85.040; prior: 1893 c 115 § 1; RRS § 5395. Formerly RCW 29.85.040.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.84.420 Unauthorized examination of ballots, election materials—Revealing information.** (1) It is a gross misdemeanor for a person to examine, or assist another to examine, any voter record, ballot, or any other state or local government official election material if the person, without lawful authority, conducts the examination:

(a) For the purpose of identifying the name of a voter and how the voter voted; or

(b) For the purpose of determining how a voter, whose name is known to the person, voted; or

(c) For the purpose of identifying the name of the voter who voted in a manner known to the person.

(2) Any person who reveals to another information which the person ascertained in violation of subsection (1) of this section is guilty of a gross misdemeanor.

(3) A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2120. Prior: 1991 c 81 § 2; 1965 c 9 § 29.85.020; prior: 1911 c 89 § 1, part; Code 1881 § 906; 1873 p 205 § 105; 1854 p 93 § 96; RRS § 5387. Formerly RCW 29.85.020.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

### POLLING PLACE

**29A.84.510 Acts prohibited in vicinity of polling place—Prohibited practices as to ballots.** (1) On the day of any primary or general or special election, no person may, within a polling place, or in any public area within three hundred feet of any entrance to such polling place:

(a) Suggest or persuade or attempt to suggest or persuade any voter to vote for or against any candidate or ballot measure;

(b) Circulate cards or handbills of any kind;

(c) Solicit signatures to any kind of petition; or

(d) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the polling place.

(2) No person may obstruct the doors or entries to a building in which a polling place is located or prevent free access to and from any polling place. Any sheriff, deputy sheriff, or municipal law enforcement officer shall prevent such obstruction, and may arrest any person creating such obstruction.

(3) No person may:

(a) Except as provided in RCW 29A.44.050, remove any ballot from the polling place before the closing of the polls; or

(b) Solicit any voter to show his or her ballot.

(4) No person other than an inspector or judge of election may receive from any voter a voted ballot or deliver a blank ballot to such elector.

(5) Any violation of this section is a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, and the person convicted may be ordered to pay the costs of prosecution. [2003 c 111 § 2121. Prior: 1991 c 81 § 20; 1990 c 59 § 75; 1984 c 35 § 1; 1983 1st ex.s. c 33 § 1; 1965 c 9 § 29.51.020; prior: (i) 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. (ii) 1895 c 156 § 7, part; 1889 p 409 § 22, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5279, part. Formerly RCW 29.51.020]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

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**29A.84.520 Electioneering by election officers forbidden.** Any election officer who does any electioneering on primary or election day, is guilty of a misdemeanor, and upon conviction must be fined in any sum not exceeding one hundred dollars and pay the costs of prosecution. [2003 c 111 § 2122; 1965 c 9 § 29.51.030. Prior: 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. Formerly RCW 29.51.030.]

**29A.84.525 Electioneering by disability access voting election officer.** (*Effective January 1, 2005.*) A disability access voting election officer who does any electioneering during the voting period is guilty of a misdemeanor, and upon conviction must be fined a sum not exceeding one hundred dollars and pay the costs of prosecution. [2004 c 267 § 309.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

*Disability access voting, prohibitions:* RCW 29A.46.150.

**29A.84.530 Refusing to leave voting booth.** Deliberately impeding other voters from casting their votes by refusing to leave a voting booth or voting device is a misdemeanor and is subject to the penalties provided in chapter 9A.20 RCW. The precinct election officers may provide assistance in the manner provided by RCW 29A.44.240 to any voter who requests it. [2003 c 111 § 2123. Prior: 1990 c 59 § 49. Formerly RCW 29.51.221.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**29A.84.540 Ballots—Removing from polling place.** Any person who, without lawful authority, removes a ballot from a polling place is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2124. Prior: 1991 c 81 § 1; 1965 c 9 § 29.85.010; prior: 1893 c 115 § 2; RRS § 5396. Formerly RCW 29.85.010.]

**Effective date—1991 c 81:** "This act shall take effect July 1, 1992." [1991 c 81 § 42.]

**29A.84.550 Tampering with materials.** Any person who willfully defaces, removes, or destroys any of the supplies or materials that the person knows are intended both for use in a polling place and for enabling a voter to prepare his or her ballot is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2125; 1991 c 81 § 9; 1965 c 9 § 29.85.110. Prior: 1889 p 412 § 31; RRS § 5296. FORMER PART OF SECTION: 1935 c 108 § 3, part; RRS § 5339-3, part, now codified, as reenacted, in RCW 29.85.230. Formerly RCW 29.85.110.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.84.560 Voting machines, devices—Tampering with—Extra keys.** Any person who tampers with or damages or attempts to damage any voting machine or device to be used or being used in a primary or special or general election, or who prevents or attempts to prevent the correct operation of such machine or device, or any unauthorized person who makes or has in his or her possession a key to a voting machine or device to be used or being used in a primary or special or general election, is guilty of a class C felony pun-

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ishable under RCW 9A.20.021. [2003 c 111 § 2126; 1991 c 81 § 18; 1965 c 9 § 29.85.260. Prior: 1913 c 58 § 16; RRS § 5316. Formerly RCW 29.85.260.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

## VOTING

**29A.84.610 Deceptive, incorrect vote recording.** A person is guilty of a gross misdemeanor who knowingly:

(1) Deceives any voter in recording his or her vote by providing incorrect or misleading recording information or by providing faulty election equipment or records; or

(2) Records the vote of any voter in a manner other than as designated by the voter.

Such a gross misdemeanor is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2127. Prior: 1991 c 81 § 4. Formerly RCW 29.85.051.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.84.620 Hindering or bribing voter.** Any person who uses menace, force, threat, or any unlawful means towards any voter to hinder or deter such a voter from voting, or directly or indirectly offers any bribe, reward, or any thing of value to a voter in exchange for the voter's vote for or against any person or ballot measure, or authorizes any person to do so, is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2128. Prior: 1991 c 81 § 5; 1965 c 9 § 29.85.060; prior: (i) 1911 c 89 § 1, part; Code 1881 § 904; 1873 p 204 § 103; 1854 p 93 § 94; RRS § 5386. (ii) 1911 c 89 § 1, part; 1901 c 142 § 1; Code 1881 § 909; 1873 p 205 § 106; 1865 p 50 § 1; 1854 p 93 § 97; RRS § 5388. Formerly RCW 29.85.060.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

*Employer's duty to provide time to vote: RCW 49.28.120.*

**29A.84.630 Influencing voter to withhold vote.** Any person who in any way, directly or indirectly, by menace or unlawful means, attempts to influence any person in refusing to give his or her vote in any primary or special or general election is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2129. Prior: 1991 c 81 § 6; 1965 c 9 § 29.85.070; prior: Code 1881 § 3140; RRS § 5389. Formerly RCW 29.85.070.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

*Employer's duty to provide time to vote: RCW 49.28.120.*

**29A.84.640 Solicitation of bribe by voter.** Any person who solicits, requests, or demands, directly or indirectly, any reward or thing of value or the promise thereof in exchange for his or her vote or in exchange for the vote of any other person for or against any candidate or for or against any ballot measure to be voted upon at a primary or special or general election is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2130. Prior: 1991 c 81 § 7; 1965 c 9 § 29.85.090; prior: 1907 c 209 § 32; RRS § 5207. Formerly RCW 29.85.090.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

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**29A.84.650 Repeaters.** Any person who votes or attempts to vote more than once at any primary or general or special election is guilty of a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2131. Prior: 1991 c 81 § 13; 1965 c 9 § 29.85.210; prior: 1911 c 89 § 1, part; Code 1881 § 903; 1873 p 204 § 102; 1865 p 51 § 5; 1854 p 93 § 93; RRS § 5383. Formerly RCW 29.85.210.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.84.655 Repeaters—Unqualified persons—Officers conniving with.** Any precinct election officer who knowingly permits any voter to cast a second vote at any primary or general or special election, or knowingly permits any person not a qualified voter to vote at any primary or general or special election, is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2132. Prior: 1991 c 81 § 14; 1965 c 9 § 29.85.220; prior: 1911 c 89 § 1, part; Code 1881 § 911; 1873 p 205 § 108; RRS § 5385. Formerly RCW 29.85.220.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.84.660 Unqualified persons voting.** Any person who knows that he or she does not possess the legal qualifications of a voter and who votes at any primary or special or general election authorized by law to be held in this state for any office whatever is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2133; 1991 c 81 § 17; 1965 c 9 § 29.85.240. Prior: 1911 c 89 § 1, part; Code 1881 § 905; 1873 p 204 § 104; 1865 p 51 § 4; 1854 p 93 § 95; RRS § 5384. Formerly RCW 29.85.240.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.84.670 Unlawful acts by voters—Penalty (as amended by 2003 c 53).** (1) It ~~((shall be))~~ is unlawful for a voter to:

~~((1))~~ (a) Show his ~~or her~~ ballot after it is marked to any person in such a way as to reveal the contents thereof or the name of any candidate for whom he ~~or she~~ has marked his ~~or her~~ vote;

~~((2))~~ (b) Receive a ballot from any person other than the election officer having charge of the ballots;

~~((3))~~ (c) Vote or offer to vote any ballot except one that he ~~or she~~ has received from the election officer having charge of the ballots;

~~((4))~~ (d) Place any mark upon his ~~or her~~ ballot by which it may afterward be identified as the one voted by him ~~or her~~;

~~((5))~~ (e) Fail to return to the election officers any ballot he ~~or she~~ received from an election officer.

(2) A violation of ~~((any provision of))~~ this section ~~((shall be))~~ is a misdemeanor, punishable by a fine not exceeding one hundred dollars, plus costs of prosecution. [2003 c 53 § 181; 1965 c 9 § 29.51.230. Prior: 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. Formerly RCW 29.51.230.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**29A.84.670 Unlawful acts by voters (as amended by 2003 c 111).** It ~~((shall be))~~ is unlawful for a voter to:

(1) ~~((Show his ballot after it is marked to any person in such a way as to reveal the contents thereof or the name of any candidate for whom he has marked his vote;~~

~~((2))~~ Receive a ballot from any person other than the election officer having charge of the ballots;

~~((3))~~ (2) Vote or offer to vote any ballot except one ~~((that he has))~~ received from the election officer having charge of the ballots;

~~((4))~~ Place any mark upon his ballot by which it may afterward be identified as the one voted by him;

(5)) (3) Fail to return to the election officers any ballot ((he)) received from an election officer.

A violation of any provision of this section ((shall be)) is a misdemeanor, punishable by a fine not exceeding one hundred dollars, plus costs of prosecution. [2003 c 111 § 2134; 1965 c 9 § 29.51.230. Prior: 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. Formerly RCW 29.51.230.]

**Reviser's note:** RCW 29.51.230 (recodified as RCW 29A.84.670) was amended twice during the 2003 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**29A.84.680 Absentee ballots.** (1) A person who willfully violates any provision of chapter 29A.40 RCW regarding the assertion or declaration of qualifications to receive or cast an absentee ballot or unlawfully casts a vote by absentee ballot is guilty of a class C felony punishable under RCW 9A.20.021.

(2) Except as provided in this chapter, a person who willfully violates any other provision of chapter 29A.40 RCW is guilty of a misdemeanor. [2003 c 111 § 2136; 2003 c 53 § 179; 2001 c 241 § 14; 1994 c 269 § 2; 1991 c 81 § 34; 1987 c 346 § 20; 1983 1st ex.s. c 71 § 9. Formerly RCW 29.36.370, 29.36.160.]

**Reviser's note:** This section was amended by 2003 c 53 § 179 and by 2003 c 111 § 2136, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

## CANVASSING AND CERTIFYING

**29A.84.711 Documents regarding nomination, election, candidacy—Frauds and falsehoods.** Every person who:

(1) Knowingly and falsely issues a certificate of nomination or election; or

(2) Knowingly provides false information on a certificate which must be filed with an elections officer under chapter 29A.20 RCW, is guilty of a class C felony punishable under RCW 9A.20.021. [2004 c 271 § 186.]

**29A.84.720 Officers—Violations generally.** Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, including primaries, or the provisions of any charter or ordinance of any city or town of this state relating to elections who willfully neglects or refuses to perform such duty, or who, in the performance of such duty, or in his or her official capacity, knowingly or fraudulently violates any of the provisions of law relating to such duty, is guilty of a class C felony punishable under RCW 9A.20.021 and shall forfeit his or her office. [2003 c 111 § 2138. Prior: 1991 c 81 § 10; 1965 c 9 § 29.85.170; prior: (i) 1889 p 412 § 32; RRS § 5297. (ii) 1911 c 89 § 1, part; Code 1881 § 912; 1877 p 205 § 2; RRS § 5392. Formerly RCW 29.85.170.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.84.730 Divulging ballot count.** (1) In any location in which ballots are counted, no person authorized by law to be present while votes are being counted may divulge any results of the count of the ballots at any time prior to the closing of the polls for that primary or special or general election.

(2) A violation of this section is a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2139. Prior: 1991 c 81 § 15; 1990 c 59 § 55; 1977 ex.s. c 361 § 85; 1965 c 9 § 29.54.035; prior: 1955 c 148 § 6. Formerly RCW 29.85.225, 29.54.035.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

*Divulging returns in voting device precincts:* RCW 29A.60.120.

**29A.84.740 Returns and posted copy of results—Tampering with.** It shall be a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, for any person to remove or deface the posted copy of the result of votes cast at their precinct or to delay delivery of or change the copy of primary or special or general election returns to be delivered to the proper election officer. [2003 c 111 § 2140. Prior: 1991 c 81 § 16; 1965 c 9 § 29.85.230; prior: 1935 c 108 § 3; RRS § 5339-3. Formerly RCW 29.85.230, 29.85.110, part.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

## Chapter 29A.88 RCW

### NUCLEAR WASTE SITE—ELECTION FOR DISAPPROVAL

#### Sections

29A.88.010	Findings.
29A.88.020	High-level repository—Selection of site in state—Special election for disapproval.
29A.88.030	Costs of election.
29A.88.040	Special election—Notification of auditors—Application of election laws.
29A.88.050	Ballot title.
29A.88.060	Effect of vote.

**29A.88.010 Findings.** (1) The legislature and the people find that the federal Nuclear Waste Policy Act provides that within sixty days of the president's recommendation of a site for a high-level nuclear waste repository, a state may disapprove the selection of such site in that state.

(2) The legislature and the people desire, if the governor and legislature do not issue a notice of disapproval within twenty-one days of the president's recommendation, that the people of this state have the opportunity to vote upon disapproval. [2003 c 111 § 2201. Prior: 1986 ex.s. c 1 § 3. Formerly RCW 29.91.010.]

**29A.88.020 High-level repository—Selection of site in state—Special election for disapproval.** (1) Within seven days after any recommendation by the president of the United States of a site in the state of Washington to be a high-level nuclear waste repository under 42 U.S.C. Sec. 10136, the governor shall set the date for a special statewide election

to vote on disapproval of the selection of such site. The special election shall be no more than fifty days after the date of the recommendation of the president of the United States.

(2) If either the governor or the legislature submits a notice of disapproval to the United States Congress within twenty-one days of the date of the recommendation by the president of the United States, then the governor is authorized to cancel the special election pursuant to subsection (1) of this section. [2003 c 111 § 2202; 1986 ex.s. c 1 § 4. Formerly RCW 29.91.020.]

**29A.88.030 Costs of election.** The state of Washington shall assume the costs of any special election called under RCW 29A.88.020 in the same manner as provided in RCW 29A.04.420 and 29A.04.430. [2003 c 111 § 2203. Prior: 1986 ex.s. c 1 § 5. Formerly RCW 29.91.030.]

**29A.88.040 Special election—Notification of auditors—Application of election laws.** The secretary of state shall promptly notify the county auditors of the date of the special election and certify to them the text of the ballot title for this special election. The general election laws shall apply to the election required by RCW 29A.88.020 to the extent that they are not inconsistent with this chapter. Statutory deadlines relating to certification, canvassing, and the voters' pamphlet may be modified for the election held pursuant to RCW 29A.88.020 by the secretary of state through emergency rules adopted under \*RCW 29A.04.610. [2003 c 111 § 2204. Prior: 1986 ex.s. c 1 § 6. Formerly RCW 29.91.040.]

**\*Reviser's note:** RCW 29A.04.610 was amended by 2004 c 267 § 702 and repealed by 2004 c 271 § 193. Later enactment, see RCW 29A.04.611.

**29A.88.050 Ballot title.** The ballot title for the special election called under RCW 29A.88.020 shall be "Shall the Governor be required to notify Congress of Washington's disapproval of the President's recommendation of [name of site] as a national high-level nuclear waste repository?" [2003 c 111 § 2205. Prior: 1986 ex.s. c 1 § 7. Formerly RCW 29.91.050.]

**29A.88.060 Effect of vote.** If the governor or the legislature fails to prepare and submit a notice of disapproval to the United States Congress within fifty-five days of the president's recommendation and a majority of the voters in the special election held pursuant to RCW 29A.88.020 favored such notice of disapproval, then the vote of the people shall be binding on the governor. The governor shall prepare and submit the notice of disapproval to the United States Congress pursuant to 42 U.S.C. Sec. 10136. [2003 c 111 § 2206; 1986 ex.s. c 1 § 8. Formerly RCW 29.91.060.]

# Title 30

## BANKS AND TRUST COMPANIES

### Chapters

<b>30.04</b>	<b>General provisions.</b>
<b>30.08</b>	<b>Organization and powers.</b>
<b>30.12</b>	<b>Officers, employees, and stockholders.</b>
<b>30.16</b>	<b>Checks.</b>
<b>30.20</b>	<b>Deposits.</b>
<b>30.22</b>	<b>Financial institution individual account deposit act.</b>
<b>30.24</b>	<b>Investment of trust funds.</b>
<b>30.32</b>	<b>Dealings with federal loan agencies.</b>
<b>30.36</b>	<b>Capital notes or debentures.</b>
<b>30.38</b>	<b>Interstate banking.</b>
<b>30.42</b>	<b>Alien banks.</b>
<b>30.43</b>	<b>Satellite facilities.</b>
<b>30.44</b>	<b>Insolvency and liquidation.</b>
<b>30.46</b>	<b>Supervisory direction—Conservatorship.</b>
<b>30.49</b>	<b>Merger, consolidation, and conversion.</b>
<b>30.53</b>	<b>Merging trust companies.</b>
<b>30.56</b>	<b>Bank stabilization act.</b>
<b>30.60</b>	<b>Community credit needs.</b>
<b>30.98</b>	<b>Construction.</b>

*Business corporations and cooperative associations: Title 23B RCW.*

*Charitable trusts: Chapter 11.100 RCW.*

*Consumer loan act: Chapter 31.04 RCW.*

*Credit life insurance and credit accident and health insurance: Chapter 48.34 RCW.*

*Credit unions: Chapter 31.12 RCW.*

*Department of financial institutions: Chapter 43.320 RCW.*

*Depositaries*  
*city: Chapter 35.38 RCW.*  
*county: Chapter 36.48 RCW.*  
*of state funds: Chapter 43.85 RCW.*

*Indemnification of corporation directors, officers, trustees authorized, insurance: RCW 23B.08.320, 23B.08.500 through 23B.08.580, 23B.08.600, and 23B.17.030.*

*Investment of county funds not required for immediate expenditures, service fee: RCW 36.29.020.*

*Investment of funds of school district—Service fee: RCW 28A.320.320.*

*Life insurance payable to trustee named as beneficiary in policy or will: RCW 48.18.450, 48.18.452.*

*Master license system exemption: RCW 19.02.800.*

*Mortgages: Title 61 RCW.*

*Negotiable instruments: Title 62A RCW.*

*Powers of appointment: Chapter 11.95 RCW.*

*Probate—Bank exempted from executors, administrators, and special administrator's bond: RCW 11.28.185, 11.32.020.*

*Public charitable trusts: Chapter 11.110 RCW.*

*Public depositaries, deposit and investment of public funds: Chapter 39.58 RCW.*

*Real property and conveyances: Title 64 RCW.*

*Retail installment sales of goods and services: Chapter 63.14 RCW.*

*Safe deposit companies: Chapter 22.28 RCW.*

*Washington principal and income act of 2002: Chapter 11.104A RCW.*

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### Chapter 30.04 RCW

#### GENERAL PROVISIONS

##### Sections

30.04.010	Definitions.
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*Depositories of state funds: Chapter 43.85 RCW.*

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*Federal bonds and notes as investment or collateral: Chapter 39.60 RCW.*

*Interest and usury in general: Chapter 19.52 RCW.*

*Issuance of money, liability of stockholders: State Constitution Art. 12 § 11.*

**30.04.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Banking" shall include the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business.

(2) "Bank," unless a different meaning appears from the context, means any corporation organized under the laws of this state engaged in banking, other than a trust company, savings association, or a mutual savings bank.

(3) "Branch" means any established office of deposit, domestic or otherwise, maintained by any bank or trust company other than its head office. "Branch" does not mean a machine permitting customers to leave funds in storage or communicate with bank employees who are not located at the site of the machine, unless employees of the bank at the site of the machine take deposits on a regular basis. An office or facility of an entity other than the bank shall not be deemed to be established by the bank, regardless of any affiliation, accommodation arrangement, or other relationship between the other entity and the bank.

(4) The term "trust business" shall include the business of doing any or all of the things specified in RCW 30.08.150 (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11).

(5) "Trust company," unless a different meaning appears from the context, means any corporation organized under the laws of this state engaged in trust business.

(6) "Person" unless a different meaning appears from the context, shall include a firm, association, partnership or cor-

poration, or the plural thereof, whether resident, nonresident, citizen or not.

(7) "Director" means the director of financial institutions.

(8) "Foreign bank" and "foreign banker" shall include:

(a) Every corporation not organized under the laws of the territory or state of Washington doing a banking business, except a national bank;

(b) Every unincorporated company, partnership or association of two or more individuals organized under the laws of another state or country, doing a banking business;

(c) Every other unincorporated company, partnership or association of two or more individuals, doing a banking business, if the members thereof owning a majority interest therein or entitled to more than one-half of the net assets thereof are not residents of this state;

(d) Every nonresident of this state doing a banking business in his or her own name and right only. [1997 c 101 § 3; 1996 c 2 § 2; 1994 c 92 § 7; 1959 c 106 § 1; 1955 c 33 § 30.04.010. Prior: 1933 c 42 § 2; 1917 c 80 § 14; RRS § 3221.]

**Severability—1996 c 2:** See RCW 30.38.900.

**30.04.020 Use of words indicating bank or trust company—Penalty.** (1) The name of every bank shall contain the word "bank" and the name of every trust company shall contain the word "trust," or the word "bank." Except as provided in RCW 33.08.030 or as otherwise approved by the director, no person except:

(a) A national bank;

(b) A bank or trust company authorized by the laws of this state;

(c) A corporation established under \*RCW 31.30.010;

(d) A foreign corporation authorized by this title so to do, shall:

(i) Use as a part of his or its name or other business designation or in any manner as if connected with his or its business or place of business any of the following words or the plural thereof, to wit: "bank," "banking," "banker," "trust."

(ii) Use any sign at or about his or its place of business or use or circulate any advertisement, letterhead, billhead, note, receipt, certificate, blank, form, or any written or printed or part written and part printed paper, instrument or article whatsoever, directly or indirectly indicating that the business of such person is that of a bank or trust company.

(2) A foreign corporation, whose name contains the words "bank," "banker," "banking," or "trust," or whose articles of incorporation empower it to engage in banking or to engage in a trust business, may not engage in banking or in a trust business in this state unless the corporation (a) is expressly authorized to do so under this title, under federal law, or by the director, and (b) complies with all applicable requirements of chapter 23B.15 RCW regarding foreign corporations. If an activity would not constitute "transacting business" within the meaning of RCW 23B.15.010(1) or chapter 23B.18 RCW, then the activity shall not constitute banking or engaging in a trust business. Nothing in this subsection shall prevent operations by an alien bank in compliance with chapter 30.42 RCW.

(3) This section shall not prevent a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the National Housing Act from using the words "mortgage banker" or "mortgage banking" in the conduct of its business, but only if both words are used together in either of the forms which appear in quotations in this sentence.

(4) Every person who, and every director and officer of every corporation which, to the knowledge of such director or officer violates any provision of this section shall be guilty of a gross misdemeanor. [1994 c 256 § 32; 1986 c 284 § 15; 1983 c 42 § 2; 1981 c 88 § 1; 1955 c 33 § 30.04.020. Prior: 1925 ex.s. c 114 § 1; 1917 c 80 § 18; RRS § 3225.]

**\*Reviser's note:** RCW 31.30.010 was repealed by 1998 c 12 § 1.

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1986 c 284:** See RCW 31.30.900.

**30.04.025 Financial institutions—Loan charges—Out-of-state national banks.** Notwithstanding any restrictions, limitations, requirements, or other provisions of law, a financial institution, as defined in RCW 30.22.040(12), may charge, take, receive, or reserve interest, discount or other points, finance charges, or other similar charges on any loan or other extension of credit, at a rate or amount that is equal to, or less than, the maximum rate or amount of interest, discount or other points, finance charges, or other similar charges that national banks located in any other state or states may charge, take, receive, or reserve, under 12 U.S.C. Sec. 85, on loans or other extensions of credit to residents of this state. However, this section does not authorize any subsidiary of a bank, of a trust company, of a mutual savings bank, of a savings and loan association, or of a credit union to charge, take, receive, or reserve interest, discount or other points, finance charges, or other similar charges on any loan or other extension of credit, unless the subsidiary is itself a bank, trust company, mutual savings bank, savings and loan association, or credit union. [2003 c 24 § 3.]

**30.04.030 Rules—Administration and interpretation of title.** The director shall have power to adopt uniform rules in accordance with the administrative procedure act, chapter 34.05 RCW, to govern examinations and reports of banks and trust companies and the form in which they shall report their assets, liabilities, and reserves, charge off bad debts and otherwise keep their records and accounts, and otherwise to govern the administration of this title. The director shall mail a copy of the rules to each bank and trust company at its principal place of business.

The director shall have the power, and broad administrative discretion, to administer and interpret the provisions of this title to facilitate the delivery of financial services to the citizens of the state of Washington by the banks and trust companies subject to this title. [1994 c 92 § 8; 1986 c 279 § 1; 1955 c 33 § 30.04.030. Prior: 1917 c 80 § 58, part; RRS § 3265, part.]

**30.04.050 Violations—Penalty.** Every bank and trust company and their officers, employees, and agents shall comply with the rules and regulations. The violation of any rule or regulation in addition to any other penalty provided in this

title, shall subject the offender to a penalty of one hundred dollars for each offense, to be recovered by the attorney general in a civil action in the name of the state. Each day's continuance of the violation shall be a separate and distinct offense. [1955 c 33 § 30.04.050. Prior: 1917 c 80 § 58, part; RRS § 3265, part.]

**30.04.060 Examinations directed—Cooperative agreements and actions.** (1) The director, assistant director, or an examiner shall visit each bank and each trust company at least once every eighteen months, and oftener if necessary, for the purpose of making a full investigation into the condition of such corporation, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director, officer, employee, or agent of such corporation. The director may make such other full or partial examinations as deemed necessary and may examine any bank holding company that owns any portion of a bank or trust company chartered by the state of Washington and obtain reports of condition for any bank holding company that owns any portion of a bank or trust company chartered by the state of Washington. The director may visit and examine into the affairs of any nonpublicly held corporation in which the bank, trust company, or bank holding company has an investment or any publicly held corporation the capital stock of which is controlled by the bank, trust company, or bank holding company; may appraise and revalue such corporations' investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such corporations for such purposes. The director may, in his or her discretion, accept in lieu of the examinations required in this section the examinations conducted at the direction of the federal reserve board or the Federal Deposit Insurance Corporation. Any willful false swearing in any examination is perjury in the second degree.

(2) The director may enter into cooperative and reciprocal agreements with the bank regulatory authorities of the United States, any state, the District of Columbia, or any trust territory of the United States for the periodic examination of domestic bank holding companies owning banking institutions in other states, the District of Columbia, or trust territories, and subsidiaries of such domestic bank holding companies, or of out-of-state bank holding companies owning a bank or trust company the principal operations of which are conducted in this state. The director may accept reports of examination and other records from such authorities in lieu of conducting his or her own examinations. The director may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out his or her responsibilities under this title and assure compliance with the laws of this state. [1994 c 92 § 9; 1989 c 180 § 1; 1985 c 305 § 3; 1983 c 157 § 3; 1982 c 196 § 6; 1955 c 33 § 30.04.060. Prior: 1937 c 48 § 1; 1919 c 209 § 5; 1917 c 80 § 7; RRS § 3214.]

**Severability—1983 c 157:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 157 § 12.]

**Severability—1982 c 196:** See note following RCW 30.04.550.

*Director of financial institutions: Chapter 43.320 RCW.*

**30.04.070 Cost of examination.** The director shall collect from each bank, mutual savings bank, trust company or industrial loan company for each examination of its condition the estimated actual cost of such examination. [1994 c 92 § 10; 1955 c 33 § 30.04.070. Prior: 1929 c 73 § 1; 1923 c 172 § 16; 1921 c 73 § 1; 1917 c 80 § 8; RRS § 3215.]

**30.04.075 Examination reports and information—Confidentiality—Disclosure—Penalty.** (1) All examination reports and all information obtained by the director and the director's staff in conducting examinations of banks, trust companies, or alien banks, and information obtained by the director and the director's staff from other state or federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(2), and information obtained by the director and the director's staff relating to examination and supervision of bank holding companies owning a bank in this state or subsidiaries of such holding companies, is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or any part of examination reports prepared by the director's office to:

(a) Federal agencies empowered to examine state banks, trust companies, or alien banks;

(b) Bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(2), and other bank regulatory authorities who are the primary regulatory authority or insurer of accounts for a bank holding company owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the director shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the director furnishes any examination report to officials empowered to investigate criminal charges, the director may only furnish that part of the report which is necessary and pertinent to the investigation, and the director may do this only after notifying the affected bank, trust company, or alien bank and any customer of the bank, trust company, or alien bank who is named in that part of the examination or report ordered to be furnished unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(d) The examined bank, trust company, or alien bank, or holding company thereof;

(e) The attorney general in his or her role as legal advisor to the director;

(f) Liquidating agents of a distressed bank, trust company, or alien bank;

(g) A person or organization officially connected with the bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

(h) The Washington public deposit protection commission as provided by RCW 39.58.105.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the department of financial institutions, and be confidential and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the department of financial institutions is designed for use in the supervision of the bank, trust company, or alien bank. The report shall remain the property of the director and will be furnished to the bank, trust company, or alien bank solely for its confidential use. Under no circumstances shall the bank, trust company, or alien bank or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The bank may also, after execution of an agreement not to disclose information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the bank.

(5) Examination reports and information obtained by the director and the director's staff in conducting examinations, or obtained from other state and federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(2), or relating to examination and supervision of bank holding companies owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company, or information obtained as a result of applications or investigations pursuant to RCW 30.04.230, shall not be subject to public disclosure under chapter 42.17 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director.

(7) This section shall not apply to investigation reports prepared by the director and the director's staff concerning an application for a new bank or trust company or an application for a branch of a bank, trust company, or alien bank: PROVIDED, That the director may adopt rules making confidential portions of the reports if in the director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the director considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall be guilty of a gross misdemeanor. [1994 c 92 § 11; 1989 c 180 § 2; 1986 c 279 § 2; 1977 ex.s. c 245 § 1.]

**Severability—1977 ex.s. c 245:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of

the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 245 § 6.]

*Examination reports and information from financial institutions exempt:*  
RCW 42.17.31911.

**30.04.111 Limit on loans and extensions of credit to one person—Exceptions.** The total loans and extensions of credit by a bank or trust company to a person outstanding at any one time shall not exceed twenty percent of the capital and surplus of such bank or trust company. The following loans and extensions of credit shall not be subject to this limitation:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse;

(2) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other such obligations wholly guaranteed as to principal and interest by the United States;

(3) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States;

(4) Loans or extensions of credit fully secured by a segregated deposit account or accounts in the lending bank;

(5) Loans or extensions of credit secured by collateral having a readily ascertained market value of at least one hundred fifteen percent of the outstanding amount of the loan or extension of credit;

(6) Loans or extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-five percent of capital and surplus in addition to the general limitations, if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of the loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure the staples;

(7) The purchase of bankers' acceptances of the kind described in section 13 of the federal reserve act and issued by other banks shall not be subject to any limitation based on capital and surplus;

(8) The unpaid purchase price of a sale of bank property, if secured by such property.

For the purposes of this section "capital" shall include the amount of common stock outstanding and unimpaired, the amount of preferred stock outstanding and unimpaired, and capital notes or debentures issued pursuant to chapter 30.36 RCW.

For the purposes of this section "surplus" shall include capital surplus, reflecting the amounts paid in excess of the par or stated value of capital stock, or amounts contributed to the bank other than for capital stock, and undivided profits.

The term "person" shall include an individual, sole proprietor, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

(2004 Ed.)

The director may prescribe rules to administer and carry out the purposes of this section, including without limitation rules to define or further define terms used in this section and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit, and to determine when a loan putatively made to a person shall, for purposes of this section, be attributed to another person. In adopting the rules, the director shall be guided by rulings of the comptroller of the currency that govern lending limits applicable to national commercial banks. [1995 c 344 § 1; 1994 c 92 § 12; 1986 c 279 § 3.]

**30.04.112 "Loans or obligations" and "liabilities" limited for purposes of RCW 30.04.111.** Sales of federal reserve funds with a maturity of one business day or under a continuing contract are not "loans or obligations" or "liabilities" for the purposes of the loan limits established by RCW 30.04.111. However, sales of federal reserve funds with a maturity of more than one business day are subject to those limits.

For the purposes of this section, "sale of federal reserve funds" means any transaction among depository institutions involving the disposal of immediately available funds resulting from credits to deposit balances at federal reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution. [1989 c 220 § 1; 1983 c 157 § 2.]

**Severability—1983 c 157:** See note following RCW 30.04.060.

**30.04.120 Loans on own stock prohibited—Shares of other corporations.** The shares of stock of every bank and trust company shall be deemed personal property. No such corporation shall hereafter make any loan or discount on the security of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; in which case the stocks so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase or acquisition. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by any such bank or trust company for its own account of any shares of stock of any corporation, except a federal reserve bank of which such corporation shall become a member, and then only to the extent required by such federal reserve bank: PROVIDED, That any bank or trust company may purchase, acquire and hold shares of stock in any other corporation which shares have been previously pledged as security to any loan or discount made in good faith and such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith and stock so purchased or acquired shall be sold at public or private sale or otherwise disposed of within two years from the time of its purchase or acquisition. Any time limit imposed in this section may be extended by the director upon cause shown. Banks and trust companies are authorized to make loans on the security of the capital stock of a bank or trust company other than the lending corporation. [1994 c 92 § 13; 1986 c 279 § 4; 1973 1st ex.s. c 104 § 1; 1955 c 33 § 30.04.120. Prior: 1943 c 187 § 1;

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1933 c 42 § 9; 1929 c 73 § 5; 1917 c 80 § 36; Rem. Supp. 1943 § 3243.]

**30.04.125 Investment in corporations—Authorized businesses.** Unless otherwise prohibited by law, any state bank or trust company may invest in the capital stock of corporations organized to conduct the following businesses:

(1) A safe deposit business: PROVIDED, That the amount of investment does not exceed fifteen percent of its capital stock and surplus, without the approval of the director;

(2) A corporation holding the premises of the bank or its branches: PROVIDED, That without the approval of the director, the investment of such stock shall not exceed, together with all loans made to the corporation by the bank, a sum equal to the amount permitted to be invested in the premises by RCW 30.04.210;

(3) Stock in a small business investment company licensed and regulated by the United States as authorized by the small business act, Public Law 85-536, 72 Statutes at Large 384, in an amount not to exceed five percent of its capital and surplus without the approval of the director;

(4) Capital stock of a banking service corporation or corporations. The total amount that a bank may invest in the shares of such corporation may not exceed ten percent of its capital and surplus without the approval of the director. A bank service corporation may not engage in any activity other than those permitted by the bank service corporation act, 12 U.S.C. Sec. 1861, et seq., as subsequently amended and in effect on December 31, 1993. The performance of any service, and any records maintained by any such corporation for a bank, shall be subject to regulation and examination by the director and appropriate federal agencies to the same extent as if the services or records were being performed or maintained by the bank on its own premises;

(5) Capital stock of a federal reserve bank to the extent required by such federal reserve bank;

(6) A corporation engaging in business activities that have been determined by the board of governors of the federal reserve system or by the United States congress to be closely related to the business of banking, as of December 31, 1993;

(7) A governmentally sponsored corporation engaged in secondary marketing of loans and the stock of which must be owned in order to participate in its marketing activities;

(8) A corporation in which all of the voting stock is owned by the bank and that engages exclusively in nondeposit-taking activities that are authorized to be engaged in by the bank or trust company;

(9) A bank or trust company may purchase for its own account shares of stock of a bank or a holding company that owns or controls a bank if the stock of the bank or company is owned exclusively, except to the extent directly qualifying shares are required by law, by depository institutions and the bank or company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees. In no event may the total amount of such stock held by a bank or trust company in any bank or bank holding company exceed at any time ten percent of its capital stock and paid-in and unimpaired surplus, and in no event may the purchase of such

stock result in a bank or trust company acquiring more than twenty-five percent of any class of voting securities of such bank or company. Such a bank or bank holding company shall be called a "banker's bank." [1994 c 256 § 33; 1994 c 92 § 14; 1986 c 279 § 5.]

**Reviser's note:** This section was amended by 1994 c 92 § 14 and by 1994 c 256 § 33, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.04.127 Formation, incorporation, or investment in corporations or other entities authorized—Approval—Exception.** (1) A bank or trust company, alone or in conjunction with other entities, may form, incorporate, or invest in corporations or other entities, whether or not such other corporation or entity is related to the bank or trust company's business. The aggregate amount of funds invested, or used in the formation of corporations or other entities under this section shall not exceed ten percent of the assets or fifty percent of the net worth, whichever is less, of the bank or trust company. For purposes of this subsection, "net worth" means the aggregate of capital, surplus, undivided profits, and all capital notes and debentures which are subordinate to the interest of depositors.

(2) A bank or trust company may engage in an activity permitted under this section only with the prior authorization of the director. In approving or denying a proposed activity, the director shall consider the financial and management strength of the institution, the convenience and needs of the public, and whether the proposed activity should be conducted through a subsidiary or affiliate of the bank. The director may not authorize under this section and no bank or trust company may act as an insurance or travel agent unless otherwise authorized by state statute. [1994 c 92 § 15; 1987 c 498 § 1.]

**30.04.129 Investment in obligations issued or guaranteed by multilateral development bank.** Any bank or trust company may invest in obligations issued or guaranteed by any multilateral development bank in which the United States government formally participates. Such investment in any one multilateral development bank shall not exceed five percent of the bank's or trust company's paid-in capital and surplus. [1985 c 301 § 2.]

**30.04.130 Defaulted debts, judgments to be charged off—Valuation of assets.** Based on examinations directed pursuant to RCW 30.04.060 or other appropriate information, all assets or portion thereof that the director may have required a bank or trust company to charge off shall be charged off. No bank or trust company shall enter or at any time carry on its books any of its assets or liabilities at a valuation contrary to generally accepted accounting principles. [1994 c 256 § 34; 1994 c 92 § 16; 1986 c 279 § 6; 1955 c 33 § 30.04.130. Prior: 1937 c 61 § 1; 1919 c 209 § 15; 1917 c 80 § 47; RRS § 3254.]

**Reviser's note:** This section was amended by 1994 c 92 § 16 and by 1994 c 256 § 34, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

### 30.04.140 Pledge of securities or assets prohibited—

**Exceptions.** No bank or trust company shall pledge or hypothecate any of its securities or assets to any depositor, except that it may qualify as depository for United States deposits, or other public funds, or funds held in trust and deposited by any public officer by virtue of his office, or as a depository for the money of estates under the statutes of the United States pertaining to bankruptcy or funds deposited by a trustee or receiver in bankruptcy appointed by any court of the United States or any referee thereof, or funds held by the United States or the state of Washington, or any officer thereof in trust, or for funds of corporations owned or controlled by the United States, and may give such security for such deposits as are required by law or by the officer making the same; and it may give security to its trust department for deposits with itself which represent trust funds invested in savings accounts or which represent fiduciary funds awaiting investment or distribution. [1986 c 279 § 7; 1983 c 157 § 6; 1967 c 133 § 2; 1955 c 33 § 30.04.140. Prior: 1933 c 42 § 24, part; 1917 c 80 § 54, part; RRS § 3261, part.]

**Severability—1983 c 157:** See note following RCW 30.04.060.

**30.04.180 Dividends.** No bank or trust company shall declare or pay any dividend to an amount greater than its retained earnings, without approval from the director. The director shall in his or her discretion have the power to require any bank or trust company to suspend the payment of any and all dividends until all requirements that may have been made by the director shall have been complied with; and upon such notice to suspend dividends no bank or trust company shall thereafter declare or pay any dividends until such notice has been rescinded in writing. A dividend is payable in cash, property, or capital stock, but the restrictions on the payment of a dividend (other than restrictions imposed by the director pursuant to his or her authority to require the suspension of the payment of any or all dividends) do not apply to a dividend payable by the bank or trust company solely in its own capital stock. For purposes of this section, "retained earnings" shall be determined by generally accepted accounting principles. [1994 c 256 § 35; 1994 c 92 § 17; 1986 c 279 § 8; 1981 c 89 § 1; 1969 c 136 § 2; 1955 c 33 § 30.04.180. Prior: 1933 c 42 § 7; 1931 c 11 § 1; 1917 c 80 § 33; RRS § 3240.]

**Reviser's note:** This section was amended by 1994 c 92 § 17 and by 1994 c 256 § 35, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1981 c 89:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 89 § 8.]

**30.04.210 Real estate holdings.** A bank or trust company may purchase, hold, and convey real estate for the following purposes:

(1) Such as shall be necessary for the convenient transaction of its business, including with its banking offices other space in the same building to rent as a source of income:

PROVIDED, That any bank or trust company shall not invest for such purposes more than the greater of: (a) Fifty percent of its capital, surplus, and undivided profits; or (b) one hundred twenty-five percent of its capital stock without the approval of the director.

(2) Such as shall be purchased or conveyed to it in satisfaction, or on account of, debts previously contracted in the course of its business.

(3) Such as it shall purchase at sale under judgments, decrees, liens, or mortgage foreclosures, from debts owed to it.

(4) Such as a trust company receives in trust or acquires pursuant to the terms or authority of any trust.

(5) Such as it may take title to or for the purpose of investing in real estate conditional sales contracts.

(6) Such as shall be purchased, held, or conveyed in accordance with RCW 30.04.212 granting banks the power to invest directly or indirectly in unimproved or improved real estate. [1994 c 256 § 36; 1994 c 92 § 18; 1986 c 279 § 9; 1985 c 329 § 4; 1979 c 142 § 1; 1973 1st ex.s. c 104 § 2; 1955 c 33 § 30.04.210. Prior: 1947 c 149 § 1; 1917 c 80 § 37; Rem. Supp. 1947 § 3244.]

**Reviser's note:** This section was amended by 1994 c 92 § 18 and by 1994 c 256 § 36, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Legislative intent—1985 c 329:** See note following RCW 30.60.010.

**Severability—Effective date—1985 c 329:** See RCW 30.60.900 and 30.60.901.

*Adoption of rules:* RCW 30.60.030.

### 30.04.212 Real property and improvements thereon.

(1) In addition to the powers granted under RCW 30.04.210 and subject to the limitations and restrictions contained in this section and in RCW 30.60.010 and 30.60.020, a bank:

(a) May acquire any interest in unimproved or improved real property;

(b) May construct, alter, and manage improvements of any description on real estate in which it holds a substantial equity interest.

(2) The powers granted under subsection (1) of this section do not include, and a bank may not:

(a) Manage any real property in which the bank does not own a substantial equity interest;

(b) Engage in activities of selling, leasing, or otherwise dealing in real property as an agent or broker; or

(c) Acquire any equity interest in any one to four-family dwelling that is used as a principal residence by the owner of the dwelling; however, this shall not prohibit a bank from making loans secured by such dwelling where all or part of the bank's anticipated compensation results from the appreciation and sale of such dwelling.

(3) The aggregate amount of funds invested under this section shall not exceed two percent of a bank's capital, surplus, and undivided profits. Such percentage amount shall be increased based upon the most recent community reinvestment rating assigned to a bank by the director in accordance with RCW 30.60.010, as follows:

(a) Excellent performance: Increase to 10%

(b) Good performance: Increase to 8%

(c) Satisfactory performance: Increase to 6%

(d) Inadequate performance: Increase to 3%

(e) Poor performance: No increase

(4) For purposes of this section only, each bank will be deemed to have been assigned a community reinvestment rating of "1" for the period beginning with January 1, 1986, and ending December 31, 1986. Thereafter, each bank will be assigned an annual rating in accordance with RCW 30.60.010, which rating shall remain in effect for the next succeeding year and until the director has conducted a new investigation and assigned a new rating for the next succeeding year, the process repeating on an annual basis.

(5) No bank may at any time be required to dispose of any investment made in accordance with this section due to the fact that the bank is not then authorized to acquire such investment, if such investment was lawfully acquired by the bank at the time of acquisition.

(6) The director shall limit the amount that may be invested in a single project or investment and may adopt any rule necessary to the safe and sound exercise of powers granted by this section. [1994 c 92 § 19; 1985 c 329 § 5.]

**Legislative intent—1985 c 329:** See note following RCW 30.60.010.

**Severability—Effective date—1985 c 329:** See RCW 30.60.900 and 30.60.901.

*Adoption of rules: RCW 30.60.030.*

**30.04.214 Qualifying community investments.** (1) An amount equal to ten percent of the aggregate amount invested in real estate in accordance with RCW 30.04.212 shall be placed in qualifying community investments as defined in subsection (2) of this section.

(2) "Qualifying community investment" means any direct or indirect investment or extension of credit made by a bank in projects or programs designed to develop or redevelop areas in which persons with low or moderate incomes reside, designed to meet the credit needs of such low or moderate-income areas, or that primarily benefits low and moderate-income residents of such areas. The term includes, but is not limited to, any of the following within the state of Washington:

(a) Investments in governmentally insured, guaranteed, subsidized, or otherwise sponsored programs for housing, small farms, or businesses that address the needs of the low and moderate-income areas.

(b) Investments in residential mortgage loans, home improvements loans, housing rehabilitation loans, and small business or small farm loans originated in low and moderate-income areas, or the purchase of such loans originated in low and moderate-income areas.

(c) Investments for the preservation or revitalization of urban or rural communities in low and moderate-income areas.

The term does not include personal installment loans, loans made to purchase, or loans secured by an automobile.

(3) A qualifying community investment made by an entity that wholly owns a bank, is wholly owned by a bank, or is wholly owned by an entity that wholly owns the bank is deemed to have been made by a bank to satisfy the requirements of subsection (1) of this section. [1985 c 329 § 6.]

**Legislative intent—1985 c 329:** See note following RCW 30.60.010.

**Severability—Effective date—1985 c 329:** See RCW 30.60.900 and 30.60.901.

*Adoption of rules: RCW 30.60.030.*

**30.04.215 Engaging in other business activities.** (1) Notwithstanding any other provisions of law, in addition to all powers enumerated by this title, and those necessarily implied therefrom, a bank or trust company may engage in other business activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of July 27, 2003.

(2) A bank or trust company that desires to perform an activity that is not expressly authorized by subsection (1) of this section shall first apply to the director for authorization to conduct such activity. Within thirty days of the receipt of this application, the director shall determine whether the activity is closely related to the business of banking, whether the public convenience and advantage will be promoted, whether the activity is apt to create an unsafe or unsound practice by the bank or trust company and whether the applicant is capable of performing such an activity. If the director finds the activity to be closely related to the business of banking and the bank or trust company is otherwise qualified, he or she shall immediately inform the applicant that the activity is authorized. If the director determines that such activity is not closely related to the business of banking or that the bank or trust company is not otherwise qualified, he or she shall promptly inform the applicant in writing. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the Administrative Procedure Act, chapter 34.05 RCW. In determining whether a particular activity is closely related to the business of banking, the director shall be guided by the rulings of the board of governors of the federal reserve system and the comptroller of the currency in making determinations in connection with the powers exercisable by bank holding companies, and the activities performed by other commercial banks or their holding companies.

(3) Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a bank or trust company has under the laws of this state, a bank or trust company shall have the powers and authorities conferred as of August 31, 1994, or a subsequent date not later than July 27, 2003, upon a federally chartered bank doing business in this state. A bank or trust company may exercise the powers and authorities conferred on a federally chartered bank after July 27, 2003, only if the director finds that the exercise of such powers and authorities:

(a) Serves the convenience and advantage of depositors, borrowers, or the general public; and

(b) Maintains the fairness of competition and parity between state-chartered banks or trust companies and federally chartered banks.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of federally chartered banks shall apply to banks or trust companies exercising those powers or authorities permitted under this subsection

but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted banks or trust companies solely under this subsection.

(4) Any activity which may be performed by a bank or trust company, except the taking of deposits, may be performed by (a) a corporation or (b) another entity approved by the director, which in either case is owned in whole or in part by the bank or trust company. [2003 c 24 § 2. Prior: 1995 c 344 § 2; 1995 c 134 § 2; prior: 1994 c 256 § 37; 1994 c 92 § 20; 1986 c 279 § 10; 1983 c 157 § 8; 1969 c 136 § 7.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1983 c 157:** See note following RCW 30.04.060.

**30.04.217 Additional powers—Powers and authorities of mutual savings bank—Restrictions.** Notwithstanding any other provisions of law, in addition to all powers, express or implied, that a bank or trust company has under the laws of this state, a bank or trust company shall have the powers and authorities conferred upon a mutual savings bank under Title 32 RCW, only if:

(1) The bank or trust company notifies the director at least thirty days prior to the exercise of such power or authority by the bank or trust company, unless the director waives or modifies this requirement for notice as to the exercise of a power, authority, or category of powers or authorities by the bank or trust company;

(2) The director finds that the exercise of such powers and authorities by the bank or by the trust company serves the convenience and advantage of depositors, borrowers, or the general public; and

(3) The director finds that the exercise of such powers and authorities by the bank or by the trust company maintains the fairness of competition and parity between banks or trust companies and mutual savings banks.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of mutual savings banks shall apply to banks or trust companies exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted banks or trust companies solely under this section. [2003 c 24 § 1.]

**30.04.220 Corporations existing under former laws.**

Every corporation, which on March 10, 1917, was actually and publicly engaged in banking or trust business in this state in full compliance with the laws hereof, which were in force immediately prior to March 10, 1917, may, if it otherwise complies with the provisions of this title, continue its said business, subject to the terms and regulations hereof and without amending its articles of incorporation, although its name and the amount of its capital stock, the number or length of terms of its directors or the form of its articles of incorporation do not comply with the requirements of this title: PROVIDED,

(1) That any such bank, which was by the director lawfully permitted to operate, although its capital stock was not

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fully paid in, shall pay in the balance of its capital stock at such times and in such amounts as the director may require;

(2) That, except with written permission of the director, any bank or trust company which shall amend its articles of incorporation must in such event comply with all the requirements of this title. [1994 c 92 § 21; 1955 c 33 § 30.04.220. Prior: 1937 c 31 § 1; 1917 c 80 § 78; RRS § 3285.]

**30.04.225 Contributions and gifts.** In the absence of an express prohibition in its articles of incorporation, the making of contributions or gifts for the public welfare, or for charitable, scientific, or educational purposes by a state bank or trust company is within its powers and shall be deemed to inure to the benefit of the bank. [1986 c 279 § 11.]

**30.04.230 Authority of corporation or association to acquire stock of bank, trust company, or national banking association.**

(1) A corporation or association organized under the laws of this state or licensed to transact business in the state may acquire any or all shares of stock of any bank, trust company, or national banking association. Nothing in this section shall be construed to prohibit the merger, consolidation, or reorganization of a bank or trust company in accordance with this title.

(2) Unless the terms of this section or RCW 30.04.232 are complied with, an out-of-state bank holding company shall not acquire more than five percent of the shares of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association the principal operations of which are conducted within this state.

(3) As used in this section a "bank holding company" means a company that is a bank holding company as defined by the Bank Holding Company Act of 1956, as amended (12 U.S.C. Sec. 1841 et seq.). An "out-of-state bank holding company" is a bank holding company that principally conducts its operations outside this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a holding company. A "domestic bank holding company" is a bank holding company that principally conducts its operations within this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a bank holding company.

(4) Any such acquisition referred to under subsection (2) of this section by an out-of-state bank holding company requires the express written approval of the director. Approval shall not be granted unless and until the following conditions are met:

(a) An out-of-state bank holding company desiring to make an acquisition referred to under subsection (2) of this section and the bank, trust company, national banking association, or domestic bank holding company parent thereof, if any, proposed to be acquired shall file an application in writing with the director. The director shall by rule establish the fee schedule to be collected from the applicant in connection with the application. The fee shall not exceed the cost of processing the application. The application shall contain such information as the director may prescribe by rule as necessary or appropriate for the purpose of making a determination under this section. The application and supporting information and all examination reports and information obtained by

the director and the director's staff in conducting its investigation shall be confidential and privileged and not subject to public disclosure under chapter 42.17 RCW. The application and information may be disclosed to federal bank regulatory agencies and to officials empowered to investigate criminal charges, subject to legal process, valid search warrant, or subpoena. In any civil action in which such application or information is sought to be discovered or used as evidence, any party may, upon notice to the director and other parties, petition for an in camera review. The court may permit discovery and introduction of only those portions that are relevant and otherwise unobtainable by the requesting party. The application and information shall be discoverable in any judicial action challenging the approval of an acquisition by the director as arbitrary and capricious or unlawful.

(b) The director shall find that:

(i) The bank, trust company, or national banking association that is proposed to be acquired or the domestic bank holding company controlling such bank, trust company, or national banking association is in such a liquidity or financial condition as to be in danger of closing, failing, or insolvency. In making any such determination the director shall be guided by the criteria developed by the federal regulatory agencies with respect to emergency acquisitions under the provisions of 12 U.S.C. Sec. 1828(c);

(ii) There is no state bank, trust company, or national banking association doing business in the state of Washington or domestic bank holding company with sufficient resources willing to acquire the entire bank, trust company, or national banking association on at least as favorable terms as the out-of-state bank holding company is willing to acquire it;

(iii) The applicant out-of-state bank holding company has provided all information and documents requested by the director in relation to the application; and

(iv) The applicant out-of-state bank holding company has demonstrated an acceptable record of meeting the credit needs of its entire community, including low and moderate income neighborhoods, consistent with the safe and sound operation of such institution.

(c) The director shall consider:

(i) The financial institution structure of this state; and

(ii) The convenience and needs of the public of this state.

(5) Nothing in this section may be construed to prohibit, limit, restrict, or subject to further regulation the ownership by a bank of the stock of a bank service corporation or a banker's bank. [1994 c 92 § 22; 1987 c 420 § 2. Prior: 1985 c 310 § 2; 1985 c 305 § 4; 1983 c 157 § 9; 1982 c 196 § 7; 1981 c 89 § 2; 1973 1st ex.s. c 92 § 1; 1961 c 69 § 1; 1955 c 33 § 30.04.230; prior: 1933 c 42 § 10; RRS § 3243-1.]

**Construction—Effective date—1985 c 310:** See notes following RCW 30.04.232.

**Severability—1983 c 157:** See note following RCW 30.04.060.

**Severability—1982 c 196:** See note following RCW 30.04.550.

**Severability—1981 c 89:** See note following RCW 30.04.180.

**30.04.232 Additional authority of out-of-state holding company to acquire stock or assets of bank, trust company, or national banking association.** (1) In addition to an acquisition pursuant to RCW 30.04.230, an out-of-state bank

holding company may acquire more than five percent of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association, the principal operations of which are conducted within this state, if the bank, trust company, or national banking association or its predecessor, the voting stock of which is to be acquired, shall have been conducting business for a period of not less than five years.

(2) The director, consistent with 12 U.S.C. Sec. 1842(d)(2)(D), may approve an acquisition if the standard on which the approval is based does not discriminate against out-of-state banks, out-of-state bank holding companies, or subsidiaries of those banks or holding companies.

(3) As used in this section, the terms "bank holding company," "domestic bank holding company," and "out-of-state bank holding company" shall have the meanings provided in RCW 30.04.230. [1996 c 2 § 3; 1994 c 92 § 23; 1985 c 310 § 1.]

**Severability—1996 c 2:** See RCW 30.38.900.

**Construction—1985 c 310:** "Nothing in this act shall be deemed to expand or limit the power of a bank holding company or bank to engage in the insurance business." [1985 c 310 § 3.]

**Effective date—1985 c 310:** "This act shall take effect July 1, 1987." [1985 c 310 § 4.]

### **30.04.238 Purchase of own capital stock authorized.**

(1) Notwithstanding any other provision of this title, a bank, with the prior approval of the director, may purchase shares of its own capital stock.

(2) When a bank purchases such shares, its capital accounts shall be reduced appropriately. The shares shall be held as authorized but unissued shares. [1994 c 92 § 24; 1986 c 279 § 12; 1985 c 305 § 1.]

### **30.04.240 Trust business to be kept separate—Authorized deposit of securities.**

(1) Every corporation doing a trust business shall maintain in its office a trust department in which it shall keep books and accounts of its trust business, separate and apart from its other business. Such books and accounts shall specify the cash, securities and other properties, real and personal, held in each trust, and such securities and properties shall be at all times segregated from all other securities and properties except as otherwise provided in this section.

(2) Any person connected with a bank or trust company who shall, contrary to this section or any other provision of law, commingle any funds or securities of any kind held by such corporation in trust, for safekeeping or as agent for another, with the funds or assets of the corporation is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding any other provisions of law, any fiduciary holding securities in its fiduciary capacity or any state bank, national bank, or trust company holding securities as fiduciary or as custodian for a fiduciary is authorized to deposit or arrange for the deposit of such securities: (a) In a clearing corporation (as defined in Article 8 of the Uniform Commercial Code, chapter 62A.8 RCW); (b) within another state bank, national bank, or trust company having trust power whether located inside or outside of this state; or (c) within itself. When such securities are so deposited, certifi-

cates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation or state bank, national bank, or trust company holding the securities as the depository, with any other such securities deposited in such clearing corporation or depository by any person, regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such state bank, national bank, or trust company as a fiduciary or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, such securities may be transferred by bookkeeping entries on the books of such clearing corporation, state bank, national bank, or trust company without physical delivery or alteration of certificates representing such securities. A state bank, national bank, or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of state chartered banks and trust companies, the director and, in the case of national banking associations, the comptroller of the currency may from time to time issue. A state bank, national bank, or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such state bank, national bank, or trust company in such clearing corporation or state bank, national bank, or trust company acting as such depository for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation or state bank, national bank, or trust company acting as such depository for its account as such fiduciary.

This subsection shall apply to any fiduciary holding securities in its fiduciary capacity, and to any state bank, national bank, or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary, acting on March 14, 1973 or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation. [2003 c 53 § 184; 1994 c 92 § 25; 1979 c 45 § 1; 1973 c 99 § 1; 1955 c 33 § 30.04.240. Prior: 1919 c 209 § 16; 1917 c 80 § 49; RRS § 3256.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

### **30.04.260 Legal services, advertising of—Penalty.**

(1) No trust company or other corporation which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, shall be permitted to act as executor, administrator, or guardian; and any trust company or other corporation whose officers or agents shall solicit legal business shall be ineligible for a period of one year thereafter to be appointed executor, administrator or guardian in any of the courts of this state.

(2) Any trust company or other corporation which advertises that it will furnish legal advice, construct or prepare

wills, or do other legal work for its customers, and any officer, agent, or employee of any trust company or corporation who shall solicit legal business is guilty of a gross misdemeanor. [2003 c 53 § 185; 1974 ex.s. c 117 § 43; 1955 c 33 § 30.04.260. Prior: 1929 c 72 § 4, part; 1923 c 115 § 6, part; 1921 c 94 § 1, part; 1917 c 80 § 24, part; RRS § 3231, part.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Application, construction—Severability—Effective date—1974 ex.s. c 117:** See RCW 11.02.080 and notes following.

### **30.04.280 Compliance enjoined—Banking, trust business, branches.**

No person shall engage in banking except in compliance with and subject to the provisions of this title, unless it is a national bank or except insofar as it may be authorized so to do by the laws of this state relating to mutual savings banks or savings and loan associations. A corporation shall not engage in a trust business except in compliance with and subject to the provisions of this title. A bank shall not engage in a trust business except as authorized under this title. A bank or trust company shall not establish any branch except in accordance with the provisions of this title. Except as authorized by federal law or by another law of this state, a trust company incorporated under the laws of another state, a national trust company or national bank the main office of which is located in such other state, or a federal savings bank the home office of which is located in such other state, shall not be permitted to engage in a trust business in this state on more favorable terms and conditions than the terms and conditions on which trust companies incorporated under this chapter and mutual savings banks engaged in trust business under RCW 32.08.140, 32.08.142, 32.08.210, and 32.08.215 are permitted to engage in trust business in such other state. [1998 c 45 § 1; 1996 c 2 § 4; 1955 c 33 § 30.04.280. Prior: 1933 c 42 § 3, part; 1919 c 209 § 7, part; 1917 c 80 § 15, part; RRS § 3222, part.]

**Severability—1996 c 2:** See RCW 30.38.900.

### **30.04.285 Director's approval of a branch—Satisfactory financial condition.**

The director's approval of a branch within the United States or any territory of the United States or in any foreign country shall be conditioned on a finding by the director that the bank has a satisfactory record of compliance with applicable laws and has a satisfactory financial condition. A bank chartered under this title may exercise any powers and authorities at any branch outside Washington that are permissible for a bank operating in that state where the branch is located, except to the extent those activities are expressly prohibited by the laws of this state or by any rule or order of the director applicable to the state bank. However, the director may waive any limitation in writing with respect to powers and authorities that the director determines do not threaten the safety or soundness of the state bank. [1996 c 2 § 6.]

**Severability—1996 c 2:** See RCW 30.38.900.

### **30.04.295 Agency agreements—Written notice to director.**

On or before the date on which a bank enters into any agency agreement authorizing another entity, as agent of the bank, to receive deposits or renew time deposits, the bank

shall give written notice to the director of the existence of that agency arrangement. The notice is not effective until it has been delivered to the office of the director. [1996 c 2 § 7.]

**Severability—1996 c 2:** See RCW 30.38.900.

**30.04.300 Foreign branch banks.** A branch of any foreign bank or banker actually and publicly engaged in banking in this state on March 10, 1917, in full compliance with the laws hereof, which were in force immediately prior to March 10, 1917, and which branch has a capital not less in amount than that required for the organization of a state bank as provided in this title at the time and place when and where such branch was established, may continue its said business, subject to all of the regulations and supervision provided for banks. The amount upon which it pays taxes shall be prima facie evidence of the amount and existence of such capital. No such bank or banker shall set forth on its or his stationery or in any manner advertise in this state a greater capital, surplus and undivided profits than are actually maintained at such branch. Every foreign corporation, bank and banker, and every officer, agent and employee thereof who violates any provision of this section or which violates the terms of the resolution filed as required by \*RCW 30.04.290 shall for each violation forfeit and pay to the state of Washington the sum of one thousand dollars. A civil action for the recovery of any such sum may be brought by the attorney general in the name of the state. [1955 c 33 § 30.04.300. Prior: 1917 c 80 § 41; RRS § 3248.]

**\*Reviser's note:** RCW 30.04.290 was repealed by 1994 c 256 § 124, without cognizance of its amendment by 1994 c 92 § 27. It has been decodified for publication purposes pursuant to RCW 1.12.025. RCW 30.04.290 was subsequently repealed by 1997 c 101 § 7.

**30.04.310 Penalty—General.** Every bank or trust company which violates or fails to comply with any provision of chapters 30.04 through 30.22, 30.44, and 11.100 RCW or any lawful direction or requirement of the director shall be subject, in addition to any penalty now provided, to a penalty of not more than one hundred dollars for each offense, to be recovered by the attorney general in a civil action in the name of the state. Each day's continuance of the violation shall be a separate and distinct offense. [1994 c 92 § 28; 1988 c 25 § 1; 1985 c 30 § 137. Prior: 1984 c 149 § 173; 1955 c 33 § 30.04.310; prior: 1923 c 115 § 13; RRS § 3286a.]

**Short title—Application—Purpose—Severability—1985 c 30:** See RCW 11.02.900 through 11.02.903.

**Severability—Effective dates—1984 c 149:** See notes following RCW 11.02.005.

**30.04.330 Saturday closing authorized.** Any bank, which term for the purpose of this section shall include but not be limited to any state bank, national bank or association, mutual savings bank, savings and loan association, trust company, federal reserve bank, federal home loan bank, and federal savings and loan association, federal credit union, and state credit union doing business in this state, may remain closed on Saturdays and any Saturday on which a bank remains closed shall be, with respect to such bank, a holiday and not a business day. Any act, authorized, required or permitted to be performed at or by or with respect to any bank, as herein defined, on a Saturday, may be performed on the

next succeeding business day, and no liability or loss of rights of any kind shall result from such closing. [1955 c 33 § 30.04.330. Prior: 1947 c 221 § 1; Rem. Supp. 1947 § 3292a.]

**30.04.375 Investment in stock, participation certificates, and other evidences of participation.** Any bank or trust company may invest in the stock or participation certificates of production credit associations, federal intermediate credit banks and the stock or other evidences of participation of federal land banks in amounts consistent with safe and sound practice in conducting the business of the trust company or bank. [1982 c 86 § 1.]

**30.04.380 Investment in paid-in capital stock and surplus of banks or corporations engaged in international or foreign banking.** Any bank or trust company may invest an amount not exceeding ten per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered under the laws of the United States, or of any state thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions. [1986 c 279 § 13; 1973 1st ex.s. c 104 § 9.]

**30.04.390 Acquisition of stock of banks organized under laws of foreign country, etc.** Any bank or trust company may acquire and hold, directly or indirectly, stock or other evidence of indebtedness or ownership in one or more banks organized under the law of a foreign country or a dependency or insular possession of the United States. [1986 c 279 § 14; 1973 1st ex.s. c 104 § 10.]

**30.04.395 Continuing authority for investments.** Any investment by a bank other than a loan, if legal and authorized when made, may continue to be held by the bank notwithstanding a change in circumstances or change in the law. [1986 c 279 § 16.]

**30.04.400 Bank acquisition or control—Definitions.** As used in RCW 30.04.400 through 30.04.410, the following words shall have the following meanings:

(1) "Control" means directly or indirectly alone or in concert with others to own, control, or hold the power to vote twenty-five percent or more of the outstanding stock or voting power of the "controlled" entity;

(2) "Acquiring party" means the person acquiring control of a bank through the purchase of stock; and

(3) "Person" means any individual, corporation, partnership, association, business trust, or other organization. [1977 ex.s. c 246 § 1.]

**30.04.405 Bank acquisition or control—Notice or application—Registration statement—Violations—Penalties.** (1) It is unlawful for any person to acquire control of a bank until thirty days after filing with the director a copy of the notice of change of control required to be filed with the federal deposit insurance corporation or a completed application. The notice or application shall be under oath and contain

substantially all of the following information plus any additional information that the director may prescribe as necessary or appropriate in the particular instance for the protection of bank depositors, borrowers, or shareholders and the public interest:

(a) The identity, banking and business experience of each person by whom or on whose behalf acquisition is to be made;

(b) The financial and managerial resources and future prospects of each person involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(d) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(e) Any plan or proposal which any person making the acquisition may have to liquidate the bank, to sell its assets, to merge it with any other bank, or to make any other major change in its business or corporate structure for management;

(f) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation; and

(g) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition.

(2) Notwithstanding any other provision of this section, a bank or domestic bank holding company as defined in RCW 30.04.230 need only notify the director of an intent to acquire control and the date of the proposed acquisition of control at least thirty days before the date of the acquisition of control.

(3) When a person, other than an individual or corporation, is required to file an application under this section, the director may require that the information required by subsection (1)(a), (b), and (f) of this section be given with respect to each person, as defined in RCW 30.04.400(3), who has an interest in or controls a person filing an application under this subsection.

(4) When a corporation is required to file an application under this section, the director may require that information required by subsection (1)(a), (b), and (f) of this section be given for the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation.

(5) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C., Sec. 77(a)), as amended, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C., Sec. 78(a)), as amended, the registration statement or application may be filed with the director in lieu of the requirements of this section.

(6) Any acquiring party shall also deliver a copy of any notice or application required by this section to the bank proposed to be acquired within two days after the notice or application is filed with the director.

(7) Any acquisition of control in violation of this section shall be ineffective and void.

(8) Any person who willfully or intentionally violates this section or any rule adopted pursuant thereto is guilty of a gross misdemeanor pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation, and any person shall upon conviction be fined not more than one thousand dollars for each day the violation continues. [1994 c 92 § 29; 1986 c 279 § 15; 1985 c 305 § 5; 1977 ex.s. c 246 § 2.]

**30.04.410 Bank acquisition or control—Disapproval by director—Change of officers.** (1) The director may disapprove the acquisition of a bank or trust company within thirty days after the filing of a complete application pursuant to RCW 30.04.405 or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring party might jeopardize the financial stability of the bank or might prejudice the interests of the bank depositors, borrowers, or shareholders;

(b) The plan or proposal of the acquiring party to liquidate the bank, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to the bank's depositors, borrowers, or stockholders or is not in the public interest;

(c) The banking and business experience and integrity of any acquiring party who would control the operation of the bank indicates that approval would not be in the interest of the bank's depositors, borrowers, or shareholders;

(d) The information provided by the application is insufficient for the director to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(e) The acquisition would not be in the public interest.

(2) An acquisition may be made prior to expiration of the disapproval period if the director issues written notice of intent not to disapprove the action.

(3) The director shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure under chapter 42.17 RCW unless the findings and/or order are appealed pursuant to chapter 34.05 RCW.

(4) Whenever such a change in control occurs, each party to the transaction shall report promptly to the director any changes or replacement of its chief executive officer, or of any director, that occurs in the next twelve-month period, including in its report a statement of the past and present business and professional affiliations of the new chief executive officer or directors. [1994 c 92 § 30; 1989 c 180 § 3; 1977 ex.s. c 246 § 3.]

**30.04.450 Violations or unsafe or unsound practices—Notice of charges—Contents—Hearing—Cease and desist order.** (1) The director may issue and serve upon a bank or trust company a notice of charges if in the opinion of the director any bank or trust company:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the bank or trust company;

(b) Is violating or has violated the law, rule, or any condition imposed in writing by the director in connection with the granting of any application or other request by the bank or trust company or any written agreement made with the director; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the bank or trust company. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the director at the request of the bank or trust company.

Unless the bank or trust company shall appear at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the director finds that any violation or practice specified in the notice of charges has been established, the director may issue and serve upon the bank or trust company an order to cease and desist from the violation or practice. The order may require the bank or trust company and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the bank to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the bank or trust company concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the director or a reviewing court. [1994 c 92 § 31; 1977 ex.s. c 178 § 1.]

**Severability—1977 ex.s. c 178:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 178 § 11.]

**30.04.455 Violations or unsafe or unsound practices—Temporary cease and desist order—Issuance.** Whenever the director determines that the acts specified in RCW 30.04.450 or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the bank or trust company or to otherwise seriously prejudice the interests of its depositors, the director may also issue a temporary order requiring the bank or trust company to cease and desist from the violation or practice. The order shall become effective upon service on the bank or trust company and shall remain effective unless set aside, limited, or suspended by a

court in proceedings under RCW 30.04.460 pending the completion of the administrative proceedings under the notice and until such time as the director shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the bank or trust company under RCW 30.04.450. [1994 c 92 § 32; 1977 ex.s. c 178 § 2.]

**Severability—1977 ex.s. c 178:** See note following RCW 30.04.450.

**30.04.460 Violations or unsafe or unsound practices—Injunction to set aside, limit, or suspend temporary order.** Within ten days after a bank or trust company has been served with a temporary cease and desist order, the bank or trust company may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served under RCW 30.04.455.

The superior court shall have jurisdiction to issue the injunction. [1977 ex.s. c 178 § 3.]

**Severability—1977 ex.s. c 178:** See note following RCW 30.04.450.

**30.04.465 Violations or unsafe or unsound practices—Injunction to enforce temporary order.** In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 30.04.455, the director may apply to the superior court of the county of the principal place of business of the bank or trust company for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation. [1994 c 92 § 33; 1977 ex.s. c 178 § 4.]

**Severability—1977 ex.s. c 178:** See note following RCW 30.04.450.

**30.04.470 Violations or unsafe or unsound practices—Removal of officer or employee or prohibiting participation in bank or trust company affairs—Administrative hearing or judicial review.** (1) Any administrative hearing provided in RCW 30.04.450 or 30.12.042 may be held at such place as is designated by the director and shall be conducted in accordance with chapter 34.05 RCW. The hearing shall be private unless the director determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

Within sixty days after the hearing the director shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 30.04.450 or 30.12.042, as the case may be.

Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the affected bank or trust company under subsection (2) of this section and until the record in the proceeding has been filed as therein provided, the director may at any time modify, terminate, or set aside any order upon such notice and in such manner as he or she shall deem proper. Upon filing the record, the director may modify, terminate, or set aside any order only with permission of the court.

The judicial review provided in this section for an order shall be exclusive.

(2) Any party to the proceeding or any person required by an order issued under RCW 30.04.450, 30.04.455, 30.04.465, or 30.12.042 to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the affected bank or trust company within ten days after the date of service of the order a written petition praying that the order of the director be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the director and the director shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record to affirm, modify, terminate, or set aside in whole or in part the order of the director except that the director may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it shall be subject to appellate review under the rules of court.

(3) The commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the director unless specifically ordered by the court.

(4) Service of any notice or order required to be served under RCW 30.04.450, 30.04.455, 30.12.040 or 30.12.042 shall be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state. [1994 c 92 § 34; 1977 ex.s. c 178 § 8.]

**Severability—1977 ex.s. c 178:** See note following RCW 30.04.450.

**30.04.475 Violations or unsafe or unsound practices—Removal of officer or employee or prohibiting participation in bank or trust company affairs—Jurisdiction of courts in enforcement or issuance of orders, injunctions or judicial review.** The director may apply to the superior court of the county of the principal place of business of the bank or trust company affected for the enforcement of any effective and outstanding order issued under RCW 30.04.450, 30.04.455, 30.04.465, or 30.12.042, and the court shall have jurisdiction to order compliance therewith.

No court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any order or to review, modify, suspend, terminate, or set aside any order except as provided in RCW 30.04.460 and 30.04.470. [1994 c 92 § 35; 1977 ex.s. c 178 § 9.]

**Severability—1977 ex.s. c 178:** See note following RCW 30.04.450.

**30.04.500 Fairness in lending act—Short title.** RCW 30.04.505 through 30.04.515 shall be known and may be cited as the "fairness in lending act". [1977 ex.s. c 301 § 10.]

*Unfair practices of financial institutions: RCW 49.60.175.*

**30.04.505 Fairness in lending act—Definitions.** As used in RCW 30.04.505 through 30.04.515:

(1) "Financial institution" means any bank or trust company, mutual savings bank, credit union, mortgage company, or savings and loan association which operates or has a place of business in this state whether regulated by the state or federal government.

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(2) "Particular type of loan" refers to a class of loans which is substantially similar with respect to the following:

(a) FHA, VA, or conventional as defined in \*RCW 19.106.030(2);

(b) Uniform or nonuniform payment;

(c) Uniform or nonuniform rate of interest;

(d) Purpose; and

(e) The location of the real estate offered as security for the loan as being inside or outside of that financial institution's lending area.

(3) "Varying the terms of a loan" includes, but is not limited to the following practices:

(a) Requiring a greater down payment than is usual for the particular type of a loan involved;

(b) Requiring a shorter period of amortization than is usual for the particular type of loan involved;

(c) Charging a higher interest rate than is usual for the particular type of loan involved;

(d) A deliberate underappraisal of the value of the property offered as security. [1977 ex.s. c 301 § 11.]

**\*Reviser's note:** RCW 19.106.030 expired on January 1, 1981. See 1977 ex.s. c 301 § 9.

**30.04.510 Fairness in lending act—Unlawful practices.** Subject to RCW 30.04.515, it shall be unlawful for any financial institution, in processing any application for a loan to be secured by a single-family residence to:

(1) Deny or vary the terms of a loan on the basis that a specific parcel of real estate offered as security is located in a specific geographical area, unless building, remodeling, or continued habitation in such specific geographical area is prohibited or restricted by any local, state, or federal law or rules or regulations promulgated thereunder.

(2) Utilize lending standards that have no economic basis. [1977 ex.s. c 301 § 12.]

**30.04.515 Fairness in lending act—Sound underwriting practices not precluded.** Nothing contained in RCW 30.04.505 through 30.04.510 shall preclude a financial institution from considering sound underwriting practices in processing any application for a loan to any person. Such practices shall include the following:

(1) The willingness and the financial ability of the borrower to repay the loan.

(2) The market value of any real estate and of any other item of property proposed as security for any loan.

(3) Diversification of the financial institution's investment portfolio. [1977 ex.s. c 301 § 13.]

**30.04.550 Reorganization as subsidiary of bank holding company—Authority.** A state banking corporation may, with the approval of the director and the affirmative vote of the shareholders of such corporation owning at least two-thirds of each class of shares entitled to vote under the terms of such shares, be reorganized to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company, as defined in the federal bank holding company act of 1956, as amended. [1994 c 92 § 36; 1986 c 279 § 40; 1982 c 196 § 1.]

**Severability—1982 c 196:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 196 § 11.]

**30.04.555 Reorganization as subsidiary of bank holding company—Procedure.** A reorganization authorized under RCW 30.04.550 shall be carried out in the following manner:

(1) A plan of reorganization specifying the manner in which the reorganization shall be carried out must be approved by a majority of the entire board of directors of the banking corporation. The plan shall specify the name of the acquiring corporation, the amount of cash, securities of the bank holding company, other consideration, or any combination thereof to be paid to the shareholders of the reorganizing corporation in exchange for their shares of the stock of the corporation. The plan shall also specify the exchange date or the manner in which such exchange date shall be determined, the manner in which the exchange shall be carried out, and such other matters, not inconsistent with this chapter, as shall be determined by the board of directors of the corporation.

(2) The plan of reorganization shall be submitted to the shareholders of the reorganizing corporation at a meeting to be held on the call of the directors. Notice of the meeting of shareholders at which the plan shall be considered shall be given by prepaid first class mail at least twenty days before the date of the meeting, to each stockholder of record of the banking corporation. The notice shall state that dissenting shareholders will be entitled to payment of the value of only those shares which are voted against approval of the plan. [1994 c 256 § 38; 1986 c 279 § 41; 1982 c 196 § 2.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1982 c 196:** See note following RCW 30.04.550.

**30.04.560 Reorganization as subsidiary of bank holding company—Dissenter's rights—Conditions.** If the shareholders approve the reorganization by a two-thirds vote of each class of shares entitled to vote under the terms of such shares, and if it is thereafter approved by the director and consummated, any shareholder of the banking corporation who has voted shares against such reorganization at such meeting or has given notice in writing at or prior to such meeting to the banking corporation that he or she dissents from the plan of reorganization and has not voted in favor of the reorganization, shall be entitled to receive the value of the shares determined as provided in RCW 30.04.565. Such dissenter's rights must be exercised by making written demand which shall be delivered to the corporation at any time within thirty days after the date of shareholder approval, accompanied by the surrender of the appropriate stock certificates. [1994 c 92 § 37; 1986 c 279 § 42; 1982 c 196 § 3.]

**Severability—1982 c 196:** See note following RCW 30.04.550.

**30.04.565 Reorganization as subsidiary of bank holding company—Valuation of shares of dissenting shareholders.** The value of the shares of a dissenting shareholder who has properly perfected dissenter's rights shall be ascertained as of the day prior to the date of the shareholder action approving such reorganization by three appraisers, one to be selected by the owners of two-thirds of the dissenting shares,

one by the board of directors of the acquiring bank holding company, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. The dissenting shareholders shall bear, on a pro rata basis based on the number of dissenting shares owned, the cost of their appraisal and one-half of the cost of the third appraisal, and the acquiring bank holding company shall bear the cost of its appraisal and one-half of the cost of the third appraisal. If the appraisal is not completed within ninety days after the effective date of the reorganization, the director shall cause an appraisal to be made which shall be final and binding upon all parties. The cost of such appraisal shall be borne equally by the dissenting shareholders and the acquiring bank holding company. The dissenting shareholders shall share their half of the cost on a pro rata basis based on the number of dissenting shares owned. [1994 c 256 § 39; 1994 c 92 § 38; 1982 c 196 § 4.]

**Reviser's note:** This section was amended by 1994 c 92 § 38 and by 1994 c 256 § 39, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1982 c 196:** See note following RCW 30.04.550.

**30.04.570 Reorganization as subsidiary of bank holding company—Approval of director—Certificate of reorganization—Exchange of shares.** The reorganization and exchange authorized by RCW 30.04.550 through 30.04.570 shall become effective as follows:

(1) If the board of directors and shareholders of the state banking corporation and the board of directors of the acquiring corporation approve the plan of reorganization, then both corporations shall apply for the approval of the director, providing such information as the director by rule may prescribe.

(2) If the director approves the reorganization, the director shall issue a certificate of reorganization to the state banking corporation.

(3) Upon the issuance of a certificate of reorganization by the director, or on such later date as shall be provided for in the plan of reorganization, the shares of the state banking corporation shall be deemed to be exchanged in accordance with the plan of reorganization, subject to the rights of dissenters under RCW 30.04.560 and 30.04.565. [1994 c 92 § 39; 1982 c 196 § 5.]

**Severability—1982 c 196:** See note following RCW 30.04.550.

**30.04.575 Public hearing prior to approval of reorganization—Request.** Prior to the approval of the reorganization, the director, upon request of the board of directors of the bank, or not less than ten percent of its shareholders, shall hold a public hearing at which bank shareholders and other interested parties may appear. Notice of the public hearing shall be sent to each shareholder by prepaid first class mail.

The approval of the reorganization by the director shall be conditioned on a finding that the terms of the reorganization are fair to the shareholders and other interested parties. [1994 c 256 § 40; 1994 c 92 § 40; 1986 c 279 § 44.]

**Reviser's note:** This section was amended by 1994 c 92 § 40 and by 1994 c 256 § 40, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.04.600 Shareholders—Actions authorized without meetings—Written consent.** Any action required by this title to be taken at a meeting of the shareholders of a corporation, or any action that may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

The consent shall have the same force and effect as a unanimous vote of shareholders and may be stated as such in any articles or documents filed under this title. [1986 c 279 § 46.]

**30.04.605 Directors, committees—Actions authorized without meetings—Written consent.** Unless otherwise provided by the articles of incorporation or bylaws, any action required by this title to be taken at a meeting of the directors of a bank or trust company, or any action which may be taken at any meeting of the directors or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. Such consent shall have the same effect as a unanimous vote. [1986 c 279 § 47.]

**30.04.610 Directors, committees—Meetings authorized by conference telephone or similar communications equipment.** Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated by the board of directors may participate in a meeting of the board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence, in person, at a meeting. [1986 c 279 § 48.]

**30.04.650 Automated teller machines and night depositories security.** Chapter 19.174 RCW applies to automated teller machines and night depositories regulated under this title. [1993 c 324 § 10.]

**Effective date—1993 c 324:** See RCW 19.174.900.

**30.04.901 Severability—2003 c 24.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2003 c 24 § 10.]

**Chapter 30.08 RCW**

**ORGANIZATION AND POWERS**

Sections

- 30.08.010 Incorporators—Paid-in capital stock, surplus, and undivided profits—Requirements.
- 30.08.020 Notice of intention to organize—Proposed articles of incorporation—Contents.
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**30.08.010 Incorporators—Paid-in capital stock, surplus, and undivided profits—Requirements.** When authorized by the director, as hereinafter provided, one or more natural persons, citizens of the United States, may incorporate a bank or trust company in the manner herein prescribed. No bank or trust company shall incorporate for less amount nor commence business unless it has a paid-in capital stock, surplus and undivided profits in the amount as may be determined by the director after consideration of the proposed location, management, and the population and economic characteristics for the area, the nature of the proposed activities and operation of the bank or trust company, and other factors deemed pertinent by the director. Each bank and trust company shall before commencing business have subscribed and paid into it in the same manner as is required for capital stock, an amount equal to at least ten percent of the capital stock above required, that shall be carried in the undivided profit account and may be used to defray organization and operating expenses of the company. Any sum not so used shall be transferred to the surplus fund of the company before any dividend shall be declared to the stockholders. [1994 c 256 § 41; 1994 c 92 § 42; 1986 c 279 § 17; 1973 1st ex.s. c 104 § 3; 1969 c 136 § 3; 1955 c 33 § 30.08.010. Prior: 1947 c 131 § 1; 1929 c 72 § 4; 1923 c 115 § 2; 1917 c 80 § 19; Rem. Supp. 1947 § 3226.]

**Reviser's note:** This section was amended by 1994 c 92 § 42 and by 1994 c 256 § 41, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.08.020 Notice of intention to organize—Proposed articles of incorporation—Contents.** Persons desiring to incorporate a bank or trust company shall file with the director a notice of their intention to organize a bank or trust company in such form and containing such information as the director shall prescribe by rule, together with proposed articles of incorporation, which shall be submitted for examination to the director at his or her office.

The proposed articles of incorporation shall state:

- (1) The name of such bank or trust company.
- (2) The city, village or locality and county where the head office of such corporation is to be located.
- (3) The nature of its business, whether that of a commercial bank, or a trust company.
- (4) The amount of its capital stock, which shall be divided into shares of a par or no par value as may be provided in the articles of incorporation.
- (5) The names and places of residence and mailing addresses of the persons who as directors are to manage the corporation until the first annual meeting of its stockholders.
- (6) If there is to be preferred or special classes of stock, a statement of preferences, voting rights, if any, limitations and relative rights in respect of the shares of each class; or a statement that the shares of each class shall have the attributes as shall be determined by the bank's board of directors from time to time with the approval of the director.
- (7) Any provision granting the shareholders the preemptive right to acquire additional shares of the bank and any provision granting shareholders the right to cumulate their votes.
- (8) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the affairs of the corporation, including any provision restricting the transfer of shares, any provision which under this title is required or permitted to be set forth in the bylaws, and any provision permitted by RCW 23B.17.030.
- (9) Any provision the incorporators elect to so set forth, not inconsistent with law or the purposes for which the bank is organized, or any provision limiting any of the powers granted in this title.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers granted in this title. The articles of incorporation shall be signed by all of the incorporators. [1999 c 14 § 11; 1995 c 134 § 3. Prior: 1994 c 256 § 42; 1994 c 92 § 43; 1986 c 279 § 18; 1981 c 73 § 1; 1973 1st ex.s. c 104 § 4; 1959 c 118 § 1; 1957 c 248 § 1; 1955 c 33 § 30.08.020; prior: (i) 1923 c 115 § 3; 1917 c 80 § 20; RRS § 3227. (ii) 1929 c 174 § 1; 1923 c 115 § 4; 1917 c 80 § 21; RRS § 3228.]

**Severability—1999 c 14:** See RCW 32.35.900.

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Effective date—1981 c 73:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 73 § 3.]

**30.08.030 Investigation.** When the notice of intention to organize and proposed articles of incorporation complying with the foregoing requirements have been received by the director, together with the fees required by law, the director shall ascertain from the best source of information at his or her command and by such investigation as he or she may deem necessary, whether the character, responsibility and general fitness of the persons named in such articles are such as to command confidence and warrant belief that the business of the proposed bank or trust company will be honestly and efficiently conducted in accordance with the intent and purpose of this title, whether the resources in the neighbor-

hood of such place and in the surrounding country afford a reasonable promise of adequate support for the proposed bank and whether the proposed bank or trust company is being formed for other than the legitimate objects covered by this title. [1994 c 92 § 44; 1973 1st ex.s. c 104 § 5; 1955 c 33 § 30.08.030. Prior: 1929 c 72 § 3, part; 1923 c 115 § 5, part; 1917 c 80 § 22, part; RRS § 3229, part.]

**30.08.040 Notice to file articles—Articles approved or refused—Hearing.** After the director is satisfied of the above facts, and, within six months of the date the notice of intention to organize has been received in his or her office, the director shall notify the incorporators to file executed articles of incorporation with the director in triplicate. Unless the director otherwise consents in writing, such articles shall be in the same form and shall contain the same information as the proposed articles and shall be filed with the director within ten days of such notice. Within thirty days after the receipt of such articles of incorporation, the director shall endorse upon each of the triplicates thereof, over his or her official signature, the word "approved," or the word "refused," with the date of such endorsement. In case of refusal the director shall forthwith return one of the triplicates, so endorsed, together with a statement explaining the reason for refusal to the person from whom the articles were received, which refusal shall be conclusive, unless the incorporators, within ten days of the issuance of such notice of refusal, shall request a hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended. [1995 c 134 § 4. Prior: 1994 c 256 § 43; 1994 c 92 § 45; 1981 c 302 § 15; 1973 1st ex.s. c 104 § 6; 1955 c 33 § 30.08.040; prior: 1929 c 72 § 3, part; 1923 c 115 § 5, part; 1917 c 80 § 22, part; RRS § 3229, part.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1981 c 302:** See note following RCW 19.76.100.

**30.08.050 Approved articles to be filed and recorded—Organization complete.** In case of approval the director shall forthwith give notice thereof to the proposed incorporators and file one of the triplicate articles of incorporation in his or her own office, and shall transmit another triplicate to the secretary of state, and the last to the incorporators. Upon receipt from the proposed incorporators of the same fees as are required for filing and recording other articles of incorporation the secretary of state shall file such articles and record the same. Upon the filing of articles of incorporation approved as aforesaid by the director, with the secretary of state, all persons named therein and their successors shall become and be a corporation, which shall have the powers and be subject to the duties and obligations prescribed by this title, and whose existence shall continue from the date of the filing of such articles until terminated pursuant to law; but such corporation shall not transact any business except as is necessarily preliminary to its organization until it has received a certificate of authority as provided herein. [1994 c 92 § 46; 1986 c 279 § 19; 1981 c 302 § 16; 1957 c 248 § 2; 1955 c 33 § 30.08.050. Prior: 1929 c 72 § 3, part; 1923 c 115 § 5, part; 1917 c 80 § 22, part; RRS § 3229, part.]

**Severability—1981 c 302:** See note following RCW 19.76.100.

**30.08.055 Amending articles—Filing with director—**

**Contents.** A bank or trust company amending its articles of incorporation shall deliver articles of amendment to the director for filing as required for articles of incorporation. The articles of amendment shall set forth:

- (1) The name of the bank or trust company;
- (2) The text of each amendment adopted;
- (3) The date of each amendment's adoption;
- (4) If the amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and

- (5) If shareholder action was required, a statement that the amendment was duly approved by the shareholders in accordance with the provisions of RCW 30.08.090. [1994 c 256 § 53.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.08.060 Certificate of authority—Issuance—Con-**

**tents.** Before any bank or trust company shall be authorized to do business, and within ninety days after approval of the articles of incorporation or such other time as the director may allow, it shall furnish proof satisfactory to the director that such corporation has a paid-in capital in the amount determined by the director, that the requisite surplus or reserve fund has been accumulated or paid in cash, and that it has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this title. If so satisfied, and within thirty days after receipt of such proof, the director shall issue under his or her hand and official seal, in triplicate, a certificate of authority for such corporation. The certificate shall state that the corporation therein named has complied with the requirements of law, that it is authorized to transact the business of a bank or trust company, or both, as the case may be: PROVIDED, HOWEVER, That the director may make his or her issuance of the certificate to a bank or trust company authorized to accept deposits, conditional upon the granting of deposit insurance by the federal deposit insurance corporation, and in such event, shall set out such condition in a written notice which shall be delivered to the corporation.

One of the triplicate certificates shall be transmitted by the director to the corporation and one of the other two shall be filed by the director in the office of the secretary of state and shall be attached to the articles of incorporation: PROVIDED, HOWEVER, That if the issuance of the certificate is made conditional upon the granting of deposit insurance by the federal deposit insurance corporation, the director shall not transmit or file the certificate until such condition is satisfied. [1994 c 92 § 47; 1986 c 279 § 20; 1981 c 302 § 17; 1973 1st ex.s. c 104 § 7; 1955 c 33 § 30.08.060. Prior: 1929 c 72 § 3, part; 1923 c 115 § 5, part; 1917 c 80 § 22, part; RRS § 3229, part.]

**Severability—1981 c 302:** See note following RCW 19.76.100.

**30.08.070 Failure to commence business—Effect—**

**Extension of time.** Every corporation heretofore or hereafter authorized by the laws of this state to do business as a bank or trust company, which corporation shall have failed to organize and commence business within six months after certifi-

cate of authority to commence business has been issued by the director, shall forfeit its rights and privileges as such corporation, which fact the director shall certify to the secretary of state, and such certificate of forfeiture shall be filed and recorded in the office of the secretary of state in the same manner as the certificate of authority: PROVIDED, That the director may, upon showing of cause satisfactory to him or her, issue an order under his or her hand and seal extending for not more than three months the time within which such organization may be effected and business commenced, such order to be transmitted to the office of the secretary of state and filed and recorded therein. [1994 c 92 § 48; 1986 c 279 § 21; 1981 c 302 § 18; 1955 c 33 § 30.08.070. Prior: 1931 c 9 § 1; RRS § 3229-1; 1915 c 175 § 41; RRS § 3370.]

**Severability—1981 c 302:** See note following RCW 19.76.100.

**30.08.080 Extension of existence—Application—Investigation—Certificate—Appeal—Winding up for failure to continue existence.**

At any time not less than one year prior to the expiration of the time of the existence of any bank or trust company, it may by written application to the director, signed and verified by a majority of its directors and approved in writing by the owners of not less than two-thirds of its capital stock, apply to the director for leave to file amended articles of incorporation, extending its time of existence. Prior to acting upon such application, the director shall make such investigation of the applicant as he or she deems necessary. If the director determines that the applicant is in sound condition, that it is conducting its business in a safe manner and in compliance with law and that no reason exists why it should not be permitted to continue, he or she shall issue to the applicant a certificate authorizing it to file amended articles of incorporation extending the time of its existence until such time as it be dissolved by the act of its shareholders owning not less than two-thirds of its stock, or until its certificate of authority becomes revoked or forfeited by reason of violation of law, or until its affairs be taken over by the director for legal cause and finally wound up by him or her. Otherwise the director shall notify the applicant that he or she refuses to grant such certificate. The applicant may appeal from such refusal in the same manner as in the case of a refusal to grant an original certificate of authority. Otherwise the determination of the director shall be conclusive.

Upon receiving a certificate, as hereinabove provided, the applicant may file amended articles of incorporation, extending the time of its existence for the term authorized, to which shall be attached a copy of the certificate of the director. Such articles shall be filed in the same manner and upon payment of the same fees as for original articles of incorporation.

Should any bank or trust company fail to continue its existence in the manner herein provided and be not previously dissolved, the director shall at the end of its original term of existence immediately take possession thereof and wind up the same in the same manner as in the case of insolvency. [1999 c 14 § 12; 1994 c 92 § 49; 1961 c 280 § 1; 1955 c 33 § 30.08.080. Prior: 1943 c 148 § 1; 1917 c 80 § 27; Rem. Supp. 1943 § 3234.]

**Severability—1999 c 14:** See RCW 32.35.900.

**30.08.081 Shares—Certificates not required.** (1) Shares of a bank or trust company may, but need not be, represented by certificates. Unless this title expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates. At a minimum, each share certificate must state the information required to be stated and must be signed as provided in RCW 23B.06.250 and/or 23B.06.270 for corporations.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a bank or trust company may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the bank or trust company.

(3) Within a reasonable time after the issue or transfer of shares without certificates, the bank or trust company shall send the shareholder a written statement of the information required to be stated on certificates under subsection (1) of this section. [1994 c 256 § 52.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.08.082 Authority to issue preferred or special classes of stock.** (1) Notwithstanding any other provisions of law and if so authorized by its articles of incorporation or amendments thereto made in the manner provided in the case of a capital increase, any bank or trust company may, pursuant to action taken by its board of directors from time to time with the approval of the director, issue shares of preferred or special classes of stock with the attributes and in such amounts and with such par value, if any, as shall be determined by the board of directors from time to time with the approval of the director. No increase of preferred stock shall be valid until the amount thereof shall have been subscribed and actually paid in.

(2) If provided in its articles of incorporation, a bank or trust company may issue shares of preferred or special classes having any one or several of the following provisions:

(a) Subjecting the shares to the right of the bank or trust company to repurchase or retire any such shares at the price fixed by the articles of incorporation for the repurchase or retirement thereof;

(b) Entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends;

(c) Having preference over any other class or classes of shares as to the payment of dividends;

(d) Having preference in the assets of the bank or trust company over any other class or classes of shares upon the voluntary or involuntary liquidation of the bank or trust company;

(e) Having voting or nonvoting rights; and

(f) Being convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation. [1994 c 256 § 44; 1994 c 92 § 50; 1986 c 279 § 22; 1981 c 89 § 4.]

**Reviser's note:** This section was amended by 1994 c 92 § 50 and by 1994 c 256 § 44, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1981 c 89:** See note following RCW 30.04.180.

**30.08.083 Authority to divide classes into series—Rights and preferences—Filing of statement.** (1) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series, and fixed and determined the variations in the relative rights and preferences as between series, the board of directors have authority to divide any or all of the classes into series and, within the limitation set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(2) In order for the board of directors to establish a series, where authority to do so is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as is not fixed and determined by the articles of incorporation.

(3) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file and execute in the manner provided in this section a statement setting forth:

(a) The name of the bank;

(b) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;

(c) The date of adoption of such resolution; and

(d) That the resolution was duly adopted by the board of directors.

(4) The statement shall be executed in triplicate by the bank by one of its officers and shall be delivered to the director. If the director finds that the statement conforms to law, the director shall, when all fees have been paid as provided in this title:

(a) Endorse on each of the triplicate originals the word "Filed," and the effective date of the filing thereof;

(b) File two of the originals; and

(c) Return the other original to the bank or its representative.

(5) Upon the filing of the statement by the director with the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation. [1994 c 92 § 51; 1986 c 279 § 23.]

**30.08.084 Rights of holders of preferred or special classes of stock—Preference in dividends and liquidation.** Notwithstanding any other provisions of law, whether relating to restriction upon the payment of dividends upon capital stock or otherwise, the holders of shares of preferred or special classes of stock shall be entitled to receive such dividends on the purchase price received by the bank or trust company for such stock as may be provided by the articles of incorporation or by the board of directors of the bank or trust company with the approval of the director.

No dividends shall be declared or paid on common stock until cumulative dividends, if any, on the shares of preferred or special classes of stock shall have been paid in full; and, if

the director takes possession of a bank or trust company for purposes of liquidation, no payments shall be made to the holders of the common stock until the holders of the shares of preferred or special classes of stock shall have been paid in full such amount as may be provided under the terms of said shares plus all accumulated dividends, if any. [1994 c 92 § 52; 1986 c 279 § 24; 1981 c 89 § 5.]

**Severability—1981 c 89:** See note following RCW 30.04.180.

**30.08.086 Determination of capital impairment when capital consists of preferred stock.** If any part of the capital of a bank and trust company consists of preferred stock, the determination of whether or not the capital of such bank is impaired and the amount of such impairment shall be based on the value of its stock as established at the time it was issued, or its par value, if any, even though the amount which the holders of such preferred stock shall be entitled to receive in the event of retirement or liquidation shall be in excess of the originally established value or the par value of such preferred stock. [1986 c 279 § 25; 1981 c 89 § 6.]

**Severability—1981 c 89:** See note following RCW 30.04.180.

**30.08.087 Authorized but unissued shares of capital stock—Issuance—Consideration.** Any bank or trust company may provide in its articles of incorporation or amendments thereto for authorized but unissued shares of its capital stock. The shares may be issued for such consideration as shall be established by the board from time to time and all consideration received therefor shall be allocated to the capital stock or surplus of the corporation. [1994 c 256 § 45; 1986 c 279 § 26; 1979 c 106 § 1; 1965 c 140 § 1.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.08.088 Authorized but unissued shares of capital stock—When shares become part of capital stock.** The authorized but unissued shares shall not become a part of the capital stock until they have been issued and paid for. [1994 c 256 § 46; 1994 c 92 § 53; 1986 c 279 § 27; 1979 c 106 § 2; 1965 c 140 § 2.]

**Reviser's note:** This section was amended by 1994 c 92 § 53 and by 1994 c 256 § 46, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.08.090 Amendment of articles—Procedure.** Unless the articles of incorporation provide otherwise, the board of directors of a bank or trust company may, by majority vote, amend the bank or trust company's articles of incorporation without shareholder action as follows:

- (1) If the bank or trust company has only one class of shares outstanding, to provide, change, or eliminate any provision with respect to the par value of any class of shares;
- (2) To delete the name and address of the initial directors;
- (3) If the bank or trust company has only one class of shares outstanding, solely to change the number of authorized shares to effectuate a split of, or stock dividend in, the bank or trust company's own shares, or solely to do so and to change the number of authorized shares in proportion thereto;
- (4) To change the bank or trust company's name; or

(5) To make any other change expressly permitted by this title to be made without shareholder action.

Other amendments to a bank or trust company's articles of incorporation, in a manner not inconsistent with the provisions of this title, require the affirmative vote of the stockholders representing two-thirds of each class of shares entitled to vote under the terms of the shares at a regular meeting, or special meeting duly called for that purpose in the manner prescribed by the bank or trust company's bylaws. No amendment shall be made whereby a bank becomes a trust company unless such bank first receives permission from the director. [1994 c 256 § 47; 1994 c 92 § 54; 1987 c 420 § 3; 1986 c 279 § 28; 1965 c 140 § 3; 1955 c 33 § 30.08.090. Prior: 1923 c 115 § 7; 1917 c 80 § 26; RRS § 3233.]

**Reviser's note:** This section was amended by 1994 c 92 § 54 and by 1994 c 256 § 47, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.08.092 Increase or decrease of capital stock authorized.** A bank or trust company may increase or decrease its capital stock by amendment to its articles of incorporation. No issuance of capital stock shall be valid, until the amount thereof shall have been actually paid in. No reduction of the capital stock shall be made to an amount less than is required for capital by the director. [1994 c 256 § 48; 1994 c 92 § 55; 1987 c 420 § 4.]

**Reviser's note:** This section was amended by 1994 c 92 § 55 and by 1994 c 256 § 48, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.08.095 Schedule of fees to be established.** The director shall collect fees for the following services:

- For filing application for certificate of authority and attendant investigation as outlined in the law;
- For filing application for certificate conferring trust powers upon a state or national bank;
- For filing articles of incorporation, or amendments thereof, or other certificates required to be filed in his or her office;
- For filing merger agreement and attendant investigation;
- For filing application to relocate main office or branch and attendant investigation;
- For issuing each certificate of authority;
- For furnishing copies of papers filed in his or her office, per page.

The director shall establish the amount of the fee for each of the above transactions, and for other services rendered.

Every bank or trust company shall also pay to the secretary of state for filing any instrument with him or her the same fees as are required of general corporations for filing corresponding instruments, and also the same license fees as are required of general corporations. [1995 c 134 § 5. Prior: 1994 c 256 § 49; 1994 c 92 § 56; 1981 c 302 § 19; 1973 1st ex.s. c 104 § 8; 1969 c 136 § 4; 1955 c 33 § 30.08.095; prior: 1929 c 72 § 1; 1923 c 115 § 1; 1917 c 80 § 12; RRS § 3219. Formerly RCW 30.04.080.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1981 c 302:** See note following RCW 19.76.100.

*Indemnification of directors, officers, employees, etc. by corporation authorized:* RCW 23B.08.320, 23B.08.500 through 23B.08.580, 23B.08.600, and 23B.17.030.

**30.08.140 Corporate powers of banks.** Upon the issuance of a certificate of authority to a bank, the persons named in the articles of incorporation and their successors shall thereupon become a corporation and shall have power:

- (1) To adopt and use a corporate seal.
- (2) To have perpetual succession.
- (3) To make contracts.
- (4) To sue and be sued, the same as a natural person.
- (5) To elect directors who, subject to the provisions of the corporation's bylaws, shall have power to appoint such officers as may be necessary or convenient, to define their powers and duties and to dismiss them at pleasure, and who shall also have general supervision and control of the affairs of such corporation.
- (6) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of its affairs.
- (7) To invest and reinvest its funds in marketable obligations evidencing the indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes, or debentures commonly known as investment securities except as may by regulation be limited by the director.
- (8) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt, to receive deposits of money and commercial paper, to lend money secured or unsecured, to issue all forms of letters of credit, to buy and sell bullion, coins and bills of exchange.
- (9) To take and receive as bailee for hire upon terms and conditions to be prescribed by the corporation, for safekeeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, mortgages, securities and valuable paper of any kind and other valuable personal property, and to rent vaults, safes, boxes and other receptacles for safekeeping and storage of personal property.
- (10) If the bank be located in a city of not more than five thousand inhabitants, to act as insurance agent. A bank exercising this power may continue to act as an insurance agent notwithstanding a change of the population of the city in which it is located.
- (11) To accept drafts or bills of exchange drawn upon it having not more than six months sight to run, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods, providing shipping documents conveying or securing title are attached at the time of acceptance; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title to readily marketable staples. No bank shall accept, either in a foreign or a domestic transaction, for any one person, company, firm or corporation, to an amount equal at any one time in the aggregate to more than ten percent of its paid up and unimpaired capital stock and surplus unless the bank is secured by attached documents or by some other actual security growing out of the same transaction as the acceptance; and no bank shall accept such bills to an

amount equal at any time in the aggregate to more than one-half of its paid up and unimpaired capital stock and surplus: PROVIDED, HOWEVER, That the director, under such general regulations applicable to all banks irrespective of the amount of capital or surplus, as the director may prescribe may authorize any bank to accept such bills to an amount not exceeding at any time in the aggregate one hundred percent of its paid up and unimpaired capital stock and surplus: PROVIDED, FURTHER, That the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty percent of such capital stock and surplus.

(12) To accept drafts or bills of exchange drawn upon it, having not more than three months sight to run, drawn under regulations to be prescribed by the director by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies or insular possessions. Such drafts or bills may be acquired by banks in such amounts and subject to such regulations, restrictions and limitations as may be provided by the director: PROVIDED, HOWEVER, That no bank shall accept such drafts or bills of exchange referred to in this subdivision for any one bank to an amount exceeding in the aggregate ten percent of the paid up and unimpaired capital and surplus of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or by some other adequate security, and that no such drafts or bills of exchange shall be accepted by any bank in an amount exceeding at any time the aggregate of one-half of its paid up and unimpaired capital and surplus: PROVIDED FURTHER, That compliance by any bank which is a member of the federal reserve system of the United States with the rules, regulations and limitations adopted by the federal reserve board thereof with respect to the acceptance of drafts or bills of exchange by members of such federal reserve system shall be a sufficient compliance with the requirements of this subdivision or paragraph relating to rules, regulations and limitations prescribed by the director.

(13) To have and exercise all powers necessary or convenient to effect its purposes.

(14) To serve as custodian of an individual retirement account and pension and profit sharing plans qualified under internal revenue code section 401(a), the assets of which are invested in deposits of the bank or trust company or are invested, pursuant to directions from the customer owning the account, in securities traded on a national securities market: PROVIDED, That the bank or trust company shall accept no investment responsibilities over the account unless it is granted trust powers by the director.

(15) To be a limited partner in a limited partnership that engages in only such activities as are authorized for the bank.

(16) To exercise any other power or authority permissible under applicable state or federal law conducted by out-of-state state banks with branches in Washington to the same extent if, in the opinion of the director, those powers and authorities affect the operations of banking in Washington or affect the delivery of financial services in Washington. [1996 c 2 § 5; 1994 c 92 § 58; 1986 c 279 § 29; 1957 c 248 § 3; 1955 c 33 § 30.08.140. Prior: 1931 c 127 § 1; 1919 c 209 § 8; 1917 c 80 § 23; RRS § 3230.]

**Severability—1996 c 2:** See RCW 30.38.900.

**30.08.150 Corporate powers of trust companies.**

Upon the issuance of a certificate of authority to a trust company, the persons named in the articles of incorporation and their successors shall thereupon become a corporation and shall have power:

- (1) To execute all the powers and possess all the privileges conferred on banks.
- (2) To act as fiscal or transfer agent of the United States or of any state, municipality, body politic or corporation and in such capacity to receive and disburse money.
- (3) To transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness and to act as attorney in fact or agent of any corporation, foreign or domestic, for any purpose, statutory or otherwise.
- (4) To act as trustee under any mortgage, or bonds, issued by any municipality, body politic, or corporation, foreign or domestic, or by any individual, firm, association or partnership, and to accept and execute any municipal or corporate trust.
- (5) To receive and manage any sinking fund of any corporation upon such terms as may be agreed upon between such corporation and those dealing with it.
- (6) To collect coupons on or interest upon all manner of securities, when authorized so to do, by the parties depositing the same.
- (7) To accept trusts from and execute trusts for married persons in respect to their separate property and to be their agent in the management of such property and to transact any business in relation thereto.
- (8) To act as receiver or trustee of the estate of any person, or to be appointed to any trust by any court, to act as assignee under any assignment for the benefit of creditors of any debtor, whether made pursuant to statute or otherwise, and to be the depository of any moneys paid into court.
- (9) To be appointed and to accept the appointment of executor of, or trustee under, the last will and testament, or administrator with or without the will annexed, of the estate of any deceased person and to be appointed and to act as guardian of the estate of lunatics, idiots, persons of unsound mind, minors and habitual drunkards: PROVIDED, HOWEVER, That the power hereby granted to trust companies to act as guardian or administrator, with or without the will annexed, shall not be construed to deprive parties of the prior right to have issued to them letters of guardianship, or of administration, as such right now exists under the law of this state.
- (10) To execute any trust or power of whatever nature or description that may be conferred upon or entrusted or committed to it by any person or by any court or municipality, foreign or domestic corporation and any other trust or power conferred upon or entrusted or committed to it by grant, assignment, transfer, devise, bequest or by any other authority and to receive, take, use, manage, hold and dispose of, according to the terms of such trusts or powers any property or estate, real or personal, which may be the subject of any such trust or power.
- (11) Generally to execute trusts of every description not inconsistent with law.
- (12) To purchase, invest in and sell promissory notes, bills of exchange, bonds, debentures and mortgages and when moneys are borrowed or received for investment, the

bonds or obligations of the company may be given therefor, but no trust company hereafter organized shall issue such bonds: PROVIDED, That no trust company which receives money for investment and issues the bonds of the company therefor shall engage in the business of banking or receiving of either savings or commercial deposits: AND PROVIDED, That it shall not issue any bond covering a period of more than ten years between the date of its issuance and its maturity date: AND PROVIDED FURTHER, That if for any cause, the holder of any such bond upon which one or more annual rate installments have been paid, shall fail to pay the subsequent annual rate installments provided in said bond such holder shall, on or before the maturity date of said bond, be paid not less than the full sum which he has paid in on account of said bond. [1973 1st ex.s. c 154 § 48; 1955 c 33 § 30.08.150. Prior: 1929 c 72 § 4, part; 1923 c 115 § 6, part; 1921 c 94 § 1, part; 1917 c 80 § 24, part; RRS § 3231, part.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**30.08.155 Powers and authorities of trust companies—Federally chartered trust companies—Findings of director.**

Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a trust company has under the laws of this state, a trust company shall have the powers and authorities conferred as of June 11, 1998, upon a federally chartered trust company doing business in this state. A trust company may exercise the powers and authorities conferred on a federally chartered trust company after this date only if the director finds that the exercise of such powers and authorities:

- (1) Serves the convenience and advantage of trustors; and
- (2) Maintains the fairness of competition and parity between state-chartered trust companies and federally chartered trust companies.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of federally chartered trust companies shall apply to trust companies exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted trust companies solely under this section. [1998 c 45 § 2.]

**30.08.160 Report of bond liability—Collateral.**

Any trust company receiving moneys for investment, and for which it shall give its bonds as in RCW 30.08.150(12) provided, shall within ten days after any regular report is called for from banks or trust companies by the director, make a statement of its total liability, on all bonds issued and then in force, certified by its board of directors, and shall at the same time deposit with the state treasurer, for the benefit of the holders of such bonds or obligations, sufficient securities or money so that it will have on deposit with said state treasurer a sufficient amount of said securities, which may be exchanged for other securities as necessity may require, or money to, at any time, pay all of said liability. In the event of its failure to make such deposits, it shall cease doing such

business: PROVIDED, That whenever money shall have been deposited with the treasurer, it may be withdrawn at any time upon a like amount of securities being deposited in its stead: AND PROVIDED FURTHER, That the securities deposited shall consist of such securities as are by this title permitted for the investment of trust funds. [1994 c 92 § 59; 1955 c 33 § 30.08.160. Prior: 1917 c 80 § 25; RRS § 3232.]

### 30.08.170 Securities may be held in name of nominee.

Any trust company incorporated under the laws of this state and any national banking association authorized to act in a fiduciary capacity in this state, when acting in a fiduciary capacity, either alone or jointly with an individual or individuals, may, with the consent of such individual fiduciary or fiduciaries, who are hereby authorized to give such consent, cause any stocks, securities, or other property now held or hereafter acquired to be registered and held in the name of a nominee or nominees of such corporate or association fiduciary without mention of the fiduciary relationship. Any such fiduciary shall be liable for any loss occasioned by the acts of any of its nominees with respect to such stocks, securities or other property so registered. [1955 c 33 § 30.08.170. Prior: 1947 c 146 § 1; Rem. Supp. 1947 § 3292b.]

**30.08.180 Reports of resources and liabilities.** Every bank and trust company shall make at least three regular reports each year to the director, as of the dates which he or she shall designate, according to form prescribed by him or her, verified by the president, manager or cashier and attested by at least two directors, which shall exhibit under appropriate heads the resources and liabilities of such corporation. The dates designated by the director shall be the dates designated by the comptroller of the currency of the United States for reports of national banking associations.

Every such corporation shall also make such special reports as the director shall call for. [1995 c 344 § 3; 1994 c 92 § 60; 1955 c 33 § 30.08.180. Prior: 1919 c 209 § 4; 1917 c 80 § 5; RRS § 3212.]

**30.08.190 Time of filing—Availability—Penalty.** (1) Every regular report shall be filed with the director within thirty days from the date of issuance of the notice. Every special report shall be filed with the director within such time as shall be specified by him or her in the notice therefor.

(2) The director shall provide a copy of any regular report free of charge to any person that submits a written request for the report.

(3) Every bank and trust company which fails to file any report, required to be filed under subsection (1) of this section and within the time specified, shall be subject to a penalty of fifty dollars per day for each day's delay. A civil action for the recovery of any such penalty may be brought by the attorney general in the name of the state. [1995 c 344 § 4; 1995 c 134 § 6. Prior: 1994 c 256 § 51; 1994 c 92 § 61; 1977 c 38 § 1; 1955 c 33 § 30.08.190; prior: 1917 c 80 § 6; RRS § 3213.]

**Reviser's note:** This section was amended by 1995 c 134 § 6 and by 1995 c 344 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

## Chapter 30.12 RCW

### OFFICERS, EMPLOYEES, AND STOCKHOLDERS

#### Sections

- 30.12.010 Directors—Election—Meetings—Oath—Vacancies.
- 30.12.020 Meetings, where held—Corporate records.
- 30.12.025 Rights of shareholder to examine and make extracts of records—Penalty—Financial statements.
- 30.12.030 Fidelity bonds—Casualty insurance.
- 30.12.040 Removal of delinquent officer or employee or prohibiting participation in bank or trust company affairs—Grounds—Notice.
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- 30.12.220 Preemptive rights of shareholders to acquire unissued shares—Articles of incorporation may limit or permit—Later acquisition.
- 30.12.230 Immunity of shareholders of bank insured by the federal deposit insurance corporation.
- 30.12.240 Violations—Director liability.

**30.12.010 Directors—Election—Meetings—Oath—Vacancies.** Every bank and trust company shall be managed by not less than five directors, who need not be residents of this state. Directors shall be elected by the stockholders and hold office for such term as is specified in the articles of incorporation, not exceeding three years, and until their successors are elected and have qualified. In the first instance the directors shall be those named in the articles of incorporation and afterwards, those elected at the annual meeting of the stockholders to be held at least once each year on a day to be specified by the bank's or trust company's bylaws. Shareholders may not cumulate their votes unless the articles of incorporation specifically so provide. If for any cause no election is held at that time, it may be held at an adjourned meeting or at a subsequent meeting called for that purpose in the manner prescribed by the corporation's bylaws. The directors shall meet at least once each quarter and whenever required by the director. A majority of the then serving board of directors shall constitute a quorum for the transaction of business. At all stockholders' meetings, each share shall be entitled to one vote, unless the articles of incorporation provide otherwise. Any stockholder may vote in person or by written proxy.

Each director, so far as the duty devolves upon him or her, shall diligently and honestly administer the affairs of such corporation and shall not knowingly violate or willingly

permit to be violated any provision of law applicable to such corporation. Vacancies in the board of directors shall be filled by the board. [1994 c 256 § 54; 1994 c 92 § 62; 1987 c 420 § 1; 1986 c 279 § 30; 1982 c 196 § 8; 1981 c 89 § 3; 1975 c 35 § 1; 1969 c 136 § 8; 1957 c 190 § 1; 1955 c 33 § 30.12.010. Prior: 1947 c 129 § 1; 1917 c 80 § 30; Rem. Supp. 1947 § 3237.]

**Reviser's note:** This section was amended by 1994 c 92 § 62 and by 1994 c 256 § 54, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1982 c 196:** See note following RCW 30.04.550.

**Severability—1981 c 89:** See note following RCW 30.04.180.

### 30.12.020 Meetings, where held—Corporate records.

All meetings of the stockholders of any bank or trust company, except organization meetings and meetings held with the consent of all stockholders, must be held in the county in which the head office or any branch of the corporation is located. Meetings of the directors of any bank or trust company may be held either within or without this state. Every such corporation shall keep records in which shall be recorded the names and residences of the stockholders thereof, the number of shares held by each, and also the transfers of stock, showing the time when made, the number of shares and by whom transferred. In all actions, suits and proceedings, said records shall be prima facie proof of the facts shown therein. All of the corporate books, including the certificate book, stockholders' ledger and minute book or a copy thereof shall be kept at the corporation's principal place of business. Any books, record, and minutes may be in written form or any other form capable of being converted to written form within a reasonable time. [1994 c 256 § 55; 1986 c 279 § 31; 1969 c 136 § 9; 1955 c 33 § 30.12.020. Prior: 1927 c 179 § 1; 1917 c 80 § 31; RRS § 3238.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.12.025 Rights of shareholder to examine and make extracts of records—Penalty—Financial statements.** Any person who has been a shareholder of record at least six months immediately preceding his or her demand or who is the holder of record of at least five percent of all the outstanding shares of a bank or trust company, upon written demand stating the purpose thereof, has the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, the bank or trust company's minutes of the proceedings of its shareholders, its shareholder records, and its existing publicly available records. The person is entitled to make extracts therefrom, except that the person is not entitled to view or make extracts of any portion of minutes that refer or relate to information which is confidential.

Any officer or agent who, or a bank or trust company that, refuses to allow any such shareholder or his or her agent or attorney, to examine and make extracts from its minutes of the proceedings of its shareholders, record of shareholders, or existing publicly available books and records, for any proper purpose, shall be liable to the shareholder for actual damages or other remedy afforded the shareholder by law.

(2004 Ed.)

It is a defense to any action for penalties under this section that the person suing therefor has, within two years: (1) Sold or offered for sale any list of shareholders for shares of such bank or trust company or any other bank or trust company; (2) aided or abetted any person in procuring any list of shareholders for any such purpose; (3) improperly used any information secured through any prior examination of existing publicly available books and records, or minutes, or record of shareholders of such bank or trust company or any other bank or trust company; or (4) not acted in good faith or for a proper purpose in making his or her demand.

Nothing in this section impairs the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which the shareholder has been a shareholder of record, and irrespective of the number of shares held by him or her, to compel the production for examination by the shareholder of the existing publicly available books and records, minutes, and record of shareholders of a bank or trust company.

Upon the written request of any shareholder of a bank or trust company, the bank or trust company shall mail to the shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations. As used in this section, "shareholder" includes the holder of voting trust certificates for shares. [1986 c 279 § 32.]

### 30.12.030 Fidelity bonds—Casualty insurance.

(1) Except as otherwise permitted by the director under specified terms and conditions, the board of directors of each bank and trust company shall direct and require good and sufficient surety company fidelity bonds issued by a company authorized to engage in the insurance business in the state of Washington on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank or trust company, on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission committed or omitted by them acting independently or in collusion or combination with any person or persons. Such bonds may be individual, schedule or blanket form, and the premiums therefor shall be paid by the bank or trust company.

(2) The said directors shall also direct and require suitable insurance protection to the bank or trust company against burglary, robbery, theft and other similar insurance hazards to which the bank or trust company may be exposed in the operations of its business on the premises or elsewhere.

The said directors shall be responsible for prescribing at least once in each year the amount or penal sum of such bonds or policies and the sureties or underwriters thereon, after giving due consideration to all known elements and factors constituting such risk or hazard. Such action shall be recorded in the minutes of the board of directors. [1994 c 92 § 63; 1986 c 279 § 33; 1955 c 33 § 30.12.030. Prior: 1947 c 132 § 1; 1927 c 224 § 1; 1917 c 80 § 32; Rem. Supp. 1947 § 3239.]

**30.12.040 Removal of delinquent officer or employee or prohibiting participation in bank or trust company affairs—Grounds—Notice.** The director may serve upon a

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director, officer, or employee of any bank or trust company a written notice of the director's intention to remove the person from office or to prohibit the person from participation in the conduct of the affairs of the bank or trust company, or both, whenever:

(1) In the opinion of the director any director, officer, or employee of any bank or trust company has committed or engaged in:

(a) Any violation of law or rule or of a cease and desist order which has become final;

(b) Any unsafe or unsound practice in connection with the bank or trust company; or

(c) Any act, omission, or practice which constitutes a breach of his or her fiduciary duty as director, officer, or employee; and

(2) The director determines that:

(a) The bank or trust company has suffered or may suffer substantial financial loss or other damage; or

(b) The interests of its depositors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty; and

(c) The violation or practice or breach of fiduciary duty is one involving personal dishonesty, recklessness, or incompetence on the part of the director, officer, or employee. [1994 c 92 § 64; 1977 ex.s. c 178 § 5; 1955 c 33 § 30.12.040. Prior: 1933 c 42 § 1; 1917 c 80 § 10; RRS § 3217.]

**Severability—1977 ex.s. c 178:** See note following RCW 30.04.450.

**30.12.042 Removal of delinquent officer or employee or prohibiting participation in bank or trust company affairs—Notice contents—Hearing—Order of removal or prohibition.** A notice of an intention to remove a director, officer, or employee from office or to prohibit his or her participation in the conduct of the affairs of a bank or trust company shall contain a statement of the facts which constitute grounds therefor and shall fix a time and place at which a hearing will be held. The hearing shall be set not earlier than ten days nor later than thirty days after the date of service of the notice unless an earlier or later date is set by the director at the request of the director, officer, or employee for good cause shown or of the attorney general of the state.

Unless the director, officer, or employee appears at the hearing personally or by a duly authorized representative, the person shall be deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the director finds that any of the grounds specified in the notice have been established, the director may issue such orders of removal from office or prohibition from participation in the conduct of the affairs of the bank or trust company as the director may consider appropriate.

Any order shall become effective at the expiration of ten days after service upon the bank and the director, officer, or employee concerned except that an order issued upon consent shall become effective at the time specified in the order.

An order shall remain effective except to the extent it is stayed, modified, terminated, or set aside by the director or a reviewing court. [1994 c 92 § 65; 1977 ex.s. c 178 § 6.]

**Severability—1977 ex.s. c 178:** See note following RCW 30.04.450.

**30.12.044 Removal of delinquent officer or employee or prohibiting participation in bank or trust company affairs—Effect upon quorum—Procedure.** If at any time because of the removal of one or more directors under this chapter there shall be on the board of directors of a bank or trust company less than a quorum of directors, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the director or directors remaining until such time as there is a quorum on the board of directors. If all of the directors of a bank or trust company are removed under this chapter, the director shall appoint persons to serve temporarily as directors until such time as their respective successors take office. [1994 c 92 § 66; 1977 ex.s. c 178 § 7.]

**Severability—1977 ex.s. c 178:** See note following RCW 30.04.450.

**30.12.045 Removal of delinquent officer or employee or prohibiting participation in bank or trust company affairs—Administrative hearing—Judicial review.** See RCW 30.04.470.

**30.12.046 Removal of delinquent officer or employee or prohibiting participation in bank or trust company affairs—Jurisdiction of courts in enforcement or issuance of orders, injunctions or judicial review.** See RCW 30.04.475.

**30.12.047 Removal of delinquent officer or employee or prohibiting participation in bank or trust company affairs—Violation of final order—Penalty.** Any present or former director, officer, or employee of a bank or trust company or any other person against whom there is outstanding an effective final order served upon the person and who participates in any manner in the conduct of the affairs of the bank or trust company involved; or who directly or indirectly solicits or procures, transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations with respect to any voting rights in the bank or trust company; or who, without the prior approval of the director, votes for a director or serves or acts as a director, officer, employee, or agent of any bank or trust company shall upon conviction for a violation of any order, be guilty of a gross misdemeanor punishable as prescribed under chapter 9A.20 RCW, as now or hereafter amended. [1994 c 92 § 67; 1977 ex.s. c 178 § 10.]

**Severability—1977 ex.s. c 178:** See note following RCW 30.04.450.

**30.12.060 Loans to officers or employees.** (1) Any bank or trust company shall be permitted to make loans to any employee of such corporation, or to purchase, discount or acquire, as security or otherwise, the obligation or debt of any employee to any other person, to the same extent as if the employee were in no way connected with the corporation. Any bank or trust company shall be permitted to make loans to any officer of such corporation, or to purchase, discount or acquire, as security or otherwise, the obligation or debt of any officer to any other person: PROVIDED, That the total value of the loans made and obligation acquired for any one officer shall not exceed such amount as shall be prescribed by the director pursuant to regulations adopted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, as

now or hereafter amended: AND PROVIDED FURTHER, That no such loan shall be made, or obligation acquired, in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, unless a resolution authorizing the same shall be adopted by a vote of a majority of the board of directors of such corporation prior to the making of such loan or discount, and such vote and resolution shall be entered in the corporate minutes. In no event shall the loan or obligation acquired exceed five hundred thousand dollars in the aggregate without prior approval by a majority of the corporation's board of directors. No loan in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, shall be made by any bank or trust company to any director of such corporation nor shall the note or obligation in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, of such director be discounted by any such corporation, or by any officer or employee thereof in its behalf, unless a resolution authorizing the same shall be adopted by a vote of a majority of the entire board of directors of such corporation exclusive of the vote of such interested director, and such vote and resolution shall be entered in the corporate minutes. In no event may the loan or obligation acquired exceed five hundred thousand dollars in the aggregate without prior approval by a majority of the corporation's board of directors.

Each bank or trust company shall at such times and in such form as may be required by the director, report to the director all outstanding loans to directors of such bank or trust company.

The amount of any endorsement or agreement of suretyship or guaranty of any such director to the corporation shall be construed to be a loan within the provisions of this section. Any modification of the terms of an existing obligation (excepting only such modifications as merely extend or renew the indebtedness) shall be construed to be a loan within the meaning of this section.

(2) "Unimpaired surplus," as used in this section, consists of the sum of the following amounts:

- (a) Fifty percent of the reserve for possible loan losses;
- (b) Subordinated notes and debentures;
- (c) Surplus;
- (d) Undivided profits; and
- (e) Reserve for contingencies and other capital reserves, excluding accrued dividends on preferred stock. [1994 c 92 § 69; 1985 c 305 § 6; 1969 c 136 § 5; 1959 c 165 § 1; 1955 c 33 § 30.12.060. Prior: 1947 c 147 § 1, part; 1933 c 42 § 22, part; 1917 c 80 § 52, part; Rem. Supp. 1947 § 3259, part.]

### **30.12.070 Unsafe loans and discounts to directors.**

The director may at any time, if in his or her judgment excessive, unsafe or improvident loans are being made or are likely to be made by a bank or trust company to any of its directors, or to any corporation, copartnership or association of which such director is a stockholder, member, co-owner, or in which such director is financially interested, or like discounts of the notes or obligations of any such director, corporation, copartnership or association are being made or are likely to be made, require such bank or trust company to submit to him or her for approval all proposed loans to, or discounts of the

note or obligation of, any such director, corporation, copartnership or association, and thereafter such proposed loans and discounts shall be reported upon such forms and with such information concerning the desirability and safety of such loans or discounts and of the responsibility and financial condition of the person, corporation, copartnership or association to whom such loan is to be made or whose note or obligation is to be discounted and of the amount and value of any collateral that may be offered as security therefor, as the director may require, and no such loan or discount shall be made without his or her written approval thereon. [1994 c 92 § 70; 1955 c 33 § 30.12.070. Prior: 1947 c 147 § 1, part; 1933 c 42 § 22, part; 1917 c 80 § 52, part; Rem. Supp. 1947 § 3259, part.]

### **30.12.090 False entries, statements, etc.—Penalty.**

Every person who shall knowingly subscribe to or make or cause to be made any false statement or false entry in the books of any bank or trust company or shall knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any bank or trust company or shall make, state or publish any false statement of the amount of the assets or liabilities of any bank or trust company is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 186; 1955 c 33 § 30.12.090. Prior: 1917 c 80 § 56; RRS § 3263.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

### **30.12.100 Destroying or secreting records—Penalty.**

Every officer, director or employee or agent of any bank or trust company who, for the purpose of concealing any fact or suppressing any evidence against himself or herself, or against any other person, abstracts, removes, mutilates, destroys or secretes any paper, book or record of any bank or trust company, or of the director, or of anyone connected with his or her office, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 187; 1994 c 92 § 71; 1955 c 33 § 30.12.100. Prior: 1917 c 80 § 56; RRS § 3264.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

### **30.12.110 Commission, etc., for procuring loan—**

**Penalty.** No officer, director, agent, employee or stockholder of any bank or trust company shall, directly or indirectly, receive a bonus, commission, compensation, remuneration, gift, speculative interest or gratuity of any kind from any person, firm or corporation other than the bank or as allowed by RCW 30.12.115 for granting, procuring or endeavoring to procure, for any person, firm or corporation, any loan by or out of the funds of such bank or trust company or the purchase or sale of any securities or property for or on account of such bank or trust company or for granting or procuring permission for any person, firm or corporation to overdraw any account with such bank or trust company. Any person violating this section shall be guilty of a gross misdemeanor. [1986 c 279 § 35; 1955 c 33 § 30.12.110. Prior: 1919 c 209 § 20; RRS § 3290.]

**30.12.115 Transactions in which director or officer has an interest.** (1) If a transaction is fair to a corporation at the time it is authorized, approved, or ratified, the fact that a director or an officer had a direct or indirect interest in the transaction is not grounds for either invalidating the transaction or imposing liability on the director or officer.

(2) In any proceeding seeking to invalidate a transaction with the corporation in which a director or an officer had a direct or indirect interest in a transaction with the corporation, the person asserting the validity of the transaction has the burden of proving fairness unless:

(a) The material facts of the transaction and the director's or officer's interest was disclosed or known to the board of directors, or a committee of the board, and the board or committee authorized, approved, or ratified the transaction; or

(b) The material facts of the transaction and the director's or officer's interest was disclosed or known to the shareholders entitled to vote, and they authorized, approved, or ratified the transaction.

(3) For purposes of this section, a director or an officer of a corporation has an indirect interest in a transaction with the corporation if:

(a) Another entity in which the director or officer has a material financial interest, or in which such person is a general partner, is a party to the transaction; or

(b) Another entity of which the director or officer is a director, officer, or trustee is a party to the transaction, and the transaction is or should be considered by the board of directors of the corporation.

(4) For purposes of subsection (3)(a) of this section, a transaction is authorized, approved, or ratified only if it receives the affirmative vote of a majority of the directors on the board of directors or on the committee who have no direct or indirect interest in the transaction. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (3)(a) of this section if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

(5) For purposes of subsection (3)(b) of this section, a transaction is authorized, approved, or ratified only if it receives the vote of a majority of shares entitled to be counted under this subsection. All outstanding shares entitled to vote under this title or the articles of incorporation are entitled to be counted under this subsection except shares owned by or voted under the control of a director or an officer who has a direct or indirect interest in the transaction. Shares owned by or voted under the control of an entity described in subsection (3)(a) of this section shall not be counted to determine whether shareholders have authorized, approved, or ratified a transaction for purposes of subsection (3)(b) of this section. The vote of the shares owned by or voted under the control of a director or an officer who has a direct or indirect interest in the transaction and shares owned by or voted under the control of an entity described in subsection (3)(a) of this section, however, shall be counted in determining whether the transaction is approved under other sections of this title and for purposes of determining a quorum. [1986 c 279 § 36.]

**30.12.120 Loans to officers or employees from trust funds—Penalty.** No corporation doing a trust business shall make any loan to any officer, or employee from its trust funds, nor shall it permit any officer, or employee to become indebted to it in any way out of its trust funds. Every officer, director, or employee of any such corporation, who knowingly violates this section, or who aids or abets any other person in any such violation, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 188; 1955 c 33 § 30.12.120. Prior: 1917 c 80 § 53; RRS § 3260.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**30.12.130 Trust company as legal representative—Oath by officer.** When any trust company shall be appointed executor, administrator, or trustee of any estate or guardian of the estate of any infant or other incompetent, it shall be lawful for any duly authorized officer of such corporation to take and subscribe for such corporation any and all oaths or affirmations required of such an appointee. [1955 c 33 § 30.12.130. Prior: 1917 c 80 § 50; RRS § 3257.]

**30.12.180 Levy of assessments.** Whenever the director shall notify the board of directors of a bank or trust company to levy an assessment upon the stock of such corporation and the holders of two-thirds of the stock shall consent thereto, such board shall, within ten days from the issuance of such notice, adopt a resolution for the levy of such assessment, and shall immediately upon the adoption of such resolution serve notice upon each stockholder, personally or by mail, at his or her last known address, to pay such assessment; and that if the same be not paid within twenty days from the date of the issuance of such notice, his or her stock will be subject to sale and all amounts previously paid thereon shall be subject to forfeiture. If any stockholder fail within said twenty days to pay the assessment as provided in this section, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such stockholder to be sold to make good the deficiency. The sale shall be held at such time and place as shall be designated by the board of directors and shall be either public or private, as the board shall deem best. At any time after the expiration of sixty days from the expiration of said twenty-day period the director may require any stock upon which the assessment remains unpaid to be canceled and deducted from the capital of the corporation. If such cancellation shall reduce the capital of the corporation below the minimum required by this title or its articles of incorporation the capital shall, within thirty days thereafter be increased to the required amount by original subscription, in default of which the director may take possession of such corporation in the manner provided by law in case of insolvency. [1994 c 92 § 72; 1955 c 33 § 30.12.180. Prior: 1923 c 115 § 8; 1917 c 80 § 34; RRS § 3241.]

**30.12.190 General penalty—Effect of conviction.** Every person who shall violate, or knowingly aid or abet the violation of any provision of RCW 30.04.010, 30.04.030, 30.04.050, 30.04.060, 30.04.070, 30.04.075, 30.04.111, 30.04.120, 30.04.130, 30.04.180, 30.04.210, 30.04.220, 30.04.280, \*30.04.290, 30.04.300, 30.08.010, 30.08.020, 30.08.030, 30.08.040, 30.08.050, 30.08.060, 30.08.080,

30.08.090, 30.08.095, \*\*30.08.110, \*\*\*30.08.120, 30.08.140, 30.08.150, 30.08.160, 30.08.180, 30.08.190, 30.12.010, 30.12.020, 30.12.030, 30.12.060, 30.12.070, 30.12.130, 30.12.180, 30.12.190, 30.16.010, 30.20.060, \*\*\*\*30.40.010, 30.44.010, 30.44.020, 30.44.030, 30.44.040, 30.44.050, 30.44.060, 30.44.070, 30.44.080, 30.44.090, 30.44.100, 30.44.130, 30.44.140, 30.44.150, 30.44.160, 30.44.170, 30.44.240, 30.44.250, \*\*\*\*\*43.19.020, 43.19.030, 43.19.050, and 43.19.090, and every person who fails to perform any act which it is therein made his duty to perform, shall be guilty of a misdemeanor. No person who has been convicted for the violation of the banking laws of this or any other state or of the United States shall be permitted to engage in or become an officer or official of any bank or trust company organized and existing under the laws of this state. [1989 c 220 § 2; 1983 c 3 § 47; 1955 c 33 § 30.12.190. Prior: 1919 c 209 § 18; 1917 c 80 § 80; RRS § 3287.]

**Reviser's note:** \*(1) RCW 30.04.290 was repealed by 1994 c 256 § 124, without cognizance of its amendment by 1994 c 92 § 27. It has been decodified for publication purposes pursuant to RCW 1.12.025. RCW 30.04.290 was subsequently repealed by 1997 c 101 § 7.

\*\*\*(2) RCW 30.08.110 was repealed by 1994 c 256 § 124.

\*\*\*\*(3) RCW 30.08.120 was repealed by 1994 c 256 § 124, without cognizance of its amendment by 1994 c 92 § 27. It has been decodified for publication purposes pursuant to RCW 1.12.025. RCW 30.08.120 was subsequently repealed by 1997 c 101 § 7.

\*\*\*\*\*4) RCW 30.40.010 was decodified September 1996.

\*\*\*\*\*5) RCW 43.19.020, 43.19.030, 43.19.050, and 43.19.090 were recodified as RCW 43.320.060, 43.320.070, 43.320.080, and 43.320.100, respectively, pursuant to 1993 c 472 § 30, effective October 1, 1993.

**30.12.205 Stock purchase options—Incentive bonus contracts, stock purchase or bonus plans, and profit sharing plans.** Subject to any restrictions in its articles of incorporation and in accordance with and subject to the provisions of RCW 30.08.088, the board of directors of a bank or trust company may grant options entitling the holders thereof to purchase from the corporation shares of any class of its stock. The instrument evidencing the option shall state the terms upon which, the time within which, and the price at which such shares may be purchased from the corporation upon the exercise of such option. If any such options are granted by contract, or are to be granted pursuant to a plan, to officers or employees of the bank or trust company, then the contract or the plan shall require the approval, within twelve months of its approval by the board of directors, of the holders of a majority of its voting capital stock. Subsequent amendments to any such contract or plan which do not change the price or duration of any option, the maximum number of shares which may be subject to options, or the class of employees eligible for options may be made by the board of directors without further shareholder approval.

Subject to any restrictions in its articles of incorporation, the board of directors of a bank or trust company shall have the authority to enter into any plans or contracts providing for compensation for its officers and employees, including, but not being limited to, incentive bonus contracts, stock purchase or bonus plans and profit sharing plans. [1986 c 279 § 37.]

**30.12.220 Preemptive rights of shareholders to acquire unissued shares—Articles of incorporation may**

(2004 Ed.)

**limit or permit—Later acquisition.** The articles of incorporation of any bank or trust company organized under this title may limit or permit the preemptive rights of a shareholder to acquire unissued shares of the corporation and may thereafter by amendment limit, deny, or grant to shareholders of any class of stock the preemptive right to acquire additional shares of the corporation whether then or thereafter authorized. [1979 c 106 § 8.]

**30.12.230 Immunity of shareholders of bank insured by the federal deposit insurance corporation.** The shareholders of a banking corporation organized under the laws of this state and the deposits of which are insured by the federal deposit insurance corporation shall not be liable for any debts or obligations of the bank. [1986 c 279 § 50.]

**30.12.240 Violations—Director liability.** If the directors of any bank shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the bank to violate any of the provisions of this title or any lawful regulation or directive of the director, and if the directors are aware that such facts and circumstances constitute such violations, then each director who participated in or assented to the violation is personally and individually liable for all damages which the state or any insurer of the deposits sustains due to the violation. [1994 c 92 § 73; 1989 c 180 § 7.]

## Chapter 30.16 RCW CHECKS

### Sections

30.16.010 Certification—Effect—Penalty.

*Negotiable instruments: Title 62A RCW.*

**30.16.010 Certification—Effect—Penalty.** No director, officer, agent or employee of any bank or trust company shall certify a check unless the amount thereof actually stands to the credit of the drawer on the books of such corporation and when certified must be charged to the account of the drawer. Every violation of this provision shall be a gross misdemeanor. Any such check so certified by a duly authorized person shall be a good and valid obligation of the bank or trust company in the hands of an innocent holder. [1955 c 33 § 30.16.010. Prior: 1917 c 80 § 44; RRS § 3251.]

## Chapter 30.20 RCW DEPOSITS

### Sections

30.20.005 Deposits by individuals governed by chapter 30.22 RCW.

30.20.025 Receipt for deposits—Contents.

30.20.060 Deposits and accounts—Regulations—Passbooks or records—Deposit contract.

30.20.090 Adverse claim to a deposit to be accompanied by court order or bond—Exceptions.

*Payment to slayers: RCW 11.84.110.*

*Receiving deposits after insolvency prohibited: State Constitution Art. 12 § 12.*

**30.20.005 Deposits by individuals governed by chapter 30.22 RCW.** Deposits made by individuals in a national

[Title 30 RCW—page 29]

bank, state bank, trust company, or other banking institution subject to the supervision of the director are governed by chapter 30.22 RCW. [1994 c 92 § 74; 1981 c 192 § 23.]

**Effective date—1981 c 192:** See RCW 30.22.900.

**30.20.025 Receipt for deposits—Contents.** Each person making a deposit in a bank or trust company shall be given a receipt that shall show or in conjunction with the deposit slip can be used to trace the name of the bank or trust company, the name of the account, the account number, the date, and the amount deposited. If specifically requested by the depositor when making the deposit, the receipt must expressly show the name of the bank or trust company, the date, the amount deposited, plus either the name of the account or the account number or both the name of the account and the account number. [1985 c 305 § 2. Formerly RCW 30.04.085.]

**30.20.060 Deposits and accounts—Regulations—Passbooks or records—Deposit contract.** A bank or trust company shall repay all deposits to the depositor or his or her lawful representative when required at such time or times and with such interest as the regulations of the corporation shall prescribe. These regulations shall be prescribed by the directors of the bank or trust company and may contain provisions with respect to the terms and conditions upon which any account or deposit will be maintained by the bank or trust company. These regulations and any amendments shall be available to depositors on request, and shall be posted in a conspicuous place in the principal office and each branch in this state or, if the regulations and any amendments are not so posted, a description of changes in the regulations after an account is opened shall be mailed to depositors pursuant to 12 U.S.C. Sec. 4305(c) or otherwise. All these rules and regulations and all amendments shall be binding upon all depositors. At the option of the bank, a passbook shall be issued to each savings account depositor, or a record maintained in lieu of a passbook. A deposit contract may be adopted by the bank or trust company in lieu of or in addition to account rules and regulations and shall be enforceable and amendable in the same manner as account rules and regulations or as provided in the deposit contract. A copy of the contract shall be provided to the depositor. [1996 c 2 § 8; 1986 c 279 § 38; 1961 c 280 § 3; 1959 c 106 § 5; 1955 c 33 § 30.20.060. Prior: 1945 c 69 § 1; 1935 c 93 § 1; 1917 c 80 § 38; Rem. Supp. 1945 § 3244a.]

**Severability—1996 c 2:** See RCW 30.38.900.

**30.20.090 Adverse claim to a deposit to be accompanied by court order or bond—Exceptions.** Notice to any national bank, state bank, trust company, mutual savings bank or bank under the supervision of the director, doing business in this state of an adverse claim to a deposit standing on its books to the credit of any person may be disregarded without liability by said bank or trust company unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said bank or trust company from a court of competent jurisdiction in a cause therein instituted by him or her wherein the person to whose credit the deposit stands is made a party and served

with summons or shall execute to said bank or trust company, in form and with sureties acceptable to it, a bond, in an amount which is double either the amount of said deposit or said adverse claim, whichever is the lesser, indemnifying said bank or trust company from any and all liability, loss, damage, costs and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or trust company: PROVIDED, That where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship, and also the facts showing reasonable cause of belief on the part of said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant, the bank or trust company shall without liability refuse to deliver such property for a period of not more than five business days from the date that the bank received the adverse claimant's affidavit, without liability for the sufficiency or truth of the facts alleged in the affidavit, after which time the claim shall be treated as any other claim under this section.

This section shall not apply to accounts subject to chapter 30.22 RCW. [1994 c 92 § 75; 1981 c 192 § 25; 1979 c 143 § 1; 1961 c 280 § 4.]

**Effective date—1981 c 192:** See RCW 30.22.900.

## Chapter 30.22 RCW FINANCIAL INSTITUTION INDIVIDUAL ACCOUNT DEPOSIT ACT

### Sections

30.22.010	Short title.
30.22.020	Purposes.
30.22.030	Construction.
30.22.040	Definitions.
30.22.041	Definitions.
30.22.050	Types of accounts which financial institution may establish.
30.22.060	Requirements of contract of deposit.
30.22.070	Accounts of minors and incompetents.
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30.22.090	Ownership of funds during lifetime of depositor.
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30.22.210	Authority to withhold payment.
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30.22.230	Authority to charge a customer for furnishing items or copies of items.
30.22.240	Records—Disclosure—Requests by law enforcement—Fees.
30.22.245	Records—Admission as evidence—Certificate.
30.22.250	No duty to request information.
30.22.900	Effective date—1981 c 192.
30.22.901	Severability—1995 c 186.

**30.22.010 Short title.** This chapter shall be known and may be cited as the financial institution individual account deposit act. [1981 c 192 § 1.]

**30.22.020 Purposes.** The purposes of this chapter are:

(1) To provide a consistent law applicable to all financial institutions authorized to accept deposits from individuals with respect to payments by the institutions to individuals claiming rights to the deposited funds; and

(2) To qualify and simplify the law concerning the respective ownership interests of individuals to funds held on deposit by financial institutions, both as to the relationship between the individual depositors and beneficiaries of an account, and to the financial institution-depositor-beneficiary relationships; and

(3) To simplify and make consistent the law pertaining to payments by financial institutions of deposited funds both before and after the death of a depositor or depositors, including provisions for the validity and effect of certain nontestamentary transfers of deposits upon the death of one or more depositors. [1981 c 192 § 2.]

**30.22.030 Construction.** When construing sections and provisions of this chapter, the sections and provisions shall:

(1) Be liberally construed and applied to promote the purposes of the chapter; and

(2) Be considered part of a general act which is intended as unified coverage of the subject matter, and no part of the chapter shall be deemed impliedly repealed by subsequent legislation if such construction can be reasonably avoided; and

(3) Not be held invalid because of the invalidity of other sections or provisions of the chapter as long as the section or provision in question can be given effect without regard to the invalid section or provision, and to this end the sections and provisions of this chapter are declared to be severable; and

(4) Not be construed by reference to section or subsection headings as used in the chapter since these do not constitute any part of the law; and

(5) Not be deemed to alter the community or separate property nature of any funds held on deposit by a financial institution or any individual's community or separate property rights thereto, and a depositor's community and/or separate property rights to funds on deposit shall not be affected by the form of the account; and

(6) Not be construed as authorizing or extending the authority of any financial institution to accept deposits or to permit a financial institution to accept deposits from such persons or entities or upon such terms as would contravene any other applicable federal or state law. [1981 c 192 § 3.]

**30.22.040 Definitions.** Unless the context of this chapter otherwise requires, the terms contained in this section have the meanings indicated.

(1) "Account" means a contract of deposit between a depositor or depositors and a financial institution; the term includes a checking account, savings account, certificate of deposit, savings certificate, share account, savings bond, and other like arrangements.

(2) "Actual knowledge" means written notice to a manager of a branch of a financial institution, or an officer of the financial institution in the course of his employment at the branch, pertaining to funds held on deposit in an account maintained by the branch received within a period of time

which affords the financial institution a reasonable opportunity to act upon the knowledge.

(3) "Individual" means a human being; "person" includes an individual, corporation, partnership, limited partnership, joint venture, trust, or other entity recognized by law to have separate legal powers.

(4) "Agent" means a person designated by a depositor or depositors in a contract of deposit or other document to have the authority to deposit and to make payments from an account in the name of the depositor or depositors.

(5) "Agency account" means an account to which funds may be deposited and from which payments may be made by an agent designated by a depositor. In the event there is more than one depositor named on an account, each depositor may designate the same or a different agent for the purpose of depositing to or making payments of funds from a depositor's account.

(6) "Single account" means an account in the name of one depositor only.

(7) "Joint account without right of survivorship" means an account in the name of two or more depositors and which contains no provision that the funds of a deceased depositor become the property of the surviving depositor or depositors.

(8) "Joint account with right of survivorship" means an account in the name of two or more depositors and which provides that the funds of a deceased depositor become the property of one or more of the surviving depositors.

(9) "Trust and P.O.D. accounts" means accounts payable on request to a depositor during the depositor's lifetime, and upon the depositor's death to one or more designated beneficiaries, or which are payable to two or more depositors during their lifetimes, and upon the death of all depositors to one or more designated beneficiaries. The term "trust account" does not include deposits by trustees or other fiduciaries where the trust or fiduciary relationship is established other than by a contract of deposit with a financial institution.

(10) "Trust or P.O.D. account beneficiary" means a person or persons, other than a codepositor, who has or have been designated by a depositor or depositors to receive the depositor's funds remaining in an account upon the death of a depositor or all depositors.

(11) "Depositor", when utilized in determining the rights of individuals to funds in an account, means an individual who owns the funds. When utilized in determining the rights of a financial institution to make or withhold payment, and/or to take any other action with regard to funds held under a contract of deposit, "depositor" means the individual or individuals who have the current right to payment of funds held under the contract of deposit without regard to the actual rights of ownership thereof by these individuals. A trust or P.O.D. account beneficiary becomes a depositor only when the account becomes payable to the beneficiary by reason of having survived the depositor or depositors named on the account, depending upon the provisions of the contract of deposit.

(12) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law.

(13) "Depositor's funds" or "funds of a depositor" means the amount of all deposits belonging to or made for the bene-

fit of a depositor, less all withdrawals of the funds by the depositor or by others for the depositor's benefit, plus the depositor's prorated share of any interest or dividends included in the current balance of the account and any proceeds of deposit life insurance added to the account by reason of the death of a depositor.

(14) "Payment(s)" of sums on deposit includes withdrawal, payment by check or other directive of a depositor or his agent, any pledge of sums on deposit by a depositor or his agent, any set-off or reduction or other disposition of all or part of an account balance, and any payments to any person under RCW 30.22.120, 30.22.140, 30.22.150, 30.22.160, 30.22.170, 30.22.180, 30.22.190, 30.22.200, and 30.22.220.

(15) "Proof of death" means a certified or authenticated copy of a death certificate, or photostatic copy thereof, purporting to be issued by an official or agency of the jurisdiction where the death purportedly occurred, or a certified or authenticated copy of a record or report of a governmental agency, domestic or foreign, that a person is dead. In either case, the proofs constitute prima facie proof of the fact, place, date, and time of death, and identity of the decedent and the status of the dates, circumstances, and places disclosed by the record or report.

(16) "Request" means a request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this chapter the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(17) "Withdrawal" means payment to a person pursuant to check or other directive of a depositor. [1981 c 192 § 4.]

*Powers of attorney or agent in probate and trust banking transactions: RCW 11.94.030.*

**30.22.041 Definitions.** The definitions in this section apply throughout this section and RCW 30.22.240 and 30.22.245.

(1) "Customer" means any person, partnership, limited partnership, corporation, trust, or other legal entity that is transacting or has transacted business with a financial institution, that is using or has used the services of an institution, or for which a financial institution has acted or is acting as a fiduciary.

(2) "Financial institution" means state and national banks and trust companies, state and federal savings banks, state and federal savings and loan associations, and state and federal credit unions.

(3) "Law enforcement officer" means an employee of a public law enforcement agency organized under the authority of a county, city, or town and designated to obtain deposit account information by the chief law enforcement officer of that agency. [1995 c 186 § 1.]

**30.22.050 Types of accounts which financial institution may establish.** The types of accounts in which funds may be deposited with a financial institution include, but are not limited to, the following:

- (1) A single account;

- (2) A joint account without right of survivorship;
- (3) A joint account with right of survivorship;
- (4) An agency account;
- (5) A trust or P.O.D. account; and
- (6) Any compatible combination of the foregoing.

In each case, the type of account shall be determined by the terms of the contract of deposit between the depositor and the financial institution. The financial institution shall describe to a potential depositor the various types of accounts available. [1981 c 192 § 5.]

**30.22.060 Requirements of contract of deposit.** The contract of deposit shall be in writing and signed by all individuals who have a current right to payment of funds from an account. The designation of an agent, or trust or P.O.D. account beneficiary by a depositor of a joint account without right of survivorship, or the designation of an agent by a depositor of a joint account with right of survivorship or by a depositor of a trust or P.O.D. account does not require the signature of a codepositor. A financial institution may insert such additional terms and conditions in a contract of deposit as it deems appropriate. [1981 c 192 § 6.]

**30.22.070 Accounts of minors and incompetents.** A minor or incompetent may enter into a valid and enforceable contract of deposit with the financial institution and any account in the name of a minor or incompetent shall, in the absence of clear and convincing evidence of a different intention at the time it is created, be held for the exclusive right and benefit of the minor or incompetent free from the control of all other persons. [1981 c 192 § 7.]

**30.22.080 Accounts of married persons.** A financial institution may enter into a contract of deposit without regard to whether the depositor is married and without regard as to whether the funds on deposit are the community or separate property of the depositor. [1981 c 192 § 8.]

**30.22.090 Ownership of funds during lifetime of depositor.** Subject to community property rights, during the lifetime of a depositor, or the joint lifetimes of depositors:

(1) Funds on deposit in a single account belong to the depositor.

(2) Funds on deposit in a joint account without right of survivorship and in a joint account with right of survivorship belong to the depositors in proportion to the net funds owned by each depositor on deposit in the account, unless the contract of deposit provides otherwise or there is clear and convincing evidence of a contrary intent at the time the account was created.

(3) Funds on deposit in a trust or P.O.D. account belong to the depositor and not to the trust or P.O.D. account beneficiary or beneficiaries; if two or more depositors are named on the trust or P.O.D. account, their rights of ownership to the funds on deposit in the account are governed by subsection (2) of this section.

(4) Ownership of funds on deposit in an agency account shall be determined in accordance with subsections (1), (2), and (3) of this section depending upon whether the principal is a depositor on a single account, joint account, joint account

with right of survivorship, or trust or P.O.D. account. [1981 c 192 § 9.]

**30.22.100 Ownership of funds after death of a depositor.** Subject to community property rights and subject to the terms and provisions of any community property agreement, upon the death of a depositor:

(1) Funds which remain on deposit in a single account belong to the depositor's estate.

(2) Funds belonging to a deceased depositor which remain on deposit in a joint account without right of survivorship belong to the depositor's estate, unless the depositor has also designated a trust or P.O.D. account beneficiary of the depositor's interest in the account.

(3) Funds belonging to a deceased depositor which remain on deposit in a joint account with right of survivorship belong to the surviving depositors unless there is clear and convincing evidence of a contrary intent at the time the account was created. If there is more than one individual having right of survivorship, the funds belong equally to the surviving depositors unless the contract of deposit otherwise provides. If there is more than one surviving depositor, the rights of survivorship shall continue between the surviving depositors.

(4) Funds remaining on deposit in a trust or P.O.D. account belong to the trust or P.O.D. account beneficiary designated by the deceased depositor unless the account has also been designated as a joint account with right of survivorship, in which event the funds remaining on deposit in the account do not belong to the trust or P.O.D. account beneficiary until the death of the last surviving depositor and the rights of the surviving depositors shall be determined by subsection (3) of this section. If the deceased depositor has designated more than one trust or P.O.D. account beneficiary, and more than one of the beneficiaries survive the depositor, the funds belong equally to the surviving beneficiaries unless the depositor has specifically designated a different method of distribution in the contract of deposit; if two or more beneficiaries survive, there is no right of survivorship as between them unless the terms of the account or deposit agreement expressly provide for rights of survivorship between the beneficiaries.

(5) Upon the death of a depositor of an agency account, the agency shall terminate and any funds remaining on deposit belonging to the deceased depositor shall become the property of the depositor's estate or such other persons who may be entitled thereto, depending upon whether the account was a single account, joint account, joint account with right of survivorship, or a trust or P.O.D. account.

Any transfers to surviving depositors or to trust or P.O.D. account beneficiaries pursuant to the terms of this section are declared to be effective by reason of the provisions of the account contracts involved and this chapter and are not to be considered as testamentary dispositions. The rights of survivorship and of trust and P.O.D. account beneficiaries arise from the express terms of the contract of deposit and cannot, under any circumstances, be changed by the will of a depositor. [1981 c 192 § 10.]

(2004 Ed.)

**30.22.110 Controversies between owners.** RCW 30.22.090 and 30.22.100 are intended to establish ownership of funds on deposit in the accounts stated, as between depositors and/or trust or P.O.D. account beneficiaries, and the provisions thereof are relevant only as to controversies between such persons and their creditors, and other successors, and have no bearing on the power of any person to receive payment of funds maintained in the accounts or the right of a financial institution to make payments to any person as provided by the terms of the contract of deposit. [1981 c 192 § 11.]

**30.22.120 Right to rely on form of account—Discharge of financial institutions.** In making payments of funds deposited in an account, a financial institution may rely conclusively and entirely upon the form of the account and the terms of the contract of deposit at the time the payments are made. A financial institution is not required to inquire as to either the source or the ownership of any funds received for deposit to an account, or to the proposed application of any payments made from an account. Unless a financial institution has actual knowledge of the existence of dispute between depositors, beneficiaries, or other persons claiming an interest in funds deposited in an account, all payments made by a financial institution from an account at the request of any depositor to the account and/or the agent of any depositor to the account in accordance with this section and RCW 30.22.140, 30.22.150, 30.22.160, 30.22.170, 30.22.180, 30.22.190, 30.22.200, and 30.22.220 shall constitute a complete release and discharge of the financial institution from all claims for the amounts so paid regardless of whether or not the payment is consistent with the actual ownership of the funds deposited in an account by a depositor and/or the actual ownership of the funds as between depositors and/or the beneficiaries of P.O.D. and trust accounts, and/or their heirs, successors, personal representatives, and assigns. [1981 c 192 § 12.]

**30.22.130 Rights as between individuals preserved.** The protection accorded to financial institutions under RCW 30.22.120, 30.22.140, 30.22.150, 30.22.160, 30.22.170, 30.22.180, 30.22.190, 30.22.200, 30.22.210, and 30.22.220 shall have no bearing on the actual rights of ownership to deposited funds by a depositor, and/or between depositors, and/or by and between beneficiaries of trust and P.O.D. accounts, and their heirs, successors, personal representatives, and assigns. [1981 c 192 § 13.]

**30.22.140 Payment of funds to a depositor.** Payments of funds on deposit in a single account may be made by a financial institution to or for the depositor regardless of whether the depositor is, in fact, the actual owner of the funds. Payments of funds on deposit in an account having two or more depositors may be made by a financial institution to or for any one or more of the depositors named on the account without regard to the actual ownership of the funds by or between the depositors, and without regard to whether any other depositor or depositors so named are deceased or incompetent at the time the payments are made. [1981 c 192 § 14.]

**30.22.150 Payment to minors and incompetents.**

Financial institutions may make payments of funds on deposit in an account established by a depositor who is a minor or incompetent without regard to whether it has actual knowledge of the minority or incompetency of the depositor unless the branch of the financial institution at which the account is maintained has received written notice to withhold payment to the minor or incompetent by the guardian of his estate and had a reasonable opportunity to act upon the notice. [1981 c 192 § 15.]

**30.22.160 Payment to trust and P.O.D. account beneficiaries.** Financial institutions may pay any funds remaining on deposit in an account to a trust or P.O.D. account beneficiary or beneficiaries when the financial institution has received proofs of death of all depositors to the account who pursuant to the terms of the contract of deposit were required to predecease the beneficiary. If there is more than one trust or P.O.D. account beneficiary, financial institutions shall not, unless the contract of deposit otherwise provides, pay to any one such beneficiary more than that amount which is obtained by dividing the total of the funds on deposit in the account by the number of trust or P.O.D. account beneficiaries. [1981 c 192 § 16.]

**30.22.170 Payment to agents of depositors.** Any funds on deposit in an account may be paid by a financial institution to or upon the order of any agent of any depositor. The contract of deposit or other document creating such agency may provide, in accordance with chapter 11.94 RCW, that any such agent's powers to receive payments and make withdrawals from an account continues in spite of, or arises by virtue of, the incompetency of a depositor, in which event the agent's powers to make payments and withdrawals from an account on behalf of a depositor is not affected by the incompetency of a depositor. Except as provided in this section, the authority of an agent to receive payments or make withdrawals from an account terminates with the death or incompetency of the agent's principal: PROVIDED, That a financial institution is not liable for any payment or withdrawal made to or by an agent for a deceased or incompetent depositor unless the financial institution making the payment or permitting the withdrawal had actual knowledge of the incompetency or death at the time payment was made. [1981 c 192 § 17.]

**30.22.180 Payment to personal representatives.** Financial institutions may pay any funds remaining on deposit in an account which belongs to a deceased depositor to the personal representative of the depositor's estate under any of the following circumstances:

- (1) When the decedent was the depositor on a single account; or
- (2) When the decedent was a depositor on a joint account without right of survivorship or the only surviving depositor on a joint account with right of survivorship, and has not designated a trust or P.O.D. account beneficiary of the decedent's interest, and the financial institution has received the proofs of death necessary to establish the deaths of the other depositors named on the account; or

(3) When the decedent was a beneficiary of a P.O.D. or trust account and the financial institution has received proofs of death of the beneficiary and all depositors to the account who, pursuant to the terms of the contract of deposit, were required to predecease the beneficiary; or

(4) When consent to the payment has been given in writing by all depositors and beneficiaries of the account; or

(5) When so ordered or directed by a superior court of the state or other court having jurisdiction over the matter. [1981 c 192 § 18.]

**30.22.190 Payment to heirs and creditors of a deceased depositor.** In each case, where it is provided in RCW 30.22.180 that a financial institution may make payment of funds deposited in an account to the personal representative of the estate of a deceased depositor or beneficiary, the financial institution may make payment of the funds to the following persons under the circumstances provided:

(1) In those instances where the deceased depositor left a surviving spouse, and the deceased depositor and the surviving spouse shall have executed a community property agreement which by its terms would include funds of the deceased depositor remaining in the account, a financial institution may make payment of all funds in the name of the deceased spouse to the surviving spouse upon receipt of a certified copy of the community property agreement as recorded in the office of a county auditor of the state and an affidavit of the surviving spouse that the community property agreement was validly executed and in full force and effect upon the death of the depositor.

(2) In those instances where the balance of the funds in the name of a deceased depositor does not exceed two thousand five hundred dollars, payment of the decedent's funds remaining in the account may be made to the surviving spouse, next of kin, funeral director, or other creditor who may appear to be entitled thereto upon receipt of proof of death and an affidavit to the effect that no personal representative has been appointed for the deceased depositor's estate. As a condition to the payment, a financial institution may require such waivers, indemnity, receipts, and acquittance and additional proofs as it may consider proper.

(3) In those instances where the person entitled presents an affidavit which meets the requirements of chapter 11.62 RCW.

A person receiving a payment from a financial institution pursuant to subsections (2) and (3) of this section is answerable and accountable therefor to any personal representative of the deceased depositor's estate wherever and whenever appointed. [1989 c 220 § 3; 1981 c 192 § 19.]

**30.22.200 Payment to foreign personal representative—Release of financial institution.** In each case where it is provided in this chapter that payment may be made to the personal representative of the estate of a deceased depositor or trust or P.O.D. account beneficiary, financial institutions may make payment of the funds on deposit in a deceased depositor's or beneficiary's account to the personal representative of the decedent's estate appointed under the laws of any other state or territory or country after:

(1) At least sixty days have elapsed since the date of the deceased depositor's death; and

(2) Upon receipt of the following:

(a) Proof of death of the deceased depositor or beneficiary;

(b) Proof of the appointment and continuing authority of the personal representative requesting payment;

(c) The personal representative's, or its agent's, affidavit to the effect that to the best of his or her knowledge no personal representative has been or will be appointed under the laws of this state; and

(d) Receipt of either an estate tax release from the department of revenue or the personal representative's, or its agent's, affidavit that the estate is not subject to Washington estate tax. However, if a personal representative of the deceased depositor's or beneficiary's estate is appointed and qualified as such under the laws of this state, and delivers proof of the appointment and qualification to the office or branch of the financial institution in which the deposit is maintained prior to the transmissions of the sums on deposit to the foreign personal representative, then the funds shall be paid to the personal representative of the deceased depositor's or beneficiary's estate who has been appointed and qualified in this state.

(3) The financial institution paying, delivering, transferring, or issuing funds on deposit in a deceased depositor's or beneficiary's account in accordance with the provisions of this section is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent, unless at the time of such payment, delivery, transfer, or issuance such institution had actual knowledge of the falsity of any statement or affidavit required to be provided under this section. Such institution is not required to see to the application of funds, or to inquire into the truth of any matter specified in any statement or affidavit required to be provided under this section. [1988 c 29 § 9; 1981 c 192 § 20.]

**30.22.210 Authority to withhold payment.** Nothing contained in this chapter shall be deemed to require any financial institution to make any payment from an account to a depositor, or any trust or P.O.D. account beneficiary, or any other person claiming an interest in any funds deposited in the account, if the financial institution has actual knowledge of the existence of a dispute between the depositors, beneficiaries, or other persons concerning their respective rights of ownerships to the funds contained in, or proposed to be withdrawn, or previously withdrawn from the account, or in the event the financial institution is otherwise uncertain as to who is entitled to the funds pursuant to the contract of deposit. In any such case, the financial institution may, without liability, notify, in writing, all depositors, beneficiaries, or other persons claiming an interest in the account of either its uncertainty as to who is entitled to the distributions or the existence of any dispute, and may also, without liability, refuse to disburse any funds contained in the account to any depositor, and/or trust or P.O.D. account beneficiary thereof, and/or other persons claiming an interest therein, until such time as either:

(1) All such depositors and/or beneficiaries have consented, in writing, to the requested payment; or

(2) The payment is authorized or directed by a court of proper jurisdiction. [1981 c 192 § 21.]

**30.22.220 Adverse claim bond.** Notwithstanding RCW 30.22.210, a financial institution may, without liability, pay or permit withdrawal of any funds on deposit in an account to a depositor and/or agent of a depositor and/or trust or P.O.D. account beneficiary, and/or other person claiming an interest therein, even when the financial institution has actual knowledge of the existence of the dispute, if the adverse claimant shall execute to the financial institution, in form and with security acceptable to it, a bond in an amount which is double either the amount of the deposit or the adverse claim, whichever is the lesser, indemnifying the financial institution from any and all liability, loss, damage, costs, and expenses, for and on account of the payment of the adverse claim or the dishonor of the check or other order of the person in whose name the deposit stands on the books of the financial institution: PROVIDED, That where the person in whose name the deposit stands is a fiduciary for the adverse claimant, and the facts constituting such relationship, and also the facts showing reasonable cause of belief on the part of the claimant that the fiduciary is about to misappropriate the deposit, are made to appear by the affidavit of the claimant, the financial institution shall, without liability, refuse to deliver the property for a period of not more than five business days from the date that the financial institution receives the adverse claimant's affidavit, without liability for the sufficiency or truth of the facts alleged in the affidavit, after which time the claim shall be treated as any other claim under this section. [1981 c 192 § 22.]

**30.22.230 Authority to charge a customer for furnishing items or copies of items.** A financial institution may charge a customer for furnishing items or copies of items as defined in RCW 62A.4-104, in excess of the number of free items or copies of items provided for in RCW 62A.4-406(b), fifty cents per copy furnished plus fees for retrieval at a rate not to exceed the rate assessed when complying with summons issued by the Internal Revenue Service. [1993 c 229 § 118.]

**Recovery of attorneys' fees—Effective date—1993 c 229:** See RCW 62A.11-111 and 62A.11-112.

**30.22.240 Records—Disclosure—Requests by law enforcement—Fees.** (1) If a financial institution discloses information in good faith concerning its customer or customers in accordance with this section, it shall not be liable to its customers or others for such disclosure or its consequences. Good faith will be presumed if the financial institution follows the procedures set forth in this section.

(2) A request for financial records made by a law enforcement officer shall be submitted to the financial institution in writing stating that the officer is conducting a criminal investigation of actual or attempted withdrawals from an account at the institution and that the officer reasonably believes a statutory notice of dishonor has been given pursuant to RCW 62A.3-515, fifteen days have elapsed, and the item remains unpaid. The request shall include the name and number of the account and be accompanied by a copy of:

(a) The front and back of at least one unpaid check or draft drawn on the account that has been presented for payment no fewer than two times or has been drawn on a closed account; and

(b) A statement of the dates or time period relevant to the investigation.

(3) To the extent permitted by federal law, under subsection (2) of this section a financial institution shall within a reasonable time disclose to a requesting law enforcement officer so much of the following information as has been requested concerning the account upon which the dishonored check or draft was drawn, to the extent the records can be located:

(a) The date the account was opened; the details and amount of the opening deposit to the account; and if closed, the reason the account was closed, the date the account was closed, and balance at date of closing;

(b) A copy of the statements of the account for the relevant period including dates under investigation and the preceding and following thirty days and the closing statement, if the account was closed;

(c) A copy of the front and back of the signature card; and

(d) If the account was closed by the financial institution, the name of the person notified of its closing and a copy of the notice of the account's closing and whether such notice was returned undelivered.

(4) Financial institutions may charge requesting parties a reasonable fee for the actual costs of providing services under this chapter. These fees may not exceed rates charged to federal agencies for similar requests. In the event an investigation results in conviction, the court may order the defendant to pay costs incurred by law enforcement under chapter 186, Laws of 1995. [1995 c 186 § 2.]

**30.22.245 Records—Admission as evidence—Certificate.** Records obtained pursuant to this chapter shall be admitted as evidence in all courts of this state, under Washington rule of evidence 902, when accompanied by a certificate substantially in the following form:

CERTIFICATE

1. The accompanying documents are true and correct copies of the records of [name of financial institution]. The records were made in the regular course of business of the financial institution at or near the time of the acts, events, or conditions which they reflect.
2. They are produced in response to a request made under RCW 30.22.240.
3. The undersigned is authorized to execute this certificate. I CERTIFY, under penalty of perjury under the laws of the State of Washington, that the foregoing statements are true and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Place of Signing

\_\_\_\_\_  
Type or Print Name/  
Title/Telephone No.

[1995 c 186 § 3.]

**30.22.250 No duty to request information.** RCW 9.38.015 does not create a duty for financial institutions to request the information set forth in RCW 9.38.015(1). [1995 c 186 § 5.]

**30.22.900 Effective date—1981 c 192.** This act shall take effect on July 1, 1982. [1981 c 192 § 34.]

**30.22.901 Severability—1995 c 186.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 186 § 7.]

Chapter 30.24 RCW

INVESTMENT OF TRUST FUNDS

Sections

30.24.080 Securities in default ineligible.

*Fiduciary bonds, premium as lawful expense: RCW 48.28.020.*

*Investment of trust funds generally: Chapter 11.100 RCW.*

*Release of powers of appointment: Chapter 11.95 RCW.*

**30.24.080 Securities in default ineligible.** Nothing in this chapter shall be construed as authorizing any fiduciary to invest funds held in trust, in any bonds, mortgages, notes or other securities, during any default in payment of either principal or interest thereof. [1955 c 33 § 30.24.080. Prior: 1947 c 100 § 8; 1941 c 41 § 16; Rem. Supp. 1947 § 3255-16.]

Chapter 30.32 RCW

DEALINGS WITH FEDERAL LOAN AGENCIES

Sections

30.32.010 Membership in federal reserve system—Investment in stock of Federal Deposit Insurance Corporation.

30.32.020 Investment in federal home loan bank stock or bonds.

30.32.030 May borrow from home loan bank.

30.32.040 Federal home loan bank as depository.

**30.32.010 Membership in federal reserve system—Investment in stock of Federal Deposit Insurance Corporation.** Any bank, trust company or mutual savings bank may become a member of the federal reserve system of the United States and to that end may comply with all laws of the United States and all rules, regulations and requirements promulgated pursuant thereto, including the investment of its funds in the stock of a federal reserve bank; and any bank, trust company or mutual savings bank, whether a member of the federal reserve system or not, may invest its funds in the stock of the Federal Deposit Insurance Corporation created by the act of congress approved June 16, 1933, and may participate in the insurance of bank deposits and obligate itself for the cost of such participation by assessments or otherwise in accordance with the laws of the United States. [1955 c 33 § 30.32.010. Prior: 1933 ex.s. c 9 § 1; RRS § 3235-1.]

**30.32.020 Investment in federal home loan bank stock or bonds.** Any savings and loan association, building and loan association, bank, trust company, savings bank, or mutual savings bank may become a member of and invest its funds in the bonds and/or the capital stock of a federal home loan bank, and vote such stock in the manner prescribed by its board of directors. [1955 c 33 § 30.32.020. Prior: 1933 c 105 § 1; RRS § 3294-1.]

**30.32.030 May borrow from home loan bank.** Any such bank, trust company, insurance company, or association, may borrow from any home loan bank and as security for borrowing may pledge therewith the notes, mortgages, trust deeds which it holds as shall be required by federal law, and under such rules and regulations as shall be adopted by a federal home loan bank. [1955 c 33 § 30.32.030. Prior: 1933 c 105 § 2; RRS § 3294-2.]

**30.32.040 Federal home loan bank as depository.** Any such bank, trust company, insurance company or association, may designate a federal home loan bank as a depository for its funds. [1955 c 33 § 30.32.040. Prior: 1933 c 105 § 3; RRS § 3294-3.]

carry its capital stock on its books at a sum less than par, and it shall not be considered impaired so long as the amount of such capital notes or debentures equals or exceeds the impairment as found by the director. [1994 c 92 § 77; 1955 c 33 § 30.36.030. Prior: 1935 c 42 § 3; RRS § 3295-3.]

**30.36.040 Impairment to be corrected before retirement of notes or debentures.** Before such capital notes or debentures are retired or paid by the bank, trust company or mutual savings bank, any existing impairment of its capital stock must be overcome or corrected to the satisfaction of the director. [1994 c 92 § 78; 1955 c 33 § 30.36.040. Prior: 1935 c 42 § 4; RRS § 3295-4.]

**30.36.050 Not subject to assessments—Liability of holders.** Such capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be held individually responsible, as such holders, for any debts, contracts or engagements of such institution, and as such holders, shall not be held liable for assessments to restore impairments in the capital of such institution. [1955 c 33 § 30.36.050. Prior: 1935 c 42 § 5; RRS § 3295-5.]

**Chapter 30.36 RCW**

**CAPITAL NOTES OR DEBENTURES**

Sections

- 30.36.010 Definitions.
- 30.36.020 Issuance and sale—Status—Conversion rights.
- 30.36.030 Stock at less than par—Impairment.
- 30.36.040 Impairment to be corrected before retirement of notes or debentures.
- 30.36.050 Not subject to assessments—Liability of holders.

**30.36.010 Definitions.** Capital notes or debentures, where used in this chapter, shall mean notes or other obligations issued by a bank, trust company or mutual savings bank, for money obtained and used as additional capital or to replace impaired capital stock: PROVIDED, Such notes or other obligations are subordinate to the rights of depositors and other creditors.

The term "capital" where used in this chapter shall mean capital stock and/or capital notes. [1955 c 33 § 30.36.010. Prior: 1935 c 42 § 1; RRS § 3295-1.]

**30.36.020 Issuance and sale—Status—Conversion rights.** With the approval of the director, any bank, trust company or mutual savings bank may at any time, through action of its board of directors or trustees, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate to the claims of depositors and other creditors. The holders of capital notes or debentures issued by a bank or trust company shall have such conversion rights as may be provided in the articles of incorporation with the approval of the director. [1994 c 92 § 76; 1979 c 106 § 5; 1955 c 33 § 30.36.020. Prior: 1935 c 42 § 2; RRS 3295-2.]

**30.36.030 Stock at less than par—Impairment.** Where any bank, trust company or mutual savings bank has issued and has outstanding capital notes or debentures, it may

**Chapter 30.38 RCW**

**INTERSTATE BANKING**

Sections

- 30.38.005 Definitions.
- 30.38.010 Out-of-state bank may engage in banking in this state—Conditions—Director's approval of interstate combination.
- 30.38.020 Out-of-state bank with host branches—Relocation of head office—Reincorporation—Application— Director's approval required.
- 30.38.030 Out-of-state bank may maintain and operate branches—Powers and authorities.
- 30.38.040 Examinations of any branch of an out-of-state state bank— Reporting requirements for any branch of an out-of-state bank—Supervisory agreements—Joint examinations or enforcement actions—Assessments.
- 30.38.050 Branch of out-of-state state bank—Violations—Unsafe and unsound operations—Enforcement actions—Notice to home state regulator.
- 30.38.060 Rules.
- 30.38.070 Out-of-state state bank becomes resulting bank—Branches in this state—RCW 30.49.125(5) does not apply—When established and maintained—Notice to director.
- 30.38.080 Application of Washington laws—Declaration of invalidity.
- 30.38.900 Severability—1996 c 2.

**30.38.005 Definitions.** As used in this chapter, unless a different meaning is required by the context, the following words and phrases have the following meanings:

- (1) "Bank" means any national bank, state bank, and district bank, as those terms are defined in 12 U.S.C. Sec. 1813(a).
- (2) "Bank holding company" has the meaning set forth in 12 U.S.C. Sec. 1841(a)(1).
- (3) "Bank supervisory agency" means:
  - (a) Any agency of another state with primary responsibility for chartering and supervising banks; and
  - (b) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, and any successor to these agencies.

(4) "Control" shall be construed consistently with the provisions of 12 U.S.C. Sec. 1841(a)(2).

(5) "Home state" means with respect to a:

(a) State bank, the state by which the bank is chartered; or

(b) National bank, the state in which the main office of the bank is located under federal law.

(6) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which the bank is chartered.

(7) "Host state" means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch.

(8) "Interstate combination" means the:

(a) Merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(b) Purchase of all or substantially all of the assets, including all or substantially all of the branches, of a bank whose home state is different from the home state of the acquiring bank.

(9) "Out-of-state bank" means a bank whose home state is a state other than Washington.

(10) "Out-of-state state bank" means a bank chartered under the laws of any state other than Washington.

(11) "Resulting bank" means a bank that has resulted from an interstate combination under this chapter.

(12) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(13) "Washington bank" means a bank whose home state is Washington.

(14) "Washington state bank" means a bank organized under Washington banking law. [1996 c 2 § 10.]

**30.38.010 Out-of-state bank may engage in banking in this state—Conditions—Director's approval of interstate combination.** (1) An out-of-state bank may engage in banking in this state without violating RCW 30.04.280 only if the conditions and filing requirements of this chapter are met and the bank was lawfully engaged in banking in this state on June 6, 1996, or resulted from an interstate combination pursuant to RCW 30.49.125 or 32.32.500, or resulted from a relocation of a head office of a state bank pursuant to 12 U.S.C. Sec. 30 and RCW 30.04.215(3), or resulted from a relocation of a main office of a national bank pursuant to 12 U.S.C. Sec. 30, or from the establishment of a branch of a savings bank in compliance with RCW 32.04.030(2). Nothing in this section affects the authorities of alien banks as defined by RCW 30.42.020 to engage in banking within this state.

(2) The director, consistent with 12 U.S.C. Sec. 1831u(b)(2)(D), may approve an interstate combination if the standard on which the approval is based does not discriminate against out-of-state banks, out-of-state bank holding companies, or subsidiaries of those banks or holding companies. [1996 c 2 § 11.]

**30.38.020 Out-of-state bank with host branches—Relocation of head office—Reincorporation—Application—Director's approval required.** An out-of-state bank with host branches in this state may relocate its head office in Washington and reincorporate as a Washington state bank if the director finds that the bank meets the standards as to capital structures, operations, business experience, and character of officers and directors, and the bank follows the procedures specified in this section.

The bank shall file with the director on a form prescribed by the director, an application to relocate its head office to Washington. Within six months upon acceptance of a complete application, the director shall notify the bank to file, in triplicate, an executed and acknowledged certificate of reincorporation signed by a majority of the entire board of directors that at least two-thirds of each class of voting stock of the bank entitled to vote thereon has approved the: (1) Head office relocation; (2) change to a Washington state bank; and (3) new articles of incorporation.

Within thirty days after receipt of the certificate and articles, the director shall endorse upon each of the triplicate copies, over the director's official signature, the word "approved" or the word "refused," with the date of the endorsement. In case of refusal the director shall immediately return one of the triplicates, so endorsed, together with a statement explaining the reason for refusal to the bank from whom the certificate and articles were received. The refusal shall be conclusive, unless the bank, within ten days of the issuance of the notice of refusal, requests a hearing under chapter 34.05 RCW. [1996 c 2 § 12.]

**30.38.030 Out-of-state bank may maintain and operate branches—Powers and authorities.** (1) If authorized to engage in banking in this state under RCW 30.38.010, an out-of-state bank may maintain and operate the branches in Washington of a Washington bank with which the out-of-state bank or its predecessors engaged in an interstate combination.

(2) The out-of-state bank may establish or acquire and operate additional branches in Washington to the same extent that any Washington bank may establish or acquire and operate a branch in Washington under applicable federal and state law.

(3) The out-of-state state bank may, at such branches, unless otherwise limited by the bank's home state law, exercise any powers and authorities that are authorized under the laws of this state for Washington state banks.

(4) The out-of-state state bank may, at these branches, exercise additional powers and authorities that are authorized under the laws of its home state, only if the director determines in writing that the exercise of the additional powers and authorities in this state will not threaten the safety and soundness of banks in this state and serves the convenience and needs of Washington consumers. Washington state banks also may exercise the powers and authorities under RCW 30.08.140(16) or 32.08.140(15). [1996 c 2 § 13.]

**30.38.040 Examinations of any branch of an out-of-state state bank—Reporting requirements for any branch of an out-of-state bank—Supervisory agreements—Joint examinations or enforcement actions—Assessments.** (1)

The director may make examinations of any branch in this state of an out-of-state state bank as the director deems necessary to determine whether the branch is being operated in compliance with the laws of this state or is conducting its activities in accordance with safe and sound banking practices. The provisions applicable to examinations and sharing of information of Washington state banks shall apply to these examinations.

(2) The director may prescribe requirements for reports regarding any branches of an out-of-state bank that operates a branch in Washington pursuant to this chapter. The required reports shall be provided by the bank or by the bank supervisory agency having primary responsibility for the bank. Any reporting requirements prescribed by the director under this subsection shall be consistent with the reporting requirements applicable to Washington state banks and appropriate for the purpose of enabling the director to carry out his or her responsibilities under this chapter.

(3) The director may enter into supervisory agreements with any bank supervisory agency that has concurrent jurisdiction over a Washington state bank or an out-of-state state bank operating a branch in this state pursuant to this chapter to engage the services of that agency's examiners at a reasonable rate of compensation, or to provide the services of the director's examiners to that agency at a reasonable rate of compensation. These contracts are exempt from the requirements of chapter 39.29 RCW. The director also may enter into supervisory agreements with other appropriate bank supervisory agencies and the bank to prescribe the applicable laws governing powers and authorities, including but not limited to corporate governance and operational matters, of Washington branches of an out-of-state bank chartered by another state or out-of-state branches of a Washington state bank. The supervisory agreement may resolve conflict of laws among home and host states and specify the manner in which the examination, supervision, and application processes shall be coordinated among the home and host states.

(4) The director may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Washington of an out-of-state state bank or any branch of a Washington state bank in any host state. The director also may at any time take action independently if the director deems it necessary or appropriate to carry out his or her responsibilities under this chapter or to ensure compliance with the laws of this state. However, in the case of an out-of-state state bank, the director shall recognize the exclusive authority of the home state regulator over corporate governance and operational matters and the primary responsibility of the home state regulator with respect to safety and soundness matters, unless otherwise specified in the supervisory agreement executed pursuant to this section.

(5) Each out-of-state state bank that maintains one or more branches in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and rules of the director. The director is authorized to enter into agreements to share fees with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies. [1996 c 2 § 14.]

(2004 Ed.)

**30.38.050 Branch of out-of-state state bank—Violations—Unsafe and unsound operations—Enforcement actions—Notice to home state regulator.** If the director determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of the laws of this state, or that the branch is being operated in an unsafe and unsound manner, the director has the authority to take all enforcement actions he or she would be empowered to take if the branch were a Washington state bank. However, the director shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action. [1996 c 2 § 15.]

**30.38.060 Rules.** The director may adopt those rules necessary to implement chapter 2, Laws of 1996. [1996 c 2 § 16.]

**30.38.070 Out-of-state state bank becomes resulting bank—Branches in this state—RCW 30.49.125(5) does not apply—When established and maintained—Notice to director.** (1) Any out-of-state state bank that will be the resulting bank pursuant to an interstate combination involving any bank with branches in Washington, if RCW 30.49.125(5) does not apply, shall notify the director of the proposed combination not later than three days after the date of filing of an application for the combination with the responsible federal bank supervisory agency, and shall submit a copy of the application to the director and pay applicable application fees, if any, required by the director. In lieu of notice from the out-of-state state bank the director may accept notice from the bank's home state regulator. The director has the authority to waive any procedures required by Washington merger laws if the director finds that the provision is in conflict with the applicable federal law or in conflict with the applicable law of the state of the resulting bank.

(2) An out-of-state state bank that has established and maintains a branch in this state pursuant to this chapter shall give at least thirty days' prior written notice or, in the case of an emergency transaction, shorter notice as is consistent with the applicable state or federal law, to the director of any transaction that would cause a change of control with respect to the bank or any bank holding company that controls the bank, with the result that an application would be required to be filed pursuant to the federal change in bank control act of 1978, as amended, 12 U.S.C. Sec. 1817(j), or the federal bank holding company act of 1956, as amended, 12 U.S.C. Sec. 1841 et seq., or any successor statutes. In lieu of notice from the out-of-state state bank the director may accept notice from the bank's home state regulator. [1996 c 2 § 17.]

**30.38.080 Application of Washington laws—Declaration of invalidity.** (1) The laws of Washington applicable to Washington state banks regarding community reinvestment, consumer protection, fair lending, and the establishment of intrastate branches apply to any branch in Washington of an out-of-state national bank or out-of-state state bank to the same extent as Washington laws apply to a Washington state bank. In lieu of taking action directly against an out-of-state state bank to enforce compliance with these Washington

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laws on host state branches, the director may refer action to the home state regulator, but the director retains enforcement powers to ensure that compliance is satisfactory to the director.

(2) Any host state branch of a Washington state bank shall comply with all applicable host state laws concerning community reinvestment, consumer protection, fair lending, and the establishment of intrastate branches.

(3) In the event that the responsible federal chartering authority, pursuant to applicable federal law, or in the event a court of competent jurisdiction declares that any Washington state law is invalid with respect to an out-of-state or national bank, that Washington state law is also invalid with respect to Washington state banks and to host branches of out-of-state state banks to that same extent. The director may, from time to time, publish by rule Washington state laws that have been found invalidated pursuant to federal law and procedures. This subsection does not impair, in any manner, the authority of the state attorney general to enforce antitrust laws applicable to banks, bank holding companies, or affiliates of those banks or bank holding companies. [1996 c 2 § 18.]

**30.38.900 Severability—1996 c 2.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1996 c 2 § 32.]

### Chapter 30.42 RCW ALIEN BANKS

#### Sections

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**30.42.010 Purpose.** The purpose of this chapter is to establish a legal and regulatory framework for operation by alien banks in the state of Washington that will:

(1) Create a financial climate which will benefit the economy of the state of Washington;

(2) Provide a well regulated and supervised financial system to assist the movement of foreign capital into Washington state for the support and diversification of the local industrial base;

(3) Assist the development of the economy of the state of Washington without disrupting business relationships of state and federal financial institutions. [1973 1st ex.s. c 53 § 1.]

**30.42.020 Definitions.** For the purposes of this chapter, the following terms shall be defined as follows:

(1) "Alien bank" means a bank organized under the laws of a foreign country and having its principal place of business in that country, the majority of the beneficial ownership and control of which is vested in citizens of countries other than the United States of America.

(2) "Office" means a branch or agency of an alien bank carrying on business in this state pursuant to this chapter.

(3) "Branch" means an office of an alien bank that is exercising the powers authorized by RCW 30.42.105, 30.42.115, and 30.42.155.

(4) "Agency" means an office of an alien bank that is exercising the powers authorized by RCW 30.42.180.

(5) "Bureau" means an alien bank's operation in this state exercising the powers authorized by RCW 30.42.230. [1994 c 92 § 80; 1983 c 3 § 48; 1973 1st ex.s. c 53 § 2.]

**30.42.030 Authorization and compliance with chapter required.** An alien bank shall not establish and operate an office or bureau in this state unless it is authorized to do so by the director and unless it first complies with all of the provisions of this chapter and then only to the extent expressly permitted by this chapter. [1994 c 92 § 81; 1973 1st ex.s. c 53 § 3.]

**30.42.040 More than one office prohibited.** An alien bank shall not be permitted to have more than one office in this state. [1973 1st ex.s. c 53 § 4.]

**30.42.050 Acquisition or serving on board of directors or trustees of other financial institutions prohibited.** An alien bank shall not take over or acquire an existing federal or state-chartered bank, trust company, mutual savings bank, savings and loan association, or credit union or any branch of any such bank, trust company, mutual savings bank, savings and loan association, or credit union in this state; nor shall any designee, officer, agent or employee of an alien bank serve on the board of directors of any federal or state bank, trust company, savings and loan association, or

credit union, or the board of trustees of a mutual savings bank. [1973 1st ex.s. c 53 § 5.]

**30.42.060 Conditions to be met before opening office in state.** An alien bank shall not hereafter open an office in this state until it has met the following conditions:

(1) It has filed with the director an application in such form and containing such information as shall be prescribed by the director.

(2) It has designated the director by a duly executed instrument in writing, its agent, upon whom process in any action or proceeding arising out of a transaction with the Washington office may be served. Such service shall have the same force and effect as if the alien bank were a Washington corporation and had been lawfully served with process within the state. The director shall forward by mail, postage prepaid, a copy of every process served upon him or her under the provisions of this subdivision, addressed to the manager or agent of such bank at its office in this state.

(3) It has allocated and assigned to its office within this state paid-in capital of not less than two hundred thousand dollars or such larger amounts as the director in his or her discretion may require.

(4) It has filed with the director a letter from its chief executive officer guaranteeing that the alien bank's entire capital and surplus is and shall be available for all liabilities and obligations of its office doing business in this state.

(5) It has paid the fees required by law and established by the director pursuant to RCW 30.08.095.

(6) It has received from the director his or her certificate authorizing the transaction of business in conformity with this chapter. [1994 c 92 § 82; 1973 1st ex.s. c 53 § 6.]

**30.42.070 Allocated paid-in capital—Requirements.** The capital allocated as required in RCW 30.42.060(3) shall be maintained within this state at all times in cash or in director approved interest bearing bonds, notes, debentures, or other obligations: (1) Of the United States or of any agency or instrumentality thereof, or guaranteed by the United States; or (2) of this state, or of a city, county, town, or other municipal corporation, or instrumentality of this state or guaranteed by this state, or such other assets as the director may approve. Such capital shall be deposited with a bank qualified to do business in and having its principal place of business within this state, or in a national bank qualified to engage in banking in this state. Such bank shall issue a written receipt addressed and delivered to the director reciting that such deposit is being held for the sole benefit of the United States domiciled creditors of such alien bank's Washington office and that the same is subject to his or her order without offset for the payment of such creditors. For the purposes of this section, the term "creditor" shall not include any other offices, branches, subsidiaries, or affiliates of such alien bank. Subject to the approval of the director, reasonable arrangements may be made for substitution of securities. So long as it shall continue business in this state in conformance with this chapter and shall remain solvent, such alien bank shall be permitted to collect all interest and/or income from the assets constituting such allocated capital.

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Should any securities so depreciate in market value and/or quality as to reduce the deposit below the amount required, additional money or securities shall be deposited promptly in amounts sufficient to meet such requirements. The director may make an investigation of the market value and of the quality of any security deposited at the time such security is presented for deposit or at any time thereafter. The director may make such charge as may be reasonable and proper for such investigation. [1994 c 92 § 83; 1982 c 95 § 1; 1979 c 106 § 6; 1973 1st ex.s. c 53 § 7.]

**Effective date—1982 c 95:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1982." [1982 c 95 § 9.]

**30.42.080 Separate assets—Books and records—Priority as to assets.** Every alien bank maintaining an office in this state shall keep the assets of its Washington office entirely separate and apart from the assets of its other operations as though the Washington office was conducted as a separate and distinct entity. Every such alien bank shall keep separate books of account and records for its Washington office and shall observe with respect to such office the applicable requirements of this chapter and the applicable rules and regulations of the director. The United States domiciled creditors of such alien bank's Washington office shall be entitled to priority with respect to the assets of its Washington office before such assets may be used or applied for the benefit of its other creditors or transferred to its general business. [1994 c 92 § 84; 1973 1st ex.s. c 53 § 8.]

**30.42.090 Approval of application—Criteria—Reciprocity.** The director may give or withhold his or her approval of an application by an alien bank to establish an office in this state at his or her discretion. The director's decision shall be based on the information submitted to his or her office in the application required by RCW 30.42.060 and such additional investigation as the director deems necessary or appropriate. Prior to granting approval to said application, the director shall have ascertained to his or her satisfaction that all of the following are true:

(1) The proposed location offers a reasonable promise of adequate support for the proposed office;

(2) The proposed office is not being formed for other than legitimate objects;

(3) The proposed officers of the proposed office have sufficient banking experience and ability to afford reasonable promise of successful operation;

(4) The reputation and financial standing of the alien bank is such as to command the confidence and warrant belief that the business of the proposed office will be conducted honestly and efficiently in accordance with the intent and purpose of this chapter, as set forth in RCW 30.42.010;

(5) The principal purpose of establishing such office shall be within the intent of this chapter.

The director shall not grant an application for an office of an alien bank unless the law of the foreign country under which laws the alien bank is organized permits a bank with its principal place of business in this state to establish in that foreign country a branch, agency or similar operation. [1994 c 92 § 85; 1973 1st ex.s. c 53 § 9.]

**30.42.100 Notice of approval—Filing—Time period for commencing business.** If the director approves the application, he or she shall notify the alien bank of his or her approval and shall file certified copies of its charter, certificate or other authorization to do business with the secretary of state. Upon such filing, the director shall issue a certificate of authority stating that the alien bank is authorized to conduct business through a branch or agency in this state at the place designated in accordance with this chapter. Each such certificate shall be conspicuously displayed at all times in the place of business specified therein.

The office of the alien bank must commence business within six months after the issuance of the director's certificate: PROVIDED, That the director for good cause shown may extend such period for an additional time not to exceed three months. [1994 c 92 § 86; 1985 c 305 § 7; 1973 1st ex.s. c 53 § 10.]

**30.42.105 Power to make loans and to guarantee obligations.** An approved branch of an alien bank shall have the same power to make loans and guarantee obligations as a state bank chartered pursuant to Title 30 RCW: PROVIDED, HOWEVER, That the base for computing the applicable loan limitation shall be the entire capital and surplus of the alien bank. The director may adopt rules limiting the amount of loans to full-time employees of the branch. [1994 c 92 § 87; 1982 c 95 § 4.]

**Effective date—1982 c 95:** See note following RCW 30.42.070.

**30.42.115 Solicitation and acceptance of deposits.** (1) Any branch of an alien bank that received approval of its branch application pursuant to RCW 30.42.090, or that had filed its branch application pursuant to RCW 30.42.060, on or before July 27, 1978, and any approved branch of an alien bank that has designated Washington as its home state pursuant to section 5 of the International Banking Act of 1978, shall have the same power to solicit and accept deposits as a state bank chartered pursuant to Title 30 RCW, except that acceptance of initial deposits of less than one hundred thousand dollars shall be limited to deposits of the following:

(a) Any business entity, including any corporation, partnership, association, or trust, that engages in commercial activity for profit: PROVIDED, That there shall be excluded from this category any such business entity that is organized under the laws of any state or the United States, is majority-owned by United States citizens or residents, and has total assets, including assets of majority owned subsidiaries, of less than one million five hundred thousand dollars as of the date of the initial deposit;

(b) Any governmental unit, including the United States government, any state government, any foreign government and any political subdivision or agency of the foregoing;

(c) Any international organization which is composed of two or more nations;

(d) Any draft, check, or similar instrument for the transmission of funds issued by the branch;

(e) Any depositor who is not a citizen of the United States and who is not a resident of the United States at the time of the initial deposit;

(f) Any depositor who established a deposit account on or before July 1, 1982, and who has continuously maintained

the deposit account since that date: PROVIDED, That this subparagraph (f) of this subsection shall be effective only until July 1, 1985;

(g) Any other person: PROVIDED, That the amount of deposits under this subparagraph (g) of this subsection may not exceed four percent of the average of the branch's deposits for the last thirty days of the most recent calendar quarter, excluding deposits in the branch of other offices, branches, agencies, or wholly owned subsidiaries of the alien bank.

(2) As used in subsection (1) of this section, "initial deposit" means the first deposit transaction between a depositor and the branch. Different deposit accounts that are held by a depositor in the same right and capacity may be added together for purposes of determining the dollar amount of that depositor's initial deposit.

(3) Approved branches of alien banks, other than those described in subsection (1) of this section, may solicit and accept deposits only from foreign governments and their agencies and instrumentalities, persons, or entities conducting business principally at their offices or establishments abroad, and such other deposits that:

(a) Are to be transmitted abroad;

(b) Consist of collateral or funds to be used for payment of obligations to the branch;

(c) Consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(d) Consist of the proceeds of extensions of credit by the branch; or

(e) Represent compensation to the branch for extensions of credit or services to the customer.

(4) A branch may accept deposits, subject to the limitations set forth in subsections (1) and (3) of this section, only upon the same terms and conditions (including nature and extent of such deposits, withdrawal, and the payment of interest thereon) that banks organized under the laws of this state which are members of the Federal Reserve System may accept such deposits. Any branch that is not subject to reserve requirements under regulations of the Federal Reserve Board shall maintain deposit reserves in this state, pursuant to rules adopted by the director, to the same extent they must be maintained by banks organized under the laws of this state which are members of the Federal Reserve System. [1994 c 92 § 88; 1985 c 305 § 8; 1982 c 95 § 6.]

**Effective date—1982 c 95:** See note following RCW 30.42.070.

**30.42.120 Requirements for accepting deposits or transacting business.** A branch shall not commence to transact in this state the business of accepting deposits or transact such business thereafter unless it has met the following requirements:

(1) It has obtained federal deposit insurance corporation insurance covering its eligible deposit liabilities within this state, or in lieu thereof, made arrangements satisfactory to the director for maintenance within this state of additional capital equal to not less than five percent of its deposit liabilities, computed on the basis of the average daily net deposit balances covering semimonthly periods as prescribed by the

director. Such additional capital shall be deposited in the manner provided in RCW 30.42.070.

(2) It holds in this state currency, bonds, notes, debentures, drafts, bills of exchange, or other evidences of indebtedness or other obligations payable in the United States or in United States funds or, with the approval of the director, in funds freely convertible into United States funds or such other assets as are approved by the director, in an amount not less than one hundred percent of the aggregate amount of liabilities of such alien bank payable at or through its office in this state. When calculating the value of the assets so held, credit shall be given for the amounts deposited pursuant to RCW 30.42.060(3) and 30.42.120(1), but there shall be excluded all amounts due from the head office and any other branch, agency, or other office or wholly-owned subsidiary of the bank, except those amounts due from such offices or subsidiaries located within the United States and payable in United States dollars.

(3) If deposits are not insured by the federal deposit insurance corporation, then that fact shall be disclosed to all depositors pursuant to rules of the director.

(4) If the branch conducts an international banking facility, the deposits of which are exempt from reserve requirements of the federal reserve banking system, the liabilities of that facility shall be excluded from the deposit and other liabilities of the branch for the purposes of subsection (1) of this section. [1994 c 92 § 89; 1982 c 95 § 2; 1975 1st ex.s. c 285 § 2; 1973 1st ex.s. c 53 § 12.]

**Effective date—1982 c 95:** See note following RCW 30.42.070.

**30.42.130 Taking possession by director—Reasons—Disposition of deposits—Claims—Priorities.** The director may take possession of the office of an alien bank for the reasons stated and in the manner provided in chapter 30.44 RCW. Upon the director taking such possession of a branch, no deposit liabilities of which are insured by the federal deposit insurance corporation, the amounts deposited pursuant to RCW 30.42.120(1) shall thereupon become the property of the director, free and clear of any and all liens and other claims, and shall be held by the director in trust for the United States domiciled depositors of the office in this state of such alien bank. Upon obtaining the approval of the superior court of Thurston county, the director shall reduce such deposited capital to cash and as soon as practicable distribute it to such depositors.

If sufficient cash is available, such distribution shall be in equal amounts to each such depositor: PROVIDED, That no such depositor receives more than the amount of his or her deposit or an amount equal to the maximum amount insured by the federal deposit insurance corporation, whichever is less. If sufficient cash is not available, such distribution shall be on a pro rata basis to each such depositor: PROVIDED, That no such depositor receives more than the maximum amount insured by the federal deposit insurance corporation. If any cash remains after such distribution, it shall be distributed pro rata to those depositors whose deposits have not been paid in full: PROVIDED, That no depositor receives more than the amount of his deposit. For purposes of this section, the term "depositor" shall not include any other offices, subsidiaries or affiliates of such alien bank.

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The term "deposit" as used in this section shall mean the unpaid balance of money or its equivalent received or held by the branch in the usual course of its business and for which it has given or is obligated to give credit, either conditionally or unconditionally to a demand, time or savings account, or which is evidenced by its certificate of deposit, or a check or draft drawn against a deposit account and certified by the branch, or a letter of credit or traveler's checks on which the branch is primarily liable.

Claims of depositors and creditors shall be made and disposed of in the manner provided in chapter 30.44 RCW in the event of insolvency or inability of the bank to pay its creditors in this state. The capital deposit of the bank shall be available for claims of depositors and creditors. The claims of depositors and creditors shall be paid from the capital deposit in the following order or priority:

- (1) Claims of depositors not paid from the amounts deposited pursuant to RCW 30.42.120(1);
- (2) Claims of Washington domiciled creditors;
- (3) Other creditors domiciled in the United States; and
- (4) Creditors domiciled in foreign countries.

The director shall proceed in accordance with and have all the powers granted by chapter 30.44 RCW. [1994 c 92 § 90; 1973 1st ex.s. c 53 § 13.]

**30.42.140 Investigations—Examinations.** The director, without previous notice, shall visit the office of an alien bank doing business in this state pursuant to this chapter at least once every eighteen months, and more often if necessary, for the purpose of making a full investigation into the condition of such office, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director or member of its governing body, officer, employee, or agent of such alien bank or office. The director shall make such other full or partial examination as he or she deems necessary. The director shall collect, from each alien bank for each examination of the conditions of its office in this state, the estimated actual cost of such examination. [2001 c 176 § 1; 1994 c 92 § 91; 1982 c 95 § 3; 1973 1st ex.s. c 53 § 14.]

**Effective date—1982 c 95:** See note following RCW 30.42.070.

**30.42.145 Examination reports and information—Confidential—Privileged—Penalty.** See RCW 30.04.075.

**30.42.150 Loans subject to usury laws.** Loans made by an office shall be subject to the laws of the state of Washington relating to usury. [1973 1st ex.s. c 53 § 15.]

**30.42.155 Powers and activities.** (1) In addition to the taking of deposits and making of loans as provided in this chapter, a branch of an alien bank shall have the power only to carry out these other activities:

- (a) Borrow funds from banks and other financial institutions;
- (b) Make investments to the same extent as a state bank chartered pursuant to Title 30 RCW;
- (c) Buy and sell foreign exchange;
- (d) Receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other securities for collection abroad

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and collect such instruments in the United States for customers abroad;

(e) Hold securities in safekeeping for, or buy and sell securities upon the order and for the risk of, customers abroad;

(f) Act as paying agent for securities issued by foreign governments or other organizations organized under foreign law and not qualified under the laws of the United States, or of any state or the District of Columbia, to do business in the United States;

(g) In order to prevent loss on debts previously contracted a branch may acquire shares in a corporation: PROVIDED, That the shares are disposed of as soon as practical but in no event later than two years from the date of acquisition;

(h) Issue letters of credit and create acceptances;

(i) Act as paying agent or trustee in connection with revenue bonds issued pursuant to chapter 39.84 RCW, in which the user is: (i) A corporation organized under the laws of a country other than the United States, or a subsidiary or affiliate owned or controlled by such a corporation; or (ii) a corporation, partnership, or other business organization, the majority of the beneficial ownership of which is owned by persons who are citizens of a country other than the United States and who are not residents of the United States, and any subsidiary or affiliate owned or controlled by such an organization; or in which the bank purchases twenty-five percent or more of the bond issue. For the purposes of chapter 39.84 RCW, such an alien bank shall be deemed to possess trust powers.

(2) In addition to the powers and activities expressly authorized by this section, a branch shall have the power to carry on such additional activities which are necessarily incidental to the activities expressly authorized by this section. [1982 c 95 § 5.]

**Effective date—1982 c 95:** See note following RCW 30.42.070.

**30.42.160 Powers as to real estate.** An alien bank may purchase, hold and convey real estate for the following purposes and no other:

(1) Such as shall be necessary for the convenient transaction of its business, including with its banking offices other apartments in the same building to rent as a source of income: PROVIDED, That not to exceed thirty percent of its capital and surplus and undivided profits may be so invested without the approval of the director.

(2) Such as shall be purchased or conveyed to it in satisfaction, or on account of, debts previously contracted in the course of business.

(3) Such as it shall purchase at sale under judgments, decrees, liens or mortgage foreclosures, against securities held by it.

(4) Such as it may take title to or for the purpose of investing in real estate conditional sales contracts.

(5) Such as shall be convenient for the residences of its employees.

No real estate except that specified in subsections (1) and (5) of this section may be carried as an asset on the corporation's books for a longer period than five years from the date title is acquired thereto, unless an extension of time be

granted by the director. [1994 c 92 § 92; 1975 1st ex.s. c 285 § 3; 1973 1st ex.s. c 53 § 16.]

**30.42.170 Advertising, status of federal insurance on deposits to be included—Gifts for new deposits.** (1) An alien bank that advertises the services of its branch in the state of Washington shall indicate on all advertising materials whether or not deposits placed with its branch are insured by the federal deposit insurance corporation.

(2) A branch shall not make gifts to a new deposit customer of a greater value than five dollars in total. The value of the gifts shall be the cost to the branch of acquiring said gift. [1973 1st ex.s. c 53 § 17.]

**30.42.180 Approved agencies—Powers and activities.** An approved agency of an alien bank may engage in the business of making loans and guaranteeing obligations for the financing of the international movement of goods and services and for all operational needs including working capital and short-term operating needs and for the acquisition of fixed assets. Other than such activities, such agency may engage only in the following activities:

(1) Borrow funds from banks and other financial institutions;

(2) Buy and sell foreign exchange;

(3) Receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other securities for collection abroad and collect such instruments in the United States for customers abroad;

(4) Hold securities in safekeeping for, or buy and sell securities upon the order and for the risk of, customers abroad;

(5) Act as paying agent for securities issued by foreign governments or other organizations organized under foreign law and not qualified under the laws of the United States, or any state or the District of Columbia to do business in the United States;

(6) In order to prevent loss on debts previously contracted, an agency may acquire shares in a corporation: PROVIDED, That the shares are disposed of as soon as practical, but in no event later than two years from the date of acquisition;

(7) Issue letters of credit and create acceptances;

(8) In addition to the powers and activities expressly authorized by this section, an agency shall have the power to carry on such additional activities which are necessarily incidental to the activities expressly authorized by this section. [1973 1st ex.s. c 53 § 18.]

**30.42.190 Bonding requirements for officers and employees.** All officers and employees of an office shall be subject to the same bonding requirements as are officers and employees of banks incorporated under the laws of this state. [1973 1st ex.s. c 53 § 19.]

**30.42.200 Books and accounts—English language.** The books and accounts of an office and a bureau shall be kept in words and figures of the English language. [1973 1st ex.s. c 53 § 20.]

**30.42.210 Bureaus—Application procedure.** (1) Application procedure. An alien bank shall not establish and operate a bureau in this state unless it is authorized to do so and unless it has met the following conditions:

(a) It has filed with the director an application in such form and containing such information as shall be prescribed by the director;

(b) It has paid the fee required by law and established by the director pursuant to RCW 30.08.095;

(c) It has received from the director a certificate authorizing the applicant bank to establish and operate a bureau in conformity herewith.

(2) Upon receipt of the bank's application, and the conducting of such examination or investigation as the director deems necessary and appropriate and being satisfied that the opening of such bureau will be consistent with the purposes of this chapter, the director may grant approval for the bureau and issue a certificate authorizing the alien bank to establish and operate a bureau in the state of Washington. [1994 c 92 § 93; 1973 1st ex.s. c 53 § 21.]

**30.42.220 Bureaus—Approval—Certificate of authority—Time limit for commencing business.** If the director approves the application, he or she shall notify the alien bank of his or her approval and shall file certified copies of its charter, certificate, or other authorization to do business with the secretary of state and with the recording officer of the county in which the bureau is to be located. Upon such filing, the director shall issue a certificate of authority stating that the alien bank is authorized to operate a bureau in this state at the place designated in accordance with this chapter. No such certificate shall be transferable or assignable. Such certificate shall be conspicuously displayed at all times in the place of business specified therein.

A bureau of an alien bank must commence business within six months after the issuance of the director's certificate: PROVIDED, That the director for good cause shown may extend such period for an additional time not to exceed three months. [1994 c 92 § 94; 1973 1st ex.s. c 53 § 22.]

**30.42.230 Bureaus—Number—Powers.** An alien bank may have as many bureaus in this state as the director will authorize. A bureau in this state may provide information about services offered by the alien bank, its subsidiaries and affiliates and may gather and provide business and economic information. A bureau may not take deposits, make loans or transact other commercial or banking business in this state. [1994 c 92 § 95; 1973 1st ex.s. c 53 § 23.]

**30.42.240 Bureaus—Examinations.** The director is empowered to examine the bureau operations of an alien bank whenever he or she deems it necessary. The director shall collect from such alien bank the estimated actual cost of such examination. [1994 c 92 § 96; 1973 1st ex.s. c 53 § 24.]

**30.42.250 Temporary facilities at trade fairs, etc.** An alien bank may operate temporary facilities at trade fairs or other commercial events of short duration without first obtaining the approval of the director: PROVIDED, That the activities of such temporary facility are limited solely to the

dissemination of information: AND PROVIDED FURTHER, If an alien bank engages in such activity, it shall notify the director in writing prior to opening of the nature and location of such facility. The director is empowered to investigate the operation of such temporary facility if he or she deems it necessary, and to collect from the alien bank the estimated actual cost thereof. [1994 c 92 § 97; 1973 1st ex.s. c 53 § 25.]

**30.42.260 Reports.** (1) An office of an alien bank shall file the following reports with the director within such times and in such form as the director shall prescribe by rule:

(a) A statement of condition of the office;

(b) A capital position report of the office;

(c) A consolidated statement of condition of an alien bank.

(2) An office of an alien bank shall publish such reports as the director by rule may prescribe.

(3) An alien bank operating a bureau in this state shall file a copy of the alien bank's annual financial report with the director as soon as possible following the end of each fiscal year and shall file such other material as the director may prescribe by rule. [1994 c 92 § 98; 1973 1st ex.s. c 53 § 26.]

**30.42.270 Taxation.** An office of an alien bank shall be taxed on the same basis as are banks incorporated under the laws of this state. [1973 1st ex.s. c 53 § 27.]

**30.42.280 Directors, officers, and employees—Duties, responsibilities and restrictions—Removal.** The directors or other governing body of an alien bank and the officers and employees of its office in this state shall be subject to all of the duties, responsibilities and restrictions to which the directors, officers and employees of a bank organized under the laws of this state are subject insofar as such duties, responsibilities and restrictions are not inconsistent with the intent of this chapter. An officer or employee of the office of an alien bank doing business in this state pursuant to this chapter may be removed for the reasons stated and in the manner provided in RCW 30.12.040, as now or hereafter amended. [1973 1st ex.s. c 53 § 28.]

**30.42.290 Compliance—Violations—Penalties.** (1) The director shall have the responsibility for assuring compliance with the provisions of this chapter. An alien bank that conducts business in this state in violation of any provisions of this chapter is guilty of a misdemeanor and in addition thereto shall be liable in the sum of one hundred dollars per day that each such offense continues, such sum to be recovered by the attorney general in a civil action in the name of the state.

(2) Every person who shall knowingly subscribe to or make or cause to be made any false entry in the books of any alien bank office or bureau doing business in this state pursuant to this chapter or shall knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any such office or bureau or shall make, state or publish any false statement of the amount of the

assets or liabilities of any such office or bureau is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) Every director or member of the governing body, officer, employee or agent of such alien bank operating an office or bureau in this state who conceals or destroys any fact or otherwise suppresses any evidence relating to a violation of this chapter is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(4) Any person who transacts business in this state on behalf of an alien bank which is subject to the provisions of this chapter, but which is not authorized to transact such business pursuant to this chapter is guilty of a misdemeanor and in addition thereto shall be liable in the sum of one hundred dollars per day for each day that such offense continues, such sum to be recovered by the attorney general in a civil action in the name of the state. [2003 c 53 § 189; 1994 c 92 § 99; 1973 1st ex.s. c 53 § 29.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**30.42.300 Suspension or revocation of certificate to operate—Grounds.** If the director finds that any alien bank to which he or she has issued a certificate to operate an office or bureau in this state pursuant to this chapter has violated any law or rule, or has conducted its affairs in an unauthorized manner, or has been unresponsive to the director's lawful orders or directions, or is in an unsound or unsafe condition, or cannot with safety and expediency continue business, or if he or she finds that the alien bank's country is unjustifiably refusing to allow banks qualified to do business in and having their principal office within this state to operate offices or similar operations in such country, the director may suspend or revoke the certificate of such alien bank and notify it of such suspension or revocation. [1994 c 92 § 100; 1973 1st ex.s. c 53 § 30.]

**30.42.310 Change of location.** An alien bank licensed to maintain an office or bureau in this state pursuant to this chapter may apply to the director for leave to change the location of its office or bureau. Such applications shall be accompanied by an investigation fee as established in accordance with RCW 30.42.330. Leave for a change of location shall be granted if the director finds that the proposed new location offers reasonable promise of adequate support for the office. [1994 c 92 § 101; 1973 1st ex.s. c 53 § 31.]

**30.42.320 Rules.** The director shall have power to adopt uniform rules to govern examination and reports of alien bank offices and bureaus doing business in this state pursuant to this chapter and the form in which they shall report their assets, liabilities, and reserves, charge off bad debts and otherwise keep their records and accounts and otherwise to govern the administration of this chapter. [1994 c 92 § 102; 1973 1st ex.s. c 53 § 32.]

**30.42.330 Fees.** The director shall collect in advance from an alien bank for filing its application for an office or a bureau and the attendant investigation, and for such other applications, approvals or certificates provided herein, such fee as shall be established by rule adopted pursuant to the

administrative procedure act, chapter 34.05 RCW, as now or hereafter amended. The alien bank shall also pay to the secretary of state and the county recording officer for filing instruments as required by this chapter the same fees as are charged general corporations for the filing of similar instruments and also the same license fees as are required of foreign corporations doing business in this state. [1994 c 92 § 103; 1973 1st ex.s. c 53 § 33.]

**30.42.340 Alien banks or branches in business on or before effective date.** (1) Any branch of an alien bank that is conducting business in this state on July 16, 1973 pursuant to RCW 30.04.300 shall not be subject to the provisions of this chapter, and shall continue to conduct its business pursuant to RCW 30.04.300.

(2) Except as provided in subsection (1) of this section, any alien bank that is conducting business in this state on July 16, 1973 shall be subject to the provisions of this chapter: PROVIDED, That any such alien bank which has operated an agency or similar operation in this state for at least the five years immediately preceding such effective date shall not be denied a certificate to operate an agency. [1973 1st ex.s. c 53 § 34.]

**30.42.900 Severability—1973 1st ex.s. c 53.** If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1973 amendatory act, or the application of the provisions to other persons or circumstances shall not be affected. [1973 1st ex.s. c 53 § 38.]

## Chapter 30.43 RCW SATELLITE FACILITIES

### Sections

30.43.005 Finding—Definition of "off-premises electronic facilities."

**30.43.005 Finding—Definition of "off-premises electronic facilities."** The legislature finds that the establishment and operation of off-premises electronic facilities, inside and outside the state of Washington, and the participation by financial institutions in arrangements for the sharing of such facilities, facilitates the delivery of financial services to the citizens of the state of Washington. The term "off-premises electronic facilities" includes, without limitation, automated teller machines, cash-dispensing machines, point-of-sale terminals, and merchant-operated terminals. [1994 c 256 § 57.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

## Chapter 30.44 RCW INSOLVENCY AND LIQUIDATION

### Sections

30.44.010 Delinquencies, notice to correct—Possession may be taken.  
30.44.020 Director may order levy of assessment.  
30.44.030 Director's right to take possession may be contested.  
30.44.040 Notice of taking possession.  
30.44.050 Powers and duties of director.  
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30.44.240	Transfer of assets and liabilities to another bank or trust company.
30.44.250	Reopening.
30.44.260	Destruction of records after liquidation.
30.44.270	Federal deposit insurance corporation as receiver or liquidator—Appointment—Powers and duties.
30.44.280	Payment or acquisition of deposit liabilities by federal deposit insurance corporation—Not hindered by judicial review—Liability.

**30.44.010 Delinquencies, notice to correct—Possession may be taken.** Whenever it shall in any manner appear to the director that any bank or trust company has violated any provision of law or is conducting its business in an unsafe manner or that it refuses to submit its books, papers, or concerns to lawful inspection or that any director or officer thereof refuses to submit to examination on oath touching its concerns, or that it has failed to carry out any authorized order or direction of an examiner, the director may give notice to the bank or trust company so offending or delinquent or whose director or officer is thus offending or delinquent to correct such offense or delinquency and if such bank or trust company fails to comply with the terms of such notice within thirty days from the date of its issuance or within such further time as the director may allow, then the director may take possession of such bank or trust company as in case of insolvency. [1994 c 92 § 107; 1955 c 33 § 30.44.010. Prior: 1917 c 80 § 59; 1915 c 98 § 1; RRS § 3266.]

**30.44.020 Director may order levy of assessment.** Whenever it shall in any manner appear to the director that any offense or delinquency referred to in RCW 30.44.010 renders a bank or trust company in an unsound or unsafe condition to continue its business or that its capital or surplus is reduced or impaired below the amount required by its articles of incorporation or by this title, or that it has suspended payment of its obligations or is insolvent, the director may notify such bank or trust company to levy an assessment on its stock or otherwise to make good such impairment or offense or other delinquency within such time and in such manner as he or she may specify or if he or she deems necessary he or she may take possession thereof without notice.

The board of directors of any such bank or trust company, with the consent of the holders of record of two-thirds of the capital stock expressed either in writing or by vote at a stockholders' meeting called for that purpose, shall have power and authority to levy such assessment upon the stockholders pro rata and to forfeit the stock upon which any such assessment is not paid, in the manner prescribed in RCW 30.12.180. [1994 c 92 § 108; 1955 c 33 § 30.44.020. Prior: 1923 c 115 § 9; 1917 c 80 § 60; RRS § 3267.]

*Levy of assessments: RCW 30.12.180.*

(2004 Ed.)

**30.44.030 Director's right to take possession may be contested.** Within ten days after the director takes possession thereof, a bank or trust company may serve a notice upon the director to appear before the superior court of the county wherein such corporation is located and at a time to be fixed by said court, which shall not be less than five nor more than fifteen days from the date of the service of such notice, to show cause why such corporation should not be restored to the possession of its assets. Upon the return day of such notice, or such further day as the matter may be continued to, the court shall summarily hear said cause and shall dismiss the same, if it be found that possession was taken by the director in good faith and for cause, but if it find that no cause existed for the taking possession of such corporation, it shall require the director to restore such bank or trust company to possession of its assets and enjoin him or her from further interference therewith without cause. [1994 c 92 § 109; 1955 c 33 § 30.44.030. Prior: 1917 c 80 § 68; RRS § 3275.]

**30.44.040 Notice of taking possession.** Upon taking possession of any bank or trust company, the director shall forthwith give written notice thereof to all persons having possession of any assets of such corporation. No person knowing of the taking of such possession by the director shall have a lien or charge for any payment thereafter advanced or clearance thereafter made or liability thereafter incurred against any of the assets of such corporation. [1994 c 92 § 110; 1955 c 33 § 30.44.040. Prior: 1917 c 80 § 61; 1915 c 98 § 2; RRS § 3268.]

**30.44.050 Powers and duties of director.** Upon taking possession of any bank or trust company, the director shall proceed to collect the assets thereof and to preserve, administer and liquidate the business and assets of such corporation. With the approval of the superior court of the county in which such corporation is located, he or she may sell, compound or compromise bad or doubtful debts, and upon such terms as the court shall direct borrow, mortgage, pledge or sell all or any part of the real estate and personal property of such corporation. He or she shall deliver to each purchaser or lender an appropriate deed, mortgage, agreement of pledge or other instrument of title or security. If real estate is situated outside of said county, a certified copy of the orders authorizing and confirming the sale or mortgage thereof shall be filed for record in the office of the auditor of the county in which such property is situated. He or she may appoint special assistants and other necessary agents to assist in the administration and liquidation of such corporation, a certificate of such appointment to be filed with the clerk of the county in which such corporation is located. He or she shall require each special assistant to give a surety company bond, conditioned as he or she shall provide, the premium of which shall be paid out of the assets of such corporation. He or she may also employ an attorney for legal assistance in such administration and liquidation. [1994 c 92 § 111; 1955 c 33 § 30.44.050. Prior: 1933 c 42 § 25; 1917 c 80 § 62; 1915 c 98 § 3; RRS § 3269.]

**30.44.060 Notice to creditors—Claims.** The director shall publish once a week for four consecutive weeks in a newspaper which he or she shall select, a notice requiring all persons having claims against such corporation to make

proof thereof at the place therein specified not later than ninety days from the date of the first publication of said notice, which date shall be therein stated. He or she shall mail similar notices to all persons whose names appear as creditors upon the books of the corporation. He or she may approve or reject any claims, but shall serve notice of rejection upon the claimant by mail or personally. An affidavit of service of such notice shall be prima facie evidence thereof. No action shall be brought on any claim after three months from the date of service of notice of rejection.

Claims of depositors may be presented after the expiration of the time fixed in the notice, and, if approved, shall be entitled to their proportion of prior dividends, if there be funds sufficient therefor, and shall share in the distribution of the remaining assets.

After the expiration of the time fixed in the notice the director shall have no power to accept any claim except the claim of a depositor, and all claims except the claims of depositors shall be barred. [1994 c 92 § 112; 1955 c 33 § 30.44.060. Prior: 1923 c 115 § 10; 1917 c 80 § 63; 1915 c 98 § 4; RRS § 3270.]

**30.44.070 Inventory—List of claims.** Upon taking possession of such corporation, the director shall make an inventory of the assets in duplicate and file one in his or her office and one in the office of the county clerk. Upon the expiration of the time fixed for the presentation of claims, he or she shall make a duplicate list of claims presented, segregating those approved and those rejected, to be filed as aforesaid. He or she shall also make and file a supplemental list of claims at least fifteen days before the declaration of any dividend, and in any event at least every six months. [1994 c 92 § 113; 1955 c 33 § 30.44.070. Prior: 1917 c 80 § 65; 1915 c 98 § 6; RRS § 3272.]

**30.44.080 Objections to approved claims.** Objection may be made by any interested person to any claim approved by the director, which objection shall be determined by the court upon such notice to the claimant and objector as the court shall prescribe. [1994 c 92 § 114; 1955 c 33 § 30.44.080. Prior: 1917 c 80 § 67; 1915 c 98 § 8; RRS § 3274.]

**30.44.090 Dividends.** At any time after the expiration of the date fixed for the presentation of claims, the director, subject to the approval of the court, may declare one or more dividends out of the funds remaining in his or her hands after the payment of expenses. [1994 c 92 § 115; 1955 c 33 § 30.44.090. Prior: 1917 c 80 § 66; 1915 c 98 § 7; RRS § 3273.]

**30.44.100 Receiver prohibited except in emergency.** No receiver shall be appointed by any court for any bank or trust company nor shall any assignment of any bank or trust company for the benefit of creditors be valid, excepting only that a court otherwise having jurisdiction may in case of imminent necessity appoint a temporary receiver to take possession of and preserve the assets of such corporation. Immediately upon any such appointment, the clerk of such court shall notify the director by telegraph and mail of such

appointment and the director shall forthwith take possession of such bank or trust company, as in case of insolvency, and such temporary receiver shall upon demand of the director surrender up to him or her such possession and all assets which shall have come into the hands of such receiver. The director shall in due course pay such receiver out of the assets of such corporation such amount as the court shall allow. [1994 c 92 § 116; 1955 c 33 § 30.44.100. Prior: 1917 c 80 § 69; 1915 c 98 § 9; RRS § 3276.]

**30.44.110 Preferences prohibited—Penalty.** Every transfer of its property or assets by any bank or trust company in this state, made in contemplation of insolvency, or after it shall have become insolvent, with a view to the preference of one creditor over another, or to prevent the equal distribution of its property and assets among its creditors, shall be void. Every director, officer, or employee making any such transfer is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 190; 1955 c 33 § 30.44.110. Prior: 1917 c 80 § 55; RRS § 3262.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**30.44.120 Receiving deposits when insolvent—Penalty.** An officer, director or employee of any bank or trust company who shall fraudulently receive for it any deposit, knowing that such bank or trust company is insolvent, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 191; 1955 c 33 § 30.44.120. Prior: 1933 c 42 § 26; 1917 c 80 § 81; RRS § 3288.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

*Receiving deposits after insolvency prohibited: State Constitution Art. 12 § 12.*

**30.44.130 Expense of liquidation.** All expenses incurred by the director in taking possession, administering and winding up any such corporation, including the expenses of assistants and reasonable fees for any attorney who may be employed in connection therewith, and the reasonable compensation of any special assistant placed in charge of such corporation shall be a first charge upon the assets thereof. Such charges shall be fixed by the director, subject to the approval of the court. [1994 c 92 § 117; 1955 c 33 § 30.44.130. Prior: 1917 c 80 § 64; 1915 c 98 § 5; RRS § 3271.]

**30.44.140 Liquidation after claims are paid.** When all proper claims of depositors and creditors (not including stockholders) have been paid, as well as all expenses of administration and liquidation and proper provision has been made for unclaimed or unpaid deposits and dividends, and assets still remain in his or her hands, the director shall call a meeting of the stockholders of such corporation, giving thirty days' notice thereof, by one publication in a newspaper published in the county where such corporation is located. At such meeting, each share shall entitle the holder thereof to a vote in person or by proxy. A vote by ballot shall be taken to determine whether the director shall wind up the affairs of such corporation or the stockholders appoint an agent to do so. The director, if so required, shall wind up such corpora-

tion and distribute its assets to those entitled thereto. If the appointment of an agent is determined upon, the stockholders shall forthwith select such agent by ballot. Such agent shall file a bond to the state of Washington in such amount and so conditioned as the director shall require. Thereupon the director shall transfer to such agent the assets of such corporation then remaining in his or her hands, and be relieved from further responsibility in reference to such corporation. Such agent shall convert the assets of such corporation into cash and distribute the same to the parties thereunto entitled, subject to the supervision of the court. In case of his or her death, removal or refusal to act, the stockholders may select a successor with like powers. [1994 c 92 § 118; 1955 c 33 § 30.44.140. Prior: 1917 c 80 § 70; RRS § 3277.]

**30.44.150 Unclaimed dividends—Disposition.** Any dividends to depositors or other creditors of such bank or trust company remaining uncalled for and unpaid in the hands of the director for six months after order of final distribution, shall be deposited in a bank or trust company to his or her credit, in trust for the benefit of the persons entitled thereto and subject to the supervision of the court shall be paid by him or her to them upon receipt of satisfactory evidence of their right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the director into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action. [1994 c 92 § 119; 1955 c 33 § 30.44.150. Prior: 1923 c 115 § 11; 1917 c 80 § 71; RRS § 3278.]

**30.44.160 Voluntary closing—Notice.** Any bank or trust company may place itself under the control of the director to be liquidated as herein provided by posting a notice on its door as follows: "This bank (trust company) is in the hands of the State Director of Financial Institutions."

Immediately upon the posting of such notice, the officers of such corporation shall notify the director thereof by telegraph and mail. The posting of such notice or the taking possession of any bank or trust company by the director shall be sufficient to place all of its assets and property of every nature in his or her possession and bar all attachment proceedings. [1994 c 92 § 120; 1955 c 33 § 30.44.160. Prior: 1917 c 80 § 72; RRS § 3279.]

**30.44.170 Voluntary liquidation—Notice to creditors.** Any bank or trust company may, upon receipt of written permission from the director, go into voluntary liquidation by a vote of its stockholders owning two-thirds of its capital stock. When such liquidation is authorized, the directors of such corporation shall publish in a newspaper published in the place where such corporation is located, once a week for four consecutive weeks, a notice requiring creditors of such corporation to present their claims against it for payment. [1994 c 92 § 121; 1955 c 33 § 30.44.170. Prior: 1917 c 80 § 74; RRS § 3281.]

**30.44.180 Unclaimed dividends on voluntary liquidation.** Whenever any bank or trust company shall voluntarily

liquidate, any dividends to depositors or other creditors of such bank or trust company remaining uncalled for and unpaid at the conclusion of the liquidation shall be transmitted to the director and shall be deposited by him or her in a bank or trust company to his or her credit in trust for the benefit of the persons entitled thereto, and shall be paid by him or her to them upon receipt of satisfactory evidence of their right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the director into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action. [1994 c 92 § 122; 1955 c 33 § 30.44.180. Prior: 1947 c 148 § 1; Rem. Supp. 1947 § 3281-1.]

**30.44.190 Disposition of unclaimed personal property.** Whenever any bank or trust company shall be liquidated, voluntarily or involuntarily, and shall retain in its possession at the conclusion of the liquidation, uncalled for and unclaimed personal property left with it for safekeeping, such property shall, in the presence of at least one witness, be inventoried by the liquidating agent and sealed in separate packages, each package plainly marked with the name and last known address of the person in whose name the property stands on the books of the bank or trust company. If the property is in safe deposit boxes, such boxes shall be opened by the liquidating agent in the presence of at least one witness, and the property inventoried, sealed in packages and marked as above required. All the packages shall be transmitted to the director, together with certificates signed by the liquidating agent and witness or witnesses, listing separately the property standing in the name of any one person on the books of the bank or trust company, together with the date of inventory, and name and last known address of the person in whose name the property stands. [1994 c 92 § 123; 1955 c 33 § 30.44.190. Prior: 1947 c 148 § 2; Rem. Supp. 1947 § 3281-2.]

**30.44.200 Duty of director—Notice to owner.** Upon receiving possession of the packages, the director shall cause them to be opened in the presence of at least one witness, the property inventoried, and the packages resealed, and held for safekeeping. The liquidated bank, its directors, officers, and shareholders, and the liquidating agent shall thereupon be relieved of responsibility and liability for the property so delivered to and received by the director. The director shall send immediately to each person in whose name the property stood on the books of the liquidated bank or trust company, at his or her last known address, in a securely closed, postpaid and registered letter, a notice that the property listed will be held in his or her name for a period of not less than two years. At any time after the mailing of such notice, and before the expiration of two years, such person may require the delivery of the property so held, by properly identifying himself or herself and offering evidence of his or her right thereto, to the satisfaction of the director. [1994 c 92 § 124; 1955 c 33 § 30.44.200. Prior: 1947 c 148 § 3; Rem. Supp. 1947 § 3281-3.]

**30.44.210 Final notice after two years—Sale.** After the expiration of two years from the time of mailing the notice, the director shall mail in a securely closed postpaid registered letter, addressed to the person at his or her last known address, a final notice stating that two years have elapsed since the sending of the notice referred to in RCW 30.44.200, and that the director will sell all the property or articles of value set out in the notice, at a specified time and place, not less than thirty days after the time of mailing the final notice. Unless the person shall, on or before the day mentioned, claim the property, identify himself or herself and offer evidence of his or her right thereto, to the satisfaction of the director, the director may sell all the property or articles of value listed in the notice, at public auction, at the time and place stated in the final notice: PROVIDED, That a notice of the time and place of sale has been published once within ten days prior to the sale in a newspaper of general circulation in the county where the sale is held. Any such property held by the director, the owner of which is not known, may be sold at public auction after it has been held by the director for two years, provided, that a notice of the time and place of sale has been published once within ten days prior to the sale in a newspaper of general circulation in the county where the sale is held. [1994 c 92 § 125; 1985 c 469 § 15; 1955 c 33 § 30.44.210. Prior: 1947 c 148 § 4; Rem. Supp. 1947 § 3281-4.]

**30.44.220 Disposition of proceeds—Escheat.** The proceeds of such sale shall be deposited by the director in a bank or trust company to his or her credit, in trust for the benefit of the person entitled thereto, and shall be paid by him or her to such person upon receipt of satisfactory evidence of his or her right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the director into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action. [1994 c 92 § 126; 1955 c 33 § 30.44.220. Prior: 1947 c 148 § 5; Rem. Supp. 1947 § 3281-5.]

**30.44.230 Procedure as to papers, documents, etc.** Whenever the personal property held by a liquidated bank or trust company shall consist either wholly or in part, of documents, letters, or other papers of a private nature, such documents, letters, or papers shall not be sold, but shall be retained by the director for a period of five years, and, unless sooner claimed by the owner, may be thereafter destroyed in the presence of the director and at least one other witness. [1994 c 92 § 127; 1955 c 33 § 30.44.230. Prior: 1947 c 148 § 6; Rem. Supp. 1947 § 3281-6.]

**30.44.240 Transfer of assets and liabilities to another bank or trust company.** A bank or trust company may for the purpose of voluntary liquidation transfer its assets and liabilities to another bank or trust company, by a vote, or with the written consent of the stockholders of record owning two-thirds of its capital stock, but only with the written consent of the director and upon such terms and conditions as he or she may prescribe. Upon any such transfer being made, or upon the liquidation of any such corporation for any cause what-

ever or upon its being no longer engaged in the business of a bank or trust company, the director shall terminate its certificate of authority, which shall not thereafter be revived or renewed. When the certificate of authority of any such corporation shall have been revoked, it shall forthwith collect and distribute its remaining assets, and when that is done the director shall certify the fact to the secretary of state, whereupon the corporation shall cease to exist and the secretary of state shall note that fact upon his or her records. [1994 c 92 § 128; 1955 c 33 § 30.44.240. Prior: 1953 c 236 § 1; 1923 c 115 § 12; 1919 c 209 § 17; 1917 c 80 § 75; RRS § 3282.]

**30.44.250 Reopening.** Whenever the director has taken possession of a bank or trust company for any cause, he or she may wind up such corporation and cancel its certificate of authority, unless enjoined from so doing, as herein provided. Or if at any time within ninety days after taking possession, he or she shall determine that all impairment and delinquencies have been made good, and that it is safe and expedient for such corporation to reopen, he or she may permit such corporation to reopen upon such terms and conditions as he or she shall prescribe. Before being permitted to reopen, every such corporation shall pay all of the expenses of the director, as herein elsewhere defined. [1994 c 92 § 129; 1955 c 33 § 30.44.250. Prior: 1917 c 80 § 73; RRS § 3280.]

**30.44.260 Destruction of records after liquidation.** Where any files, records, documents, books of account or other papers have been taken over and are in the possession of the director in connection with the liquidation of any insolvent banks or trust companies under the laws of this state, the director may, in his or her discretion at any time after the expiration of one year from the declaration of the final dividend, or from the date when such liquidation has been entirely completed, destroy any of the files, records, documents, books of account or other papers which may appear to the director to be obsolete or unnecessary for future reference as part of the liquidation and files of his or her office. [1994 c 92 § 130; 1955 c 33 § 30.44.260. Prior: 1925 ex.s. c 55 § 1; RRS § 3277-1.]

**30.44.270 Federal deposit insurance corporation as receiver or liquidator—Appointment—Powers and duties.** The federal deposit insurance corporation is hereby authorized and empowered to be and act without bond as receiver or liquidator of any bank or trust company the deposits in which are to any extent insured by that corporation and which shall have been closed on account of inability to meet the demands of its depositors. In the event of such closing, the director may appoint the federal deposit insurance corporation as receiver or liquidator of such bank or trust company. If the corporation accepts such appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a liquidator of a bank or trust company, its depositors and other creditors, and be subject to all the duties of such liquidator, except insofar as such powers, privileges, or duties are in conflict with the provisions of the federal deposit insurance act, as now or hereafter amended. [1994 c 92 § 131; 1973 1st ex.s. c 54 § 1.]

**30.44.280 Payment or acquisition of deposit liabilities by federal deposit insurance corporation—Not hindered by judicial review—Liability.** The pendency of any proceedings for judicial review of the director's actions in taking possession and control of a bank or trust company and its assets for the purpose of liquidation shall not operate to defer, delay, impede, or prevent the payment or acquisition by the federal deposit insurance corporation of the deposit liabilities of the bank or trust company which are insured by the corporation. During the pendency of any proceedings for judicial review, the director shall make available to the federal deposit insurance corporation such facilities in or of the bank or trust company and such books, records, and other relevant data of the bank or trust company as may be necessary or appropriate to enable the corporation to pay out or to acquire the insured deposit liabilities of the bank or trust company. The federal deposit insurance corporation and its directors, officers, agents, and employees, and the director and his or her agents and employees shall be free from liability to the bank or trust company, its directors, stockholders, and creditors for or on account of any action taken in connection herewith. [1994 c 92 § 132; 1973 1st ex.s. c 54 § 2.]

### Chapter 30.46 RCW

#### SUPERVISORY DIRECTION—CONSERVATORSHIP

##### Sections

30.46.010	Definitions.
30.46.020	Grounds for determining need for supervisory direction—Abatement of determination—Supervisory direction, procedure—Conservator.
30.46.030	Supervisory direction—Appointment of representative to supervise—Restrictions on operations.
30.46.040	Conservator—Appointment—Grounds—Powers, duties, and functions.
30.46.050	Costs as charge against bank's assets.
30.46.060	Request for review of action—Stay of action—Orders subject to review.
30.46.070	Suits against bank or conservator, where brought—Suits by conservator.
30.46.080	Duration of conservator's term—Rehabilitated banks—Management.
30.46.090	Authority of director.
30.46.100	Rules.

**30.46.010 Definitions.** For the purposes of this chapter the following terms shall be defined as follows:

(1) "Unsafe condition" shall mean and include, but not be limited to, any one or more of the following circumstances:

(a) If a bank's capital is impaired or impairment of capital is threatened;

(b) If a bank violates the provisions of Title 30 RCW or any other law or regulation applicable to banks;

(c) If a bank conducts a fraudulent or questionable practice in the conduct of its business that endangers the bank's reputation or threatens its solvency;

(d) If a bank conducts its business in an unsafe or unauthorized manner;

(e) If a bank violates any conditions of its charter or any agreement entered with the director; or

(f) If a bank fails to carry out any authorized order or direction of the examiner or the director.

(2) "Exceeded its powers" shall mean and include, but not be limited to the following circumstances:

(a) If a bank has refused to permit examination of its books, papers, accounts, records, or affairs by the director, assistant director, or duly commissioned examiners; or

(b) If a bank has neglected or refused to observe an order of the director to make good, within the time prescribed, any impairment of its capital.

(3) "Consent" includes and means a written agreement by the bank to either supervisory direction or conservatorship under this chapter. [1994 c 92 § 133; 1975 1st ex.s. c 87 § 1.]

**30.46.020 Grounds for determining need for supervisory direction—Abatement of determination—Supervisory direction, procedure—Conservator.** If upon examination or at any other time it appears to the director that any bank is in an unsafe condition and its condition is such as to render the continuance of its business hazardous to the public or to its depositors and creditors, or if such bank appears to have exceeded its powers or has failed to comply with the law, or if such bank gives its consent, then the director shall upon his or her determination (1) notify the bank of his or her determination, and (2) furnish to the bank a written list of the director requirements to abate his or her determination, and (3) if the director makes further determination to directly supervise, he or she shall further the bank that it is under the supervisory direction of the director and that the director is invoking the provisions of this chapter. If placed under supervisory direction the bank shall comply with the lawful requirements of the director within such time as provided in the notice of the director, subject however, to the provisions of this chapter. If the bank fails to comply within such time the director may appoint a conservator as hereafter provided. [1994 c 92 § 134; 1975 1st ex.s. c 87 § 2.]

**30.46.030 Supervisory direction—Appointment of representative to supervise—Restrictions on operations.** During the period of supervisory direction the director may appoint a representative to supervise such bank and may provide that the bank may not do any of the following during the period of supervisory direction, without the prior approval of the director or the appointed representative.

(1) Dispose of, convey or encumber any of the assets;

(2) Withdraw any of its bank accounts;

(3) Lend any of its funds;

(4) Invest any of its funds;

(5) Transfer any of its property; or

(6) Incur any debt, obligation, or liability. [1994 c 92 § 135; 1975 1st ex.s. c 87 § 3.]

**30.46.040 Conservator—Appointment—Grounds—Powers, duties, and functions.** After the period of supervisory direction specified by the director for compliance, if he or she determines that such bank has failed to comply with the lawful requirements imposed, upon due notice and hearing or by consent of the bank, the director may appoint a conservator, who shall immediately take charge of such bank and all of its property, books, records, and effects. The conservator shall conduct the business of the bank and take such steps toward the removal of the causes and conditions which have necessitated such order, as the director may direct. During the pendency of the conservatorship the conservator shall make

such reports to the director from time to time as may be required by the director, and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of such bank, including claims or causes of actions belonging to or which may be asserted by such bank, and to deal with the same in his or her own name as conservator, and shall be empowered to file, prosecute, and defend any suit and suits which have been filed or which may thereafter be filed by or against such bank which are deemed by the conservator to be necessary to protect all of the interested parties for a property affected thereby. The director, or any newly appointed assistant, may be appointed to serve as conservator. If the director, however, is satisfied that such bank is not in condition to continue business in the interest of its depositors or creditors under the conservator as above provided, the director may proceed with appropriate remedies provided by other provisions of this title. [1994 c 92 § 136; 1975 1st ex.s. c 87 § 4.]

**30.46.050 Costs as charge against bank's assets.** All costs incident to supervisory direction and the conservatorship shall be fixed and determined by the director and shall be a charge against the assets of the bank to be allowed and paid as the director may determine. [1994 c 92 § 137; 1975 1st ex.s. c 87 § 5.]

**30.46.060 Request for review of action—Stay of action—Orders subject to review.** During the period of the supervisory direction and during the period of conservatorship, the bank may request the director to review an action taken or proposed to be taken by the representative or conservator; specifying wherein the action complained of is believed not to be in the best interest of the bank, and such request shall stay the action specified pending review of such action by the director. Any order entered by the director appointing a representative and providing that the bank shall not do certain acts as provided in RCW 30.46.030 and 30.46.040, any order entered by the director appointing a conservator, and any order by the director following the review of an action of the representative or conservator as herein above provided shall be subject to review in accordance with the administrative procedure act of the state of Washington. [1994 c 92 § 138; 1975 1st ex.s. c 87 § 6.]

**30.46.070 Suits against bank or conservator, where brought—Suits by conservator.** Any suit filed against a bank or its conservator, after the entrance of an order by the director placing such bank in conservatorship and while such order is in effect, shall be brought in the superior court of Thurston county and not elsewhere. The conservator appointed hereunder for such bank may file suit in any superior court or other court of competent jurisdiction against any person for the purpose of preserving, protecting, or recovering any asset or property of such bank including claims or causes of action belonging to or which may be asserted by such bank. [1994 c 92 § 139; 1975 1st ex.s. c 87 § 7.]

**30.46.080 Duration of conservator's term—Rehabilitated banks—Management.** The conservator shall serve for such time as is necessary to accomplish the purposes of

the conservatorship as intended by this chapter. If rehabilitated, the rehabilitated bank shall be returned to management or new managements under such conditions as are reasonable and necessary to prevent recurrence of the condition which occasioned the conservatorship. [1975 1st ex.s. c 87 § 8.]

**30.46.090 Authority of director.** If the director determines to act under authority of this chapter, the sequence of his or her acts and proceedings shall be as set forth in this chapter. However, it is the purpose and substance of this chapter to authorize administrative discretion—to allow the director administrative discretion in the event of unsound banking operations—and in furtherance of that purpose the director is hereby authorized to proceed with regulation either under this chapter or under any other applicable provisions of law or under this chapter in connection with other law, either as such law is now existing or is hereinafter enacted, and it is so provided. [1994 c 92 § 140; 1975 1st ex.s. c 87 § 9.]

**30.46.100 Rules.** The director is empowered to adopt and promulgate such reasonable rules as may be necessary for the implementation of this chapter and its purposes. [1994 c 92 § 141; 1975 1st ex.s. c 87 § 10.]

## Chapter 30.49 RCW

### MERGER, CONSOLIDATION, AND CONVERSION

#### Sections

- 30.49.010 Definitions.
- 30.49.020 State bank to resulting national bank—Laws applicable—Vote required—Termination of franchise.
- 30.49.030 State or national bank to resulting state bank—Law applicable to nationals.
- 30.49.040 Merger to resulting state bank—Exception—Agreement, contents, approval, amendment.
- 30.49.050 Merger to resulting state bank—Stockholders' vote—Notice of meeting—Waiver of notice.
- 30.49.060 Merger to resulting state bank—Effective date—Termination of charters—Certificate of merger.
- 30.49.070 Conversion of national to state bank—Requirements—Procedure.
- 30.49.080 Resulting bank as same business and corporate entity—Use of name of merging, converting bank.
- 30.49.090 Rights of dissenting shareholder—Appraisal—Amount due as debt.
- 30.49.100 Provision for successors to fiduciary positions.
- 30.49.110 Assets, business—Time for conformance with state law.
- 30.49.120 Resulting state bank—Valuation of certain assets limited.
- 30.49.125 Resulting bank has branches inside and outside of state—Application—Definitions—Combination or purchase and assumption requires director's approval—Deposit concentration limits.
- 30.49.130 Severability—1955 c 33.

*Reorganization as subsidiary of bank holding company: RCW 30.04.550 through 30.04.570.*

**30.49.010 Definitions.** As used in this chapter:  
 "Merging bank" means a party to a merger;  
 "Converting bank" means a bank converting from a state to a national bank, or the reverse;  
 "Merger" includes consolidation;  
 "Resulting bank" means the bank resulting from a merger or conversion.

Wherever reference is made to a vote of stockholders or a vote of classes of stockholders it shall mean only a vote of

those entitled to vote under the terms of such shares. [1986 c 279 § 43; 1955 c 33 § 30.49.010. Prior: 1953 c 234 § 1.]

**30.49.020 State bank to resulting national bank—Laws applicable—Vote required—Termination of franchise.** This section is applicable where there is to be a resulting national bank.

Nothing in the law of this state shall restrict the right of a state bank to merge with or convert into a resulting national bank. The action to be taken by such merging or converting state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed at the time of the action for national banks merging with or converting into a resulting state bank by the law of the United States, and not by the law of this state, except that a vote of the holders of two-thirds of each class of voting stock of a state bank shall be required for the merger or conversion, and that on conversion by a state into a national bank the rights of dissenting stockholders shall be those specified in RCW 30.49.090.

Upon the completion of the merger or conversion, the franchise of any merging or converting state bank shall automatically terminate. [1955 c 33 § 30.49.020. Prior: 1953 c 234 § 2.]

**30.49.030 State or national bank to resulting state bank—Law applicable to nationals.** This section is applicable where there is to be a resulting state bank.

Upon approval by the director, state or national banks may be merged to result in a state bank, or a national bank may convert into a state bank as hereafter prescribed, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the law of the United States which shall also govern the rights of its dissenting shareholders. [1994 c 92 § 142; 1955 c 33 § 30.49.030. Prior: 1953 c 234 § 3.]

**30.49.040 Merger to resulting state bank—Exception—Agreement, contents, approval, amendment.** This section is applicable where there is to be a resulting state bank, except in the case of reorganization and exchange as authorized by this title.

(1) The board of directors of each merging state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

(a) The name of each merging state or national bank and location of each office;

(b) With respect to the resulting state bank, (i) the name and location of the principal and other offices; (ii) the name and mailing address of each director to serve until the next annual meeting of the stockholders; (iii) the name and mailing address of each officer; (iv) the amount of capital, the number of shares and the par value, if any, of each share; and (v) the amendments to its charters and bylaws;

(c) Provisions governing the exchange of shares of the merging state or national banks for such consideration as has been agreed to in the merger agreement;

(d) A statement that the agreement is subject to approval by the director and the stockholders of each merging state or national bank;

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(e) Provisions governing the manner of disposing of the shares of the resulting state bank if such shares are to be issued in the transaction and are not taken by dissenting shareholders of merging state or national banks;

(f) Such other provisions as the director requires to discharge his or her duties with respect to the merger;

(2) After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the director for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any merging national bank;

(3) Within sixty days after receipt by the director of the papers specified in subsection (2) of this section, the director shall approve or disapprove of the merger agreement, and if no action is taken, the agreement shall be deemed approved. The director shall approve the agreement if it appears that:

(a) The resulting state bank meets the requirements of state law as to the formation of a new state bank;

(b) The agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken;

(c) The agreement is fair;

(d) The merger is not contrary to the public interest.

If the director disapproves an agreement, he or she shall state his or her objections and give an opportunity to the merging state or national banks to amend the merger agreement to obviate such objections. [1994 c 92 § 143; 1986 c 279 § 49; 1982 c 196 § 9; 1955 c 33 § 30.49.040. Prior: 1953 c 234 § 4.]

**Severability—1982 c 196:** See note following RCW 30.04.550.

*Reorganization as subsidiary of bank holding company: RCW 30.04.550 through 30.04.570.*

**30.49.050 Merger to resulting state bank—Stockholders' vote—Notice of meeting—Waiver of notice.** To be effective, a merger which is to result in a state bank must be approved by the stockholders of each merging state bank by a vote of two-thirds of the outstanding voting stock of each class at a meeting called to consider such action, which vote shall constitute the adoption of the charter and bylaws of the resulting state bank, including the amendments in the merger agreement.

Unless waived in writing, notice of the meeting of stockholders shall be given by publication in a newspaper of general circulation in the place where the principal office of each merging state bank is located, at least once each week for four successive weeks, and by mail, at least fifteen days before the date of the meeting, to each stockholder of record of each merging state bank at his address on the books of his bank; no notice of publication need be given if written waivers are received from the holders of two-thirds of the outstanding shares of each class of stock. The notice shall state that dissenting stockholders will be entitled to payment of the value of only those shares which are voted against approval of the plan. [1955 c 33 § 30.49.050. Prior: 1953 c 234 § 5.]

**30.49.060 Merger to resulting state bank—Effective date—Termination of charters—Certificate of merger.** A

merger which is to result in a state bank shall, unless a later date is specified in the agreement, become effective after the filing with and upon the approval of the director of the executed agreement together with copies of the resolutions of the stockholders of each merging state or national bank approving it, certified by the bank's president or a vice president and a secretary. The charters of the merging banks, other than the resulting bank, shall thereupon automatically terminate.

The director shall thereupon issue to the resulting state bank a certificate of merger specifying the name of each merging state or national bank and the name of the resulting state bank. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging state or national bank is held. [1994 c 92 § 144; 1955 c 33 § 30.49.060. Prior: 1953 c 234 § 6.]

**30.49.070 Conversion of national to state bank—Requirements—Procedure.** Except as provided in RCW 30.49.100, a national bank located in this state which follows the procedure prescribed by the laws of the United States to convert into a state bank shall be granted a state charter by the director if he or she finds that the bank meets the standards as to location of offices, capital structures, and business experience and character of officers and directors for the incorporation of a state bank.

The national bank may apply for such charter by filing with the director a certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of a national to a state bank, and the articles of incorporation, approved by the stockholders, for the government of the bank as a state bank. [1994 c 92 § 145; 1955 c 33 § 30.49.070. Prior: 1953 c 234 § 7.]

**30.49.080 Resulting bank as same business and corporate entity—Use of name of merging, converting bank.** A resulting state or national bank shall be the same business and corporate entity as each merging state or national bank or as the converting state or national bank with all property, rights, powers and duties of each merging state or national bank or the converting state or national bank, except as affected by the state law in the case of a resulting state bank or the federal law in the case of a resulting national bank, and by the charter and bylaws of the resulting state or national bank.

A resulting state or national bank shall have the right to use the name of any merging state or national bank or of the converting bank whenever it can do any act under such name more conveniently.

Any reference to a merging or converting state or national bank in any writing, whether executed or taking effect before or after the merger or conversion, shall be deemed a reference to the resulting state or national bank if not inconsistent with the other provisions of such writing. [1955 c 33 § 30.49.080. Prior: 1953 c 234 § 8.]

**30.49.090 Rights of dissenting shareholder—Appraisal—Amount due as debt.** The owner of shares of a state bank which were voted against a merger to result in a state bank, or against the conversion of a state bank into a national bank, shall be entitled to receive their value in cash, if and when the merger or conversion becomes effective, upon written demand made to the resulting state or national bank at any time within thirty days after the effective date of the merger or conversion, accompanied by the surrender of the stock certificates. The value of such shares shall be determined, as of the date of the shareholders' meeting approving the merger or conversion, by three appraisers, one to be selected by the owners of two-thirds of the dissenting shares, one by the board of directors of the resulting state or national bank, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the merger or conversion becomes effective, the director shall cause an appraisal to be made.

The dissenting shareholders shall bear, on a pro rata basis based on the number of dissenting shares owned, the cost of their appraisal and one-half of the cost of a third appraisal, and the resulting bank shall bear the cost of its appraisal and one-half of the cost of the third appraisal. If the director causes an appraisal to be made, the cost of that appraisal shall be borne equally by the dissenting shareholders and the resulting bank, with the dissenting shareholders sharing their half of the cost on a pro rata basis based on the number of dissenting shares owned.

The resulting state or national bank may fix an amount which it considers to be not more than the fair market value of the shares of a merging or the converting bank at the time of the stockholders' meeting approving the merger or conversion, which it will pay dissenting shareholders of the bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state or national bank. [1994 c 256 § 58; 1994 c 92 § 146; 1955 c 33 § 30.49.090. Prior: 1953 c 234 § 9.]

**Reviser's note:** This section was amended by 1994 c 92 § 146 and by 1994 c 256 § 58, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.49.100 Provision for successors to fiduciary positions.** Where a resulting state bank is not to exercise trust powers, the director shall not approve a merger or conversion until satisfied that adequate provision has been made for successors to fiduciary positions held by the merging state or national banks or the converting state or national bank. [1994 c 92 § 147; 1955 c 33 § 30.49.100. Prior: 1953 c 234 § 10.]

**30.49.110 Assets, business—Time for conformance with state law.** If a merging or converting state or national bank has assets which do not conform to the requirements of state law for the resulting state bank or carries on business activities which are not permitted for the resulting state bank, the director may permit a reasonable time to conform with state law. [1994 c 92 § 148; 1955 c 33 § 30.49.110. Prior: 1953 c 234 § 11.]

**30.49.120 Resulting state bank—Valuation of certain assets limited.** Without approval by the director no asset shall be carried on the books of the resulting state bank at a valuation higher than that on the books of the merging or converting state or national bank at the time of its last examination by a state examiner or national bank examiner before the effective date of the merger or conversion. [1994 c 92 § 149; 1955 c 33 § 30.49.120. Prior: 1953 c 234 § 12.]

**30.49.125 Resulting bank has branches inside and outside of state—Application—Definitions—Combination or purchase and assumption requires director's approval—Deposit concentration limits.** (1) This section is applicable where the resulting bank would have branches inside and outside the state of Washington.

(2) As used in this section, unless a different meaning is required by the context, the following words and phrases have the following meanings:

(a) "Combination" means a merger or consolidation, or purchase or sale of all or substantially all of the assets, including all or substantially all of the branches.

(b) "Out-of-state bank" means a bank, as defined in 12 U.S.C. Sec. 1813(a), which is chartered under the laws of any state other than this state, or a national bank, the main office of which is located in any state other than this state.

(c) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(3) A bank chartered under this title may engage in a combination or purchase and assumption of one or more branches of an out-of-state bank with an out-of-state bank with the prior approval of the director if the combination or purchase and assumption would result in a bank chartered under this title. Upon notice to the director a bank chartered under this title and an out-of-state bank may engage in a combination if the combination would result in an out-of-state bank. However, that combination shall comply with applicable Washington law as determined by the director, including but not limited to applicable state merger laws, and the conditions and requirements of this section.

(4) Applications for the director's approval under subsection (3) of this section shall be on a form prescribed by the director and conditioned upon payment of the fee prescribed pursuant to RCW 30.08.095. If the director finds that (a) the proposed combination will not be detrimental to the safety and soundness of the applicant or the resulting bank, (b) any new officers and directors of the resulting bank are qualified by character, experience, and financial responsibility to direct and manage the resulting bank, and (c) the proposed merger is consistent with the convenience and needs of the communities to be served by the resulting bank in this state and is otherwise in the public interest, the director shall approve the interstate combination and the operation of branches outside of Washington by the applicant bank. This transaction may be consummated only after the applicant has received evidence of the director's written approval.

(5) Any out-of-state bank that will be the resulting bank pursuant to an interstate combination involving a bank chartered under this title shall notify the director of the proposed

combination not later than three days after the date of filing of an application for the combination with the responsible federal bank supervisory agency, and shall submit a copy of that application to the director and pay applicable filing fees, if any, required by the director. In lieu of notice from the proposed resulting bank the director may accept notice from the bank's supervisory agency having primary responsibility for the bank. The director shall have the authority to waive any procedures required by Washington merger laws if the director finds that the procedures are in conflict with applicable federal law or in conflict with the applicable law of the state of the resulting bank.

(6) Subject to RCW 30.38.010(2), the deposit concentration limits stated in 12 U.S.C. Sec. 1831u(b)(2)(B) shall apply to the combination of an out-of-state bank and a nonaffiliated out-of-state bank or bank organized under this title or under the national bank act if the combination is an interstate merger transaction as defined by 12 U.S.C. Sec. 1831u(f)(6).

(7) A combination resulting in the acquisition, by an out-of-state bank that does not have branches in this state, of a bank organized under this title or the national bank act, shall not be permitted under this chapter unless the bank to be acquired, or its predecessors, have been in continuous operation, on the date of the combination, for a period of at least five years. [1996 c 2 § 9.]

**Severability—1996 c 2:** See RCW 30.38.900.

**30.49.130 Severability—1955 c 33.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. The invalidity of any provision as to a national bank or as to the stockholders of a national bank shall not affect its validity as to a state bank or as to the stockholders of a state bank. [1955 c 33 § 30.49.130. Prior: 1953 c 234 § 13.]

**Chapter 30.53 RCW**

**MERGING TRUST COMPANIES**

Sections

30.53.010	Definitions.
30.53.020	Approval by director—Required.
30.53.030	Contents of merger agreement—Approval by each board of directors—Requirements for director's approval.
30.53.040	Approval by stockholders—Voting—Notice.
30.53.050	Effective date of merger—Certificate of merger.
30.53.060	Resulting trust company—Property, rights, powers, and duties.
30.53.070	Dissenting shareholders—May receive value in cash—Appraisal.
30.53.080	Valuation of assets—Books of merging trust company.

**30.53.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply through this chapter.

(1) "Merging trust company" means a party to a merger.

(2) "Merger" includes consolidation.

(3) "Resulting trust company" means the trust company resulting from a merger.

(4) "Vote of stockholders" or "vote of classes of stockholders" means only a vote of those entitled to vote under the terms of such shares. [1994 c 256 § 59.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.53.020 Approval by director—Required.** Upon approval by the director, trust companies may be merged to result in a trust company. [1994 c 256 § 60.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.53.030 Contents of merger agreement—Approval by each board of directors—Requirements for director's approval.** (1) The board of directors of each merging trust company shall, by a majority of the entire board, approve a merger agreement that must contain:

(a) The name of each merging trust company and location of each office;

(b) With respect to the resulting trust company, (i) the name and location of the principal and other offices; (ii) the name and mailing address of each director to serve until the next annual meeting of the stockholders; (iii) the name and mailing address of each officer; (iv) the amount of capital, the number of shares and the par value, if any, of each share; and (v) the amendments to its charters and bylaws;

(c) Provisions governing the exchange of shares of the merging trust companies for such consideration as has been agreed to in the merger agreement;

(d) A statement that the agreement is subject to approval by the director and the stockholders of each merging trust company;

(e) Provisions governing the manner of disposing of the shares of the resulting trust company if the shares are to be issued in the transaction and are not taken by dissenting shareholders of merging trust companies; and

(f) Any other provisions the director requires to discharge his or her duties with respect to the merger;

(2) After approval by the board of directors of each merging trust company, the merger agreement shall be submitted to the director for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board. Within sixty days after receipt by the director of the merger agreement and resolutions, the director shall approve or disapprove of the merger agreement, and if no action is taken, the agreement is deemed approved. The director shall approve the agreement if it appears that the:

(a) Resulting trust company meets the requirements of state law as to the formation of a new trust company;

(b) Agreement provides an adequate capital structure including surplus in relation to the deposit liabilities, if any, of the resulting trust company and its other activities which are to continue or are to be undertaken;

(c) Agreement is fair; and

(d) Merger is not contrary to the public interest.

If the director disapproves an agreement, he or she shall state his or her objections and give an opportunity to the merging trust company to amend the merger agreement to obviate such objections. [1994 c 256 § 61.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.53.040 Approval by stockholders—Voting—Notice.** (1) To be effective, a merger that is to result in a trust company must be approved by the stockholders of each merging trust company by a vote of two-thirds of the outstanding voting stock of each class at a meeting called to consider such action. This vote shall constitute the adoption of the charter and bylaws of the resulting trust company, including the amendments in the merger agreement.

(2) Unless waived in writing, notice of the meeting of stockholders shall be given by publication in a newspaper of general circulation in the place where the principal office of each merging trust company is located, at least once each week for four successive weeks, and by mail, at least fifteen days before the date of the meeting, to each stockholder of record of each merging trust company at the address on the books of the stockholder's trust company. No notice of publication need be given if written waivers are received from the holders of two-thirds of the outstanding shares of each class of stock. The notice shall state that dissenting stockholders will be entitled to payment of the value of only those shares which are voted against approval of the plan. [1994 c 256 § 62.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.53.050 Effective date of merger—Certificate of merger.** (1) A merger that is to result in a trust company shall, unless a later date is specified in the agreement, become effective after the filing with and upon the approval of the director of the executed agreement together with copies of the resolutions of the stockholders of each merging trust company approving it, certified by the trust company's president or a vice-president and a secretary. The charters of the merging trust companies, other than the resulting trust company, shall immediately after that automatically terminate.

(2) The director shall immediately after that issue to the resulting trust company a certificate of merger specifying the name of each merging trust company and the name of the resulting trust company. The certificate shall be conclusive evidence of the merger and of the correctness of all proceedings regarding the merger in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging trust companies is held. [1994 c 256 § 63.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.53.060 Resulting trust company—Property, rights, powers, and duties.** (1) A resulting trust company shall be the same business and corporate entity as each merging trust company with all property, rights, powers, and duties of each merging trust company, except as affected by state law and by the charter and bylaws of the resulting trust company. A resulting trust company shall have the right to use the name of any merging trust company whenever it can do any act under such name more conveniently.

(2) Any reference to a merging trust company in any writing, whether executed or taking effect before or after the merger, is a reference to the resulting trust company if not inconsistent with the other provisions of that writing. [1994 c 256 § 64.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.53.070 Dissenting shareholders—May receive value in cash—Appraisal.** (1) The owner of shares of a trust company that were voted against a merger to result in a trust company shall be entitled to receive their value in cash, if and when the merger becomes effective, upon written demand made to the resulting trust company at any time within thirty days after the effective date of the merger, accompanied by the surrender of the stock certificates. The value of the shares shall be determined, as of the date of the stockholders' meeting approving the merger, by three appraisers, one to be selected by the owners of two-thirds of the dissenting shares, one by the board of directors of the resulting trust company, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the merger becomes effective, the director shall cause an appraisal to be made.

(2) The dissenting shareholders shall bear, on a pro rata basis based on number of dissenting shares owned, the cost of their appraisal and one-half of the cost of a third appraisal, and the resulting trust company shall bear the cost of its appraisal and one-half of the cost of the third appraisal. If the director causes an appraisal to be made, the cost of that appraisal shall be borne equally by the dissenting shareholders and the resulting trust company, with the dissenting shareholders sharing their half of the cost on a pro rata basis based on number of dissenting shares owned.

(3) The resulting trust company may fix an amount which it considers to be not more than the fair market value of the shares of a merging trust company at the time of the stockholders' meeting approving the merger, that it will pay dissenting shareholders of the trust company entitled to payment in cash. The amount due under an accepted offer or under the appraisal shall constitute a debt of the resulting trust company. [1998 c 45 § 3; 1994 c 256 § 65.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**30.53.080 Valuation of assets—Books of merging trust company.** Without approval by the director, no asset shall be carried on the books of the resulting trust company at a valuation higher than that on the books of the merging trust company at the time of its last examination by a state trust examiner before the effective date of the merger or conversion. [1994 c 256 § 66.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

## Chapter 30.56 RCW BANK STABILIZATION ACT

### Sections

30.56.010	"Bank" and "directors" defined.
30.56.020	Postponement of payments on deposits—Order—Posting.
30.56.030	Business during postponement.
30.56.040	Deposits received during postponement.
30.56.050	Plan for reorganization—Conditions.
30.56.060	Approval of plan—Unsecured claims.
30.56.070	No dividends until reductions paid.
30.56.080	Failure to pay in excess of plan, effect.
30.56.090	New bank may be authorized.
30.56.100	Chapter designated "bank stabilization act."

**30.56.010 "Bank" and "directors" defined.** In this chapter the word "bank" includes savings banks, mutual savings banks, and trust companies, and "directors" shall include

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trustees. [1955 c 33 § 30.56.010. Prior: 1933 c 49 § 2; RRS § 3293-2.]

**30.56.020 Postponement of payments on deposits—Order—Posting.** The director is hereby empowered, upon the written application of the directors of a bank, if in his or her judgment the circumstances warrant it, to authorize a bank to postpone, for a period of ninety days and for such further period or periods as he or she may deem expedient, the payment of such proportions or amounts of the demands of its depositors from time to time as he or she may deem necessary. The period or periods of postponement and the proportions or amounts of the demands to be deferred shall be determined by him or her according to the ability of the bank to pay withdrawals. By the regulations prescribed for deferred payments, the director may classify accounts and limit payments to depositors of the several classes differently. The director's orders, regulations and directions shall be in writing and be filed in his or her office, and copies thereof shall be delivered to the bank and be forthwith posted in a conspicuous place in the banking room. [1994 c 92 § 150; 1955 c 33 § 30.56.020. Prior: 1933 c 49 § 2; RRS § 3293-2.]

**30.56.030 Business during postponement.** During postponement of payments the bank shall remain open for business and be in charge of its officers, but shall not make any loans, investments or expenditures except such as the director will approve as necessary to conserve its assets and pay the cost of operation. The bank's failure during a period of postponement to repay deposits existing at the commencement of the period, shall not authorize or require the director to take charge of or liquidate the bank, nor constitute ground for the appointment of a receiver. [1994 c 92 § 151; 1955 c 33 § 30.56.030. Prior: 1933 c 49 § 3; RRS § 3293-3.]

**30.56.040 Deposits received during postponement.** Deposits received during a period of postponement and for sixty days thereafter shall be kept separate from other assets of the bank, shall not draw interest, shall not be loaned or invested except by depositing with reserve banks or investing in liquid securities approved by the director, and shall be withdrawable upon demand. If during a postponement of payments, or at the expiration thereof, the director shall take charge of the bank for liquidation, deposits made during the period of postponement shall be deemed trust funds and be repaid to the depositors forthwith. [1994 c 92 § 152; 1955 c 33 § 30.56.040. Prior: 1933 c 49 § 4; RRS § 3293-4.]

**30.56.050 Plan for reorganization—Conditions.** At the request of the directors of a bank, the director may propose a plan for its reorganization, if in his or her judgment it would be for the best interests of the bank's creditors and of the community which the bank serves. The plan may contemplate such temporary ratable reductions of the demands of depositors and other creditors as would leave its reserve adequate and its capital and surplus unimpaired after the charging off of bad and doubtful debts; and also may contemplate a postponement of payments as in a case falling within RCW 30.56.020. The plan shall be fully described in a writing, the original of which shall be filed in the office of the director

and several copies of which shall be furnished the bank, where one or more copies shall be kept available for inspection by stockholders, depositors and other creditors. [1994 c 92 § 153; 1955 c 33 § 30.56.050. Prior: 1933 c 49 § 5; RRS § 3293-5.]

**30.56.060 Approval of plan—Unsecured claims.** If, within ninety days after the filing of the plan, creditors having unsecured demands against the bank aggregating not less than three-fourths of the amount of the unsecured demands of all its creditors, approved the plan, the director shall have power to declare the plan to be in effect. Thereupon the unsecured demands of creditors shall be ratably reduced according to the plan and appropriate debits shall be made in the books. The right of a secured creditor to enforce his or her security shall not be affected by the operation of the plan, but the amount of any deficiency to which he or she may be entitled shall be reduced as unsecured demands were reduced. If the plan contemplates a temporary postponement of payments, RCW 30.56.020, 30.56.030 and 30.56.040 shall be applicable, and the bank shall comply therewith and conduct its affairs accordingly. [1994 c 92 § 154; 1955 c 33 § 30.56.060. Prior: 1933 c 49 § 6; RRS § 3293-6.]

**30.56.070 No dividends until reductions paid.** A bank for which such a plan has been put into effect shall not declare or pay a dividend or distribute any of its assets among stockholders until there shall have been set aside for and credited ratably to the creditors whose demands were reduced an amount equal to the aggregate of the reductions. [1955 c 33 § 30.56.070. Prior: 1933 c 49 § 7; RRS 3293-7.]

**30.56.080 Failure to pay in excess of plan, effect.** The failure of a bank operating under such a plan to pay to a creditor at any time a sum greater than the plan then requires, shall not constitute a default nor authorize or require the director to take charge of or liquidate the bank nor entitle the creditor to maintain an action against the bank. [1994 c 92 § 155; 1955 c 33 § 30.56.080. Prior: 1933 c 49 § 8; RRS 3293-8.]

**30.56.090 New bank may be authorized.** If the net assets of a bank operating under such a plan are sufficient to provide the capital and surplus of a newly organized bank in the same place, the director, under such reasonable conditions as he or she shall prescribe, may approve the incorporation of a new bank and permit it to take over the assets and business and assume the liabilities of the existing bank. [1994 c 92 § 156; 1955 c 33 § 30.56.090. Prior: 1933 c 49 § 9; RRS § 3293-9.]

**30.56.100 Chapter designated "bank stabilization act."** This chapter shall be known as the bank stabilization act. [1955 c 33 § 30.56.100. Prior: 1933 c 49 § 1; RRS § 3293-1.]

## Chapter 30.60 RCW

### COMMUNITY CREDIT NEEDS

#### Sections

30.60.010	Examinations—Investigation and assessment of performance record in meeting community credit needs.
30.60.020	Approval and disapproval of applications—Consideration of performance record in meeting community credit needs.
30.60.030	Adoption of rules.
30.60.900	Severability—1985 c 329.
30.60.901	Effective date—1985 c 329.

**30.60.010 Examinations—Investigation and assessment of performance record in meeting community credit needs.** (1) In conducting an examination of a bank chartered under Title 30 RCW, the director shall investigate and assess the record of performance of the bank in meeting the credit needs of the bank's entire community, including low and moderate-income neighborhoods. The director shall accept, in lieu of an investigation or part of an investigation required by this section, any report or document that the bank is required to prepare or file with one or more federal agencies by the act of Congress entitled the "Community Reinvestment Act of 1977" and the regulations promulgated in accordance with that act, to the extent such reports or documents assist the director in making an assessment based upon the factors outlined in subsection (2) of this section.

(2) In making an investigation required under subsection (1) of this section, the director shall consider, independent of any federal determination, the following factors in assessing the bank's record of performance:

(a) Activities conducted by the institution to ascertain credit needs of its community, including the extent of the institution's efforts to communicate with members of its community regarding the credit services being provided by the institution;

(b) The extent of the institution's marketing and special credit related programs to make members of the community aware of the credit services offered by the institution;

(c) The extent of participation by the institution's board of directors in formulating the institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act of 1977;

(d) Any practices intended to discourage applications for types of credit set forth in the institution's community reinvestment act statement(s);

(e) The geographic distribution of the institution's credit extensions, credit applications, and credit denials;

(f) Evidence of prohibited discriminatory or other illegal credit practices;

(g) The institution's record of opening and closing offices and providing services at offices;

(h) The institution's participation, including investments, in local community development projects;

(i) The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its community, or the purchase of such loans originated in its community;

(j) The institution's participation in governmentally insured, guaranteed, or subsidized loan programs for housing, small businesses, or small farms;

(k) The institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic condition, and other factors;

(l) Other factors that, in the judgment of the director, reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

(3) The director shall include as part of the examination report, a summary of the results of the assessment required under subsection (1) of this section and shall assign annually to each bank a numerical community reinvestment rating based on a one through five scoring system. Such numerical scores shall represent performance assessments as follows:

- |                               |   |
|-------------------------------|---|
| (a) Excellent performance:    | 1 |
| (b) Good performance:         | 2 |
| (c) Satisfactory performance: | 3 |
| (d) Inadequate performance:   | 4 |
| (e) Poor performance:         | 5 |

[1994 c 92 § 157; 1985 c 329 § 2.]

**Legislative intent—1985 c 329:** "The legislature believes that commercial banks and savings banks doing business in Washington state have a responsibility to meet the credit needs of the businesses and communities of Washington state, consistent with safe and sound business practices and the free exercise of management discretion.

This act is intended to provide the supervisor of banking and the supervisor of savings and loan associations with the information necessary to enable the supervisors to better determine whether commercial banks, savings banks, and savings and loan associations are meeting the convenience and needs of the public.

This act is further intended to condition the approval of any application by a commercial bank, savings bank, or savings and loan association for a new branch or satellite facility, for an acquisition, merger, conversion, or purchase of assets of another institution not required for solvency reasons, or for the exercise of any new power upon proof that the applicant is satisfactorily meeting the convenience and needs of its community or communities." [1985 c 329 § 1.] "This act" consists of the enactment of RCW 30.04.212, 30.04.214, 30.60.010, 30.60.020, 30.60.030, 30.60.900, 30.60.901, 32.40.010, 32.40.020, and 32.40.030 and this section and the 1985 c 329 amendment to RCW 30.04.210.

**30.60.020 Approval and disapproval of applications—Consideration of performance record in meeting community credit needs.** Whenever the director must approve or disapprove of an application for a new branch or satellite facility; for a purchase of assets, a merger, an acquisition or a conversion not required for solvency reasons; or for authority to engage in a business activity, the director shall consider, among other factors, the record of performance of the applicant in helping to meet the credit needs of the applicant's entire community, including low and moderate-income neighborhoods. Assessment of an applicant's record of performance may be the basis for denying an application. [1994 c 92 § 158; 1985 c 329 § 3.]

**30.60.030 Adoption of rules.** The director shall adopt all rules necessary to implement sections 2 through 6, chapter 329, Laws of 1985 by January 1, 1986. [1994 c 92 § 159; 1985 c 329 § 7.]

**30.60.900 Severability—1985 c 329.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 329 § 11.]

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**30.60.901 Effective date—1985 c 329.** This act shall take effect on January 1, 1986, but the director may immediately take such steps as are necessary to ensure that this act is implemented on its effective date. [1994 c 92 § 160; 1985 c 329 § 13.]

## Chapter 30.98 RCW

### CONSTRUCTION

#### Sections

30.98.010	Continuation of existing law.
30.98.020	Title, chapter, section headings not part of law.
30.98.030	Invalidity of part of title not to affect remainder.
30.98.040	Prior investments or transactions not affected.
30.98.050	Repeals and saving.
30.98.060	Emergency—1955 c 33.

**30.98.010 Continuation of existing law.** The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1955 c 33 § 30.98.010.]

**30.98.020 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1955 c 33 § 30.98.020.]

**30.98.030 Invalidity of part of title not to affect remainder.** If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1955 c 33 § 30.98.030.]

**30.98.040 Prior investments or transactions not affected.** Nothing in this title shall be construed to affect the legality of investments, made prior to March 10, 1917, or of transactions had before March 10, 1917, pursuant to any provisions of law in force when such investment were made or transactions had. (Adopted from 1917 c 80 § 77.) [1955 c 33 § 30.98.040.]

**30.98.050 Repeals and saving.** See 1955 c 33 § 30.98.050.

**30.98.060 Emergency—1955 c 33.** This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1955 c 33 § 30.98.060.]

# Title 31

## MISCELLANEOUS LOAN AGENCIES

### Chapters

- 31.04 Consumer loan act.**
- 31.12 Washington state credit union act.**
- 31.13 Corporate credit unions.**
- 31.20 Development credit corporations.**
- 31.24 Industrial development corporations.**
- 31.35 Agricultural lenders—Loan guaranty program.**
- 31.40 Federally guaranteed small business loans.**
- 31.45 Check cashers and sellers.**

*Bills of lading: Article 62A.7 RCW.*

*Cooperative associations: Chapter 23.86 RCW.*

*Corporations and associations  
nonprofit: Title 24 RCW.  
profit: Title 23B RCW.*

*Credit life insurance and credit accident and health insurance: Chapter 48.34 RCW.*

*Department of financial institutions: Chapter 43.320 RCW.*

*False representations concerning credit: RCW 9.38.010.*

*Federal bonds and notes as investment or collateral: Chapter 39.60 RCW.*

*Forgery: RCW 9A.60.020.*

*Interest and usury in general: Chapter 19.52 RCW.*

*Joint tenancies with right of survivorship: Chapter 64.28 RCW.*

*Mortgages and trust receipts: Title 61 RCW.*

*Negotiable instruments: Article 62A.3 RCW.*

*Nonadmitted foreign corporations, powers relative to secured interests:  
Chapter 23B.18 RCW.*

*Pawnbrokers: Chapter 19.60 RCW.*

*Retail installment sales of goods and services: Chapter 63.14 RCW.*

*Safe deposit companies: Chapter 22.28 RCW.*

*Uniform unclaimed property act: Chapter 63.29 RCW.*

### Chapter 31.04 RCW

#### CONSUMER LOAN ACT

(Formerly: Industrial loan companies)

### Sections

- 31.04.005 Finding—Purpose.
- 31.04.015 Definitions.
- 31.04.025 Application of chapter.
- 31.04.027 Violations of chapter.
- 31.04.035 License required.
- 31.04.045 License—Application—Fee—Surety bond.
- 31.04.055 License—Director's duties.
- 31.04.065 License—Information contained—Requirement to post.
- 31.04.075 Licensee—Place of business.
- 31.04.085 Licensee—Assessment—Bond—Time of payment.
- 31.04.093 Licensing—Applications—Regulation of licensees—Director's duties—Fines—Orders.
- 31.04.102 Loans secured, or not secured, by lien on real property—Licensee's obligations—Disclosure of fees and costs to borrower—Time limits.
- 31.04.105 Licensee—Powers—Restrictions.
- 31.04.115 Open-end loan—Requirements—Restrictions—Options.
- 31.04.125 Loan restrictions—Interest calculations.
- 31.04.135 Advertisements or promotions.
- 31.04.145 Investigations and examinations—Director's duties—Production of information—Costs.
- 31.04.155 Licensee—Recordkeeping—Director's access—Report requirement—Failure to report.

- 31.04.165 Director—Broad administrative discretion—Rule making—Actions in superior court.
- 31.04.175 Violations—No penalty prescribed—Gross misdemeanor—Good faith exception.
- 31.04.185 Repealed sections of law—Rules adopted under.
- 31.04.202 Application of administrative procedure act.
- 31.04.205 Enforcement of chapter—Director's discretion—Hearing—Sanctions.
- 31.04.208 Application of consumer protection act.
- 31.04.900 Severability—1991 c 208.
- 31.04.901 Short title.
- 31.04.902 Effective dates, implementation—1991 c 208.

*Department of financial institutions: Chapter 43.320 RCW.*

*Master license system exemption: RCW 19.02.800.*

**31.04.005 Finding—Purpose.** The legislature finds that borrowers who represent a higher than average credit risk are unable to obtain credit except at interest rates higher than permitted under other statutory provisions governing interest rates for loans. Therefore, it is the purpose of this chapter to authorize higher interest rates for certain types of loans, subject to the conditions and limitations contained in this chapter in order to ensure credit availability. [1991 c 208 § 1.]

**31.04.015 Definitions.** The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

(1) "Person" includes individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

(2) "License" means a single license issued under the authority of this chapter with respect to a single place of business.

(3) "Licensee" means a person to whom one or more licenses have been issued.

(4) "Director" means the director of financial institutions.

(5) "Insurance" means life insurance, disability insurance, property insurance, involuntary unemployment insurance, and such other insurance as may be authorized by the insurance commissioner.

(6) "Add-on method" means the method of precomputing interest payable on a loan whereby the interest to be earned is added to the principal balance and the total plus any charges allowed under this chapter is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(7) "Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balances of the principal of the loan outstanding for the time outstanding with each payment applied first to any unpaid penalties, fees, or charges, then to accumulated interest, and the remainder of the payment applied to the unpaid balance of

the principal until paid in full. In using such method, interest shall not be payable in advance nor compounded, except that on a loan secured by real estate, a licensee may collect at the time of the loan closing up to but not exceeding forty-five days of prepaid interest. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(8) "Applicant" means a person applying for a license under this chapter.

(9) "Borrower" means any person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan, regardless of whether that person actually obtains such a loan.

(10) "Loan" means a sum of money lent at interest or for a fee or other charge and includes both open-end and closed-end loan transactions.

(11) "Loan originator" means a person employed, either directly or indirectly, or retained as an independent contractor by a licensee, to make or assist a person in applying to obtain a loan.

(12) "Making a loan" means closing a loan in a person's name, or advancing, offering to advance, or making a commitment to advance funds to a borrower for a loan.

(13) "Mortgage broker" means the same as defined in RCW 19.146.010, except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same loan transaction.

(14) "Officer" means an official appointed by the company for the purpose of making business decisions or corporate decisions.

(15) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership; company; association or corporation; or a limited liability company, and the owner of a sole proprietorship.

(16) "Senior officer" means an officer of a licensee at the vice-president level or above.

(17) "Third party service provider" means any person other than the licensee or a mortgage broker who provides goods or services to the licensee or borrower in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, real estate brokers or salespersons, title insurance companies and agents, appraisers, structural and pest inspectors, or escrow companies. [2001 c 81 § 1; 1994 c 92 § 161; 1991 c 208 § 2.]

**31.04.025 Application of chapter.** Each loan made to a resident of this state by a licensee is subject to the authority and restrictions of this chapter, unless such loan is made under the authority of another license issued pursuant to a law of this state or under other authority of a law of this state. This chapter shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions, nor to any pawnbroking business lawfully transacted under and as permitted by any law of this state regulating pawnbrokers, nor to any loan of credit made pursuant to a credit card plan. [2001 c 81 § 2; 1991 c 208 § 4.]

**31.04.027 Violations of chapter.** It is a violation of this chapter for a licensee, its officers, directors, employees, or independent contractors, or any other person subject to this chapter to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person;

(2) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(3) Directly or indirectly obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the consumer loan company may earn a fee or commission through the consumer loan company's best efforts to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) Fail to make disclosures to loan applicants as required by RCW 31.04.102 and any other applicable state or federal law;

(7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

(8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed with the department by a licensee or in connection with any investigation conducted by the department;

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property; or

(10) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by that rate of interest or otherwise fail to comply with any requirement of the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Sec. 226, the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act, 15 U.S.C. Sec. 1691 and regulation B, Sec. 202.9, 202.11, and 202.12, or any other applicable federal statute, as now or hereafter amended, in any advertising of residential mortgage loans or any other consumer loan company activity. [2001 c 81 § 3.]

**31.04.035 License required.** No person may engage in the business of making secured or unsecured loans of money, credit, or things in action at interest rates authorized by this chapter without first obtaining and maintaining a license in accordance with this chapter. [1991 c 208 § 3.]

**31.04.045 License—Application—Fee—Surety bond.** (1) Application for a license under this chapter must be in writing and in the form prescribed by the director. The application must contain at least the following information:

(a) The name and the business addresses of the applicant;

(b) If the applicant is a partnership or association, the name of every member;

(c) If the applicant is a corporation, the name, residence address, and telephone number of each officer and director;

(d) The street address, county, and municipality from which business is to be conducted; and

(e) Such other information as the director may require by rule.

(2) At the time of filing an application for a license under this chapter, each applicant shall pay to the director an investigation fee and the license fee in an amount determined by rule of the director to be sufficient to cover the director's costs in administering this chapter.

(3) Each applicant shall file and maintain a surety bond, approved by the director, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as such surety shall not exceed in the aggregate the penal sum of the bond. The penal sum of the bond shall be one hundred thousand dollars for each licensed location up to and including five licensed locations, and an additional ten thousand dollars for each licensed location in excess of five licensed locations, except that a licensee who makes a loan secured by real property shall maintain at a minimum a surety bond with a penal sum of not less than four hundred thousand dollars. The bond shall run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all the rules adopted under this chapter. The bond will pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of this chapter. In lieu of a surety bond, if the applicant is a Washington business corporation, the applicant may maintain unimpaired capital, surplus, and long-term subordinated debt in an amount that at any time its outstanding promissory notes or other evidences of debt (other than long-term subordinated debt) in an aggregate sum do not exceed three times the aggregate amount of its unimpaired capital, surplus, and long-term subordinated debt. The director may define qualifying "long-term subordinated debt" for purposes of this section. [2001 c 81 § 4; 1994 c 92 § 162; 1991 c 208 § 5.]

**31.04.055 License—Director's duties.** (1) The director shall issue and deliver a license to the applicant to make loans in accordance with this chapter at the location specified in the application if, after investigation, the director finds that:

(a) The applicant has paid all required fees;

(b) The applicant has submitted a complete application in compliance with RCW 31.04.045;

(c) Neither the applicant nor its officers or principals have had a license issued under this section or any other section, in this state or another state, revoked or suspended within the last five years of the date of filing of the application;

(d) Neither the applicant nor any of its officers or principals have been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony or a violation of the banking laws of this state or of the United States within seven years of the filing of an application; and

(e) The financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter.

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the license. The director shall notify the applicant of the denial and return to the applicant the bond posted and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The director shall approve or deny every application for license under this chapter within ninety days from the filing of a complete application with the fees and the approved bond. [2001 c 81 § 5; 1994 c 92 § 163; 1991 c 208 § 6.]

**31.04.065 License—Information contained—Requirement to post.** The license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership or association, the names of its members, and if a corporation, the date and place of its incorporation. The licensee shall conspicuously post the license in the place of business of the licensee. The license is not transferable or assignable. [1991 c 208 § 7.]

**31.04.075 Licensee—Place of business.** The licensee may not maintain more than one place of business under the same license, but the director may issue more than one license to the same licensee upon application by the licensee in a form and manner established by the director.

Whenever a licensee wishes to change the place of business to a street address other than that designated in the license, the licensee shall give written notice to the director as required by rule, pay the license fee, and obtain the director's approval. [2001 c 81 § 6; 1994 c 92 § 164; 1991 c 208 § 8.]

**31.04.085 Licensee—Assessment—Bond—Time of payment.** A licensee shall, for each license held by any person, on or before the first day of each March, pay to the director an annual assessment as determined by rule by the director. The licensee shall be responsible for payment of the annual assessment for the previous calendar year if the licensee had a license for any time during the preceding calendar year, regardless of whether they surrendered their license during the calendar year or whether their license was suspended or revoked. At the same time the licensee shall file with the director the required bond or otherwise demonstrate compliance with RCW 31.04.045. [2001 c 81 § 7; 1994 c 92 § 165; 1991 c 208 § 9.]

**31.04.093 Licensing—Applications—Regulation of licensees—Director's duties—Fines—Orders.** (1) The director shall enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this chapter.

(2) The director may deny applications for licenses for:

(a) Failure of the applicant to demonstrate within its application for a license that it meets the requirements for licensing in RCW 31.04.045 and 31.04.055;

(b) Violation of an order issued by the director under this chapter or another chapter administered by the director, including but not limited to cease and desist orders and temporary cease and desist orders;

(c) Revocation or suspension of a license to conduct lending, or to provide settlement services associated with lending, by this state, another state, or by the federal government within five years of the date of submittal of a complete application for a license; or

(d) Filing an incomplete application when that incomplete application has been filed with the department for sixty or more days, provided that the director has given notice to the licensee that the application is incomplete, informed the applicant why the application is incomplete, and allowed at least twenty days for the applicant to complete the application.

(3) The director may suspend or revoke a license issued under this chapter if the director finds that:

(a) The licensee has failed to pay any fee due the state of Washington, has failed to maintain in effect the bond or permitted substitute required under this chapter, or has failed to comply with any specific order or demand of the director lawfully made and directed to the licensee in accordance with this chapter;

(b) The licensee, either knowingly or without the exercise of due care, has violated any provision of this chapter or any rule adopted under this chapter; or

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, clearly would have allowed the director to deny the application for the original license. The director may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist unless the director finds that the grounds for revocation or suspension are of general application to all offices or to more than one office operated by the licensee, in which case, the director may revoke or suspend all of the licenses issued to the licensee.

(4) The director may impose fines of up to one hundred dollars per day upon the licensee, its employee or loan originator, or other person subject to this chapter for:

(a) Any violation of this chapter; or

(b) Failure to comply with any order or subpoena issued by the director under this chapter.

(5) The director may issue an order directing the licensee, its employee or loan originator, or other person subject to this chapter to:

(a) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter;

(b) Take such affirmative action as is necessary to comply with this chapter; or

(c) Make restitution to a borrower or other person who is damaged as a result of a violation of this chapter.

(6) The director may issue an order removing from office or prohibiting from participation in the affairs of any licensee, or both, any officer, principal, employee or loan originator, or any person subject to this chapter for:

(a) False statements or omission of material information from an application for a license that, if known, would have allowed the director to deny the original application for a license;

(b) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony;

(c) Suspension or revocation of a license to engage in lending, or perform a settlement service related to lending, in this state or another state;

(d) Failure to comply with any order or subpoena issued under this chapter; or

(e) A violation of RCW 31.04.027.

(7) Whenever the director determines that the public is likely to be substantially injured by delay in issuing a cease and desist order, the director may immediately issue a temporary cease and desist order. The order may direct the licensee to discontinue any violation of this chapter, to take such affirmative action as is necessary to comply with this chapter, and may include a summary suspension of the licensee's license and may order the licensee to immediately cease the conduct of business under this chapter. The order shall become effective at the time specified in the order. Every temporary cease and desist order shall include a provision that a hearing will be held upon request to determine whether the order will become permanent. Such hearing shall be held within fourteen days of receipt of a request for a hearing unless otherwise specified in chapter 34.05 RCW.

(8) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability, if any, for acts committed before the surrender, including any administrative action initiated by the director to suspend or revoke a license, impose fines, compel the payment of restitution to borrowers or other persons, or exercise any other authority under this chapter.

(9) The revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and a borrower.

(10) Every license issued under this chapter remains in force and effect until it has been surrendered, revoked, or suspended in accordance with this chapter. However, the director may on his or her own initiative reinstate suspended licenses or issue new licenses to a licensee whose license or licenses have been revoked if the director finds that the licensee meets all the requirements of this chapter. [2001 c 81 § 8; 1994 c 92 § 166; 1991 c 208 § 10.]

**31.04.102 Loans secured, or not secured, by lien on real property—Licensee's obligations—Disclosure of fees and costs to borrower—Time limits.** (1) For all loans made by a licensee that are not secured by a lien on real property, the licensee must make disclosures in compliance with the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Sec. 226, and all other applicable federal laws and regulations.

(2) For all loans made by a licensee that are secured by a lien on real property, the licensee shall provide to each borrower within three business days following receipt of a loan application a written disclosure containing an itemized estimation and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a loan from the licensee. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not available when the disclosure is provided. Disclosure in a form which complies with the requirements of the truth in lending act, 15

U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Sec. 226, the real estate settlement procedures act and regulation X, 24 C.F.R. Sec. 3500, and all other applicable federal laws and regulations, as now or hereafter amended, shall be deemed to constitute compliance with this disclosure requirement. Each licensee shall comply with all other applicable federal and state laws and regulations.

(3) In addition, for all loans made by the licensee that are secured by a lien on real property, the licensee must provide to the borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three days of receipt of a loan application. The annual percentage rate must be calculated in compliance with the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Sec. 226. If a licensee provides the borrower with a disclosure in compliance with the requirements of the truth in lending act within three business days of receipt of a loan application, then the licensee has complied with this subsection. If the director determines that the federal government has required a disclosure that substantially meets the objectives of this subsection, then the director may make a determination by rule that compliance with this federal disclosure requirement constitutes compliance with this subsection. [2002 c 346 § 1; 2001 c 81 § 9.]

**31.04.105 Licensee—Powers—Restrictions.** Every licensee may:

(1) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(2) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(3) Agree with the borrower for the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender;

(4) In connection with the making of a loan secured by real estate, when the borrower actually obtains a loan, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee;

(5) Charge and collect a penalty of ten cents or less on each dollar of any installment payment delinquent ten days or more;

(6) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee;

(7) Make open-end loans as provided in this chapter;

(8) Charge and collect a fee for dishonored checks in an amount approved by the director; and

(9) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower. [2001 c 81 § 10; 1998 c 28 § 1; 1994 c 92 § 167; 1993 c 190 § 1; 1991 c 208 § 11.]

**31.04.115 Open-end loan—Requirements—Restrictions—Options.** (1) As used in this section, "open-end loan" means an agreement between a licensee and a borrower that expressly states that the loan is made in accordance with this chapter and that provides that:

(a) A licensee may permit the borrower to obtain advances of money from the licensee from time to time, or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(b) The amount of each advance and permitted charges and costs are debited to the borrower's account, and payments and other credits are credited to the same account;

(c) The charges are computed on the unpaid principal balance, or balances, of the account from time to time; and

(d) The borrower has the privilege of paying the account in full at any time without prepayment penalty or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

(2) Interest charges on an open-end loan shall not exceed twenty-five percent per annum computed in each billing cycle by any of the following methods:

(a) By converting the annual rate to a daily rate, and multiplying the daily rate by the daily unpaid principal balance of the account, in which case each daily rate is determined by dividing the annual rate by three hundred sixty-five;

(b) By multiplying a monthly rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the monthly rate is one-twelfth of the annual rate, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(c) By converting the annual rate to a daily rate, and multiplying the daily rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the daily rate is determined by dividing the annual rate by three hundred sixty-five, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle.

For all of the methods of computation specified in this subsection, the billing cycle shall be monthly, and the unpaid principal balance on any day shall be determined by adding to the balance unpaid, as of the beginning of that day, all advances and other permissible amounts charged to the borrower, and deducting all payments and other credits made or received that day. A billing cycle is considered monthly if the closing date of the cycle is on the same date each month, or does not vary by more than four days from that date.

(3) In addition to the charges permitted under subsection (2) of this section, the licensee may contract for and receive an annual fee, payable each year in advance, for the privilege of opening and maintaining an open-end loan account. Except as prohibited or limited by this section, the licensee may also contract for and receive on an open-end loan any additional charge permitted by this chapter on other loans, subject to the conditions and restrictions otherwise pertaining to those charges.

(4)(a) If credit life or credit disability insurance is provided, the additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for the insurance, at the rate approved by the insurance commissioner to the entire outstanding balances in the borrower's open-end loan account, or so much thereof as the insurance covers using any of the methods specified in subsection (2) of this section for the calculation of interest charges; and

(b) The licensee shall not cancel credit life or disability insurance written in connection with an open-end loan because of delinquency of the borrower in the making of the required minimum payments on the loan, unless one or more of the payments is past due for a period of ninety days or more; and the licensee shall advance to the insurer the amounts required to keep the insurance in force during that period, which amounts may be debited to the borrower's account.

(5) A security interest in real or personal property may be taken to secure an open-end loan. Any such security interest may be retained until the open-end account is terminated. The security interest shall be promptly released if (a) there has been no outstanding balance in the account for twelve months and the borrower either does not have or surrenders the unilateral right to create a new outstanding balance; or (b) the account is terminated at the borrower's request and paid in full.

(6) The licensee may from time to time increase the rate of interest being charged on the unpaid principal balance of the borrower's open-end loans if the licensee mails or delivers written notice of the change to the borrower at least thirty days before the effective date of the increase unless the increase has been earlier agreed to by the borrower. However, the borrower may choose to terminate the open-end account and the licensee shall allow the borrower to repay the unpaid balance incurred before the effective date of the rate increase upon the existing open-end loan account terms and interest rate unless the borrower incurs additional debt on or after the effective date of the rate increase or otherwise agrees to the new rate.

(7) The licensee shall deliver a copy of the open-end loan agreement to the borrower at the time the open-end account is created. The agreement must contain the name and address of the licensee and of the principal borrower, and must contain such specific disclosures as may be required by rule of the director. In adopting the rules the director shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal consumer credit protection act.

(8) Except in the case of an account that the licensee deems to be uncollectible, or with respect to which delinquency collection procedures have been instituted, the lic-

ensee shall deliver to the borrower at the end of each billing cycle in which there is an outstanding balance of more than one dollar in the account, or with respect to which interest is imposed, a periodic statement in the form required by the director. In specifying such form the director shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal consumer credit protection act. [1994 c 92 § 168; 1993 c 405 § 1; 1991 c 208 § 12.]

### 31.04.125 Loan restrictions—Interest calculations.

(1) No licensee may make a loan with a repayment period greater than six years and fifteen days after the loan origination date except for open-end loans or loans secured by real estate or personal property used as a residence.

(2) No licensee may make a loan using any method of calculating interest other than the simple interest method; except that the add-on method of calculating interest may be used for a loan not secured by real property or personal property used as a residence when the repayment period does not exceed three years and fifteen days after the loan origination date.

(3) No licensee may make a loan using the add-on method to calculate interest that does not provide for a refund to the borrower or a credit to the borrower's account of any unearned interest when the loan is repaid before the original maturity date in full by cash, by a new loan, by refinancing, or otherwise before the final due date. The refund must be calculated using the actuarial method, unless a sum equal to two or more installments has been prepaid and the account is not in arrears and continues to be paid ahead, in which case the interest on the account must be recalculated by the simple interest method with the refund of unearned interest made as if the loan had been made using the simple interest method. When computing an actuarial refund, the lender may round the annual rate used to the nearest quarter of one percent.

In computing a required refund of unearned interest, a prepayment made on or before the fifteenth day after the scheduled payment date is deemed to have been made on the payment date preceding the prepayment. In the case of prepayment before the first installment due date, the company may retain an amount not to exceed one-thirtieth of the first month's interest charge for each day between the origination date of the loan and the actual date of prepayment.

(4) No licensee may provide credit life or disability insurance in an amount greater than that required to pay off the total balance owing on the date of the borrower's death net of refunds in the case of credit life insurance, or all minimum payments that become due on the loan during the covered period of disability in the case of credit disability insurance. The lender may not require any such insurance.

(5) Except in the case of loans by mail, where the borrower has sufficient time to review papers before returning them, no licensee may prepare loan papers in advance of the loan closing without having reviewed with the borrower the terms and conditions of the loan to include the type and amount of insurance, if any, requested by the borrower. [1995 c 9 § 1; 1991 c 208 § 13.]

**31.04.135 Advertisements or promotions.** No licensee may advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions for the lending of money that is false, misleading, or deceptive. [1991 c 208 § 14.]

**31.04.145 Investigations and examinations—Director's duties—Production of information—Costs.** (1) For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the director may at any time, either personally or by designees, investigate or examine the loans and business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of every licensee and of every person who is engaged in the business making or assisting in the making of loans at interest rates authorized by this chapter, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For these purposes, the director or designated representatives shall have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons. The director or persons designated by the director may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, records, files, and any other information the director or designated persons deem relevant to the inquiry. The director may require the production of original books, accounts, papers, records, files, and other information; may require that such original books, accounts, papers, records, files, and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, records, files, or other information. If a licensee or person does not attend and testify, or does not produce the requested books, accounts, papers, records, files, or other information, then the director or designated persons may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, records, files, or other information.

(2) The director shall make such periodic examinations of the affairs, business, office, and records of each licensee as determined by rule.

(3) Every licensee examined or investigated by the director or the director's designee shall pay to the director the cost of the examination or investigation of each licensed place of business as determined by rule by the director. [2001 c 81 § 11; 1995 c 9 § 2; 1994 c 92 § 169; 1991 c 208 § 15.]

**31.04.155 Licensee—Recordkeeping—Director's access—Report requirement—Failure to report.** The licensee shall keep and use in the business such books, accounts, records, papers, documents, files, and other information as will enable the director to determine whether the licensee is complying with this chapter and with the rules adopted by the director under this chapter. The director shall have free access to such books, accounts, records, papers, documents, files, and other information wherever located.

Every licensee shall preserve the books, accounts, records, papers, documents, files, and other information relevant to a loan for at least twenty-five months after making the final entry on any loan. No licensee or person subject to examination or investigation under this chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, accounts, records, papers, documents, files, or other information.

Each licensee shall, on or before the first day of March of each year, file a report with the director giving such relevant information as the director may reasonably require concerning the business and operations of each licensed place of business conducted during the preceding calendar year. The report must be made under oath and must be in the form prescribed by the director, who shall make and publish annually an analysis and recapitulation of the reports. Every licensee that fails to file a report that is required to be filed by this chapter within the time required under this chapter is subject to a penalty of fifty dollars per day for each day's delay. The attorney general may bring a civil action in the name of the state for recovery of any such penalty. [2001 c 81 § 12; 1994 c 92 § 170; 1991 c 208 § 16.]

**31.04.165 Director—Broad administrative discretion—Rule making—Actions in superior court.** (1) The director has the power, and broad administrative discretion, to administer and interpret this chapter to facilitate the delivery of financial services to the citizens of this state by loan companies subject to this chapter. The director shall adopt all rules necessary to administer this chapter and to ensure complete and full disclosure by licensees of lending transactions governed by this chapter.

(2) If it appears to the director that a licensee is conducting business in an injurious manner or is violating any provision of this chapter, the director may order or direct the discontinuance of any such injurious or illegal practice.

(3) For purposes of this section, "conducting business in an injurious manner" means conducting business in a manner that violates any provision of this chapter, or that creates the reasonable likelihood of a violation of any provision of this chapter.

(4) The director or designated persons, with or without prior administrative action, may bring an action in superior court to enjoin the acts or practices that constitute violations of this chapter and to enforce compliance with this chapter or any rule or order made under this chapter. Upon proper showing, injunctive relief or a temporary restraining order shall be granted. The director shall not be required to post a bond in any court proceedings. [2001 c 81 § 13; 1994 c 92 § 171; 1991 c 208 § 17.]

**31.04.175 Violations—No penalty prescribed—Gross misdemeanor—Good faith exception.** (1) A person who violates, or knowingly aids or abets in the violation of any provision of this chapter, for which no penalty has been prescribed, and a person who fails to perform any act that it is his or her duty to perform under this chapter and for which failure no penalty has been prescribed, is guilty of a gross misdemeanor.

(2) No provision imposing civil penalties or criminal liability under this chapter or rule adopted under this chapter applies to an act taken or omission made in good faith in conformity with a written notice, interpretation, or examination report of the director or his or her agent. [2001 c 81 § 14; 1994 c 92 § 172; 1991 c 208 § 18.]

**31.04.185 Repealed sections of law—Rules adopted under.** All rules adopted under or to implement the provisions of law repealed by sections 23 and 24, chapter 208, Laws of 1991 remain in effect until amended or repealed by the director. [1994 c 92 § 173; 1991 c 208 § 19.]

**31.04.202 Application of administrative procedure act.** The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies under this chapter, and any review or appeal of such action, shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW. [2001 c 81 § 15.]

**31.04.205 Enforcement of chapter—Director's discretion—Hearing—Sanctions.** The director or designated persons may, at his or her discretion, take such action as provided for in this chapter to enforce this chapter. If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action, then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter. [2001 c 81 § 16.]

**31.04.208 Application of consumer protection act.** The legislature finds that the practices governed by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive. [2001 c 81 § 17.]

**31.04.900 Severability—1991 c 208.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 208 § 20.]

**31.04.901 Short title.** This chapter shall be known as the consumer loan act. [1991 c 208 § 21.]

**31.04.902 Effective dates, implementation—1991 c 208.** (1) Sections 1 through 23 of this act shall take effect January 1, 1992, but the director shall take such steps and adopt such rules as are necessary to implement this act by that date.

(2) Section 24 of this act shall take effect January 1, 1993. [1994 c 92 § 174; 1991 c 208 § 25.]

## Chapter 31.12 RCW

### WASHINGTON STATE CREDIT UNION ACT

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*Fairness in lending act: RCW 30.04.500 through 30.04.515.*

*Master license system exemption: RCW 19.02.800.*

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**31.12.003 Findings—Intent—1997 c 397.** The legislature finds that credit unions provide many valuable services to the consumers of this state and will be better prepared to continue providing these services if the Washington state credit union act is modernized, clarified, and reorganized.

Furthermore, the legislature finds that credit unions and credit union members will benefit by enacting provisions clearly specifying the director of financial institutions' authority to enforce statutory provisions.

Revisions to this chapter reflect the legislature's intent to modernize, clarify, and reorganize the existing act, and specify the director's enforcement authority. By enacting the revisions to this chapter, it is not the intent of the legislature to affect the scope of credit unions' field of membership or tax status, or impact federal parity provisions. [1997 c 397 § 1.]

**31.12.005 Definitions.** Unless the context clearly requires otherwise, as used in this chapter:

(1) "Board" means the board of directors of a credit union.

(2) "Board officer" means an officer of the board elected under RCW 31.12.265(1).

(3) "Branch" of a credit union, out-of-state credit union, or foreign credit union means any facility that meets all of the following criteria:

(a) The facility is a staffed physical facility;

(b) The facility is owned or leased in whole or part by the credit union or its credit union service organization; and

(c) Deposits and withdrawals may be made, or shares purchased, through staff at the facility.

(4) "Capital" means a credit union's reserves, undivided earnings, and allowance for loan and lease losses, and other items that may be included under RCW 31.12.413 or by rule of the director.

(5) "Credit union" means a credit union organized and operating under this chapter.

(6) "Credit union service organization" means an organization that a credit union has invested in pursuant to RCW 31.12.436(8), or a credit union service organization invested in by an out-of-state, federal, or foreign credit union.

(7) "Director" means the director of financial institutions.

(8) "Federal credit union" means a credit union organized and operating under the laws of the United States.

(9) "Financial institution" means any commercial bank, trust company, savings bank, or savings and loan association, whether state or federally chartered, and any credit union, out-of-state credit union, or federal credit union.

(10) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction.

(11) "Insolvency" means:

(a) If, under generally accepted accounting principles, the recorded value of the credit union's assets are less than its obligations to its share account holders, depositors, creditors, and others; or

(b) If it is likely that the credit union will be unable to pay its obligations or meet its share account holders' and depositors' demands in the normal course of business.

(12) "Loan" means any loan, overdraft line of credit, extension of credit, or lease, in whole or in part.

(13) "Material violation of law" means:

(a) If the credit union or person has violated a material provision of:

- (i) Law;
- (ii) Any cease and desist order issued by the director;
- (iii) Any condition imposed in writing by the director in connection with the approval of any application or other request of the credit union; or
- (iv) Any written agreement entered into with the director;

(b) If the credit union or person has concealed any of the credit union's books, papers, records, or assets, or refused to submit the credit union's books, papers, records, or affairs for inspection to any examiner of the state or, as appropriate, to any examiner of the national credit union administration; or

(c) If the person has breached his or her fiduciary duty to the credit union.

(14) "Membership share" means an initial share that a credit union may require a person to purchase in order to establish and maintain membership in a credit union.

(15) "Net worth" means a credit union's capital, less the allowance for loan and lease losses.

(16) "Operating officer" means an employee of a credit union designated as an officer pursuant to RCW 31.12.265(2).

(17) "Organization" means a corporation, partnership, association, limited liability company, trust, or other organization or entity.

(18) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

(19) "Person" means an organization or a natural person including, but not limited to, a sole proprietorship.

(20) "Principally" or "primarily" means more than one-half.

(21) "Senior operating officer" includes:

- (a) An operating officer who is a vice-president or above; and
- (b) Any employee who has policy-making authority.

(22) "Small credit union" means a credit union with up to ten million dollars in total assets.

(23) "Unsafe or unsound condition" means, but is not limited to:

- (a) If the credit union is insolvent;
- (b) If the credit union has incurred or is likely to incur losses that will deplete all or substantially all of its net worth; or

(c) If the credit union is in imminent danger of losing its share and deposit insurance or guarantee.

(24) "Unsafe or unsound practice" means any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the likely consequences of which, if continued, would be abnormal risk of loss or danger to a credit union, its members, or an organization insuring or guaranteeing its shares and deposits. [2001 c 83 § 1; 1997 c 397 § 2. Prior: 1994 c 256 § 68; 1994 c 92 § 175; 1984 c 31 § 2.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

## CREDIT UNION ORGANIZATION

**31.12.015 Declaration of policy.** A credit union is a cooperative society organized under this chapter as a non-profit corporation for the purposes of promoting thrift among its members and creating a source of credit for them at fair and reasonable rates of interest.

The director is the state's credit union regulatory authority whose purpose is to protect members' financial interests, the integrity of credit unions as cooperative institutions, and the interests of the general public, and to ensure that credit unions remain viable and competitive in this state. [1997 c 397 § 3. Prior: 1994 c 256 § 69; 1994 c 92 § 176; 1984 c 31 § 3.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.025 Use of words in name.** (1) A credit union shall include the words "credit union" in its name.

(2) No person may conduct business or engage in any other activity under a name or title containing the words "credit union", or represent itself as a credit union, unless it is:

(a) A credit union, out-of-state credit union, or a foreign credit union;

(b) An organization whose membership or ownership is limited to credit unions, out-of-state credit unions, federal credit unions, or their trade organizations;

(c) A person that is primarily in the business of managing one or more credit unions, out-of-state credit unions, or federal credit unions; or

(d) A credit union service organization. [1997 c 397 § 4; 1994 c 256 § 70; 1984 c 31 § 4.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.035 Application for permission to organize—Approval.** Seven or more natural persons who reside in this state may apply to the director for permission to organize a credit union. The application must include copies of the proposed articles of incorporation and bylaws, and such other information as may be required by the director. The director shall approve or deny a complete application within sixty days of receipt. [1997 c 397 § 5; 1994 c 92 § 177; 1984 c 31 § 5.]

**31.12.055 Manner of organizing—Articles of incorporation—Submission to director.** (1) Persons applying for the organization of a credit union shall execute articles of incorporation stating:

(a) The initial name and location of the credit union;

(b) That the duration of the credit union is perpetual;

(c) That the purpose of the credit union is to engage in the business of a credit union and any other lawful activities permitted to a credit union by applicable law;

(d) The number of its directors, which must not be less than five or greater than fifteen, and the names of the persons who are to serve as the initial directors;

(e) The names of the incorporators;

(f) The initial par value, if any, of the shares of the credit union;

(g) The extent, if any, to which personal liability of directors is limited;

(h) The extent, if any, to which directors, supervisory committee members, officers, employees, and others will be indemnified by the credit union; and

(i) Any other provision which is not inconsistent with this chapter.

(2) Applicants shall submit the articles of incorporation in triplicate to the director. [1997 c 397 § 6. Prior: 1994 c 256 § 71; 1994 c 92 § 179; 1984 c 31 § 7.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.065 Bylaws—Submission to director.** (1) Persons applying for the organization of a credit union shall adopt bylaws that prescribe the manner in which the business of the credit union shall be conducted. The bylaws shall include:

(a) The name of the credit union;

(b) The field of membership of the credit union;

(c) Reasonable qualifications for membership in the credit union, including, but not limited to, the minimum number of shares, and the payment of a membership fee, if any, required for membership, and the procedures for expelling a member;

(d) The number of directors and supervisory committee members, and the length of terms they serve and the permissible term length of any interim director or supervisory committee member;

(e) Any qualification for eligibility to serve on the credit union's board or supervisory committee;

(f) The number of credit union employees that may serve on the board, if any;

(g) The frequency of regular meetings of the board and the supervisory committee, and the manner in which members of the board or supervisory committee will be notified of meetings;

(h) The timing of the annual membership meeting;

(i) The manner in which members may call a special membership meeting;

(j) The manner in which members will be notified of membership meetings;

(k) The number of members constituting a quorum at a membership meeting;

(l) Provisions, if any, for the indemnification of directors, supervisory committee members, officers, employees, and others by the credit union, if not included in the articles of incorporation; and

(m) Any other provision which is not inconsistent with this chapter.

(2) Applicants shall submit the bylaws in duplicate to the director. [2001 c 83 § 2; 1997 c 397 § 7. Prior: 1994 c 256 § 72; 1994 c 92 § 180; 1984 c 31 § 8.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.075 Approval, denial of proposed credit union—Appeal.** (1) When the proposed articles of incorporation and bylaws complying with the requirements of RCW 31.12.055 and 31.12.065 have been filed with the director, the director shall:

(a) Determine whether the articles of incorporation and bylaws are consistent with this chapter; and

(b) Determine the feasibility of the credit union, taking into account surrounding facts and circumstances influencing the successful operation of the credit union.

(2) If the director is satisfied with the determinations made under subsection (1)(a) and (b) of this section, the director shall endorse each of the articles of incorporation "approved", indicate the date the approval was granted, and return two sets of articles and one set of bylaws to the applicants.

(3) If the director is not satisfied with the determinations made under subsection (1)(a) and (b) of this section, the director shall endorse each of the articles of incorporation "denied," indicate the date of, and reasons for, the denial, and return two copies of the articles of incorporation with one copy of the bylaws to the person from whom they were received. The director shall at the time of returning the copies of the articles of incorporation and bylaws, also provide notice to the applicant of the applicant's right to appeal the denial under chapter 34.05 RCW. The denial is conclusive unless the applicant requests a hearing under chapter 34.05 RCW. [1997 c 397 § 8; 1994 c 92 § 181; 1984 c 31 § 9.]

**31.12.085 Filing upon approval—Fee—Notice to director—Authority to commence business.** (1) Upon approval under RCW 31.12.075(2), the director shall deliver a copy of the articles of incorporation to the secretary of state for filing. Upon receipt of the approved articles of incorporation and a twenty dollar filing fee provided by the applicants, the secretary of state shall file the articles of incorporation.

(2) Upon filing of the approved articles of incorporation by the secretary of state, the persons named in the articles of incorporation and their successors may conduct business as a credit union, having the powers, duties, and obligations set forth in this chapter. A credit union may not conduct business until the articles have been filed by the secretary of state.

(3) A credit union shall organize and begin conducting business within six months of the date that its articles of incorporation are filed by the secretary of state or its charter is void. However, the director may grant extensions of the six-month period. [2001 c 83 § 3; 1997 c 397 § 9; 1994 c 92 § 182; 1993 c 269 § 12; 1984 c 31 § 10.]

**Effective date—1993 c 269:** See note following RCW 23.86.070.

## CORPORATE GOVERNANCE

**31.12.105 Amendment to articles of incorporation—Approval of director—Procedure.** A credit union's articles of incorporation may be amended by the board with the approval of the director. Complete applications for amendments to the articles must be approved or denied by the director within sixty days of receipt. Amendments to a credit union's articles of incorporation must conform with RCW 31.12.055.

Upon approval, the director shall promptly deliver the articles' amendments, including any necessary filing fees paid by the applicant, to the secretary of state for filing. The articles' amendments are effective upon filing of the amend-

ments by the secretary of state. [2001 c 83 § 4; 1997 c 397 § 10; 1994 c 92 § 184; 1984 c 31 § 12.]

**31.12.115 Amendment to bylaws—Approval of director required—Procedure.** (1) A credit union's field of membership bylaws may be amended by the board with approval of the director. Complete applications to amend a credit union's field of membership bylaws must be approved or denied by the director within sixty days of receipt.

(2) A credit union's other bylaws may be amended by the board.

(3) Any amendments to a credit union's bylaws must conform with RCW 31.12.065. [2001 c 83 § 5; 1997 c 397 § 11. Prior: 1994 c 256 § 73; 1994 c 92 § 185; 1984 c 31 § 13.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.185 Annual membership meetings.** (1) A credit union's annual membership meeting shall be held at such time and place as the bylaws prescribe, and shall be conducted according to the rules of procedure approved by the board.

(2) Notice of the annual membership meetings of a credit union shall be given as provided in the bylaws of the credit union. [1997 c 397 § 12; 1987 c 338 § 2; 1984 c 31 § 20.]

**31.12.195 Special membership meetings.** (1) A special membership meeting of a credit union may be called by a majority of the board, a majority vote of the supervisory committee, or upon written application of at least ten percent or two thousand of the members of a credit union, whichever is less.

(2) A request for a special membership meeting of a credit union shall be in writing and shall state specifically the purpose or purposes for which the meeting is called. At this meeting, only those agenda items detailed in the written request may be considered. If the special membership meeting is being called for the removal of one or more directors, the request shall state the name of the director or directors whose removal is sought.

(3) Upon receipt of a request for a special membership meeting, the secretary of the credit union shall designate the time and place at which the special membership meeting will be held. The designated place of the meeting must be a reasonable location within the county in which the principal place of business of the credit union is located, unless provided otherwise by the bylaws. The designated time of the membership meeting must be no sooner than twenty, and no later than thirty days after the request is received by the secretary.

The secretary shall give notice of the meeting within ten days of receipt of the request or within such other reasonable time period as may be provided by the bylaws. The notice must include the purpose or purposes for which the meeting is called, as provided in the bylaws. If the special membership meeting is being called for the removal of one or more directors, the notice must state the name of the director or directors whose removal is sought.

(4) Except as provided in this subsection, the chairperson of the board shall preside over special membership meetings. If the purpose of the special meeting includes the proposed

removal of the chairperson, the next highest ranking board officer whose removal is not sought shall preside over the special meeting. If the removal of all board officers is sought, the chairperson of the supervisory committee shall preside over the special meeting.

(5) Special membership meetings shall be conducted according to the rules of procedure approved by the board. [1997 c 397 § 13. Prior: 1994 c 256 § 77; 1994 c 92 § 188; 1987 c 338 § 3; 1984 c 31 § 21.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.225 Board of directors—Election of directors—Terms—Vacancies—Meetings.** (1) The business and affairs of a credit union shall be managed by a board of not less than five and not greater than fifteen directors.

(2) The directors must be elected at the credit union's annual membership meeting. They shall hold their offices until their successors are qualified and elected or appointed.

(3) Directors shall be elected to terms of between one and three years, as provided in the bylaws. If the terms are longer than one year, the directors must be divided into classes, and an equal number of directors, as nearly as possible, must be elected each year.

(4) Any vacancy on the board must be filled by an interim director appointed by the board, unless the interim director would serve a term of fewer than ninety days. Interim directors appointed to fill vacancies created by expansion of the board will serve until the next annual meeting of members. Other interim directors will serve out the unexpired term of the former director, unless provided otherwise in the credit union's bylaws.

(5) The board will have regular meetings not less frequently than once each month. [2001 c 83 § 6; 1997 c 397 § 14; 1984 c 31 § 24.]

**31.12.235 Directors—Qualifications—Operating officers and employees may serve.** (1) A director must be a natural person and a member of the credit union. If a director ceases to be a member of the credit union, the director shall no longer serve as a director.

(2)(a) If a director is absent from four of the regular board meetings in any twelve-month period in a term without being reasonably excused by the board, the director shall no longer serve as a director for the period remaining in the term.

(b) The board secretary shall promptly notify the director that he or she shall no longer serve as a director. Failure to provide notice does not affect the termination of the director's service under (a) of this subsection.

(3) A director must meet any qualification requirements set forth in the credit union's bylaws. If a director fails to meet these requirements, the director shall no longer serve as a director.

(4) The operating officers and employees of the credit union may serve as directors of the credit union, but only as permitted by the credit union's bylaws. In no event may the operating officers and employees of the credit union constitute a majority of the board. [2001 c 83 § 7; 1997 c 397 § 15; 1994 c 256 § 78; 1984 c 31 § 25.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.246 Removal of directors—Interim directors.**

The members of a credit union may remove a director of the credit union at a special membership meeting held in accordance with RCW 31.12.195 and called for that purpose. If the members remove a director, the members may at the same special membership meeting elect an interim director to complete the remainder of the former director's term of office or authorize the board to appoint an interim director as provided in RCW 31.12.225. [1997 c 397 § 16; 1984 c 31 § 26.]

**31.12.255 Board of directors—Powers and duties.**

The business and affairs of a credit union shall be managed by the board of the credit union. The duties of the board include, but are not limited to, the duties enumerated in this section. The duties listed in subsection (1) of this section may not be delegated by the credit union's board of directors. The duties listed in subsection (2) of this section may be delegated to a committee, officer, or employee, with appropriate reporting to the board.

- (1) The board shall:
  - (a) Set the par value of shares, if any, of the credit union;
  - (b) Set the minimum number of shares, if any, required for membership;
  - (c) Establish the loan policies under which loans may be approved;
  - (d) Establish the conditions under which a member may be expelled for cause;
  - (e) Fill vacancies on all committees except the supervisory committee;
  - (f) Approve an annual operating budget for the credit union;
  - (g) Designate those persons or positions authorized to execute or certify documents or records on behalf of the credit union;
  - (h) Review the supervisory committee's annual report; and
  - (i) Perform such other duties as the members may direct.
- (2) In addition, unless delegated, the board shall:
  - (a) Act upon applications for membership in the credit union;
  - (b) Determine the maximum amount of shares and deposits that a member may hold in the credit union;
  - (c) Declare dividends on shares and set the rate of interest on deposits;
  - (d) Set the fees, if any, to be charged by the credit union to its members for the right to be a member of the credit union and for services rendered by the credit union;
  - (e) Determine the amount which may be loaned to a member together with the terms and conditions of loans;
  - (f) Establish policies under which the credit union may borrow and invest; and
  - (g) Approve the charge-off of credit union losses. [2001 c 83 § 8; 1997 c 397 § 17; 1994 c 256 § 79; 1984 c 31 § 27.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.265 Officers.** (1) The board at its first meeting after the annual membership meeting shall elect board officers from among its members, as provided in the credit union's bylaws. The board will elect as many board officers as it deems necessary for transacting the business of the board of the credit union. The board officers shall hold office until

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their successors are qualified and elected, unless sooner removed as provided in this chapter. All board officers must be elected members of the board. However, the office of board treasurer and board secretary may be held by the same person and need not be elected members of the board.

(2) The board may designate as many operating officers as it deems necessary for conducting the business of the credit union, including, but not limited to, a principal operating officer. Individuals serving as operating officers may also serve as board officers in accordance with subsection (1) of this section and subject to RCW 31.12.235(4). [1997 c 397 § 18; 1994 c 256 § 80; 1987 c 338 § 4; 1984 c 31 § 28.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.267 Directors and officers—Fiduciary relationship.** Directors, board officers, and senior operating officers are deemed to stand in a fiduciary relationship to the credit union, and must discharge the duties of their respective positions:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the director or officer reasonably believes to be in the best interests of the credit union. [2001 c 83 § 9; 1997 c 397 § 19.]

**31.12.269 Directors and committee members—Limitations on personal liability—Exceptions.** (1) Directors and committee members at a credit union or federal credit union have no personal liability for harm caused by acts or omissions performed on behalf of the credit union if: The director or committee member was acting within the scope of his or her duties at the time of the act or omission; the harm was not caused by an act in violation of RCW 31.12.267; the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed; and the harm was not caused by the director or committee member's operation of a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to either possess an operator's license or maintain insurance.

(2) This section does not affect a director's or committee member's liability to the credit union or to a governmental entity for harm to the credit union or governmental entity caused by the director or committee member.

(3) This section does not affect the vicarious liability of the credit union with respect to harm caused to any person, including harm caused by the negligence of a director or committee member.

(4) This section does not affect the liability of employees of the credit union for acts or omissions done within the scope of their employment. [2001 c 120 § 1.]

**31.12.285 Suspension of members of board or supervisory committee by board—For cause.** The board may suspend for cause a member of the board or a member of the supervisory committee until a membership meeting is held. The membership meeting must be held within thirty days after the suspension. The members attending the meeting

shall vote whether to remove a suspended party. For purposes of this section, "cause" includes demonstrated financial irresponsibility, a breach of fiduciary duty to the credit union, or activities which, in the judgment of the board, threaten the safety and soundness of the credit union. [1997 c 397 § 21; 1984 c 31 § 30.]

**31.12.326 Supervisory committee—Membership—Terms—Vacancies—Operating officers and employees may not serve.** (1) A supervisory committee of at least three members must be elected at the annual membership meeting of the credit union. Members of the supervisory committee shall serve a term of three years, unless sooner removed under this chapter or until their successors are qualified and elected or appointed. The members of the supervisory committee shall be divided into classes so that as equal a number as is possible is elected each year.

(2)(a) If a supervisory committee member is absent from more than one-third of the committee meetings in any twelve-month period in a term without being reasonably excused by the committee, the member shall no longer serve as a member of the committee for the period remaining in the term.

(b) The supervisory committee shall promptly notify the member that he or she shall no longer serve as a committee member. Failure to provide notice does not affect the termination of the member's service under (a) of this subsection.

(3) A supervisory committee member must be a natural person and a member of the credit union. If a member of the supervisory committee ceases to be a member of the credit union, the member shall no longer serve as a committee member. The chairperson of the supervisory committee may not serve as a board officer.

(4) Any vacancy on the committee must be filled by an interim member appointed by the committee, unless the interim member would serve a term of fewer than ninety days. Interim members appointed to fill vacancies created by expansion of the committee will serve until the next annual meeting of members. Other interim members may serve out the unexpired term of the former member, unless provided otherwise by the credit union's bylaws. However, if all positions on the committee are vacant at the same time, the board may appoint interim members to serve until the next annual membership meeting.

(5) No operating officer or employee of a credit union may serve on the credit union's supervisory committee. No more than one director may be a member of the supervisory committee at the same time, unless provided otherwise by the credit union's bylaws. No member of the supervisory committee may serve on the credit committee or investment committee of the credit union while serving on the supervisory committee. [2001 c 83 § 10; 1997 c 397 § 22; 1984 c 31 § 34.]

**31.12.335 Supervisory committee—Duties.** (1) The supervisory committee of a credit union shall:

(a) Meet at least quarterly;

(b) Keep fully informed as to the financial condition of the credit union and the decisions of the credit union's board;

(c) Perform or arrange for a complete annual audit of the credit union and a verification of its members' accounts; and

(d) Report its findings and recommendations to the board and make an annual report to members at each annual membership meeting.

(2) At least one supervisory committee member may attend each regular board meeting. [2001 c 83 § 11; 1997 c 397 § 23. Prior: 1994 c 256 § 82; 1994 c 92 § 192; 1984 c 31 § 35.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.345 Suspension of members of a committee or members of the board by supervisory committee—For cause.** (1) The supervisory committee may, by unanimous vote, for cause, suspend a member of the board, until a membership meeting is held. The membership meeting must be held within thirty days after the suspension. The members attending that meeting shall vote whether to remove the suspended party or parties. The supervisory committee may, by unanimous vote, for cause, suspend members of other committees until a membership meeting is held. The meeting must be held within thirty days after the suspension. The members attending that meeting shall vote whether to remove the suspended party or parties.

(2) For purposes of this section, "cause" includes demonstrated financial irresponsibility, a breach of fiduciary duty to the credit union, or activities which, in the judgment of the supervisory committee, threaten the safety and soundness of the credit union. [1997 c 397 § 24; 1984 c 31 § 36.]

**31.12.365 Directors and members of committees—Compensation—Reimbursement—Loans.** (1) Directors and members of committees shall not receive compensation for their service as directors and committee members. However, this subsection does not prohibit directors or committee members from receiving:

(a) Gifts of minimal value; and

(b) Insurance coverage or incidental services, available to employees generally.

(2) Directors and members of committees may receive reimbursement for reasonable expenses incurred on behalf of themselves and their spouses in the performance of the directors' and committee members' duties.

(3) Loans to directors and supervisory and credit committee members may not be made under more favorable terms and conditions than those made to members generally. [2001 c 83 § 12; 1997 c 397 § 25; 1984 c 31 § 38.]

**31.12.367 Risk—Bond coverage—Notice to director.** (1) Each credit union must be adequately insured against risk. In addition, each director, officer, committee member, and employee of a credit union must be adequately bonded.

(2) When a credit union receives notice that its fidelity bond coverage will be suspended or terminated, the credit union shall notify the director in writing not less than thirty-five days prior to the effective date of the notice of suspension or termination. [2001 c 83 § 13; 1997 c 397 § 26; 1994 c 92 § 191; 1984 c 31 § 32. Formerly RCW 31.12.306.]

## MEMBERSHIP

**31.12.382 Limitation on membership.** (1) Membership in a credit union shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district. The director may adopt rules: (a) Reasonably defining "common bond"; and (b) setting forth standards for the approval of charters.

(2) The director may approve the inclusion within the field of membership of a credit union a group having a separate common bond if the director determines that the group is not of sufficient size or resources to support a viable credit union of its own. [1994 c 92 § 178; 1984 c 31 § 6. Formerly RCW 31.12.045.]

**31.12.384 Membership.** (1) A credit union may admit to membership those persons qualified for membership as set forth in its bylaws.

(2) An organization whose membership, ownership, or employees are comprised principally of persons who are eligible for membership in the credit union may become a member of the credit union. [1997 c 397 § 27; 1984 c 31 § 16. Formerly RCW 31.12.145.]

**31.12.386 Voting rights—Methods—Proxy—Under eighteen years of age.** (1) No member may have more than one vote regardless of the number of shares held by the member. An organization having membership in a credit union may cast one vote through its agent duly authorized in writing.

(2) Members may vote, as prescribed in the credit union's bylaws, by mail ballot, absentee ballot, or other method. However, no member may vote by proxy.

(3) A member who is not at least eighteen years of age is not eligible to vote as a member unless otherwise provided in the credit union's bylaws. [1997 c 397 § 28; 1994 c 256 § 76; 1984 c 31 § 17. Formerly RCW 31.12.155.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.388 Expulsion of member—Challenge—Share and deposit accounts.** (1) Members expelled from the credit union will be notified of the expulsion and the reasons upon which it is based. The credit union will, upon request of the expelled member, allow the member to challenge the expulsion and seek reinstatement as a member.

(2) The amounts in an expelled member's share and deposit accounts must be promptly paid to the person following expulsion, and after deducting amounts due from the member(s) to the credit union, including, but not limited to, any applicable penalties for early withdrawal. Expulsion will not operate to relieve the person from outstanding liabilities owed to the credit union. [1997 c 397 § 29; 1984 c 31 § 31. Formerly RCW 31.12.295.]

## POWERS OF CREDIT UNIONS

**31.12.402 Powers.** A credit union may:

(1) Issue shares to and receive deposits from its members in accordance with RCW 31.12.416;

(2) Make loans to its members in accordance with RCW 31.12.426 and 31.12.428;

(3) Pay dividends and interest to its members in accordance with RCW 31.12.418;

(4) Impose reasonable charges for the services it provides to its members;

(5) Impose financing charges and reasonable late charges in the event of default on loans, subject to applicable law, and recover reasonable costs and expenses, including, but not limited to, collection costs, and reasonable attorneys' fees incurred both before and after judgment, incurred in the collection of sums due, if provided for in the note or agreement signed by the borrower;

(6) Acquire, lease, hold, assign, pledge, sell, or otherwise dispose of interests in personal property and in real property in accordance with RCW 31.12.438;

(7) Deposit and invest funds in accordance with RCW 31.12.436;

(8) Borrow money, up to a maximum of fifty percent of its total shares, deposits, and net worth;

(9) Discount or sell any of its assets, or purchase any or all of the assets of another credit union, out-of-state credit union, or federal credit union. However, a credit union may not discount or sell all, or substantially all, of its assets without the approval of the director;

(10) Accept deposits of deferred compensation of its members;

(11) Act as fiscal agent for and receive payments on shares and deposits from the federal government or this state, and any agency or political subdivision thereof;

(12) Engage in activities and programs as requested by the federal government, this state, and any agency or political subdivision thereof, when the activities or programs are not inconsistent with this chapter;

(13) Hold membership in credit unions, out-of-state credit unions, or federal credit unions and in organizations controlled by or fostering the interests of credit unions, including, but not limited to, a central liquidity facility organized under state or federal law;

(14) Pay additional dividends and interest to members, or an interest rate refund to borrowers;

(15) Enter into lease agreements, lease contracts, and lease-purchase agreements with members;

(16) Act as insurance agent or broker for the sale to members of:

(a) Group life, accident, health, and credit life and disability insurance; and

(b) Other insurance that other types of Washington state-chartered financial institutions are permitted to sell, on the same terms and conditions that these institutions are permitted to sell such insurance;

(17) Impose a reasonable service charge for the administration and processing of accounts that remain dormant for a period of time specified by the credit union;

(18) Establish and operate on-premises or off-premises electronic facilities;

(19) Enter into formal or informal agreements with another credit union for the purpose of fostering the development of the other credit union;

(20) Work with community leaders to develop and prioritize efforts to improve the areas where their members reside

by making investments in the community through contributions to organizations that primarily serve either a charitable, social, welfare, or educational purpose, or are exempt from taxation pursuant to section 501(c)(3) of the internal revenue code;

(21) Limit the personal liability of its directors in accordance with provisions of its articles of incorporation that conform with RCW 23B.08.320;

(22) Indemnify its directors, supervisory committee members, officers, employees, and others in accordance with provisions of its articles of incorporation or bylaws that conform with RCW 23B.08.500 through 23B.08.600; and

(23) Exercise such incidental powers as are necessary or convenient to enable it to conduct the business of a credit union. [2001 c 83 § 14; 1997 c 397 § 30. Prior: 1994 c 256 § 74; 1994 c 92 § 186; 1990 c 33 § 564; 1984 c 31 § 14. Formerly RCW 31.12.125.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**31.12.404 Additional powers—Powers conferred on federal credit union—Authority of director.** (1) Notwithstanding any other provision of law, and in addition to all powers and authorities, express or implied, that a credit union has under the laws of this state, a credit union has the powers and authorities that a federal credit union had on December 31, 1993, or a subsequent date not later than July 22, 2001.

(2) Notwithstanding any other provision of law, and in addition to the powers and authorities, express or implied, that a credit union has under subsection (1) of this section, a credit union has the powers and authorities that a federal credit union has, and an out-of-state credit union operating a branch in Washington has, subsequent to July 22, 2001, if the director finds that the exercise of the power and authority serves the convenience and advantage of members of credit unions, and maintains the fairness of competition and parity between credit unions and federal or out-of-state credit unions. However, a credit union:

(a) Must still comply with RCW 31.12.408; and

(b) Is not granted the field of membership powers or authorities of any out-of-state credit union operating a branch in Washington.

(3) The restrictions, limitations, and requirements applicable to specific powers or authorities of federal or out-of-state credit unions apply to credit unions exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to the specific exercise of the powers or authorities granted credit unions solely under this section.

(4) As used in this section, "powers and authorities" include, but are not limited to, powers and authorities in corporate governance matters. [2001 c 83 § 15; 1997 c 397 § 31. Prior: 1994 c 256 § 75; 1994 c 92 § 187; 1987 c 338 § 1; 1984 c 31 § 15. Formerly RCW 31.12.136.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.408 Insurance required after December 31, 1998—Federal share insurance program or an equivalent share insurance program—Director's findings.** (1) After

December 31, 1998, credit unions must be insured under the federal share insurance program or an equivalent share insurance program as defined in this section. For the purposes of this section an equivalent share insurance program is a program that: (a) Holds reserves proportionately equal to the federal share insurance program; (b) maintains adequate reserves and access to additional sources of funds through replenishment features, reinsurance, or other sources of funds; and (c) has share insurance contracts that reflect a national geographic diversity.

(2) Before any credit union may insure its share deposits with a share insurance program other than the federal share insurance program, the director must make a finding that the alternative share insurance program meets the standards set forth in this section, following a public hearing and a report on the basis for such finding to the appropriate standing committees of the legislature. All such findings shall be made before December 1st of any year and shall not take effect until the end of the regular legislative session of the following year.

(3) Any alternative share insurance program approved under this section shall be reviewed annually by the director to determine whether the program currently meets the standards in this section. The director shall prepare a written report of his or her findings including supporting analysis and forward the report to the appropriate standing committees of the legislature. If the director finds that the alternative share insurance program does not currently meet the standards of this section the director shall notify all credit unions that insure their shares under the alternative share insurance program, and shall include notice of a public hearing for the purpose of receiving comment on the director's finding. Following the hearing the director may either rescind his or her finding or reaffirm the finding that the alternative share insurance program does not meet the standards in this section. If the finding is reaffirmed, the director shall order all credit unions whose shares are insured with the alternative share insurance program to file, immediately, an application with the national credit union administration to convert to the federal share insurance program. [1996 c 5 § 6; (1998 c 122 § 6 expired July 1, 2001). Formerly RCW 31.12.039.]

**Expiration date—1998 c 122 §§ 5 and 6:** "Sections 5 and 6 of this act expire July 1, 2001." [1998 c 122 § 9.]

**Findings—Intent—1996 c 5:** "The legislature finds that since its creation in 1975 the Washington credit union share guaranty association has provided security to member share accounts and other valuable services to members.

The legislature further finds that although during that period thirty member credit unions have been required to liquidate or merge with other members with the assistance of the association, no depositor has experienced any loss.

The legislature further finds that the changing financial services environment, and ever-increasing competitive pressures have caused the association to review its operation and capacity with the result that the membership has recommended an orderly dissolution, and now seeks the adoption of standards and procedures by the legislature that will direct and ensure an orderly transition to federal share insurance.

Therefore, it is the intent of the legislature to effectuate a fair and orderly transition of association members to federal share insurance, and provide the highest available level of safety for share accounts in keeping with depositors' expectations." [1996 c 5 § 1.]

**Severability—1996 c 5:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 5 § 9.]

**31.12.413 Low-income credit unions—Director's approval required—Powers—Rules.** (1) A credit union may apply in writing to the director for designation as a low-income credit union. The criteria for approval of this designation are as follows:

(a) At least fifty percent of a substantial and well-defined segment of the credit union's members or potential primary members earn no more than eighty percent of the state or national median income, whichever is higher;

(b) The credit union must submit an acceptable written plan on marketing to and serving the well-defined segment;

(c) The credit union must agree to submit annual reports to the director on its service to the well-defined segment; and

(d) The credit union must submit other information and satisfy other criteria as may be required by the director.

(2)(a) Among other powers and authorities, a low-income credit union may:

(i) Issue secondary capital accounts approved in advance by the director upon application of the credit union; and

(ii) Accept shares and deposits from nonmembers.

(b) A secondary capital account is:

(i) Over one hundred thousand dollars, or a higher amount as established by the director;

(ii) Nontransactional;

(iii) Owned by a nonnatural person; and

(iv) Subordinate to other creditors.

(3) The director may adopt rules for the organization and operation of low-income credit unions including, but not limited to, rules concerning secondary capital accounts and requiring disclosures to the purchasers of the accounts. [2001 c 83 § 16.]

#### MEMBERS' ACCOUNTS

**31.12.416 Shares and deposits governed by chapter 30.22 RCW—Limitation on shares and deposits—Notice of withdrawal—Lien rights.** (1) Shares held and deposits made in a credit union by a natural person are governed by chapter 30.22 RCW.

(2) A credit union may require ninety days notice of a member's intention to withdraw shares or deposits. The notice requirement may be extended with the written consent of the director.

(3) A credit union will have a lien on all shares and deposits, including, but not limited to, dividends, interest, and any other earnings and accumulations thereon, of any share account holder or depositor, to the extent of any obligation owed to the credit union by the share account holder or depositor. [1997 c 397 § 32. Prior: 1994 c 256 § 83; 1994 c 92 § 194; 1984 c 31 § 40. Formerly RCW 31.12.385.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.418 Dividends.** Dividends may be declared from the credit union's earnings which remain after the deduction of expenses, interest on deposits, and the amounts required for reserves, or the dividends may be declared in whole or in part from the undivided earnings that remain from preceding periods. [1997 c 397 § 33; 1984 c 31 § 50. Formerly RCW 31.12.485.]

(2004 Ed.)

#### LOANS TO MEMBERS

**31.12.426 Loans to members—Secured or unsecured loans.** (1) A credit union may make secured and unsecured loans to its members under policies established by the board, subject to the loans to one borrower limits provided for in RCW 31.12.428. Each loan must be evidenced by records adequate to support enforcement or collection of the loan and any review of the loan by the director. Loans must be in compliance with rules adopted by the director.

(2) A credit union may obligate itself to purchase loans in accordance with RCW 31.12.436(1), if the credit union's underwriting policies would have permitted it to originate the loans. [2001 c 83 § 17; 1997 c 397 § 34. Prior: 1994 c 256 § 84; 1994 c 92 § 195; 1987 c 338 § 6; 1984 c 31 § 42. Formerly RCW 31.12.406.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.428 Limit on loan amount.** (1) No loan may be made to any borrower if the loan would cause the borrower to be indebted to the credit union on all types of loans in an aggregated amount exceeding ten thousand dollars or twenty-five percent of the capital of the credit union, whichever is greater, without the approval of the director.

(2) The director by rule may establish separate limits on business loans to one borrower. [2001 c 83 § 18; 1997 c 397 § 35; 1994 c 256 § 92. Formerly RCW 31.12.317.]

**Effective date—1997 c 397 § 35:** "Section 35 of this act takes effect July 1, 1998." [1997 c 397 § 90.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

#### INVESTMENTS

**31.12.436 Investment of funds in excess of loans.** A credit union may invest its funds in any of the following, as long as they are deemed prudent by the board:

(1) Loans held by credit unions, out-of-state credit unions, or federal credit unions; loans to members held by other lenders; and loans to nonmembers held by other lenders, with the approval of the director;

(2) Bonds, securities, or other investments that are fully guaranteed as to principal and interest by the United States government, and general obligations of this state and its political subdivisions;

(3) Obligations issued by corporations designated under 31 U.S.C. Sec. 9101, or obligations, participations or other instruments issued and guaranteed by the federal national mortgage association, federal home loan mortgage corporation, government national mortgage association, or other government-sponsored enterprise;

(4) Participations or obligations which have been subjected by one or more government agencies to a trust or trusts for which an executive department, agency, or instrumental-ity of the United States has been named to act as trustee;

(5) Share or deposit accounts of other financial institutions, the accounts of which are federally insured or insured or guaranteed by another insurer or guarantor approved by the director. The shares and deposits made by a credit union under this subsection may exceed the insurance or guarantee

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limits established by the organization insuring or guaranteeing the institution into which the shares or deposits are made;

(6) Common trust or mutual funds whose investment portfolios consist of securities issued or guaranteed by the federal government or an agency of the government;

(7) Up to five percent of the capital of the credit union, in debt or equity issued by an organization owned by the Washington credit union league;

(8) Shares, stocks, loans, or other obligations of organizations whose primary purpose is to strengthen, advance, or provide services to the credit union industry or credit union members. A credit union may in the aggregate invest an amount not to exceed one percent of its assets in organizations under this subsection. In addition, a credit union may in the aggregate lend an amount not to exceed one percent of its assets to organizations under this subsection. These limits do not apply to investments in, and loans to, an organization:

(a) That is wholly owned by one or more credit unions or federal or out-of-state credit unions; and

(b) Whose activities are limited exclusively to those authorized by this chapter for a credit union;

(9) Loans to credit unions, out-of-state credit unions, or federal credit unions. The aggregate of loans issued under this subsection is limited to twenty-five percent of the total shares and deposits of the lending credit union;

(10) Key person insurance policies, the proceeds of which inure exclusively to the benefit of the credit union; or

(11) Other investments approved by the director upon written application. [2001 c 83 § 19; 1997 c 397 § 36. Prior: 1994 c 256 § 86; 1994 c 92 § 197; 1987 c 338 § 7; 1984 c 31 § 44. Formerly RCW 31.12.425.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.438 Investment in real property or leasehold interests for own use—Future expansion.** (1) A credit union may invest in real property or leasehold interests primarily for its own use in conducting business, including, but not limited to, structures and fixtures attached to real property, subject to the following limitations:

(a) The credit union's net worth equals at least five percent of the total of its share and deposit accounts;

(b) The board approves the investment; and

(c) The aggregate of all such investments does not exceed seven and one-half percent of the total of its share and deposit accounts.

(2) If the real property or leasehold interest is acquired for future expansion, the credit union must satisfy the use requirement in subsection (1) of this section within three years after the credit union makes the investment.

(3) The director may, upon written application, waive any of the limitations listed in subsection (1) or (2) of this section. [2001 c 83 § 20; 1997 c 397 § 37. Prior: 1994 c 256 § 87; 1994 c 92 § 198; 1984 c 31 § 45. Formerly RCW 31.12.435.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

## MERGERS, CONVERSIONS, AND VOLUNTARY LIQUIDATIONS

**31.12.461 Mergers.** (1) For purposes of this section, the merging credit union is the credit union whose charter ceases to exist upon merger with the continuing credit union. The continuing credit union is the credit union whose charter continues upon merger with the merging credit union.

(2) A credit union may be merged with another credit union with the approval of the director and in accordance with requirements the director may prescribe. The merger must be approved by a two-thirds majority vote of the board of each credit union and a two-thirds majority vote of those members of the merging credit union voting on the merger at a membership meeting. The requirement of approval by the members of the merging credit union may be waived by the director if the merging credit union is in imminent danger of insolvency.

(3) The property, rights, and interests of the merging credit union transfer to and vest in the continuing credit union without deed, endorsement, or instrument of transfer, although instruments of transfer may be used if their use is deemed appropriate. The debts and obligations of the merging credit union that are known or reasonably should be known are assumed by the continuing credit union. The continuing credit union shall cause to be published notice of merger once a week for three consecutive weeks in a newspaper of general circulation in the county in which the principal place of business of the merging credit union is located. The notice of merger must also inform creditors of the merging credit union how to make a claim on the continuing credit union, and that if a claim is not made upon the continuing credit union within thirty days of the last date of publication, creditors' claims that are not known by the continuing credit union may be barred. Except for claims filed as requested by the notice, or debts or obligations that are known or reasonably should be known by the continuing credit union, the debts and obligations of the merging credit union are discharged. Upon merger, the charter of the merging credit union ceases to exist.

(4) Mergers are effective after the thirty-day notice period to creditors and all regulatory waiting periods have expired, and upon filing of the credit union's articles of merger by the secretary of state, or a later date stated in the articles, which in no event may be later than ninety days after the articles are filed. [2001 c 83 § 21; 1997 c 397 § 40. Prior: 1994 c 256 § 91; 1994 c 92 § 220; 1987 c 338 § 8; 1984 c 31 § 71. Formerly RCW 31.12.695.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.464 Merger or conversion of state into federal, out-of-state, or foreign credit union, or other type of financial institution.** (1) A credit union may merge or convert into a federal credit union as authorized by the federal credit union act. The merger or conversion must be approved by a two-thirds majority vote of those credit union members voting at a membership meeting.

(2) If the merger or conversion is approved by the members, a copy of the resolution certified by the secretary must be filed with the director within ten days of approval. The

board may effect the merger or conversion upon terms agreed by the board and the federal regulator.

(3) A certified copy of the federal credit union charter or authorization issued by the federal regulator must be filed with the director and thereupon the credit union ceases to exist except for the purpose of winding up its affairs and prosecuting or defending any litigation by or against the credit union. For all other purposes, the credit union is merged or converted into a federal credit union and the credit union may execute, acknowledge, and deliver to the successor federal credit union the instruments of transfer, conveyance, and assignment that are necessary or desirable to complete the merger or conversion, and the property, tangible or intangible, and all rights, titles, and interests that are agreed to by the board and the federal regulator.

(4) Mergers and conversions are effective after all applicable regulatory waiting periods have expired and upon filing of the credit union's articles of merger or articles of conversion, as appropriate, by the secretary of state, or a later date stated in the articles, which in no event may be later than ninety days after the articles are filed.

(5) Procedures, similar to those contained in subsections (1) through (4) of this section, prescribed by the director must be followed when a credit union merges or converts into an out-of-state or foreign credit union, or other type of financial institution. [2001 c 83 § 22; 1997 c 397 § 41; 1994 c 92 § 221; 1984 c 31 § 72. Formerly RCW 31.12.705.]

**31.12.467 Merger or conversion of federal, out-of-state, or foreign to state credit union.** (1) A federal credit union located and conducting business in this state may merge or convert into a credit union organized and operating under this chapter.

(2) In the case of a conversion, the board of the federal credit union shall file with the director proposed articles of incorporation and bylaws, as provided by this chapter for organizing a new credit union. If the conversion is approved by the director, the federal credit union becomes a credit union under the laws of this state.

(3) The assets and liabilities of the federal credit union will vest in and become the property of the successor credit union subject to all existing liabilities against the federal credit union. Members of the federal credit union may become members of the successor credit union.

(4) Mergers and conversions are effective after all applicable regulatory waiting periods have expired and upon filing of the federal credit union's articles of merger or articles of conversion, as appropriate, by the secretary of state, or a later date stated in the articles, which in no event may be later than ninety days after the articles are filed.

(5) Procedures, similar to those contained in subsections (1) through (4) of this section, prescribed by the director must be followed when an out-of-state or foreign credit union wishes to merge or convert into a credit union organized and operating under this chapter. [2001 c 83 § 23; 1997 c 397 § 42; 1994 c 92 § 222; 1984 c 31 § 73. Formerly RCW 31.12.715.]

**31.12.471 Authority of out-of-state or foreign credit union to operate in this state—Conditions.** (1) An out-of-

state or foreign credit union may not operate a branch in Washington unless:

(a) The director has approved its application in accordance with this section;

(b) A credit union organized and operating under this chapter is permitted to do business in the state or foreign jurisdiction in which the credit union is organized;

(c) The interest rate charged by the credit union on loans made to members residing in this state does not exceed the maximum interest rate permitted in the state or jurisdiction in which the credit union is organized, or exceed the maximum interest rate that a credit union organized and operating under this chapter is permitted to charge on similar loans, whichever is lower;

(d) The credit union has secured surety bond and fidelity bond coverages satisfactory to the director;

(e) The credit union's share and deposit accounts are insured under the federal share insurance program or an equivalent share insurance program in compliance with RCW 31.12.408;

(f) The credit union submits to the director an annual examination report of its most recently completed fiscal year;

(g) The credit union has not had its authority to do business in another state or foreign jurisdiction suspended or revoked;

(h) The credit union complies with:

(i) The provisions concerning field of membership in this chapter and rules adopted by the director; and

(ii) Such other provisions of this chapter and rules adopted by the director, as determined by the director; and

(i) In addition, if the credit union is a foreign credit union:

(i) A treaty or agreement between the United States and the jurisdiction where the credit union is organized requires the director to permit the credit union to operate a branch in Washington; and

(ii) The director determines that the credit union has substantially the same characteristics as a credit union organized and operating under this chapter.

(2) The director shall deny an application filed under this section or, upon notice and an opportunity for hearing, suspend or revoke the approval of an application, if the director finds that the standards of organization, operation, and regulation of the applicant do not reasonably conform with the standards under this chapter. In considering the standards of organization, operation, and regulation of the applicant, the director may consider the laws of the state or foreign jurisdiction in which the applicant is organized. A decision under this subsection may be appealed under chapter 34.05 RCW.

(3) In implementing this section, the director may cooperate with credit union regulators in other states or jurisdictions and may share with the regulators the information received in the administration of this chapter.

(4) The director may enter into supervisory agreements with out-of-state and foreign credit unions and their regulators to prescribe the applicable laws governing the powers and authorities of Washington branches of the out-of-state or foreign credit unions. The director may also enter into supervisory agreements with the credit union regulators in other states or foreign jurisdictions to prescribe the applicable laws

governing the powers and authorities of out-of-state or foreign branches and other facilities of credit unions.

The agreements may address, but are not limited to, corporate governance and operational matters. The agreements may resolve any conflict of laws, and specify the manner in which the examination, supervision, and application processes must be coordinated with the regulators.

The director may adopt rules for the periodic examination and investigation of the affairs of an out-of-state or foreign credit union operating a branch in this state. [2001 c 83 § 24; 1997 c 397 § 43. Prior: 1994 c 256 § 88; 1994 c 92 § 205; 1984 c 31 § 54. Formerly RCW 31.12.526.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**31.12.474 Liquidation—Disposition of unclaimed funds.** (1) At a special meeting called for the purpose of liquidation, and upon the recommendation of at least two-thirds of the total members of the board of a credit union, the members of a credit union may elect to liquidate the credit union by a two-thirds majority vote of those members voting.

(2) Upon a vote to liquidate under subsection (1) of this section, a three-person liquidating committee must be elected to liquidate the assets of the credit union. The committee shall act in accordance with any requirements of the director and may be reasonably compensated by the board of the credit union. Each share account holder and depositor at the credit union is entitled to his, her, or its proportionate part of the assets in liquidation after all shares, deposits, and debts have been paid. The proportionate allocation shall be based on account balances as of a date determined by the board. For the purposes of liquidation, shares and deposits are equivalent. The assets of the liquidating credit union are not subject to contingent liabilities. Upon distribution of the assets, the credit union ceases to exist except for the purpose of discharging existing liabilities and obligations.

(3) Funds representing unclaimed dividends in liquidation and remaining in the hands of the liquidating committee for six months after the date of the final dividend must be deposited, together with all the books and papers of the credit union, with the director. The director may, one year after receipt, destroy such records, books, and papers as, in the director's judgment, are obsolete or unnecessary for future reference. The funds may be deposited in one or more financial institutions to the credit of the director, in trust for the members of the credit union entitled to the funds. The director may pay a portion of the funds to a person upon receipt of satisfactory evidence that the person is entitled to the funds. In case of doubt or conflicting claims, the director may require an order of the superior court of the county in which the principal place of business of the credit union was located, authorizing and directing the payment of the funds. The director may apply the interest earned by the funds toward defraying the expenses incurred in the holding and paying of the funds. Five years after the receipt of the funds, the funds still remaining with the director must be remitted to the state as unclaimed property. [2001 c 83 § 25; 1997 c 397 § 44; 1994 c 92 § 223; 1984 c 31 § 74. Formerly RCW 31.12.725.]

*Uniform unclaimed property act: Chapter 63.29 RCW.*

## EXAMINATION AND SUPERVISION

**31.12.516 Powers of director.** (1) The powers of supervision and examination of credit unions and other persons subject to this chapter and chapter 31.13 RCW are vested in the director. The director shall require each credit union to conduct business in compliance with this chapter and may require each credit union to conduct business in compliance with other state and federal laws that apply to credit unions. The director has the power to commence and prosecute actions and proceedings, to enjoin violations, and to collect sums due the state of Washington from a credit union.

(2) The director may adopt such rules as are reasonable or necessary to carry out the purposes of this chapter and chapter 31.13 RCW. Chapter 34.05 RCW will, whenever applicable, govern the rights, remedies, and procedures respecting the administration of this chapter.

(3) The director may by rule provide appropriate relief for small credit unions from requirements under this chapter or rules of the director. However, small credit unions must still comply with RCW 31.12.408.

(4) The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter and chapter 31.13 RCW, to facilitate the delivery of financial services to the members of a credit union.

(5) Nonfederally insured credit unions, nonfederally insured out-of-state credit unions, and nonfederally insured foreign credit unions operating in this state as permitted by RCW 31.12.408 and 31.12.471, as applicable, must comply with safety and soundness requirements established by the director.

(6) The director may charge fees to credit unions and other persons subject to examination and investigation under this chapter and chapter 31.13 RCW, and to other parties where the division contracts out its services, in order to cover the costs of the operation of the division of credit unions, and to establish a reasonable reserve for the division. The director may waive all or a portion of the fees. [2001 c 83 § 26; 1997 c 397 § 45; 1994 c 92 § 204; 1984 c 31 § 53.]

**31.12.545 Examinations and investigations—Reports—Access to records—Oaths—Subpoenas.** (1) The director shall make an examination and investigation into the affairs of each credit union at least once every eighteen months, unless the director determines with respect to a credit union, that a less frequent examination schedule will satisfactorily protect the financial stability of the credit union and will satisfactorily assure compliance with the provisions of this chapter.

(2) In regard to credit unions, and out-of-state and foreign credit unions permitted to operate a branch in Washington pursuant to RCW 31.12.471, the director:

(a) Shall have full access to the credit union's books and records and files, including but not limited to computer files;

(b) May appraise and revalue the credit union's investments; and

(c) May require the credit union to charge off or set up a special reserve for loans and investments.

(3) The director may make an examination and investigation into the affairs of:

- (a) An out-of-state or foreign credit union permitted to operate a branch in Washington pursuant to RCW 31.12.471;
- (b) A nonpublicly held organization in which a credit union has a material investment;
- (c) A publicly held organization the capital stock or equity of which is controlled by a credit union;
- (d) A credit union service organization in which a credit union has an interest;
- (e) An organization that is not a credit union, out-of-state credit union, federal credit union, or foreign credit union, and that has a majority interest in a credit union service organization in which a credit union has an interest;
- (f) A sole proprietorship or organization primarily in the business of managing one or more credit unions; and
- (g) A person providing electronic data processing services to a credit union.

The director shall have full access to the books and records and files, including but not limited to computer files, of persons described in this subsection.

(4) In connection with examinations and investigations, the director may:

- (a) Administer oaths and examine under oath any person concerning the affairs of any credit union or of any person described in subsection (3) of this section; and
- (b) Issue subpoenas to and require the attendance and testimony of any person at any place within this state, and require witnesses to produce any books and records and files, including but not limited to computer files, that are material to an examination or investigation.

(5) The director may accept in lieu of an examination under this section:

- (a) The report of an examiner authorized to examine a credit union or an out-of-state, federal, or foreign credit union, or other financial institution; or
- (b) The report of an accountant, satisfactory to the director, who has made and submitted a report of the condition of the affairs of a credit union or an out-of-state, federal, or foreign credit union, or other financial institution. The director may accept all or part of such a report in lieu of all or part of an examination. The accepted report or accepted part of the report has the same force and effect as an examination under this section. [2001 c 83 § 27; 1997 c 397 § 46; 1994 c 92 § 207; 1984 c 31 § 56.]

**31.12.565 Examination reports and information confidential—Exceptions—Penalty.** (1) The following are confidential and privileged and not subject to public disclosure under chapter 42.17 RCW:

- (a) Examination reports and information obtained by the director in conducting examinations and investigations under this chapter and chapter 31.13 RCW;
- (b) Examination reports and related information from other financial institution regulators obtained by the director;
- (c) Reports or parts of reports accepted in lieu of an examination under RCW 31.12.545; and
- (d) Business plans and other proprietary information obtained by the director in connection with a credit union's application or notice to the director.

(2004 Ed.)

(2) Notwithstanding subsection (1) of this section, the director may furnish examination reports prepared by the director to:

- (a) Federal agencies empowered to examine credit unions or other financial institutions;
- (b) Officials empowered to investigate criminal charges. The director may furnish only that part of the report which is necessary and pertinent to the investigation, and only after notifying the affected credit union and members of the credit union who are named in that part of the examination report, or other person examined, that the report is being furnished to the officials, unless the officials requesting the report obtain a waiver of the notice requirement for good cause from a court of competent jurisdiction;
- (c) The examined credit union or other person examined, solely for its confidential use;
- (d) The attorney general in his or her role as legal advisor to the director;
- (e) Prospective merger partners or conservators, receivers, or liquidating agents of a distressed credit union;
- (f) Credit union regulators in other states or foreign jurisdictions regarding an out-of-state or foreign credit union conducting business in this state under this chapter, or regarding a credit union conducting business in the other state or jurisdiction;

(g) A person officially connected with the credit union or other person examined, as officer, director, supervisory committee member, attorney, auditor, accountant, independent attorney, independent auditor, or independent accountant;

(h) Organizations that have bonded the credit union to the extent that information is relevant to the renewal of the bond coverage or to a claim under the bond coverage;

(i) Organizations insuring or guaranteeing the shares of, or deposits in, the credit union; or

(j) Other persons as the director may determine necessary to protect the public interest and confidence.

(3) Examination reports furnished under subsection (2) of this section remain the property of the director and no person to whom reports are furnished or any officer, director, or employee thereof may disclose or make public the reports or information contained in the reports except in published statistical information that does not disclose the affairs of a person, except that nothing prevents the use in a criminal prosecution of reports furnished under subsection (2)(b) of this section.

(4) In a civil action in which the reports or information are sought to be discovered or used as evidence, a party may, upon notice to the director, petition the court for an in-camera review of the reports or information. The court may permit discovery and introduction of only those portions of the report or information which are relevant and otherwise unobtainable by the requesting party. This subsection does not apply to an action brought or defended by the director.

(5) This section does not apply to investigation reports prepared by the director concerning an application for a new credit union or a notice of intent to establish a branch of a credit union, except that the director may adopt rules making portions of the reports confidential, if in the director's opinion the public disclosure of that portion of the report would impair the ability to obtain information the director considers necessary to fully evaluate the application.

(6) Any person who knowingly violates a provision of this section is guilty of a gross misdemeanor. [2001 c 83 § 28; 1997 c 397 § 48. Prior: 1994 c 256 § 90; 1994 c 92 § 209; 1984 c 31 § 58.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

*Examination reports and information from financial institutions exempt:* RCW 42.17.31911.

**31.12.567 Reports—Financial and statistical data—As required by director.** A credit union shall file with the director any financial and statistical report that it is required to file with the national credit union administration. Each report must be certified by the principal operating officer of the credit union. In addition, a credit union shall file reports as may be required by the director. [2001 c 83 § 29; 1997 c 397 § 49.]

**31.12.569 Generally accepted accounting principles.** Credit unions will comply with the provisions of generally accepted accounting principles as required by federal law or rule of the director. In adopting rules to implement this section, the director shall consider, among other relevant factors, whether to transition small credit unions to generally accepted accounting principles over a period of time. [2001 c 83 § 30; 1997 c 397 § 50.]

**Effective date—1997 c 397 § 50:** "Section 50 of this act takes effect January 1, 1999." [1997 c 397 § 91.]

**31.12.571 Notice of intent to establish branch—Another state or foreign jurisdiction.** A credit union desiring to establish a branch in another state or a foreign jurisdiction shall submit to the director a notice of intent to establish the branch at least thirty days before conducting business at the branch. [2001 c 83 § 31; 1997 c 397 § 51; 1994 c 92 § 190; 1984 c 31 § 23. Formerly RCW 31.12.215.]

**31.12.575 Removal or prohibition orders—Director's authority—Notice.** The director may issue and serve a credit union director, supervisory committee member, officer, or employee with written notice of intent to remove the person from office or employment or to prohibit the person from participating in the conduct of the affairs of the credit union or any credit union whenever, in the opinion of the director:

(1) The person has committed a material violation of law or an unsafe or unsound practice; and

(2)(a) The credit union has suffered or is likely to suffer substantial financial loss or other damage; or

(b) The interests of the credit union's share account holders and depositors could be seriously prejudiced by reason of the violation or practice; and

(3) The violation or practice involves personal dishonesty, recklessness, or incompetence. [2001 c 83 § 32; 1997 c 397 § 52; 1994 c 92 § 210; 1984 c 31 § 59.]

**31.12.585 Prohibited acts—Notice—Cease and desist order.** The director may issue and serve a credit union with a written notice of charges and intent to issue a cease and desist order if, in the opinion of the director, the credit union has committed or is about to commit:

(1) A material violation of law; or

(2) An unsafe or unsound practice.

Upon taking effect, the order may require the credit union and its directors, supervisory committee members, officers, employees, and agents to cease and desist from the violation or practice and may require them to take affirmative action to correct the conditions resulting from the violation or practice. [2001 c 83 § 33; 1997 c 397 § 53; 1994 c 92 § 211; 1984 c 31 § 60.]

**31.12.595 Temporary cease and desist order—Notice—Superior court.** (1) If the director determines that the violation or practice specified in RCW 31.12.585 is likely to cause an unsafe or unsound condition at the credit union, the director may issue and serve a temporary cease and desist order. The order may require the credit union and its directors, supervisory committee members, officers, employees, and agents to cease and desist from the violation or practice and may require them to take affirmative action to correct the conditions resulting from the violation or practice.

(2) With the temporary order, the director shall serve a notice of charges and intent to issue a cease and desist order under RCW 31.12.585 in the matter.

(3) The temporary order becomes effective upon service on the credit union and remains effective until completion of the administrative proceedings under the notice issued under subsection (2) of this section.

(4) Within ten days after a credit union has been served with a temporary order, the credit union may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings under the notice issued under subsection (2) of this section.

(5) In the case of a violation or threatened violation of a temporary order, the director may apply to the superior court of the county of the principal place of business of the credit union for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation. [2001 c 83 § 34; 1997 c 397 § 54; 1994 c 92 § 212; 1984 c 31 § 61.]

**31.12.625 Administrative hearing—Procedures.** An administrative hearing on the notice provided for in RCW 31.12.575 and 31.12.585 must be conducted in accordance with chapter 34.05 RCW; provided that, to the extent the requirements of this chapter are inconsistent with chapter 34.05 RCW, this chapter will govern. The hearing may be held at such place as is designated by the director. The hearing shall be private unless the director determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing. [2001 c 83 § 35; 1997 c 397 § 56; 1994 c 92 § 214; 1984 c 31 § 64.]

**31.12.630 Authority of director to call special meeting of board.** The director may request a special meeting of the board of a credit union if the director believes that a special meeting is necessary for the welfare of the credit union or the purposes of this chapter. The director's request for a spe-

cial board meeting must be made in writing to the secretary of the board and the request must be handled in the same manner as a call for a special meeting under RCW 31.12.195. The director may require the attendance of all of the directors at the special board meeting, and an absence unexcused by the director constitutes a violation of this chapter. [1997 c 397 § 58; 1994 c 92 § 216; 1984 c 31 § 67. Formerly RCW 31.12.655.]

**31.12.633 Authority of director to attend meetings of the board.** The director may attend a meeting of the board of a credit union if the director believes that attendance at the meeting is necessary for the welfare of the credit union, or the purposes of this chapter, or if the board has requested the director's attendance. The director shall provide reasonable notice to the board before attending a meeting. [1997 c 397 § 59; 1994 c 92 § 217; 1984 c 31 § 68. Formerly RCW 31.12.665.]

**31.12.637 Intervention by director—Conditions.** The director may place a credit union under supervisory direction in accordance with RCW 31.12.641 through 31.12.647, appoint a conservator for a credit union in accordance with RCW 31.12.651 through 31.12.661, appoint a liquidating agent for a credit union in accordance with RCW 31.12.664 and 31.12.667, or appoint a receiver for a credit union in accordance with RCW 31.12.671 through 31.12.724, if the credit union:

- (1) Consents to the action;
- (2) Has failed to comply with the requirements of the director while the credit union is under supervisory direction;
- (3) Has committed or is about to commit a material violation of law or an unsafe or unsound practice, and such violation or practice has caused or is likely to cause an unsafe or unsound condition at the credit union; or
- (4) Is in an unsafe or unsound condition. [1997 c 397 § 60.]

**31.12.641 Supervision by director—Notice—Compliance—Costs.** (1) As authorized by RCW 31.12.637, the director may determine to place a credit union under supervisory direction. Upon such a determination, the director shall notify the credit union in writing of:

- (a) The director's determination; and
- (b) Any requirements that must be satisfied before the director shall terminate the supervisory direction.

(2) The credit union must comply with the requirements of the director as provided in the notice. If the credit union fails to comply with the requirements, the director may appoint a conservator, liquidating agent, or receiver for the credit union, in accordance with this chapter. The director may appoint a representative to supervise the credit union during the period of supervisory direction.

(3) All costs incident to supervisory direction will be a charge against the assets of the credit union to be allowed and paid as the director may determine. [1997 c 397 § 61.]

**31.12.644 Supervision by director—Certain acts prohibited.** During the period of supervisory direction, the

director may prohibit the credit union from engaging in any of the following acts without prior approval:

- (1) Disposing of, conveying, or encumbering any of its assets;
- (2) Withdrawing any of its accounts at other financial institutions;
- (3) Lending any of its funds;
- (4) Investing any of its funds;
- (5) Transferring any of its property; or
- (6) Incurring any debt, obligation, or liability. [1997 c 397 § 62.]

**31.12.647 Supervision by director—Credit union request for review.** During the period of supervisory direction, the credit union may request the director to review an action taken or proposed to be taken by the representative, specifying how the action is not in the best interests of the credit union. The request stays the action, pending the director's review of the request. [1997 c 397 § 63.]

**31.12.651 Conservator—Authorized actions—Costs.**

(1) As authorized by RCW 31.12.637, the director may, upon due notice and hearing, appoint a conservator for a credit union. The director may appoint himself or herself or another qualified party as conservator of the credit union. The conservator shall immediately take charge of the credit union and all of its property, books, records, and effects.

(2) The conservator shall conduct the business of the credit union and take such steps toward the removal of the causes and conditions that have necessitated the appointment of a conservator, as the director may direct. The conservator is authorized to, without limitation:

(a) Take all necessary measures to preserve, protect, and recover any assets or property of the credit union, including any claim or cause of action belonging to or which may be asserted by the credit union, and administer the same in his or her own name as conservator; and

(b) File, prosecute, and defend any suit that has been filed or may be filed by or against the credit union that is deemed by the conservator to be necessary to protect all of the interested parties or a property affected thereby.

The conservator shall make such reports to the director from time to time as may be required by the director.

(3) All costs incident to conservatorship will be a charge against the assets of the credit union to be allowed and paid as the director may determine.

(4) If at any time the director determines that the credit union is not in condition to continue business under the conservator in the interest of its share account holders, depositors, or creditors, and grounds exist under RCW 31.12.637, the director may proceed with appointment of a liquidating agent or receiver in accordance with this chapter. [1997 c 397 § 64.]

**31.12.654 Actions by conservator—Review.** During the period of conservatorship, the credit union may request the director to review an action taken or proposed to be taken by the conservator, specifying how the action is not in the best interest of the credit union. The request stays the action,

pending the director's review of the request. [1997 c 397 § 65.]

**31.12.657 Lawsuits during period of conservatorship.** Any suit filed against a credit union or its conservator, during the period of conservatorship, must be brought in the superior court of Thurston county. A conservator for a credit union may file suit in any superior court or other court of competent jurisdiction against any person for the purpose of preserving, protecting, or recovering any asset or property of the credit union, including, but not limited to, any claims or causes of action belonging to or asserted by the credit union. [1997 c 397 § 66.]

**31.12.661 Conservator serves until purposes are accomplished.** The conservator shall serve until the purposes of the conservatorship have been accomplished. If rehabilitated, the credit union must be returned to management or new management under such conditions as the director may determine. [1997 c 397 § 67.]

**31.12.664 Liquidation—Suspension or revocation of articles—Placement in involuntary liquidation—Appointment of liquidating agent—Notice—Procedure—Effect.** (1) As authorized by RCW 31.12.637, the director may appoint a liquidating agent for a credit union. Before appointing a liquidating agent, the director shall issue and serve notice on the credit union an order directing the credit union to show cause why its articles of incorporation should not be suspended or revoked, in accordance with chapter 34.05 RCW.

(2) If the credit union fails to adequately show cause, the director shall serve the credit union with an order directing the suspension or revocation of the articles of incorporation, placing the credit union in involuntary liquidation, appointing a liquidating agent under this section and RCW 31.12.667, and providing a statement of the findings on which the order is based.

(3) The suspension or revocation must be immediate and complete. Once the articles of incorporation are suspended or revoked, the credit union shall cease conducting business. The credit union may not accept any payment to share or deposit accounts, may not grant or pay out any new or previously approved loans, may not invest any of its assets, and may not declare or pay out any previously declared dividends. The liquidating agent of a credit union whose articles have been suspended or revoked may accept payments on loans previously paid out and may accept income from investments already made. [1997 c 397 § 68; 1994 c 92 § 218; 1984 c 31 § 69. Formerly RCW 31.12.675.]

**31.12.667 Order directing involuntary liquidation—Procedure.** (1) On receipt of the order placing the credit union in involuntary liquidation, the officers and directors of the credit union shall deliver to the liquidating agent possession and control of all books, records, assets, and property of the credit union.

(2) The liquidating agent shall proceed to convert the assets to cash, collect all debts due to the credit union and wind up its affairs in accordance with any instructions and

procedures issued by the director. If a liquidating agent agrees to absorb and serve the membership of the credit union, the director may approve a pooling of assets and liabilities rather than a distribution of assets.

(3) Each share account holder and depositor at the credit union is entitled to a proportionate allocation of the assets in liquidation after all shares, deposits, and debts have been paid.

The proportionate allocation shall be based on account balances as of a date determined by the board. For the purposes of liquidation, shares and deposits are equivalent.

(4) The liquidating agent shall cause a notice of liquidation to be published once a week for three consecutive weeks in a newspaper of general circulation in the county in which the principal place of business of the credit union is located. The notice of liquidation must inform creditors of the credit union on how to make a claim upon the liquidating agent, and that if a claim is not made upon the liquidating agent within thirty days of the last date of publication, the creditor's claim is barred. The liquidating agent shall provide personal notice of liquidation to the creditors of record, informing them that if they fail to make a claim upon the liquidating agent within thirty days of the service of the notice, the creditor's claim is barred. If a creditor fails to make a claim upon the liquidating agent within the times required to be specified in the notices of liquidation, the creditor's claim is barred. All contingent liabilities of the credit union are discharged upon the director's order to liquidate the credit union. The liquidating agent shall, upon completion, certify to the director that the distribution or pooling of assets of the credit union is complete. [1997 c 397 § 69; 1994 c 92 § 219; 1984 c 31 § 70. Formerly RCW 31.12.685.]

**31.12.671 Receivership—Appointment of receiver by director—Notice—Act without bond.** As authorized by RCW 31.12.637, the director may without prior notice appoint a receiver to take possession of a credit union. The director may appoint the national credit union administration or other qualified party as receiver. Upon appointment, the receiver is authorized to act without bond. Upon acceptance of the appointment, the receiver shall have and possess all the powers and privileges provided by the laws of this state with respect to the receivership of a credit union, and be subject to all the duties of and restrictions applicable to such a receiver, except insofar as such powers, privileges, duties, or restrictions are in conflict with any applicable provision of the federal credit union act.

Upon taking possession of the credit union, the receiver shall give written notice to the directors of the credit union and to all persons having possession of any assets of the credit union. No person with knowledge of the taking of possession by the receiver shall have a lien or charge for any payment advanced, clearance made, or liability incurred against any of the assets of the credit union, after the receiver takes possession, unless approved by the receiver. [1997 c 397 § 70.]

**31.12.674 Receiver may be required to show cause—Superior court.** Within ten days after the receiver takes possession of a credit union's assets, the credit union may serve

notice upon the receiver to appear before the superior court of the county in which the principal place of business of the credit union is located and at a time to be fixed by the court, which may not be less than five or more than fifteen days from the date of the service of the notice, to show cause why the credit union should not be restored to the possession of its assets.

The court shall summarily hear and dismiss the complaint if it finds that the receiver was appointed for cause. However, if the court finds that no cause existed for appointment of the receiver, the court shall require the receiver to restore the credit union to possession of its assets and enjoin the director from further appointment of a receiver for the credit union without cause. [1997 c 397 § 71.]

**31.12.677 Powers and duties of receiver.** Upon taking possession of a credit union, the receiver shall proceed to collect the assets of the credit union and preserve, administer, and liquidate its business and assets.

With the approval of the Thurston county superior court or the superior court of the county in which the principal place of business of the credit union is located, the receiver may sell, compound, or compromise bad or doubtful debts, and upon such terms as the court may direct, borrow, mortgage, pledge, or sell all or any part of the real and personal property of the credit union. The receiver may deliver to each purchaser or lender an appropriate deed, mortgage, agreement of pledge, or other instrument of title or security. The receiver may employ an attorney or other assistants to assist in carrying out the receivership, subject to such surety bond as the director may require. The premium for any such bond must be paid out of the assets of the credit union.

In carrying out the receivership, the receiver may without limitation arrange for the merger or consolidation of the credit union in receivership with another credit union, out-of-state credit union, or federal credit union, or may arrange for the purchase of the credit union's assets and the assumption of its liabilities by such a credit union, in whole or in part, or may arrange for such a transaction with another type of financial institution as may be otherwise permitted by law. The receiver shall give preference to transactions with a credit union or a federal credit union that has its principal place of business in this state. [1997 c 397 § 72.]

**31.12.681 Claims against credit union in receivership—Notice.** The receiver shall publish once a week for four consecutive weeks in a newspaper of general circulation in the county where the credit union's principal place of business is located, a notice requiring all persons having claims against the credit union to file proof of claim not later than ninety days from the date of the first publication of the notice. The receiver shall mail similar notices to all persons whose names appear as creditors upon the books of the credit union. The assets of the credit union are not subject to contingent claims.

After the expiration of the time fixed in the notice, the receiver has no power to accept any claim except the claim of a depositor or share account holder, and all other claims are barred. Claims of depositors or share account holders may be presented after the expiration of the time fixed in the notice

and may be approved by the receiver. If such a claim is approved, the depositor or share account holder is entitled to its proportion of prior liquidation dividends, if sufficient funds are available for it, and will share in the distribution of the remaining assets.

The receiver may approve or reject any claim, but shall serve notice of rejection upon the claimant by mail or personally. An affidavit of service of the notice of rejection will serve as prima facie evidence that notice was given. No action may be brought on any claim after three months from the date of service of the notice of rejection. [1997 c 397 § 73.]

**31.12.684 Receiver shall inventory assets—File lists of assets and claims—Objections to approved claims.**

Upon taking possession of the credit union, the receiver shall make an inventory of the assets and file the list in the office of the county clerk. Upon the expiration of the time fixed for the presentation of claims, the receiver shall make a list of claims presented, segregating those approved and those rejected, to be filed in the office of the county clerk. The receiver shall also make and file with the office of the county clerk a supplemental list of claims at least fifteen days before the declaration of any liquidation dividend, and in any event at least every six months.

Objection may be made by any interested person to any claim approved by the receiver. Objections to claims approved by the receiver will be resolved by the court after providing notice to both the claimant and objector, as the court may prescribe. [1997 c 397 § 74.]

**31.12.687 Expenses incurred by receiver.** All expenses incurred by the receiver in relation to the receivership of a credit union, including, but not limited to, reasonable attorneys' fees, become a first charge upon the assets of the credit union. The charges shall be fixed and determined by the receiver, subject to the approval of the court. [1997 c 397 § 75.]

**31.12.691 Liquidation dividends—Approval of court.** At any time after the expiration of the date fixed for the presentation of claims, the receiver, subject to the approval of the court, may declare one or more liquidation dividends out of the funds remaining after the payment of expenses. [1997 c 397 § 76.]

**31.12.694 Remaining assets—Distribution.** When all expenses of the receivership have been paid, as well as all proper claims of share account holders, depositors, and other creditors, and proper provision has been made for unclaimed or unpaid debts and liquidation dividends, and assets of the credit union still remain, the receiver shall wind up the affairs of the credit union and distribute its assets to those entitled to them. Each share account holder and depositor at the credit union is entitled to a proportionate share of the assets remaining. The proportionate allocation shall be based on account balances as of a date determined by the board. For the purposes of liquidation, shares and deposits are equivalent. [1997 c 397 § 77.]

**31.12.697 Unclaimed liquidation dividends.** Any liquidation dividends to share account holders, depositors, or other creditors of the credit union remaining uncalled for and unpaid in the hands of the receiver for six months after the order of final distribution, must be deposited in a financial institution to each share account holder's, depositor's, or creditor's credit. The funds must be held in trust for the benefit of the persons entitled to the funds and, subject to the supervision of the court, must be paid by the receiver to them upon presentation of satisfactory evidence of their right to the funds. [1997 c 397 § 78.]

**31.12.701 Personal property—Receiver's duties.** (1) The receiver shall inventory, package, and seal uncalled for and unclaimed personal property left with the credit union, including, but not limited to, property held in safe deposit boxes, and arrange for the packages to be held in safekeeping. The credit union, its directors and officers, and the receiver, shall be relieved of responsibility and liability for the property held in safekeeping. The receiver shall promptly send to each person in whose name the property stood on the books of the credit union, at the person's last known address, a registered letter notifying the person that the property will be held in the person's name for a period of not less than two years.

(2) After the expiration of two years from the date of mailing the notice, the receiver shall promptly send to each person in whose name the property stood on the books of the credit union, at the person's last known address, a registered letter providing notice of sale. The letter must indicate that the receiver will sell the property set out in the notice, at a public auction at a specified time and place, not less than thirty days after the date of mailing the letter. The receiver may sell the property unless the person, prior to the sale, presents satisfactory evidence of the person's right to the property. A notice of the time and place of the sale must be published once within ten days prior to the sale in a newspaper of general circulation in the county where the sale is to be held.

(3) Any property, for which the address of the owner or owners is not known, may be sold at public auction after it has been held by the receiver for two years. A notice of the time and place of the sale must be published once within ten days prior to the sale in a newspaper of general circulation in the county where the sale is to be held.

(4) Whenever the personal property left with the credit union consists either wholly or in part, of documents, letters, or other papers of a private nature, the documents, letters, or papers may not be sold, but must be retained by the receiver and may be destroyed after a period of five years. [1997 c 397 § 79.]

**31.12.704 Proceeds of sale—Deposit or payment by receiver.** The proceeds of the sale less any amounts for costs and charges incurred in safekeeping and sale must be deposited by the receiver in a financial institution, in trust for the benefit of the person entitled to the property. The sale proceeds must be paid by the receiver to the person upon presentation of satisfactory evidence of the person's right to the funds. [1997 c 397 § 80.]

**31.12.707 Completion of receivership—Merger, purchase, or liquidation—Secretary of state.** Upon the completion of a receivership through merger, purchase of assets and assumption of liabilities, or liquidation, the director shall terminate the credit union's authority to conduct business and certify that fact to the secretary of state. Upon certification, the credit union shall cease to exist and the secretary of state shall note that fact upon his or her records. [1997 c 397 § 81.]

**31.12.711 Director may terminate receivership—Expenses.** If at any time after a receiver is appointed, the director determines that all material deficiencies at the credit union have been corrected, and that the credit union is in a safe and sound condition to resume conducting business, the director may terminate the receivership and permit the credit union to reopen upon such terms and conditions as the director may prescribe. Before being permitted to reopen, the credit union must pay all of the expenses of the receiver. [1997 c 397 § 82.]

**31.12.714 Receivership files.** The receiver or director, as appropriate, may at any time after the expiration of one year from the order of final distribution, or from the date when the receivership has been completed, destroy any of the remaining files, records, documents, books of account, or other papers of the credit union that appear to be obsolete or unnecessary for future reference as part of the receivership files. [1997 c 397 § 83.]

**31.12.717 Pendency of proceedings for review of appointment of receiver—Liabilities of credit union—Availability of relevant data.** The pendency of any proceedings for judicial review of the appointment of a receiver may not operate to prevent the payment or acquisition of the share and deposit liabilities of the credit union by the national credit union administration or other insurer or guarantor of the share and deposit liabilities of the credit union. During the pendency of the proceedings, the receiver shall make credit union facilities, books, records, and other relevant credit union data available to the insurer or guarantor as may be necessary or appropriate to enable the insurer or guarantor to pay out or to acquire the insured or guaranteed share and deposit liabilities of the credit union. The national credit union administration and any other insurer or guarantor of the credit union's share and deposit liabilities, together with their directors, officers, agents, and employees, and the director and receiver and their agents and employees, will be free from liability to the credit union, its directors, members, and creditors, for or on account of any action taken in connection with the receivership. [1997 c 397 § 84.]

**31.12.721 Appointment by court of temporary receiver—Notice to director.** No receiver may be appointed by any court for any credit union, except that a court otherwise having jurisdiction may in case of imminent necessity appoint a temporary receiver to take possession of and preserve the assets of the credit union. Immediately upon appointment, the clerk of the court shall notify the director in writing of the appointment and the director shall appoint a receiver to take possession of the credit union and the tempo-

rary receiver shall upon demand surrender possession of the assets of the credit union to the receiver. The receiver may in due course pay the temporary receiver out of the assets of the credit union, subject to the approval of the court. [1997 c 397 § 85.]

**31.12.724 Actions that are void—Felonious conduct—Penalties.** (1) Every transfer of a credit union's property or assets, and every assignment by a credit union for the benefit of creditors, made in contemplation of insolvency, or after it has become insolvent, to intentionally prefer one creditor over another, or to intentionally prevent the equal distribution of its property and assets among its creditors, is void.

(2) Every credit union director, officer, or employee making any transfer described in subsection (1) of this section is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) An officer, director, or employee of a credit union who fraudulently receives any share or deposit on behalf of the credit union, knowing that the credit union is insolvent, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 192; 1997 c 397 § 86.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**31.12.728 Applicability of general receivership law.** Except in cases in which a receiver is appointed by a court on a temporary basis under RCW 31.12.721, the provisions of Title 7 RCW generally applicable to receivers and receiverships do not apply to receivers elected or appointed under this chapter. [2004 c 165 § 42.]

**Purpose—Captions not law—2004 c 165:** See notes following RCW 7.60.005.

## MISCELLANEOUS

**31.12.850 Prohibited acts—Penalty.** (1)(a) It is unlawful for a director, supervisory committee member, officer, employee, or agent of a credit union to knowingly violate or consent to a violation of this chapter.

(b) Unless otherwise provided by law, a violation of this subsection is a misdemeanor under chapter 9A.20 RCW.

(2)(a) It is unlawful for a person to perform any of the following acts:

(i) To knowingly subscribe to, make, or cause to be made a false statement or entry in the books of a credit union;

(ii) To knowingly make a false statement or entry in a report required to be made to the director; or

(iii) To knowingly exhibit a false or fictitious paper, instrument, or security to a person authorized to examine a credit union.

(b) A violation of this subsection is a class C felony under chapter 9A.20 RCW. [2003 c 53 § 193; 1997 c 397 § 87; 1994 c 92 § 215; 1984 c 31 § 65. Formerly RCW 31.12.635.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**31.12.860 Taxation of credit unions.** Neither a credit union nor its members may be taxed upon its shares and deposits as property. A credit union shall be taxable upon its (2004 Ed.)

real property and tangible personal property, and every credit union shall be termed a mutual institution for savings and neither it nor its property may be taxable under any law which exempts savings banks or institutions for savings from taxation. For all purposes of taxation, the assets represented by the regular reserve and other reserves, other than reserves for expenses and losses of a credit union, shall be deemed its only permanent capital, and in computing any tax, whether it be property, income, or excise, appropriate adjustment shall be made to give effect to the mutual nature of such credit union. [1984 c 31 § 75. Formerly RCW 31.12.735.]

**31.12.890 Satellite facilities.** See chapter 30.43 RCW.

**31.12.891 Automated teller machines and night depositories security.** Chapter 19.174 RCW applies to automated teller machines and night depositories regulated under this title. [1993 c 324 § 11. Formerly RCW 31.12.740.]

**Effective date—1993 c 324:** See RCW 19.174.900.

**31.12.902 Short title.** This chapter may be known and cited as the "Washington State Credit Union Act." [1984 c 31 § 76.]

**31.12.906 Effective date—1997 c 397.** Except for sections 35 and 50 of this act, this act takes effect January 1, 1998. [1997 c 397 § 92.]

**31.12.907 Severability—1997 c 397.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 397 § 93.]

**31.12.908 Severability—2001 c 83.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2001 c 83 § 41.]

## Chapter 31.13 RCW

### CORPORATE CREDIT UNIONS

(Formerly: Central credit unions)

#### Sections

- 31.13.010 Definition of corporate credit union or corporate.  
31.13.020 Authority to organize and operate—Powers and authorities—Name—Federal or Kansas state corporate credit unions.

*Master license system exemption: RCW 19.02.800.*

**31.13.010 Definition of corporate credit union or corporate.** As used in this chapter, unless the context in which it is used clearly indicates otherwise, the term "corporate credit union" or "corporate" means a credit union organized under this chapter. [2001 c 83 § 36; 1984 c 31 § 79; 1977 ex.s. c 207 § 5.]

**Severability—2001 c 83:** See RCW 31.12.908.

**31.13.020 Authority to organize and operate—Powers and authorities—Name—Federal or Kansas state cor-**

**porate credit unions.** (1) Corporate credit unions may be organized and operated under this chapter. A corporate credit union has all the powers and authorities granted in, and is subject to, all of the provisions of chapter 31.12 RCW which are not inconsistent with this chapter. A corporate must use the term "corporate" in its official name. The director may adopt rules for the organization and operation of corporate credit unions.

(2) Notwithstanding any other provision of law, and in addition to all powers and authorities, express or implied, that a corporate credit union has under the laws of this state, a corporate has the powers and authorities that a federal or Kansas state corporate credit union had on July 22, 2001. However, a corporate must still comply with RCW 31.12.408.

(3) Notwithstanding any other provision of law, and in addition to the powers and authorities, express or implied, that a corporate has under subsection (2) of this section, a corporate credit union has the powers and authorities that a federal or Kansas state corporate credit union has subsequent to July 22, 2001, if the director finds that the exercise of the power and authority serves the convenience and advantage of members of credit unions, and maintains the fairness of competition and parity between corporate credit unions. However, a corporate must still comply with RCW 31.12.408.

(4) The restrictions, limitations, and requirements applicable to specific powers or authorities of federal or Kansas state corporate credit unions apply to corporate credit unions exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to the specific exercise of the powers or authorities granted corporate credit unions solely under this section.

(5) As used in this section, "powers and authorities" include, but are not limited to, powers and authorities in corporate governance matters. [2001 c 83 § 37; 1977 ex.s. c 207 § 1.]

**Severability—2001 c 83:** See RCW 31.12.908.

## Chapter 31.20 RCW

### DEVELOPMENT CREDIT CORPORATIONS

#### Sections

31.20.010	Creation under general corporation laws authorized.
31.20.020	Purposes specified.
31.20.030	Corporate powers.
31.20.040	Minimum capital stock.
31.20.050	Board of directors.
31.20.060	Members power to loan funds to corporation.
31.20.070	Members of corporation enumerated.
31.20.080	Members duty to loan funds to corporation—Maximum limits—Proration of calls.
31.20.090	Withdrawal from membership.
31.20.100	Surplus reserve required.
31.20.110	Funds to be deposited in designated depository.
31.20.120	Money deposits prohibited.
31.20.130	Publication of annual statement of assets and liabilities.
31.20.140	Participation in federal act authorized.

**31.20.010 Creation under general corporation laws authorized.** Organizations to provide development credit are authorized to be created under the general corporation laws of the state, with all of the powers, privileges and immunities conferred on corporations by such laws. [1959 c 213 § 1.]

**31.20.020 Purposes specified.** The purposes of development credit corporations as authorized herein shall be: (1) To promote, aid, and, through the united efforts of the institutions and corporations which shall from time to time become members thereof, develop and advance the industrial and business prosperity and welfare of the state of Washington; (2) To encourage new industries; (3) To stimulate and help to expand all kinds of business ventures which tend to promote the growth of the state; (4) To act whenever and wherever deemed by it advisable in conjunction with other organizations, the objects of which are the promotion of industrial, agricultural or recreational developments within the state; and (5) To furnish for approved and deserving applicants ready and required money for the carrying on and development of every kind of business or industrial undertaking whereby a medium of credit is established not otherwise readily available therefor. [1959 c 213 § 2.]

**31.20.030 Corporate powers.** In furtherance of the purposes set forth in RCW 31.20.020, and in addition to the powers conferred by the general laws relating to corporations, this corporation shall, subject to the restrictions and limitations set forth in this chapter, have the following powers:

(1) To borrow money on secured or unsecured notes from any bank, trust company, savings bank, mutual savings bank, savings and loan association, building and loan association, credit union, insurance company or union funds which shall be members of this corporation and to pledge bonds, notes and other securities as collateral therefor: PROVIDED, In no case shall the amount so loaned by any member exceed the limit as hereinafter defined;

(2) To lend money upon secured or unsecured applications: PROVIDED, It shall not be the purpose hereof to take from other institutions within the state any such loans or commitments as may be desired by such institutions generally in the ordinary course of their business;

(3) To establish and regulate the terms and conditions of any such loans and charges for interest or service connected therewith;

(4) To purchase, hold, lease and otherwise acquire and to convey such real estate as may, from time to time, be acquired by it in satisfaction of debts or may be acquired by it in the foreclosure of mortgages thereon or upon judgments for debts or in settlements to secure debts. [1959 c 213 § 3.]

**31.20.040 Minimum capital stock.** No development credit corporation shall be organized with a capital stock of less than twenty-five thousand dollars, which shall be paid into the treasury of the corporation in cash before the corporation shall be authorized to transact any business other than such as relates to its organization. [1959 c 213 § 4.]

**31.20.050 Board of directors.** All the corporate powers of a development credit corporation shall be exercised by a board of not less than nine directors who shall be residents of this state. The number of directors and their term of office shall be determined by the stockholders at the first meeting held by the incorporators and at each annual meeting thereafter. In the first instance the directors shall be elected by the stockholders to serve until the first annual meeting. At the

first annual meeting, and at each annual meeting thereafter, one-third of the directors shall be elected by a vote of the stockholders and the remaining two-thirds thereof shall be elected by members of the corporation herein provided for, each member having one vote. The removal of any director from this state shall immediately vacate his office. If any vacancy occurs in the board of directors through death, resignation or otherwise, the remaining directors may elect a person to fill the vacancy until the next annual meeting of the corporation. The directors shall be annually sworn to the proper discharge of their duties and they shall hold office until others are elected or appointed and qualified in their stead. [1959 c 213 § 5.]

**31.20.060 Members power to loan funds to corporation.** Any member, as set forth in RCW 31.20.070, shall have power and authority to loan any of their funds to any development credit corporation of which they are a member, subject to the restrictions as set forth in RCW 31.20.080, notwithstanding any laws to the contrary pertaining to such member. [1959 c 213 § 6.]

**31.20.070 Members of corporation enumerated.** The members of a development credit corporation shall consist of such banks, trust companies, savings banks, mutual savings banks, savings and loan associations, building and loan associations, credit unions, insurance companies or union funds as may make accepted applications to this corporation to lend funds to it upon call and up to the limit herein provided. [1959 c 213 § 7.]

**31.20.080 Members duty to loan funds to corporation—Maximum limits—Proration of calls.** Each member of a development credit corporation shall lend funds to the development credit corporation as and when called upon by it to do so to the extent of the member's commitment, but the total amount on loan by any member at any one time shall not exceed the following limit: (1) For banks, trust companies, or insurance companies, three percent of capital and surplus; (2) For mutual savings banks, savings and loan associations, or credit unions, three percent of guaranty and reserve funds; and (3) Comparable limits for other institutions. All loan limits shall be established at the thousand dollars amount nearest to the amount computed on an actual basis. All calls when made by this corporation shall be prorated among the members on the same proportion that the maximum lending commitment of each bears to the aggregate maximum lending commitment of all members. [1959 c 213 § 8.]

**31.20.090 Withdrawal from membership.** Upon notice given one year in advance a member of the corporation may withdraw from membership in the corporation at the expiration date of such notice and from said expiration date shall be free from obligations hereunder except as to those accrued prior to said expiration date. [1959 c 213 § 9.]

**31.20.100 Surplus reserve required.** A development credit corporation shall set apart a surplus of not less than ten percent of its net earnings in each and every year until such surplus, with any unimpaired surplus paid in, shall amount to

one-half of the capital stock. The said surplus shall be kept to secure against losses and contingencies, and whenever the same becomes impaired it shall be reimbursed in the manner provided for its accumulation. [1959 c 213 § 10.]

**31.20.110 Funds to be deposited in designated depository.** A development credit corporation shall not deposit any of its funds in any institution unless such institution has been designated as a depository by a vote of a majority of the directors, exclusive of the vote of any director who is an officer or director of the depository so designated. [1959 c 213 § 11.]

**31.20.120 Money deposits prohibited.** A development credit corporation shall not receive money on deposit. [1959 c 213 § 12.]

**31.20.130 Publication of annual statement of assets and liabilities.** A development credit corporation, on or before February 15th of each year, shall publish in three consecutive issues of a newspaper of general circulation in the area or areas where the corporation is located a statement of assets and liabilities as of December 31st of the preceding year. [1959 c 213 § 13.]

**31.20.140 Participation in federal act authorized.** Any development credit corporation desiring to qualify and participate in the federal Small Business Investment Act of 1958 and as hereafter amended may do so and to that end may comply with all the laws of the United States and all the rules, regulations and requirements promulgated pursuant thereto. [1959 c 213 § 14.]

## Chapter 31.24 RCW

### INDUSTRIAL DEVELOPMENT CORPORATIONS

#### Sections

31.24.010	Definitions.
31.24.020	Articles of incorporation—Contents—Approval.
31.24.030	Corporate powers.
31.24.040	Organizations authorized to acquire, hold and dispose of corporate bonds, securities, stock, etc.—Membership—Rights and powers—Limitation on stock ownership.
31.24.050	Membership by financial institutions—Loans to corporation by members—Limitations—Interest.
31.24.060	Membership—Duration—Withdrawal.
31.24.070	Powers of stockholders and members—Voting rights—Proxy voting.
31.24.080	Amendment of articles—Articles of amendment—Contents—Filing.
31.24.090	Board of directors.
31.24.100	Earnings and surplus—Reserves.
31.24.110	Funds to be deposited in designated depository—Money deposits prohibited.
31.24.120	Examinations by director of financial institutions—Reports—Authority of director.
31.24.130	First meeting.
31.24.140	Duration of corporation.
31.24.150	Dissolution—Method—Distribution of assets.
31.24.160	Credit of state not pledged.
31.24.170	Corporations designated state development companies—Scope of operations.
31.24.180	Calendar year adopted as fiscal year.
31.24.190	Formation of industrial development corporation for purpose of preservation of historic buildings or areas.
31.24.900	Severability—1963 c 162.

*Economic development finance authority: RCW 43.163.080.*

**31.24.010 Definitions.** As used in this chapter, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) Corporation means a Washington industrial development corporation created under this chapter.

(2) Financial institution means any banking corporation or trust company, national banking association, savings and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

(3) Member means any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this chapter, upon its call, and in accordance with the provisions of this chapter.

(4) Board of directors means the board of directors of the corporation created under this chapter.

(5) Loan limit means for any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this chapter. [1963 c 162 § 1.]

**31.24.020 Articles of incorporation—Contents—**

**Approval.** Fifteen or more persons, a majority of whom shall be residents of this state, who may desire to create an industrial development corporation under the provisions of this chapter, for the purpose of promoting, developing and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges herein-after provided, may be incorporated by filing in the office of the secretary of state, as hereinafter provided, articles of incorporation. The articles of incorporation shall contain:

(1) The name of the corporation, which shall include the words "Development Corporation of Washington."

(2) The location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors.

(3) The purposes for which the corporation is founded, which shall be to promote, stimulate, develop and advance the business prosperity and economic welfare of Washington and its citizens; to encourage and assist through loans, investments or other business transactions in the location of new business and industry in this state and to rehabilitate and assist existing business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of citizens of this state; similarly, to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

(4) The names and post office addresses of the members of the first board of directors, who, unless otherwise provided by the articles of incorporation or the bylaws, shall hold office for the first year of existence of the corporation or until their successors are elected and have qualified.

(5) Any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, dividing, limiting and regulating the powers of the corporation, the directors, stockholders or any class of the stockholders, including, but not limited to a list of the officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates.

(6) The amount of authorized capital stock and the number of shares into which it is divided, the par value of each share and the amount of capital with which it will commence business and, if there is more than one class of stock, a description of the different classes; the names and post office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the minimum amount of capital with which the corporation shall commence business which shall not be less than fifty thousand dollars. The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation.

(7) The articles of incorporation shall be in writing, subscribed by not less than five natural persons competent to contract and acknowledged by each of the subscribers before an officer authorized to take acknowledgments and filed in the office of the secretary of state for approval. A duplicate copy so subscribed and acknowledged may also be filed.

(8) The articles of incorporation shall recite that the corporation is organized under the provisions of this chapter.

The secretary of state shall not approve articles of incorporation for a corporation organized under this chapter until a total of at least ten national banks, state banks, savings banks, industrial savings banks, federal savings and loan associations, domestic building and loan associations, or insurance companies authorized to do business within this state, or any combination thereof, have agreed in writing to become members of said corporation; and said written agreement shall be filed with the secretary of state with the articles of incorporation and the filing of same shall be a condition precedent to the approval of the articles of incorporation by the secretary of state. Whenever the articles of incorporation shall have been filed in the office of the secretary of state and approved by him and all taxes, fees and charges, have been paid, as required by law, the subscribers, their successors and assigns shall constitute a corporation, and said corporation shall then be authorized to commence business, and stock thereof to the extent herein or hereafter duly authorized may from time to time be issued. [1974 ex.s. c 16 § 1; 1963 c 162 § 2.]

**31.24.030 Corporate powers.** In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by the provisions of Title 23B RCW, the corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

(1) To elect, appoint and employ officers, agents and employees; to make contracts and incur liabilities for any of the purposes of the corporation: PROVIDED, That the corporation shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint stock company, association or trust, or in any other manner.

(2) To borrow money from its members and the small business administration and any other similar federal agency, for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes or other evidence of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval: PROVIDED, That no loan to the corporation shall be secured in any manner unless all outstanding loans to the corporation shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

(3) To make loans to any person, firm, corporation, joint-stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith: PROVIDED, That the corporation shall not approve any application for a loan unless and until the person applying for said loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution.

(4) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(5) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint-stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments.

(6) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association or trust, and while the owner or holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(7) To mortgage, pledge, or otherwise encumber any property, right or things of value, acquired pursuant to the powers contained in subsections (4), (5), or (6) of this section, as security for the payment of any part of the purchase price thereof.

(8) To cooperate with and avail itself of the facilities of the United States department of commerce, the department of trade and economic development, and any other similar state or federal governmental agencies; and to cooperate with and

assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof.

(9) To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter. [1991 c 72 § 49; 1985 c 466 § 42; 1983 c 3 § 51; 1963 c 162 § 3.]

**Effective date—Severability—1985 c 466:** See notes following RCW 43.31.125.

**31.24.040 Organizations authorized to acquire, hold and dispose of corporate bonds, securities, stock, etc.—Membership—Rights and powers—Limitation on stock ownership.** Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization or trust indentures:

(1) Any person including all domestic corporations organized for the purpose of carrying on business within this state and further including without implied limitation public utility companies and insurance companies, and foreign corporations licensed to do business within this state, and all financial institutions as defined herein, and all trustees, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state except as otherwise provided in this chapter: PROVIDED, That a financial institution which does not become a member of the corporation shall not be permitted to acquire any shares of the capital stock of the corporation;

(2) All financial institutions are hereby authorized to become members of the corporation and to make loans to the corporation as provided herein; and

(3) Each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of, any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of said stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state: PROVIDED, That the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed ten percent of the loan limit of such member.

The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire. [1963 c 162 § 4.]

**31.24.050 Membership by financial institutions—Loans to corporation by members—Limitations—Interest.** Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors

may require, and membership shall become effective upon acceptance of such application by said board.

Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand dollar amount nearest to the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed fifteen times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) Thirty percent of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding, amounts validly called for loan but not yet loaned.

(b) The following limit, to be determined as of the time such member becomes a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, or thereafter on the basis of the preceding fiscal year, or in the case of an insurance company, its last annual statement to the state insurance commissioner; or thereafter on the basis of its last annual statement to the insurance commissioner, two and one-half percent of the capital and surplus of commercial banks and trust companies; one-half of one percent of the total outstanding loans made by savings and loan associations, and building and loan associations; two and one-half percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; two and one-half percent of the unassigned surplus of mutual insurance companies, except fire insurance companies; one-tenth of one percent of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) Subject to subsection (3)(a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(5) All loans to the corporation by members shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-quarter of one percent in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans. [1974 ex.s. c 16 § 2; 1973 1st ex.s. c 90 § 1; 1963 c 162 § 5.]

### **31.24.060 Membership—Duration—Withdrawal.**

Membership in the corporation shall be for the duration of the corporation: PROVIDED, That upon written notice given to the corporation five years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to notice of the intended withdrawal of said member. [1963 c 162 § 6.]

**31.24.070 Powers of stockholders and members—Voting rights—Proxy voting.** The stockholders and the members of the corporation shall have the following powers of the corporation:

(1) To determine the number of and elect directors as provided in RCW 31.24.090;

(2) To make, amend and repeal bylaws;

(3) To amend this charter as provided in RCW 31.24.080;

(4) To dissolve the corporation as provided in RCW 31.24.150;

(5) To do all things necessary or desirable to secure aid, assistance, loans and other financing from any financial institutions, and from any agency established under the small business investment act of 1958, public law 85-699, 85th congress, or other similar federal laws now or hereafter enacted.

(6) To exercise such other of the powers of the corporation consistent with this chapter as may be conferred on the stockholders and the members by the bylaws.

As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and, except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars shall have one additional vote, in person or by proxy, for each additional one thousand dollars which such member is authorized to have outstanding on loans to the corporation at any one time as determined under subsection (3)(b) of RCW 31.24.050. [1963 c 162 § 7.]

**31.24.080 Amendment of articles—Articles of amendment—Contents—Filing.** The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled and two-thirds of the votes to which the members shall be entitled: PROVIDED, That no amendment of the articles of incorporation which is inconsistent with the general purposes expressed herein or which authorizes any additional class of capital stock to be issued, or which eliminates or curtails the right of the director to examine the corporation

or the obligation of the corporation to make reports as provided in RCW 31.24.120, shall be made: PROVIDED, FURTHER, That no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes any charge in the principal amount, interest rate, maturity date, or in the security or credit position of an outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided herein, or affects a member's voting rights as provided herein, shall be made without the consent of each membership affected by such amendment.

Within thirty days after any meeting at which an amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and due adoption thereof, shall be submitted to the secretary of state, who shall examine them and if he finds that they conform to the requirements of this chapter, shall so certify and endorse his or her approval thereon. Thereupon, the articles of amendment shall be filed in the office of the secretary of state and no such amendment shall take effect until such articles of amendment shall have been filed as aforesaid. [1994 c 92 § 235; 1963 c 162 § 8.]

**31.24.090 Board of directors.** The business and affairs of the corporation shall be managed and conducted by a board of directors, a president, a vice president, a secretary, a treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize. The board of directors shall consist of such number, not less than eleven nor more than twenty-one, as shall be determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies in the office of director which shall be filled as hereinafter provided. The board of directors shall be elected in the first instance by the incorporators and thereafter at the annual meeting, the day and month of which shall be established by the bylaws of the corporations, or, if no annual meeting shall be held in the year of incorporation, then within ninety days after the approval of the articles of incorporation at a special meeting as hereinafter provided. At each annual meeting, or at each special meeting held as provided in this section, the members of the corporation shall elect two-thirds of the board of directors and the stockholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after the election and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders.

Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the wilful mis-

conduct of such directors and officers. [1974 ex.s. c 16 § 3; 1963 c 162 § 9.]

**31.24.100 Earnings and surplus—Reserves.** Each year the corporation shall set apart as earned surplus not less than ten percent of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one-half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the determination of the directors made in good faith shall be conclusive on all persons. [1963 c 162 § 10.]

**31.24.110 Funds to be deposited in designated depository—Money deposits prohibited.** The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated. The corporation shall not receive money on deposit. [1963 c 162 § 11.]

**31.24.120 Examinations by director of financial institutions—Reports—Authority of director.** The corporation shall be examined at least once annually by the director and shall make reports of its condition not less than annually to the director and more frequently upon call of the director, who in turn shall make copies of such reports available to the state insurance commissioner and the governor; and the corporation shall also furnish such other information as may from time to time be required by the director and secretary of state. The corporation shall pay the actual cost of the examinations. The director shall exercise the same power and authority over corporations organized under this chapter as is now exercised over banks and trust companies by the provisions of the Title 30 RCW, where the provisions of Title 30 RCW are not in conflict with this chapter. [1994 c 92 § 236; 1963 c 162 § 12.]

**31.24.130 First meeting.** The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place and purpose of the meeting, a copy of which notice shall be mailed, or delivered, to each incorporator at least five days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

At such first meeting, the incorporators shall organize by the choice, by ballot, of a temporary clerk; by the adoption of bylaws, by the election by ballot of directors; and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings.

Ten of the incorporators shall be a quorum for the transaction of business. [1963 c 162 § 13.]

**31.24.140 Duration of corporation.** Unless otherwise provided in the articles of incorporation, the period of duration of the corporation shall be perpetual, subject, however, to the right of the stockholders and the members to dissolve the corporation prior to the expiration of said period as provided in RCW 31.24.150. [1963 c 162 § 14.]

**31.24.150 Dissolution—Method—Distribution of assets.** The corporation may upon the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled and two-thirds of the votes to which the member shall be entitled dissolve said corporation as provided by Title 23B RCW, insofar as Title 23B RCW is not in conflict with the provisions of this chapter. Upon any dissolution of the corporation, none of the corporation's assets shall be distributed to the stockholders until all sums due the members of the corporation as creditors thereof have been paid in full. [1991 c 72 § 50; 1983 c 3 § 52; 1963 c 162 § 15.]

**31.24.160 Credit of state not pledged.** Under no circumstances shall the credit of the state of Washington be pledged to any corporation organized under the provisions of this chapter. [1963 c 162 § 16.]

**31.24.170 Corporations designated state development companies—Scope of operations.** Any corporation organized under the provisions of this chapter shall be a state development company, as defined in the small business investment act of 1958, public law 85-699, 85th congress, or any other similar federal legislation, and shall be authorized to operate on a statewide basis. [1963 c 162 § 17.]

**31.24.180 Calendar year adopted as fiscal year.** Corporations organized under this chapter shall adopt the calendar year as their fiscal year. [1963 c 162 § 18.]

**31.24.190 Formation of industrial development corporation for purpose of preservation of historic buildings or areas.** In addition to the purposes specified in RCW 31.24.020(2) [(3)] an industrial development corporation may be formed to encourage and stimulate the preservation of historic buildings or areas by returning them to economically productive uses which are compatible with or enhance the historic character of such buildings or areas; to stimulate and assist in the development of business or other activities which have an impact upon the preservation of historic buildings or areas; to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of historical preservation activities; and to provide financing through loans, investments of other business transactions for the promotion, development, and conduct of all kinds of business activity which encourages or relates to historic preservation. An industrial development corporation created to carry out the purposes of this section shall not engage in the broad economic and business promotion activities permitted by RCW 31.24.020(3) which are not related to the purposes of this section. Any such industrial development

corporation shall in all other respects be subject to the provisions of this chapter. [1973 1st ex.s. c 90 § 2.]

**31.24.900 Severability—1963 c 162.** The provisions of this chapter are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions. [1963 c 162 § 19.]

## Chapter 31.35 RCW AGRICULTURAL LENDERS—LOAN GUARANTY PROGRAM

### Sections

31.35.010	Findings—Intent.
31.35.020	Definitions.
31.35.030	Administration—Rules—Duties of director.
31.35.040	Participation by agricultural lender—Powers and privileges.
31.35.050	Costs of supervision—Fees.
31.35.060	Responsibility of agricultural lender—Recordkeeping—Loan loss reserve.
31.35.070	Examination of agricultural lender.
31.35.080	Enforcement—Responsibility of director—Penalty.
31.35.090	Enforcement—Court order.
31.35.100	Notice—Investments not insured.
31.35.900	Severability—Administrative review—1990 c 134.

*Department of financial institutions: Chapter 43.320 RCW.*

**31.35.010 Findings—Intent.** The legislature finds and declares that nondepository agricultural lenders can enhance their access to working capital for the purpose of financing agricultural borrowers by using the United States farmers home administration loan guaranty program. The farmers home administration loan guaranty program provides financing to agricultural borrowers needing working capital and longer term financing for the purchase of real estate, agricultural production expenses, debt refinancing, equipment, and the purchase of other fixed assets. Loans can be made to agricultural borrowers by nondepository lenders and guaranteed by the farmers home administration only if the state provides an ongoing opportunity for examination of such entities to confirm good lending practices and solvency.

It is the intent of the legislature to empower the director of financial institutions to examine nondepository agricultural lenders for the purpose of allowing such lenders to qualify for participation in the farmers home administration loan guaranty program. [1994 c 92 § 251; 1990 c 134 § 1.]

**31.35.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agricultural lender" means a Washington corporation incorporated under Title 23B or 24 RCW and qualified as such under this chapter and the jurisdiction of the federal government agency sponsoring the loan guaranty program.

(2) "Director" means the director of financial institutions.

(3) "Loan guaranty program" means the farmers home administration loan guaranty program, or any other government program for which the agricultural lender is eligible and which has as its function the provision, facilitation, or financing of agricultural business operations. [1994 c 92 § 252; 1990 c 134 § 2.]

**31.35.030 Administration—Rules—Duties of director.** (1) The director shall administer this chapter. The director may issue orders and adopt rules that, in the opinion of the director, are necessary to execute, enforce, and effectuate the purposes of this chapter. Rules to enforce the provisions of this chapter shall be adopted under the administrative procedure act, chapter 34.05 RCW.

(2) An application filed with the director under this chapter shall be in such form and contain such information as required by the director by rule and be consistent with the requirements of the loan guaranty program.

(3) After the director is satisfied that the applicant has satisfied all the conditions necessary for approval, the director shall issue a license to the applicant authorizing it to be an agricultural lender under this chapter.

(4) Any change of control of an agricultural lender shall be subject to the approval of the director. Such approval shall be subject to the same criteria as the criteria for approval of the original license. For purposes of this subsection, "change of control" means directly or indirectly, alone or in concert with others, to own, control, or hold the power to vote ten percent or more of the outstanding voting stock of an agricultural lender or the power to elect or control the election of a majority of the board of directors of an agricultural lender.

(5) The director may deny, suspend, or revoke a license if the agricultural lender violates any provision of this chapter or any rules promulgated pursuant to this chapter. [1994 c 92 § 253; 1990 c 134 § 3.]

**31.35.040 Participation by agricultural lender—Powers and privileges.** (1) An agricultural lender may participate in a loan guaranty program. If an agricultural lender participates in a loan guaranty program, the agricultural lender shall comply with the requirements of that program.

(2) An agricultural lender may be incorporated under either the Washington business corporation act, Title 23B RCW, or the Washington nonprofit corporation act, Title 24 RCW. In addition to the powers and privileges provided to an agricultural lender by this chapter, an agricultural lender has all the powers and privileges conferred by its incorporating statute that are not inconsistent with or limited by this chapter. [1990 c 134 § 4.]

**31.35.050 Costs of supervision—Fees.** (1) The director is authorized to charge a fee for the estimated direct and indirect costs for examination and supervision by the director of an agricultural lender or a subsidiary of an agricultural lender. Excess examiner time shall be billed at a reasonable rate established by rule.

(2) All such fees shall be deposited in the financial services regulation fund and administered consistent with the provisions of RCW 43.320.110. [2001 c 177 § 7; 1994 c 92 § 254; 1990 c 134 § 5.]

**Effective date—2001 c 177:** See note following RCW 43.320.080.

**31.35.060 Responsibility of agricultural lender—Recordkeeping—Loan loss reserve.** (1) An agricultural lender shall keep books, accounts, and other records in such form and manner as required by the director. These records

shall be kept at such place and shall be preserved for such length of time as specified by the director by rule.

(2) Not more than ninety days after the close of each calendar year, or within a period specified by the director, an agricultural lender shall file with the director a report containing the following:

(a) Financial statements, including the balance sheet, the statement of income or loss, the statement of changes in capital accounts, and the statement of changes in financial position; and

(b) Other information that the director may require.

(3) Each agricultural lender shall provide for a loan loss reserve sufficient to cover projected loan losses that are not guaranteed by the United States government or any agency thereof. [1994 c 92 § 255; 1990 c 134 § 6.]

**31.35.070 Examination of agricultural lender.** (1) The director shall visit each agricultural lender at least every twenty-four months for the purpose of assuring that the agricultural lender remains in compliance with and qualified for the loan guaranty program.

(a) The director may accept timely audited financial statements and other timely reports the director determines to be relevant and accurate as part of a full and complete examination of the agricultural lender. The director shall make an independent review of loans guaranteed by the loan guaranty program.

(b) The agricultural lender shall be exempt from examination under this subsection if it terminates its activities under the loan guaranty program and no loans guaranteed by the loan guaranty program remain on the books. This exemption becomes effective upon notification to the director. The director shall confirm termination of activities under the loan guaranty program with the appropriate federal agency.

(c) All examination reports and all information obtained by the director and the director's staff in conducting examinations of an agricultural lender are confidential to the same extent bank examinations are confidential under RCW 30.04.075.

(d) All examination reports may be shared with other state or federal agencies consistent with chapter 30.04 RCW.

(2) A director, officer, or employee of an agricultural lender or of a subsidiary of an agricultural lender being examined by the director or a person having custody of any of the books, accounts, or records of the agricultural lender or of the subsidiary shall facilitate the examination so far as it is in his or her power to do so.

(3) If in the opinion of the director it is necessary in the examination of an agricultural lender or of a subsidiary of an agricultural lender, the director may retain any certified public accountant, attorney, appraiser, or other person to assist the director. The agricultural lender being examined shall pay the fees of a person retained by the director under this subsection. [1994 c 92 § 256; 1990 c 134 § 7.]

**31.35.080 Enforcement—Responsibility of director—Penalty.** (1) The director shall adopt rules to enforce the intent and purposes of this chapter. Such rules shall include, but not be limited to, the following:

(a) Disclosure of conflicts of interest;

(b) Prohibition of false statements made to the director on any form required by the director or during any examination; or

(c) Prevention of fraud and undue influence within an agricultural lender.

(2) A violation of any provision of this chapter or any rule of the director adopted under this chapter by an agent, employee, officer, or director of the agricultural lender shall be punishable by a fine, established by the director, not to exceed one hundred dollars for each offense. Each day's continuance of the violation shall be a separate and distinct offense. All fines shall be credited to the financial services regulation fund.

(3) The director may issue and serve upon an agricultural lender a notice of charges if, in the opinion of the director, the agricultural lender is violating or has violated the law, rule, or any condition imposed in writing by the director or any written agreement made by the director.

(a) The notice shall contain a statement of the facts constituting the alleged violation or practice and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the agricultural lender. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the director at the request of the agricultural lender.

Unless the agricultural lender appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of consent or if, upon the record made at the hearing, the director finds that any violation or practice specified in the notice of charges has been established, the director may issue and serve upon the agricultural lender an order to cease and desist from the violation or practice. The order may require the agricultural lender and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the agricultural lender to take affirmative action to correct the conditions resulting from the violation or practice.

(b) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the agricultural lender concerned, except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the director or a reviewing court. [2001 c 177 § 8; 1994 c 92 § 257; 1990 c 134 § 8.]

**Effective date—2001 c 177:** See note following RCW 43.320.080.

**31.35.090 Enforcement—Court order.** If, in the opinion of the director, an agricultural lender violates or there is reasonable cause to believe that an agricultural lender is about to violate any provision of this chapter or any rule adopted under this chapter, the director may bring an action in the appropriate court to enjoin the violation or to enforce compliance. Upon a proper showing, a restraining order, or preliminary or permanent injunction, shall be granted, and a receiver or a conservator may be appointed for the agricultural lender or the agricultural lender's assets. [1994 c 92 § 258; 1990 c 134 § 9.]

**31.35.100 Notice—Investments not insured.** All agricultural lenders shall notify their members at the time of membership and annually thereafter that their investment in the agricultural lender, although regulated by the director, is not insured, guaranteed, or protected by any federal or state agency. [1994 c 92 § 259; 1990 c 134 § 10.]

**31.35.900 Severability—Administrative review—1990 c 134.** If any provision of this act or its application to any person or circumstance is held invalid or, if in the written opinion of the farmers home administration, is contrary to the intent and purposes of the loan guaranty program, the director shall not enforce such provision, but the remainder of the act or the application of the provision to other persons or circumstances shall not be affected. [1994 c 92 § 260; 1990 c 134 § 11.]

## Chapter 31.40 RCW

### FEDERALLY GUARANTEED SMALL BUSINESS LOANS

#### Sections

31.40.010	Intent.
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31.40.030	Director—Powers and duties.
31.40.040	Licensee—Powers and duties.
31.40.050	License approval.
31.40.060	Prohibited loans—Exception.
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31.40.090	Examination of licensees.
31.40.100	Application denial.
31.40.110	Rules—Penalties.
31.40.120	Injunction.
31.40.130	Penalty—License impairment.
31.40.900	Severability—1989 c 212.

**31.40.010 Intent.** The legislature finds and declares that small and moderate-size companies can enhance their access to working capital and to capital for acquiring and equipping commercial and industrial facilities by using the United States small business administration national small business loan program known as the 7(a) loan guaranty program. The 7(a) loan guaranty program provides financing to small firms needing working capital and longer term financing for equipment and other fixed assets. Such loans can be made to small businesses by nondepository lenders and guaranteed by the small business administration only if the state provides for the on-going regulation and examination of such entities.

It is the intent of the legislature that the director of financial institutions [license], regulate, and subject to on-going examination, nondepository lenders for the purpose of allowing such lenders to participate in the small business administration's 7(a) loan guaranty program. [1994 c 92 § 261; 1989 c 212 § 1.]

**31.40.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Licensee" means a Washington corporation licensed under the terms of this chapter.

(2) "Director" means the director of financial institutions. [1994 c 92 § 262; 1989 c 212 § 2.]

**31.40.030 Director—Powers and duties.** (1) The director shall administer this chapter. The director may issue orders and adopt rules that, in the opinion of the director, are necessary to execute, enforce, and effectuate the purposes of this chapter. Rules to enforce the provisions of this chapter shall be adopted under the administrative procedure act, chapter 34.05 RCW.

(2) Whenever the director issues an order or a license under this chapter, the director may impose conditions that are necessary, in the opinion of the director, to carry out the purposes of this chapter.

(3) An application filed with the director under this chapter shall be in such a form and contain such information as the director may require.

(4) Any change of control of a licensee shall be subject to the approval of the director. Such approval shall be subject to the same criteria as the criteria for approval of the original license. For purposes of this subsection, "change of control" means directly or indirectly, alone or in concert with others, to own, control, or hold the power to vote ten percent or more of the outstanding voting stock of a licensee or the power to elect or control the election of a majority of the board of directors of the licensee. [1994 c 92 § 263; 1989 c 212 § 3.]

**31.40.040 Licensee—Powers and duties.** (1) A licensee may participate in the 7(a) loan guaranty program of the small business administration pursuant to section 7(a) of the federal small business investment act of 1958, 15 U.S.C. Sec. 636(a), or any other government program for which the licensee is eligible and which has as its function the provision or facilitation of financing or management assistance to business firms. If a licensee participates in a program referred to in this section, the licensee shall comply with the requirements of that program.

(2) A licensee may be incorporated under either the Washington business corporation act or the Washington non-profit corporation act. In addition to the powers and privileges provided to a licensee by this chapter, a licensee has all the powers and privileges conferred by its incorporating statute which are not inconsistent with or limited by this chapter. [1989 c 212 § 4.]

**31.40.050 License approval.** After a review of information regarding the directors, officers, and controlling persons of the applicant for a license, a review of the applicant's business plan, including at least three years of detailed financial projections and other relevant information, and a review of such additional information as is considered relevant by the director, the director shall approve an application for a license if, and only if, the director determines that:

(1) The applicant is capitalized in an amount that is not less than five hundred thousand dollars and that such sum is adequate for the applicant to transact business as a nondepository 7(a) lender and that in evaluating the capital position of the applicant the director may consider and include the net worth of any corporate shareholder of the applicant corporation if the shareholder guarantees the liabilities of the applicant: PROVIDED, That such corporate shareholder be subject to the reporting requirements of RCW 31.40.080;

(2) Each director, officer, and controlling person of the applicant is of good character and sound financial standing;

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that the directors and officers of the applicant are competent to perform their functions with respect to the applicant; and that the directors and officers of the applicant are collectively adequate to manage the business of the applicant as a nondepository 7(a) lender;

(3) The business plan of the applicant will be honestly and efficiently conducted in accordance with the intent and purposes of this chapter; and

(4) The proposed activity possesses a reasonable prospect for success. [1994 c 92 § 264; 1989 c 212 § 5.]

**31.40.060 Prohibited loans—Exception.** (1) Either by itself or in concert with a director, officer, principal shareholder, or affiliate, or with another licensee, a licensee shall not hold control of a business firm to which it has made a loan under section 7(a) of the federal small business investment act of 1958, 15 U.S.C. Sec. 636(a), except that, to the extent necessary to protect the licensee's interest as creditor of the business firm, a licensee that provides financing assistance to a business firm may acquire and hold control of that business firm. Unless the director approves a longer period, a licensee holding control of a business firm under this section shall divest itself of the interest which constitutes holding control as soon as practicable or within five years after acquiring that interest, whichever is sooner.

(2) For the purposes of subsection (1) of this section, "hold control" means alone or in concert with others:

(a) Ownership, directly or indirectly, of record or beneficially, of voting securities greater than:

(i) For a business firm with outstanding voting securities held by fewer than fifty shareholders, forty percent of the outstanding voting securities;

(ii) For a business firm with outstanding voting securities held by fifty or more shareholders, twenty-five percent of the outstanding voting securities;

(b) Being able to elect or control the election of a majority of the board of directors. [1994 c 92 § 265; 1989 c 212 § 6.]

**31.40.070 Fees.** (1) The director is authorized to charge a fee for the estimated direct and indirect costs of the following:

(a) An application for a license and the investigation thereof;

(b) An application for approval to acquire control of a licensee and the investigation thereof;

(c) An application for approval for a licensee to merge with another corporation, an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee and the investigation thereof;

(d) An annual license;

(e) An examination by the director of a licensee or a subsidiary of a licensee. Excess examiner time shall be billed at a reasonable rate established by rule.

(2) A fee for filing an application with the director shall be paid at the time the application is filed with the director.

(3) All such fees shall be deposited in the financial services regulation fund and administered consistent with the provisions of RCW 43.320.110. [2001 c 177 § 9; 1994 c 92 § 266; 1989 c 212 § 7.]

**Effective date—2001 c 177:** See note following RCW 43.320.080.

**Construction—1989 c 212 § 7:** "Nothing in section 7 of this act shall be construed to prevent repayment to the general fund of the twenty-five thousand dollar start-up appropriation set forth in section 15 of this act." [1989 c 212 § 14.]

**31.40.080 Records—Reports—Loan loss reserve.** (1) A licensee shall keep books, accounts, and other records in such a form and manner as the director may require. These records shall be kept at such a place and shall be preserved for such a length of time as the director may specify.

(2) Not more than ninety days after the close of each calendar year or within a period specified by the director, a licensee shall file with the director a report containing the following:

(a) Financial statements, including the balance sheet, the statement of income or loss, the statement of changes in capital accounts and the statement of changes in financial position; and

(b) Other information that the director may require.

(3) Each licensee shall provide for a loan loss reserve sufficient to cover projected loan losses which are not guaranteed by the United States government or any agency thereof. [1994 c 92 § 267; 1989 c 212 § 8.]

**31.40.090 Examination of licensees.** (1) The director shall examine each licensee not less than once each year.

(2) The director may with or without notice and at any time during regular business hours examine a licensee or a subsidiary of a licensee.

(3) A director, officer, or employee of a licensee or of a subsidiary of a licensee being examined by the director or a person having custody of any of the books, accounts, or records of the licensee or of the subsidiary shall otherwise facilitate the examination so far as it is in his or her power to do so.

(4) If in the director's opinion it is necessary in the examination of a licensee, or of a subsidiary of a licensee, the director may retain any certified public accountant, attorney, appraiser, or other person to assist the director. The licensee being examined shall pay the fees of a person retained by the director under this subsection. [1994 c 92 § 268; 1989 c 212 § 9.]

**31.40.100 Application denial.** If the director denies an application, the director shall provide the applicant with a written statement explaining the basis for the denial. [1994 c 92 § 269; 1989 c 212 § 10.]

**31.40.110 Rules—Penalties.** (1) The director shall adopt rules to enforce the intent and purposes of this chapter. Such rules shall include, but need not be limited to, the following:

(a) Disclosure of conflicts of interest;

(b) Prohibition of false statements made to the director on any form required by the director or during any examination requested by the director; or

(c) Prevention of fraud and undue influence by a licensee.

(2) A violation of any provision of this chapter or any rule of the director adopted under this chapter by an agent, employee, officer, or director of the licensee shall be punishable by a fine, established by the director, not to exceed one hundred dollars for each offense. Each day's continuance of the violation shall be a separate and distinct offense. Each such fine shall be credited to the financial services regulation fund. [2001 c 177 § 10; 1994 c 92 § 270; 1989 c 212 § 11.]

**Effective date—2001 c 177:** See note following RCW 43.320.080.

**31.40.120 Injunction.** If, in the opinion of the director, a person violates or there is reasonable cause to believe that a person is about to violate any provision of this chapter or any rule adopted under this chapter, the director may bring an action in the appropriate court to enjoin the violation or to enforce compliance. Upon a proper showing, a restraining order, preliminary or permanent injunction, shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant's assets. [1994 c 92 § 271; 1989 c 212 § 12.]

**31.40.130 Penalty—License impairment.** The director may deny, suspend, or revoke a license if the applicant or holder violates any provision of this chapter or any rules promulgated pursuant to this chapter. [1994 c 92 § 272; 1989 c 212 § 13.]

**31.40.900 Severability—1989 c 212.** If any provision of this act or its application to any person or circumstance is held invalid or, if in the written opinion of the small business administration, is contrary to the intent and purposes of the 7(a) loan guaranty program, the director shall not enforce such provision but the remainder of the act or the application of the provision to other persons or circumstances shall not be affected. [1994 c 92 § 273; 1989 c 212 § 16.]

## Chapter 31.45 RCW

### CHECK CASHERS AND SELLERS

#### Sections

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**31.45.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person that files an application for a license under this chapter, including the applicant's sole proprietor, owners, directors, officers, partners, members, and controlling persons.

(2) "Borrower" means a natural person who receives a small loan.

(3) "Business day" means any day that the licensee is open for business in at least one physical location.

(4) "Check" means the same as defined in RCW 62A.3-104(f) and, for purposes of conducting the business of making small loans, includes other electronic forms of payment, including stored value cards, internet transfers, and automated clearing house transactions.

(5) "Check casher" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of cashing checks, drafts, money orders, or other commercial paper serving the same purpose.

(6) "Check seller" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of or selling checks, drafts, money orders, or other commercial paper serving the same purpose.

(7) "Collateral" means the same as defined in chapter 62A.9A RCW.

(8) "Controlling person" means a person owning or controlling ten percent or more of the total outstanding shares of the applicant or licensee, if the applicant or licensee is a corporation, and a member who owns ten percent or more of a limited liability company or limited liability partnership.

(9) "Default" means the borrower's failure to repay the small loan in compliance with the terms contained in the small loan agreement or note or failure to make payments in compliance with a loan payment plan.

(10) "Director" means the director of financial institutions.

(11) "Financial institution" means a commercial bank, savings bank, savings and loan association, or credit union.

(12) "Licensee" means a check casher or seller licensed by the director to engage in business in accordance with this chapter. For purposes of the enforcement powers of this chapter, including the power to issue cease and desist orders under RCW 31.45.110, "licensee" also means a check casher or seller who fails to obtain the license required by this chapter.

(13) "Origination date" means the date upon which the borrower and the licensee initiate a small loan transaction.

(14) "Outstanding principal balance" of a small loan means any of the principal amount that has not been paid by the borrower.

(15) "Paid" means that moment in time when the licensee deposits the borrower's check or accepts cash for the full amount owing on a valid small loan.

(16) "Person" means an individual, partnership, association, limited liability company, limited liability partnership, trust, corporation, and any other legal entity.

(17) "Principal" means the loan proceeds advanced for the benefit of the borrower in a small loan, excluding any fee or interest charge.

(18) "Rescission" means annulling the loan contract and, with respect to the small loan contract, returning the borrower and the licensee to their financial condition prior to the origination date of the loan.

(19) "Small loan" means a loan of up to the maximum amount and for a period of time up to the maximum term specified in RCW 31.45.073.

(20) "Successive loans" means a series of loans made by the same licensee to the same borrower in such a manner that no more than three business days separate the termination date of any one loan and the origination date of any other loan in the series.

(21) "Termination date" means the date upon which payment for the small loan transaction is due or paid to the licensee, whichever occurs first.

(22) "Total of payments" means the principal amount of the small loan plus all fees or interest charged on the loan.

(23) "Trade secret" means the same as defined in RCW 19.108.010. [2003 c 86 § 1; 1995 c 18 § 1; 1994 c 92 § 274; 1993 c 143 § 1; 1991 c 355 § 1.]

**31.45.020 Application of chapter.** (1) This chapter does not apply to:

(a) Any financial institution or trust company authorized to do business in Washington;

(b) The cashing of checks, drafts, or money orders by any person who cashes checks, drafts, or money orders as a convenience, as a minor part of its customary business, and not for profit;

(c) The issuance or sale of checks, drafts, or money orders by any corporation, partnership, or association that has a net worth of not less than three million dollars as shown by audited financial statements; and

(d) The issuance or sale of checks, drafts, money orders, or other commercial paper serving the same purpose by any agent of a corporation, partnership, or association described in (c) of this subsection.

(2) Upon application to the director, the director may exempt a person from any or all provisions of this chapter upon a finding by the director that although not otherwise exempt under this section, the applicant is not primarily engaged in the business of cashing or selling checks and a total or partial exemption would not be detrimental to the public. [2003 c 86 § 2; 1994 c 92 § 275; 1991 c 355 § 2.]

**31.45.030 License required—Small loan endorsement—Application—Fee—Bond—Deposit in lieu of bond—Director's duties.** (1) Except as provided in RCW 31.45.020, no check casher or seller may engage in business without first obtaining a license from the director in accordance with this chapter. A license is required for each location where a licensee engages in the business of cashing or selling checks or drafts.

(2) Each application for a license shall be in writing in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;

(b) The location where the initial registered office of the applicant will be located in this state;

(c) The complete address of any other locations at which the applicant proposes to engage in business as a check casher or seller; and

(d) Such other data, financial statements, and pertinent information as the director may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(3) Any information in the application regarding the personal residential address or telephone number of the applicant, and any trade secret as defined in RCW 19.108.010 including any financial statement that is a trade secret, is exempt from the public records disclosure requirements of chapter 42.17 RCW.

(4) The application shall be filed together with an investigation and supervision fee established by rule by the director. Such fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110.

(5)(a) Before granting a license to sell checks, drafts, or money orders under this chapter, the director shall require that the licensee file with the director a surety bond running to the state of Washington, which bond shall be issued by a surety insurer which meets the requirements of chapter 48.28 RCW, and be in a format acceptable to the director. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. The bond shall be conditioned upon the licensee paying all persons who purchase checks, drafts, or money orders from the licensee the face value of any check, draft, or money order which is dishonored by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed. The bond shall only be liable for the face value of the dishonored check, draft, or money order, and shall not be liable for any interest or consequential damages.

(b) Before granting a small loan endorsement under this chapter, the director shall require that the licensee file with the director a surety bond, in a format acceptable to the director, issued by a surety insurer that meets the requirements of chapter 48.28 RCW. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. A licensee who wishes to engage in both check selling and making small loans may combine the penal sums of the bonding requirements and file one bond in a form acceptable to the director. The bond shall run to the state of Washington

as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the licensee's violation of this chapter or any rules adopted under this chapter. The bond shall only be liable for damages suffered by borrowers as a result of the licensee's violation of this chapter or rules adopted under this chapter, and shall not be liable for any interest or consequential damages.

(c) The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director and licensee of its intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any liability of the licensee for tortious acts, whether or not such liability is imposed by statute or common law, or is imposed by contract. The bond shall not be a substitute or supplement to any liability or other insurance required by law or by the contract. If the surety desires to make payment without awaiting court action against it, the penal sum of the bond shall be reduced to the extent of any payment made by the surety in good faith under the bond.

(d) Any person who is a purchaser of a check, draft, or money order from the licensee having a claim against the licensee for the dishonor of any check, draft, or money order by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed, or who obtained a small loan from the licensee and was damaged by the licensee's violation of this chapter or rules adopted under this chapter, may bring suit upon such bond or deposit in the superior court of the county in which the check, draft, or money order was purchased, or in the superior court of a county in which the licensee maintains a place of business. Jurisdiction shall be exclusively in the superior court. Any such action must be brought not later than one year after the dishonor of the check, draft, or money order on which the claim is based. In the event valid claims against a bond or deposit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond, or deposit, without regard to the date of filing of any claim or action.

(e) In lieu of the surety bond required by this section, the applicant for a check seller license may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond. In lieu of the surety bond required by this section, the applicant for a small loan endorsement may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond, or may demonstrate to the director net worth in excess of three times the amount of the penal sum of the required bond.

The director may adopt rules necessary for the proper administration of the security or to establish reporting

requirements to ensure that the net worth requirements continue to be met. A deposit given instead of the bond required by this section is not an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. A deposit given instead of the bond required by this section is a fund held in trust for the benefit of eligible claimants under this section and is not an asset of the estate of any licensee that seeks protection voluntarily or involuntarily under the bankruptcy laws of the United States.

(f) Such security may be sold by the director at public auction if it becomes necessary to satisfy the requirements of this chapter. Notice of the sale shall be served upon the licensee who placed the security personally or by mail. If notice is served by mail, service shall be addressed to the licensee at its address as it appears in the records of the director. Bearer bonds of the United States or the state of Washington without a prevailing market price must be sold at public auction. Such bonds having a prevailing market price may be sold at private sale not lower than the prevailing market price. Upon any sale, any surplus above amounts due shall be returned to the licensee, and the licensee shall deposit with the director additional security sufficient to meet the amount required by the director. A deposit given instead of the bond required by this section shall not be deemed an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. [2003 c 86 § 3; 2001 c 177 § 11; 1995 c 18 § 4; 1994 c 92 § 276; 1993 c 176 § 1; 1991 c 355 § 3.]

**Effective date—2001 c 177:** See note following RCW 43.320.080.

**Effective date—1993 c 176:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]." [1993 c 176 § 2.]

*Examination reports and information from financial institutions exempt:*  
RCW 42.17.31911.

**31.45.040 Application for license or small loan endorsement—Financial responsibility—Director's investigation.** (1) The director shall conduct an investigation of every applicant to determine the financial responsibility, experience, character, and general fitness of the applicant. The director shall issue the applicant a license to engage in the business of cashing or selling checks, or both, or a small loan endorsement, if the director determines to his or her satisfaction that:

(a) The applicant has satisfied the requirements of RCW 31.45.030;

(b) The applicant is financially responsible and appears to be able to conduct the business of cashing or selling checks or making small loans in an honest, fair, and efficient manner with the confidence and trust of the community; and

(c) The applicant has the required bonds, or has provided an acceptable alternative form of financial security.

(2) The director may refuse to issue a license or small loan endorsement if he or she finds that the applicant, or any person who is a director, officer, partner, agent, sole proprietor, owner, or controlling person of the applicant, has been convicted of a felony in any jurisdiction within seven years of filing the present application or is associating or consorting with any person who has been convicted of a felony in any jurisdiction within seven years of filing the present application. The term "substantial stockholder" as used in this sub-

section, means a person owning or controlling ten percent or more of the total outstanding shares of the applicant corporation.

(3) A license or small loan endorsement may not be issued to an applicant:

(a) Whose license to conduct business under this chapter, or any similar statute in any other jurisdiction, has been suspended or revoked within five years of the filing of the present application;

(b) Who has been banned from the industry by an administrative order issued by the director or the director's designee, for the period specified in the administrative order; or

(c) When any person who is a sole proprietor, owner, director, officer, partner, agent, or controlling person of the applicant has been banned from the industry in an administrative order issued by the director, for the period specified in the administrative order.

(4) A license or small loan endorsement issued under this chapter shall be conspicuously posted in the place of business of the licensee. The license is not transferable or assignable.

(5) A license or small loan endorsement issued in accordance with this chapter remains in force and effect until surrendered, suspended, or revoked, or until the license expires as a result of nonpayment of the annual assessment fee. [2003 c 86 § 4; 1996 c 13 § 1; 1995 c 18 § 5; 1994 c 92 § 277; 1991 c 355 § 4.]

**31.45.050 Investigation or examination fee and annual assessment fee required—Amounts determined by rule—Failure to pay—Notice requirements of licensee.**

(1) Each applicant and licensee shall pay to the director an investigation or examination fee as established in rule and an annual assessment fee for the coming year in an amount determined by rule as necessary to cover the operation of the program. The annual assessment fee is due upon the annual assessment fee due date as established in rule. Nonpayment of the annual assessment fee may result in expiration of the license as provided in subsection (2) of this section. In establishing the fees, the director shall differentiate between check cashing and check selling and making small loans, and consider at least the volume of business, level of risk, and potential harm to the public related to each activity. The fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110.

(2) If a licensee does not pay its annual assessment fee by the annual assessment fee due date as specified in rule, the director or the director's designee shall send the licensee a notice of suspension and assess the licensee a late fee not to exceed twenty-five percent of the annual assessment fee as established in rule by the director. The licensee's payment of both the annual assessment fee and the late fee must arrive in the department's offices by 5:00 p.m. on the tenth day after the annual assessment fee due date, unless the department is not open for business on that date, in which case the licensee's payment of both the annual assessment fee and the late fee must arrive in the department's offices by 5:00 p.m. on the next occurring day that the department is open for business. If the payment of both the annual assessment fee and the late fee does not arrive prior to such time and date, then the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after the assessment fee due date. The director

or the director's designee may reinstate the license if, within twenty days after the effective date of expiration, the licensee:

(a) Pays both the annual assessment fee and the late fee; and

(b) Attests under penalty of perjury that it did not engage in conduct requiring a license under this chapter during the period its license was expired, as confirmed by an investigation by the director or the director's designee.

(3) If a licensee intends to do business at a new location, to close an existing place of business, or to relocate an existing place of business, the licensee shall provide written notification of that intention to the director no less than thirty days before the proposed establishing, closing, or moving of a place of business. [2003 c 86 § 5; 2001 c 177 § 12; 1996 c 13 § 2; 1995 c 18 § 6; 1994 c 92 § 278; 1991 c 355 § 5.]

**Effective date—2001 c 177:** See note following RCW 43.320.080.

**31.45.060 Licensee—Schedule of fee and charges—Recordkeeping.** (1) A schedule of the fees and the charges for the cashing and selling of checks, drafts, money orders, or other commercial paper serving the same purpose shall be conspicuously and continuously posted in every location licensed under this chapter. The licensee shall provide to its customer a receipt for each transaction. The receipt must include the name of the licensee, the type and amount of the transaction, and the fee or fees charged for the transaction.

(2) Each licensee shall keep and maintain such business books, accounts, and records as the director may require to fulfill the purposes of this chapter. Every licensee shall preserve such books, accounts, and records as required in rule by the director for at least two years from the completion of the transaction. Records may be maintained on an electronic, magnetic, optical, or other storage media. However, the licensee must maintain the necessary technology to permit access to the records by the department for the period required under this chapter.

(3) A check, draft, or money order sold by a licensee shall be drawn on an account of a licensee maintained in a federally insured financial institution authorized to do business in the state of Washington. [2003 c 86 § 6; 1994 c 92 § 279; 1991 c 355 § 6.]

**31.45.070 Licensee—Permissible transactions—Restrictions.** (1) No licensee may engage in a loan business or the negotiation of loans or the discounting of notes, bills of exchange, checks, or other evidences of debt on the same premises where a check cashing or selling business is conducted, unless the licensee:

(a) Is conducting the activities of pawnbroker as defined in RCW 19.60.010;

(b) Is a properly licensed consumer loan company under chapter 31.04 RCW;

(c) Is conducting other lending activity permitted in the state of Washington; or

(d) Has a small loan endorsement.

(2) Except as otherwise permitted in this chapter, no licensee may at any time cash or advance any moneys on a post-dated check or draft. However, a licensee may cash a check

payable on the first banking day following the date of cashing if:

(a) The check is drawn by the United States, the state of Washington, or any political subdivision of the state, or by any department or agency of the state or its subdivisions; or

(b) The check is a payroll check drawn by an employer to the order of its employee in payment for services performed by the employee.

(3) Except as otherwise permitted in this chapter, no licensee may agree to hold a check or draft for later deposit. A licensee shall deposit all checks and drafts cashed by the licensee as soon as practicable.

(4) No licensee may issue or cause to be issued any check, draft, or money order, or other commercial paper serving the same purpose, that is drawn upon the trust account of a licensee without concurrently receiving the full principal amount, in cash, or by check, draft, or money order from a third party believed to be valid.

(5) No licensee may advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, any statement or representation that is false, misleading, or deceptive, or that omits material information, or that refers to the supervision of the licensee by the state of Washington or any department or official of the state.

(6) Each licensee shall comply with all applicable federal statutes governing currency transaction reporting. [2003 c 86 § 7; 1995 c 18 § 7; 1994 c 92 § 280; 1991 c 355 § 7.]

**31.45.073 Making small loans—Endorsement required—Termination date—Maximum amount—Interest—Fees—Postdated check or draft as security.** (1)

No licensee may engage in the business of making small loans without first obtaining a small loan endorsement to its license from the director in accordance with this chapter. An endorsement will be required for each location where a licensee engages in the business of making small loans, but a small loan endorsement may authorize a licensee to make small loans at a location different than the licensed locations where it cashes or sells checks. A licensee may have more than one endorsement.

(2) The termination date of a small loan may not exceed the origination date of that same small loan by more than forty-five days, including weekends and holidays, unless the term of the loan is extended by agreement of both the borrower and the licensee and no additional fee or interest is charged. The maximum principal amount of any small loan, or the outstanding principal balances of all small loans made by a licensee to a single borrower at any one time, may not exceed seven hundred dollars.

(3) A licensee that has obtained the required small loan endorsement may charge interest or fees for small loans not to exceed in the aggregate fifteen percent of the first five hundred dollars of principal. If the principal exceeds five hundred dollars, a licensee may charge interest or fees not to exceed in the aggregate ten percent of that portion of the principal in excess of five hundred dollars. If a licensee makes more than one loan to a single borrower, and the aggregated principal of all loans made to that borrower exceeds five hundred dollars at any one time, the licensee may charge interest or fees not to exceed in the aggregate ten percent on that por-

tion of the aggregated principal of all loans at any one time that is in excess of five hundred dollars. The director may determine by rule which fees, if any, are not subject to the interest or fee limitations described in this section. It is a violation of this chapter for any licensee to knowingly loan to a single borrower at any one time, in a single loan or in the aggregate, more than the maximum principal amount described in this section.

(4) In connection with making a small loan, a licensee may advance moneys on the security of a postdated check. The licensee may not accept any other property, title to property, or other evidence of ownership of property as collateral for a small loan. The licensee may accept only one postdated check per loan as security for the loan. A licensee may permit a borrower to redeem a postdated check with a payment of cash or the equivalent of cash. The licensee may disburse the proceeds of a small loan in cash, in the form of a check, or in the form of the electronic equivalent of cash or a check.

(5) No person may at any time cash or advance any moneys on a postdated check or draft in excess of the amount of goods or services purchased without first obtaining a small loan endorsement to a check casher or check seller license. [2003 c 86 § 8; 1995 c 18 § 2.]

**31.45.077 Small loan endorsement—Application—Form—Information—Exemption from disclosure—Fees.**

(1) Each application for a small loan endorsement to a check casher or check seller license must be in writing and in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant, and if the applicant is a partnership, corporation, or association, the name and address of every member, partner, officer, and director thereof;

(b) The street and mailing address of each location where the licensee will engage in the business of making small loans;

(c) A surety bond, or other security allowed under RCW 31.45.030, in the amount required; and

(d) Any other pertinent information, including financial statements, as the director may require with respect to the licensee and its directors, officers, trustees, members, or employees.

(2) Any information in the application regarding the licensee's personal residential address or telephone number, and any trade secrets of the licensee as defined under RCW 19.108.010 including any financial statement that is a trade secret, is exempt from the public records disclosure requirements of chapter 42.17 RCW.

(3) The application shall be filed together with an investigation and review fee established by rule by the director. Fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110. [2003 c 86 § 9; 2001 c 177 § 13; 1995 c 18 § 3.]

**Effective date—2001 c 177:** See note following RCW 43.320.080.

**31.45.079 Making small loans—Agent for a licensee or exempt entity—Federal preemption.** A person may not engage in the business of making small loans as an agent for a licensee or exempt entity without first obtaining a small

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loan endorsement to a check casher or check seller license under this chapter. An agent of a licensee or exempt entity engaged in the business of making small loans is subject to this chapter. To the extent that federal law preempts the applicability of any part of this chapter, all other parts of this chapter remain in effect. [2003 c 86 § 10.]

**31.45.080 Trust funds—Deposit requirements—**

**Rules.** (1) All funds received by a licensee or its agents from the sale of checks, drafts, money orders, or other commercial paper serving the same purpose constitute trust funds owned by and belonging to the person from whom they were received or to the person who has paid the checks, drafts, money orders, or other commercial paper serving the same purpose.

(2) All such trust funds shall be deposited in a bank, savings bank, or savings and loan association located in Washington state in an account or accounts in the name of the licensee designated "trust account," or by some other appropriate name indicating that the funds are not the funds of the licensee or of its officers, employees, or agents. Such funds are not subject to attachment, levy of execution, or sequestration by order of a court except by a payee, assignee, or holder in due course of a check, draft, or money order sold by a licensee or its agent. Funds in the trust account, together with funds and checks on hand and in the hands of agents held for the account of the licensee at all times shall be at least equal to the aggregate liability of the licensee on account of checks, drafts, money orders, or other commercial paper serving the same purpose that are sold.

(3) The director shall adopt rules requiring the licensee to periodically withdraw from the trust account the portion of trust funds earned by the licensee from the sale of checks, drafts, money orders, or other commercial paper serving the same purpose. If a licensee has accepted, in payment for a check, draft, money order, or commercial paper serving the same purpose issued by the licensee, a check or draft that is subsequently dishonored, the director shall prohibit the withdrawal of earned funds in an amount necessary to cover the dishonored check or draft.

(4) If a licensee or its agent commingles trust funds with its own funds, all assets belonging to the licensee or its agent are impressed with a trust in favor of the persons specified in subsection (1) of this section in an amount equal to the aggregate funds that should have been segregated. Such trust continues until an amount equal to the necessary aggregate funds have been deposited in accordance with subsection (2) of this section.

(5) Upon request of the director, a licensee shall furnish to the director an authorization for examination of financial records of any trust fund account established for compliance with this section.

(6) The director may adopt any rules necessary for the maintenance of trust accounts, including rules establishing procedures for distribution of trust account funds if a license is suspended, terminated, or not renewed. [1994 c 92 § 281; 1991 c 355 § 8.]

**31.45.082 Delinquent small loan—Collection by licensee or third party.** A licensee shall comply with all appli-

cable state and federal laws when collecting a delinquent small loan. A licensee may charge a one-time fee as determined in rule by the director to any borrower in default on any loan or loans where the borrower's check has been returned unpaid by the financial institution upon which it was drawn. A licensee may take civil action under Title 62A RCW to collect upon a check that has been dishonored. If the licensee takes civil action, a licensee may charge the borrower the cost of collection as allowed under RCW 62A.3-515, but may not collect attorneys' fees or any other interest or damages as allowed under RCW 62A.3-515. A licensee may not threaten criminal prosecution as a method of collecting a delinquent small loan. If a dishonored check is assigned to any third party for collection, this section applies to the third party for the collection of the dishonored check. [2003 c 86 § 11.]

**31.45.084 Small loan payment plan—Terms—Restrictions.** (1) A licensee and borrower may agree to a payment plan for a small loan at any time. After four successive loans and prior to default upon the last loan, each borrower may convert their small loan to a payment plan. Each agreement for a loan payment plan must be in writing and acknowledged by both the borrower and the licensee. The licensee may charge the borrower, at the time both parties enter into the payment plan, a one-time fee for the payment plan in an amount up to the fee or interest on the outstanding principal of the loan as allowed under RCW 31.45.073(3). The licensee may not assess any other fee, interest charge, or other charge on the borrower as a result of converting the small loan into a payment plan. This payment plan must provide for the payment of the total of payments due on the small loan over a period not less than sixty days in three or more payments, unless the borrower and licensee agree to a shorter payment period. The borrower may pay the total of payments at any time. The licensee may not charge any penalty, fee, or charge to the borrower for prepayment of the loan payment plan by the borrower. Each licensee shall conspicuously disclose to each borrower in the small loan agreement or small loan note that the borrower has access to such a payment plan after four successive loans. A licensee's violation of such a payment plan constitutes a violation of this chapter.

(2) The licensee may take postdated checks at the initiation of the payment plan for the payments agreed to under the plan. If any check accepted by the licensee as payment under the payment plan is dishonored, the licensee may not charge the borrower any fee for the dishonored check.

(3) If the borrower defaults on the payment plan, the licensee may initiate action to collect the total of payments under RCW 31.45.082. The licensee may charge the borrower a one-time payment plan default fee of twenty-five dollars.

(4) If the licensee enters into a payment plan with the borrower through an accredited third party, with certified credit counselors, that is representing the borrower, the licensee's failure to comply with the terms of that payment plan constitutes a violation of this chapter. [2003 c 86 § 12.]

**Effective date—2003 c 86 § 12:** "Section 12 of this act takes effect October 1, 2003." [2003 c 86 § 20.]

**31.45.086 Small loans—Right of rescission.** A borrower may rescind a loan, on or before the close of business on the next day of business at the location where the loan was originated, by returning the principal in cash or the original check disbursed by the licensee to fund the small loan. The licensee may not charge the borrower for rescinding the loan and shall return to the borrower any postdated check taken as security for the loan or any electronic equivalent. The licensee shall conspicuously disclose to the borrower this right of rescission in writing in the small loan agreement or small loan note. [2003 c 86 § 13.]

**31.45.088 Small loans—Disclosure requirements—Advertising—Making loan.** (1) When advertising the availability of small loans, if a licensee includes in an advertisement the fee or interest rate charged by the licensee for a small loan, then the licensee shall also disclose the annual percentage rate resulting from this fee or interest rate.

(2) When advertising the availability of small loans, compliance with all applicable state and federal laws and regulations, including the truth in lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226 constitutes compliance with subsection (1) of this section.

(3) When making a small loan, each licensee shall disclose to the borrower the terms of the small loan, including the principal amount of the small loan, the total of payments of the small loan, the fee or interest rate charged by the licensee on the small loan, and the annual percentage rate resulting from this fee or interest rate.

(4) When making a small loan, disclosure of the terms of the small loan in compliance with all applicable state and federal laws and regulations, including the truth in lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226 constitutes compliance with subsection (3) of this section. [2003 c 86 § 14.]

**31.45.090 Report requirements—Disclosure of information—Rules.** (1) Each licensee shall submit to the director, in a form approved by the director, a report containing financial statements covering the calendar year or, if the licensee has an established fiscal year, then for such fiscal year, within one hundred five days after the close of each calendar or fiscal year. The licensee shall also file such additional relevant information as the director may require. Any information provided by a licensee in an annual report that constitutes a trade secret under chapter 19.108 RCW is exempt from disclosure under chapter 42.17 RCW, unless aggregated with information supplied by other licensees in such a manner that the licensee's individual information is not identifiable. Any information provided by the licensee that allows identification of the licensee may only be used for purposes reasonably related to the regulation of licensees to ensure compliance with this chapter.

(2) A licensee whose license has been suspended or revoked shall submit to the director, at the licensee's expense, within one hundred five days after the effective date of such surrender or revocation, a closing audit report containing audited financial statements as of such effective date for the twelve months ending with such effective date.

(3) The director shall adopt rules specifying the form and content of such audit reports and may require additional

reporting as is necessary for the director to ensure compliance with this chapter. [2003 c 86 § 15; 1994 c 92 § 282; 1991 c 355 § 9.]

**31.45.100 Examination or investigation—Director's authority—Costs.** The director or the director's designee may at any time examine and investigate the business and examine the books, accounts, records, and files, or other information, wherever located, of any licensee or person who the director has reason to believe is engaging in the business governed by this chapter. For these purposes, the director or the director's designee may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of the investigation. The director or the director's designee may require the production of original books, accounts, records, files, or other information, or may make copies of such original books, accounts, records, files, or other information. The director or the director's designee may issue a subpoena or subpoena duces tecum requiring attendance and testimony, or the production of the books, accounts, records, files, or other information. The director shall collect from the licensee the actual cost of the examination or investigation. [2003 c 86 § 16; 1994 c 92 § 283; 1991 c 355 § 10.]

**31.45.110 Violations or unsound financial practices—Statement of charges—Hearing—Sanctions—Director's authority.** (1) The director may issue and serve upon a licensee or applicant a statement of charges if, in the opinion of the director, any licensee or applicant:

(a) Is engaging or has engaged in an unsafe or unsound financial practice in conducting the business of a check seller governed by this chapter;

(b) Is violating or has violated this chapter, including rules, orders, or subpoenas, any rule adopted under chapter 86, Laws of 2003, any order issued under chapter 86, Laws of 2003, any subpoena issued under chapter 86, Laws of 2003, or any condition imposed in writing by the director or the director's designee in connection with the granting of any application or other request by the licensee or any written agreement made with the director;

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause;

(d) Obtains a license by means of fraud, misrepresentation, concealment, or through mistake or inadvertence of the director;

(e) Provides false statements or omissions of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(f) Fails to pay a fee required by the director or maintain the required bond;

(g) Commits a crime against the laws of the state of Washington or any other state or government involving moral turpitude, financial misconduct, or dishonest dealings;

(h) Knowingly commits or is a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person relying

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upon the word, representation, or conduct acts to his or her injury or damage;

(i) Converts any money or its equivalent to his or her own use or to the use of his or her principal or of any other person;

(j) Fails, upon demand by the director or the director's designee, to disclose any information within his or her knowledge to, or to produce any document, book, or record in his or her possession for inspection of, the director or the director's designee;

(k) Commits any act of fraudulent or dishonest dealing, and a certified copy of the final holding of any court, tribunal, agency, or administrative body of competent jurisdiction regarding that act is conclusive evidence in any hearing under this chapter; or

(l) Commits an act or engages in conduct that demonstrates incompetence or untrustworthiness, or is a source of injury and loss to the public.

(2) The statement of charges shall be issued under chapter 34.05 RCW. The director or the director's designee may impose the following sanctions against any licensee or applicant, or any director, officer, sole proprietor, partner, controlling person, or employee of a licensee or applicant:

(a) Deny, revoke, suspend, or condition the license;

(b) Order the licensee to cease and desist from practices in violation of this chapter or practices that constitute unsafe and unsound financial practices in the sale of checks;

(c) Impose a fine not to exceed one hundred dollars per day for each day's violation of this chapter;

(d) Order restitution to borrowers or other parties damaged by the licensee's violation of this chapter or take other affirmative action as necessary to comply with this chapter; and

(e) Remove from office or ban from participation in the affairs of any licensee any director, officer, sole proprietor, partner, controlling person, or employee of a licensee.

(3) The proceedings to impose the sanctions described in subsection (2) of this section, including any hearing or appeal of the statement of charges, are governed by chapter 34.05 RCW.

Unless the licensee personally appears at the hearing or is represented by a duly authorized representative, the licensee is deemed to have consented to the statement of charges and the sanctions imposed in the statement of charges. [2003 c 86 § 17; 1994 c 92 § 284; 1991 c 355 § 11.]

**31.45.120 Violations or unsound practices—Temporary cease and desist order—Director's authority.** Whenever the director determines that the acts specified in RCW 31.45.110 or their continuation is likely to cause insolvency or substantial injury to the public, the director may also issue a temporary cease and desist order requiring the licensee to cease and desist from the violation or practice. The order becomes effective upon service upon the licensee and remains effective unless set aside, limited, or suspended by a court under RCW 31.45.130 pending the completion of the administrative proceedings under the notice and until such time as the director dismisses the charges specified in the notice or until the effective date of the cease and desist order issued against the licensee under RCW 31.45.110. [2003 c 86 § 18; 1994 c 92 § 285; 1991 c 355 § 12.]

**31.45.130 Temporary cease and desist order—Licensee's application for injunction.** Within ten days after a licensee has been served with a temporary cease and desist order, the licensee may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served under RCW 31.45.120. The superior court has jurisdiction to issue the injunction. [1991 c 355 § 13.]

**31.45.140 Violation of temporary cease and desist order—Director's application for injunction.** In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 31.45.120, the director may apply to the superior court of the county of the principal place of business of the licensee for an injunction. [1994 c 92 § 286; 1991 c 355 § 14.]

**31.45.150 Licensee's failure to perform obligations—Director's duty.** Whenever as a result of an examination or report it appears to the director that:

- (1) The capital of any licensee is impaired;
- (2) Any licensee is conducting its business in such an unsafe or unsound manner as to render its further operations hazardous to the public;
- (3) Any licensee has suspended payment of its trust obligations;
- (4) Any licensee has refused to submit its books, papers, and affairs to the inspection of the director or the director's examiner;
- (5) Any officer of any licensee refuses to be examined under oath regarding the business of the licensee;
- (6) Any licensee neglects or refuses to comply with any order of the director made pursuant to this chapter unless the enforcement of such order is restrained in a proceeding brought by such licensee;

the director may immediately take possession of the property and business of the licensee and retain possession until the licensee resumes business or its affairs are finally liquidated as provided in RCW 31.45.160. The licensee may resume business upon such terms as the director may prescribe. [1994 c 92 § 287; 1991 c 355 § 15.]

**31.45.160 Director's possession of property and business—Appointment of receiver.** Whenever the director has taken possession of the property and business of a licensee, the director may petition the superior court for the appointment of a receiver to liquidate the affairs of the licensee. During the time that the director retains possession of the property and business of a licensee, the director has the same powers and authority with reference to the licensee as is vested in the director under chapter 31.04 RCW, and the licensee has the same rights to hearings and judicial review as are granted under chapter 31.04 RCW. [1997 c 101 § 4; 1994 c 92 § 288; 1991 c 355 § 16.]

**31.45.180 Violation—Misdemeanor.** Any person who violates or participates in the violation of any provision of the rules or orders of the director or of this chapter is guilty of a misdemeanor. [1994 c 92 § 290; 1991 c 355 § 18.]

**31.45.190 Violation—Consumer protection act—Remedies.** The legislature finds and declares that any violation of this chapter substantially affects the public interest and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce as set forth in RCW 19.86.020. Remedies available under chapter 19.86 RCW shall not affect any other remedy the injured party may have. [1991 c 355 § 19.]

**31.45.200 Director—Broad administrative discretion.** The director has the power, and broad administrative discretion, to administer and interpret the provisions of this chapter to ensure the protection of the public. [1994 c 92 § 291; 1991 c 355 § 20.]

**31.45.900 Effective date, implementation—1991 c 355.** This act shall take effect January 1, 1992. The director shall take such steps as are necessary to ensure that this act is implemented on its effective date. [1994 c 92 § 292; 1991 c 355 § 24.]

# Title 32

## MUTUAL SAVINGS BANKS

### Chapters

- 32.04** General provisions.
- 32.08** Organization and powers.
- 32.12** Deposits—Earnings—Dividends—Interest.
- 32.16** Officers and employees.
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- 32.30** Conversion of mutual savings bank to building and loan or savings and loan association.
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- 32.34** Merger, consolidation, conversion, etc.
- 32.35** Stock savings banks.
- 32.40** Community credit needs.
- 32.98** Construction.

*Credit life insurance and credit accident and health insurance: Chapter 48.34 RCW.*

*Fairness in lending act: RCW 30.04.500 through 30.04.515.*

*Indemnification of directors, officers, employees, etc., by corporations authorized, insurance: RCW 23B.08.320, 23B.08.500 through 23B.08.580, 23B.08.600, and 23B.17.030.*

*Master license system exemption: RCW 19.02.800.*

*Public depositories, deposit and investment of public funds: Chapter 39.58 RCW.*

*Retail installment sales of goods and services: Chapter 63.14 RCW.*

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### Chapter 32.04 RCW GENERAL PROVISIONS

#### Sections

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- 32.04.310 Automated teller machines and night depositories security.

*Corporate seals, effect of absence from instrument: RCW 64.04.105.*

*Depositories of state funds: Chapter 43.85 RCW.*

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*Indemnification of directors, officers, employees, etc., by corporation authorized, insurance: RCW 23B.08.320, 23B.08.500 through 23B.08.580, 23B.08.600, and 23B.17.030.*

*Negotiable instruments: Title 62A RCW.*

*Powers of appointment: Chapter 11.95 RCW.*

*Safe deposit companies: Chapter 22.28 RCW.*

**32.04.010 Scope of title.** This title shall not be construed as amending or repealing any other law of the state authorizing the incorporation of banks or regulating the same, but shall be deemed to be additional legislation for the sole purpose of authorizing the incorporation and operation of mutual savings banks and mutual savings banks converted under chapter 32.32 RCW to stock form, as herein prescribed. Savings banks incorporated on the stock plan, other than converted mutual savings banks, and other stock banks having savings departments as authorized by RCW 30.20.060, or by any other law of the state heretofore or hereafter enacted, shall not be in any manner affected by the provisions of this title, or any amendment thereto. [1981 c 85 § 105; 1955 c 13 § 32.04.010. Prior: 1915 c 175 § 52; RRS § 3381.]

**32.04.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) The use of the term "savings bank" or "mutual savings bank" refers to savings banks organized under chapter 32.08 or 32.35 RCW or converted under chapter 32.32 or 33.44 RCW.

(2) The use of the words "mutual savings" as part of a name under which business of any kind is or may be transacted by any person, firm, or corporation, except such as were organized and in actual operation on June 9, 1915, or as may be thereafter operated under the requirements of this title is hereby prohibited.

(3) The use of the term "director" refers to the director of financial institutions.

(4) The use of the word "branch" refers to an established office or facility other than the principal office, at which employees of the savings bank take deposits. The term "branch" does not refer to a machine permitting customers to

leave funds in storage or communicate with savings bank employees who are not located at the site of that machine, unless employees of the savings bank at the site of that machine take deposits on a regular basis. An office of an entity other than the savings bank is not established by the savings bank, regardless of any affiliation, accommodation arrangement, or other relationship between the other entity and the savings bank. [1999 c 14 § 13; 1997 c 101 § 5; 1996 c 2 § 20; 1994 c 92 § 293; 1985 c 56 § 1; 1981 c 85 § 106; 1955 c 13 § 32.04.020. Prior: 1915 c 175 § 49; RRS § 3378.]

**Severability—1999 c 14:** See RCW 32.35.900.

**Severability—1996 c 2:** See RCW 30.38.900.

**32.04.022 "Mortgage" includes deed of trust.** The word "mortgage" as used in this title includes deed of trust. [1969 c 55 § 13.]

**32.04.025 Powers as to horizontal property regimes or condominiums.** The words "real estate" and "real property" as used in this title shall include apartments or other portions, however designated, of horizontal property regimes, or a condominium interest in property, as may be created under any laws now in existence or hereafter enacted. A mutual savings bank may do any act necessary or appropriate in connection with its interest in or ownership of any portion of a horizontal property regime or condominium. [1963 c 176 § 10.]

*Horizontal property regimes: Chapter 64.32 RCW.*

**32.04.030 Branches—Director's approval.** A savings bank may not, without the written approval of the director, establish and operate branches in any place.

A savings bank headquartered in this state desiring to establish a branch shall file a written application with the director, who shall approve or disapprove the application.

The director's approval shall be conditioned on a finding that the savings bank has a satisfactory record of compliance with applicable laws and has a satisfactory financial condition. In making such findings, the director may rely on an application in the form filed with the federal deposit insurance corporation pursuant to 12 U.S.C. Sec. 1828(d). If the application for a branch is not approved, the savings bank shall have the right to appeal in the same manner and within the same time as provided by RCW 32.08.050 and 32.08.060. The savings bank when delivering the application to the director shall transmit to the director a check in an amount established by rule to cover the expense of the investigation. A savings bank headquartered in this state shall not move its headquarters or any branch more than two miles from its existing location without prior approval of the director. On or before the date on which it opens any office at which it will transact business in any state, territory, province, or other jurisdiction, a savings bank shall give written notice to the director of the location of this office. No such notice shall become effective until it has been delivered to the director.

The board of trustees of a savings bank, after notice to the director, may discontinue the operation of a branch. The savings bank shall keep the director informed in the matter and shall notify the director of the date operation of the branch is discontinued.

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(1) A savings bank that is headquartered in this state and is operating branches in another state, territory, province, or other jurisdiction may provide copies of state examination reports and reports of condition of the savings bank to the regulator having oversight responsibility with regard to its operations in that other jurisdiction, including the regulator of savings associations in the event such a savings bank is transacting savings and loan business pursuant to RCW 32.08.142 in that other jurisdiction.

(2) No savings bank headquartered in another state may establish, or acquire pursuant to RCW 32.32.500, and operate branches as a savings bank in any place within the state unless:

(a) The savings bank has filed with the director an agreement to comply with the requirements of RCW 30.38.040 for periodic reports by the savings bank or by the appropriate state superintendent or equivalent regulator of the savings bank under the laws of the state in which the savings bank is incorporated, unless the laws expressly require the provision of all the reports to the director;

(b) The savings bank has filed with the director (i) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the director and his or her successors its true and lawful attorney, upon whom all process in any action or proceeding against it in a cause of action arising out of business transacted by such savings bank in this state, may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state, and (ii) a written certificate of designation, which may be changed from time to time by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person to whom such process shall be forwarded by the director; and

(c) The savings bank has supplied the director with such information as he or she shall require by rule, not to exceed the information on which the director may rely in approving a branch application pursuant to this section by a savings bank headquartered in this state.

A savings bank headquartered in another state may not establish and operate branches as a foreign savings association in any place within the state except upon compliance with chapter 33.32 RCW. [1996 c 2 § 21. Prior: 1994 c 256 § 93; 1994 c 92 § 294; 1985 c 56 § 2; 1955 c 80 § 1; 1955 c 13 § 32.04.030; prior: 1933 c 143 § 1; 1925 ex.s. c 86 § 10; 1915 c 175 § 15; RRS § 3344.]

**Severability—1996 c 2:** See RCW 30.38.900.

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.04.035 Agency agreements—Written notice to director.** On or before the date on which a mutual savings bank enters into any agency agreement authorizing another entity, as agent of the mutual savings bank, to receive deposits or renew time deposits, the mutual savings bank shall give written notice to the director of the existence of the agency agreement. The notice is not effective until it has been delivered to the office of the director. [1996 c 2 § 22.]

**Severability—1996 c 2:** See RCW 30.38.900.

**32.04.050 Reports.** A savings bank shall render to the director, in such form as he or she shall prescribe, at least

three regular reports each year exhibiting its resources and liabilities as of such dates as the director shall designate, which shall be the dates designated by the comptroller of the currency of the United States for reports of national banking associations. Every such report, in a condensed form to be prescribed by the director, shall be published once in a newspaper of general circulation, published in the place where the bank is located. A savings bank shall also make such special reports as the director shall call for. A regular report shall be filed with the director within thirty days and proof of the publication thereof within forty days from the date of the issuance of the call for the report. A special report shall be filed within such time as the director shall indicate in the call therefor. A savings bank that fails to file within the prescribed time any report required by this section or proof of the publication of any report required to be published shall be subject to a penalty to the state of fifty dollars for each day's delay, recoverable by a civil action brought by the attorney general in the name of the state. [1994 c 92 § 296; 1977 ex.s. c 241 § 1; 1955 c 13 § 32.04.050. Prior: 1925 ex.s. c 86 § 13; 1915 c 175 § 39; RRS § 3368a.]

#### **32.04.070 Certified copies of records as evidence.**

Copies from the records, books, and accounts of a savings bank shall be competent evidence in all cases, equal with originals thereof, if there is annexed to such copies an affidavit taken before a notary public or clerk of a court under seal, stating that the affiant is the officer of the bank having charge of the original records, and that the copy is true and correct and is full so far as the same relates to the subject matter therein mentioned. [1955 c 13 § 32.04.070. Prior: 1915 c 175 § 47; RRS § 3376.]

**32.04.080 Employees' pension, retirement, or health insurance benefits—Payment.** A mutual savings bank may provide for pensions or retirement benefits for its disabled or superannuated employees or health insurance benefits for its employees and may pay a part or all of the cost of providing such pensions or benefits in accordance with a plan adopted by its board of trustees or a board committee, none of whose members is an officer of the bank. The board of trustees of a savings bank or such a committee of the board may set aside from current earnings reserves in such amounts as the board or the committee shall deem wise to provide for the payment of future pensions or benefits. [1999 c 14 § 14. Prior: 1994 c 256 § 95; 1994 c 92 § 297; 1955 c 80 § 2; 1955 c 13 § 32.04.080; prior: 1949 c 119 § 1; 1937 c 64 § 2; 1935 c 87 § 1; Rem. Supp. 1949 § 3366-1.]

**Severability—1999 c 14:** See RCW 32.35.900.

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.04.082 Pension, retirement, or health insurance benefits—Waiver by bank of offsets attributable to social security.** With respect to pension payments or retirement or health insurance benefits payable by a mutual savings bank to any employee heretofore or hereafter retired, such bank may waive all or any part of any offsets thereto attributable to social security benefits receivable by such employee. [1999 c 14 § 15; 1957 c 80 § 7.]

**Severability—1999 c 14:** See RCW 32.35.900.

**32.04.085 Pension, retirement, or health insurance benefits—Supplementation.** Any pension payment or retirement or health insurance benefits payable by a mutual savings bank to a former officer or employee, or to a person or persons entitled thereto by virtue of service performed by such officer or employee, in the discretion of a majority of all the trustees of such bank, may be supplemented from time to time. The board of trustees of a savings bank or a board committee, none of whose members is an officer of the bank, may set aside from current earnings, reserves in such amounts as the board or the committee shall deem appropriate to provide for the payments of future supplemental payments. [1999 c 14 § 16. Prior: 1994 c 256 § 96; 1994 c 92 § 298; 1971 ex.s. c 222 § 1.]

**Severability—1999 c 14:** See RCW 32.35.900.

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1971 ex.s. c 222:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 222 § 9.]

**32.04.100 Penalty for falsification.** Every person who knowingly subscribes to or makes or causes to be made any false statement or false entry in the books of any savings bank, or knowingly subscribes to or exhibits any false or fictitious security, document or paper, with the intent to deceive any person authorized to examine into the affairs of any savings bank, or makes or publishes any false statement of the amount of the assets or liabilities of any such savings bank is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 194; 1955 c 13 § 32.04.100. Prior: 1931 c 132 § 11; RRS § 3379b.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**32.04.110 Penalty for concealing or destroying evidence.** Every trustee, officer, employee, or agent of any savings bank who for the purpose of concealing any fact suppresses any evidence against himself or herself, or against any other person, or who abstracts, removes, mutilates, destroys, or secretes any paper, book, or record of any savings bank, or of the director, or anyone connected with his or her office is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 195; 1994 c 92 § 299; 1955 c 13 § 32.04.110. Prior: 1931 c 132 § 12; RRS § 3379c.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**32.04.120 Specific penalties invoked.** The provisions of RCW 9.24.050, 9.24.040 and 9.24.030 shall apply to the corporations authorized under this title. [1955 c 13 § 32.04.120. Prior: 1915 c 175 § 50; RRS § 3379.]

**32.04.130 General penalty.** Any person who does anything forbidden by chapter 32.04, 32.08, 32.12, 32.16 or 32.24 RCW of this title for which a penalty is not provided in this title, or in some other law of the state, shall be guilty of a gross misdemeanor and be punished accordingly. [1955 c 13 § 32.04.130. Prior: 1915 c 175 § 51; RRS § 3380.]

**32.04.150 Cost of examination.** See RCW 30.04.070.

**32.04.170 Conversion to mutual savings bank of savings and loan association.** See chapter 33.44 RCW.

**32.04.190 Bank stabilization act.** See chapter 30.56 RCW.

**32.04.200 Capital notes or debentures.** See chapter 30.36 RCW.

**32.04.210 Saturday closing authorized.** See RCW 30.04.330.

**32.04.211 Examinations directed—Cooperative agreements and actions.** (1) The director, assistant director, or an examiner shall visit each savings bank at least once every eighteen months, and oftener if necessary, for the purpose of making a full investigation into the condition of such corporation, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director, officer, employee, or agent of such corporation. The director may make such other full or partial examinations as deemed necessary and may examine any holding company that owns any portion of a savings bank chartered by the state of Washington and obtain reports of condition for any holding company that owns any portion of a savings bank chartered by the state of Washington. The director may visit and examine into the affairs of any nonpublicly held corporation in which the savings bank or holding company has an investment or any publicly held corporation the capital stock of which is controlled by the savings bank or holding company; may appraise and revalue such corporations' investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such corporations for such purposes. The director may, in his or her discretion, accept in lieu of the examinations required in this section the examinations conducted at the direction of the federal reserve board or the Federal Deposit Insurance Corporation. Any willful false swearing in any examination is perjury in the second degree.

(2) The director may enter into cooperative and reciprocal agreements with the bank regulatory authorities of the United States, any state, the District of Columbia, or any trust territory of the United States for the periodic examination of domestic savings banks or holding companies owning banking institutions in other states, the District of Columbia, or trust territories, and subsidiaries of such domestic savings banks and holding companies, or of out-of-state holding companies owning a savings bank the principal operations of which are conducted in this state. The director may accept reports of examination and other records from such authorities in lieu of conducting his or her own examinations. The director may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out his or her responsibilities under this title and assure compliance with the laws of this state. [1994 c 92 § 300; 1989 c 180 § 4.]

**32.04.220 Examination reports and information—Confidential—Privileged—Penalty.** (1) All examination reports and all information obtained by the director and the director's staff in conducting examinations of mutual savings banks, and information obtained by the director and the director's staff from other state or federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 32.04.211, and information obtained by the director and the director's staff relating to examination and supervision of holding companies owning a savings bank in this state or subsidiaries of such holding companies, is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or any part of examination reports prepared by the director's office to:

(a) Federal agencies empowered to examine mutual savings banks;

(b) Bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 32.04.211, and other bank regulatory authorities who are the primary regulatory authority or insurer of accounts for a holding company owning a savings bank the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the director shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the director furnishes any examination report to officials empowered to investigate criminal charges, the director may only furnish that part of the report which is necessary and pertinent to the investigation, and the director may do this only after notifying the affected mutual savings bank and any customer of the mutual savings bank who is named in that part of the report of the order to furnish the part of the examination report unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(d) The examined savings bank or holding company thereof;

(e) The attorney general in his or her role as legal advisor to the director;

(f) Liquidating agents of a distressed savings bank;

(g) A person or organization officially connected with the savings bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

(h) The Washington public deposit protection commission as provided by RCW 39.58.105.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the department of financial institutions, and be confidential, and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the department of financial institutions is designed for use in the supervision of the mutual savings bank, and the director may furnish a copy of the report to the mutual savings bank examined. The report shall remain the property of the director and will be furnished to the mutual savings bank solely for its confidential use. Under no circumstances shall the mutual savings bank or any of its trustees, officers, or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the savings bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The savings bank may also, after execution of an agreement not to disclose information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the savings bank.

(5) Examination reports and information obtained by the director and the director's staff in conducting examinations, or from other state and federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 32.04.211, or relating to examination and supervision of holding companies owning a savings bank the principal operations of which are conducted in this state or a subsidiary of such holding company, shall not be subject to public disclosure under chapter 42.17 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director.

(7) This section shall not apply to investigation reports prepared by the director and the director's staff concerning an application for a new mutual savings bank or an application for a branch of a mutual savings bank: PROVIDED, That the director may adopt rules making confidential portions of the reports if in the director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the director considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall forfeit the person's office or employment and be guilty of a gross misdemeanor. [1994 c 92 § 301; 1989 c 180 § 5; 1977 ex.s. c 245 § 2.]

**Severability—1977 ex.s. c 245:** See note following RCW 30.04.075.

*Examination reports and information from financial institutions exempt: RCW 42.17.31911.*

**32.04.250 Violations or unsafe practices—Notice of charges—Grounds—Contents of notice—Hearing—Cease and desist orders.** (1) The director may issue and serve upon a mutual savings bank a notice of charges if in the opinion of the director any mutual savings bank:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the mutual savings bank;

(b) Is violating or has violated the law, rule, or any condition imposed in writing by the director in connection with the granting of any application or other request by the mutual

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savings bank or any written agreement made with the director; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the mutual savings bank. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice, unless a later date is set by the director at the request of the mutual savings bank.

Unless the mutual savings bank shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the director finds that any violation or practice specified in the notice of charges has been established, the director may issue and serve upon the mutual savings bank an order to cease and desist from the violation or practice. The order may require the mutual savings bank and its trustees, officers, employees, and agents to cease and desist from the violation or practice and may require the mutual savings bank to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the mutual savings bank concerned, except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein, unless it is stayed, modified, terminated, or set aside by action of the director or a reviewing court. [1994 c 92 § 302; 1979 c 46 § 1.]

**Severability—1979 c 46:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 46 § 11.]

**32.04.260 Violations or unsafe practices—Temporary cease and desist orders.** Whenever the director determines that the acts specified in RCW 32.04.250 or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the mutual savings bank or to otherwise seriously prejudice the interest of its depositors, the director may also issue a temporary order requiring the mutual savings bank to cease and desist from the violation or practice. The order shall become effective upon service on the mutual savings bank and, unless set aside, limited, or suspended by a court in proceedings under RCW 32.04.270, shall remain effective pending the completion of the administrative proceedings under the notice and until such time as the director shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the mutual savings bank under RCW 32.04.250. [1994 c 92 § 303; 1979 c 46 § 2.]

**Severability—1979 c 46:** See note following RCW 32.04.250.

**32.04.270 Violations or unsafe practices—Injunction to set aside temporary cease and desist order.** Within ten days after a mutual savings bank has been served with a tem-

porary cease and desist order, the mutual savings bank may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served under RCW 32.04.250.

The superior court shall have jurisdiction to issue the injunction. [1979 c 46 § 3.]

**Severability—1979 c 46:** See note following RCW 32.04.250.

**32.04.280 Violation of temporary cease and desist order—Injunction to enforce order.** In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 32.04.260, the director may apply to the superior court of the county of the principal place of business of the mutual savings bank for an injunction to enforce the order. The court shall issue an injunction if it determines there has been a violation or threatened violation. [1994 c 92 § 304; 1979 c 46 § 4.]

**Severability—1979 c 46:** See note following RCW 32.04.250.

**32.04.290 Administrative hearing provided for in RCW 32.04.250 or 32.16.093—Procedure—Order—Judicial review.** (1) Any administrative hearing provided in RCW 32.04.250 or 32.16.093 may be held at such place as is designated by the director and shall be conducted in accordance with chapter 34.05 RCW. The hearing shall be private unless the director determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

Within sixty days after the hearing, the director shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 32.04.250 or 32.16.093, as the case may be.

Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the affected mutual savings bank under subsection (2) of this section, and until the record in the proceeding has been filed as provided therein, the director may at any time modify, terminate, or set aside any order upon such notice and in such manner as he or she shall deem proper. Upon filing the record, the director may modify, terminate, or set aside any order only with permission of the court.

The judicial review provided in this section shall be exclusive for orders issued under RCW 32.04.250 and 32.16.093.

(2) Any party to the proceeding or any person required by an order, temporary order, or injunction issued under RCW 32.04.250, 32.04.260, 32.04.280, or 32.16.093 to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the affected mutual savings bank within ten days after the date of service of the order a written petition praying that the order of the director be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the director and the director shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the

filing of the petition, which jurisdiction shall become exclusive upon the filing of the record, to affirm, modify, terminate, or set aside in whole or in part the order of the director except that the director may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it shall be subject to appellate review under the rules of court.

(3) The commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the director unless specifically ordered by the court.

(4) Service of any notice or order required to be served under RCW 32.04.250, 32.04.260, or 32.16.093, or under RCW 32.16.090, as now or hereafter amended, shall be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state. [1994 c 92 § 305; 1979 c 46 § 5.]

**Severability—1979 c 46:** See note following RCW 32.04.250.

**32.04.300 Jurisdiction of courts as to cease and desist orders, orders to remove trustee, officer, or employee, etc.** The director may apply to the superior court of the county of the principal place of business of the mutual savings bank affected for the enforcement of any effective and outstanding order issued under RCW 32.04.250 or 32.16.093, and the court shall have jurisdiction to order compliance therewith.

No court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any such order, or to review, modify, suspend, terminate, or set aside any such order, except as provided in RCW 32.04.270, 32.04.280, and 32.04.290. [1994 c 92 § 306; 1979 c 46 § 6.]

**Severability—1979 c 46:** See note following RCW 32.04.250.

**32.04.310 Automated teller machines and night depositories security.** Chapter 19.174 RCW applies to automated teller machines and night depositories regulated under this title. [1993 c 324 § 12.]

**Effective date—1993 c 324:** See RCW 19.174.900.

## Chapter 32.08 RCW ORGANIZATION AND POWERS

### Sections

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**32.08.010 Authority to organize—Incorporators—Certificate.** When authorized by the director, as hereinafter provided, not less than nine nor more than thirty persons may form a corporation to be known as a "mutual savings bank." Such persons must be citizens of the United States; at least four-fifths of them must be residents of this state, and at least two-thirds of them must be residents of the county where the bank is to be located and its business transacted. They shall subscribe an incorporation certificate in triplicate which shall specifically state:

- (1) The name by which the savings bank is to be known, which name shall include the words "mutual savings bank";
- (2) The place where the bank is to be located, and its business transacted, naming the city or town and county;
- (3) The name, occupation, residence, and post office address of each incorporator;
- (4) The sums which each incorporator will contribute in cash to the initial guaranty fund, and to the expense fund respectively, as provided in RCW 32.08.090 and 32.08.100;
- (5) Any provision the incorporators elect to so set forth which is permitted by RCW 23B.17.030;
- (6) Any other provision the incorporators elect to so set forth which is not inconsistent with this chapter;
- (7) A declaration that each incorporator will accept the responsibilities and faithfully discharge the duties of a trustee of the savings bank, and is free from all the disqualifications specified in RCW 32.16.010. [1994 c 256 § 97; 1994 c 92 § 307; 1955 c 13 § 32.08.010. Prior: 1915 c 175 § 1; 1905 c 129 § 2; RRS § 3313.]

**Reviser's note:** This section was amended by 1994 c 92 § 307 and by 1994 c 256 § 97, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.08.020 Notice of intention.** At the time of executing the incorporation certificate, the proposed incorporators shall sign a notice of intention to organize the mutual savings bank, which shall specify their names, the name of the proposed corporation, and its location as set forth in the incorporation certificate. The original of such notice shall be filed in the office of the director within sixty days after the date of its execution, and a copy thereof shall be published at least once a week for four successive weeks in a newspaper designated

by the director, the publication to be commenced within thirty days after such designation. At least fifteen days before the incorporation certificate is submitted to the director for examination, as provided in RCW 32.08.030, a copy of such notice shall be served upon each savings bank doing business in the city or town named in the incorporation certificate, by mailing such copy (postage prepaid) to such bank. [1994 c 92 § 308; 1955 c 13 § 32.08.020. Prior: 1915 c 175 § 2; RRS § 3314.]

**32.08.030 Submission of certificate—Proof of service of notice.** After the lapse of at least twenty-eight days from the date of the first due publication of the notice of intention to incorporate, and within ten days after the date of the last publication thereof, the incorporation certificate executed in triplicate shall be submitted for examination to the director at his or her office in Olympia, with affidavits showing due publication and service of the notice of intention to organize prescribed in RCW 32.08.020. [1994 c 92 § 309; 1955 c 13 § 32.08.030. Prior: 1915 c 175 § 3; RRS § 3315.]

**32.08.040 Examination and action by director.** When any such certificate has been filed for examination the director shall thereupon ascertain from the best source of information at his or her command, and by such investigation as he or she may deem necessary, whether the character, responsibility, and general fitness of the person or persons named in such certificate are such as to command confidence and warrant belief that the business of the proposed bank will be honestly and efficiently conducted in accordance with the intent and purpose of this title, and whether the public convenience and advantage will be promoted by allowing such proposed bank to be incorporated and engage in business, and whether greater convenience and access to a savings bank would be afforded to any considerable number of depositors by opening a mutual savings bank in the place designated, whether the population in the neighborhood of such place, and in the surrounding country, affords a reasonable promise of adequate support for the proposed bank, and whether the contributions to the initial guaranty fund and expense fund have been paid in cash. After the director has satisfied himself or herself by such investigation whether it is expedient and desirable to permit such proposed bank to be incorporated and engage in business, he or she shall within sixty days after the date of the filing of the certificate for examination indorse upon each of the triplicates thereof over his or her official signature the word "approved" or the word "refused," with the date of such indorsement. In case of refusal he or she shall forthwith return one of the triplicates so indorsed to the proposed incorporators from whom the certificate was received. [1994 c 92 § 310; 1955 c 13 § 32.08.040. Prior: 1915 c 175 § 4, part; RRS § 3316, part.]

**32.08.050 Appeal from adverse decision.** From the director's refusal to issue a certificate of authorization, the applicants or a majority of them, may within thirty days from the date of the filing of the certificate of refusal with the secretary of state, appeal to a board of appeal composed of the governor or the governor's designee, the attorney general and the director by filing in the office of the director a notice that

they appeal to such board from his or her refusal. The procedure upon the appeal shall be such as the board may prescribe, and its determination shall be certified, filed, and recorded in the same manner as the director's, and shall be final. [1994 c 92 § 311; 1979 ex.s. c 57 § 6; 1955 c 13 § 32.08.050. Prior: 1915 c 175 § 4, part; RRS § 3316, part.]

**32.08.060 Procedure upon approval.** In case of approval, the director shall forthwith give notice thereof to the proposed incorporators, and file one of the duplicate certificates in his or her own office, and shall transmit the other to the secretary of state. Upon receipt from the proposed incorporators of the same fees as are required for filing and recording other incorporation certificates, the secretary of state shall file the certificate and record the same. Upon the filing of said incorporation certificate in duplicate approved as aforesaid in the offices of the director and the secretary of state, the persons named therein and their successors shall thereupon become and be a corporation, which corporation shall have the powers and be subject to the duties and obligations prescribed in this title and its corporate existence shall be perpetual, unless sooner terminated pursuant to law, but such corporation shall not receive deposits or engage in business until authorized so to do by the director as provided in RCW 32.08.070. [1994 c 92 § 312; 1981 c 302 § 26; 1957 c 80 § 1; 1955 c 13 § 32.08.060. Prior: 1915 c 175 § 4, part; RRS § 3316, part.]

**Severability—1981 c 302:** See note following RCW 19.76.100.

**32.08.061 Extension of period of existence—Procedure.** A mutual savings bank may amend its incorporation certificate to extend the period of its corporate existence for a further definite time or perpetually by a resolution adopted by a majority vote of its board of trustees. Duplicate copies of the resolution, subscribed and acknowledged by the president and secretary of such bank, shall be filed in the office of the director within thirty days after its adoption. If the director finds that the resolution conforms to law he or she shall, within sixty days after the date of the filing thereof, endorse upon each of the duplicates thereof, over his or her official signature, his or her approval and forthwith give notice thereof to the bank and shall file one of the certificates in his or her own office and shall transmit the other to the secretary of state. Upon receipt from the mutual savings bank of the same fees as are required of general corporations for filing corresponding instruments, the secretary of state shall file the resolution and record the same. Upon the filing of said resolution in duplicate, approved as aforesaid in the offices of the director and the secretary of state, the corporate existence of said bank shall continue for the period set forth in said resolution unless sooner terminated pursuant to law. [1994 c 92 § 313; 1981 c 302 § 27; 1963 c 176 § 1; 1957 c 80 § 8.]

**Severability—1981 c 302:** See note following RCW 19.76.100.

**32.08.070 Authorization certificate.** Before a mutual savings bank shall be authorized to do any business the director shall be satisfied that the corporation has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this title. If satisfied that the corporation has in good faith

complied with all the requirements of law, and fulfilled all the conditions precedent to commencing business imposed by this title, the director shall within six months after the date upon which the proposed organization certificate was filed with him or her for examination, but in no case after the expiration of that period, issue under his or her hand and official seal in triplicate an authorization certificate to such corporation. Such authorization certificate shall state that the corporation therein named has complied with all the requirements of law, that it is authorized to transact at the place designated in its certificate of incorporation, the business of a mutual savings bank. One of the triplicate authorization certificates shall be transmitted by the director to the corporation therein named, and the other two authorization certificates shall be filed by the director in the same public offices where the certificate of incorporation is filed, and shall be attached to said incorporation certificate. [1994 c 92 § 314; 1981 c 302 § 28; 1955 c 13 § 32.08.070. Prior: 1915 c 175 § 5; RRS § 3317.]

**Severability—1981 c 302:** See note following RCW 19.76.100.

**32.08.080 Conditions precedent to reception of deposits.** Before such corporation shall be authorized to receive deposits or transact business other than the completion of its organization, the director shall be satisfied that:

(1) The incorporators have made the deposit of the initial guaranty fund required by this title;

(2) The incorporators have made the deposit of the expense fund required by RCW 32.08.090 and if the director shall so require, have entered into the agreement or undertaking with him or her and have filed the same and the security therefor as prescribed in said section;

(3) The corporation has transmitted to the director the name, residence, and post office address of each officer of the corporation;

(4) Its certificate of incorporation in triplicate has been filed in the respective public offices designated in this title. [1994 c 92 § 315; 1955 c 13 § 32.08.080. Prior: 1915 c 175 § 6; RRS § 3318.]

**32.08.090 Expense fund—Agreement to contribute further—Security.** Before any mutual savings bank shall be authorized to do business, its incorporators shall create an expense fund from which the expense of organizing such bank and its operating expenses may be paid, until such time as its earnings are sufficient to pay its operating expenses in addition to such dividends as may be declared and credited to its depositors from its earnings. The incorporators shall deposit to the credit of such savings bank in cash as an expense fund the sum of five thousand dollars. They shall also enter into such an agreement or undertaking with the director as trustee for the depositors with the savings bank as he or she may require to make such further contributions in cash to the expense fund as may be necessary to pay its operating expenses until such time as it can pay them from its earnings, in addition to such dividends as may be declared and credited to its depositors. Such agreement or undertaking shall fix the maximum liability assumed thereby which shall be a reasonable amount approved by the director and the same shall be secured to his or her satisfaction, which security in his or her discretion may be by a surety bond executed

by a domestic or foreign corporation authorized to transact within this state the business of surety. The agreement or undertaking and security shall be filed in the office of the director. Such agreement or undertaking and such security need not be made or furnished unless the director shall require the same. The amounts contributed to the expense fund of said savings bank by the incorporators or trustees shall not constitute a liability of the savings bank except as hereinafter provided. [1994 c 92 § 316; 1955 c 13 § 32.08.090. Prior: 1915 c 175 § 8; RRS § 3320.]

**32.08.100 Guaranty fund.** Before any mutual savings bank shall be authorized to do business, its incorporators shall create a guaranty fund for the protection of its depositors against loss on its investments, whether arising from depreciation in the market value of its securities or otherwise:

(1) Such guaranty fund shall consist of payments in cash made by the original incorporators and of all sums credited thereto from the earnings of the savings bank as hereinafter required.

(2) The incorporators shall deposit to the credit of such savings bank in cash as an initial guaranty fund at least five thousand dollars.

(3) Prior to the liquidation of any such savings bank such guaranty fund shall not be in any manner encroached upon, except for losses and the repayment of contributions made by incorporators or trustees as hereinafter provided, until such fund together with undivided profits exceeds twenty-five percent of the amount due depositors.

(4) The amounts contributed to such guaranty fund by the incorporators or trustees shall not constitute a liability of the savings bank, except as hereinafter provided, and any loss sustained by the savings bank in excess of that portion of the guaranty fund created from earnings may be charged against such contributions pro rata. [1955 c 13 § 32.08.100. Prior: 1915 c 175 § 7; RRS § 3319.]

**32.08.110 Guaranty fund—Purpose.** The contributions of the incorporators, or trustees of any such savings bank under the provisions of RCW 32.08.100, and the sums credited thereto from its net earnings under the provisions of RCW 32.08.120, shall constitute a guaranty fund for the security of its depositors, and shall be held to meet any contingency or loss in its business from depreciation of its securities or otherwise, and for no other purpose except as provided in RCW 32.08.130, and RCW 32.12.090(5). [1955 c 13 § 32.08.110. Prior: 1915 c 175 § 21; RRS § 3350.]

**32.08.115 Guaranty fund—Payment of interest and dividends—Legislative declaration.** It is hereby recognized that the savings banks of the state of Washington are affected adversely by the uncertainties and ambiguities in the law relating to guaranty funds. It is the express purpose of the legislature in enacting RCW 32.08.116 to clarify that the law permits payment of interest and dividends from the guaranty funds of savings banks and RCW 32.08.116 shall be liberally construed to that end. [1982 c 5 § 1.]

**32.08.116 Guaranty fund—Payment of interest and dividends—When authorized.** A savings bank not having

net earnings or undivided profits or other surplus may pay interest and dividends from its guaranty fund upon prior written approval of the director, which approval shall not be withheld unless the director has determined that such payments would place the savings bank in an unsafe and unsound condition. [1994 c 92 § 317; 1982 c 5 § 2.]

**32.08.120 Guaranty fund—Replenishment—Dividends.** (1) If at the close of any dividend period the guaranty fund of a savings bank is less than ten percent of the amount due to depositors, there shall be deducted from its net earnings and credited to its guaranty fund not less than five percent of its net earnings for such period.

(2) The balance of its net earnings for such dividend period, plus any earnings from prior accounting periods not previously disbursed and not reserved for losses or other contingencies or required to be maintained in the guaranty fund, shall be available for dividends.

While the trustees of such savings bank are paying its expenses or any portion thereof, the amounts to be credited to its guaranty fund shall be computed at the same percentage upon the total dividends credited to its depositors instead of upon its net earnings. If the guaranty fund accumulated from earnings equals or exceeds ten percent of the amount due to depositors, the minimum dividend shall be four percent, if the net earnings for such period are sufficient therefor. [1955 c 13 § 32.08.120. Prior: 1941 c 15 § 4; 1929 c 123 § 3; 1927 c 184 § 6; 1915 c 175 § 24; Rem. Supp. 1941 § 3353.]

**32.08.130 Reimbursement fund.** When the portion of the guaranty fund created from earnings amounts to not less than five thousand dollars (including in the case of a savings bank converted from a building and loan or savings and loan association or society the amount of the initial guaranty fund), the board of trustees, with the written consent of the director, may establish a reimbursement fund from which to repay contributors to the expense fund and the initial guaranty fund (excepting the initial guaranty fund in the case of a bank converted from a building and loan or savings and loan association or society), and may transfer to the reimbursement fund any unexpended balance of contributions to the expense fund. At the close of each dividend period the trustees may place to the credit of the reimbursement fund not more than one percent of the net earnings of the bank during that period. Payments from the reimbursement fund may be made from time to time in such amounts as the board of trustees shall determine, and shall be made first to the contributors to the expense fund in proportion to their contributions thereto until they shall have been repaid in full, and then shall be made to the contributors to the guaranty fund in proportion to their contributions thereto until they shall have been repaid in full. In case of the liquidation of the savings bank before the contributions to the expense fund and the initial guaranty fund have been fully repaid as above contemplated, any portion of the contributions not needed for the payment of the expenses of liquidation and the payment of depositors in full shall be paid to the contributors to the expense fund in proportion to their contributions thereto until they have been repaid in full, and then shall be paid to the contributors to the guaranty fund in proportion to their contributions thereto

until they have been repaid in full. [1994 c 92 § 318; 1955 c 13 § 32.08.130. Prior: 1945 c 135 § 1; 1927 c 178 § 1; 1915 c 175 § 9; Rem. Supp. 1945 § 3321.]

**32.08.140 Powers of bank.** Every mutual savings bank incorporated under this title shall have, subject to the restrictions and limitations contained in this title, the following powers:

(1) To receive deposits of money, to invest the same in the property and securities prescribed in this title, to declare dividends in the manner prescribed in this title, and to exercise by its board of trustees or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of a savings bank.

(2) To issue transferable certificates showing the amounts contributed by any incorporator or trustee to the guaranty fund of such bank, or for the purpose of paying its expenses. Every such certificate shall show that it does not constitute a liability of the savings bank, except as otherwise provided in this title.

(3) To purchase, hold and convey real property as prescribed in RCW 32.20.280.

(4) To pay depositors as hereinafter provided, and when requested, pay them by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge current rates of exchange for such drafts.

(5) To borrow money in pursuance of a resolution adopted by a vote of a majority of its board of trustees duly entered upon its minutes whereon shall be recorded by ayes and noes the vote of each trustee, for the purpose of repaying depositors, and to pledge or hypothecate securities as collateral for loans so obtained. Immediate written notice shall be given to the director of all amounts so borrowed, and of all assets so pledged or hypothecated.

(6) Subject to such regulations and restrictions as the director finds to be necessary and proper, to borrow money in pursuance of a resolution, policy, or other governing document adopted by its board of trustees, for purposes other than that of repaying depositors and to pledge or hypothecate its assets as collateral for any such loans, provided that no amount shall at any time be borrowed by a savings bank pursuant to this subsection (6), if such amount, together with the amount then remaining unpaid upon prior borrowings by such savings bank pursuant to this subsection (6), exceeds thirty percent of the assets of the savings bank.

The sale of securities or loans by a bank subject to an agreement to repurchase the securities or loans shall not be considered a borrowing. Borrowings from federal, state, or municipal governments or agencies or instrumentalities thereof shall not be subject to the limits of this subsection.

(7) To collect or protest promissory notes or bills of exchange owned by such bank or held by it as collateral, and remit the proceeds of the collections by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge the usual rates or fees for such collection and remittance for such protest.

(8) To sell gold or silver received in payment of interest or principal of obligations owned by the savings bank or from depositors in the ordinary course of business.

(9) To act as insurance agent for the purpose of writing fire insurance on property in which the bank has an insurable

interest, the property to be located in the city in which the bank is situated and in the immediate contiguous suburbs, notwithstanding anything in any other statute to the contrary.

(10) To let vaults, safes, boxes or other receptacles for the safekeeping or storage of personal property, subject to laws and regulations applicable to, and with the powers possessed by, safe deposit companies.

(11) To elect or appoint in such manner as it may determine all necessary or proper officers, agents, boards, and committees, to fix their compensation, subject to the provisions of this title, and to define their powers and duties, and to remove them at will.

(12) To make and amend bylaws consistent with law for the management of its property and the conduct of its business.

(13) To wind up and liquidate its business in accordance with this title.

(14) To adopt and use a common seal and to alter the same at pleasure.

(15) To exercise any other power or authority permissible under applicable state or federal law exercised by other savings banks or by savings and loan associations with branches in Washington to the same extent as those savings institutions if, in the opinion of the director, the exercise of these powers and authorities by the other savings institutions affects the operations of savings banks in Washington or affects the delivery of financial services in Washington.

(16) To exercise the powers and authorities conferred by RCW 30.04.215.

(17) To exercise the powers and authorities that may be carried on by a subsidiary of the mutual savings bank that has been determined to be a prudent investment pursuant to RCW 32.20.380.

(18) To do all other acts authorized by this title.

(19) To exercise the powers and authorities that may be exercised by an insured state bank in compliance with 12 U.S.C. Sec. 1831a. [1999 c 14 § 17; 1996 c 2 § 23; 1994 c 92 § 319; 1981 c 86 § 2; 1977 ex.s. c 104 § 1; 1963 c 176 § 2; 1957 c 80 § 2; 1955 c 13 § 32.08.140. Prior: 1927 c 184 § 1; 1925 ex.s. c 86 § 1; 1915 c 175 § 10; RRS § 3322.]

**Severability—1999 c 14:** See RCW 32.35.900.

**Severability—1996 c 2:** See RCW 30.38.900.

**Severability—1981 c 86:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 86 § 17.]

**32.08.142 Additional powers—Powers of federal mutual savings bank.** Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank shall have the powers and authorities that any federal mutual savings bank had on July 28, 1985, or a subsequent date not later than July 27, 2003. As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of federal mutual savings banks shall apply to mutual savings banks exercising those powers or authorities permitted under this section but only

insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section. [2003 c 24 § 7; 1999 c 14 § 18; 1996 c 2 § 24; 1994 c 256 § 98; 1985 c 56 § 3; 1981 c 86 § 10.]

**Severability—2003 c 24:** See RCW 30.04.901.

**Severability—1999 c 14:** See RCW 32.35.900.

**Severability—1996 c 2:** See RCW 30.38.900.

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1981 c 86:** See note following RCW 32.08.140.

**32.08.145 Safe deposit companies.** See chapter 22.28 RCW.

**32.08.146 Additional powers—Powers and authorities granted to federal mutual savings banks after July 27, 2003—Restrictions.** A mutual savings bank may exercise the powers and authorities granted, after July 27, 2003, to federal mutual savings banks or their successors under federal law, only if the director finds that the exercise of such powers and authorities:

- (1) Serves the convenience and advantage of depositors and borrowers; and
- (2) Maintains the fairness of competition and parity between state-chartered savings banks and federal savings banks or their successors under federal law.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of federal mutual savings banks or their successors under federal law shall apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section. [2003 c 24 § 8; 1999 c 14 § 19; 1996 c 2 § 25; 1994 c 256 § 99.]

**Severability—2003 c 24:** See RCW 30.04.901.

**Severability—1999 c 14:** See RCW 32.35.900.

**Severability—1996 c 2:** See RCW 30.38.900.

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.08.148 Operation of branch outside Washington—Powers and authorities.** In addition to all powers and authorities, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank chartered under this title may exercise any powers and authorities at any branch outside Washington that are permissible for a savings bank operating in the jurisdiction where that branch is located, or for a bank, savings association, or similar financial institution operating in the jurisdiction if the laws of the jurisdiction do not provide for the operation of savings banks in the jurisdiction, except to the extent that the exercise of these powers and authorities is expressly prohibited or limited by the laws of this state or by any rule or order of the director applicable to the mutual savings bank. However, the director may waive any limitation in writing with respect to powers and authorities that the director determines do not

threaten the safety or soundness of the mutual savings bank. [1996 c 2 § 26.]

**Severability—1996 c 2:** See RCW 30.38.900.

**32.08.150 Certificates of deposit.** A mutual savings bank may issue savings certificates of deposit in such form and upon such terms as the bank may determine. [1981 c 86 § 3; 1979 c 51 § 1; 1975 c 15 § 1; 1969 c 55 § 1; 1959 c 41 § 1; 1959 c 14 § 1; 1957 c 80 § 3; 1955 c 13 § 32.08.150. Prior: 1915 c 175 § 13; RRS § 3342.]

**Severability—1981 c 86:** See note following RCW 32.08.140.

**32.08.153 Additional powers—Powers and authorities of national banks as of July 27, 2003.** Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank shall have the powers and authorities that national banks had on July 27, 2003.

The restrictions, limitations, and requirements applicable to specific powers or authorities of national banks apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section. [2003 c 24 § 4.]

**Severability—2003 c 24:** See RCW 30.04.901.

**32.08.155 Additional powers—Powers and authorities conferred upon national banks after July 27, 2003—Restrictions.** Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank shall have the powers and authorities conferred upon a national bank after July 27, 2003, only if the director finds that the exercise of such powers and authorities:

- (1) Serves the convenience and advantage of depositors, borrowers, or the general public; and
- (2) Maintains the fairness of competition and parity between mutual savings banks and national banks.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of national banks apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section. [2003 c 24 § 5.]

**Severability—2003 c 24:** See RCW 30.04.901.

**32.08.157 Additional powers—Powers and authorities of banks.** Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under this title, a mutual savings bank has the powers and authorities that a bank has under Title 30 RCW. As used in this section, "pow-

ers and authorities" include without limitation powers and authorities in corporate governance matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of banks apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section. [2003 c 24 § 6.]

**Severability—2003 c 24:** See RCW 30.04.901.

**32.08.160 Writing of fire insurance restricted.** When a savings bank is itself acting as an insurance agent, a trustee, officer, or employee of the bank shall not act as an insurance agent to write fire insurance on property in which the bank has an insurable interest, and no part of a room used by a savings bank in the transaction of its business shall be occupied or used by any person other than the bank in the writing of fire insurance. [1955 c 13 § 32.08.160. Prior: 1925 ex.s. c 86 § 7; RRS § 3342a.]

**32.08.170 Effect of failure to organize or commence business.** See RCW 30.08.070.

**32.08.180 Extension of existence.** See RCW 30.08.080.

**32.08.190 May borrow from home loan bank.** See RCW 30.32.030.

**32.08.210 Power to act as trustee—Authorized trusts—Limitations—Application to act as trustee, fee—Approval or refusal of application—Right of appeal—Use of word "trust".** A mutual savings bank shall have the power to act as trustee under:

(1) A trust established by an inter vivos trust agreement or under the will of a deceased person.

(2) A trust established in connection with any collective bargaining agreement or labor negotiation wherein the beneficiaries of the trust include the employees concerned under the agreement or negotiation, or a trust established in connection with any pension, profit sharing, or retirement benefit plan of any corporation, partnership, association, or individual, including but not limited to retirement plans established pursuant to the provisions of the act of congress entitled "Self-Employed Individuals Tax Retirement Act of 1962", as now constituted or hereafter amended, or plans established pursuant to the provisions of the act of congress entitled "Employee Retirement Income Security Act of 1974", as now constituted or hereafter amended.

A mutual savings bank may be appointed to and accept the appointment of personal representative of the last will and testament, or administrator with will annexed, of the estate of any deceased person and to be appointed and to act as guardian of the estate of minors and incompetent and disabled persons.

The restrictions, limitations and requirements in Title 30 RCW shall apply to a mutual savings bank exercising the powers granted under this section insofar as the restrictions, limitations, and requirements relate to exercising the powers

granted under this section. The incidental trust powers to act as agent in the management of trust property and the transaction of trust business in Title 30 RCW shall apply to a mutual savings bank exercising the powers granted under this section insofar as the incidental powers relate to exercising the powers granted under this section.

Before engaging in trust business, a mutual savings bank shall apply to the director on such form as he or she shall determine and pay the same fee as required for a state bank to engage in trust business. In considering such application the director shall ascertain from the best source of information at his or her command and by such investigation as he or she may deem necessary whether the management and personnel of the mutual savings bank are such as to command confidence and warrant belief that the trust business will be adequately and efficiently conducted in accordance with law, whether the resources in the neighborhood of such place and in the surrounding country afford a reasonable promise of adequate support for the proposed trust business and whether the resources of the mutual savings bank are sufficient to support the conduct of such trust business, and that the mutual savings bank has and maintains, in addition to its guaranty fund, undivided profits against which the depositors have no prior claim in an amount not less than would be required of a state bank or trust company, which undivided profits shall be eligible for investment in the same manner as the guaranty fund of a mutual savings bank. Within sixty days after receipt of such application, the director shall either approve or refuse the same and forthwith return to the mutual savings bank a copy of the application upon which his or her decision has been endorsed. The director shall not be required to approve or refuse an application until thirty days after any appropriate approval has been obtained from a federal regulatory agency. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the administrative procedure act, chapter 34.05 RCW, as now or hereafter amended. A mutual savings bank shall not use the word "trust" in its name, but may use the word "trust" in its business or advertising. [1994 c 92 § 320; 1975 1st ex.s. c 265 § 1; 1969 c 55 § 12.]

**32.08.215 Power to act as trustee for common trust funds under multiple trust agreements—Conditions.** No mutual savings bank or wholly owned subsidiary thereof shall act as trustee for common trust funds established for the benefit of more than one beneficiary under more than one trust agreement, unless the savings bank or subsidiary trust company shall first give written notice to the director, at least sixty days prior to the creation of any such fund. [1994 c 92 § 321; 1985 c 56 § 4.]

**32.08.220 Findings—Purpose.** The legislature finds that [the] state of Washington needs investment of funds from out of state and from investors in the state of Washington to keep money for real estate and other forms of financing reasonably available for the needs of Washington citizens. Many innovations have taken place in the last several years to aid in the sale of loans or portions thereof to others including the sale of mortgage passthrough certificates, mortgage backed bonds, participation sales with varying rates, terms or

priorities to various participants and the like. As the marketing of such investments continues, further innovations can be expected. It will benefit the state if mutual savings banks subject to the laws of this state have the broadest powers possible commensurate with their safety and soundness to take part in such activities. It is the purpose of RCW 32.08.225 and 32.08.230 to grant a broad power. [1981 c 86 § 11.]

**Severability—1981 c 86:** See note following RCW 32.08.140.

**32.08.225 Sale, purchase, etc., of interest rate exchange agreements, loans, or interests therein.** Any mutual savings bank may through any device sell, purchase, exchange, issue evidence of a sale or exchange of, or in any manner deal in any form of sale or exchange of interest rate exchange agreements, loans, or any interest therein including but not being limited to mortgage passthrough issues, mortgage backed bond issues, and loan participations and may purchase a subordinated portion thereof, issue letters of credit to insure against losses on a portion thereof, agree to repurchase all or a portion thereof, guarantee all or a portion of the payments thereof, and without any implied limitation by the foregoing or otherwise, do any and all things necessary or convenient to take part in or effectuate any such sales or exchanges by a mutual savings bank itself or by a subsidiary thereof. [1985 c 56 § 5; 1981 c 86 § 12.]

**Severability—1981 c 86:** See note following RCW 32.08.140.

**32.08.230 Restrictions and requirements by director.** Any mutual savings bank engaging in any activity contemplated in RCW 32.08.225, whereby it holds or purchases subordinated securities, issues letters of credit to secure a portion of any sale or issue of loans sold or exchanged, or in any manner acts as a partial guarantor or insurer or repurchaser of any loans sold or exchanged, shall do so only in accordance with such reasonable restrictions and requirements as the director shall require and shall report and carry such transactions on its books and records in such manner as the director shall require. In establishing any requirements and restrictions hereunder, the director shall consider the effect the transaction and the reporting thereof will have on the safety and soundness of the mutual savings bank engaging in it. [1994 c 92 § 322; 1981 c 86 § 13.]

**Severability—1981 c 86:** See note following RCW 32.08.140.

**Chapter 32.12 RCW**

**DEPOSITS—EARNINGS—DIVIDENDS—INTEREST**

Sections

- 32.12.010 Deposits by individuals governed by chapter 30.22 RCW—Other deposits which a savings bank may establish—Limitations.
- 32.12.020 Repayment of deposits and dividends.
- 32.12.025 Withdrawals by savings bank's drafts in accordance with depositor's instructions authorized.
- 32.12.050 Accounting—Entry of assets, real estate, securities, etc.
- 32.12.070 Computation of earnings.
- 32.12.080 Misleading advertisement of surplus or guaranty fund.
- 32.12.090 Interest—Rate—Notice of changed rate.
- 32.12.120 Adverse claim to a deposit to be accompanied by court order or bond—Exceptions.

*Depositaries*

*city:* Chapter 35.38 RCW.  
*county:* Chapter 36.48 RCW.

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*of state funds:* Chapter 43.85 RCW.

*Receiving deposits after insolvency prohibited:* State Constitution Art. 12 § 12; RCW 9.24.030.

*Uniform unclaimed property act:* Chapter 63.29 RCW.

**32.12.010 Deposits by individuals governed by chapter 30.22 RCW—Other deposits which a savings bank may establish—Limitations.** Deposits made by individuals in a mutual savings bank under this chapter are governed by chapter 30.22 RCW. In addition, other deposits which a savings bank may establish include but are not limited to the following:

- (1) Deposits in the name of, or on behalf of, a partnership or other form of multiple ownership enterprise.
- (2) Deposits in the name of a corporation, society, or unincorporated association.
- (3) Deposits maintained by a person, society, or corporation as administrator, executor, guardian, or trustee under a will or trust agreement.

Every such bank may limit the aggregate amount which an individual or any corporation or society may have to his or her or its credit to such sum as such bank may deem expedient to receive; and may in its discretion refuse to receive a deposit, or may at any time return all or any part of any deposits or require the withdrawal of any dividends or interest. Any account in excess of one hundred thousand dollars may only be accepted or held in accordance with such regulations as the director may establish. [1994 c 92 § 323; 1981 c 192 § 27; 1967 c 145 § 1; 1961 c 80 § 1; 1959 c 41 § 2; 1957 c 80 § 4; 1955 c 13 § 32.12.010. Prior: 1953 c 238 § 1; 1949 c 119 § 4; 1941 c 15 § 2; 1929 c 123 § 1; 1927 c 184 § 5; 1921 c 156 § 2; 1919 c 200 § 2; 1915 c 175 § 17; Rem. Supp. 1949 § 3346.]

**Effective date—1981 c 192:** See RCW 30.22.900.

**32.12.020 Repayment of deposits and dividends.** The sums deposited with any savings bank, together with any dividends or interest credited thereto, shall be repaid to the depositors thereof respectively, or to their legal representatives, after demand in such manner, and at such times, and under such regulations, as the board of trustees shall prescribe, subject to the provisions of this section and chapter 30.22 RCW. These regulations shall be available to depositors upon request, and shall be posted in a conspicuous place in the principal office and each branch in this state or, if the regulations are not so posted, a description of changes in the regulations after an account is opened shall be mailed to depositors pursuant to 12 U.S.C. Sec. 4305(c) or otherwise. All such rules and regulations, and all amendments thereto, from time to time in effect, shall be binding upon all depositors.

(1) Such bank may at any time by a resolution of its board of trustees require a notice of not more than six months before repaying deposits, in which event no deposit shall be due or payable until the required notice of intention to withdraw the same shall have been personally given by the depositor: PROVIDED, That such bank at its option may pay any deposit or deposits before the expiration of such notice. But no bank shall agree with its depositors or any of them in advance to waive the requirement of notice as herein provided: PROVIDED, That the bank may create a special class

of depositors who shall be entitled to receive their deposits upon demand.

(2) The savings bank may pay dividend or interest, or repay a deposit or portion thereof, upon receipt of information in written, oral, visual, electronic, or other form satisfactory to such bank, that the recipient is entitled to receipt, and may pay any check drawn upon it by a depositor. [1999 c 14 § 20; 1996 c 2 § 27; 1994 c 92 § 324; 1985 c 56 § 6; 1983 c 3 § 53; 1981 c 192 § 28; 1974 ex.s. c 117 § 40; 1969 c 55 § 2; 1967 c 145 § 2; 1963 c 176 § 3; 1961 c 80 § 2; 1959 c 41 § 3; 1955 c 13 § 32.12.020. Prior: 1945 c 228 § 6; 1921 c 156 § 3; 1915 c 175 § 18; Rem. Supp. 1945 § 3347.]

**Severability—1999 c 14:** See RCW 32.35.900.

**Severability—1996 c 2:** See RCW 30.38.900.

**Effective date—1981 c 192:** See RCW 30.22.900.

**Application, construction—Severability—Effective date—1974 ex.s. c 117:** See RCW 11.02.080 and notes following.

**32.12.025 Withdrawals by savings bank's drafts in accordance with depositor's instructions authorized.** Subject to the provisions of RCW 32.12.020(1), a savings bank may, on instructions from a depositor, effect withdrawals from a savings account by the savings bank's drafts payable to parties and on terms as so instructed; to the extent of the subjection of accounts to such withdrawal instruction, such accounts may be specifically classified under RCW 32.12.090(2) and ineligible to receive interest or eligible only for limited interest. [1967 c 145 § 3.]

**32.12.050 Accounting—Entry of assets, real estate, securities, etc.** (1) No savings bank shall by any system of accounting, or any device of bookkeeping, directly or indirectly, enter any of its assets upon its books in the name of any other individual, partnership, unincorporated association, or corporation, or under any title or designation that is not in accordance with the actual facts.

(2) The bonds, notes, mortgages, or other interest bearing obligations purchased or acquired by a savings bank, shall not be entered on its books at more than the actual cost thereof, and shall not thereafter be carried upon its books for a longer period than until the next declaration of dividends, or in any event for more than one year, at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of any such security purchased for a sum in excess of the amount payable thereon at maturity and charging to "profit and loss" a sufficient sum to bring it to par at maturity, or adding to the cost of any such security purchased at less than the amount payable thereon at maturity and crediting to "profit and loss" a sufficient sum to bring it to par at maturity.

(3) No such bank shall enter, or at any time carry on its books, the real estate and the building or buildings thereon used by it as its place of business at a valuation exceeding their actual cost to the bank.

(4) Every such bank shall conform its methods of keeping its books and records to such orders in respect thereof as shall have been made and promulgated by the director. Any officer, agent, or employee of any savings bank who refuses or neglects to obey any such order shall be punished as hereinafter provided.

(5) Real estate acquired by a savings bank, other than that acquired for use as a place of business, may be entered on the books of the bank at the actual cost thereof but shall not be carried beyond the current dividend period at an amount in excess of the amount of the debt in protection of which such real estate was acquired, plus the cost of any improvements thereto.

An appraisal shall be made by a qualified person of every such parcel of real estate within six months from the date of conveyance. If the value at which such real estate is carried on the books is in excess of the value found on appraisal the book value shall, at the end of the dividend period during which such appraisal was made, be reduced to an amount not in excess of such appraised value.

(6) No such bank shall enter or carry on its books any asset which has been disallowed by the director or the trustees of such bank, unless the director upon application by such savings bank has fixed a valuation at which such asset may be carried as permitted in subsection (7) of this section.

(7) Notwithstanding the provisions of this section, no savings bank may maintain its books and records or enter and carry on its books any asset or liability at any valuation contrary to any accounting rules promulgated or adopted by the federal deposit insurance corporation or the director or contrary to generally accepted accounting principles. [1994 c 256 § 100; 1994 c 92 § 325; 1985 c 56 § 7; 1983 c 44 § 1; 1955 c 13 § 32.12.050. Prior: 1941 c 15 § 1; 1915 c 175 § 16; Rem. Supp. 1941 § 3345.]

**Reviser's note:** This section was amended by 1994 c 92 § 325 and by 1994 c 256 § 100, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.12.070 Computation of earnings.** (1) Gross current operating earnings. Every savings bank shall close its books, for the purpose of computing its net earnings, at the end of any period for which a dividend is to be paid, and in no event less frequently than semiannually. To determine the amount of gross earnings of a savings bank during any dividend period the following items may be included:

(a) All earnings actually received during such period, less interest accrued and uncollected included in the last previous calculation of earnings;

(b) Interest accrued and uncollected upon debts owing to it secured by authorized collateral, upon which there has been no default for more than one year, and upon corporate bonds, or other interest bearing obligations owned by it upon which there is no default;

(c) The sums added to the cost of securities purchased for less than par as a result of amortization;

(d) Any profits actually received during such period from the sale of securities, real estate or other property owned by it;

(e) Such other items as the director, in his or her discretion and upon his or her written consent, may permit to be included.

(2) Net current earnings. To determine the amount of its net earnings for each dividend period the following items shall be deducted from gross earnings:

(a) All expenses paid or incurred, both ordinary and extraordinary, in the transaction of its business, the collection of its debts and the management of its affairs, less expenses incurred and interest accrued upon its debts deducted at the last previous calculation of net earnings for dividend purposes;

(b) Interest paid or accrued and unpaid upon debts owing by it;

(c) The amounts deducted through amortization from the cost of bonds or other interest bearing obligations purchased above par in order to bring them to par at maturity;

(d) Contributions to any corporation or any community chest fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation. The total contributions for any calendar year shall not exceed a sum equal to one-half of one percent of the net earnings of such savings bank for the preceding calendar year.

The balance thus obtained shall constitute the net earnings of the savings bank for such period.

(3) Earnings paid by a savings bank on deposits may be referred to as "dividends" or as "interest". [1994 c 92 § 327; 1955 c 80 § 3; 1955 c 13 § 32.12.070. Prior: 1953 c 238 § 2; 1941 c 15 § 3; 1915 c 175 § 23; Rem. Supp. 1941 § 3352.]

**32.12.080 Misleading advertisement of surplus or guaranty fund.** No savings bank shall put forth any sign or notice or publish or circulate any advertisement or advertising literature upon which or in which it is stated that such savings bank has a surplus or guaranty fund other than as determined in the manner prescribed by law. [1955 c 13 § 32.12.080. Prior: 1929 c 123 § 5; 1915 c 175 § 27; RRS § 3356.]

**32.12.090 Interest—Rate—Notice of changed rate.**

(1) Every savings bank shall regulate the rate of interest upon the amounts to the credit of depositors therewith, in such manner that depositors shall receive as nearly as may be all the earnings of the bank after transferring the amount required by RCW 32.08.120 and such further amounts as its trustees may deem it expedient and for the security of the depositors to transfer to the guaranty fund, which to the amount of ten percent of the amount due its depositors the trustees shall gradually accumulate and hold. Such trustees may also deduct from its net earnings, and carry as reserves for losses, or other contingencies, or as undivided profits, such additional sums as they may deem wise.

(2) Every savings bank may classify its depositors according to the local market, character, amount, regularity, or duration of their dealings with the savings bank, and may regulate the interest in such manner that each depositor shall receive the same ratable portion of interest as all others of his or her class.

(3) Unimpaired contributions to the initial guaranty fund and to the expense fund, made by the incorporators or trustees of a savings bank, shall be entitled to have dividends

apportioned thereon, which may be credited and paid to such incorporators or trustees.

Whenever the guaranty fund of any savings bank is sufficiently large to permit the return of such contributions, the contributors may receive interest thereon not theretofore credited or paid at the same rate paid to depositors.

(4) A savings bank may pay interest on deposits at such rates as its board or a committee or officer designated by the board shall from time to time determine.

(5) The trustees of any savings banks, other than a stock savings bank, whose undivided profits and guaranty fund, determined in the manner prescribed in RCW 32.12.070, amount to more than twenty-five percent of the amount due its depositors, shall at least once in three years divide equitably the accumulation beyond such twenty-five percent as an extra dividend to depositors in excess of the regular dividend authorized.

(6) A notice posted conspicuously in a savings bank of a change in the rate of interest shall be equivalent to a personal notice. [1999 c 14 § 21; 1994 c 256 § 101; 1983 c 44 § 2; 1977 ex.s. c 104 § 2; 1969 c 55 § 3; 1961 c 80 § 3; 1957 c 80 § 5; 1955 c 13 § 32.12.090. Prior: 1953 c 238 § 3; 1921 c 156 § 4; 1919 c 200 § 3; 1915 c 175 § 25; RRS § 3354.]

**Severability—1999 c 14:** See RCW 32.35.900.

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.12.120 Adverse claim to a deposit to be accompanied by court order or bond—Exceptions.** Notice to any mutual savings bank doing business in this state of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank to recognize said adverse claimant unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said bank from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons or shall execute to said bank, in form and with sureties acceptable to it, a bond, in an amount which is double either the amount of said deposit or said adverse claim, whichever is the lesser, indemnifying said bank from any and all liability, loss, damage, costs and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank: PROVIDED, That this law shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship as also the facts showing reasonable cause of belief on the part of said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant.

This section shall not apply to accounts subject to chapter 30.22 RCW. [1981 c 192 § 31; 1963 c 176 § 13. Cf. 1961 c 280 § 4; RCW 30.20.090.]

**Effective date—1981 c 192:** See RCW 30.22.900.

**Chapter 32.16 RCW**  
**OFFICERS AND EMPLOYEES**

## Sections

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**32.16.010 Board of trustees—Number—Qualifications.** (1) There shall be a board of trustees who shall have the entire management and control of the affairs of the savings bank. The persons named in the certificate of authorization shall be the first trustees. The board shall consist of not less than nine nor more than thirty members.

(2) A person shall not be a trustee of a savings bank, if he

(a) Is not a resident of a state of the United States;

(b) Has been adjudicated a bankrupt or has taken the benefit of any insolvency law, or has made a general assignment for the benefit of creditors;

(c) Has suffered a judgment recovered against him for a sum of money to remain unsatisfied of record or unsecured on appeal for a period of more than three months;

(d) Is a trustee, officer, clerk, or other employee of any other savings bank.

(3) Nor shall a person be a trustee of a savings bank solely by reason of his holding public office. [1985 c 56 § 8; 1955 c 13 § 32.16.010. Prior: 1915 c 175 § 28; RRS § 3357.]

**32.16.012 Age requirements.** The bylaws of a savings bank may prescribe a maximum age beyond which no person shall be eligible for election to the board of trustees and may prescribe a mandatory retirement age of seventy-five years or less for trustees subject to the following limitations:

(1) No person shall be eligible for initial election as a trustee after December 31, 1969, who is seventy years of age or more; and

(2) No person shall continue to serve as a trustee after December 31, 1973, who is seventy-five years of age or more and the office of any such trustee shall become vacant on the last day of the month in which the trustee reaches his seventy-fifth birthday or December 31, 1973, whichever is the latest.

If a savings bank does not adopt a bylaw prescribing a mandatory retirement age for trustees prior to January 1, 1970, or does not maintain thereafter a bylaw prescribing a mandatory retirement age, the office of a trustee of such savings bank shall become vacant on the last day of the month in

which such trustee reaches his seventieth birthday or on December 31, 1969, whichever is the latest. [1969 c 55 § 14.]

**32.16.020 Oath of trustees—Declaration of incumbency—Not applicable to directors of stock savings banks.** (1) Each trustee, whether named in the certificate of authorization or elected to fill a vacancy, shall, when such certificate of authorization has been issued, or when notified of such election, take an oath that he or she will, so far as it devolves on him or her, diligently and honestly administer the affairs of the savings bank, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such savings bank. Such oath shall be subscribed by the trustee making it and certified by the officer before whom it is taken, and shall be immediately transmitted to the director and filed and preserved in his or her office.

(2) Prior to the first day of March in each year, every trustee of every savings bank shall subscribe a declaration to the effect that he or she is, at the date thereof, a trustee of the savings bank, and that he or she has not resigned, become ineligible, or in any other manner vacated his or her office as such trustee. Such declaration shall be acknowledged in like manner as a deed to be entitled to record and shall be transmitted to the director and filed in his or her office prior to the tenth day of March in each year.

(3) This section does not apply to the directors of stock savings banks. [1994 c 256 § 102; 1994 c 92 § 328; 1955 c 13 § 32.16.020. Prior: 1915 c 175 § 29; RRS § 3358.]

**Reviser's note:** This section was amended by 1994 c 92 § 328 and by 1994 c 256 § 102, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.16.030 Vacancies, when to be filled.** A vacancy in the board of trustees shall be filled by the board as soon as practicable, at a regular meeting thereof. [1955 c 13 § 32.16.030. Prior: 1915 c 175 § 36; RRS § 3365.]

**32.16.040 Quorum—Meetings.** A quorum at any regular or special or adjourned meeting of the board of trustees shall consist of not less than five of whom the chief executive officer shall be one, except when he or she is prevented from attending by sickness or other unavoidable detention, when he or she may be represented in forming a quorum by such other officer as the board may designate; but less than a quorum shall have power to adjourn from time to time until the next regular meeting. However, a savings bank may adopt procedures which provide that, in the event of a national emergency, any trustee may act on behalf of the board to continue the operations of the savings bank. For purposes of this subsection, a national emergency is an emergency declared by the president of the United States or the person performing the president's functions, or a war, or natural disaster.

Regular meetings of the board of trustees shall be held as established from time to time by the board, not less than six times during each year. [1999 c 14 § 22; 1985 c 56 § 9; 1969 c 55 § 4; 1955 c 13 § 32.16.040. Prior: 1915 c 175 § 31; RRS § 3360.]

**Severability—1999 c 14:** See RCW 32.35.900.

**32.16.050 Compensation of trustees.** (1) A trustee of a savings bank shall not directly or indirectly receive any pay or emolument for services as trustee, except as provided in this section.

(2) A trustee may receive, by affirmative vote of a majority of all the trustees, reasonable compensation for (a) attendance at meetings of the board of trustees; (b) service as an officer of the savings bank, provided his or her duties as officer require and receive his or her regular and faithful attendance at the savings bank; (c) service in appraising real property for the savings bank; and (d) service as a member of a committee of the board of trustees: **PROVIDED**, That a trustee receiving compensation for service as an officer pursuant to (b) shall not receive any additional compensation for service under (a), (c), or (d).

(3) An attorney for a savings bank, although he or she is a trustee thereof, may receive a reasonable compensation for his or her professional services, including examinations and certificates of title to real property on which mortgage loans are made by the savings bank; or if the bank requires the borrowers to pay all expenses of searches, examinations, and certificates of title, including the drawing, perfecting, and recording of papers, such attorney may collect of the borrower and retain for his or her own use the usual fees for such services, excepting any commissions as broker or on account of placing or accepting such mortgage loans.

(4) All incentive compensation, bonus, or supplemental compensation plans for officers and employees of a savings bank shall be approved by a majority of nonofficer trustees of the savings bank or approved by a committee of not less than three trustees, none of whom shall be officers of the savings bank. No such plan shall permit any officer or employee of a savings bank who has or exercises final authority with regard to any loan or investment to receive any commission on such loan or investment.

(5) If an officer or attorney of a savings bank receives, on any loan made by the bank, any commission which he or she is not authorized by this section to retain for his or her own use, he or she shall immediately pay the same over to the savings bank. [1999 c 14 § 23; 1985 c 56 § 10; 1957 c 80 § 6; 1955 c 13 § 32.16.050. Prior: 1915 c 175 § 32; RRS § 3361.]

**Severability—1999 c 14:** See RCW 32.35.900.

**32.16.060 Change in number of trustees.** The board of trustees of every savings bank may, by resolution incorporated in its bylaws, increase or reduce the number of trustees named in the original charter or certificate of authorization.

(1) The number may be increased to a number designated in the resolution not exceeding thirty: **PROVIDED**, That reasons therefor are shown to the satisfaction of the director and his or her written consent thereto is first obtained.

(2) The number may be reduced to a number designated in the resolution but not less than nine. The reduction shall be effected by omissions to fill vacancies occurring in the board. [1994 c 92 § 329; 1955 c 13 § 32.16.060. Prior: 1915 c 175 § 33; RRS § 3362.]

**32.16.070 Restrictions on trustees.** (1) A trustee of a savings bank shall not, except to the extent permitted for a director of a federal mutual savings bank:

(a) Have any interest, direct or indirect, in the gains or profits of the savings bank, except to receive dividends (i) upon the amounts contributed by him or her to the guaranty fund and the expense fund of the savings bank as provided in RCW 32.08.090 and 32.08.100, and (ii) upon any deposit he or she may have in the bank, the same as any other depositor and under the same regulations and conditions.

(b) Become a member of the board of directors of a bank, trust company, or national banking association of which board enough other trustees of the savings bank are members to constitute with him a majority of the board of trustees.

(2) Neither a trustee nor an officer of a savings bank shall, except to the extent permitted for a director or officer of a federal mutual savings bank:

(a) For himself or herself or as agent or partner of another, directly or indirectly use any of the funds or deposits held by the savings bank, except to make such current and necessary payments as are authorized by the board of trustees.

(b) Receive directly or indirectly and retain for his or her own use any commission on or benefit from any loan made by the savings bank, or any pay or emolument for services rendered to any borrower from the savings bank in connection with such loan, except as authorized by RCW 32.16.050.

(c) Become an indorser, surety, or guarantor, or in any manner an obligor, for any loan made by the savings bank.

(d) For himself or herself or as agent or partner of another, directly or indirectly borrow any of the funds or deposits held by the savings bank, or become the owner of real property upon which the savings bank holds a mortgage. A loan to or a purchase by a corporation in which he or she is a stockholder to the amount of fifteen percent of the total outstanding stock, or in which he or she and other trustees of the savings bank hold stock to the amount of twenty-five percent of the total outstanding stock, shall be deemed a loan to or a purchase by such trustee within the meaning of this section, except when the loan to or purchase by such corporation occurred without his or her knowledge or against his or her protest. A deposit in a bank shall not be deemed a loan within the meaning of this section. [1994 c 256 § 103; 1955 c 13 § 32.16.070. Prior: 1925 ex.s. c 86 § 12; 1915 c 175 § 34; RRS § 3363.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.16.080 Removal of trustees—Vacancies—Eligibility to reelection.** (1) Whenever, in the judgment of three-fourths of the trustees, the conduct and habits of a trustee of any savings bank are of such character as to be injurious to such bank, or he or she has been guilty of acts that are detrimental or hostile to the interests of the bank, he or she may be removed from office, at any regular meeting of the trustees, by the affirmative vote of three-fourths of the total number thereof: **PROVIDED**, That a written copy of the charges made against him or her has been served upon him or her personally at least two weeks before such meeting, that the vote of such trustees by ayes and noes is entered in the record of the minutes of such meeting, and that such removal receives the written approval of the director which shall be attached to the minutes of such meeting and form a part of the record.

(2) The office of a trustee of a savings bank shall immediately become vacant whenever he or she:

(a) Fails to comply with any of the provisions of RCW 32.16.020 relating to his or her official oath and declaration;

(b) Becomes disqualified for any of the reasons specified in RCW 32.16.010(2);

(c) Has failed to attend the regular meetings of the board of trustees, or to perform any of his or her duties as trustee, for a period of six successive months, unless excused by the board for such failure;

(d) Violates any of the provisions of RCW 32.16.070 imposing restrictions upon trustees and officers, except subsection (2)(c) thereof.

(3) A trustee who has forfeited or vacated his or her office shall not be eligible to reelection, except when the forfeiture or vacancy occurred solely by reason of his or her:

(a) Failure to comply with the provisions of RCW 32.16.020, relating to his or her official oath and declaration; or

(b) Neglect of his or her official duties as prescribed in subsection (2)(c) of this section; or

(c) Disqualification through becoming a nonresident, or becoming a trustee, officer, clerk or other employee of another savings bank, or becoming a director of a bank, trust company, or national banking association under the circumstances specified in RCW 32.16.070(1)(b) and such disqualification has been removed. [1994 c 92 § 330; 1955 c 13 § 32.16.080. Prior: 1915 c 175 § 35; RRS § 3364.]

**32.16.090 Removal of trustee, officer, or employee or prohibition from participation in conduct of affairs on objection of the director—Grounds—Notice.** Whenever the director finds that:

(1) Any trustee, officer, or employee of any mutual savings bank has committed or engaged in:

(a) A violation of any law, rule, or cease and desist order which has become final;

(b) Any unsafe or unsound practice in connection with the mutual savings bank; or

(c) Any act, omission, or practice which constitutes a breach of his or her fiduciary duty as trustee, officer, or employee; and

(2) The director determines that:

(a) The mutual savings bank has suffered or may suffer substantial financial loss or other damage; or

(b) The interests of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty; and

(3) The director determines that the violation, practice, or breach of fiduciary duty is one involving personal dishonesty, recklessness, or incompetence on the part of the trustee, officer, or employee;

Then the director may serve upon the trustee, officer, or employee of any mutual savings bank a written notice of the director's intention to remove the person from office or to prohibit the person from participation in the conduct of the affairs of the mutual savings bank. [1994 c 92 § 331; 1979 c 46 § 7; 1955 c 13 § 32.16.090. Prior: 1931 c 132 § 2; RRS § 3364a.]

**Severability—1979 c 46:** See note following RCW 32.04.250.

**32.16.093 Notice of intention to remove or prohibit participation in conduct of affairs—Hearing—Order of removal and/or prohibition.** A notice of an intention to remove a trustee, officer, or employee from office or to prohibit his or her participation in the conduct of the affairs of a mutual savings bank shall contain a statement of the facts which constitute grounds therefor and shall fix a time and place at which a hearing will be held. The hearing shall be set not earlier than ten days nor later than thirty days after the date of service of the notice unless an earlier or later date is set by the director at the request of the trustee, officer, or employee for good cause shown or at the request of the attorney general of the state.

Unless the trustee, officer, or employee appears at the hearing personally or by a duly authorized representative, the person shall be deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the director finds that any of the grounds specified in the notice have been established, the director may issue such orders of removal from office or prohibition from participation in the conduct of the affairs of the mutual savings bank as the director may consider appropriate.

Any order under this section shall become effective at the expiration of ten days after service upon the mutual savings bank and the trustee, officer, or employee concerned except that an order issued upon consent shall become effective at the time specified in the order.

An order shall remain effective except to the extent it is stayed, modified, terminated, or set aside by the director or a reviewing court. [1994 c 92 § 332; 1979 c 46 § 8.]

**Severability—1979 c 46:** See note following RCW 32.04.250.

*Administrative hearings, procedure, orders, and judicial review:* RCW 32.04.290.

*Jurisdiction of courts as to orders to remove trustee, officer, or employee:* RCW 32.04.300.

*Violations or unsafe practices, procedure, etc.:* RCW 32.04.250 through 32.04.300.

**32.16.095 Removal of trustees—Lack of quorum—Temporary trustees.** If at any time because of the removal of one or more trustees under this chapter there shall be on the board of trustees of a mutual savings bank less than a quorum of trustees, all powers and functions vested in, or exercisable by the board shall vest in, and be exercisable by the trustee or trustees remaining, until such time as there is a quorum on the board of trustees. If all of the trustees of a mutual savings bank are removed under this chapter, the director shall appoint persons to serve temporarily as trustees until such time as their respective successors take office. [1994 c 92 § 333; 1979 c 46 § 9.]

**Severability—1979 c 46:** See note following RCW 32.04.250.

**32.16.097 Penalty for violation of order issued under RCW 32.16.093.** Any present or former trustee, officer, or employee of a mutual savings bank or any other person against whom there is outstanding an effective final order issued under RCW 32.16.093, which order has been served upon the person, and who, in violation of the order, (1) participates in any manner in the conduct of the affairs of the mutual savings bank involved; or (2) directly or indirectly

solicits or procures, transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations with respect to any voting rights in the mutual savings bank; or (3) without the prior approval of the director, votes for a trustee or serves or acts as a trustee, officer, employee, or agent of any mutual savings bank, shall be guilty of a gross misdemeanor, and, upon conviction, shall be punishable as prescribed under chapter 9A.20 RCW. [1994 c 92 § 334; 1979 c 46 § 10.]

**Severability—1979 c 46:** See note following RCW 32.04.250.

**32.16.100 Examination by trustees' committee—Report.** The trustees of every savings bank, by a committee of not less than three of their number, shall at least annually fully examine the records and affairs of such savings bank for the purpose of determining its financial condition. The trustees may employ such assistants as they deem necessary in making the examination. A report of each such examination shall be presented to the board of trustees at a regular meeting within thirty days after the completion of the same, and shall be filed in the records of the savings bank. [1994 c 256 § 104; 1955 c 13 § 32.16.100. Prior: 1941 c 15 § 5; 1915 c 175 § 38; Rem. Supp. 1941 § 3367.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.16.110 Officers.** The board of trustees shall elect from their number, or otherwise, a president and two vice presidents and such other officers as they may deem fit. [1955 c 13 § 32.16.110. Prior: 1915 c 175 § 30; RRS § 3359.]

**32.16.120 Fidelity bonds.** The trustees of every savings bank shall have power to require from the officers, clerks, and agents thereof such security for their fidelity and the faithful performance of their duties as the trustees deem necessary. Such security may be accepted from any company authorized to furnish fidelity bonds and doing business under the laws of this state, and the premiums therefor may be paid as a necessary expense of the savings bank. [1955 c 13 § 32.16.120. Prior: 1915 c 175 § 37; RRS § 3366.]

**32.16.130 Conversion of savings and loan association to mutual savings bank—Director may serve as trustee.** In the event a savings and loan association is converted to a mutual savings bank, any person, who at the time of such conversion was a director of the savings and loan association, may serve as a trustee of the mutual savings bank until he reaches the age of seventy-five years or until one year following the date of conversion of such savings and loan association, whichever is later. The bylaws of any mutual savings bank may modify this provision by requiring earlier retirement of any trustee affected hereby. [1971 ex.s. c 222 § 2.]

**Severability—1971 ex.s. c 222:** See note following RCW 32.04.085.

**32.16.140 Violations—Director liability.** If the directors of any bank shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the bank to violate any of the provisions of this title or any lawful regulation or directive of the director, and if the directors are aware that such facts and circumstances constitute such violations, then each director who participated in or assented to the violation

is personally and individually liable for all damages which the state or any insurer of the deposits sustains due to the violation. [1994 c 92 § 335; 1989 c 180 § 9.]

## Chapter 32.20 RCW INVESTMENTS

### Sections

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- 32.20.480 Loans or investments to provide adequate housing and environmental improvements—Criteria—Restrictions.
- 32.20.500 Construction—1973 1st ex.s. c 31.

*Federal bonds and notes as investment or collateral: Chapter 39.60 RCW.*

**32.20.010 Definitions.** The words "mutual savings bank" and "savings bank," whenever used in this chapter, shall mean a mutual savings bank organized and existing under the laws of the state of Washington.

The words "its funds," whenever used in this chapter, shall mean and include moneys deposited with or borrowed by a mutual savings bank, sums credited to the guaranty fund of a mutual savings bank, and the income derived from such deposits or fund, or both, and the principal balance of any outstanding capital notes, and capital debentures. [1999 c 14 § 24; 1977 ex.s. c 241 § 2; 1955 c 13 § 32.20.010. Prior: 1929 c 74 § 1; RRS § 3381-1.]

**Severability—1999 c 14:** See RCW 32.35.900.

**32.20.020 Power to invest funds—Restrictions.** A mutual savings bank shall have the power to invest its funds in the manner set forth in chapter 32.08 RCW and in this chapter and not otherwise. [1999 c 14 § 25; 1955 c 13 § 32.20.020. Prior: 1929 c 74 § 2; RRS § 3381-2.]

**Severability—1999 c 14:** See RCW 32.35.900.

**32.20.030 Bonds or obligations of United States and Canada.** A mutual savings bank may invest its funds in the bonds or obligations of the United States or the Dominion of Canada or those for which the faith of the United States or the Dominion of Canada is pledged to provide for the payment of the interest and principal, including bonds of the District of Columbia: PROVIDED, That in the case of bonds of the Dominion or those for which its faith is pledged the interest and principal is payable in the United States or with exchange to a city in the United States and in lawful money of the United States or its equivalent. [1955 c 13 § 32.20.030. Prior: 1937 c 95 § 1; 1929 c 74 § 3; 1925 ex.s. c 86 § 2; 1921 c 156 §§ 11, 11a; RRS § 3381-3.]

**32.20.035 Investment trusts or companies.** Except as may be limited by the director by rule, a mutual savings bank may invest its funds in obligations of the United States, as authorized by RCW 32.20.030, either directly or in the form of securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940, as now or hereafter amended, if both of the following conditions are met:

(1) The portfolio of the investment company or investment trust is limited to obligations of the United States and to repurchase agreements fully collateralized by such obligations; and

(2) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian. [1994 c 92 § 336; 1989 c 97 § 2.]

**32.20.040 Federally insured or secured loans, securities, etc.** A mutual savings bank may invest its funds:

(1) In such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the Federal Housing Administrator, and may obtain such insurance.

(2) In such loans secured by mortgage on real property as the Federal Housing Administrator insures or makes a commitment to insure, and may obtain such insurance.

(3) In such other loans or contracts or advances of credit as are insured or guaranteed or which are covered by a repurchase agreement in whole or in part by the United States or through any corporation, administrator, agency or instrumentality which is or hereafter may be created by the United States, and may obtain such insurance or guarantee.

(4) In capital stock, notes, bonds, debentures, or other such obligations of any national mortgage association.

(5) In such loans as are secured by contracts of the United States or any agency or department thereof assigned under the "Assignment of Claims Act of 1940," approved October 9, 1940, and acts amendatory thereof or supplementary thereto, and may participate with others in such loans.

(6) In notes or bonds secured by mortgages issued under sections 500 to 505, inclusive, of Title III of the Servicemen's Readjustment Act of 1944 (Public Law 346, 78th congress), and any amendments thereto, and the regulations, orders or rulings promulgated thereunder.

No law of this state prescribing the nature, amount, or form of security or requiring security or prescribing or limiting interest rates or prescribing or limiting the term, shall be deemed to apply to loans, contracts, advances of credit or purchases made pursuant to the foregoing subdivisions (1), (2), (3), (4), (5), and (6). [1963 c 176 § 5; 1955 c 13 § 32.20.040. Prior: 1945 c 228 § 1; 1941 c 15 § 6; 1939 c 33 § 1; 1935 c 10 § 1; 1929 c 74 § 3a; Rem. Supp. 1945 § 3381-3a.]

**32.20.045 Obligations of corporations created as federal agency or instrumentality.** A mutual savings bank may invest its funds in capital stock, notes, bonds, debentures, or other such obligations of any corporation which is or hereafter may be created by the United States as a governmental agency or instrumentality: PROVIDED, That the total amount a mutual savings bank may invest pursuant to this section shall not exceed fifteen percent of the funds of such savings bank: PROVIDED FURTHER, That the amounts heretofore or hereafter invested by a mutual savings bank pursuant to any law of this state other than this section, even if such investment might also be authorized under this section, shall not be limited by the provisions of this section and amounts so invested pursuant to any such other law of this state shall not be included in computing the maximum amount which may be invested pursuant to this section. [1967 c 145 § 4; 1957 c 80 § 10.]

**32.20.047 Stock of small business investment companies regulated by United States.** A savings bank may purchase and hold for its own investment account stock in small business investment companies licensed and regulated by the United States, as authorized by the Small Business Act, Public Law 85-536, 72 Statutes at Large 384, in an amount not to exceed one percent of the guaranty fund of such mutual savings bank. [1959 c 185 § 2.]

**32.20.050 Bonds of state of Washington and its agencies.** A mutual savings bank may invest its funds in the bonds

or interest bearing obligations of this state, or any agency thereof, issued pursuant to the authority of any law of this state, whether such bonds or interest bearing obligations are general or limited obligations of the state or such agency. [1955 c 13 § 32.20.050. Prior: 1953 c 238 § 4; 1929 c 74 § 9; 1921 c 156 § 11b; RRS § 3381-4.]

**32.20.060 Bonds of other states.** A mutual savings bank may invest its funds in the bonds or obligations of any other state of the United States upon which there is no default. [1955 c 13 § 32.20.060. Prior: 1937 c 95 § 2; 1929 c 74 § 5; 1921 c 156 § 11c; RRS § 3381-5.]

**32.20.070 Bonds and warrants of counties, municipalities, etc., of Washington.** A mutual savings bank may invest its funds in the valid warrants or bonds of any county, city, town, school district, port district, water-sewer district, or other municipal corporation in the state of Washington issued pursuant to law and for the payment of which the faith and credit of such county, municipality, or district is pledged and taxes are leviable upon all taxable property within its limits.

A mutual savings bank may invest its funds in the water revenue, sewer revenue, or electric revenue bonds of any city or public utility district of this state for the payment of which the entire revenue of the city's or district's water system, sewer system, or electric system, less maintenance and operating costs, is irrevocably pledged. [1999 c 153 § 26; 1955 c 13 § 32.20.070. Prior: 1941 c 15 § 7; 1937 c 95 § 3; 1929 c 74 § 6; 1925 ex.s. c 86 § 3; 1921 c 156 § 11d; Rem. Supp. 1941 § 3381-6.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**32.20.080 Municipal bonds in adjoining state.** A mutual savings bank may invest its funds in the valid bonds of any incorporated city having a population in excess of three thousand inhabitants as shown by the last decennial federal census or of any county or school district situated in one of the states of the United States which adjoins the state of Washington: PROVIDED, That the indebtedness of such city or school district, together with the indebtedness of any other district or other municipal corporation or subdivision (except a county) which is wholly or in part included within the boundaries or limits of the city or school district, less its water debt and sinking fund, does not exceed twelve percent, or the indebtedness of the county less its sinking fund does not exceed seven percent, of the valuation thereof for the purposes of taxation. [1955 c 13 § 32.20.080. Prior: 1937 c 95 § 4; 1929 c 74 § 7; 1925 ex.s. c 86 § 4; 1921 c 156 § 11e; RRS § 3381-7.]

**32.20.090 Housing and industrial development bonds and municipal obligations in any state.** A mutual savings bank may invest in housing or industrial development bonds or municipal obligations issued by a state, county, parish, borough, city, or district situated in the United States, or by any instrumentality thereof, provided such bonds or obligations at the time of purchase are prudent investments. [1985

c 56 § 11; 1955 c 13 § 32.20.090. Prior: 1937 c 95 § 5; 1929 c 74 § 8; 1921 c 156 § 11f; RRS § 3381-8.]

**32.20.100 Revenue bonds of certain cities in any state.** A mutual savings bank may invest its funds in the water revenue or electric revenue bonds of any incorporated city situated in the United States: PROVIDED, That the city has a population as shown by the last decennial federal census of at least forty-five thousand inhabitants, and the entire revenue of the city's water or electric system less maintenance and operating costs is irrevocably pledged to the payment of the interest and principal of the bonds. [1955 c 13 § 32.20.100. Prior: 1941 c 15 § 8; 1937 c 95 § 6; Rem. Supp. 1941 § 3381-8a.]

**32.20.110 District bonds secured by taxing power.** A mutual savings bank may invest its funds in the bonds of any port district, sanitary district, water-sewer district, tunnel district, bridge district, flood control district, park district, or highway district in the United States which has a population as shown by the last decennial federal census of not less than one hundred fifty thousand inhabitants, and has taxable real property with an assessed valuation in excess of two hundred million dollars and has power to levy taxes on the taxable real property therein for the payment of the bonds without limitation of rate or amount. [1999 c 153 § 27; 1955 c 13 § 32.20.110. Prior: 1937 c 95 § 7; RRS § 3381-8b.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**32.20.120 Local improvement district bonds.** A mutual savings bank may invest not to exceed fifteen percent of its funds in the bonds or warrants of any local improvement district of any city or town of this state (except bonds or warrants issued for an improvement consisting of grading only), unless the total indebtedness of the district after the completion of the improvement for which the bonds or warrants are issued, plus the amount of all other assessments of a local or special nature against the land assessed or liable to be assessed to pay the bonds, exceed fifty percent of the value of the benefited property, exclusive of improvements, at the time the bonds or warrants are purchased or taken by the bank, according to the actual valuation last placed upon the property for general taxation.

Before any such bonds or warrants are purchased or taken as security the condition of the district's affairs shall be ascertained and the property of the district examined by at least two members of the board of investment who shall report in writing their findings and recommendations; and no bonds or warrants shall be taken unless such report is favorable, nor unless the executive committee of the board of trustees after careful investigation is satisfied of the validity of the bonds or warrants and of the validity and sufficiency of the assessment or other means provided for payment thereof: PROVIDED, That, excepting bonds issued by local improvement districts in cities of the first or second class, for improvements ordered after June 7, 1927, no local improvement district bonds falling within the twenty-five percent in amount of any issue last callable for payment, shall be acquired or taken as security. [1955 c 13 § 32.20.120. Prior:

1953 c 238 § 5; 1929 c 74 § 9; 1921 c 156 § 11h; RRS § 3381-9.]

**32.20.130 Bonds of irrigation, diking, drainage districts.** A mutual savings bank may invest not to exceed five percent of its funds in the bonds of any irrigation, diking, drainage, diking improvement, or drainage improvement district of this state, unless the total indebtedness of the district after the completion of the improvement for which the bonds are issued, plus the amount of all other assessments of a local or special nature against the land assessed or liable to be assessed to pay the bonds, exceeds forty percent of the value of the benefited property, exclusive of improvements, at the time the bonds are purchased or taken by the bank, according to the actual valuation last placed upon the property for general taxation.

Before any such bonds are purchased or taken as security the condition of the district's affairs shall be ascertained and the property of the district examined by at least two members of the board of investment of the mutual savings bank, who shall report in writing their findings and recommendations; and no bonds shall be taken unless such report is favorable, nor unless the executive committee of the board of trustees after careful investigation is satisfied of the validity of the bonds and of the sufficiency of the assessment or other means provided for payment thereof: PROVIDED, That no mutual savings bank shall invest a sum greater than three percent of its funds, or, in any event, more than three hundred thousand dollars, in the bonds of any one district described in this section. [1955 c 13 § 32.20.130. Prior: 1929 c 74 § 10; 1921 c 156 § 11h; RRS § 3381-10.]

**32.20.210 Obligations of International Bank for Reconstruction and Development.** A mutual savings bank may invest not to exceed five percent of its funds in interest bearing obligations of the International Bank for Reconstruction and Development. [1955 c 13 § 32.20.210. Prior: 1949 c 119 § 3; Rem. Supp. 1949 § 3381-16b.]

**32.20.215 Obligations issued or guaranteed by Inter-American Development Bank.** A mutual savings bank may invest not to exceed five percent of its funds in obligations issued or guaranteed by the Inter-American Development Bank. [1963 c 176 § 14.]

**32.20.217 Obligations of Asian Development Bank.** A mutual savings bank may invest not to exceed five percent of its funds in obligations issued or guaranteed by the Asian Development Bank. [1971 ex.s. c 222 § 7.]

**Severability—1971 ex.s. c 222:** See note following RCW 32.04.085.

**32.20.219 Obligations issued or guaranteed by African Development Bank or other multilateral development bank.** A mutual savings bank may invest not to exceed five percent of its funds in obligations issued or guaranteed by the African Development Bank or in obligations issued or guaranteed by any multilateral development bank in which the United States government formally participates. [1985 c 301 § 1.]

**32.20.220 Bankers' acceptances, bills of exchange, and commercial paper.** A mutual savings bank may invest not to exceed twenty percent of its funds in the following:

(1) Bankers' acceptances, and bills of exchange made eligible by law for rediscount with federal reserve banks, provided the same are accepted by a bank or trust company which is a member of the federal reserve system and which has a capital and surplus of not less than two million dollars, or commercial paper which is a prudent investment.

(2) Bills of exchange drawn by the seller on the purchaser of goods and accepted by such purchaser, of the kind made eligible by law for rediscount with federal reserve banks, provided the same are indorsed by a bank or trust company which is a member of the federal reserve system and which has a capital and surplus of not less than two million dollars.

The aggregate amount of the liability of any bank or trust company to any mutual savings bank, whether as principal or indorser, for acceptances held by such savings bank and deposits made with it, shall not exceed twenty-five percent of the paid up capital and surplus of such bank or trust company, and not more than five percent of the funds of any mutual savings bank shall be invested in the acceptances of or deposited with a bank or trust company of which a trustee of such mutual savings bank is a director. [1985 c 56 § 12; 1955 c 13 § 32.20.220. Prior: 1929 c 74 § 17; RRS § 3381-17.]

**32.20.230 Notes secured by investments.** A mutual savings bank may invest its funds in promissory notes payable to the order of the savings bank, secured by the pledge or assignment of investments lawfully purchasable by a savings bank. No such loan shall exceed ninety percent of the cash market value of such investments so pledged. Should any of the investments so held in pledge depreciate in value after the making of such loan, the savings bank shall require an immediate payment of such loan, or of a part thereof, or additional security therefor, so that the amount loaned thereon shall at no time exceed ninety percent of the market value of the investments so pledged for such loan. [1969 c 55 § 5; 1963 c 176 § 6; 1955 c 13 § 32.20.230. Prior: 1945 c 228 § 2; 1929 c 74 § 18; Rem. Supp. 1945 § 3381-18.]

*Interest and usury in general: Chapter 19.52 RCW.*

**32.20.240 Notes secured by pledge or assignment of account.** A mutual savings bank may invest its funds in promissory notes made payable to the order of the savings bank, secured by the pledge or assignment of the account of the mutual savings bank as collateral security for the payment thereof. No such loan shall exceed the balance due the holder of such account. [1967 c 145 § 5; 1955 c 13 § 32.20.240. Prior: 1945 c 228 § 3; 1929 c 74 § 19; 1921 c 156 § 11m; Rem. Supp. 1945 § 3381-19.]

*Interest and usury in general: Chapter 19.52 RCW.*

**32.20.253 Loans secured by real estate, mobile homes, movable buildings.** A mutual savings bank may invest its funds in loans secured by real estate or on the security of mobile homes or other movable buildings or any interest or estate in any of the foregoing. Such loans may be on such terms and conditions and subject to such limitations and

restrictions as the board of trustees shall from time to time establish. [1981 c 86 § 14.]

**Severability—1981 c 86:** See note following RCW 32.08.140.

**32.20.265 Valuation of property to be mortgaged—Appraiser's opinion.** When, under any provision of this title, a written report is required of members of the board of investment of a mutual savings bank certifying according to their best judgment the value of any property to be mortgaged such value may be determined upon the signed opinion in writing of an appraiser appointed by the board of trustees of such bank. [1957 c 80 § 9.]

**32.20.280 Investments in real estate.** A mutual savings bank may invest its funds in real estate as follows:

(1) A tract of land whereon there is or may be erected a building or buildings suitable for the convenient transaction of the business of the savings bank, from portions of which not required for its own use revenue may be derived: PROVIDED, That the cost of the land and building or buildings for the transaction of the business of the savings bank shall in no case exceed fifty percent of the guaranty fund, undivided profits, reserves, and subordinated securities of the savings bank, except with the approval of the director; and before the purchase of such property is made, or the erection of a building or buildings is commenced, the estimate of the cost thereof, and the cost of the completion of the building or buildings, shall be submitted to and approved by the director. "The cost of the land and building or buildings" means the amounts paid or expended therefor less the reasonable depreciation thereof taken by the bank against such improvements during the time they were held by the bank.

(2) Such lands as shall be conveyed to the savings bank in satisfaction of debts previously contracted in the course of its business.

(3) Such lands as the savings bank shall purchase at sales under judgments, decrees, or mortgages held by it.

All real estate purchased by any such savings bank, or taken by it in satisfaction of debts due it, under this section, shall be conveyed to it directly by name, or in the name of a corporation all of the stock of which is owned by the bank, or in such other manner as the bank shall determine to be in the best interest of the bank, and the conveyance shall be immediately recorded in the office of the proper recording officer of the county in which such real estate is situated.

(4) Every parcel of real estate purchased or acquired by a savings bank under subsections (2) and (3) of this section, shall be sold by it within five years from the date on which it was purchased or acquired, or in case it was acquired subject to a right of redemption, within five years from the date on which the right of redemption expires, unless:

(a) There is a building thereon occupied by the savings bank and its offices,

(b) The director, on application of the board of trustees of the savings bank, extends the time within which such sale shall be made, or

(c) The property is held by the bank as an investment under the provisions of RCW 32.20.285, as now or hereafter amended. [1994 c 92 § 337; 1981 c 86 § 4; 1973 1st ex.s. c

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31 § 6; 1969 c 55 § 7; 1955 c 13 § 32.20.280. Prior: 1929 c 74 § 22; 1921 c 156 § 110; 1915 c 175 § 12; RRS § 3381-22.]

**Severability—1981 c 86:** See note following RCW 32.08.140.

**Construction—1973 1st ex.s. c 31:** See RCW 32.20.500.

**32.20.285 Investments through purchase of real estate—Improvements.** A mutual savings bank may invest its funds in such real estate, improved or unimproved, and its fixtures and equipment, as the savings bank shall purchase either alone or with others or through ownership of interests in entities holding such real estate. The savings bank may improve property which it owns, and rent, lease, sell, and otherwise deal in such property, the same as any other owner thereof. The total amount a mutual savings bank may invest pursuant to this section shall not exceed twenty percent of its funds. No officer or trustee of the bank shall own or hold any interest in any property in which the bank owns an interest, and in the event the bank owns an interest in property hereunder with or as a part of another entity, no officer or trustee of the bank shall own more than two and one-half percent of the equity or stock of any entity involved, and all of the officers and trustees of the bank shall not own more than five percent of the equity or stock of any entity involved. [1981 c 86 § 5; 1969 c 55 § 15.]

**Severability—1981 c 86:** See note following RCW 32.08.140.

**32.20.300 Home loan bank as depositary.** See RCW 30.32.040.

**32.20.310 Deposit of securities.** A savings bank may deposit securities owned by it, for safekeeping, with any duly designated depositary for the bank's funds. The written statement of the depositary that it holds for safekeeping specified securities of a savings bank may be taken as evidence of the facts therein shown by any public officer or any officer of the bank or committee of its trustees whose duty it is to examine the affairs and assets of the bank. [1955 c 13 § 32.20.310. Prior: 1929 c 74 § 24; 1927 c 184 § 4; RRS § 3381-24.]

**32.20.320 Investment of funds.** The trustees of every savings bank shall as soon as practicable invest the moneys deposited with it in the securities prescribed in this title.

The purchase by a savings bank of a negotiable certificate of deposit or similar security issued by a bank need not be considered a deposit if the certificate or security is eligible for investment by a savings bank under any other provision of this title. [1969 c 55 § 8; 1955 c 13 § 32.20.320. Prior: 1929 c 74 § 25; 1925 ex.s. c 86 § 11; 1915 c 175 § 20; RRS § 3381-25.]

**32.20.330 Investments—Loans, preferred stock, or interest-bearing obligations—Restrictions.** A mutual savings bank may invest in loans to sole proprietorships, partnerships, limited liability companies, corporations, or other entities, or in preferred stock or discounted or other interest bearing obligations issued, guaranteed, or assumed by limited liability companies or corporations commonly accepted as industrial corporations or engaged in communications, transportation, agriculture, furnishing utility professional services, manufacturing, construction, mining, fishing, processing or

merchandising of goods, food, or information, banking, or commercial or consumer financing, doing business or incorporated under the laws of the United States, or any state thereof, or the District of Columbia, or the Dominion of Canada, or any province thereof, subject to the following conditions:

(1) Not more than two percent of the bank's funds shall be invested, pursuant to this section, in the aggregate of loans to and preferred stock and obligations of any person, as defined in RCW 32.32.228(1)(c), and such person's affiliates, as defined in RCW 32.32.025(1), incorporating the definition of control in RCW 32.32.025(8).

(2) Such loans or securities shall be prudent investments.

(3) Pursuant to this section, the total amount a savings bank may invest shall not exceed fifty percent of its funds, and not more than fifteen percent of the bank's funds may be invested in such loans to or securities of any industry. [1999 c 14 § 26; 1985 c 56 § 13; 1973 1st ex.s. c 31 § 7; 1971 ex.s. c 222 § 6; 1955 c 80 § 6.]

**Severability—1999 c 14:** See RCW 32.35.900.

**Construction—1973 1st ex.s. c 31:** See RCW 32.20.500.

**Severability—1971 ex.s. c 222:** See note following RCW 32.04.085.

**32.20.335 Investments—Qualified thrift investments.** A mutual savings bank may invest in loans or securities that are qualified thrift investments for a savings association subject to the limits specified in 12 U.S.C. Sec. 1467a(m). [1999 c 14 § 27.]

**Severability—1999 c 14:** See RCW 32.35.900.

**32.20.340 Stock or bonds of federal home loan bank.** See RCW 30.32.020.

**32.20.350 Stock of federal reserve bank or Federal Deposit Insurance Corporation.** See RCW 30.32.010.

**32.20.370 Corporate bonds and other interest-bearing or discounted obligations.** A mutual savings bank may invest its funds in bonds or other interest bearing or discounted obligations of corporations not otherwise eligible for investment by the savings bank which are prudent investments for such bank in the opinion of its board of trustees or of a committee thereof whose action is ratified by such board at its regular meeting next following such investment. The total amount a mutual savings bank may invest pursuant to this section shall not exceed ten percent of its funds. [1977 ex.s. c 104 § 5; 1967 c 145 § 9; 1959 c 41 § 6.]

**32.20.380 Stocks, securities, of corporations not otherwise eligible for investment.** A mutual savings bank may invest its funds in stocks or other securities of corporations not otherwise eligible for investment by the savings bank which are prudent investments for the bank in the opinion of its board of trustees or of a committee thereof whose action is ratified by the board at its regular meeting next following the investment. The total amount a mutual savings bank may invest pursuant to this section shall not exceed fifty percent of the total of its guaranty fund, undivided profits, and unallocated reserves, or five percent of its deposits, whichever is less. [1981 c 86 § 6; 1963 c 176 § 16.]

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**Severability—1981 c 86:** See note following RCW 32.08.140.

**32.20.390 Obligations of corporations or associations federally authorized to insure or market real estate mortgages—Loans, etc., eligible for insurance.** A mutual savings bank may invest its funds:

(1) In capital stock, notes, bonds, debentures, participating certificates, and other obligations of any corporation or association which is or hereafter may be created pursuant to any law of the United States for the purpose of insuring or marketing real estate mortgages: PROVIDED, That the amount a mutual savings bank may invest in the capital stock of any one such corporation shall not exceed five percent of the funds of the mutual savings bank and the total amount it may invest in capital stock pursuant to this subsection (1) shall not exceed ten percent of the funds of the mutual savings bank.

(2) In such loans, advances of credit, participating certificates, and purchases of obligations representing loans and advances of credit as are eligible for insurance by any corporation or association which is or hereafter may be created pursuant to any law of the United States for the purpose of insuring real estate mortgages. The bank may do all acts necessary or appropriate to obtain such insurance. No law of this state prescribing the nature, amount, or form of security, or prescribing or limiting the period for which loans or advances of credit may be made shall apply to loans, advances of credit, or purchases made pursuant to this subsection (2). [1963 c 176 § 17.]

**32.20.400 Loans for home or property repairs, alterations, appliances, improvements, additions, furnishings, underground utilities, education or nonbusiness family purposes.** A mutual savings bank may invest not to exceed twenty percent of its funds pursuant to this section in loans for home or property repairs, alterations, appliances, improvements, or additions, home furnishings, for installation of underground utilities, for educational purposes, or for nonbusiness family purposes: PROVIDED, That the application therefor shall state that the proceeds are to be used for one of the above purposes. [1999 c 14 § 28; 1981 c 86 § 7; 1977 ex.s. c 104 § 6; 1969 c 55 § 9; 1967 c 145 § 10; 1963 c 176 § 18.]

**Severability—1999 c 14:** See RCW 32.35.900.

**Severability—1981 c 86:** See note following RCW 32.08.140.

**32.20.410 Limitation of total investment in certain obligations.** The aggregate total amount a mutual savings bank may invest in the following shall not exceed the sum of eighty-five percent of its funds and one hundred percent of its borrowings as permitted under RCW 32.08.140, as now or hereafter amended and RCW 32.08.190, as now or hereafter amended:

- (1) Mortgages upon real estate and participations therein;
- (2) Contracts for the sale of realty;
- (3) Mortgages upon leasehold estates; and
- (4) Notes secured by pledges or assignments of first mortgages or real estate contracts.

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The limitation of this section shall not apply to GNMA certificates, mortgage backed bonds, mortgage passthrough certificates or other similar securities purchased or held by the bank. [1981 c 86 § 8; 1977 ex.s. c 104 § 7; 1969 c 55 § 10; 1963 c 176 § 19.]

**Severability—1981 c 86:** See note following RCW 32.08.140.

**32.20.415 Limitation on certain secured and unsecured loans.** In addition to all other investments and loans authorized for mutual savings banks in this state, a mutual savings bank may invest not more than twenty percent of its funds in secured or unsecured loans on such terms and conditions as the bank may determine. [1981 c 86 § 15.]

**Severability—1981 c 86:** See note following RCW 32.08.140.

**32.20.430 Loans to banks or trust companies.** A mutual savings bank may invest its funds in loans to banks or trust companies which mature on the next business day following the day of making such loan. The loans may be evidenced by any writing or ledger entries deemed adequate by the mutual savings bank and may be secured or unsecured. The loans made hereunder are payable on the same basis as are regular deposits in such banks, and therefore the transactions may be characterized for accounting and statement purposes and carried on the books of the mutual savings bank as either a deposit with or a loan to the bank. [1971 ex.s. c 222 § 3.]

**Severability—1971 ex.s. c 222:** See note following RCW 32.04.085.

**32.20.440 Purchase of United States securities from banks or trust companies.** A mutual savings bank may invest its funds in the purchase of United States government securities from a bank or trust company, subject to the selling bank's or trust company's agreement to repurchase such securities on the business day next following their purchase by the mutual savings bank. The securities may be purchased at par, or at a premium or discount, as the mutual savings bank may agree, and may be characterized for accounting and statement purposes and carried on the books of the mutual savings bank as such securities to the extent of their market value, and as due from such banks or trust companies to the extent that the repurchase price agreed to be paid exceeds such market value. [1971 ex.s. c 222 § 4.]

**Severability—1971 ex.s. c 222:** See note following RCW 32.04.085.

**32.20.445 Stock, other securities, and obligations of federally insured institutions.** A savings bank may invest its funds in the stock and other securities and obligations of a savings or banking institution or holding company thereof if the deposits of the savings or banking institution are insured by the federal deposit insurance corporation or any other federal instrumentalities established to carry on substantially the same functions as such corporations. [1999 c 14 § 29; 1989 c 180 § 8.]

**Severability—1999 c 14:** See RCW 32.35.900.

**32.20.450 Low-cost housing—Legislative finding.** The legislature finds there is a shortage of adequate housing in a suitable environment in many parts of this state for people of modest means, which shortage adversely affects the

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public in general and the mutual savings banks of this state and their depositors. The legislature further finds that the making of loans or investments to alleviate this problem which may provide a less than market rate of return and entail a higher degree of risk than might otherwise be acceptable, will benefit this state, the banks, and their depositors. [1973 1st ex.s. c 31 § 1.]

**Construction—1973 1st ex.s. c 31:** See RCW 32.20.500.

**32.20.460 Low-cost housing—Factory built housing—Mobile homes.** In addition to the portions of its funds permitted to be invested in real estate loans under RCW 32.20.410, a mutual savings bank may invest not to exceed fifteen percent of its funds in loans and investments as follows:

(1) Loans for the rehabilitation, remodeling, or expansion of existing housing.

(2) Loans in connection with, or participation in:

(a) Housing programs of any agency of federal, state, or local government; and

(b) Housing programs of any nonprofit, union, community, public, or quasi-public corporation or entity.

Such housing must be made available to all without regard to race, creed, sex, color, or national origin.

(3) Loans for purchasing or constructing factory built housing, including but not limited to mobile homes. The bank shall determine the amount, security, and repayment basis which it considers prudent for the loans.

(4) In mobile home chattel paper which finances the acquisition of inventory by a mobile home dealer if the inventory is to be held for sale in the ordinary course of business by the mobile home dealer, the monetary obligation evidenced by such chattel paper is the obligation of the mobile home dealer and the amount thereof does not exceed the amount allowed to be loaned on such mobile homes under subsection (3) of this section. [1981 c 86 § 9; 1977 ex.s. c 104 § 9; 1973 1st ex.s. c 31 § 2.]

**Severability—1981 c 86:** See note following RCW 32.08.140.

**Construction—1973 1st ex.s. c 31:** See RCW 32.20.500.

**32.20.470 Improvement of private land for public parks and recreation areas.** Subject to the limits hereinafter set forth, a mutual savings bank may expend its funds for the improvement for public use of privately owned land as parks or recreation areas, including but not limited to "vest pocket" parks, provided that the owner of such land will:

(1) Permit public use thereof for a period of at least eighteen months or for such longer period and subject to such other requirements as the bank may impose; and

(2) At or before the end of public use, permit the removal of all such improvements which in the bank's judgment reasonably may be accomplished.

As used in this section, "public use" means use without regard to race, creed, sex, color, or national origin. The amount expended hereunder and under RCW 32.12.070(2)(d) in any calendar year shall not exceed one-half of one percent of the net earnings of bank for the preceding year. [1973 1st ex.s. c 31 § 3.]

**Construction—1973 1st ex.s. c 31:** See RCW 32.20.500.

**32.20.480 Loans or investments to provide adequate housing and environmental improvements—Criteria—Restrictions.** Loans or investments made under \*this 1973 amendatory act may provide a less than market rate of return and entail a higher degree of risk than might otherwise be acceptable to the general market, so long as the board of trustees of the bank determines the loan or investment may be beneficial to the community where made, without the need to show a direct corporate benefit, and so long as any private individual who benefits is not, and is not related to any person who is, an officer, employee, or trustee of the bank. It is hereby recognized that the mutual savings banks of the state of Washington and their depositors are affected adversely by the absence of adequate low-cost housing and environmental developments and improvements within the communities they serve and the state of Washington.

The amount a mutual savings bank may invest under \*this 1973 amendatory act during any twelve month period at less than a market rate of return shall not exceed two percent of the total principal amount of all real estate loans made by the bank during the preceding twelve months. [1973 1st ex.s. c 31 § 4.]

**\*Reviser's note:** "This 1973 amendatory act" consists of the enactment of RCW 32.20.450, 32.20.460, 32.20.470, 32.20.480, 32.20.490, and 32.20.500 and the amendments to RCW 32.20.280 and 32.20.330 by 1973 1st ex.s. c 31.

**Construction—1973 1st ex.s. c 31:** See RCW 32.20.500.

**32.20.500 Construction—1973 1st ex.s. c 31.** The powers granted by \*this 1973 amendatory act are in addition to and not in limitation of the powers conferred upon a mutual savings bank by other provisions of law. [1973 1st ex.s. c 31 § 8.]

**\*Reviser's note:** For "this 1973 amendatory act," see note following RCW 32.20.480.

## Chapter 32.24 RCW

### INSOLVENCY AND LIQUIDATION

#### Sections

32.24.010	Liquidation of solvent bank.
32.24.020	Procedure to liquidate and dissolve.
32.24.030	Transfer of assets and liabilities to another bank.
32.24.040	Unsafe practices—Notice to correct.
32.24.050	Liquidation of bank in unsound condition or insolvent.
32.24.060	Possession by director—Bank may contest.
32.24.070	Receiver prohibited except in emergency.
32.24.080	Transfer of assets when insolvent—Penalty.
32.24.090	Federal deposit insurance corporation as receiver or liquidator—Appointment—Powers and duties.
32.24.100	Payment or acquisition of deposit liabilities by federal deposit insurance corporation—Not hindered by judicial review—Liability.

**32.24.010 Liquidation of solvent bank.** If the trustees of any solvent mutual savings bank deem it necessary or expedient to close the business of such bank, they may, by affirmative vote of not less than two-thirds of the whole number of trustees, at a meeting called for that purpose, of which one month's notice has been given, either personally or by mailing such notice to the post office address of each trustee, declare by resolution their determination to close such business and pay the moneys due depositors and creditors and to surrender the corporate franchise. Subject to the approval and

under the direction of the director, such savings bank may adopt any lawful plan for closing up its affairs, as nearly as may be in accordance with the original plan and objects. [1994 c 92 § 339; 1955 c 13 § 32.24.010. Prior: 1915 c 175 § 45; RRS § 3374.]

**32.24.020 Procedure to liquidate and dissolve.** When the trustees, acting under the provisions of RCW 32.24.010, have paid the sums due respectively to all creditors and depositors, who, after such notice as the director shall prescribe, claim the money due and their deposits, the trustees shall make a transcript or statement from the books in the bank of the names of all depositors and creditors who have not claimed or have not received the balance of the credit due them, and of the sums due them, respectively, and shall file such transcript with the director and pay over and transfer all such unclaimed and unpaid deposits, credits, and moneys to the director. The trustees shall then report their proceedings, duly verified, to the superior court of the county wherein the bank is located, and upon such report and the petition of the trustees, and after notice to the attorney general and the director, and such other notice as the court may deem necessary, the court shall adjudge the franchise surrendered and the existence of the corporation terminated. Certified copies of the judgment shall be filed in the offices of the secretary of state and the director and shall be recorded in the office of the secretary of state. [1994 c 92 § 340; 1981 c 302 § 29; 1955 c 13 § 32.24.020. Prior: 1931 c 132 § 4; 1915 c 175 § 46; RRS § 3375.]

**Severability—1981 c 302:** See note following RCW 19.76.100.

**32.24.030 Transfer of assets and liabilities to another bank.** An unconverted mutual savings bank may for the purpose of consolidation, acquisition, pooling of assets, merger, or voluntary liquidation arrange for its assets and liabilities to become assets and liabilities of another mutual savings bank, by the affirmative vote or with the written consent of two-thirds of the whole number of its trustees, but only with the written consent of the director and upon such terms and conditions as he or she may prescribe.

Upon any such transfer being made, or upon the liquidation of any such mutual savings bank for any cause whatever, or upon its being no longer engaged in the business of a mutual savings bank, the director shall terminate its certificate of authority, which shall not thereafter be revived or renewed. When the certificate of authority of any such corporation has been revoked, it shall forthwith collect and distribute its remaining assets, and when that is done, the director shall certify the fact to the secretary of state, whereupon the corporation shall cease to exist and the secretary of state shall note the fact upon his or her records.

In case of the consolidation with or voluntary liquidation of a mutual savings bank by another mutual savings bank, as herein provided, any sums advanced by its incorporators, or others, to create or maintain its guaranty fund or its expense fund shall not be liabilities of such mutual savings bank unless the mutual savings bank, so assuming its liabilities shall specifically undertake to pay the same, or a stated portion thereof. [1994 c 92 § 341; 1985 c 56 § 14; 1955 c 13 § 32.24.030. Prior: 1931 c 132 § 5; RRS § 3375a.]

**32.24.040 Unsafe practices—Notice to correct.**

Whenever it appears to the director that any mutual savings bank is conducting its business in an unsafe manner or that it refuses to submit its books, papers, or concerns to lawful inspection, or that any trustee or officer thereof refuses to submit to examination on oath touching its concerns, or that it has failed to carry out any authorized order or direction of the director, such director may give notice to the mutual savings bank so offending or delinquent or whose trustee or officer is thus offending or delinquent to correct such offense or delinquency, and if the mutual savings bank fails to comply with the terms of such notice within thirty days from the date of its issuance, or within such further time as the director may allow, then the director may take possession of such mutual savings bank as in the case of insolvency. [1994 c 92 § 342; 1955 c 13 § 32.24.040. Prior: 1931 c 132 § 6; RRS § 3375b.]

**32.24.050 Liquidation of bank in unsound condition or insolvent.** Whenever it appears to the director that any offense or delinquency referred to in RCW 32.24.040 renders a mutual savings bank in an unsound or unsafe condition to continue its business, or that it has suspended payment of its obligations, or is insolvent, such director may take possession thereof without notice.

Upon taking possession of any mutual savings bank, the director shall forthwith proceed to liquidate the business, affairs, and assets thereof and such liquidation shall be had in accordance with the provisions of law governing the liquidation of insolvent banks and trust companies. [1994 c 92 § 343; 1955 c 13 § 32.24.050. Prior: 1931 c 132 § 7; RRS § 3375c.]

**32.24.060 Possession by director—Bank may contest.**

Within ten days after the director takes possession thereof, a mutual savings bank may serve notice upon such director to appear before the superior court in the county wherein such corporation is located, at a time to be fixed by said court, which shall not be less than five nor more than fifteen days from the date of the service of such notice, to show cause why such corporation should not be restored to the possession of its assets. Upon the return day of such notice, or such further day as the matter may be continued to, the court shall summarily hear said cause and shall dismiss the same, if it finds that possession was taken by the director in good faith and for cause, but if it finds that no cause existed for the taking possession of such corporation, it shall require the director to restore the bank to the possession of its assets and enjoin him or her from further interference therewith without cause. [1994 c 92 § 344; 1955 c 13 § 32.24.060. Prior: 1931 c 132 § 8; RRS § 3375d.]

**32.24.070 Receiver prohibited except in emergency.**

No receiver shall be appointed by any court for any mutual savings bank, nor shall any assignment of any such bank for the benefit of creditors be valid, excepting only that a court otherwise having jurisdiction may in case of imminent necessity appoint a temporary receiver to take possession of and preserve the assets of the mutual savings bank. Immediately upon any such appointment, the clerk of the court shall notify the director by telegram and mail of such appointment and

the director shall forthwith take possession of the mutual savings bank, as in case of insolvency, and the temporary receiver shall upon demand of the director surrender up to him or her such possession and all assets which have come into his or her hands. The director shall in due course pay such receiver out of the assets of the mutual savings bank such amount as the court shall allow. [1994 c 92 § 345; 1955 c 13 § 32.24.070. Prior: 1931 c 132 § 9; RRS § 3375e.]

**32.24.080 Transfer of assets when insolvent—Penalty.**

(1) Every transfer of its property or assets by any mutual savings bank in this state, made (a) after it has become insolvent, (b) within ninety days before the date the director takes possession of such savings bank under RCW 32.24.050 or the federal deposit insurance corporation is appointed as receiver or liquidator of such savings bank under RCW 32.24.090, and (c) with the view to the preference of one creditor over another or to prevent equal distribution of its property and assets among its creditors, shall be void.

(2) Every trustee, officer, or employee making any transfer described in subsection (1) of this section is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 196; 1994 c 92 § 346; 1985 c 56 § 15; 1955 c 13 § 32.24.080. Prior: 1931 c 132 § 10; RRS § 3379a.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**32.24.090 Federal deposit insurance corporation as receiver or liquidator—Appointment—Powers and duties.**

The federal deposit insurance corporation is hereby authorized and empowered to be and act without bond as receiver or liquidator of any mutual savings bank the deposits in which are to any extent insured by that corporation and which shall have been closed on account of inability to meet the demands of its depositors. In the event of such closing, the director may appoint the federal deposit insurance corporation as receiver or liquidator of such mutual savings bank. If the corporation accepts such appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a liquidator of a mutual savings bank, its depositors and other creditors, and be subject to all the duties of such liquidator, except insofar as such powers, privileges, or duties are in conflict with the provisions of the federal deposit insurance act, as now or hereafter amended. [1994 c 92 § 347; 1973 1st ex.s. c 54 § 3.]

**32.24.100 Payment or acquisition of deposit liabilities by federal deposit insurance corporation—Not hindered by judicial review—Liability.**

The pendency of any proceedings for judicial review of the director's actions in taking possession and control of a mutual savings bank and its assets for the purpose of liquidation shall not operate to defer, delay, impede, or prevent the payment or acquisition by the federal deposit insurance corporation of the deposit liabilities of the mutual savings bank which are insured by the corporation. During the pendency of any proceedings for judicial review, the director shall make available to the federal deposit insurance corporation such facilities in or of the mutual savings bank and such books, records, and other relevant data of the mutual savings bank as may be necessary or

appropriate to enable the corporation to pay out or to acquire the insured deposit liabilities of the mutual savings bank. The federal deposit insurance corporation and its directors, officers, agents, and employees, the director, and his or her agents and employees shall be free from liability to the mutual savings bank, its directors, stockholders, and creditors for or on account of any action taken in connection herewith. [1994 c 92 § 348; 1973 1st ex.s. c 54 § 4.]

**Chapter 32.28 RCW**  
**SATELLITE FACILITIES**  
 (See chapter 30.43 RCW)

**Chapter 32.30 RCW**  
**CONVERSION OF MUTUAL SAVINGS BANK TO BUILDING AND LOAN OR SAVINGS AND LOAN ASSOCIATION**  
 (See chapter 33.46 RCW)

**Chapter 32.32 RCW**  
**CONVERSION OF MUTUAL SAVINGS BANK TO CAPITAL STOCK SAVINGS BANK**

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**32.32.010 Chapter exclusive—Prohibition on conversion without approval—Waiver of requirements.** This chapter shall exclusively govern the conversion of mutual savings banks to capital stock savings banks. No mutual savings bank may convert to the capital stock form of organization without the prior written approval of the director pursuant to this chapter, except that the director may waive requirements of this chapter in appropriate cases. [1994 c 92 § 349; 1981 c 85 § 1.]

**32.32.015 Forms.** The director may prescribe under this chapter such forms as the director deems appropriate for use by a mutual savings bank seeking to convert to a capital stock savings bank pursuant to this chapter. [1994 c 92 § 350; 1981 c 85 § 2.]

**32.32.020 Request of noncompliance—Requirements.** (1) If an applicant finds that compliance with any provision of this chapter would be in conflict with applicable federal law, the director shall grant or deny a request of noncompliance with the provision. The request may be incorporated in the application for conversion; otherwise, the applicant shall file the request in accordance with the requirements of the director.

(2) In making any such request, the applicant shall:

(a) Specify the provision or provisions of this chapter with respect to which the applicant desires waiver;

(b) Furnish an opinion of counsel demonstrating that applicable federal law is in conflict with the specified provision or provisions of this chapter; and

(c) Demonstrate that the requested waiver would not result in any effects that would be inequitable or detrimental to the applicant, its account holders, or other financial institutions or would be contrary to the public interest. [1994 c 92 § 351; 1981 c 85 § 3.]

**32.32.025 Definitions.** As used in this chapter, the following definitions apply, unless the context otherwise requires:

(1) Except as provided in RCW 32.32.230, an "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(3) An "applicant" is a mutual savings bank which has applied to convert pursuant to this chapter.

(4) The term "associate", when used to indicate a relationship with any person, means (a) any corporation or organization (other than the applicant or a majority-owned subsidiary of the applicant) of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of equity securities, (b) any trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity, and (c) any relative who would be a "class A beneficiary" if the person were a decedent.

(5) The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(6) The term "capital stock" includes permanent stock, guaranty stock, permanent reserve stock, any similar certificate evidencing nonwithdrawable capital, or preferred stock, of a savings bank converted under this chapter or of a subsidiary institution or holding company.

(7) The term "charter" includes articles of incorporation, articles of reincorporation, and certificates of incorporation, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated person.

(8) Except as provided in RCW 32.32.230, the term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(9) The term "dealer" means any person who engages either for all or part of his or her time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(10) The term "deposits" refers to the deposits of a savings bank that is converting under this chapter, and may refer in addition to the deposits or share accounts of any other financial institution that is converting to the stock form in connection with a merger with and into a savings bank.

(11) The term "director" means any director of a corporation, any trustee of a mutual savings bank, or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(12) The term "eligibility record date" means the record date for determining eligible account holders of a converting mutual savings bank.

(13) The term "eligible account holder" means any person holding a qualifying deposit as determined in accordance with RCW 32.32.180.

(14) The term "employee" does not include a director or officer.

(15) The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or

right to subscribe to or purchase such a security; or any such warrant or right.

(16) The term "market maker" means a dealer who, with respect to a particular security, (a) regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or (b) furnishes bona fide competitive bid and offer quotations on request; and (c) is ready, willing, and able to effect transaction in reasonable quantities at his or her quoted prices with other brokers or dealers.

(17) The term "material", when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant.

(18) The term "mutual savings bank" means a mutual savings bank organized and operating under Title 32 RCW.

(19) Except as provided in RCW 32.32.435, the term "offer", "offer to sell", or "offer of sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with an applicant.

(20) The term "officer", for purposes of the purchase of stock in a conversion under this chapter or the sale of this stock, means the chairman of the board, president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

(21) Except as provided in RCW 32.32.435, the term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.

(22) The term "proxy" includes every form of authorization by which a person is or may be deemed to be designated to act for a stockholder in the exercise of his or her voting rights in the affairs of an institution. Such an authorization may take the form of failure to dissent or object.

(23) The terms "purchase" and "buy" include every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

(24) The terms "sale" and "sell" include every contract to sell or otherwise dispose of a security or interest in a security for value; but these terms do not include an exchange of securities in connection with a merger or acquisition approved by the director.

(25) The term "savings account" means deposits established in a mutual savings bank and includes certificates of deposit.

(26) Except as provided in RCW 32.32.435, the term "security" includes any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting-trust certificate, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase any of the foregoing.

(27) The term "series of preferred stock" refers to a subdivision, within a class of preferred stock, each share of which has preferences, limitations, and relative rights identical with those of other shares of the same series.

(28) The term "subscription offering" refers to the offering of shares of capital stock, through nontransferable subscription rights issued to: (a) Eligible account holders as required by RCW 32.32.045; (b) supplemental eligible account holders as required by RCW 32.32.055; (c) directors, officers, and employees, as permitted by RCW 32.32.140; and (d) eligible account holders and supplemental eligible account holders as permitted by RCW 32.32.145.

(29) A "subsidiary" of a specified person is an affiliate controlled by the person, directly or indirectly through one or more intermediaries.

(30) The term "supplemental eligibility record date" means the supplemental record date for determining supplemental eligible account holders of a converting savings bank required by RCW 32.32.055. The date shall be the last day of the calendar quarter preceding director approval of the application for conversion.

(31) The term "supplemental eligible account holder" means any person holding a qualifying deposit, except officers, directors, and their associates, as of the supplemental eligibility record date.

(32) The term "underwriter" means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but the term does not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers commission. The term "principal underwriter" means an underwriter in privity of contract with the applicant or other issuer of securities as to which that person is the underwriter.

Terms defined in other chapters of this title, when used in this chapter, shall have the meanings given in those definitions, to the extent those definitions are not inconsistent with the definitions contained in this chapter unless the context otherwise requires. [1995 c 134 § 7. Prior: 1994 c 256 § 105; 1994 c 92 § 352; 1985 c 56 § 16; 1981 c 85 § 4.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.32.030 Prohibition on approval of certain applications for conversion.** No application for conversion may be approved by the director if:

(1) The plan of conversion adopted by the applicant's board of directors is not in accordance with this chapter;

(2) The conversion would result in a reduction of the applicant's net worth below requirements established by the director;

(3) The conversion may result in a taxable reorganization of the applicant under the United States Internal Revenue Code of 1954, as amended; or

(4) The converted savings bank does not meet the insurance requirements as established by the director. [1994 c 92 § 353; 1981 c 85 § 5.]

**32.32.035 Requirements of plan of conversion.** The plan of conversion shall contain all of the provisions set forth in RCW 32.32.040 through 32.32.125. [1981 c 85 § 6.]

**32.32.040 Issuance of capital stock—Price.** A converted savings bank or a holding company organized pursuant to chapter 32.34 RCW shall issue and sell capital stock at a total price equal to the estimated pro forma market value of the stock issued in connection with the conversion, based on an independent valuation, as provided in RCW 32.32.305. In the conversion of a mutual savings bank or holding company, either of which is in the process of merging with, being acquired by, or consolidating with a stock savings bank, or a savings bank holding company owned by stockholders, or a subsidiary thereof, the following subsections apply:

(1) The price per share of the shares offered for subscription and issued in the conversion shall be not less than the price reported for stock which is listed on a national or regional stock exchange, or the bid price for stock which is traded on the NASDAQ system, as of the day before any public offering or other completion of the sale of stock in the conversion: PROVIDED, That for stock not so listed and not traded on the NASDAQ system, and any stock whose price has been affected, as of the day specified above, by a violation of RCW 32.32.225, the price per share shall be determined by the director, upon the submission of such information as the director may request.

(2) The independent valuation as provided in RCW 32.32.305 shall determine the aggregate value of shares for which subscription rights are granted pursuant to RCW 32.32.045, 32.32.050, and 32.32.055, rather than a price per share or number of shares as provided in RCW 32.32.290, 32.32.325, and 32.32.330. This independent valuation may be replaced by a demonstration, to the satisfaction of the director, of the fairness of the price of the shares issued. [1994 c 92 § 354; 1985 c 56 § 17; 1981 c 85 § 7.]

**32.32.042 Shares—Certificate not required.** (1) Shares of a savings bank may, but need not be, represented by certificates. Unless this title expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates. At a minimum, each share certificate must state the information required to be stated and must be signed as provided in RCW 23B.06.250 and/or 23B.06.270 for corporations.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a savings bank may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the savings bank.

(3) Within a reasonable time after the issue or transfer of shares without certificates, the savings bank shall send the shareholder a written statement of the information required to be stated on certificates under subsection (1) of this section. [1994 c 256 § 114.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.32.045 Stock purchase subscription rights—Eligible account holders.** Each eligible account holder shall

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receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greatest of two hundred shares, one-tenth of one percent of the total offering of shares, or fifteen times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the eligible account holder and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting savings bank. If the allotment made in this section results in an oversubscription, shares shall be allocated among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase a number of shares sufficient to make his total allocation equal to one hundred shares. Any shares not so allocated shall be allocated among the subscribing eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion. [1981 c 85 § 8.]

**32.32.050 Stock purchase subscription rights received by officers, directors, and their associates—Subordination.** Nontransferable subscription rights to purchase capital stock received by officers and directors and their associates of the converting savings bank based on their increased deposits in the converting savings bank in the one-year period preceding the eligibility record date shall be subordinated to all other subscriptions involving the exercise of nontransferable subscription rights to purchase shares pursuant to RCW 32.32.045. [1981 c 85 § 9.]

**32.32.055 Supplemental share purchase subscription rights—Supplemental eligible account holder—Conditions.** In plans involving an eligibility record date that is more than fifteen months prior to the date of the latest amendment to the application for conversion filed prior to the director approval, a supplemental eligibility record date shall be determined whereby each supplemental eligible account holder of the converting savings bank shall receive, without payment, nontransferable subscription rights to purchase supplemental shares in an amount equal to the greatest of two hundred shares, one-tenth of one percent of the total offering of shares, or fifteen times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the supplemental eligible account holder and the denominator is the total amount of the qualifying deposits of all supplemental eligible account holders in the converting savings bank on the supplemental eligibility record date.

(1) Subscription rights received pursuant to this section shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to RCW 32.32.045 and 32.32.050.

(2) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with RCW 32.32.045 shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to this section.

(3) In the event of an oversubscription for supplemental shares pursuant to this section, shares shall be allocated among the subscribing supplemental eligible account holders as follows:

(a) Shares shall be allocated among subscribing supplemental eligible account holders so as to permit each such supplemental account holder, to the extent possible, to purchase a number of shares sufficient to make the supplemental account holder's total allocation (including the number of shares, if any, allocated in accordance with RCW 32.32.045) equal to one hundred shares.

(b) Any shares not allocated in accordance with subsection (3)(a) of this section shall be allocated among the subscribing supplemental eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion. [1994 c 92 § 355; 1981 c 85 § 10.]

**32.32.060 Sale of shares not sold in subscription offering—Methods—Conditions.** Any shares of the converting savings bank not sold in the subscription offering shall either be sold in a public offering through an underwriter or directly by the converting savings bank in a direct community marketing, subject to the applicant demonstrating to the director the feasibility of the method of sale and to such conditions as may be provided in the plan of conversion. The conditions shall include, but not be limited to:

(1) A condition limiting purchases by each officer and director or their associates in this phase of the offering to one-tenth of one percent of the total offering of shares.

(2) A condition limiting purchases by any person and that person's associates in this phase of the offering to a number of shares or a percentage of the total offering so long as the limitation does not exceed two percent of the shares to be sold in the total offering.

(3) A condition that any direct community offering by the converting savings bank shall give a preference to natural persons residing in the counties in which the savings bank has an office. The methods by which preference shall be given shall be approved by the director. [1994 c 92 § 356; 1981 c 85 § 11.]

**32.32.065 Limitation on subscription and purchase of shares by person with associate or group—Amount.** The number of shares which any person together with any associate or group of persons acting in concert may subscribe for or purchase in the conversion shall not exceed five percent of the total offering of shares. For purposes of this section, the members of the converting savings bank's board of directors shall not be deemed to be associates or a group acting in concert solely as a result of their board membership. [1981 c 85 § 12.]

**32.32.070 Limitation on purchase of shares by officers, directors, and their associates—Amount.** The number of shares which officers and directors of the converting savings bank and their associates may purchase in the conversion shall not exceed twenty-five percent of the total offering of shares. [1981 c 85 § 13.]

**32.32.075 Prohibition on purchase of shares by officers, directors, and their associates—Exception.** No officer or director, or their associates, may purchase without the prior written approval of the director the capital stock of the converted savings bank except from a broker or a dealer registered with the Securities and Exchange Commission for a period of three years following the conversion. This provision shall not apply to negotiated transactions involving more than one percent of the outstanding capital stock of the converted savings bank.

As used in this section, the term "negotiated transactions" means transactions in which the securities are offered and the terms and arrangements relating to any sale of the securities are arrived at through direct communications between the seller or any person acting on the seller's behalf and the purchaser or the purchaser's investment representative. The term "investment representative" means a professional investment adviser acting as agent for the purchaser and independent of the seller and not acting on behalf of the seller in connection with the transaction. [1994 c 92 § 357; 1981 c 85 § 14.]

**32.32.080 Uniform sales price of shares required—Application to specify arrangements on sale of shares not sold in subscription offering.** The sales price of the shares of capital stock to be sold in the conversion shall be a uniform price determined in accordance with RCW 32.32.290, 32.32.305, and 32.32.325. The applicant shall specify in its conversion application the underwriting and/or other marketing arrangements to be made to assure the sale of all shares not sold in the subscription offering. [1981 c 85 § 15.]

**32.32.085 Savings account holder to receive withdrawable savings account(s)—Amount.** Each savings account holder of the converting savings bank shall receive, without payment, a withdrawable savings account or accounts in the converted savings bank equal in withdrawable amount to the withdrawal value of the account holder's savings account or accounts in the converting savings bank. [1981 c 85 § 16.]

**32.32.090 Liquidation account—Establishment and maintenance required.** A converting savings bank shall establish and maintain a liquidation account for the benefit of eligible account holders and supplemental eligible account holders in the event of a subsequent complete liquidation of the converted savings bank, in accordance with RCW 32.32.185 through 32.32.205. [1981 c 85 § 17.]

**32.32.095 Establishment of eligibility record date required.** The applicant shall establish an eligibility record date, which shall not be less than ninety days prior to the date of adoption of the plan by the converting savings bank's board of directors. [1981 c 85 § 18.]

**32.32.100 Capital stock—Voting rights.** The holders of the capital stock of the converted savings bank shall have exclusive voting rights. [1981 c 85 § 19.]

**32.32.105 Amendment and termination of plan of conversion.** The plan of conversion adopted by the applicant's board of directors may be amended by the board of directors with the concurrence of the director at any time prior to final approval of the director and may be terminated with the concurrence of the director at any time prior to issuance of the authorization certificate by the director. [1994 c 92 § 358; 1981 c 85 § 20.]

**32.32.110 Restriction on sale of shares of stock by directors and officers.** All shares of capital stock purchased by directors and officers on original issue in the conversion either directly from the savings bank (by subscription or otherwise) or from an underwriter of the shares shall be subject to the restriction that the shares shall not be sold for a period of not less than three years following the date of purchase, except in the event of death of the director or officer. [1981 c 85 § 21.]

**32.32.115 Conditions on shares of stock subject to restriction on sale.** In connection with shares of capital stock subject to restriction on sale for a period of time:

(1) Each certificate for the stock shall bear a legend giving appropriate notice of the restriction;

(2) Appropriate instructions shall be issued to the transfer agent for the capital stock with respect to applicable restrictions on transfer of any such restricted stock; and

(3) Any shares issued as a stock dividend, stock split, or otherwise with respect to any such restricted stock shall be subject to the same restrictions as may apply to the restricted stock. [1985 c 56 § 18; 1981 c 85 § 22.]

**32.32.120 Registration of securities—Marketing of securities—Listing of shares on securities exchange or NASDAQ quotation system.** A converted savings bank or holding company formed under chapter 32.34 RCW shall:

(1) Promptly following its conversion register the securities issued in connection therewith pursuant to the Securities and Exchange Act of 1934 and undertake not to deregister the securities for a period of three years thereafter;

(2) Use its best efforts to encourage and assist a market maker to establish and maintain a market for the securities issued in connection with the conversion; and

(3) Use its best efforts to list those shares issued in connection with the conversion on a national or regional securities exchange or on the NASDAQ quotation system. [1985 c 56 § 19; 1981 c 85 § 23.]

**32.32.125 Reasonable expenses required.** The expenses incurred in the conversion shall be reasonable. [1981 c 85 § 24.]

**32.32.130 Plan of conversion—Prohibited provisions.** The plan of conversion shall contain no provision which the director determines to be inequitable or detrimental to the applicant, its savings account holders, or other savings banks or to be contrary to the public interest. [1994 c 92 § 359; 1981 c 85 § 25.]

**32.32.135 Plan of conversion—Permissible provisions.** The plan of conversion may contain any of the provisions set forth in RCW 32.32.140 through 32.32.170. [1981 c 85 § 26.]

**32.32.140 Purchase of certain shares of stock by directors, officers, and employees permitted—Conditions.** Directors, officers, and employees of the converting savings bank, as part of the subscription offering, may be entitled to purchase shares of capital stock, to the extent that shares are available after satisfying the subscriptions of eligible account holders and supplemental eligible account holders, subject to the following conditions:

(1) The total number of shares which may be purchased under this section shall not exceed twenty-five percent of the total number of shares to be issued in the case of a converting savings bank with total assets of less than fifty million dollars or fifteen percent in the case of a converting savings bank with total assets of five hundred million dollars or more; in the case of a converting savings bank with total assets of fifty million dollars or more but less than five hundred million dollars, the percentage shall be no more than a correspondingly appropriate number of shares based on total asset size (for example, twenty percent in the case of a converting savings bank with total assets of approximately two hundred seventy five million dollars); and

(2) The shares shall be allocated among directors, officers, and employees on an equitable basis such as by giving weight to period of service, compensation, and position, subject to a reasonable limitation on the amount of shares which may be purchased by any person or associate thereof, or group of affiliated persons or group of persons otherwise acting in concert. [1981 c 85 § 27.]

**32.32.145 Receipt of certain subscription rights by account holders permitted—Amount—Conditions.** Any account holder receiving rights to purchase stock in the subscription offering may also receive, without payment, non-transferable subscription rights to purchase up to one percent of the total offering of shares of capital stock, to the extent that the shares are available after satisfying the subscription under RCW 32.32.045 and 32.32.055, subject to such conditions as may be provided in the plan of conversion. In the event of an oversubscription for the additional shares, the shares available shall be allocated among the subscribing eligible account holders and supplemental eligible account holders on such equitable basis, related to the amounts of their respective subscriptions, as may be provided in the plan of conversion. Where possible the subscriptions shall be allocated in such a manner that total purchases by eligible account holders and supplemental eligible account holders shall be rounded to the nearest one hundred shares. [1981 c 85 § 28.]

**32.32.150 Permissible sales of insignificant residue of shares.** Any insignificant residue of shares not sold in the subscription offering or in a public offering referred to in RCW 32.32.060 may be sold in such other manner as provided in the plan with the director's approval. [1994 c 92 § 360; 1985 c 56 § 20; 1981 c 85 § 29.]

**32.32.155 Limitation on number of shares subscribed in subscription offering permitted.** The number of shares which any person, or group of persons affiliated with each other or otherwise acting in concert, may subscribe for in the subscription offering may be made subject to a limit of not less than one percent of the total offering of shares. [1981 c 85 § 30.]

**32.32.160 Minimum purchase requirement in exercise of subscription rights permitted.** Any person exercising subscription rights to purchase capital stock may be required to purchase a minimum of up to twenty-five shares to the extent the shares are available (but the aggregate price for any minimum share purchase shall not exceed five hundred dollars). [1981 c 85 § 31.]

**32.32.165 Stock option plan permitted—Reserved shares.** A stock option plan may be adopted by the board of directors at the meeting at which the plan of conversion is voted upon. The number of shares reserved for the stock option plans should be limited to ten percent of the number of shares sold in the conversion. [1981 c 85 § 32.]

**32.32.170 Issuance of securities in lieu of capital stock permitted—References to capital stock.** The converted savings bank may issue and sell, in lieu of shares of its capital stock, units of securities consisting of capital stock or other equity securities, in which event any reference in this chapter to capital stock shall apply to the units of equity securities unless the context otherwise requires. [1981 c 85 § 33.]

**32.32.175 Approval of other equitable provisions.** The director may approve such other equitable provisions as are necessary to avert imminent injury to the converting savings bank. [1994 c 92 § 361; 1981 c 85 § 34.]

**32.32.180 Amount of qualifying deposit of eligible account holder or supplemental eligible account holder.** (1) Unless otherwise provided in the plan of conversion, the amount of the qualifying deposit of an eligible account holder or supplemental eligible account holder shall be the total of the deposit balances in the eligible account holder's or supplemental eligible account holder's savings accounts in the converting savings bank as of the close of business on the eligibility record date or supplemental eligibility record date. However, the plan of conversion may provide that any savings accounts with total deposit balances of less than fifty dollars (or any lesser amount) shall not constitute a qualifying deposit.

(2) As used in this section, the term "savings account" includes a predecessor or successor account of a given savings account which is held only in the same right and capacity and on the same terms and conditions as the given savings account. However, the plan of conversion may provide for lesser requirements for consideration as a predecessor or successor account. [1981 c 85 § 35.]

**32.32.185 Liquidation account—Establishment required—Amount—Function.** Each converted savings bank shall, at the time of conversion, establish a liquidation

account in an amount equal to the amount of net worth of the converting savings bank as of the latest practicable date prior to conversion. For the purposes of this section, the savings bank shall use the net worth figure no later than that set forth in its latest statement of financial condition contained in the final offering circular. The function of the liquidation account is to establish a priority on liquidation and, except as provided in RCW 32.32.215, the existence of the liquidation account shall not operate to restrict the use or application of any of the net worth accounts of the converted savings bank. [1981 c 85 § 36.]

**32.32.190 Liquidation account—Maintenance required—Subaccounts.** The liquidation account shall be maintained by the converted savings bank for the benefit of eligible account holders and supplemental eligible account holders who maintain their savings accounts in the bank. Each such eligible account holder shall, with respect to each savings account, have a related inchoate interest in a portion of the liquidation account balance ("subaccount"). [1981 c 85 § 37.]

**32.32.195 Liquidation account—Distribution upon complete liquidation.** In the event of a complete liquidation of the converted savings bank (and only in this event), each eligible account holder and supplemental eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account, in the amount of the then current adjusted subaccount balances for savings accounts then held, before any liquidation distribution may be made with respect to capital stock. No merger, consolidation, purchase of bulk assets with assumption of savings accounts and other liabilities, or similar transaction, in which the converted savings bank is not the survivor, is considered to be a complete liquidation for this purpose. In these transactions, the liquidation account shall be assumed by the surviving institution. [1981 c 85 § 38.]

**32.32.200 Liquidation account—Determination of subaccount balances.** The initial subaccount balance for a savings account held by an eligible account holder and/or supplemental eligible account holder shall be determined by multiplying the opening balance in the liquidation account by a fraction of which the numerator is the amount of qualifying deposits in the savings account on the eligibility record date and/or the supplemental eligibility record date and the denominator is the total amount of qualifying deposits of all eligible account holders and supplemental eligible account holders in the converting savings bank on these dates. For savings accounts in existence at both dates, separate subaccounts shall be determined on the basis of the qualifying deposits in these savings accounts on these record dates. The initial subaccount balances shall not be increased, and it shall be subject to downward adjustment as provided in RCW 32.32.205. [1981 c 85 § 39.]

**32.32.205 Reduction of subaccount balance.** If the deposit balance in any savings account of an eligible account holder or supplemental eligible account holder at the close of business on any annual closing date subsequent to the respec-

tive record dates is less than the lesser of (1) the deposit balance in the savings account at the close of business on any other annual closing date subsequent to the eligibility record date or (2) the amount of qualifying deposit as of the eligibility record date or the supplemental eligibility record date, the subaccount balance for the savings account shall be adjusted by reducing the subaccount balance in an amount proportionate to the reduction in the deposit balance. In the event of such a downward adjustment, the subaccount balance shall not be subsequently increased, notwithstanding any increase in the deposit balance of the related savings account. If any such savings account is closed, the related subaccount balance shall be reduced to zero. [1981 c 85 § 40.]

**32.32.210 Converted savings bank prohibited from repurchasing its stock without approval.** No converted savings bank may repurchase any of its capital stock from any person unless the repurchase is approved by the director either in advance or at the time of repurchase. [1994 c 92 § 362; 1985 c 56 § 21; 1981 c 85 § 41.]

**32.32.215 Limitation on cash dividends.** Except as provided in RCW 32.32.222, no converted savings bank may declare or pay a cash dividend unless the declaration or payment of the dividend would be in accordance with the requirements of RCW 30.04.180 and would not have the effect of reducing the net worth of the converted savings bank below (1) the amount required for the liquidation account or (2) the amount required by the director. [1994 c 92 § 363; 1985 c 56 § 22; 1981 c 85 § 42.]

**32.32.220 Limitation on certain cash dividends within ten years of conversion.** Except as provided in RCW 32.32.222, no converted savings bank may, without the prior approval of the director, for a period of ten years after the date of its conversion, declare or pay a cash dividend on its capital stock in an amount in excess of one-half of the greater of:

- (1) The savings bank's net income for the current fiscal year; or
- (2) The average of the savings bank's net income for the current fiscal year and not more than two of the immediately preceding fiscal years.

For purposes of this chapter, "net income" shall be determined by generally accepted accounting principles. [1994 c 92 § 364; 1985 c 56 § 23; 1981 c 85 § 43.]

**32.32.222 Dividends on preferred stock.** A converted mutual savings bank may pay dividends on preferred stock at the rate or rates agreed in connection with the issuance of preferred stock if such issuance has been approved by the director. [1994 c 92 § 365; 1985 c 56 § 24.]

**32.32.225 Prohibitions on offer, sale, or purchase of securities.** In the offer, sale, or purchase of securities issued incident to its conversion, no savings bank, or any director, officer, attorney, agent, or employee thereof, may (1) employ any device, scheme, or artifice to defraud, or (2) obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact neces-

sary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller. [1981 c 85 § 44.]

**32.32.228 Acquisition of control of a converted savings bank.** (1) As used in this section, the following definitions apply:

(a) "Control" means directly or indirectly alone or in concert with others to own, control, or hold the power to vote twenty-five percent or more of the outstanding stock or voting power of the controlled entity;

(b) "Acquiring party" means the person acquiring control of a bank through the purchase of stock;

(c) "Person" means any individual, corporation, partnership, group acting in concert, association, business trust, or other organization.

(2)(a) It is unlawful for any person to acquire control of a converted savings bank until thirty days after filing with the director a completed application. The application shall be under oath or affirmation, and shall contain substantially all of the following information plus any additional information that the director may prescribe as necessary or appropriate in the particular instance for the protection of bank depositors, borrowers, or shareholders and the public interest:

(i) The identity and banking and business experience of each person by whom or on whose behalf acquisition is to be made;

(ii) The financial and managerial resources and future prospects of each person involved in the acquisition;

(iii) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(iv) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(v) Any plan or proposal which any person making the acquisition may have to liquidate the bank, to sell its assets, to merge it with any other bank, or to make any other major change in its business or corporate structure or management;

(vi) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation;

(vii) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition; and

(viii) Such additional information as shall be necessary to satisfy the director, in the exercise of the director's discretion, that each such person and associate meets the standards of character, responsibility, and general fitness established for incorporators of a savings bank under RCW 32.08.040.

(b) Notwithstanding any other provision of this section, a bank or bank holding company which has been in operation for at least three consecutive years or a converted mutual sav-

ings bank or the holding company of a mutual savings bank need only notify the director and the savings bank to be acquired of an intent to acquire control and the date of the proposed acquisition of control at least thirty days before the date of the acquisition of control.

(c) When a person, other than an individual or corporation, is required to file an application under this section, the director may require that the information required by (a) (i), (ii), (vi), and (viii) of this subsection be given with respect to each person, as defined in subsection (1)(c) of this section, who has an interest in or controls a person filing an application under this subsection.

(d) When a corporation is required to file an application under this section, the director may require that information required by (a) (i), (ii), (vi), and (viii) of this subsection be given for the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation.

(e) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the securities act of 1933 (48 Stat. 74, 15 U.S.C. Sec. 77(a)), as amended, or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934 (48 Stat. 881, 15 U.S.C. Sec. 78(a)), as amended, the registration statement or application may be filed with the director in lieu of the requirements of this section.

(f) Any acquiring party shall also deliver a copy of any notice or application required by this section to the savings bank proposed to be acquired within two days after such notice or application is filed with the director.

(g) Any acquisition of control in violation of this section shall be ineffective and void.

(h) Any person who willfully or intentionally violates this section or any rule adopted under this section is guilty of a gross misdemeanor pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation, and any person shall upon conviction be fined not more than one thousand dollars for each day the violation continues.

(3) The director may disapprove the acquisition of a savings bank within thirty days after the filing of a complete application pursuant to subsections (1) and (2) of this section or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring party might jeopardize the financial stability of the savings bank or might prejudice the interest of depositors, borrowers, or shareholders;

(b) The plan or proposal of the acquiring party to liquidate the savings bank, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to its depositors, borrowers, or stockholders or is not in public interest;

(c) The banking and business experience and integrity of any acquiring party who would control the operation of the savings bank indicates that approval would not be in the interest of the savings bank's depositors, borrowers, or shareholders;

(d) The information provided by the application is insufficient for the director to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(e) The acquisition would not be in the public interest.

An acquisition may be made prior to expiration of the disapproval period if the director issues written notice of intent not to disapprove the action.

The director shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure under chapter 42.17 RCW unless the findings and/or order are appealed pursuant to chapter 34.05 RCW.

Whenever such a change in control occurs, each party to the transaction shall report promptly to the director any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(4)(a) For a period of ten years following the acquisition of control by any person, neither such acquiring party nor any associate shall receive any loan or the use of any of the funds of, nor purchase, lease, or otherwise receive any property from, nor receive any consideration from the sale, lease, or any other conveyance of property to, any savings bank in which the acquiring party has control except as provided in (b) of this subsection.

(b) Upon application by any acquiring party or associate subject to (a) of this subsection, the director may approve a transaction between a converted savings bank and such acquiring party, person, or associate, upon finding that the terms and conditions of the transaction are at least as advantageous to the savings bank as the savings bank would obtain in a comparable transaction with an unaffiliated person.

(5) Except with the consent of the director, no converted savings bank shall, for the purpose of enabling any person to purchase any or all shares of its capital stock, pledge or otherwise transfer any of its assets as security for a loan to such person or to any associate, or pay any dividend to any such person or associate. Nothing in this section shall prohibit a dividend of stock among shareholders in proportion to their shareholdings. In the event any clause of this section is declared to be unconstitutional or otherwise invalid, all remaining dependent and independent clauses of this section shall remain in full force and effect. [1994 c 92 § 366; 1989 c 180 § 6; 1985 c 56 § 25.]

**32.32.230 Nonapproval of conversion unless acquisition of control within three years by certain companies prohibited.**

(1) No conversion may be approved by the director unless the plan of conversion provides that the converted savings bank shall enter into an agreement with the director, in form satisfactory to the director, which shall provide that for a period of three years following the conversion any company significantly engaged in an unrelated business activity, either directly or through an affiliate thereof, shall not be permitted, regardless of the form of the transaction, to

acquire control of the converted savings bank. Any acquisition of a converted savings bank shall also comply with RCW 32.32.228.

(2) As used in this section:

(a) The term "affiliate" means any person or company which controls, is controlled by, or is under common control with, a specified company.

(b) A person or company shall be deemed to have "control" of:

(i) A savings bank if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than twenty-five percent of the voting shares of the savings bank, or controls in any manner the election of a majority of the directors of the bank;

(ii) Any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than twenty-five percent of the voting shares or rights of the other company, or controls in any manner the election or appointment of a majority of the directors or trustees of the other company, or is a general partner in or has contributed more than twenty-five percent of the capital of the other company;

(iii) A trust if the person is a trustee thereof; or

(iv) A savings bank or any other company if the director determines, after reasonable notice and opportunity for hearing, that the person directly or indirectly exercises a controlling influence over the management or policies of the savings bank or other company.

(c) A company shall be deemed to be "significantly engaged" in an unrelated business activity if its unrelated business activities would represent, on either an actual or a pro forma basis, more than fifteen percent of its consolidated net worth at the close of this preceding fiscal year or of its consolidated net earnings for such fiscal year.

(d) The term "unrelated business activity" means any business activity not authorized for a savings bank or any subsidiary thereof. [1994 c 92 § 367; 1985 c 56 § 26; 1981 c 85 § 45.]

**32.32.235 Plan of conversion—Charter restrictions permitted.** To the extent permitted by applicable federal or state law, a plan of conversion may provide for a provision in the charter of the converted savings bank containing, in substance, the restriction set forth in RCW 32.32.230. There may also be included a restriction providing that the charter provision may be amended only by a vote of up to seventy-five percent of the votes eligible to be cast at a regular or special meeting of shareholders of the converted savings bank. If the converted savings bank elects to adopt the foregoing optional charter provision, the director shall impose, as a condition to approval of the conversion, a requirement that the converted savings bank fully enforce the charter provision. [1994 c 92 § 368; 1981 c 85 § 46.]

**32.32.240 Confidentiality of consideration to convert—Remedial measures for breach.** A savings bank which is considering converting pursuant to this chapter and

its directors, officers, and employees shall keep this consideration in the strictest confidence and shall only discuss the potential conversion as would be consistent with the need to prepare information for filing an application for conversion. Should this confidence be breached the director may require remedial measures including:

(1) A public statement by the savings bank that its board of directors is currently considering converting pursuant to this chapter;

(2) Providing for an eligibility record date which shall be as of such a date prior to the adoption of the plan by the converting savings bank's board of directors as to assure the equitability of the conversion;

(3) Limitation of the subscription rights of any person violating or aiding the violation of this section to an amount deemed appropriate by the director; and

(4) Any other actions the director may deem appropriate and necessary to assure the fairness and equitability of the conversion. [1994 c 92 § 369; 1981 c 85 § 47.]

**32.32.245 Public statement authorized.** If it should become essential as a result of rumors prior to the adoption of a plan of conversion by the applicant's board of directors, a public statement limited to that purpose may be made by the applicant. [1981 c 85 § 48.]

**32.32.250 Adoption of plan of conversion—Notice to and inspection by account holders—Statement and letter—Press release authorized.** Promptly after the adoption of a plan of conversion by not less than two-thirds of its board of directors, the savings bank shall:

(1) Notify its account holders of the action by publishing a statement in a newspaper having general circulation in each community in which an office of the savings bank is located and/or by mailing a letter to each of its account holders; and

(2) Have copies of the adopted plan of conversion available for inspection by its account holders at each office of the savings bank.

The savings bank may also issue a press release with respect to the action. Copies of the proposed statement, letter, and press release are not required to be filed with the director but may be submitted to the director for comment. Copies of the definitive statement, letter, and press release shall be filed with the director as part of the application for conversion. [1994 c 92 § 370; 1981 c 85 § 49.]

**32.32.255 Statement, letter, and press release—Content permitted.** The statement, letter, and press release of the applicant issued pursuant to RCW 32.32.250, unless otherwise authorized by the director, shall contain only (but need not contain all of) the following:

(1) A statement that the board of directors has adopted a plan to convert the savings bank from a mutual savings bank to a capital stock savings bank;

(2) A statement that the plan of conversion is subject to approval by the director and by the appropriate federal regulatory authority or authorities (naming such an authority or authorities) before the plan can become effective and that account holders of the applicant will have an opportunity to

file written comments including objections and materials supporting the objections with the director;

(3) A statement that the plan of conversion is contingent upon obtaining favorable tax rulings from the Internal Revenue Service or an appropriate tax opinion;

(4) A statement that there is no assurance that the approval of the director or the approval of any appropriate federal authority or authorities will be obtained, and also no assurance that the favorable tax rulings or tax opinion will be received;

(5) The proposed record date for determining the eligible account holders entitled to receive nontransferable subscription rights to purchase capital stock of the applicant;

(6) A brief statement describing the circumstances that would require supplemental eligible account holders to receive nontransferable subscription rights to purchase capital stock of the applicant;

(7) A brief description of the plan of conversion;

(8) The par value and approximate number of shares of capital stock to be issued and sold under the plan of conversion;

(9) A brief statement as to the extent to which directors, officers, and employees will participate in the conversion;

(10) A statement that savings account holders will continue to hold accounts in the converted savings bank identical as to dollar amount, rate of return, and general terms and that their accounts will continue to be insured by the Federal Deposit Insurance Corporation;

(11) A statement that borrowers' loans will be unaffected by conversion and that the amount, rate, maturity, security, and other conditions will remain contractually fixed as they existed prior to conversion;

(12) A statement that the normal business of the savings bank in accepting savings and making loans will continue without interruption; that the converted savings bank will continue after conversion to conduct its present services to savings account holders and borrowers under current policies to be carried on in existing offices and by the present management and staff;

(13) A statement that the plan of conversion may be substantially amended or terminated by the board of directors with the concurrence of the director; and

(14) A statement that questions of account holders may be answered by telephoning or writing to the savings bank. [1994 c 92 § 371; 1981 c 85 § 50.]

**32.32.260 Statement, letter, and press release—Contents prohibited—Inquiries.** The statement, letter, and press release of the applicant issued pursuant to RCW 32.32.250 shall not include financial statements or describe the benefits of conversion or the value of the capital stock of the savings bank upon conversion. In replying to inquiries, the savings bank should limit its answers to the matters listed in RCW 32.32.255. [1981 c 85 § 51.]

**32.32.265 Notices of filing of application—Requests for subscription offering circular.** Upon determination that an application for conversion is properly executed and is not materially incomplete, the director shall advise the applicant, in writing, to publish notices of the filing of the application.

Promptly after receipt of the advice, the applicant shall furnish a written notice of the filing to each eligible account holder and also publish a notice of the filing in a newspaper printed in the English language and having general circulation in each community in which an office of the applicant is located, as follows:

**NOTICE OF FILING OF AN APPLICATION FOR APPROVAL TO CONVERT TO A STOCK SAVINGS BANK**

Notice is hereby given that, pursuant to chapter 32.32 of the Revised Code of Washington

.....  
(fill in name of applicant)

has filed an application with the Director of Financial Institutions for approval to convert to the stock form of organization. Copies of the application have been delivered to (address).

Written comments, including objections to the plan of conversion and materials supporting the objections, from any account holder of the applicant or aggrieved person, will be considered by the director if filed within twenty business days after the date of this notice. Failure to make written comments in objection may preclude the pursuit of any administrative or judicial remedies. Three copies of the comments should be sent to the aforementioned. The proposed plan of conversion and any comments thereon will be available for inspection by any account holder of the applicant at (address). A copy of the plan may also be inspected at each office of the applicant.

If a significant number of the applicant's account holders speak a language other than English and a newspaper in that language is published in the area served by the applicant, an appropriate translation of the notice shall also be published in that newspaper. A notice sent by mail may be accompanied by the statement that the converting institution will not mail a subscription offering circular to an eligible account holder or a supplemental eligible account holder unless the eligible account holder or the supplemental eligible account holder, prior to the commencement of the subscription offering, requests the subscription offering circular by returning a postcard. The issuer of stock in the conversion shall pay the postage of this postcard and shall inform the eligible account holder or supplemental eligible holder that the postage is paid. [1994 c 92 § 372; 1985 c 56 § 27; 1981 c 85 § 52.]

**32.32.270 Filing of notice and affidavit of publication required.** Promptly after publication of the notices prescribed in RCW 32.32.265, the applicant shall file with the director the notice and affidavit of publication from each newspaper publisher in the manner the director shall require. [1994 c 92 § 373; 1981 c 85 § 53.]

**32.32.275 Applications available for public inspection—Confidential information.** Should the applicant desire to submit information it deems to be of a confiden-

tial nature regarding any item or a part of any exhibit included in any application under this chapter, the information pertaining to the item or exhibit shall be separately bound and labeled "confidential", and a statement shall be submitted therewith briefly setting forth the grounds on which the information should be treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this chapter shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the director determines to withhold from public availability under RCW 42.17.250 through 42.17.340. The applicant shall be advised of any decision by the director to make public information designated as "confidential" by the applicant. Even though sections of the application are considered "confidential" as far as public inspection thereof is concerned, to the extent the director deems necessary the director may comment on the confidential submissions in any public statement in connection with the director's decision on the application without prior notice to the applicant. [1994 c 92 § 374; 1981 c 85 § 54.]

**32.32.280 Offers and sales of securities—Prohibitions.** No offer to sell securities of an applicant pursuant to a plan of conversion may be made prior to approval by the director of the application for conversion. No sale of these securities in the subscription offering may be made except by means of the final offering circular for the subscription offering. No sale of unsubscribed securities may be made except by means of the final offering circular for the public offering or direct community marketing. The offering of shares in the direct community marketing may commence during the subscription offering upon the declaration of effectiveness by the director of the offering circular proposed for the community offering. This section shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in privity of contract with the applicant. [1994 c 92 § 375; 1981 c 85 § 55.]

**32.32.285 Distribution of offering circulars authorized.** Any preliminary offering circular for the subscription offering, the public offering, or the direct community marketing which has been filed with the director may be distributed to eligible account holders or supplemental eligible account holders and to others in connection with the offering after the director has advised the applicant in writing that the application is properly executed and is not materially incomplete under RCW 32.32.265. No final offering circular may be distributed until the offering circular has been declared effective by the director. [1994 c 92 § 376; 1981 c 85 § 56.]

**32.32.290 Preliminary offering circular for subscription offering—Estimated subscription price range required.** With respect to the capital stock of the applicant to be sold under the plan of conversion, any preliminary offering circular for the subscription offering shall set forth the estimated subscription price range. The maximum of the price range should normally be no more than fifteen percent above the average of the minimum and maximum of the price range and the minimum should normally be no more than fif-

teen percent below this average. The maximum price used in the price range should normally be no more than fifty dollars per share and the minimum no less than five dollars per share. [1994 c 256 § 106; 1981 c 85 § 57.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.32.295 Review of price information by director.** The director shall review the price information required under RCW 32.32.290 in determining whether to give approval to an application for conversion. No representations may be made in any manner that the price information has been approved by the director or that the shares of capital stock sold pursuant to the plan of conversion have been approved or disapproved by the director or that the director has passed upon the accuracy or adequacy of any offering circular covering the shares. [1994 c 92 § 377; 1981 c 85 § 58.]

**32.32.300 Underwriting commissions.** Underwriting commissions shall not exceed an amount or percentage per share acceptable to the director. No underwriting commission may be allowed or paid with respect to shares of capital stock sold in the subscription offering; however, an underwriter may be reimbursed for accountable expenses in connection with the subscription offering where the public offering is so small that reasonable underwriting commissions thereon would not be sufficient to cover total accountable expenses. The term "underwriting commissions" includes underwriting discounts. [1994 c 92 § 378; 1981 c 85 § 59.]

**32.32.305 Consideration of pricing information by director—Guidelines.** In considering the pricing information required under RCW 32.32.290, the director shall apply the following guidelines:

- (1) The materials shall be prepared by persons independent of the applicant, experienced and expert in the area of corporate appraisal, and acceptable to the director;
- (2) The materials shall contain data which are sufficient to support the conclusions reached therein;
- (3) The materials shall contain a complete and detailed description of the appraisal methodology employed; and
- (4) To the extent that the appraisal is based on a capitalization of the pro forma income of the converted savings bank, the materials shall indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on comparison of the capital stock of the applicant with outstanding capital stock of existing stock savings banks or stock savings and loan associations, the materials shall demonstrate the appropriate comparability of the form and substance of the outstanding capital stock and the appropriate comparability of the existing stock savings banks and stock savings and loan associations in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings. [1994 c 92 § 379; 1981 c 85 § 60.]

**32.32.310 Submission of information by applicant.** In addition to the information required in RCW 32.32.305, the applicant shall submit information demonstrating to the

satisfaction of the director the independence and expertise of any person preparing materials under RCW 32.32.305. However, a person will not be considered as lacking independence for the reason that the person will participate in effecting a sale of capital stock under the plan of conversion or will receive a fee from the applicant for services rendered in connection with the appraisal. [1994 c 92 § 380; 1981 c 85 § 61.]

**32.32.315 Subscription offering—Distribution of order forms for the purchase of shares.** Promptly after the director has declared the offering circular for the subscription offering effective, the applicant shall distribute order forms for the purchase of shares of capital stock in the subscription offering to all eligible account holders, supplemental eligible account holders (if applicable), and other persons who may subscribe for the shares under the plan of conversion. [1994 c 92 § 381; 1981 c 85 § 62.]

**32.32.320 Order forms—Final offering circular and detailed instructions.** Each order form distributed pursuant to RCW 32.32.315 shall be accompanied or preceded by the final offering circular for the subscription offering and a set of detailed instructions explaining how to properly complete the order forms. [1981 c 85 § 63.]

**32.32.325 Subscription price.** The maximum subscription price stated on each order form distributed pursuant to RCW 32.32.315 shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the director's approval and the offering circular. If either the maximum subscription price or the actual subscription price is not within this subscription price range, the applicant shall obtain an amendment to the director's approval. If appropriate, the director shall condition the giving of amended approval by requiring a resolicitation of order forms. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription price. [1994 c 92 § 382; 1981 c 85 § 64.]

**32.32.330 Order form—Contents.** Each order form distributed pursuant to RCW 32.32.315 shall be prepared so as to indicate to the person receiving it, in as simple, clear, and intelligible a manner as possible, the actions which are required or available to the person with respect to the form and the capital stock offered for purchase thereby. Specifically, each order form shall:

- (1) Indicate the maximum number of shares that may be purchased pursuant to the subscription offering;
- (2) Indicate the period of time within which the subscription rights must be exercised, which period of time shall not be less than twenty days following the date of the mailing of the order form;
- (3) State the maximum subscription price per share of capital stock;
- (4) Indicate any requirements as to the minimum number of shares of capital stock which may be purchased;

(5) Provide a specifically designated blank space or spaces for indicating the number of shares of capital stock which the eligible account holder or other person wishes to purchase;

(6) Indicate that payment may be made by cash if delivered in person or by check or by withdrawal from an account holder's savings account. If payment is to be made by withdrawal, a box to check should be provided;

(7) Provide specifically designated blank spaces for dating and signing the order form;

(8) Contain an acknowledgment by the account holder or other person signing the order form that the person has received the final offering circular for the subscription offering prior to signing; and

(9) Indicate the consequences of failing to properly complete and return the order form, including a statement that the subscription rights are nontransferable and will become void at the end of the subscription period. The order form may, and the set of instructions shall, indicate the place or places to which the order forms are to be returned and when the applicant will consider order forms received, such as by date and time of actual receipt in the applicant's offices or by date and time of postmark. [1981 c 85 § 65.]

**32.32.335 Order form—Additional provision authorized—Payment by withdrawal.** The order form distributed pursuant to RCW 32.32.315 may provide that it may not be modified without the applicant's consent after its receipt by the applicant. If payment is to be made by withdrawal from a savings account the applicant may, but need not, cause the withdrawal to be made upon receipt of the order form. If the withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the account holder on the account withdrawn as if the amount had remained in the account from which it was withdrawn until the closing date. [1981 c 85 § 66.]

**32.32.340 Time period for completion of sale of all shares of capital stock.** The sale of all shares of capital stock of the converting savings bank to be made under the plan of conversion, including any sale in a public offering or direct community marketing, shall be completed as promptly as possible and within forty-five calendar days after the last day of the subscription period, unless extended by the director. [1994 c 92 § 383; 1981 c 85 § 67.]

**32.32.345 Copies of application for approval to be filed.** An applicant that desires to convert in accordance with this chapter shall file copies of an application for approval in the form and number prescribed by the director. [1994 c 92 § 384; 1981 c 85 § 68.]

**32.32.350 Nonacceptance and return of applications.** Any application for approval that is improperly executed, or that does not contain copies of a plan of conversion, amendments to the charter of the applicant in the form of new articles of incorporation, and preliminary offering circulars for the subscription offering and for the public offering or direct community marketing shall not be accepted for filing and shall be returned to the applicant. Any application for

approval containing a materially incomplete plan of conversion or offering circular may be returned by the director to the applicant. [1994 c 92 § 385; 1981 c 85 § 69.]

**32.32.355 Continuity of corporate existence.** Upon the filing of the articles of incorporation of a converted savings bank with the secretary of state in accordance with RCW 32.32.485, the corporate existence of the mutual savings bank converting to a stock savings bank pursuant to this chapter shall not terminate but the converted savings bank shall be deemed to be a continuation of the entity of the mutual savings bank so converted having the same rights and obligations as it had prior to the conversion. [1981 c 85 § 70.]

**32.32.360 Form of application.** The form of the application shall comply with the requirements of the director. [1994 c 92 § 386; 1981 c 85 § 71.]

**32.32.365 Representations upon filing of application.** Except as provided in RCW 32.32.370, the filing of any application or amendment thereto under this chapter shall constitute a representation of the applicant by its duly authorized representative, the applicant's principal executive officer, the applicant's principal financial officer, and the applicant's principal accounting officer, and each member of the applicant's board of directors (whether or not the director has signed the application or any amendment thereto) severally that (1) he or she has read the application or amendment, (2) in the opinion of each such person he or she has made such examination and investigation as is necessary to enable him or her to express an informed opinion that the application or amendment complies to the best of his or her knowledge and belief with the applicable requirements of this chapter, and (3) each such person holds this informed opinion. [1981 c 85 § 72.]

**32.32.370 Representations upon filing of application—Exception.** The representations specified in RCW 32.32.365 shall not be deemed to have been made by any director of the applicant who did not sign the application or any amendment thereto, if, and only to the extent that, the director files with the director within ten business days after the filing of the application or amendment a statement describing those portions of the filing as to which he or she does not so represent. [1994 c 92 § 387; 1981 c 85 § 73.]

**32.32.375 Application to furnish information.** Every application shall furnish information in accordance with this chapter and with the requirements and forms prescribed by the director. [1994 c 92 § 388; 1981 c 85 § 74.]

**32.32.380 Application—Additional information required.** In addition to the information expressly required to be included in any application under this chapter, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. [1981 c 85 § 75.]

**32.32.385 Omission of certain information permitted—Conditions.** Information required need be given only insofar as it is known or reasonably available to the applicant. If any required information is unknown and not reasonably available to the applicant, either because the obtaining thereof would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of another person not affiliated with the applicant, the information may be omitted, subject to the following conditions:

(1) The applicant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(2) The applicant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to the person for the information. [1981 c 85 § 76.]

**32.32.390 Offering circular—Certain manner of presentation of required information prohibited.** The information required in an offering circular shall not be set forth in such fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. [1981 c 85 § 77.]

**32.32.395 Form and contents of filings.** The form and contents of any filing made under this chapter need conform only to the applicable requirements and forms prescribed by the director then in effect, and contain the information, including financial statements, required at the time the filing is made, notwithstanding subsequent changes, except as otherwise provided in any such amendment or in RCW 32.32.400. [1994 c 92 § 389; 1981 c 85 § 78.]

**32.32.400 Conformance required to order prohibiting the use of any filing.** Whenever the director prohibits by order or otherwise the use of any filing under this chapter, the form and contents of any filing used thereafter shall conform to the requirements of the order. [1994 c 92 § 390; 1981 c 85 § 79.]

**32.32.405 Application—Certain named persons—Filing of written consent required.** (1) If any accountant, attorney, investment banker, appraiser, or other persons whose professions give authority to a statement made in any application under this chapter is named as having prepared, reviewed, passed upon, or certified any part thereof, or any report or valuation for use in connection therewith, the written consent of the person shall be filed with the application. If any portion of a report of an expert is quoted or summarized as such in any filing under this chapter, the written consent of the expert shall expressly state that the expert consents to this quotation or summarization.

(2) All written consents filed pursuant to this section shall be dated and signed manually. A list of the consents shall be filed with the application. Where the consent of the expert is contained in the expert's report, a reference shall be made in the list to the report containing the consent. [1981 c 85 § 80.]

**32.32.410 Offering circular—Certain named persons—Filing of written consent required.** If any person who has not signed an application is named in the offering circular as about to become a director, the written consent of this person shall be filed with the director in the form the director prescribes. [1994 c 92 § 391; 1981 c 85 § 81.]

**32.32.415 Date of receipt—Date of filing.** The date on which any documents are actually received by the office of the director of financial institutions shall be the date of filing thereof. [1994 c 92 § 392; 1981 c 85 § 82.]

**32.32.420 Availability for conferences in advance of filing of application—Refusal of prefiling review.** (1) The staff of the director shall be available for conferences with prospective applicants or their representatives in advance of filing an application to convert. These conferences may be held for the purpose of discussing generally the problems confronting an applicant in effecting conversion or to resolve specific problems of an unusual nature.

(2) Prefiling review of an application may be refused by the staff of the director if the review would delay the examination and processing of material which has already been filed or would favor certain applicants at the expense of others. In any conference under this section, the staff of the director shall not undertake to prepare material for filing but shall limit itself to indicating the kind of information required, leaving the actual drafting to the applicant and its representatives. [1994 c 92 § 393; 1981 c 85 § 83.]

**32.32.425 Appeal from refusal to approve application.** From the director of financial institutions' refusal to approve an application for conversion, the applicant may, within thirty days from the date of the mailing by the director of financial institutions of notice of refusal to approve, appeal to a board of appeal composed of the governor or the governor's designee, the attorney general, and the director of financial institutions by filing in the office of the director of financial institutions a notice that it appeals to this board from the director of financial institutions' refusal. The procedure upon the appeal shall be such as the board may prescribe, and its determination shall be certified, filed, and recorded in the same manner as the director of financial institutions', and shall be final. [1994 c 92 § 394; 1981 c 85 § 84.]

**32.32.430 Postconversion reports.** The applicant shall file such postconversion reports concerning its conversion as the director may require. [1994 c 92 § 395; 1981 c 85 § 85.]

**32.32.435 Definitions.** For purposes of RCW 32.32.440 through 32.32.475, the following definitions shall apply:

(1) The term "offer" includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value.

(2) The term "person" means an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, and any unincorporated organization or similar company.

(3) Without limitation on the generality of its meaning, the term "security" includes nontransferable subscription rights issued to a plan of conversion. [1981 c 85 § 86.]

**32.32.440 Certain agreement to transfer and transfers of ownership in rights or securities prohibited.** Prior to completion of a conversion, no person may transfer or enter into any agreement or understanding to transfer the legal or beneficial ownership of conversion subscription rights, or the underlying securities, to the account of another. [1981 c 85 § 87.]

**32.32.445 Certain offers and announcements on securities prohibited.** Prior to completion of a conversion, no person may make any offer, or announcement of an offer or intent to make an offer, for any security of a converting savings bank issued or to be issued in connection with the conversion. [1981 c 85 § 88.]

**32.32.450 Certain offers and acquisitions prohibited.** No person for a period of three years following the date of the conversion may directly or indirectly offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of any savings bank converted in accordance with this chapter without the prior written approval of the director of financial institutions. [1994 c 92 § 396; 1981 c 85 § 89.]

**32.32.455 Nonapplicability of RCW 32.32.440 and 32.32.445.** RCW 32.32.440 and 32.32.445 shall not apply to a transfer, agreement or understanding to transfer, offer, or announcement of an offer or intent to make an offer which (1) pertains only to securities to be purchased pursuant to RCW 32.32.060, 32.32.150, or 32.32.175; and (2) has prior written approval of the director. [1994 c 92 § 397; 1981 c 85 § 90.]

**32.32.460 Nonapplicability of RCW 32.32.445 and 32.32.450.** RCW 32.32.445 and 32.32.450 shall not apply to any offer with a view toward public resale made exclusively to the savings bank or underwriters or selling group acting on its behalf. [1981 c 85 § 91.]

**32.32.465 Nonapplicability of RCW 32.32.450.** Unless made applicable by the director by prior advice in writing, the prohibition contained in RCW 32.32.450 shall not apply to any offer or announcement of an offer which if consummated would result in acquisition by a person, together with all other acquisitions by the person of the same class of securities during the preceding twelve-month period, of not more than one percent of the same class of securities. [1994 c 92 § 398; 1981 c 85 § 92.]

**32.32.470 Approval of certain applications prohibited.** The director shall not approve an application involving an offer for, an announcement thereof, or an acquisition of any security of a converted savings bank submitted under RCW 32.32.450 if the director finds that the offer frustrates the purposes of this chapter, is manipulative or deceptive, subverts the fairness of the conversion, is likely to result in injury to the savings bank, is not consistent with savings

banking under Title 32 RCW, or is otherwise violative of law or regulation. [1994 c 92 § 399; 1981 c 85 § 93.]

**32.32.475 Penalty for violations.** For willful violation or assistance of such a violation of any provision of RCW 32.32.440 through 32.32.470, any person who (1) has any connection with the management of a converting or converted savings bank, including any director, officer, employee, attorney, or agent, or (2) controls more than ten percent of the outstanding shares of any class of equity security or voting rights thereto of a converting or converted savings bank shall be subject to a civil penalty of not more than five hundred dollars (which penalty shall be cumulative to any other remedies) for each day that the violation continues, which penalty the director may recover by suit or otherwise for the director's own use. The director in his or her discretion may, at any time before collection of the penalty (whether before or after the bringing of any action or other legal proceedings, the obtaining of any judgment or other recovery, or the issuance or levy of any execution or other legal process thereof), compromise or remit in whole or in part the penalty. [1994 c 92 § 400; 1981 c 85 § 94.]

**32.32.480 Name of converted savings bank.** A savings bank shall not be forbidden or required to change its corporate name as a result of its conversion pursuant to this chapter. [1994 c 256 § 107; 1981 c 85 § 95.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.32.485 Amendments to charter required in application—Articles of incorporation—Filing of certificate required—Contents—Issuance and filing of authorization certificate.** (1) An application for conversion under this chapter shall include amendments to the charter of the converting savings bank. The charter of the converted savings bank, as amended, shall be known after the conversion as the articles of incorporation of the converted savings bank. The articles of incorporation may limit or permit the preemptive rights of a shareholder to acquire unissued shares of the converted savings bank and may thereafter by amendment limit, deny, or grant to shareholders of any class of stock or of any series of preferred stock the preemptive right to acquire additional shares of the converted savings bank whether then or thereafter authorized. The articles of incorporation may establish or may specify procedures, in accordance with RCW 30.08.083, for the division of a class of preferred stock into series. In addition to such provisions and the provisions permitted pursuant to RCW 23B.17.030, the articles of incorporation shall contain such other provisions not inconsistent with this chapter as the board of directors of the converting savings bank may determine and as shall be approved by the director of financial institutions.

(2) When all of the stock of a converting savings bank has been subscribed for in accordance with the plan and any amendments thereto, the board of trustees shall thereupon issue the stock and shall cause to be filed with the director of financial institutions, in triplicate, a certificate subscribed by the persons who are to be directors of the converted savings bank, stating:

(a) That all of the stock of the converted mutual savings bank has been issued;

(b) That the attached articles of incorporation have been executed by all of the persons who are to be directors of the converted mutual savings bank;

(c) The place where the bank is to be located and its business transacted, naming the city or town and county, which city or town shall be the same as that where the principal place of business of the mutual savings bank has theretofore been located;

(d) The name, occupation, residence, and post office address of each signer of the certificate; and

(e) The amount of the assets of the mutual savings bank, the amount of its liabilities, and the amount of its guaranty fund and nondivided profits as of the first day of the current calendar month.

(3) Upon the filing of the certificate in triplicate, the director of financial institutions shall, within thirty days thereafter, if satisfied that the corporation has complied with all the provisions of this chapter, issue in triplicate an authorization certificate stating that the corporation has complied with all the requirements of law, and that it has authority to transact at the place designated in its articles of incorporation the business of a converted mutual savings bank. One of the director of financial institutions' certificates of authorization shall be attached to each of the articles of incorporation, and one set of these shall be filed and retained by the director of financial institutions, one set shall be filed in the office of the secretary of state, and one set shall be transmitted to the bank for its files. Upon the receipt from the corporation of the same fees as are required for filing and recording other incorporation certificates or articles the secretary of state shall record the same; whereupon the conversion of the mutual savings bank shall be deemed complete, the requirements of RCW 32.08.010 relating to the incorporation certificate of an unconverted mutual savings bank shall no longer apply, and the signers of the articles of incorporation and their successors shall be a corporation having the powers and being subject to the duties and obligations prescribed by the laws of this state applicable to converted mutual savings banks, and the time of existence of the corporation shall be perpetual, unless terminated pursuant to law. [1994 c 256 § 108; 1994 c 92 § 401; 1981 c 85 § 96.]

**Reviser's note:** This section was amended by 1994 c 92 § 401 and by 1994 c 256 § 108, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.32.490 Amendments to articles of incorporation.**

(1) Amendments to the articles of incorporation of the converted savings bank shall be made only with the approvals of the director, of two-thirds of the directors of the savings bank, and of the holders of a majority of each class of the outstanding shares of capital stock or such greater percentage of these shares as may be specified in the articles of the converted savings bank.

(2) Unless the articles of incorporation provide otherwise, the board of directors of a savings bank may, by majority vote, amend the savings bank's articles of incorporation as provided in this section without shareholder action:

(a) If the savings bank has only one class of shares outstanding, to provide, change, or eliminate any provision with respect to the par value of any class of shares;

(b) To delete the name and address of the initial directors;

(c) If the savings bank has only one class of shares outstanding, solely to change the number of authorized shares to effectuate a split of, or stock dividend in, the savings bank's own shares, or solely to do so and to change the number of authorized shares in proportion thereto;

(d) To change the savings bank's name; or

(e) To make any other change expressly permitted by this title to be made without shareholder action. [1994 c 256 § 109; 1994 c 92 § 402; 1985 c 56 § 28; 1981 c 85 § 97.]

**Reviser's note:** This section was amended by 1994 c 92 § 402 and by 1994 c 256 § 109, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.32.495 Directors—Election—Meetings—Quorum—Oath—Vacancies.** (1) Every converted savings bank shall be managed by not less than five directors, except that a bank having a capital of fifty thousand dollars or less may have only three directors. Directors shall be elected by the stockholders and hold office for one year and until their successors are elected and have qualified. In the first instance the directors shall be those named in the articles of incorporation and afterwards, those elected at the annual meeting of the stockholders to be held at least once each year on a day to be specified by the converted savings bank's bylaws but not later than May 15th of each year. If for any cause an election is not held at that time, it may be held at an adjourned meeting or at a subsequent meeting called for that purpose in the manner prescribed by the corporation's bylaws. Each director shall be a resident of a state of the United States. The directors shall meet at least nine times each year and whenever required by the director. A majority of the board of directors shall constitute a quorum for the transaction of business. At all stockholders' meetings, each share shall be entitled to one vote, unless the articles of incorporation provide otherwise. Any stockholder may vote in person or by written proxy.

(2) If the board of directors consists of nine or more members, in lieu of electing the entire number of directors annually, the converted savings bank's articles of incorporation or bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification, the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there are two classes, or until the third succeeding annual meeting, if there are three classes. A classification of directors shall not be effective prior to the first annual meeting of shareholders.

(3) Each director, so far as the duty devolves upon him or her, shall diligently and honestly administer the affairs of the corporation and shall not knowingly violate or willingly permit to be violated any provision of law applicable to the corporation.

(4) A vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors. A director elected to fill a vacancy shall be elected for the unexpired term of the director's predecessor in office. A directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. [1994 c 256 § 110; 1994 c 92 § 403; 1985 c 56 § 29; 1983 c 44 § 3; 1981 c 85 § 98.]

**Reviser's note:** This section was amended by 1994 c 92 § 403 and by 1994 c 256 § 110, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.32.497 Conversions incident to acquisition by savings bank holding company or merger or consolidation with savings bank holding company subsidiary—Application of RCW 32.32.110 and 32.32.115.** (1) In a conversion of an unconverted mutual savings bank that is in the process of acquisition by a savings bank holding company or in the process of merger or consolidation with a subsidiary of a savings bank holding company, the restrictions imposed by RCW 32.32.110 on resale of stock apply to shares of the holding company purchased on original issue by any director or officer of the converting savings bank that is in the process of acquisition, merger, or consolidation, and the restrictions imposed by this chapter apply to the ownership of capital stock in the holding company with the same force and effect as they would apply to the ownership of capital stock of the unconverted mutual savings bank if shares of this savings bank were offered to depositors or the public pursuant to this chapter.

(2) The tender of shares by directors and officers of a converted savings bank in exchange for shares of another converted savings bank, or for shares of a holding company, do not constitute a sale for purposes of RCW 32.32.110. However, the restrictions of RCW 32.32.110 and 32.32.115 apply to the resale of the shares they receive in such an exchange with the same force and effect as to the shares of the converted savings bank they purchased on original issue for a period of three years following the date of such purchase on original issue. [1985 c 56 § 30.]

**32.32.500 Merger, consolidation, conversion, etc.—Approval—Concentration limits.** (1) A savings bank may merge with, consolidate with, convert into, acquire a branch or branches of, or sell its branch or branches to any depository institution as defined in 12 U.S.C. Sec. 461, any financial institution chartered or authorized to do business under the laws of any state, territory, province, or other jurisdiction of the United States or another nation, or any holding company or subsidiary of such an institution, subject to the approval of (a) the director of financial institutions if the surviving institution is one chartered under Title 30, 31, 32, or 33 RCW, or (b) if the surviving institution is to be a bank,

savings bank, savings and loan association, or other depository institution that is federally chartered under the laws of the United States, the federal regulatory authority having jurisdiction over the transaction under the applicable laws, or (c) if the surviving institution is to be a bank, savings bank, savings and loan association, or other depository or financial institution that is chartered under the laws of another state or territory of the United States, the regulatory authority having jurisdiction over that transaction under the applicable laws, or (d) if the surviving institution is to be a bank, savings bank, savings and loan association, or other depository or financial institution that is chartered under the laws of a nation other than the United States or of a state, territory, province, or other jurisdiction of such nation, the director of financial institutions, or (e) if the surviving institution is to be a bank holding company or financial holding company, the Federal Reserve Board or its successor under 12 U.S.C. Sec. 1842 (a) and (d).

(2) In the case of a liquidation, acquisition, merger, consolidation, or conversion of a converted savings bank, chapter 32.34 RCW shall apply.

(3) The concentration limits applicable to these transactions, pursuant to 12 U.S.C. Sec. 1831u(b)(2)(C) with respect to interstate transactions, shall be those imposed pursuant to 12 U.S.C. Sec. 1828(c)(5), as applied by the federal regulatory authority having jurisdiction over that transaction under the applicable law, in lieu of the concentration limits of 12 U.S.C. Sec. 1831u(b)(2)(B). [2003 c 24 § 9; 1999 c 14 § 30; 1996 c 2 § 28. Prior: 1994 c 256 § 111; 1994 c 92 § 404; 1985 c 56 § 31; 1981 c 85 § 99.]

**Severability—2003 c 24:** See RCW 30.04.901.

**Severability—1999 c 14:** See RCW 32.35.900.

**Severability—1996 c 2:** See RCW 30.38.900.

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.32.505 Intent—References in the Revised Code of Washington.** (1) It is the intention of the legislature to grant, by this chapter, authority to permit conversions by mutual savings banks to capital stock form, and the rights, powers, restrictions, limitations, and requirements of Title 32 RCW shall apply to a converted mutual savings bank except that, in the event of conflict between the provisions of this chapter and other provisions of Title 32 RCW, the other provisions shall be construed in favor of the accomplishment of the purposes of this chapter.

(2) References in the Revised Code of Washington as of the most recent effective date of any amendment, to mutual savings banks shall refer also to stock savings banks. References in the Revised Code of Washington to the board of trustees of a mutual savings bank shall refer also to the board of directors of a stock savings bank. The provisions of Title 30 RCW shall not apply to a converted savings bank except insofar as the provisions would apply to a mutual savings bank. [1994 c 256 § 112; 1985 c 56 § 32; 1981 c 85 § 100.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.32.515 Guaranty fund.** The guaranty fund of a mutual savings bank converted under this chapter shall become surplus of the converted savings bank, but shall not be available after conversion for purposes other than those

purposes for which a guaranty fund may be used by a mutual savings bank under Title 32 RCW. No contribution need be made to the guaranty fund by the converted savings bank after conversion. When any provision of any other chapter of this title refers to the amount of the guaranty fund for the purpose of determining the extent of the authority of a savings bank, and not for purposes of prescribing the use of funds in or contributions to the guaranty fund, such provision shall be deemed to refer to an amount including capital surplus and paid-in capital of a stock savings bank. [1994 c 256 § 113; 1981 c 85 § 102.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.32.520 "Funds" defined.** The "funds" of a converted savings bank, as the term is used in Title 32 RCW, shall mean deposits, sums credited to the liquidation account, capital stock, the principal balance of any outstanding capital notes, capital debentures, borrowings, undivided profits and income derived from the foregoing or the proceeds of the foregoing as listed in this section. [1999 c 14 § 31; 1981 c 85 § 103.]

**Severability—1999 c 14:** See RCW 32.35.900.

**32.32.525 Prohibition on certain securities and purchases—Exception.** After July 26, 1981, no converted savings bank may make any loan or discount on the security of its own capital stock, nor be the purchaser or holder of any such shares, unless the security or purchase is necessary to prevent loss upon a debt previously contracted in good faith, in which case the stocks so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase or acquisition. The prohibitions of this section do not apply to a purchase of shares approved by the director pursuant to RCW 32.32.210. [1994 c 92 § 405; 1983 c 44 § 4; 1981 c 85 § 104.]

**32.32.900 Severability—1981 c 85.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 85 § 107.]

**Chapter 32.34 RCW**

**MERGER, CONSOLIDATION, CONVERSION, ETC.**

(Formerly: Conversion between domestic and federal savings bank)

Sections

32.34.010	Conversion of domestic savings bank—Rights, powers, etc., of successor institution.
32.34.020	Conversion of federal savings bank, national bank, or state commercial bank to domestic savings bank.
32.34.025	Conversion of stock savings bank to savings bank without capital stock.
32.34.030	Savings banks converted to stock form—Voluntary liquidation, transfer of assets, merger, consolidation, etc.—Approval of directors and shareholders.
32.34.040	Savings bank holding companies—Savings bank subsidiaries.
32.34.050	Business trusts for the benefit of depositors.
32.34.060	Voluntary liquidation, conversion, acquisition, merger, and consolidation—Right of dissenting shareholder to receive value of shares—Determination.

**32.34.010 Conversion of domestic savings bank—Rights, powers, etc., of successor institution.** (1) A domes-

tic savings bank formed or converted under this title may convert itself into a state or federal credit union or a federal mutual or stock savings bank, national bank or, within the meaning of chapter 30.49 RCW, a resulting state bank. The conversion shall be effected, notwithstanding any restrictions, limitations, and requirements of law:

(a) In the case of the conversion of a mutual savings bank without capital stock to a state or federal credit union or a federal mutual savings bank, by the vote of two-thirds of the trustees at a regular or special meeting of the trustees called for such purpose;

(b) In the case of the conversion of a stock savings bank to a federal stock savings bank, national bank or, within the meaning of chapter 30.49 RCW, a resulting state bank, by the vote of a majority of the stockholders present, in person or by proxy, at a regular or special meeting of the stockholders called for such purpose;

(c) In the case of the conversion of a savings bank to a federal credit union, federal savings bank, or national bank, in compliance with the procedure, if any, prescribed by the laws of the United States.

(2) Notice of the meeting, stating the purpose thereof, shall be given the director at least thirty days prior to the meeting. If the conversion is authorized by the trustees or stockholders at the meeting, the trustees or stockholders are authorized and shall effect such action, and the officers of the savings bank shall execute all proper conveyances, documents, and other papers necessary or proper thereunto. If conversion is authorized, a copy of the minutes of the meeting shall be filed forthwith with the director.

(3) Upon consummation of the conversion, the successor credit union, federal savings bank, national bank, or resulting state bank shall succeed to all right, title, and interest of the mutual or stock bank, respectively, in and to its assets and to its liabilities to the creditors of the savings bank. Upon the conversion, after the execution and delivery of all instruments of transfer, conveyance, and assignment, the domestic savings bank shall be deemed dissolved.

(4) Every federal savings bank, the home office of which is located in this state, and the savings accounts therein, have all the rights, powers, and privileges and are entitled to the same immunities and exemptions as pertain to savings banks organized under the laws of this state. [1999 c 14 § 32; 1994 c 92 § 406; 1983 c 45 § 1.]

**Severability—1999 c 14:** See RCW 32.35.900.

**32.34.020 Conversion of federal savings bank, national bank, or state commercial bank to domestic savings bank.** (1) A federal savings bank, the home office of which is located in this state, a national bank, the head office of which is located in this state, or a state commercial bank incorporated under chapter 30.08 RCW or resulting under chapter 30.49 RCW may convert itself into a domestic savings bank under this title upon approval by the director. For any such conversion, the federal savings bank, national bank, or state commercial bank shall proceed as provided in this chapter for the conversion of a domestic savings bank into a federal savings bank, national bank, or resulting bank under chapter 30.49 RCW. The conversion shall be effected by the vote of a majority of the members or stockholders present, in

person or by proxy, at a regular or special meeting of the members or stockholders called for such purpose.

(2) Upon consummation of the conversion, the successor domestic savings bank shall succeed to all right, title, and interest of the federal savings bank in and to its assets, and to its liabilities to the creditors of such federal savings bank, national bank, or a state bank. [1999 c 14 § 33; 1994 c 92 § 407; 1983 c 45 § 2.]

**Severability—1999 c 14:** See RCW 32.35.900.

**32.34.025 Conversion of stock savings bank to savings bank without capital stock.** (1) The conversion of a stock savings bank to a savings bank without capital stock requires the affirmative vote or written consent of two-thirds of the directors of the savings bank and requires the affirmative vote of two-thirds of the outstanding stock of the savings bank. The conversion shall proceed as prescribed in chapter 32.32 RCW subject to the authority of the director under RCW 32.32.010 and is complete upon the payment into the guaranty fund of the resulting savings bank without capital stock of any surplus remaining after satisfaction of all debts and liabilities of the savings bank, including but not limited to liabilities to dissenting shareholders under RCW 32.34.060.

(2) Any stock savings bank may provide in its articles of incorporation for a higher percentage of affirmative shareholder votes to approve a conversion to a savings bank without capital stock. [1999 c 14 § 34.]

**Severability—1999 c 14:** See RCW 32.35.900.

**32.34.030 Savings banks converted to stock form—Voluntary liquidation, transfer of assets, merger, consolidation, etc.—Approval of directors and shareholders.** (1) The voluntary liquidation of a mutual savings bank converted to the stock form requires the affirmative vote or written consent of two-thirds of the directors of the converted savings bank, requires the affirmative vote of two-thirds of the outstanding stock of the savings bank, shall proceed as prescribed in chapter 32.24 RCW, and shall be complete upon the payment of any surplus remaining, after satisfaction of all debts and liabilities of the savings bank, to shareholders in accordance with their legal rights to such surplus.

(2) A savings bank which has converted to the stock form may sell all its assets and transfer all its liabilities upon the affirmative vote or with the written consent of two-thirds of its directors, and upon the affirmative vote of the holders of two-thirds of the outstanding voting shares in each class entitled to vote.

(3) Any merger or consolidation involving a mutual savings bank converted to stock form requires approval by two-thirds of the directors and by the holders of a majority of the outstanding voting shares in each class except that a merger or consolidation approved by two-thirds of the outstanding voting shares in each class requires approval by only a majority of the directors of the converted savings bank, and except as provided in subsection (4) of this section.

(4) A savings bank that has converted to the stock form may engage in a consolidation or merger upon the affirmative vote of two-thirds of its directors, if (a) the transaction is with a wholly-owned subsidiary of the converted savings bank, or

(b)(i) the transaction is incident to the establishment of a holding company pursuant to RCW 32.34.040 or 12 U.S.C. Sec. 1467a, (ii) each shareholder will, immediately after the effective date of such transaction, hold the same number of shares of the holding company, with substantially the same designations, preferences, limitations, and rights, as the shares of the converted savings bank that the shareholder held immediately before the effective date, and (iii) the number of authorized shares of the holding company will, immediately after the effective date, be the same as the number of authorized shares of the converted savings bank immediately before the effective date, or (c)(i) the total assets of the converted savings bank, immediately prior to the effective date of the transaction, exceed two-thirds of the assets of the institution that would result from the transaction and (ii) the converted savings bank will survive the transaction without its shareholders surrendering their shares of stock in the converted savings bank.

(5) Any converted savings bank may provide in its articles of incorporation for a higher percentage of affirmative shareholder votes to approve any liquidation, sale of assets, merger, or consolidation. [1994 c 256 § 115; 1985 c 56 § 33.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**32.34.040 Savings bank holding companies—Savings bank subsidiaries.** (1) No savings bank having capital stock may establish a holding company to own all its stock without the approval of the director. Upon tender of their shares of the converted savings bank, the shareholders of the savings bank shall receive all the shares of the holding company which are outstanding at the time of this tender.

(2) Any company owning more than twenty-five percent of the outstanding voting stock of a savings bank doing business under this Title 32 RCW shall, in addition to the restrictions of RCW 32.32.228, be subject to regulation as a savings bank holding company. Any savings bank holding company which is not subject to regulation by the federal reserve board or the federal home loan bank board, and all holding company subsidiaries engaging in businesses which are not subject to regulation or licensing by the federal home loan bank board, the director, the commissioner of insurance, or the administrator authorized to regulate loan companies doing business under Title 31 RCW, will be subject to such regulation of accounting practices and of the qualifications of directors and officers, and such inspection and visitation by the director as the director shall deem appropriate, subject to the limitations imposed on regulation, inspection, and visitation of a savings bank under this title. In addition, any savings bank holding company and all holding company subsidiaries will be subject to visitation by the director as such shall deem appropriate, subject to the limitations imposed on visitation of a savings bank under this Title 32 RCW and under the supremacy clause of the Constitution of the United States. The savings bank subsidiary of this holding corporation may engage in subsequent mergers, consolidations, acquisitions, and conversions, only to the extent authorized by RCW 32.32.500, and only upon complying with the applicable requirements in RCW 32.34.030 and this chapter.

(3) In the event a savings bank forms a subsidiary to carry out any of the powers of savings banks under this title,

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any institution with which this subsidiary merges shall continue to be subject to regulation, inspection, and visitation by the director if the subsidiary is authorized to do business by Title 33 RCW. [1994 c 92 § 408; 1985 c 56 § 34.]

**32.34.050 Business trusts for the benefit of depositors.** A savings bank not having capital stock may establish a business trust for the benefit of its depositors, with the approval of the director and subject to such rules as the director may adopt. The director may permit this business trust to become a mutual holding company owning all shares of an interim stock savings bank, the sole purpose of which shall be to merge into the mutual savings bank that formed the business trust. The depositors in an unconverted savings bank which has merged with the subsidiary of such a mutual holding company, in the event of a later conversion of this mutual holding company to the stock form, shall retain all their rights to their deposits in the savings bank, and shall also receive, without payment, nontransferrable rights to subscribe for the stock of the holding company, and rights to a liquidation account maintained by the holding company in proportion to their deposits in the savings bank, to the same extent that they would receive these rights in a stock conversion of the savings bank as prescribed in chapter 32.32 RCW. [1994 c 92 § 409; 1985 c 56 § 35.]

**32.34.060 Voluntary liquidation, conversion, acquisition, merger, and consolidation—Right of dissenting shareholder to receive value of shares—Determination.**

(1) Any holder of shares of a savings bank shall be entitled to receive the value of these shares, as specified in subsection (2) of this section, if (a) the savings bank is voluntarily liquidating, converting to a savings bank without capital stock, being acquired, merging, or consolidating, (b) the shareholder voted, in person or by proxy, against the liquidation, conversion, acquisition, merger, or consolidation, at a meeting of shareholders called for the purpose of voting on such transaction, and (c) the shareholder delivers a written demand for payment, with the stock certificates, to the savings bank within thirty days after such meeting of shareholders. The value of shares shall be paid in cash, within ten days after the later of the effective date of the transaction or the completion of the appraisal as specified in subsection (2) of this section.

(2) The value of such shares shall be determined as of the close of business on the business day before the shareholders' meeting at which the shareholder dissented, by three appraisers, one to be selected by the owners of two-thirds of the dissenting shares, one by the board of directors of the institution that will survive the transaction, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If such appraisal is not completed by the later of the effective date of the transaction or the thirty-fifth day after receipt of the written demand and stock certificates, the director shall cause an appraisal to be made.

(3) The dissenting shareholders shall bear, on a pro rata basis based on the number of dissenting shares owned, the cost of their appraisal and one-half of the cost of a third appraisal, and the surviving institution shall bear the cost of its appraisal and one-half the cost of the third appraisal. If the director causes an appraisal to be made, the cost of that

appraisal shall be borne equally by the dissenting shareholders and the surviving institution, with the dissenting shareholders sharing their half of the cost on a pro rata basis based on the number of dissenting shares owned.

The institution that is to survive the transaction may fix an amount which it considers to be not more than the fair market value of the shares of a savings bank at the time of the stockholder's meeting approving the transaction, which it will pay dissenting shareholders entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the surviving institution. [1999 c 14 § 35; 1994 c 256 § 116; 1985 c 56 § 36.]

**Severability—1999 c 14:** See RCW 32.35.900.

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

## Chapter 32.35 RCW STOCK SAVINGS BANKS

### Sections

32.35.010	Incorporators—Paid-in capital stock, surplus, and undivided profits—Requirements.
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32.35.030	Investigation.
32.35.040	Notice to file articles—Articles approved or refused—Hearing.
32.35.050	Approved articles to be filed and recorded—Organization complete.
32.35.055	Amending articles—Filing with director—Contents.
32.35.060	Certificate of authority—Issuance—Contents.
32.35.070	Failure to commence business—Effect—Extension of time.
32.35.080	Extension of existence—Application—Investigation—Certificate—Appeal—Winding up for failure to continue existence.
32.35.090	Shares—Certificates not required.
32.35.900	Severability—1999 c 14.

**32.35.010 Incorporators—Paid-in capital stock, surplus, and undivided profits—Requirements.** When authorized by the director, one or more natural persons, citizens of the United States, may incorporate a stock savings bank in the manner prescribed under this chapter. No stock savings bank may incorporate for less amount nor commence business unless it has a paid-in capital stock, surplus and undivided profits in the amount as may be determined by the director after consideration of the proposed location, management, and the population and economic characteristics for the area, the nature of the proposed activities and operation of the stock savings bank, and other factors deemed pertinent by the director. Before commencing business, each stock savings bank shall have subscribed and paid into it in the same manner as is required for capital stock, an amount equal to at least ten percent of the capital stock required, that shall be carried in the undivided profit account and may be used to defray organization and operating expenses of the company. Any sum not so used shall be transferred to the surplus fund of the company before any dividend shall be declared to the stockholders. [1999 c 14 § 1.]

**32.35.020 Notice of intention to organize—Proposed articles of incorporation—Contents.** Persons desiring to incorporate a stock savings bank shall file with the director a notice of their intention to organize a stock savings bank in such form and containing such information as the director

shall require, together with proposed articles of incorporation, which shall be submitted for examination to the director at his or her office.

The proposed articles of incorporation shall state:

- (1) The name of the stock savings bank;
- (2) The city, village, or locality and county where the head office of the corporation is to be located;
- (3) The nature of its business, that of a stock savings bank;
- (4) The amount of its capital stock, which shall be divided into shares of a par or no par value as may be provided in the articles of incorporation;
- (5) The names and places of residence and mailing addresses of the persons who as directors are to manage the corporation until the first annual meeting of its stockholders;

(6) If there is to be preferred or special classes of stock, a statement of preferences, voting rights, if any, limitations and relative rights in respect of the shares of each class; or a statement that the shares of each class shall have the attributes as shall be determined by the stock savings bank's board of directors from time to time with the approval of the director;

(7) Any provision granting the shareholders the preemptive right to acquire additional shares of the stock savings bank and any provision granting shareholders the right to cumulate their votes;

(8) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the affairs of the corporation, including any provision restricting the transfer of shares, any provision which under this title is required or permitted to be set forth in the bylaws, and any provision permitted by RCW 23B.17.030;

(9) Any provision the incorporators elect to so set forth, not inconsistent with law or the purposes for which the stock savings bank is organized, or any provision limiting any of the powers granted in this title.

It is not necessary to set forth in the articles of incorporation any of the corporate powers granted in this title. The articles of incorporation shall be signed by all of the incorporators. [1999 c 14 § 2.]

**32.35.030 Investigation.** When the notice of intention to organize and proposed articles of incorporation complying with RCW 32.35.020 have been received by the director, together with the fees required by law, the director shall ascertain from the best source of information at his or her command and by such investigation as he or she may deem necessary, whether the character, responsibility and general fitness of the persons named in the articles are such as to command confidence and warrant belief that the business of the proposed stock savings bank will be honestly and efficiently conducted in accordance with the intent and purpose of this title, whether the resources in the neighborhood of such place and in the surrounding country afford a reasonable promise of adequate support for the proposed stock savings bank, and whether the proposed stock savings bank is being formed for other than the legitimate objects covered by this title. [1999 c 14 § 3.]

**32.35.040 Notice to file articles—Articles approved or refused—Hearing.** After the director is satisfied of the \*above facts, and, within six months of the date the notice of intention to organize has been received in his or her office, the director shall notify the incorporators to file executed articles of incorporation with the director in triplicate. Unless the director otherwise consents in writing, such articles shall be in the same form and shall contain the same information as the proposed articles and shall be filed with the director within ten days of such notice. Within thirty days after the receipt of such articles of incorporation, the director shall endorse upon each of the copies, over his or her official signature, the word "approved," or the word "refused," with the date of such endorsement. In case of refusal the director shall immediately return one of the copies, so endorsed, together with a statement explaining the reason for refusal to the person from whom the articles were received, which refusal shall be conclusive, unless the incorporators, within ten days of the issuance of such notice of refusal, shall request a hearing pursuant to the administrative procedure act, chapter 34.05 RCW. [1999 c 14 § 4.]

**\*Reviser's note:** The term "above facts" apparently refers to the investigation required under RCW 32.35.030.

**32.35.050 Approved articles to be filed and recorded—Organization complete.** In case of approval the director shall immediately give notice to the proposed incorporators and file one of the copies of the articles of incorporation in his or her own office, and shall transmit another copy to the secretary of state, and the last to the incorporators. Upon receipt from the proposed incorporators of the fees as are required for filing and recording other articles of incorporation, the secretary of state shall file and record the articles. Upon the filing of articles of incorporation approved by the director with the secretary of state, all persons named in the articles and their successors shall become and be a corporation, which shall have the powers and be subject to the duties and obligations prescribed by this title, and whose existence shall continue from the date of the filing of such articles until terminated pursuant to law; but such corporation shall not transact any business except as is necessarily preliminary to its organization until it has received a certificate of authority. [1999 c 14 § 5.]

**32.35.055 Amending articles—Filing with director—Contents.** A stock savings bank amending its articles of incorporation shall deliver articles of amendment to the director for filing as required for articles of incorporation. The articles of amendment shall set forth:

- (1) The name of the stock savings bank;
- (2) The text of each amendment adopted;
- (3) The date of each amendment's adoption;
- (4) If the amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and
- (5) If shareholder action was required, a statement that the amendment was duly approved by the shareholders in accordance with the provisions of RCW 32.32.490. [1999 c 14 § 6.]

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**32.35.060 Certificate of authority—Issuance—Contents.** Before any stock savings bank is authorized to do business, and within ninety days after approval of the articles of incorporation or such other time as the director may allow, it shall furnish proof satisfactory to the director that such corporation has a paid-in capital in the amount determined by the director, that the requisite surplus or reserve fund has been accumulated or paid in cash, and that it has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this title. If so satisfied, and within thirty days after receipt of such proof, the director shall issue under his or her hand and official seal, in triplicate, a certificate of authority for such corporation. The certificate shall state that the named corporation has complied with the requirements of law and that it is authorized to transact the business of a stock savings bank. However, the director may make his or her issuance of the certificate to a stock savings bank authorized to accept deposits, conditional upon the granting of deposit insurance by the federal deposit insurance corporation, and in such event, shall set out such condition in a written notice which shall be delivered to the corporation.

One of the triplicate certificates shall be transmitted by the director to the corporation and one of the other two shall be filed by the director in the office of the secretary of state and shall be attached to the articles of incorporation. However, if the issuance of the certificate is made conditional upon the granting of deposit insurance by the federal deposit insurance corporation, the director shall not transmit or file the certificate until such condition is satisfied. [1999 c 14 § 7.]

**32.35.070 Failure to commence business—Effect—Extension of time.** Every corporation authorized by the laws of this state to do business as a stock savings bank, which corporation shall have failed to organize and commence business within six months after certificate of authority to commence business has been issued by the director, shall forfeit its rights and privileges as such corporation, which fact the director shall certify to the secretary of state, and such certificate of forfeiture shall be filed and recorded in the office of the secretary of state in the same manner as the certificate of authority. However, the director may, upon showing of cause satisfactory to him or her, issue an order under his or her hand and seal extending for not more than three months the time within which such organization may be effected and business commenced, such order to be transmitted to the office of the secretary of state and filed and recorded. [1999 c 14 § 8.]

**32.35.080 Extension of existence—Application—Investigation—Certificate—Appeal—Winding up for failure to continue existence.** At any time not less than one year prior to the expiration of the time of the existence of any mutual savings bank or stock savings bank, it may by written application to the director, signed and verified by a majority of its directors and approved in writing by the owners of not less than two-thirds of its capital stock, apply to the director for leave to file amended articles of incorporation, extending its time of existence. Prior to acting upon such application, the director shall make such investigation of the applicant as he or she deems necessary. If the director determines that the

applicant is in sound condition, that it is conducting its business in a safe manner and in compliance with law and that no reason exists why it should not be permitted to continue, he or she shall issue to the applicant a certificate authorizing it to file amended articles of incorporation extending the time of its existence until such time as it be dissolved by the act of its shareholders owning not less than two-thirds of its stock, or until its certificate of authority becomes revoked or forfeited by reason of violation of law, or until its affairs be taken over by the director for legal cause and finally wound up by him or her. Otherwise the director shall notify the applicant that he or she refuses to grant such certificate. The applicant may appeal from such refusal in the same manner as in the case of a refusal to grant an original certificate of authority. Otherwise the determination of the director shall be conclusive.

Upon receiving a certificate, as hereinabove provided, the applicant may file amended articles of incorporation, extending the time of its existence for the term authorized, to which shall be attached a copy of the certificate of the director. Such articles shall be filed in the same manner and upon payment of the same fees as for original articles of incorporation.

Should any mutual savings bank or stock savings bank fail to continue its existence in the manner provided and be not previously dissolved, the director shall at the end of its original term of existence immediately take possession of the corporation and wind up its affairs in the same manner as in the case of insolvency. [1999 c 14 § 9.]

**32.35.090 Shares—Certificates not required.** (1) Shares of a stock savings bank may, but need not be, represented by certificates. Unless this title expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates. At a minimum, each share certificate must state the information required to be stated and must be signed as provided in RCW 23B.06.250 and/or 23B.06.270 for corporations.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a stock savings bank may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the stock savings bank.

(3) Within a reasonable time after the issue or transfer of shares without certificates, the stock savings bank shall send the shareholder a written statement of the information required to be stated on certificates under subsection (1) of this section. [1999 c 14 § 10.]

**32.35.900 Severability—1999 c 14.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1999 c 14 § 38.]

## Chapter 32.40 RCW COMMUNITY CREDIT NEEDS

### Sections

32.40.010	Examinations—Investigation and assessment of performance record in meeting community credit needs.
32.40.020	Approval and disapproval of applications—Consideration of performance record in meeting community credit needs.
32.40.030	Adoption of rules.
32.40.900	Severability—1985 c 329.
32.40.901	Effective date—1985 c 329.

### **32.40.010 Examinations—Investigation and assessment of performance record in meeting community credit needs.**

(1) In conducting an examination of a savings bank chartered under Title 32 RCW, the director shall investigate and assess the record of performance of the savings bank in meeting the credit needs of the savings bank's entire community, including low and moderate-income neighborhoods. The director shall accept, in lieu of an investigation or part of an investigation required by this section, any report or document that the savings bank is required to prepare or file with one or more federal agencies by the act of Congress entitled the "Community Reinvestment Act of 1977" and the regulations promulgated in accordance with that act, to the extent such reports or documents assist the director in making an assessment based upon the factors outlined in subsection (2) of this section.

(2) In making an investigation required under subsection (1) of this section, the director shall consider, independent of any federal determination, the following factors in assessing the savings bank's record of performance:

(a) Activities conducted by the institution to ascertain credit needs of its community, including the extent of the institution's efforts to communicate with members of its community regarding the credit services being provided by the institution;

(b) The extent of the institution's marketing and special credit related programs to make members of the community aware of the credit services offered by the institution;

(c) The extent of participation by the institution's board of directors or board of trustees in formulating the institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act of 1977;

(d) Any practices intended to discourage applications for types of credit set forth in the institution's community reinvestment act statement(s);

(e) The geographic distribution of the institution's credit extensions, credit applications, and credit denials;

(f) Evidence of prohibited discriminatory or other illegal credit practices;

(g) The institution's record of opening and closing offices and providing services at offices;

(h) The institution's participation, including investments, in local community development projects;

(i) The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans and small business or small farm loans within its community, or the purchase of such loans originated in its community;

(j) The institution's participation in governmentally insured, guaranteed, or subsidized loan programs for housing, small businesses, or small farms;

(k) The institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic condition, and other factors;

(l) Other factors that, in the judgment of the director, reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

(3) The director shall include as part of the examination report, a summary of the results of the assessment required under subsection (1) of this section and shall assign annually to each savings bank a numerical community reinvestment rating based on a one through five scoring system. Such numerical scores shall represent performance assessments as follows:

- (a) Excellent performance: 1
- (b) Good performance: 2
- (c) Satisfactory performance: 3
- (d) Inadequate performance: 4
- (e) Poor performance: 5

[1994 c 92 § 410; 1985 c 329 § 8.]

**Legislative intent—1985 c 329:** See note following RCW 30.60.010.

**32.40.020 Approval and disapproval of applications—Consideration of performance record in meeting community credit needs.** Whenever the director must approve or disapprove of an application for a new branch or satellite facility; for a purchase of assets, a merger, an acquisition or a conversion not required for solvency reasons; or for authority to engage in a business activity, the director shall consider, among other factors, the record of performance of the applicant in helping to meet the credit needs of the applicant's entire community, including low and moderate-income neighborhoods. Assessment of an applicant's record of performance may be the basis for denying an application. [1994 c 92 § 411; 1985 c 329 § 9.]

**Legislative intent—1985 c 329:** See note following RCW 30.60.010.

**32.40.030 Adoption of rules.** The director shall adopt all rules necessary to implement RCW 32.40.010 and 32.40.020 by January 1, 1986. [1994 c 92 § 412; 1985 c 329 § 10.]

**Legislative intent—1985 c 329:** See note following RCW 30.60.010.

**32.40.900 Severability—1985 c 329.** See RCW 30.60.900.

**32.40.901 Effective date—1985 c 329.** See RCW 30.60.901.

## Chapter 32.98 RCW CONSTRUCTION

### Sections

32.98.010	Continuation of existing law.
32.98.020	Title, chapter, section headings not part of law.
32.98.030	Invalidity of part of title not to affect remainder.
32.98.031	Severability—1963 c 176.
32.98.050	Repeals and saving.
32.98.060	Emergency—1955 c 13.

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**32.98.010 Continuation of existing law.** The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1955 c 13 § 32.98.010.]

**32.98.020 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1955 c 13 § 32.98.020.]

**32.98.030 Invalidity of part of title not to affect remainder.** If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1955 c 13 § 32.98.030.]

**32.98.031 Severability—1963 c 176.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1963 c 176 § 20.]

**32.98.050 Repeals and saving.** See 1955 c 13 § 32.98.050.

**32.98.060 Emergency—1955 c 13.** This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1955 c 13 § 32.98.060.]

# Title 33

## SAVINGS AND LOAN ASSOCIATIONS

### Chapters

- 33.04** General provisions.
- 33.08** Organization—Articles—Bylaws.
- 33.12** Powers and restrictions.
- 33.16** Directors, officers and employees.
- 33.20** Members—Savings.
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- 33.28** Fees and taxes.
- 33.32** Foreign associations.
- 33.36** Prohibited acts—Penalties.
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- 33.44** Conversion to mutual savings bank.
- 33.46** Conversion of savings bank or commercial bank to association.
- 33.48** Stock associations.
- 33.54** Satellite facilities.

*Age of majority: Chapter 26.28 RCW.*

*Assignment for benefit of creditors: Chapter 7.08 RCW.*

*Bonds and notes of federal agencies as investment and collateral: Chapter 39.60 RCW.*

*Corporate seals, effect of absence from instrument: RCW 64.04.105.*

*Corporation fees, in general: Chapter 23B.01 RCW.*

*Corporations: Titles 23B, 24 RCW.*

*Credit life insurance and credit accident and health insurance: Chapter 48.34 RCW.*

*Department of financial institutions: Chapter 43.320 RCW.*

*Fairness in lending act: RCW 30.04.500 through 30.04.515.*

*False representations: Chapter 9.38 RCW.*

*Home loan bank*

*as depository: RCW 30.32.040.*

*may borrow from: RCW 30.32.030.*

*Husband and wife, rights, liabilities: Chapter 26.16 RCW.*

*Indemnification of officers, directors, employees, etc., by corporation, insurance: RCW 23B.08.320, 23B.08.500 through 23B.08.580, 23B.08.600, and 23B.17.030.*

*Interest and usury in general: Chapter 19.52 RCW.*

*Investment*

*in federal home loan bank stock or bonds authorized: RCW 30.32.020. of county funds not required for immediate expenditures, service fee: RCW 36.29.020.*

*of funds of school districts—Service fee: RCW 28A.320.320.*

*Joint tenants, simultaneous death: RCW 11.05.030.*

*Master license system exemption: RCW 19.02.800.*

*Mortgages: Title 61 RCW.*

*Powers of appointment: Chapter 11.95 RCW.*

*Real property and conveyances: Title 64 RCW.*

*Retail installment sales of goods and services: Chapter 63.14 RCW.*

*Safe deposit companies: Chapter 22.28 RCW.*

*Uniform unclaimed property act: Chapter 63.29 RCW.*

*Washington Principal and Income Act of 2002: Chapter 11.104A RCW.*

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### Chapter 33.04 RCW

#### GENERAL PROVISIONS

##### Sections

- 33.04.002 Legislative declaration, intent—Purpose.
- 33.04.005 Definitions.
- 33.04.011 "Mortgage" includes deed of trust and real estate contract.
- 33.04.020 Director—Powers and duties.
- 33.04.025 Rules.
- 33.04.030 Compelling attendance of witnesses.
- 33.04.042 Cease and desist order—Notice of charges—Grounds—Hearing on—Issuance of order, when—Contents—Effective, when.
- 33.04.044 Temporary cease and desist order—Issued, when—Effective, when—Duration.
- 33.04.046 Temporary cease and desist order—Injunction against order on application of association—Jurisdiction.
- 33.04.048 Temporary cease and desist order—Injunction to enforce—Jurisdiction.
- 33.04.052 Cease and desist order—Administrative hearing—Procedure—Modification, termination, or setting aside of order—Review of order, procedure—Manner of service of notice or order.
- 33.04.054 Cease and desist order—Enforcement—Jurisdiction.
- 33.04.060 Appellate review.
- 33.04.090 Saturday closing authorized.
- 33.04.110 Examination reports and information—Confidential and privileged—Exceptions, limitations and procedure—Penalty.
- 33.04.120 Automated teller machines and night depositories security.

#### **33.04.002 Legislative declaration, intent—Purpose.**

The legislature finds that the statutory law relating to savings and loan associations has not been generally updated or modernized since 1945; and, as a result, many changes to Title 33 RCW should now be made with respect to the powers and duties of the director; to the provisions relating to the organization, management and conversion of savings and loan associations; and to the powers and restrictions placed upon savings and loan associations to make investments. While it is the intent of the legislature to grant permissive investment powers to state-chartered savings and loan associations, it does not intend these associations to abandon the residential financing market in Washington. It, therefore, finds that the powers granted in chapter 3, Laws of 1982 are for the purpose of updating and modernizing the law relating to savings and loan associations, thereby creating a more secure and responsive financial environment in which the residential home buyer will continue to obtain financing. [1994 c 92 § 413; 1982 c 3 § 1.]

**Severability—1982 c 3:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 3 § 118.]

**33.04.005 Definitions.** Unless the context requires otherwise, the definitions in this section apply throughout this title.

(1) "Branch" means an established manned place of business or a manned mobile facility or other manned facility of an association, other than the principal office, at which deposits may be taken.

(2) "Depositor" means a person who deposits money in an association.

(3) "Domestic association" means a savings and loan association which is incorporated under the laws of this state.

(4) "Federal association" means a savings and loan association which is incorporated under federal law.

(5) "Foreign association" means a savings and loan association organized under the laws of another state.

(6)(a) "Member," in a mutual association, means a depositor or any other person who is a member of a class of persons granted membership rights by the articles of incorporation or bylaws.

(b) "Member," in a stock association, means a stockholder or any other person who is a member of a class of persons granted membership rights by the articles of incorporation or bylaws.

(7) "Mutual association" means an association formed without authority to issue stock.

(8) "Savings and loan association," "savings association" or "association," unless otherwise restricted, means a domestic or foreign association and includes a stock or a mutual association.

(9) "Stock association" means an association formed with the authority to issue stock.

(10) "Department" means department of financial institutions.

(11) "Director" means director of financial institutions. [1994 c 92 § 414; 1982 c 3 § 2.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.04.011 "Mortgage" includes deed of trust and real estate contract.** See RCW 33.24.005.

**33.04.020 Director—Powers and duties.** The director:

(1) Shall be charged with the administration and enforcement of this title and shall have and exercise all powers necessary or convenient thereunto;

(2) Shall issue to each association doing business hereunder, when it shall have paid its annual license fee and be duly qualified otherwise, a certificate of authority authorizing it to transact business;

(3) Shall require of each association an annual statement and such other reports and statements as the director deems desirable, on forms to be furnished by the director;

(4) Shall require each association to conduct its business in compliance with the provisions of this title;

(5) Shall visit and examine into the affairs of every association, at least once in each biennium; may appraise and revalue its investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such association for such purposes. The director may accept in lieu of an examination the report of the examining division of the federal home loan bank board, or the report of the savings and loan department of another state, which has made and submitted a report of the condition of the affairs of the association, and if approved, the report shall have the same force and effect as though the examination were made by the director or one of his or her appointees;

(6) May accept or exchange any information or reports with the examining division of the federal home loan bank board or other like agency which may insure the accounts in an association or to which an association may belong or with the savings and loan department of another state which has authority to examine any association doing business in this state;

(7) May visit and examine into the affairs of any nonpublicly-held corporation in which the association has a material investment and any publicly-held corporation the capital stock of which is controlled by the association; may appraise and revalue its investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such corporation for such purposes;

(8) May, in the director's discretion, administer oaths to and to examine any person under oath concerning the affairs of any association or nonpublicly-held corporation in which the association has a material investment and any publicly-held corporation the capital stock of which is controlled by an association and, in connection therewith, to issue subpoenas and require the attendance and testimony of any person or persons at any place within this state, and to require witnesses to produce any books, papers, documents, or other things under their control material to such examination; and

(9) Shall have power to commence and prosecute actions and proceedings to enforce the provisions of this title, to enjoin violations thereof, and to collect sums due to the state of Washington from any association. [1994 c 92 § 416; 1982 c 3 § 4; 1979 c 113 § 1; 1973 c 130 § 22; 1945 c 235 § 95; Rem. Supp. 1945 § 3717-214. Prior: 1933 c 183 §§ 79, 94, 95; 1919 c 169 § 12; 1913 c 110 § 19; 1890 p 56 § 19.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1979 c 113:** "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 113 § 17.]

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.04.025 Rules.** The director shall adopt uniform rules in accordance with the administrative procedure act, chapter 34.05 RCW, to govern examinations and reports of associations and the form in which they shall report their assets, liabilities, and reserves, charge off bad debts and otherwise keep their records and accounts, and otherwise to govern the administration of this title. The director shall mail a copy of the rules to each savings and loan association at its principal place of business. The person doing the mailing shall make and file his or her affidavit thereof in the office of the director. [1994 c 92 § 417; 1982 c 3 § 5; 1973 c 130 § 20.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.04.030 Compelling attendance of witnesses.** In event any person shall refuse to appear in compliance with any subpoena issued by the director or shall refuse to testify thereunder, the superior court of the state of Washington for the county in which such witness was required by said subpoena to appear, upon application of the director, shall have jurisdiction to compel such witness to attend and testify and to punish for contempt any witness not complying with the

order of the court. [1994 c 92 § 418; 1945 c 235 § 96; Rem. Supp. 1945 § 3717-215. Prior: 1933 c 183 §§ 94, 95; 1919 c 169 § 12; 1913 c 110 § 19.]

**33.04.042 Cease and desist order—Notice of charges—Grounds—Hearing on—Issuance of order, when—Contents—Effective, when.** (1) The director may issue and serve upon an association a notice of charges if in the opinion of the director the association:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the association;

(b) Is violating or has violated a material provision of any law, rule, or any condition imposed in writing by the director in connection with the granting of any application or other request by the association or any written agreement made with the director; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection if the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the association. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the director at the request of the association.

Unless the association appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the director finds that any violation or practice specified in the notice of charges has been established, the director may issue and serve upon the association an order to cease and desist from the violation or practice. The order may require the association and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the association to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the association concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the director or a reviewing court. [1994 c 92 § 419; 1982 c 3 § 7.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.04.044 Temporary cease and desist order—Issued, when—Effective, when—Duration.** Whenever the director determines that the acts specified in RCW 33.04.042 or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the association or to otherwise seriously prejudice the interests of its depositors, the director may also issue a temporary order requiring the association to cease and desist from the violation or practice. The order shall become effective upon service on the association and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 33.04.046

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pending the completion of the administrative proceedings under the notice and until such time as the director shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the association under RCW 33.04.042. [1994 c 92 § 420; 1982 c 3 § 8.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.04.046 Temporary cease and desist order—Injunction against order on application of association—Jurisdiction.** Within ten days after an association has been served with a temporary cease and desist order, the association may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served under RCW 33.04.044.

The superior court shall have jurisdiction to issue the injunction. [1982 c 3 § 9.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.04.048 Temporary cease and desist order—Injunction to enforce—Jurisdiction.** In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 33.04.044, the director may apply to the superior court of the county of the principal place of business of the association for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation. [1994 c 92 § 421; 1982 c 3 § 10.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.04.052 Cease and desist order—Administrative hearing—Procedure—Modification, termination, or setting aside of order—Review of order, procedure—Manner of service of notice or order.** (1) Any administrative hearing provided in RCW 33.04.042 may be held at such place as is designated by the director and shall be conducted in accordance with chapter 34.05 RCW. The hearing shall be private unless the director determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

Within sixty days after the hearing, the director shall render a decision which shall include findings of fact upon which the decision is based and the director shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 33.04.042.

Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the affected association under subsection (2) of this section and until the record in the proceeding has been filed as therein provided, the director may at any time modify, terminate, or set aside any order upon such notice and in such manner as the director deems proper. Upon filing the record, the director may modify, terminate, or set aside any order only with permission of the court.

The judicial review provided in this section for an order shall be exclusive.

(2) Any party to the proceeding or any person required by an order issued under RCW 33.04.042, 33.04.044 or 33.04.048 to refrain from any of the violations or practices

stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the affected association within ten days after the date of service of the order a written petition praying that the order of the director be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the director and the director shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record to affirm, modify, terminate, or set aside in whole or in part the order of the director except that the director may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it is subject to appellate review under the rules of court.

(3) The commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the director unless specifically ordered by the court.

(4) Service of any notice or order required to be served under RCW 33.04.042 or 33.04.044 shall be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state. [1994 c 92 § 422; 1982 c 3 § 11.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.04.054 Cease and desist order—Enforcement—Jurisdiction.** The director may apply to the superior court of the county of the principal place of business of the association affected for the enforcement of any effective and outstanding order issued under RCW 33.04.042, 33.04.044, or 33.04.048, and the court shall have jurisdiction to order compliance therewith.

No court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any order or to review, modify, suspend, terminate, or set aside any order except as provided in RCW 33.04.046 and 33.04.052. [1994 c 92 § 423; 1982 c 3 § 12.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.04.060 Appellate review.** An association may petition the superior court of the state of Washington for Thurston county for the review of any decision, ruling, requirement or other action or determination of the director, by filing its complaint, duly verified, with the clerk of the court and serving a copy thereof upon the director. Upon the filing of the complaint, the clerk of the court shall docket the same as a cause pending therein.

The director may answer the complaint and the petitioner reply thereto, and the cause shall be heard before the court as in other civil actions. Both the petitioner and the director may seek appellate review of the decision of the court to the supreme court or the court of appeals of the state of Washington. [1994 c 92 § 424; 1988 c 202 § 32; 1971 c 81 § 84; 1945 c 235 § 115; Rem. Supp. 1945 § 3717-234. Prior: 1933 c 183 § 95.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**33.04.090 Saturday closing authorized.** See RCW 30.04.330.

**33.04.110 Examination reports and information—Confidential and privileged—Exceptions, limitations and procedure—Penalty.** (1) Except as otherwise provided in this section, all examination reports and all information obtained by the director and the director's staff in conducting examinations of associations are confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish in whole or in part examination reports prepared by the director's office to federal agencies empowered to examine state associations, to savings and loan supervisory agencies of other states which have authority to examine associations doing business in this state, to the attorney general in his or her role as legal advisor to the director, to the examined association as provided in subsection (4) of this section, and to officials empowered to investigate criminal charges. If the director furnishes any examination report to officials empowered to investigate criminal charges, the director may only furnish that part of the report which is necessary and pertinent to the investigation, and the director may do this only after notifying the affected savings and loan association and any customer of the savings and loan association who is named in that part of the report of the order to furnish the part of the examination report unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause. The director may also furnish in whole or in part examination reports concerning any association in danger of insolvency to the directors or officers of a potential acquiring party when, in the director's opinion, it is necessary to do so in order to protect the interests of members, depositors, or borrowers of the examined association.

(3) All examination reports furnished under subsection (2) of this section shall remain the property of the department of financial institutions and, except as provided in subsection (4) of this section, no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the department of financial institutions is designed for use in the supervision of the association, and the director may furnish a copy of the report to the savings and loan association examined. The report shall remain the property of the director and will be furnished to the association solely for its confidential use. Neither the association nor any of its directors, officers, or employees may disclose or make public in any manner the report or any portion thereof without permission of the board of directors of the examined association. The permission shall be entered in the minutes of the board.

(5) Examination reports and information obtained by the director and the director's staff in conducting examinations

shall not be subject to public disclosure under chapter 42.17 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director.

(7) This section shall not apply to investigation reports prepared by the director and the director's staff concerning an application for a new association or an application for a branch of an association. The director may adopt rules making confidential portions of such reports if in the director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the director considers necessary to fully evaluate the application.

(8) Every person who intentionally violates any provision of this section is guilty of a gross misdemeanor. [1994 c 92 § 425; 1982 c 3 § 6; 1977 ex.s. c 245 § 3.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1977 ex.s. c 245:** See note following RCW 30.04.075.

*Examination reports and information from financial institutions exempt: RCW 42.17.31911.*

**33.04.120 Automated teller machines and night depositories security.** Chapter 19.174 RCW applies to automated teller machines and night depositories regulated under this title. [1993 c 324 § 13.]

**Effective date—1993 c 324:** See RCW 19.174.900.

### Chapter 33.08 RCW

#### ORGANIZATION—ARTICLES—BYLAWS

##### Sections

33.08.010	Compliance required—Use of words in name or advertising—Penalty—Saving.
33.08.020	Who may form association.
33.08.030	Domestic association as stock or mutual association—Articles of incorporation.
33.08.040	Bylaws.
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33.08.080	Articles and bylaws filed—Certificate of incorporation issued—Revocation of right to engage in business, when.
33.08.090	Amendment of articles.
33.08.100	Amendment of bylaws.
33.08.110	Branch association—Authorized—Procedure—Limitations—Discontinuance of branch, procedure.

**33.08.010 Compliance required—Use of words in name or advertising—Penalty—Saving.** No person, firm, company, association, fiduciary, co-partnership, or corporation, either foreign or domestic, shall organize as, carry on or conduct the business of an association except in conformity with the terms and provisions of this title or unless incorporated as a savings and loan association under the laws of the United States or use in name or advertising any of the following:

(2004 Ed.)

Any collocation employing either or both of the words "building" or "loan" with one or more of the words "saving", "savings", "thrift", or words of similar import except in conformity with this title;

Any collocation employing one or more of the words "saving", "savings", "thrift" or words of similar import, with one or more of the words "association", "institution", "society", "company", "corporation", or words of similar import, or abbreviations thereof except in conformity with this title or unless authorized to do business under the laws of this state or of the United States relating to savings and loan associations, banks, or mutual savings banks; nor shall the word "federal" be used as a part of such name unless the user is incorporated as a savings and loan association under the laws of the United States.

Neither shall the words "saving", or "savings", be used in any name or advertising or to represent in any manner to indicate that the business is of the character or kind of business carried on or transacted by an association or which is calculated to lead any person to believe that the business is that of an association unless authorized to do business under the laws of this state or of the United States relating to savings and loan associations, banks, or mutual savings banks.

Every person who, and every director and officer of every corporation which, to the knowledge of such director or officer, violates any provision of this section, shall be guilty of a gross misdemeanor. Such conduct shall also be deemed a nuisance and subject to abatement in the manner prescribed by law at the instance of the director of financial institutions or any other public body or officer authorized to do so.

The provisions of this section shall have no application to use of any word or collocation of words or to any representation or advertising which had been adopted and lawfully used by any person, firm, company, association, fiduciary, co-partnership or corporation lawfully engaged in business on March 24, 1959. [1994 c 92 § 426; 1959 c 280 § 1; 1945 c 235 § 2; Rem. Supp. 1945 § 3717-121. Prior: 1933 c 183 §§ 84, 100; 1919 c 169 § 1; 1913 c 110 §§ 2, 25; 1890 p 56 §§ 2, 22, 37.]

**33.08.020 Who may form association.** Any individuals desiring to transact a business of an association may, by complying with this chapter, become a body corporate for that purpose. [1982 c 3 § 13; 1945 c 235 § 3; Rem. Supp. 1945 § 3717-122. Prior: 1933 c 183 § 3; 1925 ex.s. c 144 § 1; 1913 c 110 § 1; 1903 c 116 § 1; 1890 p 56 § 1.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.08.030 Domestic association as stock or mutual association—Articles of incorporation.** A domestic association shall be incorporated either as a stock or a mutual association. The articles of incorporation shall specifically state:

(1) The name of the association, which shall include the words:

- (a) "Savings association";
- (b) "Savings and loan association"; or
- (c) "Savings bank";

(2) The city or town and county in which it is to have its principal place of business;

(3) The name, occupation, and place of residence of all incorporators, the majority of whom shall be Washington residents;

(4) Its purposes;

(5) Its duration, which may be for a stated number of years or perpetual;

(6) The amount of paid-in savings with which the association will commence business;

(7) The names, occupations, and addresses of the first directors;

(8) Whether the association is organized as a stock or mutual association and who has membership rights and the relative rights of different classes of members of the association; and

(9) Any provision the incorporators elect to so set forth which is permitted by RCW 23B.17.030.

The articles of incorporation may contain any other provisions consistent with the laws of this state and the provisions of this title pertaining to the association's business or the conduct of its affairs. [1994 c 256 § 117; 1983 c 42 § 1; 1982 c 3 § 14; 1949 c 20 § 1; 1945 c 235 § 4; Rem. Supp. 1949 § 3717-123. Prior: 1933 c 183 § 4; 1925 ex.s. c 144 § 1; 1919 c 169 § 5; 1913 c 110 §§ 1, 6; 1903 c 116 § 1; 1890 p 56 § 1.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.08.040 Bylaws.** The incorporators shall prepare bylaws for the government of the association, which shall include:

(1) The offices of the association and the respective duties assigned to them;

(2) Policies and procedures for the conduct of the business of the association;

(3) Any other matters deemed necessary or expedient.

Such bylaws must conform in all respects to the provisions of this title and the laws of this state. [1982 c 3 § 15; 1945 c 235 § 5; Rem. Supp. 1945 § 3717-124. Prior: 1933 c 183 § 5; 1919 c 169 § 1; 1913 c 110 § 2; 1890 p 56 § 3.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.08.050 Articles and bylaws to director.** The incorporators shall deliver to the director triplicate originals of the articles of incorporation and duplicate copies of its proposed bylaws. [1994 c 92 § 427; 1982 c 3 § 16; 1981 c 302 § 30; 1945 c 235 § 6; Rem. Supp. 1945 § 3717-125. Prior: 1933 c 183 § 6; 1890 p 56 § 3.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1981 c 302:** See note following RCW 19.76.100.

**33.08.055 Certificate of incorporation—Application, contents—Filing fee.** When the incorporators of a domestic association deliver the articles of incorporation and bylaws to the director, the incorporators shall submit an application for a certificate of incorporation, signed and verified by the incorporators, together with the filing fee. The application shall set forth:

(1) The names and addresses of the incorporators and proposed directors and officers of the association;

(2) A statement of the character, financial responsibility, experience, and fitness of the directors and officers to engage in the association business;

(3) Statements of estimated receipts, expenditures, earnings, and financial condition of the association for the first two years or such longer period as the director may require;

(4) A showing that the association will have a reasonable chance to succeed in the market area in which it proposes to operate;

(5) A showing that the public convenience and advantage will be promoted by the formation of the proposed association; and

(6) Any other matters the director may require. [1994 c 92 § 428; 1982 c 3 § 17.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.08.060 Investigation—Fee.** Upon receipt of the articles of incorporation and bylaws, the director shall proceed to determine, from all sources of information and by such investigation as he or she may deem necessary, whether:

(1) The proposed articles and bylaws comply with all requirements of law;

(2) The incorporators and directors possess the qualifications required by this title;

(3) The incorporators have available for the operation of the business at the specified location sufficient cash assets;

(4) The general fitness of the persons named in the articles of incorporation are such as to command confidence and warrant belief that the business of the proposed association will be honestly and efficiently conducted in accordance with the intent and purposes of this title;

(5) The public convenience and advantage will be promoted by allowing such association to be incorporated and engage in business in the market area indicated; and

(6) The population and industry of the market area afford reasonable promise of adequate support for the proposed association.

For the purpose of this investigation and determination, the incorporators, when delivering the articles and bylaws to the director, shall pay to the director an investigation fee, the amount of which shall be established by rule of the director. [1994 c 92 § 429; 1982 c 3 § 18; 1969 c 107 § 1; 1963 c 246 § 1; 1945 c 235 § 7; Rem. Supp. 1945 § 3717-126. Prior: 1933 c 183 § 6; 1925 ex.s. c 144 § 2; 1919 c 169 § 2; 1913 c 110 § 3; 1890 p 56 § 3.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.08.070 Approval or refusal—Appellate review.** The director, not later than six months after receipt of the proposed articles and bylaws shall endorse upon each copy thereof the word "approved" or "refused" and the date thereof. In case of refusal, he or she shall forthwith return one copy of the articles and bylaws to the incorporators, and the refusal shall be final unless the incorporators, or a majority of them, within thirty days after the refusal, appeal to the superior court of Thurston county. The appeal may be accomplished by the incorporators preparing a notice of appeal, serving a copy of it upon the director, and filing the notice with the clerk of the court, whereupon the clerk, under the direction of the judge, shall give notice to the appellants and

to the director of a date for the hearing of the appeal. The appeal shall be tried de novo by the court. At the hearing a record shall be kept of the evidence adduced, and the decision of the court shall be final unless appellate review is sought as in other cases. [1994 c 92 § 430; 1988 c 202 § 33; 1971 c 81 § 85; 1953 c 71 § 1; 1945 c 235 § 8; Rem. Supp. 1945 § 3717-127. Prior: 1933 c 183 § 7; 1925 ex.s. c 144 § 2; 1919 c 169 § 2; 1913 c 110 § 3; 1890 p 56 § 3.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**33.08.080 Articles and bylaws filed—Certificate of incorporation issued—Revocation of right to engage in business, when.** If the director approves the incorporation of the proposed association, the director shall forthwith return two copies of the articles of incorporation and one copy of the bylaws to the incorporators, retaining the others as a part of the files of the director's office. The incorporators, thereupon, shall file one set of the articles with the secretary of state and retain the other set of the articles of incorporation and the bylaws as a part of its minute records, paying to the secretary of state such fees and charges as are required by law. Upon receiving an original set of the approved articles of incorporation, duly endorsed by the director as herein provided, together with the required fees, the secretary of state shall issue the secretary of state's certificate of incorporation and deliver the same to the incorporators, whereupon the corporate existence of the association shall begin. Unless an association whose articles of incorporation and bylaws have been approved by the director shall engage in business within two years from the date of such approval, its right to engage in business shall be deemed revoked and of no effect. In the director's discretion, the two-year period in which the association must commence business may be extended for a reasonable period of time, which shall not exceed one additional year. [1994 c 92 § 431; 1982 c 3 § 19; 1981 c 302 § 31; 1945 c 235 § 9; Rem. Supp. 1945 § 3717-128. Prior: 1933 c 183 § 8; 1925 ex.s. c 144 § 2; 1919 c 169 § 2; 1913 c 110 § 3; 1890 p 56 § 1.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1981 c 302:** See note following RCW 19.76.100.

**33.08.090 Amendment of articles.** The members, at any meeting called for the purpose, may amend the articles of incorporation of the association by a majority vote of the members present, in person or in proxy. The amended articles shall be filed with the director and be subject to the same procedure of approval, refusal, appeal, and filing with the secretary of state as provided for the original articles of incorporation. Proposed amendments of the articles of incorporation shall be submitted to the director at least thirty days prior to the meeting of the members.

If the amendments include a change in the association's corporate name, the association shall give notice by mail to each association doing business within this state at its principal place of business of the filing of the amended articles. Persons interested in protesting an amendment changing the association's corporate name may contact the director in person or by writing prior to a date which shall be given in the notice. [1994 c 92 § 432; 1982 c 3 § 20; 1981 c 302 § 32; 1979 c 113 § 2; 1945 c 235 § 10; Rem. Supp. 1945 § 3717-

129. Prior: 1933 c 183 §§ 9, 10; 1925 ex.s. c 144 § 1; 1913 c 110 § 1; 1903 c 116 § 1; 1890 p 56 §§ 16, 17.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1981 c 302:** See note following RCW 19.76.100.

**Severability—1979 c 113:** See note following RCW 33.04.020.

**33.08.100 Amendment of bylaws.** The bylaws adopted by the incorporators and approved by the director shall be the bylaws of the association. The members, at any meeting called for the purpose, may amend the bylaws of the association on a majority vote of the members present, in person or by proxy, or the directors at any regular or special meeting called under the provisions of RCW 33.16.090 may amend the bylaws of the association on a two-thirds majority vote of the directors. Amendments of the bylaws shall become effective after being adopted by the board or the members. [1994 c 256 § 118; 1994 c 92 § 433; 1967 c 49 § 1; 1945 c 235 § 11; Rem. Supp. 1945 § 3717-130. Prior: 1933 c 183 §§ 9, 10; 1890 p 56 § 3.]

**Reviser's note:** This section was amended by 1994 c 92 § 433 and by 1994 c 256 § 118, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**33.08.110 Branch association—Authorized—Procedure—Limitations—Discontinuance of branch, procedure.** An association with the written approval of the director, may establish and operate branches in any place within the state.

An association desiring to establish a branch shall file a written application therefor with the director, who shall approve or disapprove the application within four months after receipt.

The director's approval shall be conditioned on a finding that the resources in the market area of the proposed location offer a reasonable promise of adequate support for the proposed branch and that the proposed branch is not being formed for other than the legitimate purposes under this title. A branch shall not be established or permitted if the contingent fund, loss reserves and guaranty stock are less than the aggregate paid-in capital which would be required by law as a prerequisite to the establishment and operation of an equal number of branches in like locations by a commercial bank. If the application for a branch is not approved, the association shall have the right to appeal in the same manner and within the same time as provided by RCW 33.08.070 as now or hereafter amended. The association when delivering the application to the director shall transmit to the director a check in an amount established by rule to cover the expense of the investigation. An association shall not move any office more than two miles from its existing location without prior approval of the director.

The board of directors of an association, after notice to the director, may discontinue the operation of a branch. The association shall keep the director informed in the matter and shall notify the director of the date operation of the branch is discontinued. [1994 c 92 § 434; 1982 c 3 § 21; 1974 ex.s. c 98 § 1; 1969 c 107 § 2; 1959 c 280 § 7.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

## Chapter 33.12 RCW

## POWERS AND RESTRICTIONS

## Sections

33.12.010	Powers in general.
33.12.012	Powers conferred upon federal savings and loan association as of December 31, 1993.
33.12.014	Powers conferred upon federal savings and loan association—Reserve or other requirements—Authority of director to adopt by rule—Conditions.
33.12.015	Safe deposit companies.
33.12.060	Dealings with directors, officers, agents, employees prohibited—Exception.
33.12.140	Expense and contingent funds.
33.12.150	Contingent fund as reserve—Members' rights to fund limited.
33.12.170	May borrow from home loan bank.
33.12.180	Trustee of retirement plan established under federal act entitled "Self-Employed Individuals Tax Retirement Act of 1962."

**33.12.010 Powers in general.** An association shall have the same capacity to act as possessed by natural persons. An association has authority to perform such acts as are necessary or proper to accomplish its purposes.

In addition to any other power an association may have, an association has authority:

- (1) To have and alter a corporate seal;
- (2) To continue as an association for the time limited in its articles of incorporation or, if no such time limit is specified, then perpetually;
- (3) To sue or be sued in its corporate name;
- (4) To acquire, hold, sell, dispose of, pledge, mortgage, or encumber property, as its interests and purposes may require;
- (5) To conduct business in this state and elsewhere as may be permitted by law and, to this end, to comply with any law, regulation, or other requirements incident thereto;
- (6) To acquire capital in the form of deposits, shares, or other accounts for fixed, minimum or indefinite periods of time as are authorized by its bylaws, and may issue such pass-books, statements, time certificates of deposit, or other evidence of accounts;
- (7) To pay interest;
- (8) To charge reasonable service fees for services provided as part of its business;
- (9) To borrow money and to pledge, mortgage, or hypothecate its properties and securities in connection therewith;
- (10) To collect or protest promissory notes or bills of exchange owned or held as collateral by the association;
- (11) To let vaults, safes, boxes, or other receptacles for the safekeeping or storage of personal property, subject to the laws and regulations applicable to and with the powers possessed by safe deposit companies; and to act as escrow holder;
- (12) To act as fiscal agent for the United States of America; to purchase, own, vote, or sell stock in, or act as fiscal agent for any federal home loan bank, the federal housing administration, home owners' loan corporation, or other state or federal agency, organized under the authority of the United States or of the state of Washington and authorized to loan to or act as fiscal agent for associations or to insure savings accounts or mortgages; and in the exercise of these powers, to comply with any requirements of law or rules or orders promulgated by such federal or state agency and to execute any contracts and pay any charges in connection therewith;

mulgated by such federal or state agency and to execute any contracts and pay any charges in connection therewith;

(13) To procure insurance of its mortgages and of its accounts from any state or federal corporation or agency authorized to write such insurance and, in the exercise of these powers, to comply with any requirements of law or rules or orders promulgated and to execute any contracts and pay any premiums required in connection therewith;

(14) To loan money and to sell any of its notes or other evidences of indebtedness, together with the collateral securing the same;

(15) To make, adopt, and amend bylaws for the management of its property and the conduct of its business;

(16) To deposit moneys and securities in any other association or any bank or savings bank or other like depository;

(17) To dissolve and wind up its business;

(18) To collect or compromise debts due to it and, in so doing, to apply to the indebtedness the accounts of the debtors, and to receive, as collateral or otherwise, other securities, property or property rights of any kind or nature;

(19) To become a member of, deal with, or make reasonable payments or contribution to any organization to the extent that such organization assists in furthering or facilitating the association's purposes, powers or community responsibilities, and to comply with any reasonable conditions of eligibility;

(20) To sell money orders, travelers checks and similar instruments as agent for any organization empowered to sell such instruments through agents within this state and to receive money for transmission through a federal home loan bank;

(21) To service loans and investments for others;

(22) To sell and to purchase mortgages or other loans, including participating interests therein;

(23) To use abbreviations, words or symbols in connection with any document of any nature and on checks, proxies, notices and other instruments which abbreviations, words, or symbols shall have the same force and legal effect as though the respective words and phrases for which they stand were set forth in full for the purposes of all statutes of the state and all other purposes;

(24) To conduct a trust business under rules adopted by the director pursuant to chapter 34.05 RCW; and

(25) To exercise, by and through its board of directors and duly authorized officers and agents, all such incidental powers as may be necessary to carry on the business of the association.

The powers granted in this section shall not be construed as limiting or enlarging any grant of authority made elsewhere by this title. [1994 c 92 § 435; 1982 c 3 § 22; 1969 c 107 § 3; 1963 c 246 § 2; 1945 c 235 § 29; Rem. Supp. 1945 § 3717-148. Prior: 1939 c 98 §§ 6, 7; 1935 c 171 § 1; 1933 c 183 §§ 47, 48, 55, 59.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.12.012 Powers conferred upon federal savings and loan association as of December 31, 1993.** Notwithstanding any other provision of law, in addition to all powers and authorities, express or implied, that an association has under this title, an association may exercise any of the powers

or authorities conferred as of December 31, 1993, upon a federal savings and loan association doing business in this state. As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

The restrictions, limitations and requirements applicable to specific powers or authorities of federal savings and loan associations shall apply to associations exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted associations solely by this section. [1994 c 256 § 119; 1982 c 3 § 23; 1981 c 87 § 1.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.12.014 Powers conferred upon federal savings and loan association—Reserve or other requirements—Authority of director to adopt by rule—Conditions.** Notwithstanding any other provision of law, in addition to all powers and authorities, express or implied, that an association has under this title, the director may make reasonable rules authorizing an association to exercise any of the powers and authorities conferred at the time of the adoption of the rules upon a federal savings and loan association doing business in this state, or may modify or reduce reserve or other requirements if an association is insured by the federal savings and loan insurance corporation, if the director finds that the exercise of the power or authorities:

(1) Serves the convenience and advantage of depositors and borrowers; and

(2) Maintains the fairness of competition and parity between state-chartered savings and loan associations and federally-chartered savings and loan associations.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

The restrictions, limitations and requirements applicable to specific powers or authorities of federal savings and loan associations shall apply to associations exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted associations solely by this section. [1994 c 256 § 120; 1994 c 92 § 436; 1982 c 3 § 24; 1981 c 87 § 2.]

**Reviser's note:** This section was amended by 1994 c 92 § 436 and by 1994 c 256 § 120, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.12.015 Safe deposit companies.** See chapter 22.28 RCW.

**33.12.060 Dealings with directors, officers, agents, employees prohibited—Exception.** An association shall make no loan to or sell to or purchase any real property or securities from any director, officer, agent, or employee of an association except to the extent permitted to or from a director, officer, agent, or employee of a federal savings associa-

tion. [1994 c 256 § 121; 1994 c 92 § 437; 1985 c 239 § 1; 1982 c 3 § 25; 1979 c 113 § 3; 1953 c 71 § 2; 1947 c 257 § 3; 1945 c 235 § 35; Rem. Supp. 1947 § 3717-154. Prior: 1939 c 98 § 10; 1933 c 183 §§ 51, 53.]

**Reviser's note:** This section was amended by 1994 c 92 § 437 and by 1994 c 256 § 121, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1979 c 113:** See note following RCW 33.04.020.

**33.12.140 Expense and contingent funds.** Before any association is authorized to receive deposits or transact any business, its incorporators shall create an expense fund, in such amount as the director may determine, from which the expense of organizing the association and its operating expenses may be paid until such time as its earnings are sufficient to pay its operating expenses, and the incorporators shall enter into an undertaking with the director to make such further contributions to the expense fund as may be necessary to pay its operating expenses until such time as it can pay them from its earnings.

Before any mutual association is authorized to receive deposits or transact any business, its incorporators shall create a contingent fund for the protection of its members against investment losses, in an amount to be determined by the director.

The contingent fund shall consist of payments in cash made by the incorporators as provided in this section and of all sums credited thereto from the earnings of the association as hereinafter required.

Prior to the liquidation of any mutual association the contingent fund shall not be encroached upon in any manner except for losses and for the repayment of contributions made by the incorporators.

No repayment of the contribution of incorporators to the contingent fund shall be made until the net balance credited to the contingent fund from earnings of the association, after such repayment, equals five percent of the amount due members.

The incorporators may receive interest upon the amount of their contributions to the contingent fund at the same rate as is paid, from time to time, to savings members.

The amounts contributed to the contingent fund by the incorporators shall not constitute a liability of the association except as hereinafter provided, and any loss sustained by the association in excess of that portion of the contingent fund created from earnings may be charged against such contributions pro rata. [1994 c 92 § 438; 1982 c 3 § 26; 1945 c 235 § 13; Rem. Supp. 1945 § 3717-132. Prior: 1933 c 183 § 77; 1925 ex.s. c 144 § 7; 1919 c 169 § 8; 1913 c 110 §§ 13, 14; 1903 c 106 §§ 3, 5; 1890 p 56 §§ 6, 15, 31.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.12.150 Contingent fund as reserve—Members' rights to fund limited.** The contingent fund shall constitute a reserve for the absorption of losses of a mutual association.

Members do not have, individually or collectively, any right or claim to the contingent fund except upon dissolution of the association. [1982 c 3 § 27; 1981 c 84 § 3; 1963 c 246

§ 4; 1961 c 222 § 2; 1945 c 235 § 51; Rem. Supp. 1945 § 3717-170. Prior: 1933 c 183 §§ 63, 67; 1925 ex.s. c 144 § 7; 1919 c 169 § 8; 1913 c 110 §§ 13, 14; 1903 c 116 § 5; 1890 p 56 § 31.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.12.170 May borrow from home loan bank.** See RCW 30.32.030.

*Home loan bank as depository:* RCW 30.32.040.

*Investment in federal home loan bank stock or bonds authorized:* RCW 30.32.020.

**33.12.180 Trustee of retirement plan established under federal act entitled "Self-Employed Individuals Tax Retirement Act of 1962."** A savings and loan association shall have the power to act as trustee under:

A retirement plan established pursuant to the provisions of the act of congress entitled "Self-Employed Individuals Tax Retirement Act of 1962" (76 Stat. 809, 26 U.S.C. Sec. 37), as now constituted or hereafter amended. If a retirement plan, which in the judgment of the savings and loan association, constituted a qualified plan under the provisions of that act at the time accepted by the savings and loan association, is subsequently determined not to be a qualified plan or subsequently ceases to be a qualified plan in whole or in part, the savings and loan association may, nevertheless, continue to act as trustee of any deposits theretofore made under the plan and to dispose of the same in accordance with the directions of the trustor and the beneficiaries thereof. [1973 1st ex.s. c 93 § 1.]

## Chapter 33.16 RCW

### DIRECTORS, OFFICERS AND EMPLOYEES

#### Sections

33.16.010	Directors—Number—Vacancies.
33.16.020	Directors—Qualifications—Eligibility.
33.16.030	Directors—Prohibited acts.
33.16.040	Removal of director, officer or employee on objection of director of financial institutions—Procedure.
33.16.050	Removal of director for cause—When—Procedure.
33.16.060	Fiduciary relationship of directors and officers.
33.16.080	Officers—Election—Service.
33.16.090	Board meetings—Notice—Quorum.
33.16.120	Statement of assets and liabilities—Reports.
33.16.130	Bonds of officers and employees.
33.16.150	Pensions, retirement plans and other benefits.
33.16.170	Federal home loan bank as depository.

*Indemnification of directors, officers, employees, etc., by corporation, insurance:* RCW 23B.08.320, 23B.08.500 through 23B.08.580, 23B.08.600, and 23B.17.030.

**33.16.010 Directors—Number—Vacancies.** The business and affairs of every association shall be managed and controlled by a board of not less than seven nor more than fifteen directors, a majority of which shall not be officers or employees of the association. The persons designated in the articles of incorporation shall be the first directors.

Vacancies in the board of directors shall be filled by vote of the members at the annual meetings or at a special meeting called for the purpose. The board of directors may fill vacancies occurring on the board, such appointees to serve until the next annual meeting of the members. [1947 c 257 § 1; 1945 c 235 § 14; Rem. Supp. 1947 § 3717-133. Prior: 1933 c 183

§ 11; 1925 ex.s. c 144 § 3; 1919 c 169 § 3; 1913 c 110 § 4; 1890 p 56 § 32.]

**33.16.020 Directors—Qualifications—Eligibility.** The board of directors shall be elected at the annual meeting, unless the bylaws of the association otherwise provide.

A person shall not be a director of an association if the person has been adjudicated bankrupt or has taken the benefit of any assignment for the benefit of creditors or has suffered a judgment recovered against him for a sum of money to remain unsatisfied of record or un-superseded on appeal for a period of more than three months.

To be eligible to hold the position of director of an association, a person must have savings or stock or a combination thereof in the sum or the aggregate sum of at least one thousand dollars. Such minimum amount shall not be reduced either by withdrawal or by pledge for a loan or in any other manner, so long as he remains a director of the association. [1982 c 3 § 28; 1963 c 246 § 5; 1945 c 235 § 15; Rem. Supp. 1945 § 3717-134. Prior: 1933 c 183 §§ 12, 14; 1925 ex.s. c 144 § 3; 1919 c 169 § 3; 1913 c 110 § 4.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.16.030 Directors—Prohibited acts.** A director of a savings and loan association shall not, except to the extent permitted for a director of a federal savings and loan association:

(1) Have any interest, direct or indirect, in the gains or profits of the association, except to receive dividends, or interest upon his or her contribution to the contingent fund or upon his or her deposit accounts. However, nothing in this subsection shall prevent an officer from receiving his or her authorized compensation nor from participating in a benefit program under RCW 33.16.150, nor prevent a director from receiving an authorized director's fee;

Receive and retain, directly or indirectly, for his or her own use any commission on any loan, or purchase of real property or securities, made by the association;

(2) Become an endorser, surety, or guarantor, or in any manner an obligor, for any loan made by the association;

(3) For himself or herself or as agent, partner, stockholder, or officer of another, directly or indirectly, borrow from the association, except as hereinafter provided. [1994 c 256 § 122; 1982 c 3 § 29; 1945 c 235 § 16; Rem. Supp. 1945 § 3717-135. Prior: 1933 c 183 §§ 21, 62.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.16.040 Removal of director, officer or employee on objection of director of financial institutions—Procedure.** If the director shall notify the board of directors of any association in writing, that he or she has information that any director, officer, or employee of such association is dishonest, reckless, or incompetent or is failing to perform any duty of his or her office, the board shall meet and consider such matter forthwith and the director shall have notice of the time and place of such meeting. If the board shall find the director's objection to be well founded, such director, officer, or employee shall be removed immediately. If the board does not remove the director, officer, or employee against whom

the objections have been filed, or if the board fails to meet, consider or act upon the objections within twenty days after receiving the same, the director may forthwith or within twenty days thereafter, remove such individual by complying with the administrative procedure act, chapter 34.05 RCW. If the director feels that the public interest or safety of the association requires the immediate removal of such individual, the director may petition the superior court for a temporary injunction suspending the performance of the individual as a director pending the administrative procedure hearing. [1994 c 92 § 439; 1982 c 3 § 30; 1973 c 130 § 21; 1945 c 235 § 17; Rem. Supp. 1945 § 3717-136. Prior: 1933 c 183 § 18.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

*Appointment of provisional officers and directors:* RCW 33.40.150.

**33.16.050 Removal of director for cause—When—Procedure.** If a director becomes ineligible or if the director's conduct or habits are such as to reflect discredit upon the association or if other good cause exists, the director may be removed from office by an affirmative vote of two-thirds of the members of the board of directors at any regular meeting of the board or at any special meeting called for that purpose. No such vote upon removal of a director shall be taken until the director has been advised of the reasons therefor and has had opportunity to submit to the board of directors a statement relative thereto, either oral or written. If the director affected is present at the meeting, he shall leave the place where the meeting is being held after his statement has been submitted and prior to the vote upon the matter of his removal. [1982 c 3 § 31; 1945 c 235 § 19; Rem. Supp. 1945 § 3717-138. Prior: 1933 c 183 § 17; 1925 ex.s. c 144 § 3; 1919 c 169 § 3; 1913 c 110 § 4.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.16.060 Fiduciary relationship of directors and officers.** Directors and officers of an association shall be deemed to stand in a fiduciary relation to the association and shall discharge the duties of their respective positions in good faith and with that diligence, care, and skill which ordinary, prudent persons would exercise under similar circumstances in like position. [1982 c 3 § 32; 1945 c 235 § 20; Rem. Supp. 1945 § 3717-139. Prior: 1933 c 183 § 15; 1925 ex.s. c 144 § 3; 1919 c 169 § 3; 1913 c 110 § 4.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.16.080 Officers—Election—Service.** The board of directors of the association shall elect the officers named in the bylaws of the association, which officers shall serve at the pleasure of the board. [1982 c 3 § 33; 1945 c 235 § 22; Rem. Supp. 1945 § 3717-141. Prior: 1939 c 98 § 2; 1933 c 183 §§ 19, 20.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.16.090 Board meetings—Notice—Quorum.** The board of directors of each association shall hold a regular meeting at least once each quarter and whenever required by the director, at a time to be designated by it. Special meetings of the board of directors may be held upon notice to each director sufficient to permit his or her attendance.

At any meeting of the board of directors, a majority of the members shall constitute a quorum for the transaction of business.

The president of the association or chairman of the board or any three members of the board may call a meeting of the board by giving notice to all of the directors. [1994 c 256 § 123; 1982 c 3 § 34; 1945 c 235 § 23; Rem. Supp. 1945 § 3717-142. Prior: 1933 c 183 § 19.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.16.120 Statement of assets and liabilities—Reports.** The board of directors shall cause to be prepared, from the books of the association, a statement of assets and of liabilities, at the end of the association's fiscal year.

The board shall also cause to be prepared, certified, and filed with the director, upon blanks to be furnished by the director, such reports and statements as the director, from time to time, may require. [1994 c 92 § 440; 1982 c 3 § 35; 1973 c 130 § 23; 1945 c 235 § 27; Rem. Supp. 1945 § 3717-146. Prior: 1933 c 183 § 79; 1919 c 169 §§ 11, 12; 1913 c 110 §§ 18, 19; 1890 p 56 §§ 18, 36.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.16.130 Bonds of officers and employees.** The board of directors of every association shall procure a bond or bonds, covering all of its active officers, agents, and employees, whether or not they draw salary or compensation, with duly qualified corporate surety authorized to do business in the state of Washington, conditioned that the surety will indemnify and save harmless the association against any and all loss or losses arising through the larceny, theft, embezzlement, or other fraudulent or dishonest act or acts of any such officer, agent, or employee. Such bond coverage may provide for a deductible amount from any loss which otherwise would be recoverable from the corporate surety. A deductible amount may be applied separately to one or more bonding agreements. The bond shall not provide for more than one deductible amount from all losses caused by the same person or caused by the same persons acting in collusion or combination in cases in which such losses result from dishonesty of employees (as defined in the bond).

Such bond or bonds shall be in such amount, as to each of said officers or employees, as the directors shall deem advisable, and said bond or bonds shall be subject to the approval of the director and shall be filed with him or her. The board shall review such bond, or bonds, at its regular meeting in January of each year, and by resolution determine such bond coverage for the ensuing year. [1994 c 92 § 441; 1979 c 113 § 4; 1945 c 235 § 28; Rem. Supp. 1945 § 3717-147. Prior: 1939 c 98 § 2; 1933 c 183 § 20; 1925 ex.s. c 144 § 3; 1919 c 169 § 3; 1913 c 110 § 4; 1890 p 56 § 21.]

**Severability—1979 c 113:** See note following RCW 33.04.020.

**33.16.150 Pensions, retirement plans and other benefits.** An association may provide for pensions, retirement plans and other benefits for its officers and employees, and may contribute to the cost thereof in accordance with the plan adopted by its board of directors. Any officer or employee of

the association who is also a director or any director who has been an officer or employee is eligible for and may receive such pension, retirement plan, or other benefit to the extent that the officer or employee regularly participates or the director while an officer or employee regularly participated in the operation of the association. [1982 c 3 § 36; 1945 c 235 § 38; Rem. Supp. 1945 § 3717-157.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.16.170 Federal home loan bank as depository.** See RCW 30.32.040.

### Chapter 33.20 RCW MEMBERS—SAVINGS

#### Sections

33.20.005	Deposits by individuals governed by chapter 30.22 RCW.
33.20.010	Mutual association member's interest in assets—Meetings—Voting—Proxies.
33.20.040	Minors as members.
33.20.060	State, political subdivisions, fiduciaries as depositors.
33.20.125	Record of member deposits—As in lieu of passbook, statement, or certificate of deposit.
33.20.130	Dormant accounts.
33.20.150	Deposits with interest to be repaid on request—Postponement of withdrawals—Procedure.
33.20.170	Withdrawals may be limited—Conditions.
33.20.180	Classification of depositors—Regulation of earnings according to class.
33.20.190	Withdrawal by association draft or negotiable or transferable order or authorization—Interest eligibility.

**33.20.005 Deposits by individuals governed by chapter 30.22 RCW.** Deposits made by individuals in an association are governed by chapter 30.22 RCW. [1981 c 192 § 29.]

**Effective date—1981 c 192:** See RCW 30.22.900.

**33.20.010 Mutual association member's interest in assets—Meetings—Voting—Proxies.** Each member having deposits in a mutual association shall have a proportionate proprietary interest in its assets or net earnings subordinate to the claims of its other creditors. At any meeting of the members of a mutual association, each member shall be entitled to at least one vote. A mutual association, by its bylaws, may provide that each member shall be entitled to one vote for each one hundred dollars of the member's deposit account. At any meeting of the members, voting may be in person or by proxy. Proxies shall be in writing and signed by the member and, when filed with the secretary, shall continue in force until revoked or superseded by subsequent proxies. Written notice of the time and place of the holding of special meetings (other than the regular annual meeting) shall be mailed to each member at his last known address not more than thirty days, nor less than ten days prior to the meeting. The regular annual meeting of the mutual association shall be announced by publication of a notice thereof in a newspaper published in the city or town, or, if the association is not in a city or town, in the county in which the association is located at least ten days prior to the date of such meeting, or by ten days' written notice to the members mailed to the last known address of each member. [1982 c 3 § 37; 1969 c 107 § 4; 1949 c 20 § 2; 1945 c 235 § 12; Rem. Supp. 1949 § 3717-131.]

Prior: 1933 c 183 §§ 13, 39; 1919 c 169 § 4; 1913 c 110 § 5; 1903 c 116 § 6; 1890 p 56 § 39.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.20.040 Minors as members.** Subject to chapter 30.22 RCW, minors may become depositors or members of an association and all contracts entered into between a minor and an association, with respect to his membership or his deposits therein, shall be valid and enforceable, and a minor may not disaffirm, because of his minority, any such membership or agreement in connection therewith. [1982 c 3 § 38; 1981 c 192 § 30; 1945 c 235 § 41; Rem. Supp. 1945 § 3717-160. Prior: 1933 c 183 §§ 24, 40; 1919 c 169 § 5; 1913 c 110 § 6.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Effective date—1981 c 192:** See RCW 30.22.900.

**33.20.060 State, political subdivisions, fiduciaries as depositors.** The state of Washington and the political subdivisions thereof, and trustees, administrators, executors, guardians, and other fiduciaries, either individual or corporate, in their fiduciary capacity, may be depositors in associations. [1982 c 3 § 39; 1945 c 235 § 44; Rem. Supp. 1945 § 3717-163.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.20.125 Record of member deposits—As in lieu of passbook, statement, or certificate of deposit.** An association shall maintain a record of all deposits received from its members. The issuance of a passbook, statement, or certificate may be omitted for any account if a record thereof is maintained in lieu of a passbook, statement, or certificate of deposit, on which shall be entered deposits, withdrawals, and interest credited. [1982 c 3 § 40.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.20.130 Dormant accounts.** When any savings member shall have neither paid in nor withdrawn any funds from his or her savings account in the association for seven consecutive years, and his or her whereabouts is unknown to the association and he or she shall not respond to a letter from the association inquiring as to his or her whereabouts, sent by registered mail to his or her last known address, the association may transfer his or her account to a "Dormant Accounts" fund. Any savings account in the "Dormant Accounts" fund shall not participate in the earnings of the association except by permissive action of the directors of the association. The member, or his or her or its executor, administrator, successors or assigns, may claim the amount so transferred from his or her account to the dormant accounts fund at any time after such transfer. Should the association be placed in liquidation while any savings account shall remain credited in the dormant accounts fund and before any valid claim shall have been made thereto, as hereinabove provided, such savings account so credited, upon order of the director and without any other escheat proceedings, shall escheat to the state of Washington. [1994 c 92 § 442; 1945 c 235 § 53; Rem. Supp. 1945 § 3717-172. Prior: 1933 c 183 § 38.]

*Escheats: Chapter 11.08 RCW.*

*Uniform unclaimed property act: Chapter 63.29 RCW.*

**33.20.150 Deposits with interest to be repaid on request—Postponement of withdrawals—Procedure.** The deposits paid into an association, together with any interest credited thereon, shall be repaid to the depositors thereof respectively, or to their legal representatives, upon request.

If, in the judgment of the board, circumstances warrant deferment of the payment of withdrawals from savings accounts to a later date, thereafter withdrawals shall be paid proportionately, on a percentage basis, to all depositors requesting withdrawal until full withdrawal requests are paid to all depositors. A board resolution of deferment shall not affect the payments of withdrawals from federal tax and loan accounts.

The board shall, however, have the right in its discretion, where need is shown, to pay not exceeding one hundred dollars to any account holder in one month.

If, upon examination, the director finds that further postponement of withdrawals is unwarranted, the director may order the association to resume full payment of withdrawals and cancel all written withdrawal requests. Such order shall be in writing.

The association's failure, during a period of postponement, to pay withdrawal requests shall not authorize the director to take charge of or liquidate the association. [1994 c 92 § 443; 1982 c 3 § 41; 1979 c 113 § 5; 1953 c 71 § 5; 1945 c 235 § 54; Rem. Supp. 1945 § 3717-173. Prior: 1939 c 98 § 5; 1933 c 183 §§ 29, 30, 31, 32, 33, 34, 37; 1919 c 169 § 10; 1913 c 110 § 16; 1890 p 56 § 27.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1979 c 113:** See note following RCW 33.04.020.

**33.20.170 Withdrawals may be limited—Conditions.** The director further is empowered, if in his or her judgment the circumstances warrant it, to issue in writing a declaration that an acute business depression, state of panic, or economic emergency exists, in which event the directors of any association, state or federal, within the state may limit withdrawals by resolution, subject to the following conditions; that incoming funds shall be applied:

First, to the payment of operating expenses, indebtedness, taxes, insurance, and to the necessary charges for the protection of the association and its investments;

Second, to the payment to members of emergency withdrawals not exceeding twenty-five dollars per month to any member. The board of directors of any association, with the prior written approval of the director, by resolution may authorize the payment of emergency withdrawals not exceeding one hundred dollars per month to any member;

Third, to the payment of dividends on the savings of its members;

Fourth, three-fourths of all remaining receipts of the association, except interest payments, shall be applied to the payment of withdrawals, until all withdrawal requests have been paid.

All such withdrawal payments shall be made to members having withdrawal requests on file in proportion to the amount of such withdrawal requests. [1994 c 92 § 444; 1945 c 235 § 99; Rem. Supp. 1945 § 3717-218. Prior: 1939 c 98 § 5; 1933 c 183 §§ 29, 30, 31, 32, 33, 34; 1919 c 169 § 10; 1913 c 110 § 16; 1890 p 56 § 27.]

(2004 Ed.)

**33.20.180 Classification of depositors—Regulation of earnings according to class.** An association may classify its depositors according to the character, amount, frequency or duration of their dealings with the association and may regulate the earnings in such manner that each depositor receives the same rate of interest as all others of the depositor's class. [1982 c 3 § 42; 1969 c 107 § 9.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.20.190 Withdrawal by association draft or negotiable or transferable order or authorization—Interest eligibility.** An association may, on instruction from a depositor, effect withdrawals from the depositor's account by the association's drafts payable to parties and on terms as so instructed. An association may allow a depositor to effect withdrawals or transfers from the depositor's account upon negotiable or transferable order or authorization to the association. To the extent of the subjection of accounts to such withdrawal instructions or orders, such accounts may be specifically classified under RCW 33.20.180 and ineligible to receive interest or eligible only for limited interest. [1982 c 3 § 43; 1980 c 54 § 1; 1969 c 107 § 10.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Contingent effective date—1980 c 54:** "The provisions of this 1980 amendatory act shall take effect on the effective date of a law enacted by the United States Congress enabling depository institutions in the state of Washington to allow the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties." [1980 c 54 § 3.] Section 303 of the Consumer Checking Account Equity Act of 1980, 94 Stat. 145, authorizes the above-mentioned withdrawals. Section 303 has an effective date of December 31, 1980.

## Chapter 33.24 RCW

### LOANS AND INVESTMENTS

#### Sections

33.24.005	"Mortgage" includes deed of trust and real estate contract.
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33.24.015	Loans generally—Limitation.
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33.24.115	Forming, incorporating with, or investing in other entities—Limitation.
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33.24.360	Acquisition of control of association—Unlawful, when—Application—Contents—Notice to other associations—Penalty.
33.24.370	Acquisition of control of association—Action or proceeding to prevent—Grounds.

33.24.375 Acquisition of control of association—Application to foreign association branches.

*Federal bonds and notes as investment or collateral: Chapter 39.60 RCW.*

*Interest and usury in general: Chapter 19.52 RCW.*

*Mortgages: Title 61 RCW.*

*Real property and conveyances: Title 64 RCW.*

**33.24.005 "Mortgage" includes deed of trust and real estate contract.** The word "mortgage" as used in this title includes deed of trust and real estate contract. [1982 c 3 § 44; 1973 c 130 § 28.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.24.007 "Real property" defined.** Unless the context clearly requires otherwise, "real property" means improved or unimproved real estate and includes leasehold interests in improved or unimproved real estate and includes manufactured housing whether temporarily, semipermanently, or permanently attached to land and mobile homes and manufactured homes whose title has been eliminated under chapter 65.20 RCW. [1989 c 343 § 23; 1982 c 3 § 49.]

**Severability—Effective date—1989 c 343:** See RCW 65.20.940 and 65.20.950.

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.24.010 Loans to any one person—Limitation.** An association may invest its funds only as provided in this chapter.

It shall not invest more than two and a half percent of its assets in any loan or obligation to any one person, except with the written approval of the director. [1994 c 92 § 445; 1982 c 3 § 45; 1979 c 113 § 6; 1963 c 246 § 7; 1953 c 71 § 6; 1947 c 257 § 5; 1945 c 235 § 58; Rem. Supp. 1947 § 3717-177. Prior: 1939 c 98 § 11; 1933 c 183 §§ 39, 52, 56, 58; 1925 ex.s. c 144 § 5; 1913 c 110 §§ 8, 9; 1903 c 116 § 2; 1890 p 56 §§ 4, 30.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1979 c 113:** See note following RCW 33.04.020.

**33.24.015 Loans generally—Limitation.** An association may invest not more than twenty percent of its assets in loans on such terms as it deems appropriate. [1982 c 3 § 51.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.24.020 Obligations of United States or Canada.** An association may invest its funds in loans upon or purchases of the bonds or obligations of or bonds or obligations guaranteed by the United States of America, including bonds of the District of Columbia, of the Dominion of Canada, or those for which the faith of the United States or the Dominion of Canada is pledged to provide for the payment of interest and principal: PROVIDED, That, in the case of bonds of the Dominion of Canada or those for which its faith is pledged, the interest and principal shall be payable in the United States or with exchange to a city in the United States and in lawful money of the United States or its equivalent. [1947 c 257 § 6; 1945 c 235 § 59; Rem. Supp. 1947 § 3717-178. Prior: 1939 c 98 § 11; 1935 c 9 §§ 1, 2, 3; 1933 c 183 § 56.]

**33.24.025 Investment in investment trusts or companies.** Except as may be limited by the director by rule, an association may invest its funds in obligations of the United States, as authorized by RCW 33.24.020, either directly or in the form of securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940, as now or hereafter amended, if both of the following conditions are met:

(1) The portfolio of the investment company or investment trust is limited to obligations of the United States and to repurchase agreements fully collateralized by such obligations; and

(2) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian. [1994 c 92 § 446; 1989 c 97 § 3.]

**33.24.030 Obligations of this state.** An association may invest its funds in the bonds or interest bearing obligations of this state or any agency thereof. [1955 c 126 § 1; 1945 c 235 § 60; Rem. Supp. 1945 § 3717-179. Prior: 1939 c 98 § 11; 1933 c 183 § 56.]

**33.24.040 Obligations of other states.** An association may invest its funds in the bonds or interest bearing obligations of any other state of the United States upon which there is no existing default and upon which there has been no default for more than ninety days within ten years immediately preceding the investment: PROVIDED, That such state has not been in default for more than ninety days, within said ten years, in the payment of any part of the principal or interest of any debt contracted by it or for which the faith of such state was pledged. [1945 c 235 § 61; Rem. Supp. 1945 § 3717-180. Prior: 1939 c 98 § 11; 1933 c 183 § 56.]

**33.24.050 Obligations of municipal corporations in this state.** An association may invest its funds in the valid warrants or bonds of any city, town, county, school district, port district, or other municipal corporation in the state of Washington which are issued pursuant to law and for the payment of which the faith and credit of such municipal corporations is pledged and taxes are leviable upon all taxable property within its limits. The aggregate of the investments of an association in any issue of such warrants or bonds shall at no time exceed five percent of the amount of its savings accounts. [1945 c 235 § 62; Rem. Supp. 1945 § 3717-181. Prior: 1939 c 98 § 11; 1933 c 183 § 56.]

**33.24.060 Obligations of municipal corporations in any state.** An association may invest its funds in the valid warrants or bonds of any city, county, school district, port district, or other municipal corporation in the United States having a population of not less than fifty thousand inhabitants as determined by the last federal census, which municipal corporation has not defaulted in the payment of interest or principal upon any general obligation, including those for which its credit was pledged, within ten years last past, and for the payment of which the faith and credit of such municipal corporation is pledged and taxes are leviable upon all tax-

able property within its limits. No such investment shall be made unless the warrants or bonds for purchase are rated not less than BAA by Moody's Investors' Service, or have equivalent rating of another standard rating bureau, and the aggregate of the investments of an association in any issue of such warrants or bonds shall at no time exceed five percent of the amount of its savings accounts. [1945 c 235 § 63; Rem. Supp. 1945 § 3717-182. Prior: 1939 c 98 § 11; 1933 c 183 § 56.]

**33.24.065 Obligations issued or guaranteed by multilateral development bank.** An association may invest in obligations issued or guaranteed by any multilateral development bank in which the United States government formally participates. Such investment in any one multilateral development bank shall not exceed five percent of the association's assets. [1985 c 301 § 3.]

**33.24.070 City or district light, water, and sewer revenue bonds.** An association may invest its funds in the revenue bonds of any city, town, district, or political subdivision of this state for the payment of which revenue of the city, town, district or political subdivision utility or revenue producing facility is irrevocably pledged.

It may invest its funds in the light, water, or sewer revenue bonds of any city or other municipal corporation in the United States having a population of not less than fifty thousand inhabitants as determined by the last federal census, which has not defaulted in the payment of interest or principal upon this or any like obligation, including those for which its credit was pledged, within ten years last past, for the payment of which the entire revenue of the city's or other municipal corporation's light, water, or sewer system, less maintenance and operating costs, is irrevocably pledged.

The aggregate of the investments of an association in any issue of such revenue bonds shall at no time exceed five percent of the amount of its savings accounts. [1955 c 126 § 2; 1945 c 235 § 64; Rem. Supp. 1945 § 3717-183. Prior: 1939 c 98 § 11; 1933 c 183 § 56.]

**33.24.080 Local improvement district bonds.** An association may invest its funds in the bonds of any local improvement district of any city of this state (except bonds issued for an improvement consisting of grading only), the ultimate payment of which is guaranteed by the municipality under the provisions of guaranty laws of this state: PROVIDED, That one-half of the lots in the district are improved with revenue producing houses or other improvements and that local improvement district bonds falling within the twenty-five percent, in amount of any issue, last callable for payment shall neither be acquired nor taken as security. The aggregate of the investments of an association in any issue of such bonds shall at no time exceed three percent of the amount of its savings accounts, and it may not have invested, at any one time, more than one hundred thousand dollars in the bonds of any such district. [1953 c 71 § 7; 1945 c 235 § 65; Rem. Supp. 1945 § 3717-184. Prior: 1939 c 98 § 11; 1933 c 183 § 56.]

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**33.24.090 Obligations of federal and state agencies—Investment in other associations.** An association may invest its funds in stock or notes, bonds, debentures, or other such obligations of any federal home loan bank, the Home Owners' Loan Corporation, any federal land bank, the Federal Savings and Loan Insurance Corporation, the Federal Housing Administration, the Federal National Mortgage Association, or any other instrumentality of the federal government, or any state or federal agency organized under the laws of the United States or of the state of Washington authorized to loan to or act as a fiscal agency for, or insurer of, a savings and loan association.

An association may become a member of and invest its funds in other savings and loan associations organized under either federal or state law, which have an authorized office in this state: PROVIDED, That the investment in any such other savings and loan association shall not exceed the amount which is insured by the Federal Savings and Loan Insurance Corporation. [1959 c 280 § 3; 1953 c 71 § 8; 1945 c 235 § 66; Rem. Supp. 1945 § 3717-185. Prior: 1939 c 98 § 11; 1935 c 9 §§ 1, 2, 3; 1933 c 183 § 56.]

**33.24.100 Loans or other obligations secured by real property.** An association may invest its funds in loans, mortgages, or other obligations secured by real property. [1982 c 3 § 46; 1979 c 113 § 7; 1969 c 107 § 5; 1949 c 20 § 6; 1945 c 235 § 67; Rem. Supp. 1949 § 3717-186. Prior: 1939 c 98 § 11; 1935 c 9 §§ 1, 2, 3; 1933 c 183 §§ 56, 58; 1925 ex.s. c 144 § 5; 1913 c 110 §§ 8, 9; 1903 c 116 § 2; 1890 p 56 § 4.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1979 c 113:** See note following RCW 33.04.020.

**33.24.115 Forming, incorporating with, or investing in other entities—Limitation.** An association, alone or in conjunction with other entities, may form, incorporate, or invest in corporations or other entities, whether or not such other corporation or entity is related to the association's business. The aggregate amount of funds invested or used in the formation of corporations or other entities under this section shall not exceed ten percent of the assets of the association. [1982 c 3 § 50.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.24.160 Investment in office equipment and real property interests used in doing business.** An association may invest its funds in the acquisition of furniture, fixtures and office equipment convenient and necessary for the carrying on of its business.

An association may invest its funds in real property or leasehold interests therein for use in the transaction of its business. [1982 c 3 § 47; 1945 c 235 § 73; Rem. Supp. 1945 § 3717-192. Prior: 1939 c 98 § 11; 1933 c 183 § 56.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.24.200 Personal liability on unlawful loans.** Every director, officer, agent, or employee of an association who shall borrow or who shall knowingly permit any person to borrow any of its funds in violation of the provisions of this title shall be personally liable for any loss or damage which

the association may sustain in consequence thereof. [1945 c 235 § 94; Rem. Supp. 1945 § 3717-213.]

**33.24.210 Revenue bonds of public utility districts.**  
See RCW 54.24.120.

**33.24.220 Stock or bonds of federal home loan bank.**  
See RCW 30.32.020.

*Home loan bank as depository:* RCW 30.32.040.

*May borrow from home loan bank:* RCW 30.32.030.

**33.24.270 Stock in small business investment companies.** A savings and loan association may purchase and hold for its own investment accounts stock in small business investment companies licensed and regulated by the United States as authorized by the small business act, Public Law 85-536, as amended and now in force, in an amount not to exceed one percent of its assets. [1973 c 130 § 30; 1969 c 107 § 13.]

**Severability—1973 c 130:** See note following RCW 33.24.350.

**Definitions—1973 c 130:** See RCW 33.24.350.

**33.24.295 Loans for nonbusiness family purposes—Limitation.** An association may invest not to exceed twenty percent of its assets in loans for any nonbusiness family purposes. [1982 c 3 § 48; 1979 c 113 § 12; 1973 c 130 § 27.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1979 c 113:** See note following RCW 33.04.020.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.24.345 Acquisition of control of association—Authorized.** A person or other entity, including an association, organized under the laws of this state or authorized to transact business in this state, may acquire any or all of the assets or shares of stock of any association authorized to transact business under this title. [1982 c 3 § 52.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.24.350 Acquisition of control of association—Definitions.** Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Subsidiary" of a person or other entity means any person or other entity which is controlled by such person or other entity.

(2) "Control" means directly or indirectly or acting in concert with one or more other persons or entities, or through one or more subsidiaries, owning, controlling, or holding with the power to vote twenty-five percent or more of the voting rights of an association.

(3) "Acquiring party" means the person or other entity acquiring control of a savings and loan association. [1982 c 3 § 53; 1973 c 130 § 1.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 130 § 32.]

**33.24.360 Acquisition of control of association—Unlawful, when—Application—Contents—Notice to**

**other associations—Penalty.** (1) It is unlawful for any acquiring party to acquire control of an association until thirty days after the date of filing with the director an application containing substantially all of the following information and any additional information that the director may prescribe as necessary or appropriate in the public interest or for the protection of deposit account holders, borrowers or stockholders:

(a) The identity, character, and experience of each acquiring party by whom or on whose behalf acquisition is to be made;

(b) The financial and managerial resources and future prospects of each acquiring party involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which such acquisition is to be made;

(d) The source and amount of the funds or other consideration used or to be used in making the acquisition and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction and the names of the parties. However, where a source of funds is a loan made in the lender's ordinary course of business, if the person filing the statement so requests, the director shall not disclose the name of the lender to the public;

(e) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the association to sell its assets, to merge it with any company, or to make any other major changes in its business or corporate structure or management;

(f) The identification of any persons employed, retained or to be compensated by the acquiring party, or by any person on his or her behalf, who makes solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and brief description of the terms of such employment, retainer, or arrangements for compensation;

(g) Copies of all invitations for tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

(2) When an unincorporated company is required to file the statements under subsection (1)(a), (b), and (f) of this section, the director may require that the information be given with respect to each partner of a partnership or limited partnership, by each member of a syndicate or group, and by each person who controls a partner or member. When an incorporated company is required to file the statements under subsection (1)(a), (b), and (f) of this section, the director may require that the information be given for the corporation and for each officer and director of the corporation and for each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation. If any tender offer, request or invitation for tenders or other agreement to acquire control is proposed to be made by means of a registration statement under the federal securities act of 1933 (48 Stat. 74, 15 U.S.C. Sec. 77a), as amended, or in circumstances requiring the disclosure of similar information under the federal securities exchange act of 1934 (48 Stat. 881; 15 U.S.C. Sec. 77b), as amended, or in an application filed with the federal home loan bank board requiring similar disclosure, such registration statement or application may be filed with the director in lieu of the requirements of this section.

(3) The director shall give notice by mail to all associations doing business within the state of the filing of an application to acquire control of an association. The association shall transmit a check to the director for two hundred dollars when filing the application to cover the expense of notification. Persons interested in protesting the application may contact the director in person or by writing prior to a date which shall be given in the notice.

(4) Any person who willfully violates this section, or any regulation or order thereunder, is guilty of a misdemeanor and shall be fined not more than one thousand dollars for each day during which the violation continues. [2003 c 53 § 197; 1994 c 92 § 447; 1982 c 3 § 54; 1979 c 113 § 13; 1973 c 130 § 2.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1979 c 113:** See note following RCW 33.04.020.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.24.370 Acquisition of control of association—Action or proceeding to prevent—Grounds.** The director may within thirty days after the date of filing of the application under RCW 33.24.360, file an action or proceeding in superior court to prevent the pending acquisition of control if the director finds any of the following:

(1) The acquisition would substantially lessen competition or would in any manner be in restraint of trade or would result in a monopoly, or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the state of Washington, unless the director also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;

(2) The poor financial condition of any acquiring party might jeopardize the financial stability of the association being acquired or might prejudice the interests of the depositors, borrowers, or stockholders of the association or is not in the public interest;

(3) The plan or proposal under which the acquiring party intends to liquidate the association, to sell its assets, or to merge it with any person or company, or to make any other major change in its business or corporate structure or management, is not fair and reasonable to the association's depositors, borrowers, or stockholders or is not in the public interest; or

(4) The competence, experience and integrity of any acquiring party who would control the operation of the association indicates that approval would not be in the interest of the association's depositors, borrowers, or stockholders nor in the public interest. [1994 c 92 § 448; 1982 c 3 § 55; 1973 c 130 § 3.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.24.375 Acquisition of control of association—Application to foreign association branches.** RCW 33.24.345, 33.24.350, 33.24.360, and 33.24.370 do not apply

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to foreign associations doing business in this state, except when an acquiring party intends to acquire only one or more branches of a foreign association which are located in this state. [1982 c 3 § 56.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

## Chapter 33.28 RCW FEES AND TAXES

### Sections

33.28.010	Filing and copy fees.
33.28.020	Fee for examination and supervision costs.
33.28.040	Taxation of associations.

**33.28.010 Filing and copy fees.** The secretary of state shall collect fees of twenty dollars in advance for filing articles of incorporation. The secretary of state shall establish by rule, fees for amendments to articles of incorporation, other certificates required to be filed in his or her office, and for furnishing copies of papers filed in his or her office.

Every association shall also pay to the secretary of state, for filing any instrument with him or her, the same fees as are required of general corporations for filing similar papers. [1993 c 269 § 13; 1981 c 302 § 33; 1945 c 235 § 76; Rem. Supp. 1945 § 3717-195.]

**Effective date—1993 c 269:** See note following RCW 23.86.070.

**Severability—1981 c 302:** See note following RCW 19.76.100.

*Corporations, fees in general: Chapter 23B.01 RCW.*

**33.28.020 Fee for examination and supervision costs.** The director shall collect from each association a fee, the amount of which shall be set by rule, to cover the actual cost of examinations and supervision. [1994 c 92 § 449; 1982 c 3 § 57; 1974 ex.s. c 22 § 1; 1969 c 107 § 6; 1961 c 222 § 4; 1945 c 235 § 77; Rem. Supp. 1945 § 3717-196. Prior: 1933 c 183 § 82; 1919 c 169 § 11; 1913 c 110 § 18.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.28.040 Taxation of associations.** The fees provided for in this title shall be in lieu of all other corporation fees, licenses, or excises for the privilege of doing business, except for business and occupation taxes imposed pursuant to chapter 82.04 RCW, and except for license fees or taxes imposed by a city or town under RCW 82.14A.010, notwithstanding any other provisions of this section.

Neither an association nor its members shall be taxed upon its deposit accounts as property, nor shall a domestic association be taxed upon its real and tangible personal property at a rate greater than any federal association doing business in this state.

An association is an institution for deposits and neither it nor its property shall be taxed under any law which shall exempt banks or other savings institutions, state or federal, from taxation.

For all purposes of taxation, the assets represented by the contingent fund, guaranty fund, and other reserves (other than reserves for expenses and specific losses) of an association shall be deemed its only permanent capital and, in computing any tax, whether property, income, or excise, appropriate adjustments shall be made to give effect to the nature

of such association. [1982 c 3 § 58; 1972 ex.s. c 134 § 4; 1970 ex.s. c 101 § 1; 1945 c 235 § 79; Rem. Supp. 1945 § 3717-198. Prior: 1933 c 183 § 86; 1913 c 110 § 17; 1890 p 56 §§ 35, 38.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Effective date—1972 ex.s. c 134:** See RCW 82.14A.900.

**Severability—1970 ex.s. c 101:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 101 § 5.]

**Effective date—1970 ex.s. c 101:** "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect March 1, 1970." [1970 ex.s. c 101 § 6.]

*City or town license fees or taxes on financial institutions: Chapter 82.14A RCW.*

## Chapter 33.32 RCW FOREIGN ASSOCIATIONS

### Sections

33.32.020	Examinations and reports.
33.32.030	Subject to state regulations and laws.
33.32.050	Power of attorney for service of process.
33.32.060	Reciprocity.
33.32.070	Failure to comply with title as disqualifying act.
33.32.080	Nonadmitted foreign associations—Powers relative to secured interests.

**33.32.020 Examinations and reports.** Unless prohibited by the laws of the state in which it is incorporated, a foreign association or like corporation authorized to do business in this state which, by the laws of the state in which it is incorporated, is required to be examined or to make reports to officers of such state, after each such examination or on the making of each such report, shall furnish to the director a copy of such examination or report, certified by the officer of the state making such examination or receiving the report. [1994 c 92 § 450; 1982 c 3 § 59; 1945 c 235 § 81; Rem. Supp. 1945 § 3717-200. Prior: 1933 c 183 § 87; 1913 c 110 § 21; 1890 p 56 §§ 14, 37.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.32.030 Subject to state regulations and laws.** Except as to those matters relating strictly to its internal management which are governed by provisions of the law of the state of its incorporation inconsistent with this title, a foreign association or like corporation authorized to transact business in this state shall conduct its business in conformance with the provisions of this title and all requirements of the director.

All agreements made by any foreign association or like corporation doing business in this state with any resident of this state shall be deemed and construed to be made within this state. [1994 c 92 § 451; 1982 c 3 § 60; 1945 c 235 § 82; Rem. Supp. 1945 § 3717-201. Prior: 1933 c 183 § 87; 1913 c 110 § 21; 1890 p 56 §§ 9, 14.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.32.050 Power of attorney for service of process.** No foreign savings and loan association or like corporation shall do business in this state until it shall file with the director a written irrevocable power of attorney providing that service upon the director of any process issued against it by any

court in this state shall constitute valid service of such process upon it. Such service shall be had by serving upon the director two copies of such summons or other process, together with the sum of two dollars. The director, upon receipt of any such summons or other process, shall forthwith transmit, by registered mail, one copy thereof to the principal office of such foreign association or corporation. [1994 c 92 § 452; 1945 c 235 § 84; Rem. Supp. 1945 § 3717-203. Prior: 1933 c 183 § 87; 1890 p 56 §§ 9, 10, 12.]

**33.32.060 Reciprocity.** No foreign savings and loan association shall be permitted to do business in this state on more favorable terms and conditions than the associations organized under the laws of this state are permitted to do business in the state in which such foreign association or corporation is organized. [1945 c 235 § 85; Rem. Supp. 1945 § 3717-204. Prior: 1933 c 183 § 88; 1890 p 56 § 13.]

**33.32.070 Failure to comply with title as disqualifying act.** Any foreign savings and loan association or like corporation doing business in this state which fails to comply with any provision of this title as required shall not thereafter transact any business within this state. [1982 c 3 § 61; 1945 c 235 § 86; Rem. Supp. 1945 § 3717-205. Prior: 1933 c 183 § 89; 1913 c 110 § 21; 1890 p 56 §§ 14, 20.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.32.080 Nonadmitted foreign associations—Powers relative to secured interests.** See chapter 23B.18 RCW.

## Chapter 33.36 RCW PROHIBITED ACTS—PENALTIES

### Sections

33.36.010	Illegal loans or investments.
33.36.020	Purchase at discount of accounts or certificates.
33.36.030	Preference in case of insolvency.
33.36.040	Falsification of books—Exhibiting false document—Making false statement of assets or liabilities.
33.36.050	False statement affecting financial standing.
33.36.060	Suppressing, secreting, or destroying evidence or records.

*Assignment for benefit of creditors: Chapter 7.08 RCW.*

*False representations: Chapter 9.38 RCW.*

**33.36.010 Illegal loans or investments.** Any director, officer, agent, or employee of an association who, on behalf of such association, shall knowingly and wilfully make or participate in making or consent to any loan or investment contrary to the provisions of this title shall be guilty of a gross misdemeanor. [1945 c 235 § 87; Rem. Supp. 1945 § 3717-206. Prior: 1933 c 183 §§ 53, 62, 102, 111; 1919 c 169 § 16; 1913 c 110 § 27.]

**33.36.020 Purchase at discount of accounts or certificates.** Any director, officer, agent, attorney, or employee of an association who, directly or indirectly, shall purchase at a discount any savings account in the association or any certificate or debenture of any segregation corporation holding assets formerly held by the association shall be guilty of a

gross misdemeanor. [1945 c 235 § 88; Rem. Supp. 1945 § 3717-207. Prior: 1933 c 183 §§ 62, 101.]

**33.36.030 Preference in case of insolvency.** Every transfer of its property and assets by any association in this state, made in contemplation of insolvency, or after it becomes insolvent, with a view to the preference of one creditor or member over another, or to prevent the proper distribution of its property and assets among its creditors and members, shall be void.

Every director, officer, agent, or employee making such transfer or assisting therein is guilty of a class C felony as provided in chapter 9A.20 RCW. [1982 c 3 § 62; 1945 c 235 § 89; Rem. Supp. 1945 § 3717-208.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.36.040 Falsification of books—Exhibiting false document—Making false statement of assets or liabilities.** Every person who subscribes to or knowingly makes or causes to be made any false statement or false entry in the books of any association, or knowingly subscribes to or exhibits any false or fictitious security, document, or paper, with intent to deceive any person authorized to examine into the affairs of any association, or knowingly makes or publishes any false statement of the amount of the assets or liabilities of the association, is guilty of a class C felony as provided in chapter 9A.20 RCW. [1982 c 3 § 63; 1945 c 235 § 90; Rem. Supp. 1945 § 3717-209. Prior: 1933 c 183 § 101; 1919 c 169 §§ 12, 18; 1913 c 110 § 19.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.36.050 False statement affecting financial standing.** Any person who wilfully instigates, makes, circulates, or transmits to another or others any statement which the person knows to be false concerning the financial condition or affecting the financial standing of any association doing business in this state, or who wilfully counsels, aids, procures or induces another to start, transmit, or circulate any such statement which the person knows to be false, is guilty of a gross misdemeanor. [1982 c 3 § 64; 1945 c 235 § 92; Rem. Supp. 1945 § 3717-211. Prior: 1933 c 183 § 110.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.36.060 Suppressing, secreting, or destroying evidence or records.** Any person who, for the purpose of concealing any material fact, suppresses any evidence or abstract, removes, mutilates, destroys, or secretes any book, paper or record of an association, or of the director, or of anyone connected with the association or the office of the director, is guilty of a class C felony as provided in chapter 9A.20 RCW. [1994 c 92 § 453; 1982 c 3 § 65; 1945 c 235 § 91; Rem. Supp. 1945 § 3717-210. Prior: 1933 c 183 § 106; 1919 c 169 § 19.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Chapter 33.40 RCW**

**INSOLVENCY, LIQUIDATION, MERGER**

Sections

33.40.010 Voluntary liquidation, merger, etc., authorized—Procedure.

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- 33.40.020 Director may take possession of domestic association on notice for delinquency.
- 33.40.030 Possession without notice.
- 33.40.040 Procedure on taking possession.
- 33.40.050 Involuntary liquidation—Procedure—Federal insurance corporation as liquidator.
- 33.40.060 Procedure to be as in receivership.
- 33.40.070 Liquidator's powers.
- 33.40.075 Investment of liquidation funds—Use of income.
- 33.40.080 Disposition of records.
- 33.40.110 Voluntary liquidation—Disposition of unclaimed dividends and records.
- 33.40.120 Removal of liquidator—Appellate review.
- 33.40.130 Payment of deposits accepted during economic emergency, preference.
- 33.40.150 Appointment of provisional officers and directors.

**33.40.010 Voluntary liquidation, merger, etc., authorized—Procedure.** Any domestic association may determine to enter upon voluntary liquidation, to transfer its assets and liabilities to another association, to merge with another association, to segregate its assets into classes, to charge off its losses in excess of its reserves.

Any such liquidation, transfer, merger, segregation, or charge-off shall be effected by the vote of a majority in amount of the members present, in person or by proxy, at any regular or special meeting of the members called for such purpose. Notice of such meeting, stating the purpose thereof, shall be given the director at least thirty days prior to the meeting and to the members pursuant to the provisions contained in RCW 33.20.010.

If such liquidation, transfer, merger, segregation, or charge-off be authorized by the members at the meeting, the directors of the association are authorized and shall effect such action, and the officers of the association shall execute all proper conveyances, documents, and other papers necessary or proper thereunto. [1994 c 92 § 454; 1949 c 20 § 9; 1945 c 235 § 102; Rem. Supp. 1949 § 3717-221. Prior: 1935 c 171 § 4; 1933 c 183 §§ 60, 78; 1919 c 169 § 17.]

**33.40.020 Director may take possession of domestic association on notice for delinquency.** Whenever it appears to the director that any domestic association is in an unsound condition or is conducting its business in an unsafe manner or is refusing to submit its books, papers, or concerns to lawful inspection, or that any director or officer thereof refuses to submit to examination on oath touching its concerns and affairs or that it has failed to carry out any authorized order or direction of the director, the director may give notice to the association so offending or delinquent or whose director or officer is thus offending or delinquent to correct such offense or delinquency and, if such association or such director or officer fails to correct the condition, offense, or delinquency within a reasonable time, as determined by the director, the director may take possession of the association. [1994 c 92 § 455; 1982 c 3 § 66; 1945 c 235 § 103; Rem. Supp. 1945 § 3717-222. Prior: 1933 c 183 §§ 68, 71.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.40.030 Possession without notice.** Whenever it shall appear to the director that any association is in an unsound or unsafe condition to continue business or is insolvent, the director may take possession thereof without notice. [1994 c 92 § 456; 1945 c 235 § 104; Rem. Supp. 1945 § 3717-223. Prior: 1933 c 183 §§ 68, 71.]

**33.40.040 Procedure on taking possession.** Upon the director taking possession of any domestic association, the director shall proceed to liquidate the association unless, in the director's discretion, the director shall determine to call a meeting of the members to consider either a proportionate charge-off against the deposit accounts to permit the association thereafter to continue in business, or whether the association should proceed to voluntary liquidation under the management of its board of directors. In such event, if the director approves the decision of a majority in amount of the members present and voting, the director shall order such action to be taken.

During any period of voluntary liquidation, the director may take possession of the association and its assets and complete the liquidation whenever, in the director's discretion, this seems advisable. [1994 c 92 § 457; 1982 c 3 § 67; 1945 c 235 § 105; Rem. Supp. 1945 § 3717-224. Prior: 1935 c 171 § 4; 1933 c 183 §§ 70, 72, 78; 1919 c 169 § 13; 1913 c 110 § 20.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.40.050 Involuntary liquidation—Procedure—Federal insurance corporation as liquidator.** Whenever the director determines to liquidate the affairs of a domestic association, the director shall cause the attorney general to present to the superior court of the county in which the association has its principal place of business a written petition setting forth the date of the taking of possession, the reasons therefor, and other material facts concerning the affairs of the association and, if the court determines that the association should be liquidated, it shall appoint the director, or other responsible person as recommended by the director, as the liquidator of the association and fix and require a bond to be given by the liquidator conditioned for the faithful performance of the duties as such liquidator, but if the association has the insurance protection provided by Title IV of the National Housing Act, as now or hereafter amended, the court upon the request of the director may tender to the federal savings and loan insurance corporation the appointment as liquidator.

Upon the filing with and approval by the court of the bond, the director or other person appointed shall enter upon the duties as liquidator of the affairs of the association, and, under the direction of the court, shall administer and liquidate the assets thereof and apply the same to the payment of the expenses of liquidation and the debts of the association, and distribute the remainder to the deposit accounts proportionately.

If the court tenders the appointment as liquidator to the federal savings and loan insurance corporation, and if the insurance corporation accepts the appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a liquidator of an association, its depositors and other creditors, and be subject to all the duties of such liquidator, except insofar as such powers, privileges, or duties are in conflict with the provisions of Title IV of the National Housing Act, as now or hereafter amended. In any liquidation proceeding in which the insurance corporation is the liquidator, it may proceed to liquidate without being subject to the control of the court and without bond. [1994 c 92 § 458; 1982 c 3 § 68; 1973 c 130 § 29; 1945 c 235

§ 106; Rem. Supp. 1945 § 3717-225. Prior: 1935 c 171 § 4; 1933 c 183 §§ 70, 72, 73, 74, 76, 77, 78; 1919 c 169 § 13; 1913 c 110 § 20.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.40.060 Procedure to be as in receivership.** In any such liquidation proceeding, the court, except as otherwise in this title expressly provided, shall have the powers and proceed as in receivership proceedings. [1945 c 235 § 107; Rem. Supp. 1945 § 3717-226. Prior: 1935 c 171 § 4; 1933 c 183 §§ 70, 72, 73, 75, 76, 77, 78; 1919 c 169 § 13; 1913 c 110 § 20.]

**33.40.070 Liquidator's powers.** The liquidator, upon the approval of the court, may sell, discount, or compromise debts of the association and claims against its debtors. The liquidator, with the approval of the court, may lease, operate, repair, exchange, or sell, either for cash or upon terms, the real and personal property of the association.

The liquidator, with the approval of the court, when funds are available, may pay savings members whose balances amount to not more than five dollars, the full amount of the balances.

Checks issued or payments held by the liquidator which remain undelivered for six months following the final liquidation dividend shall be deposited with the director, after which the liquidator shall be discharged by the court. During ten years thereafter, the director shall deliver the checks or payments, or the director's own checks in lieu thereof, to the payee, or his or her legal representative, upon receipt of satisfactory evidence of the payee's right thereto. After the ten years, the director shall cancel all such checks or payments remaining in the director's possession and issue a check against the account for the amount thereof, payable to the state treasurer, and deliver it to the state treasurer. Such payment shall escheat to the state, without further legal proceedings. [1994 c 92 § 459; 1982 c 3 § 69; 1953 c 71 § 10; 1945 c 235 § 108; Rem. Supp. 1945 § 3717-227. Prior: 1935 c 171 § 4; 1933 c 183 §§ 70, 73, 74, 78.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.40.075 Investment of liquidation funds—Use of income.** All funds received by the director from liquidations may be invested by the director. The earnings from the moneys so held may be applied toward defraying the expenses incurred in the liquidations. [1994 c 92 § 460; 1982 c 3 § 70; 1951 c 105 § 1.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.40.080 Disposition of records.** Upon the termination of any liquidation proceeding, any files, records, documents, books of account, or other papers in the possession of the liquidator shall be surrendered into the possession of the director, who, in his or her discretion at any time after the expiration of one year, may destroy any of such files, records, documents, books of account or other papers which appear to him or her to be obsolete or unnecessary for future reference. [1994 c 92 § 461; 1945 c 235 § 109; Rem. Supp. 1945 § 3717-228.]

**33.40.110 Voluntary liquidation—Disposition of unclaimed dividends and records.** In a voluntary liquidation of a domestic association, checks issued in the liquidation or funds representing liquidating dividends or otherwise which remain undelivered for six months following the final liquidating dividend, shall be deposited with the director, together with any files, records, documents, books of account, or other papers of the association. The director, at any time after one year from delivery, may destroy any of such files, records, documents, books of account, or other papers which appear to the director to be obsolete or unnecessary for future reference. During ten years thereafter, the director shall deliver such checks, or the director's own checks in lieu thereof, or portions of such funds to the payee, or the payee's legal representative, upon receipt of satisfactory evidence of the payee's right thereto. After the ten years, the director shall cancel all such checks remaining in the director's possession and issue a check payable to the state treasurer for the amount thereof together with any other liquidating funds, and deliver them to the state treasurer. Such payment shall escheat to the state without further legal proceedings. [1994 c 92 § 462; 1982 c 3 § 71; 1953 c 71 § 11; 1945 c 235 § 112; Rem. Supp. 1945 § 3717-231.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

*Uniform unclaimed property act: Chapter 63.29 RCW.*

**33.40.120 Removal of liquidator—Appellate review.** The court, upon notice and hearing, may remove the liquidator for cause. Appellate review of the order of removal may be sought as in other civil cases.

During the pendency of any appeal, the director of financial institutions shall act as liquidator of the association, without giving any additional bond for the performance of the duties as such liquidator.

If such order of removal shall be affirmed, the director of financial institutions shall name another liquidator for the association, which nominee, upon qualifying as required for receivers generally, shall succeed to the position of liquidator of the association. [1994 c 92 § 463; 1988 c 202 § 34; 1982 c 3 § 72; 1971 c 81 § 86; 1945 c 235 § 113; Rem. Supp. 1945 § 3717-232.]

**Rules of court:** *Appeal procedures superseded by RAP 2.1, 2.2, 18.22.*

**Severability—1988 c 202:** See note following RCW 2.24.050.

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.40.130 Payment of deposits accepted during economic emergency, preference.** Savings deposits received by an association, during a period or periods of postponement of payment of withdrawals or of acute business depression, panic or economic emergency under authorization or declaration of the director as hereinbefore provided, shall be repaid to the depositors paying in such savings before any liquidation dividends shall be declared or paid if, during such period or periods or at the expiration thereof, the director takes charge of the association for liquidation, as provided in this title. [1994 c 92 § 464; 1982 c 3 § 73; 1945 c 235 § 100; Rem. Supp. 1945 § 3717-219.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

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**33.40.150 Appointment of provisional officers and directors.** (1) The director of financial institutions, after exercising the authority granted in RCW 33.16.040, may appoint provisional officers and directors, in whole or in part, of an association.

(2) Notice of the appointment shall be served upon the association, and the appointment shall take effect immediately and shall remain in effect until a successor is chosen in accordance with the association's bylaws. [1994 c 92 § 465; 1985 c 239 § 2.]

## Chapter 33.43 RCW

### CONVERSION TO AND FROM FEDERAL ASSOCIATION

#### Sections

33.43.010	Conversion of domestic association to federal association.
33.43.020	Federal association—Powers.
33.43.030	Conversion of federal association to domestic association.

**33.43.010 Conversion of domestic association to federal association.** Any domestic association may convert itself into a federal mutual or stock savings and loan association. Any such conversion shall be effected by the vote of a majority in amount of the members present, in person or by proxy, at any regular or special meeting of the members called for such purpose. Notice of such meeting, stating the purpose thereof, shall be given the director at least thirty days prior to the meeting and to the members pursuant to the provisions contained in RCW 33.20.010.

If such conversion be authorized by the members at the meeting, the directors of the association are authorized and shall effect such action, and the officers of the association shall execute all proper conveyances, documents, and other papers necessary or proper thereunto.

If conversion be authorized, a copy of the minutes of the meeting shall be filed forthwith with the director.

Upon consummation of such conversion, the successor federal savings and loan association shall succeed to all right, title, and interest of the domestic association in and to its assets, and to its liabilities to the creditors and members of the association. Upon such conversion, after the execution and delivery of all instruments of transfer, conveyance and assignment, the domestic association shall be deemed dissolved. [1994 c 92 § 466; 1982 c 3 § 74; 1949 c 20 § 10; 1945 c 235 § 116; Rem. Supp. 1949 § 3717-235. Prior: 1933 ex.s. c 15 §§ 1 through 6. Formerly RCW 33.44.100.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.43.020 Federal association—Powers.** Every federal savings and loan association, the home office of which is located in this state, and the savings accounts therein shall have all the rights, powers and privileges and be entitled to the same immunities and exemptions as pertain to savings and loan associations organized under the laws of this state. [1945 c 235 § 117; Rem. Supp. 1945 § 3717-236. Prior: 1939 c 98 § 9; 1933 c 183 § 50. Formerly RCW 33.44.110.]

**33.43.030 Conversion of federal association to domestic association.** Any federal savings and loan association the home office of which is located in this state may

convert itself into a domestic savings and loan association of this state. For any such conversion, such federal association shall proceed as provided in this title for the conversion of a domestic association into a federal association.

Upon consummation of such conversion, the successor domestic association shall succeed to all right, title, and interest of the federal association in and to its assets, and to its liabilities to the creditors and members of such federal association. [1945 c 235 § 118; Rem. Supp. 1945 § 3717-237. Prior: 1939 c 98 § 1. Formerly RCW 33.44.120.]

### Chapter 33.44 RCW

#### CONVERSION TO MUTUAL SAVINGS BANK

##### Sections

33.44.020	Conversion to a savings bank or commercial bank—Procedure.
33.44.080	Depositor's interest upon conversion.
33.44.090	Transfer of securities upon conversion.
33.44.125	Waiver of chapter requirements.
33.44.130	Rules implementing chapter—Standard.

**33.44.020 Conversion to a savings bank or commercial bank—Procedure.** Any association organized under the laws of this state, or under the laws of the United States, may, if it has obtained the approval, required by law or regulation, of any federal agencies, including the federal home loan bank board and the federal savings and loan insurance corporation, be converted into a savings bank or commercial bank in the following manner:

(1) The board of directors of such association shall pass a resolution declaring its intention to convert the association into a savings bank or commercial bank and shall apply to the director of financial institutions for leave to submit to the members of the association the question whether the association shall be converted into a savings bank or a commercial bank. A duplicate of the application to the director of financial institutions shall be filed with the director of financial institutions, except that no such filing shall be required in the case of an association organized under the laws of the United States. The application shall include a proposal which sets forth the method by and extent to which membership or stockholder interests, as the case may be, in the association are to be converted into membership or stockholder interests, as the case may be, in the savings bank or commercial bank, and the proposal shall allow for any member or stockholder to withdraw the value of his or her interest at any time within sixty days of the completion of the conversion. The proposal shall be subject to the approval of the director of financial institutions and shall conform to all applicable regulations of the federal home loan bank board, the federal savings and loan insurance corporation, the federal deposit insurance corporation, or other federal regulatory agency.

(2) Thereupon the director of financial institutions shall make the same investigation and determine the same questions as would be required by law to make and determine in case of the submission to the director of financial institutions of a certificate of incorporation of a proposed new savings bank or commercial bank, and the director of financial institutions shall also determine whether by the proposed conversion the business needs and conveniences of the members of the association would be served with facility and safety,

except that no such conference shall be pertinent to such investigation or determination in the case of an association organized under the laws of the United States. After the director of financial institutions determines whether it is expedient and desirable to permit the proposed conversion, the director of financial institutions shall, within sixty days after the filing of the application, endorse thereon over the official signature of the director of financial institutions the word "granted" or the word "refused", with the date of such endorsement and shall immediately notify the secretary of such association of his or her decision. If an application to convert to a mutual savings bank is granted, the director of financial institutions shall require the applicants to enter into such an agreement or undertaking with the director of financial institutions as trustee for the depositors with the mutual savings bank to make such contributions in cash to the expense fund of the mutual savings bank as in the director of financial institutions judgment will be necessary then and from time to time thereafter to pay the operating expenses of the mutual savings bank if its earnings should not be sufficient to pay the same in addition to the payment of such dividends as may be declared and credited to depositors from its earnings.

If the application is denied by the director of financial institutions, the association, acting by a two-thirds majority of its board of directors, may, within thirty days after receiving the notice of the denial, appeal to the superior court in the manner prescribed in chapter 34.05 RCW.

(3) If the application is granted by the director of financial institutions or by the court, as the case may be, the board of directors of the association shall, within sixty days thereafter, submit the question of the proposed conversion to the members of the association at a special meeting called for that purpose. Notice of the meeting shall state the time, place and purpose of the meeting, and that the only question to be voted upon will be, "shall the (naming the association) be converted into a savings bank or commercial bank under the laws of the state of Washington?" The vote on the question shall be by ballot. Any member may vote by proxy or may transmit the member's ballot by mail if the bylaws provide a method for so doing. If two-thirds or more in number of the members voting on the question vote affirmatively, then the board of directors shall have power, and it shall be its duty, to proceed to convert such association into a savings bank or commercial bank; otherwise, the proposed conversion shall be abandoned and shall not be again submitted to the members within three years from the date of the meeting.

(4) If authority for the proposed conversion has been approved by the members as required by this section, the directors shall, within thirty days thereafter, subscribe and acknowledge and file with the director of financial institutions in triplicate a certificate of reincorporation, stating:

(a) The name by which the converted corporation is to be known.

(b) The place where the bank is to be located and its business transacted, naming the city or town and county, which city or town shall be the same as that where the principal place of business of the corporation has theretofore been located.

(c) The name, occupation, residence and post office address of each signer of the certificate.

(d) The amount of the assets of the corporation, the amount of its liabilities and the amount of its contingent, reserve, expense, and guaranty fund, as applicable, as of the first day of the then calendar month.

(e) A declaration that each signer will accept the responsibilities and faithfully discharge the duties of a trustee or director of the bank, and is free from all the disqualifications specified in the laws applicable to savings banks or commercial banks.

(f) Such other items as the director of financial institutions may require.

(5) Upon the filing of the certificate in triplicate, the director of financial institutions shall, within thirty days thereafter, if satisfied that all the provisions of this chapter have been complied with, issue in triplicate an authorization certificate stating that the corporation has complied with all the requirements of law, and that it has authority to transact at the place designated in its certificate of incorporation the business of a savings bank or commercial bank. One of the director of financial institutions certificates of authorization shall be attached to each of the certificates of reincorporation, and one set of these shall be filed and retained by the director of financial institutions, one set shall be filed in the office of the secretary of state, and one set shall be transmitted to the bank for its files. Upon the receipt from the corporation of the same fees as are required for filing and recording other incorporation certificates or articles, the secretary of state shall file the certificates and record the same; whereupon the conversion of the association shall be deemed complete, and the signers of said reincorporation certificate and their successors shall thereupon become and be a corporation having the powers and being subject to the duties and obligations prescribed by the laws of this state applicable to savings banks or commercial banks, as the case may be. The time of existence of the corporation shall be perpetual unless provided otherwise in the articles of incorporation of the association or unless sooner terminated pursuant to law. [1997 c 101 § 6; 1994 c 92 § 467; 1982 c 3 § 75; 1981 c 302 § 34; 1979 ex.s. c 57 § 7; 1975 1st ex.s. c 111 § 1; 1927 c 177 § 1; 1917 c 154 § 1; RRS §§ 3749 through 3754. Formerly RCW 33.44.020 through 33.44.070.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1981 c 302:** See note following RCW 19.76.100.

### 33.44.080 Depositor's interest upon conversion.

Upon the conversion of any association into a savings bank or commercial bank, every person who was a depositor of the association at the time of the conversion shall become and be deemed to be a depositor of the bank in a sum equal to the value of the deposit of the depositor as of the day on which the conversion was consummated. [1982 c 3 § 76; 1927 c 177 § 2; 1917 c 154 § 2; RRS § 3755.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.44.090 Transfer of securities upon conversion.** All mortgages, notes and other securities of any association that has been converted into a savings bank or commercial bank, shall on request of the bank, be delivered to it by the director of financial institutions or under the director's direction by any depository having possession thereof. Every such bank

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shall, as soon as practicable and within such time and by such methods as the director may direct, cause its organization, its securities and investments, the character of its business and its methods of transacting the same to conform to the laws applicable to savings banks or commercial banks, as applicable. [1994 c 92 § 468; 1982 c 3 § 77; 1927 c 177 § 3; 1917 c 154 § 3; RRS § 3756.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.44.125 Waiver of chapter requirements.** If, in the opinion of the director of financial institutions, it is necessary for any of the requirements of this chapter to be waived in order to permit an association which is in danger of failing to convert its charter to that of a commercial bank or a savings bank so that the association may be acquired by a commercial bank or a savings bank or a bank holding company, then the director may waive any such requirement. [1994 c 92 § 469; 1982 c 3 § 78.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

### 33.44.130 Rules implementing chapter—Standard.

The director of financial institutions shall adopt such rules under the administrative procedure act, chapter 34.05 RCW, as are necessary to implement this chapter in a manner which protects the relative interests of members, depositors, borrowers, stockholders, and creditors. [1994 c 92 § 470; 1982 c 3 § 79.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

## Chapter 33.46 RCW

### CONVERSION OF SAVINGS BANK OR COMMERCIAL BANK TO ASSOCIATION

(Formerly: Conversion of mutual savings bank to building and loan or savings and loan association)

#### Sections

33.46.010	Definitions.
33.46.020	Conversion of bank to association—Procedure.
33.46.030	Cash contributions to expense fund if becoming domestic mutual association.
33.46.040	Appeal from denial of application.
33.46.050	Certificate of reincorporation—Required—Filing—Contents.
33.46.060	Issuance of authorization certificate—Filing—Completion of conversion—Effect.
33.46.070	Depositor's interest upon conversion.
33.46.080	Transfer of securities—Conformance to state association laws, when.
33.46.090	Assets, liabilities, etc., vested in association upon conversion.
33.46.100	Initial meeting of shareholders of domestic association—Notice—Proxy voting.
33.46.110	Conversion to federal association—Procedure.
33.46.130	Rules implementing chapter—Standard.

**33.46.010 Definitions.** As used in this chapter, unless the context indicates otherwise:

(1) "Association" means any association organized under the laws of this state or the laws of the United States of America;

(2) "Director" means a member of the board of directors of an association, savings bank, or commercial bank, as applicable;

(3) "Bank" means a savings bank or commercial bank organized under the laws of this state; and

(4) "Trustee" means a member of the managing board of a mutual savings bank. [1982 c 3 § 80; 1975 1st ex.s. c 83 § 1.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.46.020 Conversion of bank to association—Procedure.** Any bank may be converted into an association in the following manner:

(1) The trustees or directors of the bank shall pass, by at least a two-thirds favorable vote of all trustees or directors, a resolution declaring its intention to convert the bank into an association, specifying in such resolution the type of association and whether the association is to be organized under the laws of this state, or is to be organized under the laws of the United States of America. If the association is to be a state association the bank shall apply to the director of financial institutions for authority to convert into an association. The application shall include a proposal which sets forth the method by and extent to which membership or stockholder interests, as the case may be, in the bank are to be converted into membership or shareholder interest, as the case may be, in the association, and the proposal shall allow for any member or stockholder to withdraw the value of his or her interest at any time within sixty days of the completion of the conversion. The proposal is subject to the approval of the director of financial institutions and shall conform to all applicable regulations of the federal deposit insurance corporation, the federal home loan bank board, the federal savings and loan insurance corporation, or other federal regulatory agency.

(2) The director of financial institutions shall, in the case of an application to convert into a state association, make the same investigation and determine the same questions as he or she would be required by law to make in determining the case of submission to him or her of articles of incorporation of a proposed new state association, and shall also determine whether the proposed conversion would serve the needs and conveniences of the depositors of the bank.

(3) The director of financial institutions shall grant or deny the application within sixty days of its date of filing and shall immediately notify the secretary of the bank of the decision. [1994 c 92 § 471; 1982 c 3 § 81; 1975 1st ex.s. c 83 § 2.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.46.030 Cash contributions to expense fund if becoming domestic mutual association.** If the application to become a domestic mutual association is granted, the director of financial institutions shall require the applicant to enter into an agreement or undertaking with the director, as trustee for the members of the association, to make such cash contributions to an expense fund of the mutual association as in the director's judgment will be necessary then and from time to time thereafter to pay the operating expenses of the association if its earnings should not be sufficient to pay the same in addition to the payment of such dividends as may be declared and credited to members from its earnings. [1994 c 92 § 472; 1982 c 3 § 82; 1975 1st ex.s. c 83 § 3.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.46.040 Appeal from denial of application.** If the application is denied by the director of financial institutions,

the bank, acting by a two-thirds majority of its trustees or directors, may, within thirty days after receiving notice of such denial, appeal to the superior court of Thurston county pursuant to the provisions of the administrative procedure act, chapter 34.05 RCW. [1994 c 92 § 473; 1982 c 3 § 83; 1975 1st ex.s. c 83 § 4.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.46.050 Certificate of reincorporation—Required—Filing—Contents.** If the application is granted by the director of financial institutions, or by the court, the trustees or directors of the bank shall, within thirty days thereafter, subscribe, acknowledge, and file with the director of financial institutions, in triplicate, a certificate of reincorporation stating:

(1) The name by which the association is to be known;

(2) The place where the association is to be located and its business transacted, naming the city or town and the county, which city or town shall be the same as that where the principal place of business of the bank has theretofore been located;

(3) The name, occupation, residence, and post office address of each signer of the certificate;

(4) The amount of the assets of the association, the amount of its liabilities, and the amount of its contingent, expense, or guaranty fund, as applicable, as of the first day of the calendar month during which the certificate is filed; and

(5) A declaration that each signer will accept the responsibilities and faithfully discharge the duties of a director of the association, and is free from all the disqualifications specified in the laws applicable to savings and loan associations. [1994 c 92 § 474; 1982 c 3 § 84; 1981 c 302 § 35; 1975 1st ex.s. c 83 § 5.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1981 c 302:** See note following RCW 19.76.100.

**33.46.060 Issuance of authorization certificate—Filing—Completion of conversion—Effect.** Upon filing the certificate in triplicate as provided in RCW 33.46.050, the director of financial institutions shall, within thirty days thereafter, if satisfied that all the provisions of this chapter have been complied with, issue in triplicate an authorization certificate stating that the association has complied with all of the requirements of law, and that it has authority to transact, at the place or places designated in its certificate, the business of an association. The director of financial institutions shall retain one set of the triplicate originals of the certificate of reincorporation and of the certificate of authorization and shall transmit the other two sets to the association, which shall retain one set, and file one set with the secretary of state, paying the required fees. Upon such filings being made, the conversion of the bank to the association shall be deemed complete and consummated, and the association shall thereupon be a corporation having the powers and being subject to the duties and obligations prescribed by the laws of this state applicable to state associations, and the time of existence of such association shall be perpetual, unless sooner terminated. [1994 c 92 § 475; 1982 c 3 § 85; 1981 c 302 § 36; 1975 1st ex.s. c 83 § 6.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1981 c 302:** See note following RCW 19.76.100.

### 33.46.070 Depositor's interest upon conversion.

Upon the conversion of a bank into an association, every person who was a depositor of the bank at the time of the conversion shall become and be deemed to be a depositor of the association in a sum equal to the value of the deposits of the depositor in the bank as of the day on which the conversion was consummated. [1982 c 3 § 86; 1975 1st ex.s. c 83 § 7.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.46.080 Transfer of securities—Conformance to state association laws, when.** All mortgages, notes, and other securities of any bank that has been converted into an association shall, on request of the association, be delivered to it by the director of financial institutions or, under the direction of the director, by any depository having possession thereof. If the association is a state association it shall, as soon as practicable and within such time and by such methods as the director may direct, cause its organization, its securities and investments, the character of its business, and its methods of transacting the same to conform to the laws applicable to state associations. [1994 c 92 § 476; 1982 c 3 § 87; 1975 1st ex.s. c 83 § 8.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.46.090 Assets, liabilities, etc., vested in association upon conversion.** Upon a conversion being consummated all assets, rights and properties of the bank shall vest in and be the property of the association and all liabilities, debts, and obligations of the bank shall be the liabilities, debts, and obligations of the association and any right can be enforced by or against the association the same as it could have been enforced by or against the bank if the conversion had not occurred. [1975 1st ex.s. c 83 § 9.]

**33.46.100 Initial meeting of shareholders of domestic association—Notice—Proxy voting.** Within twelve months following consummation of the conversion, the directors of a domestic association shall call a meeting of the members for the purpose of electing directors and conducting such other business of the association as is appropriate. Notice of such meeting shall be mailed not less than ten nor more than thirty days in advance of the meeting to the last known address of each member. The notice may also include a proxy form authorizing any one or more persons, who may be directors or officers of the association, selected by the directors, to vote on behalf of any member executing such proxy. [1982 c 3 § 88; 1975 1st ex.s. c 83 § 10.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.46.110 Conversion to federal association—Procedure.** If the bank specifies in the resolution that it intends to become a federal association, it shall proceed to make all filings and do all things which are required by federal laws and regulations to qualify as and become a federal association, and when all such things have been accomplished and a charter has been issued by the appropriate federal agency, the bank shall thereupon cease to be a bank organized under the laws of this state. [1982 c 3 § 89; 1975 1st ex.s. c 83 § 11.]

(2004 Ed.)

**Severability—1982 c 3:** See note following RCW 33.04.002.

### 33.46.130 Rules implementing chapter—Standard.

The director of financial institutions shall adopt such rules under the administrative procedure act, chapter 34.05 RCW, as are necessary to implement this chapter in a manner which protects the relative interests of members, depositors, borrowers, stockholders, and creditors. [1994 c 92 § 477; 1982 c 3 § 90.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

## Chapter 33.48 RCW

### STOCK ASSOCIATIONS

(Formerly: Guaranty stock state savings and loan associations)

#### Sections

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33.48.290	RCW 33.48.150 through 33.48.280 inapplicable to foreign associations.
33.48.320	Waiver of chapter requirements.

### 33.48.025 Applicability of chapter 23B.06 RCW.

Except to the extent provided otherwise in this title, stock associations are subject to the provisions of chapter 23B.06 RCW. [1991 c 72 § 51; 1982 c 3 § 91; 1981 c 84 § 4.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.48.030 Minimum amount of permanent stock required—Preferred or special classes of shares authorized.** Stock associations shall have permanent stock which may be issued with or without par value but with a statement of value of nonpar stock in accordance with Title 23B RCW. The minimum amount of such stock shall be twenty-five thousand dollars in the case of associations outside of incorporated cities, or in cities of less than twenty-five thousand population. Associations located in cities of greater population shall have as a minimum, fifty thousand dollars of such

stock. The board of such association is authorized and directed to issue and maintain the stock in the following percentages: Three percent upon the first five million dollars; two percent upon the next three million dollars, and one percent upon all additional withdrawable savings: PROVIDED, That associations whose savings are insured by the Federal Savings and Loan Insurance Corporation shall not be required to maintain stock in excess of three hundred thousand dollars. A stock association may issue preferred or special classes of shares as provided in chapter 23B.06 RCW. [1991 c 72 § 52; 1982 c 3 § 92; 1981 c 84 § 1; 1969 c 107 § 7; 1963 c 246 § 9; 1955 c 122 § 4.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.48.040 Stock dividends, when.** No dividends shall be declared on stock until the association has met the net worth and federal insurance requirements of the federal savings and loan insurance corporation. Subject to the provisions of this chapter, stock shall be entitled to such rate of dividend, if earned, as fixed by the board. Stock dividends may be declared and issued by the board at any time, payable from otherwise unallocated surplus and undivided profits. [1982 c 3 § 93; 1981 c 84 § 2; 1979 c 113 § 14; 1955 c 122 § 5.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1979 c 113:** See note following RCW 33.04.020.

**33.48.080 Member's proprietary interest—Subordinate to claims of creditors.** Each member in a stock association shall have a proportionate proprietary interest in its assets and net earnings subordinate to the claims of its creditors with priorities as established by this chapter. [1982 c 3 § 94; 1969 c 107 § 8; 1967 c 49 § 6; 1955 c 122 § 9.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.48.090 Dividends only if interest paid on deposits.** No dividend shall be paid or credited upon shares of stock for any period in which the association has not declared and paid interest on deposits eligible to receive interest. [1982 c 3 § 95; 1955 c 122 § 10.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.48.100 Conversion procedure—Domestic stock to domestic mutual association.** A domestic stock association may convert to a domestic mutual association under the provisions of applicable statutes and regulations of proper federal and state supervisory authorities. In the event of compliance with such statutes and regulations an appraisal of the stock shall be made by the director, upon written request of the directors of the association, and the appropriate value of the stock may be given consideration in the proceedings to convert by giving credit to such stock from surplus and other reserves. [1994 c 92 § 478; 1982 c 3 § 96; 1955 c 122 § 11.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.48.110 Conversion procedure—Mutual association to domestic stock association—Rules implementing section—Standard.** Any mutual association, either domestic or federal, operating in the state of Washington may convert itself into a domestic stock association. The conversion shall be effected by the vote of two-thirds of the members

present and voting in person or by proxy at any regular or special meeting of the members called for such purpose. Notice of such meeting, stating the purpose thereof, shall be given to the director and to each member by mailing notice to the member's last known address at least thirty days prior to the meeting.

At the meeting, the members may adopt a resolution amending its articles of incorporation and bylaws to provide for operation under this chapter as a stock association.

Upon adoption of the resolution, members shall be given notice of the proposed change and shall be offered, for a period of sixty days following the date of the meeting, the right to subscribe for the proposed stock, pro rata to their deposits in such mutual association, and such right shall be transferable. In the event that the total stock required has not, at the end of the sixty day period, been fully subscribed, the unsubscribed portion shall be offered to any former subscribers for such stock.

When the stock has been fully subscribed and paid for, certified copies of the documents relating to the conversion shall be submitted to the director for his or her approval of the conversion proceedings. Upon notification by the director that the director approves the conversion, the directors shall adopt a resolution declaring the association to be a stock association and thereafter it shall be such.

The director shall adopt such rules under chapter 34.05 RCW, the administrative procedure act, as are necessary to implement this section in a manner which protects the relative interests of members, depositors, borrowers, stockholders, and creditors. [1994 c 92 § 479; 1982 c 3 § 97; 1955 c 122 § 12.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.48.120 Conversion procedure—Creation of permanent loss reserve—Disposition of reserve upon liquidation.** The accumulated surplus and unallocated reserves of an association at the time of conversion to a stock association shall be designated as a permanent loss reserve against which any losses incurred on assets may be charged. In case of liquidation the remaining sum in said permanent loss reserve shall be distributed to the depositors in proportion to the withdrawable value of their deposit accounts at the time of liquidation. In liquidation, after payment of all liabilities and the withdrawable value of all types and classes of deposit accounts together with the remainder in the permanent loss reserve heretofore mentioned, any excess shall be paid pro rata to the stockholders. [1982 c 3 § 98; 1955 c 122 § 13.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.48.130 Withdrawal of charter amendment or conversion application.** The directors of an association which has voted to amend its charter or convert to another type of institution, may withdraw the application at any time prior to the issuance of the amended charter, by adopting a proper resolution and forwarding a copy to the director. [1994 c 92 § 480; 1955 c 122 § 14.]

**33.48.140 Legislative intent—Chapter to control over conflicting provisions.** It is the intention of the legislature to grant, by this chapter, authority to create stock associ-

ations in this state, by either organization or conversion under its provisions, and in the event of conflict between the provisions of this chapter and other provisions of Title 33 RCW, such other provisions shall be construed in favor of the accomplishment of the purposes of this chapter. [1982 c 3 § 99; 1955 c 122 § 15.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**33.48.150 Organizing permit—Required.** No subscriptions or funds from proposed stockholders of any proposed association, prior to its incorporation and prior to a decision by the director on its application for approval of its articles of incorporation, may be solicited or taken until a verified application for an organizing permit has been filed and a permit has been issued by the director authorizing such subscription or collection of funds and then, only in accordance with the terms of such permit. [1994 c 92 § 481; 1973 c 130 § 6.]

**Severability—1973 c 130:** See note following RCW 33.24.350.

**Definitions—1973 c 130:** See RCW 33.24.350.

**33.48.160 Organizing permit—Application.** The application for an organizing permit under RCW 33.48.150 shall be in writing, verified as provided by law for the verification of pleadings and shall be filed in the office of the director. Such application shall be signed by the proposed incorporators and shall include the following:

- (1) The names and addresses of its proposed directors, officers and incorporators, to the extent known;
- (2) The proposed location of its office;
- (3) A copy of any contract proposed to be used for the solicitation of stock subscriptions and funds for its preincorporation expenses;
- (4) A copy of any advertisement, circular, or other written matter proposed to be used for soliciting stock subscriptions and funds for its preincorporation expenses;
- (5) A statement of the total funds proposed to be solicited and collected prior to incorporation and an itemized estimate of the preincorporation expenses proposed to be paid;
- (6) A list of the names and addresses and amounts of each of the known proposed stockholders and contributors to the fund for preincorporation expenses; and
- (7) Such additional information as the director may require. [1994 c 92 § 482; 1973 c 130 § 7.]

**Severability—1973 c 130:** See note following RCW 33.24.350.

**Definitions—1973 c 130:** See RCW 33.24.350.

**33.48.170 Organizing permit—Conditions.** The director may impose conditions in the director's organizing permit issued under RCW 33.48.150 concerning the deposit in escrow of funds collected pursuant to said permit, the manner of expenditure of such funds and such other conditions as he or she deems reasonable and necessary or advisable for the protection of the public and the subscribers to such stock or funds for preincorporation expenses. [1994 c 92 § 483; 1982 c 3 § 100; 1973 c 130 § 8.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.48.180 Permit authorizing sale of stock—Applicability.** No association shall sell, take subscriptions for, or issue any stock until the association applies for and secures from the director a permit authorizing it to sell stock.

This section does not apply to an offering involving less than five hundred thousand dollars nor to an offering made under a registration statement filed under the federal securities act of 1933 (48 Stat. 74; 15 U.S.C. Sec. 77a). [1994 c 92 § 484; 1982 c 3 § 101; 1973 c 130 § 5.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.48.190 Permit authorizing sale of guaranty stock—Required prior to sale of issued or outstanding stock.** No issued and outstanding stock of an association shall be sold or offered for sale to the public, nor shall subscriptions be solicited or taken for such sales until the association or the selling stockholders have applied for and secured from the director a permit authorizing the sale of the guaranty stock.

This section shall not apply to an offering involving less than ten percent of the issued and outstanding guaranty stock of an association and less than five hundred thousand dollars nor to an offering made under a registration statement filed under the Securities Act of 1933 (48 Stat. 74; 15 U.S.C. Sec. 77a). [1994 c 92 § 485; 1973 c 130 § 9.]

**Severability—1973 c 130:** See note following RCW 33.24.350.

**Definitions—1973 c 130:** See RCW 33.24.350.

**33.48.200 Permit authorizing sale of stock—Application—Contents.** An application for a permit to sell stock shall be in writing and shall be filed in the office of the director by the association.

The application shall include the following:

- (1) Regarding the association:
  - (a) The names and addresses of its officers;
  - (b) The location of its office;
  - (c) An itemized account of its financial condition within ninety days of the filing date; and
  - (d) A copy of all minutes of any proceedings of its directors, shareholders, or stockholders relating to or affecting the issue of such stock;
- (2) Regarding the offering:
  - (a) The names and addresses of the selling stockholders and of the officers of any selling corporation and the partners of any selling partnership;
  - (b) A copy of any contract concerning the sale of the stock;
  - (c) A copy of a prospectus or advertisement or other description of the stock prepared for distribution or publication in accordance with requirements prescribed by the director;
  - (d) A brief description of the method by which the stock is to be offered for sale including the offering price and the underwriting commissions and expense, if any; and
- (3) Such additional information as the director may require. [1994 c 92 § 486; 1982 c 3 § 102; 1973 c 130 § 10.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.48.210 Permit authorizing sale of stock—Examination and investigation—Issuance or denial.** Upon the filing of the application for a permit to sell stock, the director shall examine the application and other papers and documents filed therewith and he or she may make a detailed examination, audit, and investigation of the association and its affairs. If the director finds that the proposed plan for the issue and sale of such stock is fair, just and equitable, the director shall issue to the applicant a permit authorizing it to issue and dispose of its stock in such amounts and for such considerations and upon such terms and conditions as the director may provide in the permit. If the director does not so find he or she shall deny the application and notify the applicant in writing of his or her decision. [1994 c 92 § 487; 1982 c 3 § 103; 1973 c 130 § 11.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.48.220 Recitation in permit to take subscriptions for stock.** Every permit to take subscriptions for stock shall recite in bold face type that the issuance thereof is permissive only and does not constitute a recommendation or endorsement of the stock permitted to be issued. [1982 c 3 § 104; 1973 c 130 § 12.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.48.230 Sales of stock—Imposition of conditions.** With respect to sales of stock by an association, the director may impose conditions requiring the impoundment of the proceeds from the sale of stock, limiting the expense in connection with the sale of such stock, and other conditions as he or she deems reasonable and necessary or advisable to insure the disposition of the proceeds from the sale of such stock in the manner and for the purposes provided in the permit. [1994 c 92 § 488; 1982 c 3 § 105; 1973 c 130 § 13.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.48.240 Organizing permit—Amendment, alteration, suspension, or revocation by director—Grounds.** The director may amend, alter, suspend, or revoke any permit issued under RCW 33.48.150 if there is a violation of the terms and conditions of the permit or if the director determines that the subscription or proposed issue and sale is no longer fair, just, and equitable. [1994 c 92 § 489; 1982 c 3 § 106; 1973 c 130 § 14.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.48.250 Purchase by association of stock issued by it—Conditions.** An association may purchase stock issued by it in an amount not to exceed the amount of earned surplus or undivided profits available for dividends on its stock if: The stock so purchased is included for federal estate tax purposes in determining the gross estate of a decedent, and the amount paid for such purchase is entitled to be treated under section 303 of the Internal Revenue Code of 1954 (68A Stat. 3; 26 U.S.C. Sec. 1), or other applicable federal statute or the corresponding provision of any future federal revenue law, as

a distribution in full payment in exchange for the stock so purchased, or such purchase is with the prior consent of the director, or such purchase is pursuant to a put option contained in a plan which has been approved by the director establishing an employee stock ownership plan for the association and its employees pursuant to the provisions of the act of congress entitled "Employee Retirement Income Security Act of 1974", as now constituted or hereafter amended, or Section 409 of the Internal Revenue Code of 1954, as now constituted or hereafter amended. Stock so purchased until sold shall be carried as treasury stock. Upon the purchase of any stock issued by the association, an amount equal to the purchase price shall be set aside from earned surplus or undivided profits available for dividends to a specific reserve account established for this purpose. Upon sale of any of such stock, the amount relating thereto in the specific reserve account shall be returned to the surplus or undivided profits account (as the case may be) and shall be available for dividends. Reacquired stock shall not be resold at less than its reacquisition cost, without the specific approval of the director, and shall not be resold or reissued except in accordance with RCW 33.48.220 through 33.48.240. [1994 c 92 § 490; 1985 c 239 § 3; 1982 c 3 § 107; 1973 c 130 § 15.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.48.260 Reduction of stock—Conditions.** With the prior consent of the director, the stock of an association may be reduced by resolution of the board of directors approved by the vote or written consent of the holders of a majority in amount of the outstanding stock of the association to such amount as the director approves. [1994 c 92 § 491; 1982 c 3 § 108; 1973 c 130 § 16.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.48.270 Reduction of stock—Disposition of surplus.** Any surplus resulting from reduction of stock shall not be available for dividends or other distribution to stockholders except upon liquidation. [1982 c 3 § 109; 1973 c 130 § 17.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.48.280 Paid-in or contributed surplus or surplus created by reduction of stock—Application and uses.** An association may, by action of its board of directors and with the prior approval of the director, apply any part or all of any paid-in or contributed surplus or any surplus created by reduction of stock to the reduction or writing off of any deficit arising from losses or diminution in value of its assets, or may transfer to or designate as a part of its federal insurance account or any other reserve account irrevocably established for the sole purpose of absorbing losses, any part or all of any paid-in or contributed surplus or any surplus created by reduction of stock. [1994 c 92 § 492; 1982 c 3 § 110; 1973 c 130 § 18.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.48.290 RCW 33.48.150 through 33.48.280 inapplicable to foreign associations.** RCW 33.48.150 through 33.48.280 do not apply to foreign associations doing business in this state pursuant to the provisions of chapter 33.32 RCW. [1982 c 3 § 111; 1973 c 130 § 19.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Severability—1973 c 130:** See note following RCW 33.24.350.

**33.48.320 Waiver of chapter requirements.** If, in the opinion of the director, it is necessary for any of the requirements of this chapter to be waived in order to permit an association which is in danger of failing to convert its charter from a mutual association to a stock association or from a stock association to a mutual association so that the association may be acquired by an association or a savings and loan holding company, then the director may waive any such requirement. [1994 c 92 § 493; 1982 c 3 § 112.]

**Severability—1982 c 3:** See note following RCW 33.04.002.

**Chapter 33.54 RCW**  
**SATELLITE FACILITIES**  
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# Title 34

## ADMINISTRATIVE LAW

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### Chapter 34.05 RCW

#### ADMINISTRATIVE PROCEDURE ACT

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*Nonbinding effect of unpublished rules and procedures: RCW 42.17.250.*

**34.05.001 Legislative intent.** The legislature intends, by enacting this 1988 Administrative Procedure Act, to clarify the existing law of administrative procedure, to achieve greater consistency with other states and the federal government in administrative procedure, and to provide greater public and legislative access to administrative decision making. The legislature intends that to the greatest extent possible and unless this chapter clearly requires otherwise, current agency practices and court decisions interpreting the Administrative Procedure Act in effect before July 1, 1989, shall remain in effect. The legislature also intends that the courts should interpret provisions of this chapter consistently with decisions of other courts interpreting similar provisions of other states, the federal government, and model acts. [1988 c 288 § 18.]

PART I  
GENERAL PROVISIONS

**34.05.010 Definitions.** The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

(2) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law and any local governmental entity that may request the appointment of an administrative law judge under chapter 42.41 RCW.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or application

of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by any other means, including eminent domain, of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar statute, or (c) any sale, lease, contract, or other proprietary decision in the management of public lands or real property interests, or (d) the granting of a license, franchise, or permission for the use of trademarks, symbols, and similar property owned or controlled by the agency.

(4) "Agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

(5) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective.

(6) "Filing" of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.

(7) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions."

(8) "Interpretive statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.

(9)(a) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law, but does not include (i) a license required solely for revenue purposes, or (ii) a certification of an exclusive bargaining representative, or similar status, under a collective bargaining law or similar statute, or (iii) a license, franchise, or permission for use of trademarks, symbols, and similar property owned or controlled by the agency.

(b) "Licensing" includes the agency process respecting the issuance, denial, revocation, suspension, or modification of a license.

(10) "Mail" or "send," for purposes of any notice relating to rule making or policy or interpretive statements, means regular mail or electronic distribution, as provided in RCW 34.05.260. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(11)(a) "Order," without further qualification, means a written statement of particular applicability that finally deter-

mines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

(b) "Order of adoption" means the official written statement by which an agency adopts, amends, or repeals a rule.

(12) "Party to agency proceedings," or "party" in a context so indicating, means:

(a) A person to whom the agency action is specifically directed; or

(b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(13) "Party to judicial review or civil enforcement proceedings," or "party" in a context so indicating, means:

(a) A person who files a petition for a judicial review or civil enforcement proceeding; or

(b) A person named as a party in a judicial review or civil enforcement proceeding, or allowed to participate as a party in a judicial review or civil enforcement proceeding.

(14) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(15) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

(16) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes.

(17) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to RCW 34.05.610 for the purpose of selectively reviewing existing and proposed rules of state agencies.

(18) "Rule making" means the process for formulation and adoption of a rule.

(19) "Service," except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic telefacsimile transmission, where copies are mailed simultaneously, or by commercial parcel delivery company. [1997 c 126 § 2; 1992 c 44 § 10; 1989 c 175 § 1; 1988 c 288 § 101; 1982 c 10 § 5. Prior: 1981 c 324 § 2; 1981 c 183 § 1; 1967 c 237 § 1; 1959 c 234 § 1. Formerly RCW 34.04.010.]

**Effective dates—Severability—1992 c 44:** See RCW 42.41.901 and 42.41.902.

**Effective dates—1989 c 175:** "Sections 1 through 35 and 37 through 185 of this act are necessary for the immediate preservation of the public peace, health, or safety, or the support of the state government and its existing public institutions, and shall take effect on July 1, 1989. Section 36 of this act shall take effect on July 1, 1990." [1989 c 175 § 186.]

**Severability—1982 c 10:** See note following RCW 6.13.080.

**Legislative affirmation—1981 c 324:** "The legislature affirms that all rule-making authority of state agencies and institutions of higher education is a function delegated by the legislature, and as such, shall be exercised pursuant to the conditions and restrictions contained in this act." [1981 c 324 § 1.]

**Severability—1981 c 324:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 324 § 18.]

**34.05.020 Savings—Authority of agencies to comply with chapter—Effect of subsequent legislation.** Nothing in this chapter may be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of this chapter through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this chapter or its applicability to any agency except to the extent that such legislation shall do so expressly. [1988 c 288 § 102; 1967 c 237 § 24. Formerly RCW 34.04.940.]

**34.05.030 Exclusions from chapter or parts of chapter. (Effective until July 1, 2006.)** (1) This chapter shall not apply to:

(a) The state militia, or  
 (b) The board of clemency and pardons, or  
 (c) The department of corrections or the indeterminate sentencing review board with respect to persons who are in their custody or are subject to the jurisdiction of those agencies.

(2) The provisions of RCW 34.05.410 through 34.05.598 shall not apply:

(a) To adjudicative proceedings of the board of industrial insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

(b) Except for actions pursuant to chapter 46.29 RCW, to the denial, suspension, or revocation of a driver's license by the department of licensing;

(c) To the department of labor and industries where another statute expressly provides for review of adjudicative

proceedings of a department action, order, decision, or award before the board of industrial insurance appeals;

(d) To actions of the Washington personnel resources board, the director of personnel, or the personnel appeals board; or

(e) To the extent they are inconsistent with any provisions of chapter 43.43 RCW.

(3) Unless a party makes an election for a formal hearing pursuant to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through 34.05.598 do not apply to a review hearing conducted by the board of tax appeals.

(4) The rule-making provisions of this chapter do not apply to reimbursement unit values, fee schedules, arithmetic conversion factors, and similar arithmetic factors used to determine payment rates that apply to goods and services purchased under contract for clients eligible under chapter 74.09 RCW.

(5) All other agencies, whether or not formerly specifically excluded from the provisions of all or any part of the Administrative Procedure Act, shall be subject to the entire act. [1994 c 39 § 1; 1993 c 281 § 15; 1989 c 175 § 2; 1988 c 288 § 103; 1984 c 141 § 8; 1982 c 221 § 6; 1981 c 64 § 2; 1979 c 158 § 90; 1971 ex.s. c 57 § 17; 1971 c 21 § 1; 1967 ex.s. c 71 § 1; 1967 c 237 § 7; 1963 c 237 § 1; 1959 c 234 § 15. Formerly RCW 34.04.150.]

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.030 Exclusions from chapter or parts of chapter.** (*Effective July 1, 2006.*) (1) This chapter shall not apply to:

(a) The state militia, or

(b) The board of clemency and pardons, or

(c) The department of corrections or the indeterminate sentencing review board with respect to persons who are in their custody or are subject to the jurisdiction of those agencies.

(2) The provisions of RCW 34.05.410 through 34.05.598 shall not apply:

(a) To adjudicative proceedings of the board of industrial insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

(b) Except for actions pursuant to chapter 46.29 RCW, to the denial, suspension, or revocation of a driver's license by the department of licensing;

(c) To the department of labor and industries where another statute expressly provides for review of adjudicative proceedings of a department action, order, decision, or award before the board of industrial insurance appeals;

(d) To actions of the Washington personnel resources board or the director of personnel; or

(e) To the extent they are inconsistent with any provisions of chapter 43.43 RCW.

(3) Unless a party makes an election for a formal hearing pursuant to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through 34.05.598 do not apply to a review hearing conducted by the board of tax appeals.

(4) The rule-making provisions of this chapter do not apply to reimbursement unit values, fee schedules, arithmetic conversion factors, and similar arithmetic factors used to

determine payment rates that apply to goods and services purchased under contract for clients eligible under chapter 74.09 RCW.

(5) All other agencies, whether or not formerly specifically excluded from the provisions of all or any part of the Administrative Procedure Act, shall be subject to the entire act. [2002 c 354 § 225; 1994 c 39 § 1; 1993 c 281 § 15; 1989 c 175 § 2; 1988 c 288 § 103; 1984 c 141 § 8; 1982 c 221 § 6; 1981 c 64 § 2; 1979 c 158 § 90; 1971 ex.s. c 57 § 17; 1971 c 21 § 1; 1967 ex.s. c 71 § 1; 1967 c 237 § 7; 1963 c 237 § 1; 1959 c 234 § 15. Formerly RCW 34.04.150.]

**Short title—Headings, captions not law—Severability—Effective dates—2002 c 354:** See RCW 41.80.907 through 41.80.910.

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.040 Operation of chapter if in conflict with federal law.** If any part of this chapter is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. [1988 c 288 § 104; 1959 c 234 § 19. Formerly RCW 34.04.930.]

**34.05.050 Waiver.** Except to the extent precluded by another provision of law, a person may waive any right conferred upon that person by this chapter. [1988 c 288 § 105.]

**34.05.060 Informal settlements.** Except to the extent precluded by another provision of law and subject to approval by agency order, informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is strongly encouraged. Agencies may establish by rule specific procedures for attempting and executing informal settlement of matters. This section does not require any party or other person to settle a matter. [1988 c 288 § 106.]

**34.05.070 Conversion of proceedings.** (1) If it becomes apparent during the course of an adjudicative or rule-making proceeding undertaken pursuant to this chapter that another form of proceeding under this chapter is necessary, is in the public interest, or is more appropriate to resolve issues affecting the participants, on his or her own motion or on the motion of any party, the presiding officer or other official responsible for the original proceeding shall advise the parties of necessary steps for conversion and, if within the official's power, commence the new proceeding. If the agency refuses to convert to another proceeding, that decision is not subject to judicial review. Commencement of the new proceeding shall be accomplished pursuant to the procedural rules of the new proceeding, except that elements already performed need not be repeated.

(2) If appropriate, a new proceeding may be commenced independently of the original proceeding or may replace the original proceeding.

(3) Conversion to a replacement proceeding shall not be undertaken if the rights of any party will be substantially prejudiced.

(4) To the extent feasible the record of the original proceeding shall be included in the record of a replacement proceeding.

(5) The time of commencement of a replacement proceeding shall be considered to be the time of commencement of the original proceeding. [1988 c 288 § 107.]

**34.05.080 Variation from time limits.** (1) An agency may modify time limits established in this chapter only as set forth in this section. An agency may not modify time limits relating to rule-making procedures or the time limits for filing a petition for judicial review specified in RCW 34.05.542.

(2) The time limits set forth in this chapter may be modified by rule of the agency or by rule of the chief administrative law judge if:

(a) The agency has an agency head composed of a body of individuals serving part time who do not regularly meet on a schedule that would allow compliance with the time limits of this chapter in the normal course of agency affairs;

(b) The agency does not have a permanent staff to comply with the time limits set forth in this chapter without substantial loss of efficiency and economy; and

(c) The rights of persons dealing with the agency are not substantially impaired.

(3) The time limits set forth in this chapter may be modified by rule if the agency determines that the change is necessary to the performance of its statutory duties. Agency rule may provide for emergency variation when required in a specific case.

(4) Time limits may be changed pursuant to RCW 34.05.040.

(5) Time limits may be waived pursuant to RCW 34.05.050.

(6) Any modification in the time limits set forth in this chapter shall be to new time limits that are reasonable under the specific circumstances.

(7) In an adjudicative proceeding, any agency whose time limits vary from those set forth in this chapter shall provide reasonable and adequate notice of the pertinent time limits to persons affected. The notice may be given by the presiding or reviewing officer involved in the proceeding.

(8) Two years after July 1, 1989, the chief administrative law judge shall cause a survey to be made of variations by agencies from the time limits set forth in this chapter, and shall submit a written report of the results of the survey to the office of the governor. [1989 c 175 § 3; 1988 c 288 § 108.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.090 Forest practices board—Emergency rules.** Emergency rules adopted by the forest practices board pertaining to forest practices and the protection of aquatic resources are subject to this chapter to the extent provided in RCW 76.09.055. [1999 sp.s. c 4 § 202.]

**Effective date—1999 sp.s. c 4 §§ 201, 202, and 203:** See note following RCW 76.09.055.

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

(2004 Ed.)

**34.05.100 Respectful language.** (1) All agency orders creating new rules, or amending existing rules, shall be formulated in accordance with the requirements of RCW 44.04.280 regarding the use of respectful language.

(2) No agency rule is invalid because it does not comply with this section. [2004 c 175 § 2.]

## PART II PUBLIC ACCESS TO AGENCY RULES

**34.05.210 Code and register—Publication and distribution—Omissions, removals, revisions—Judicial notice.**

(1) The code reviser shall cause the Washington Administrative Code to be compiled, indexed by subject, and published. All current, permanently effective rules of each agency shall be published in the Washington Administrative Code. Compilations shall be supplemented or revised as often as necessary and at least annually in a form compatible with the main compilation.

(2) Subject to the provisions of this chapter, the code reviser shall prescribe a uniform numbering system, form, and style for all proposed and adopted rules.

(3) The code reviser shall publish a register setting forth the text of all rules filed during the appropriate register publication period.

(4) The code reviser may omit from the register or the compilation, rules that would be unduly cumbersome, expensive, or otherwise inexpedient to publish, if such rules are made available in printed or processed form on application to the adopting agency, and if the register or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

(5) The code reviser may edit and revise rules for publication, codification, and compilation, without changing the meaning of any such rule.

(6) When a rule, in whole or in part, is declared invalid and unconstitutional by a court of final appeal, the adopting agency shall give notice to that effect in the register. With the consent of the attorney general, the code reviser may remove obsolete rules or parts of rules from the Washington Administrative Code when:

(a) The rules are declared unconstitutional by a court of final appeal; or

(b) The adopting agency ceases to exist and the rules are not transferred by statute to a successor agency.

(7) Registers and compilations shall be made available, in written form to (a) state elected officials whose offices are created by Article II or III of the state Constitution or by RCW 48.02.010, upon request, (b) to the secretary of the senate and the chief clerk of the house for committee use, as required, but not to exceed the number of standing committees in each body, (c) to county boards of law library trustees and to the Olympia representatives of the Associated Press and the United Press International without request, free of charge, and (d) to other persons at a price fixed by the code reviser.

(8) The board of law library trustees of each county shall keep and maintain a complete and current set of registers and compilations for use and inspection as provided in \*RCW 27.24.060.

(9) Judicial notice shall be taken of rules filed and published as provided in RCW 34.05.380 and this section. [1988 c 288 § 201; 1982 1st ex.s. c 32 § 7; 1980 c 186 § 12; 1977 ex.s. c 240 § 9; 1959 c 234 § 5. Formerly RCW 34.04.050.]

**\*Reviser's note:** RCW 27.24.060 was repealed by 1992 c 62 § 9, effective April 1, 1992.

**Severability—1980 c 186:** See note following RCW 34.05.320.

**Effective date—Severability—1977 ex.s. c 240:** See RCW 34.08.905 and 34.08.910.

*Nonbinding effect of unpublished rules and procedures:* RCW 42.17.250.

**34.05.220 Rules for agency procedure—Indexes of opinions and statements.** (1) In addition to other rule-making requirements imposed by law:

(a) Each agency may adopt rules governing the formal and informal procedures prescribed or authorized by this chapter and rules of practice before the agency, together with forms and instructions. If an agency has not adopted procedural rules under this section, the model rules adopted by the chief administrative law judge under RCW 34.05.250 govern procedures before the agency.

(b) To assist interested persons dealing with it, each agency shall adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information and make submissions or requests. No person may be required to comply with agency procedure not adopted as a rule as herein required.

(2) To the extent not prohibited by federal law or regulation, nor prohibited for reasons of confidentiality by state law, each agency shall keep on file for public inspection all final orders, decisions, and opinions in adjudicative proceedings, interpretive statements, policy statements, and any digest or index to those orders, decisions, opinions, or statements prepared by or for the agency.

(3) No agency order, decision, or opinion is valid or effective against any person, nor may it be invoked by the agency for any purpose, unless it is available for public inspection. This subsection is not applicable in favor of any person who has actual knowledge of the order, decision, or opinion. The agency has the burden of proving that knowledge, but may meet that burden by proving that the person has been properly served with a copy of the order.

(4) Each agency that is authorized by law to exercise discretion in deciding individual cases is encouraged to formalize the general principles that may evolve from these decisions by adopting the principles as rules that the agency will follow until they are amended or repealed.

(5) To the extent practicable, any rule proposed or adopted by an agency should be clearly and simply stated, so that it can be understood by those required to comply.

(6) The departments of employment security, labor and industries, ecology, and revenue shall develop and use a notification process to communicate information to the public regarding the postadoption notice required by RCW 34.05.362. [2003 c 246 § 2; 1994 c 249 § 24; 1989 c 175 § 4; 1988 c 288 § 202; 1981 c 67 § 13; 1967 c 237 § 2; 1959 c 234 § 2. Formerly RCW 34.04.020.]

**Finding—2003 c 246:** See note following RCW 34.05.362.

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**34.05.230 Interpretive and policy statements.** (1) An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. To better inform and involve the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.

(2) A person may petition an agency requesting the conversion of interpretive and policy statements into rules. Upon submission, the agency shall notify the joint administrative rules review committee of the petition. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with this chapter.

(3) Each agency shall maintain a roster of interested persons, consisting of persons who have requested in writing to be notified of all interpretive and policy statements issued by that agency. Each agency shall update the roster periodically and eliminate persons who do not indicate a desire to continue on the roster. Whenever an agency issues an interpretive or policy statement, it shall send a copy of the statement to each person listed on the roster. The agency may charge a nominal fee to the interested person for this service.

(4) Whenever an agency issues an interpretive or policy statement, it shall submit to the code reviser for publication in the Washington State Register a statement describing the subject matter of the interpretive or policy statement, and listing the person at the agency from whom a copy of the interpretive or policy statement may be obtained. [2004 c 31 § 3; 2001 c 25 § 1; 1997 c 409 § 202; 1996 c 206 § 12; 1995 c 403 § 702; 1988 c 288 § 203.]

**Part headings—Severability—1997 c 409:** See notes following RCW 43.22.051.

**Findings—1996 c 206:** See note following RCW 43.05.030.

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

### **34.05.240 Declaratory order by agency—Petition.**

(1) Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition shall set forth facts and reasons on which the petitioner relies to show:

(a) That uncertainty necessitating resolution exists;

(b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;

(c) That the uncertainty adversely affects the petitioner;

(d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and

(e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section.

(2) Each agency may adopt rules that provide for: (a) The form, contents, and filing of petitions for a declaratory order; (b) the procedural rights of persons in relation thereto; and (c) the disposition of those petitions. These rules may include a description of the classes of circumstances in which the agency will not enter a declaratory order and shall be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agencies to provide reliable advice.

(3) Within fifteen days after receipt of a petition for a declaratory order, the agency shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.

(4) RCW 34.05.410 through 34.05.494 apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.

(5) Within thirty days after receipt of a petition for a declaratory order an agency, in writing, shall do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(6) The time limits of subsection (5) (b) and (c) of this section may be extended by the agency for good cause.

(7) An agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(8) A declaratory order has the same status as any other order entered in an agency adjudicative proceeding. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions. [1988 c 288 § 204; 1959 c 234 § 8. Formerly RCW 34.04.080.]

**34.05.250 Model rules of procedure.** The chief administrative law judge shall adopt model rules of procedure appropriate for use by as many agencies as possible. The model rules shall deal with all general functions and duties performed in common by the various agencies. Each agency shall adopt as much of the model rules as is reasonable under its circumstances. Any agency adopting a rule of procedure that differs from the model rules shall include in the order of adoption a finding stating the reasons for variance. [1988 c 288 § 205.]

**34.05.260 Electronic distribution.** (1) In order to provide the greatest possible access to agency documents to the most people, agencies are encouraged to make their rule, interpretive, and policy information available through electronic distribution as well as through the regular mail. Agencies that have the capacity to transmit electronically may ask persons who are on mailing lists or rosters for copies of inter-

pretive statements, policy statements, preproposal statements of inquiry, and other similar notices whether they would like to receive the notices electronically.

(2) Electronic distribution to persons who request it may substitute for mailed copies related to rule making or policy or interpretive statements. If a notice is distributed electronically, the agency is not required to transmit the actual notice form but must send all the information contained in the notice.

(3) Agencies which maintain mailing lists or rosters for any notices relating to rule making or policy or interpretive statements may establish different rosters or lists by general subject area. [1997 c 126 § 1.]

### PART III RULE-MAKING PROCEDURES

**34.05.310 Prenotice inquiry—Negotiated and pilot rules.** (1) To meet the intent of providing greater public access to administrative rule making and to promote consensus among interested parties, agencies shall solicit comments from the public on a subject of possible rule making before filing with the code reviser a notice of proposed rule making under RCW 34.05.320. The agency shall prepare a statement of inquiry that:

(a) Identifies the specific statute or statutes authorizing the agency to adopt rules on this subject;

(b) Discusses why rules on this subject may be needed and what they might accomplish;

(c) Identifies other federal and state agencies that regulate this subject, and describes the process whereby the agency would coordinate the contemplated rule with these agencies;

(d) Discusses the process by which the rule might be developed, including, but not limited to, negotiated rule making, pilot rule making, or agency study;

(e) Specifies the process by which interested parties can effectively participate in the decision to adopt a new rule and formulation of a proposed rule before its publication.

The statement of inquiry shall be filed with the code reviser for publication in the state register at least thirty days before the date the agency files notice of proposed rule making under RCW 34.05.320 and the statement, or a summary of the information contained in that statement, shall be sent to any party that has requested receipt of the agency's statements of inquiry.

(2) Agencies are encouraged to develop and use new procedures for reaching agreement among interested parties before publication of notice and the adoption hearing on a proposed rule. Examples of new procedures include, but are not limited to:

(a) Negotiated rule making by which representatives of an agency and of the interests that are affected by a subject of rule making, including, where appropriate, county and city representatives, seek to reach consensus on the terms of the proposed rule and on the process by which it is negotiated; and

(b) Pilot rule making which includes testing the feasibility of complying with or administering draft new rules or draft amendments to existing rules through the use of volunteer pilot groups in various areas and circumstances, as pro-

vided in RCW 34.05.313 or as otherwise provided by the agency.

(3)(a) An agency must make a determination whether negotiated rule making, pilot rule making, or another process for generating participation from interested parties prior to development of the rule is appropriate.

(b) An agency must include a written justification in the rule-making file if an opportunity for interested parties to participate in the rule-making process prior to publication of the proposed rule has not been provided.

(4) This section does not apply to:

(a) Emergency rules adopted under RCW 34.05.350;

(b) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(c) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(d) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(e) Rules the content of which is explicitly and specifically dictated by statute;

(f) Rules that set or adjust fees or rates pursuant to legislative standards; or

(g) Rules that adopt, amend, or repeal:

(i) A procedure, practice, or requirement relating to agency hearings; or

(ii) A filing or related process requirement for applying to an agency for a license or permit. [2004 c 31 § 1; 1995 c 403 § 301; 1994 c 249 § 1; 1993 c 202 § 2; 1989 c 175 § 5; 1988 c 288 § 301.]

**Application—1995 c 403 §§ 201, 301-305, 401-405, and 801:** See note following RCW 34.05.328.

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**Severability—1994 c 249:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 249 § 38.]

**Application—1994 c 249:** "This act applies prospectively only and not retroactively." [1994 c 249 § 36.]

**Finding—Intent—1993 c 202:** "The legislature finds that while the 1988 Administrative Procedure Act expanded public participation in the agency rule-making process, there continue to be instances when participants have developed adversarial relationships with each other, resulting in the inability to identify all of the issues, the failure to focus on solutions to problems, unnecessary delays, litigation, and added cost to the agency, affected parties, and the public in general.

When interested parties work together, it is possible to negotiate development of a rule that is acceptable to all affected, and that conforms to the intent of the statute the rule is intended to implement.

After a rule is adopted, unanticipated negative impacts may emerge. Examples include excessive costs of administration for the agency and compliance by affected parties, technical conditions that may be physically or economically unfeasible to meet, problems of interpretation due to lack of

clarity, and reporting requirements that duplicate or conflict with those already in place.

It is therefore the intent of the legislature to encourage flexible approaches to developing administrative rules, including but not limited to negotiated rule making and a process for testing the feasibility of adopted rules, often called the pilot rule process. However, nothing in chapter 202, Laws of 1993 shall be construed to create any mandatory duty for an agency to use the procedures in RCW 34.05.310 or 34.05.313 in any particular instance of rule making. Agencies shall determine, in their discretion, when it is appropriate to use these procedures." [1993 c 202 § 1.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

*Rules coordinator duties regarding business: RCW 43.17.310.*

**34.05.312 Rules coordinator.** Each agency shall designate a rules coordinator, who shall have knowledge of the subjects of rules being proposed or prepared within the agency for proposal, maintain the records of any such action, and respond to public inquiries about possible, proposed, or adopted rules and the identity of agency personnel working, reviewing, or commenting on them. The office and mailing address of the rules coordinator shall be published in the state register at the time of designation and in the first issue of each calendar year thereafter for the duration of the designation. The rules coordinator may be an employee of another agency. [2003 c 246 § 4; 1993 c 202 § 3.]

**Finding—2003 c 246:** See note following RCW 34.05.362.

**Finding—Intent—1993 c 202:** See note following RCW 34.05.310.

**34.05.313 Feasibility studies—Pilot projects.** (1) During the development of a rule or after its adoption, an agency may develop methods for measuring or testing the feasibility of complying with or administering the rule and for identifying simple, efficient, and economical alternatives for achieving the goal of the rule. A pilot project shall include public notice, participation by volunteers who are or will be subject to the rule, a high level of involvement from agency management, reasonable completion dates, and a process by which one or more parties may withdraw from the process or the process may be terminated. Volunteers who agree to test a rule and attempt to meet the requirements of the draft rule, to report periodically to the proposing agency on the extent of their ability to meet the requirements of the draft rule, and to make recommendations for improving the draft rule shall not be obligated to comply fully with the rule being tested nor be subject to any enforcement action or other sanction for failing to comply with the requirements of the draft rule.

(2) An agency conducting a pilot rule project authorized under subsection (1) of this section may waive one or more provisions of agency rules otherwise applicable to participants in such a pilot project if the agency first determines that such a waiver is in the public interest and necessary to conduct the project. Such a waiver may be only for a stated period of time, not to exceed the duration of the project.

(3) The findings of the pilot project should be widely shared and, where appropriate, adopted as amendments to the rule.

(4) If an agency conducts a pilot rule project in lieu of meeting the requirements of the regulatory fairness act, chapter 19.85 RCW, the agency shall ensure the following conditions are met:

(a) If over ten small businesses are affected, there shall be at least ten small businesses in the test group and at least

one-half of the volunteers participating in the pilot test group shall be small businesses.

(b)(i) If there are at least one hundred businesses affected, the participation by small businesses in the test group shall be as follows:

(A) Not less than twenty percent of the small businesses must employ twenty-six to fifty employees;

(B) Not less than twenty percent of the small businesses must employ eleven to twenty-six employees; and

(C) Not less than twenty percent of the small businesses must employ zero to ten employees.

(ii) If there do not exist a sufficient number of small businesses in each size category set forth in (b)(i) of this subsection willing to participate in the pilot project to meet the minimum requirements of that subsection, then the agency must comply with this section to the maximum extent practicable.

(c) The agency may not terminate the pilot project before completion.

(d) Before filing the notice of proposed rule making pursuant to RCW 34.05.320, the agency must prepare a report of the pilot rule project that includes:

(i) A description of the difficulties small businesses had in complying with the pilot rule;

(ii) A list of the recommended revisions to the rule to make compliance with the rule easier or to reduce the cost of compliance with the rule by the small businesses participating in the pilot rule project;

(iii) A written statement explaining the options it considered to resolve each of the difficulties described and a statement explaining its reasons for not including a recommendation by the pilot test group to revise the rule; and

(iv) If the agency was unable to meet the requirements set forth in (b)(i) of this subsection, a written explanation of why it was unable to do so and the steps the agency took to include small businesses in the pilot project. [1995 c 403 § 303; 1993 c 202 § 4.]

**Application—1995 c 403 §§ 201, 301-305, 401-405, and 801:** See note following RCW 34.05.328.

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**Finding—Intent—1993 c 202:** See note following RCW 34.05.310.

**34.05.314 Rules development agenda.** Each state agency shall prepare a semiannual agenda for rules under development. The agency shall file the agenda with the code reviser for publication in the state register not later than January 31st and July 31st of each year. Not later than three days after its publication in the state register, the agency shall send a copy of the agenda to each person who has requested receipt of a copy of the agenda. The agency shall also submit the agenda to the director of financial management, the rules review committee, and any other state agency that may reasonably be expected to have an interest in the subject of rules that will be developed. [1997 c 409 § 206.]

**Part headings—Severability—1997 c 409:** See notes following RCW 43.22.051.

**34.05.315 Rule-making docket.** (1) Each agency shall maintain a current public rule-making docket. The rule-mak-

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ing docket shall contain the information specified in subsection (3) of this section.

(2) The rule-making docket shall contain a listing of each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced by publication of a notice of proposed rule adoption under RCW 34.05.320 until the proposed rule is withdrawn under RCW 34.05.335 or is adopted by the agency.

(3) For each rule-making proceeding, the docket shall indicate all of the following:

(a) The name and address of agency personnel responsible for the proposed rule;

(b) The subject of the proposed rule;

(c) A citation to all notices relating to the proceeding that have been published in the state register under RCW 34.05.320;

(d) The place where written submissions about the proposed rule may be inspected;

(e) The time during which written submissions will be accepted;

(f) The current timetable established for the agency proceeding, including the time and place of any rule-making hearing, the date of the rule's adoption, filing, publication, and its effective date. [1989 c 175 § 6; 1988 c 288 § 302.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.320 Notice of proposed rule—Contents—Distribution by agency—Institutions of higher education.** (1) At least twenty days before the rule-making hearing at which the agency receives public comment regarding adoption of a rule, the agency shall cause notice of the hearing to be published in the state register. The publication constitutes the proposal of a rule. The notice shall include all of the following:

(a) A title, a description of the rule's purpose, and any other information which may be of assistance in identifying the rule or its purpose;

(b) Citations of the statutory authority for adopting the rule and the specific statute the rule is intended to implement;

(c) A short explanation of the rule, its purpose, and anticipated effects, including in the case of a proposal that would modify existing rules, a short description of the changes the proposal would make, and a statement of the reasons supporting the proposed action;

(d) The agency personnel, with their office location and telephone number, who are responsible for the drafting, implementation, and enforcement of the rule;

(e) The name of the person or organization, whether private, public, or governmental, proposing the rule;

(f) Agency comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule;

(g) Whether the rule is necessary as the result of federal law or federal or state court action, and if so, a citation to such law or court decision;

(h) When, where, and how persons may present their views on the proposed rule;

(i) The date on which the agency intends to adopt the rule;

(j) A copy of the small business economic impact statement prepared under chapter 19.85 RCW, or an explanation for why the agency did not prepare the statement;

(k) A statement indicating whether RCW 34.05.328 applies to the rule adoption; and

(l) If RCW 34.05.328 does apply, a statement indicating that a copy of the preliminary cost-benefit analysis described in RCW 34.05.328(1)(c) is available.

(2)(a) Upon filing notice of the proposed rule with the code reviser, the adopting agency shall have copies of the notice on file and available for public inspection. Except as provided in (b) of this subsection, the agency shall forward three copies of the notice to the rules review committee.

(b) A pilot of at least ten agencies, including the departments of labor and industries, fish and wildlife, revenue, ecology, retirement systems, and health, shall file the copies required under this subsection, as well as under RCW 34.05.350 and 34.05.353, with the rules review committee electronically for a period of four years from June 10, 2004. The office of regulatory assistance shall negotiate the details of the pilot among the agencies, the legislature, and the code reviser.

(3) No later than three days after its publication in the state register, the agency shall cause either a copy of the notice of proposed rule adoption, or a summary of the information contained on the notice, to be mailed to each person, city, and county that has made a request to the agency for a mailed copy of such notices. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices.

(4) In addition to the notice required by subsections (1) and (2) of this section, an institution of higher education shall cause the notice to be published in the campus or standard newspaper of the institution at least seven days before the rule-making hearing. [2004 c 31 § 2; 2003 c 165 § 1; 1995 c 403 § 302; 1994 c 249 § 14; 1992 c 197 § 8; 1989 c 175 § 7; 1988 c 288 § 303; 1982 c 221 § 2; 1982 c 6 § 7; 1980 c 186 § 10; 1977 ex.s. c 84 § 1. Formerly RCW 34.04.045.]

**Application—1995 c 403 §§ 201, 301-305, 401-405, and 801:** See note following RCW 34.05.328.

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1982 c 6:** See RCW 19.85.900.

**Severability—1980 c 186:** "If any provision of this 1980 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 186 § 29.]

*Expedited adoption:* RCW 34.05.353.

*Small business economic impact statement—Purpose—Contents:* RCW 19.85.040.

**34.05.322 Scope of rule-making authority.** For rules implementing statutes enacted after July 23, 1995, an agency may not rely solely on the section of law stating a statute's intent or purpose, or on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for its statutory authority to adopt the rule. An agency

may use the statement of intent or purpose or the agency enabling provisions to interpret ambiguities in a statute's other provisions. [1995 c 403 § 118.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**34.05.325 Public participation—Concise explanatory statement.** (1) The agency shall make a good faith effort to insure that the information on the proposed rule published pursuant to RCW 34.05.320 accurately reflects the rule to be presented and considered at the oral hearing on the rule. Written comment about a proposed rule, including supporting data, shall be accepted by an agency if received no later than the time and date specified in the notice, or such later time and date established at the rule-making hearing.

(2) The agency shall provide an opportunity for oral comment to be received by the agency in a rule-making hearing.

(3) If the agency possesses equipment capable of receiving telefacsimile transmissions or recorded telephonic communications, the agency may provide in its notice of hearing filed under RCW 34.05.320 that interested parties may comment on proposed rules by these means. If the agency chooses to receive comments by these means, the notice of hearing shall provide instructions for making such comments, including, but not limited to, appropriate telephone numbers to be used; the date and time by which comments must be received; required methods to verify the receipt and authenticity of the comments; and any limitations on the number of pages for telefacsimile transmission comments and on the minutes of tape recorded comments. The agency shall accept comments received by these means for inclusion in the official record if the comments are made in accordance with the agency's instructions.

(4) The agency head, a member of the agency head, or a presiding officer designated by the agency head shall preside at the rule-making hearing. Rule-making hearings shall be open to the public. The agency shall cause a record to be made of the hearing by stenographic, mechanical, or electronic means. Regardless of whether the agency head has delegated rule-making authority, the presiding official shall prepare a memorandum for consideration by the agency head, summarizing the contents of the presentations made at the rule-making hearing, unless the agency head presided or was present at substantially all of the hearings. The summarizing memorandum is a public document and shall be made available to any person in accordance with chapter 42.17 RCW.

(5) Rule-making hearings are legislative in character and shall be reasonably conducted by the presiding official to afford interested persons the opportunity to present comment. Rule-making hearings may be continued to a later time and place established on the record without publication of further notice under RCW 34.05.320.

(6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

(i) Identifying the agency's reasons for adopting the rule;

(ii) Describing differences between the text of the proposed rule as published in the register and the text of the rule

as adopted, other than editing changes, stating the reasons for differences; and

(iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

(b) The agency shall provide the concise explanatory statement to any person upon request or from whom the agency received comment. [1998 c 125 § 1; 1995 c 403 § 304; 1994 c 249 § 7; 1992 c 57 § 1; 1988 c 288 § 304.]

**Application—1995 c 403 §§ 201, 301-305, 401-405, and 801:** See note following RCW 34.05.328.

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**34.05.328 Significant legislative rules, other selected rules.** (1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Provide notification in the notice of proposed rule making under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice shall include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis shall be available when the rule is adopted under RCW 34.05.360;

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

(f) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;

(g) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law;

(h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ from federal standards; or

(ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and

(i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

(2) In making its determinations pursuant to subsection (1)(b) through (h) of this section, the agency shall place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified.

(3) Before adopting rules described in subsection (5) of this section, an agency shall place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan shall describe how the agency intends to:

(a) Implement and enforce the rule, including a description of the resources the agency intends to use;

(b) Inform and educate affected persons about the rule;

(c) Promote and assist voluntary compliance; and

(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

(4) After adopting a rule described in subsection (5) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency shall do all of the following:

(a) Provide to the \*business assistance center a list citing by reference the other federal and state laws that regulate the same activity or subject matter;

(b) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;

(ii) Designating a lead agency; or

(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection (4)(b), the agency shall report to the legislature pursuant to (c) of this subsection;

(c) Report to the joint administrative rules review committee:

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and

(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section applies to:

(i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, and to the legislative rules of the department of fish and wildlife implementing chapter 77.55 RCW; and

(ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320.

(b) This section does not apply to:

(i) Emergency rules adopted under RCW 34.05.350;

(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(iii) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(v) Rules the content of which is explicitly and specifically dictated by statute;

(vi) Rules that set or adjust fees or rates pursuant to legislative standards; or

(vii) Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

(c) For purposes of this subsection:

(i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy statement pertaining to the consistent internal operations of an agency.

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.

(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW 34.05.320, an agency shall state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of financial management, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, shall report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report shall document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section. [2003 c 165 § 2; 2003 c 39 § 13; 1997 c 430 § 1; 1995 c 403 § 201.]

**Reviser's note:** \*(1) The business assistance center and its powers and duties were terminated June 30, 1995. RCW 43.31.083, 43.31.085, 43.31.087, and 43.31.089 were repealed by 1993 c 280 § 81, effective June 30, 1996.

(2) This section was amended by 2003 c 39 § 13 and by 2003 c 165 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Short title—Intent—1995 c 403:** "(1) The legislature finds that:

(a) One of its fundamental responsibilities, to the benefit of all the citizens of the state, is the protection of public health and safety, including health and safety in the workplace, and the preservation of the extraordinary natural environment with which Washington is endowed;

(b) Essential to this mission is the delegation of authority to state agencies to implement the policies established by the legislature; and that the adoption of administrative rules by these agencies helps assure that these policies are clearly understood, fairly applied, and uniformly enforced;

(c) Despite its importance, Washington's regulatory system must not impose excessive, unreasonable, or unnecessary obligations; to do so serves only to discredit government, makes enforcement of essential regulations more difficult, and detrimentally affects the economy of the state and the well-being of our citizens.

(2) The legislature therefore enacts chapter 403, Laws of 1995, to be known as the regulatory reform act of 1995, to ensure that the citizens and environment of this state receive the highest level of protection, in an effective and efficient manner, without stifling legitimate activities and responsible economic growth. To that end, it is the intent of the legislature, in the adoption of chapter 403, Laws of 1995, that:

(a) Unless otherwise authorized, substantial policy decisions affecting the public be made by those directly accountable to the public, namely the legislature, and that state agencies not use their administrative authority to create or amend regulatory programs;

(b) When an agency is authorized to adopt rules imposing obligations on the public, that it do so responsibly: The rules it adopts should be justified and reasonable, with the agency having determined, based on common sense criteria established by the legislature, that the obligations imposed are truly in the public interest;

(c) Governments at all levels better coordinate their regulatory efforts to avoid confusing and frustrating the public with overlapping or contradictory requirements;

(d) The public respect the process whereby administrative rules are adopted, whether or not they agree with the result: Members of the public affected by administrative rules must have the opportunity for a meaningful role in their development; the bases for agency action must be legitimate and clearly articulated;

(e) Members of the public have adequate opportunity to challenge administrative rules with which they have legitimate concerns through meaningful review of the rule by the executive, the legislature, and the judiciary. While it is the intent of the legislature that upon judicial review of a rule, a court should not substitute its judgment for that of an administrative agency, the court should determine whether the agency decision making was rigorous and deliberative; whether the agency reached its result through a

process of reason; and whether the agency took a hard look at the rule before its adoption;

(f) In order to achieve greater compliance with administrative rules at less cost, that a cooperative partnership exist between agencies and regulated parties that emphasizes education and assistance before the imposition of penalties; and

(g) Workplace safety and health in this state not be diminished, whether provided by constitution, by statute, or by rule." [1995 c 403 § 1.]

**Application—1995 c 403 §§ 201, 301-305, 401-405, and 801:** "Sections 201, 301 through 305, 401 through 405, and 801 of this act shall apply to all rule making for which a statement of proposed rule making under RCW 34.05.320 is filed after July 23, 1995." [1995 c 403 § 1102.]

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

*Expedited adoption:* RCW 34.05.353.

**34.05.330 Petition for adoption, amendment, repeal—Agency action—Appeal.** (1) Any person may petition an agency requesting the adoption, amendment, or repeal of any rule. The office of financial management shall prescribe by rule the format for such petitions and the procedure for their submission, consideration, and disposition and provide a standard form that may be used to petition any agency. Within sixty days after submission of a petition, the agency shall either (a) deny the petition in writing, stating (i) its reasons for the denial, specifically addressing the concerns raised by the petitioner, and, where appropriate, (ii) the alternative means by which it will address the concerns raised by the petitioner, or (b) initiate rule-making proceedings in accordance with RCW 34.05.320.

(2) If an agency denies a petition to repeal or amend a rule submitted under subsection (1) of this section, and the petition alleges that the rule is not within the intent of the legislature or was not adopted in accordance with all applicable provisions of law, the person may petition for review of the rule by the joint administrative rules review committee under RCW 34.05.655.

(3) If an agency denies a petition to repeal or amend a rule submitted under subsection (1) of this section, the petitioner, within thirty days of the denial, may appeal the denial to the governor. The governor shall immediately file notice of the appeal with the code reviser for publication in the Washington state register. Within forty-five days after receiving the appeal, the governor shall either (a) deny the petition in writing, stating (i) his or her reasons for the denial, specifically addressing the concerns raised by the petitioner, and, (ii) where appropriate, the alternative means by which he or she will address the concerns raised by the petitioner; (b) for agencies listed in RCW 43.17.010, direct the agency to initiate rule-making proceedings in accordance with this chapter; or (c) for agencies not listed in RCW 43.17.010, recommend that the agency initiate rule-making proceedings in accordance with this chapter. The governor's response to the appeal shall be published in the Washington state register and copies shall be submitted to the chief clerk of the house of representatives and the secretary of the senate.

(4) In petitioning for repeal or amendment of a rule under this section, a person is encouraged to address, among other concerns:

(a) Whether the rule is authorized;

(b) Whether the rule is needed;

(c) Whether the rule conflicts with or duplicates other federal, state, or local laws;

(d) Whether alternatives to the rule exist that will serve the same purpose at less cost;

(e) Whether the rule applies differently to public and private entities;

(f) Whether the rule serves the purposes for which it was adopted;

(g) Whether the costs imposed by the rule are unreasonable;

(h) Whether the rule is clearly and simply stated;

(i) Whether the rule is different than a federal law applicable to the same activity or subject matter without adequate justification; and

(j) Whether the rule was adopted according to all applicable provisions of law.

(5) The department of community, trade, and economic development and the office of financial management shall coordinate efforts among agencies to inform the public about the existence of this rules review process.

(6) The office of financial management shall initiate the rule making required by subsection (1) of this section by September 1, 1995. [1998 c 280 § 5; 1996 c 318 § 1; 1995 c 403 § 703; 1988 c 288 § 305; 1967 c 237 § 5; 1959 c 234 § 6. Formerly RCW 34.04.060.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**34.05.335 Withdrawal of proposal—Time and manner of adoption.** (1) A proposed rule may be withdrawn by the proposing agency at any time before adoption. A withdrawn rule may not be adopted unless it is again proposed in accordance with RCW 34.05.320.

(2) Before adopting a rule, an agency shall consider the written and oral submissions, or any memorandum summarizing oral submissions.

(3) Rules not adopted and filed with the code reviser within one hundred eighty days after publication of the text as last proposed in the register shall be regarded as withdrawn. An agency may not thereafter adopt the proposed rule without refileing it in accordance with RCW 34.05.320. The code reviser shall give notice of the withdrawal in the register.

(4) An agency may not adopt a rule before the time established in the published notice, or such later time established on the record or by publication in the state register. [1989 c 175 § 8; 1988 c 288 § 306; 1980 c 186 § 11. Formerly RCW 34.04.048.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1980 c 186:** See note following RCW 34.05.320.

### **34.05.340 Variance between proposed and final rule.**

(1) Unless it complies with subsection (3) of this section, an agency may not adopt a rule that is substantially different from the rule proposed in the published notice of proposed rule adoption or a supplemental notice in the proceeding. If an agency contemplates making a substantial variance from a proposed rule described in a published notice, it may file a supplemental notice with the code reviser meeting the requirements of RCW 34.05.320 and reopen the proceedings for public comment on the proposed variance, or the agency may withdraw the proposed rule and commence a new rule-

making proceeding to adopt a substantially different rule. If a new rule-making proceeding is commenced, relevant public comment received regarding the initial proposed rule shall be considered in the new proceeding.

(2) The following factors shall be considered in determining whether an adopted rule is substantially different from the proposed rule on which it is based:

(a) The extent to which a reasonable person affected by the adopted rule would have understood that the published proposed rule would affect his or her interests;

(b) The extent to which the subject of the adopted rule or the issues determined in it are substantially different from the subject or issues involved in the published proposed rule; and

(c) The extent to which the effects of the adopted rule differ from the effects of the published proposed rule.

(3) If the agency, without filing a supplemental notice under subsection (1) of this section, adopts a rule that varies in content from the proposed rule, the general subject matter of the adopted rule must remain the same as the proposed rule. The agency shall briefly describe any changes, other than editing changes, and the principal reasons for adopting the changes. The brief description shall be filed with the code reviser together with the order of adoption for publication in the state register. Within sixty days of publication of the adopted rule in the state register, any interested person may petition the agency to amend any portion of the adopted rule that is substantially different from the proposed rule. The petition shall briefly demonstrate how the adopted rule is substantially different from the proposed rule and shall contain the text of the petitioner's proposed amendment. For purposes of the petition, an adopted rule is substantially different if the issues determined in the adopted rule differ from the issues determined in the proposed rule or the anticipated effects of the adopted rule differ from those of the proposed rule. If the petition meets the requirements of this subsection and RCW 34.05.330, the agency shall initiate rule-making proceedings upon the proposed amendments within the time provided in RCW 34.05.330. [1989 c 175 § 9; 1988 c 288 § 307.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.345 Failure to give twenty days notice of intended action—Effect.** Except for emergency rules adopted under RCW 34.05.350, when twenty days notice of intended action to adopt, amend, or repeal a rule has not been published in the state register, as required by RCW 34.05.320, the code reviser shall not publish such rule and such rule shall not be effective for any purpose. [1988 c 288 § 308; 1967 c 237 § 4. Formerly RCW 34.04.027.]

**34.05.350 Emergency rules and amendments.** (1) If an agency for good cause finds:

(a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; or

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule,

the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

(2) An emergency rule adopted under this section takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing. Identical or substantially similar emergency rules may not be adopted in sequence unless conditions have changed or the agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. This section does not relieve any agency from compliance with any law requiring that its permanent rules be approved by designated persons or bodies before they become effective.

(3) Within seven days after the rule is adopted, any person may petition the governor requesting the immediate repeal of a rule adopted on an emergency basis by any department listed in RCW 43.17.010. Within seven days after submission of the petition, the governor shall either deny the petition in writing, stating his or her reasons for the denial, or order the immediate repeal of the rule. In ruling on the petition, the governor shall consider only whether the conditions in subsection (1) of this section were met such that adoption of the rule on an emergency basis was necessary. If the governor orders the repeal of the emergency rule, any sanction imposed based on that rule is void. This subsection shall not be construed to prohibit adoption of any rule as a permanent rule.

(4) In adopting an emergency rule, the agency shall comply with \*section 4 of this act or provide a written explanation for its failure to do so. [1994 c 249 § 3; 1989 c 175 § 10; 1988 c 288 § 309; 1981 c 324 § 4; 1977 ex.s. c 240 § 8; 1959 c 234 § 3. Formerly RCW 34.04.030.]

**\*Reviser's note:** The governor vetoed 1994 c 249 § 4.

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Legislative affirmation—Severability—1981 c 324:** See notes following RCW 34.05.010.

**Effective date—Severability—1977 ex.s. c 240:** See RCW 34.08.905 and 34.08.910.

**34.05.353 Expedited rule making.** (1) An agency may file notice for the expedited adoption of rules in accordance with the procedures set forth in this section for rules meeting any one of the following criteria:

(a) The proposed rules relate only to internal governmental operations that are not subject to violation by a person;

(b) The proposed rules adopt or incorporate by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as

referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(c) The proposed rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(d) The content of the proposed rules is explicitly and specifically dictated by statute;

(e) The proposed rules have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or

(f) The proposed rule is being amended after a review under RCW 34.05.328.

(2) An agency may file notice for the expedited repeal of rules under the procedures set forth in this section for rules meeting any one of the following criteria:

(a) The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;

(b) The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;

(c) The rule is no longer necessary because of changed circumstances; or

(d) Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

(3) The expedited rule-making process must follow the requirements for rule making set forth in RCW 34.05.320, except that the agency is not required to prepare a small business economic impact statement under RCW 19.85.025, a statement indicating whether the rule constitutes a significant legislative rule under RCW 34.05.328(5)(c)(iii), or a significant legislative rule analysis under RCW 34.05.328. An agency is not required to prepare statements of inquiry under RCW 34.05.310 or conduct a hearing for the expedited rule making. The notice for the expedited rule making must contain a statement in at least ten-point type, that is substantially in the following form:

#### NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO (INSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).

(4) The agency shall send either a copy of the notice of the proposed expedited rule making, or a summary of the information on the notice, to any person who has requested

notification of proposals for expedited rule making or of regular agency rule making, as well as the joint administrative rules review committee, within three days after its publication in the Washington State Register. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices. The notice of the proposed expedited rule making must be preceded by a statement substantially in the form provided in subsection (3) of this section. The notice must also include an explanation of the reasons the agency believes the expedited rule-making process is appropriate.

(5) The code reviser shall publish the text of all rules proposed for expedited adoption, and the citation and caption of all rules proposed for expedited repeal, along with the notice required in this section in a separate section of the Washington State Register. Once the notice of expedited rule making has been published in the Washington State Register, the only changes that an agency may make in the noticed materials before their final adoption or repeal are to correct typographical errors.

(6) Any person may file a written objection to the expedited rule making. The objection must be filed with the agency rules coordinator within forty-five days after the notice of the proposed expedited rule making has been published in the Washington State Register. A person who has filed a written objection to the expedited rule making may withdraw the objection.

(7) If no written objections to the expedited rule making are filed with the agency within forty-five days after the notice of proposed expedited rule making is published, or if all objections that have been filed are withdrawn by the persons filing the objections, the agency may enter an order adopting or repealing the rule without further notice or a public hearing. The order must be published in the manner required by this chapter for any other agency order adopting, amending, or repealing a rule.

(8) If a written notice of objection to the expedited rule making is timely filed with the agency and is not withdrawn, the notice of proposed expedited rule making published under this section is considered a statement of inquiry for the purposes of RCW 34.05.310, and the agency may initiate further rule-making proceedings in accordance with this chapter.

(9) As used in this section, "expedited rule making" includes both the expedited adoption of rules and the expedited repeal of rules. [2004 c 31 § 4; 2001 c 25 § 2.]

**34.05.360 Order adopting rule, contents.** The order of adoption by which each rule is adopted by an agency shall contain all of the following:

- (1) The date the agency adopted the rule;
- (2) A concise statement of the purpose of the rule;
- (3) A reference to all rules repealed, amended, or suspended by the rule;
- (4) A reference to the specific statutory or other authority authorizing adoption of the rule;
- (5) Any findings required by any provision of law as a precondition to adoption or effectiveness of the rule; and
- (6) The effective date of the rule if other than that specified in RCW 34.05.380(2). [1988 c 288 § 311.]

**34.05.362 Postadoption notice.** Either before or within two hundred days after the effective date of an adopted rule that imposes additional requirements on businesses the violation of which subjects the business to a penalty, assessment, or administrative sanction, an agency identified in RCW 34.05.220(6) shall notify businesses affected by the rule of the requirements of the rule and how to obtain technical assistance to comply. Notification must be provided by e-mail, if possible, to every person identified to receive the postadoption notice under RCW 34.05.220(6).

The notification must announce the rule change, briefly summarize the rule change, refer to appeal procedures under RCW 34.05.330, and include a contact for more information. Failure to notify a specific business under this section does not invalidate a rule or waive the requirement to comply with the rule. The requirements of this section do not apply to emergency rules adopted under RCW 34.05.350. [2003 c 246 § 3.]

**Finding—2003 c 246:** "The legislature finds that many businesses in the state are frustrated by the complexity of the regulatory system. The Washington Administrative Code containing agency rules now fills twelve volumes, and appears to be growing each year. While the vast majority of businesses make a good faith attempt to comply with applicable laws and rules, many find it extremely difficult to keep up with agencies' issuance of new rules and requirements. Therefore, state agencies are directed to make a good faith attempt to notify businesses affected by rule changes that may subject noncomplying businesses to penalties." [2003 c 246 § 1.]

**34.05.365 Incorporation by reference.** An agency may incorporate by reference and without publishing the incorporated matter in full, all or any part of a code, standard, rule, or regulation that has been adopted by an agency of the United States, of this state, or of another state, by a political subdivision of this state, or by a generally recognized organization or association if incorporation of the full text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in agency rules shall fully identify the incorporated matter. An agency may incorporate by reference such matter in its rules only if the agency, organization, or association originally issuing that matter makes copies readily available to the public. The incorporating agency shall have, maintain, and make available for public inspection a copy of the incorporated matter. The rule must state where copies of the incorporated matter are available. [1988 c 288 § 312.]

**34.05.370 Rule-making file.** (1) Each agency shall maintain an official rule-making file for each rule that it (a) proposes by publication in the state register, or (b) adopts. The file and materials incorporated by reference shall be available for public inspection.

(2) The agency rule-making file shall contain all of the following:

(a) A list of citations to all notices in the state register with respect to the rule or the proceeding upon which the rule is based;

(b) Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding on which the rule is based;

(c) All written petitions, requests, submissions, and comments received by the agency and all other written material

regarded by the agency as important to adoption of the rule or the proceeding on which the rule is based;

(d) Any official transcript of oral presentations made in the proceeding on which the rule is based or, if not transcribed, any tape recording or stenographic record of them, and any memorandum prepared by a presiding official summarizing the contents of those presentations;

(e) All petitions for exceptions to, amendment of, or repeal or suspension of, the rule;

(f) Citations to data, factual information, studies, or reports on which the agency relies in the adoption of the rule, indicating where such data, factual information, studies, or reports are available for review by the public, but this subsection (2)(f) does not require the agency to include in the rule-making file any data, factual information, studies, or reports gathered pursuant to chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(g) The concise explanatory statement required by RCW 34.05.325(6); and

(h) Any other material placed in the file by the agency.

(3) Internal agency documents are exempt from inclusion in the rule-making file under subsection (2) of this section to the extent they constitute preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific document is not exempt from inclusion when it is publicly cited by an agency in connection with its decision.

(4) Upon judicial review, the file required by this section constitutes the official agency rule-making file with respect to that rule. Unless otherwise required by another provision of law, the official agency rule-making file need not be the exclusive basis for agency action on that rule. [1998 c 280 § 7; 1996 c 102 § 2; 1995 c 403 § 801; 1994 c 249 § 2; 1988 c 288 § 313.]

**Application—1995 c 403 §§ 201, 301-305, 401-405, and 801:** See note following RCW 34.05.328.

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**34.05.375 Substantial compliance with procedures.** No rule proposed after July 1, 1989, is valid unless it is adopted in substantial compliance with RCW 34.05.310 through 34.05.395. Inadvertent failure to mail notice of a proposed rule adoption to any person as required by RCW 34.05.320(3) does not invalidate a rule. No action based upon this section may be maintained to contest the validity of any rule unless it is commenced within two years after the effective date of the rule. [1988 c 288 § 314.]

**34.05.380 Filing with code reviser—Register—Effective dates.** (1) Each agency shall file in the office of the code reviser a certified copy of all rules it adopts, except for rules contained in tariffs filed with or published by the Washington utilities and transportation commission. The code reviser shall place upon each rule a notation of the time and date of filing and shall keep a permanent register of filed rules open

to public inspection. In filing a rule, each agency shall use the standard form prescribed for this purpose by the code reviser.

(2) Emergency rules adopted under RCW 34.05.350 become effective upon filing unless a later date is specified in the order of adoption. All other rules become effective upon the expiration of thirty days after the date of filing, unless a later date is required by statute or specified in the order of adoption.

(3) A rule may become effective immediately upon its filing with the code reviser or on any subsequent date earlier than that established by subsection (2) of this section, if the agency establishes that effective date in the adopting order and finds that:

(a) Such action is required by the state or federal Constitution, a statute, or court order;

(b) The rule only delays the effective date of another rule that is not yet effective; or

(c) The earlier effective date is necessary because of imminent peril to the public health, safety, or welfare.

The finding and a brief statement of the reasons therefor required by this subsection shall be made a part of the order adopting the rule.

(4) With respect to a rule made effective pursuant to subsection (3) of this section, each agency shall make reasonable efforts to make the effective date known to persons who may be affected by it. [1989 c 175 § 11; 1988 c 288 § 315; 1987 c 505 § 17; 1980 c 87 § 11; 1959 c 234 § 4. Formerly RCW 34.04.040.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.385 Rules for rule making.** The code reviser may adopt rules for carrying out the provisions of this chapter relating to the filing and publication of rules and notices of intention to adopt rules, including the form and style to be employed by the various agencies in the drafting of such rules and notices. [1988 c 288 § 316; 1967 c 237 § 13. Formerly RCW 34.04.055.]

**34.05.390 Style, format, and numbering—Agency compliance.** After the rules of an agency have been published by the code reviser:

(1) All agency orders amending or rescinding such rules, or creating new rules, shall be formulated in accordance with the style, format, and numbering system of the Washington Administrative Code;

(2) Any subsequent printing or reprinting of such rules shall be printed in the style and format (including the numbering system) of such code; and

(3) Amendments of previously adopted rules shall incorporate any editorial corrections made by the code reviser. [1988 c 288 § 317; 1967 c 237 § 14. Formerly RCW 34.04.057.]

**34.05.395 Format and style of amendatory and new sections—Failure to comply.** (1) Rules proposed or adopted by an agency pursuant to this chapter that amend existing sections of the administrative code shall have the words which are amendatory to such existing sections underlined. Any matter to be deleted from an existing section shall be indicated by setting such matter forth in full, enclosed by double

parentheses, and such deleted matter shall be lined out with hyphens. A new section shall be designated "NEW SECTION" in upper case type and such designation shall be underlined, but the complete text of the section shall not be underlined. No rule may be forwarded by any agency to the code reviser, nor may the code reviser accept for filing any rule unless the format of such rule is in compliance with the provisions of this section.

(2) Once the rule has been formally adopted by the agency the code reviser need not, except with regard to the register published pursuant to RCW 34.05.210(3), include the items enumerated in subsection (1) of this section in the official code.

(3) Any addition to or deletion from an existing code section not filed by the agency in the style prescribed by subsection (1) of this section shall in all respects be ineffectual, and shall not be shown in subsequent publications or codifications of that section unless the ineffectual portion of the rule is clearly distinguished and an explanatory note is appended thereto by the code reviser in accordance with RCW 34.05.210. [1988 c 288 § 318; 1980 c 186 § 14; 1977 c 19 § 1. Formerly RCW 34.04.058.]

**Severability—1980 c 186:** See note following RCW 34.05.320.

## PART IV ADJUDICATIVE PROCEEDINGS

**34.05.410 Application of Part IV.** (1) Adjudicative proceedings are governed by RCW 34.05.413 through 34.05.476, except as otherwise provided:

(a) By a rule that adopts the procedures for brief adjudicative proceedings in accordance with the standards provided in RCW 34.05.482 for those proceedings;

(b) By RCW 34.05.479 pertaining to emergency adjudicative proceedings; or

(c) By RCW 34.05.240 pertaining to declaratory proceedings.

(2) RCW 34.05.410 through 34.05.494 do not apply to rule-making proceedings unless another statute expressly so requires. [1988 c 288 § 401.]

**34.05.413 Commencement—When required.** (1) Within the scope of its authority, an agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction.

(2) When required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding.

(3) An agency may provide forms for and, by rule, may provide procedures for filing an application for an adjudicative proceeding. An agency may require by rule that an application be in writing and that it be filed at a specific address, in a specified manner, and within specified time limits. The agency shall allow at least twenty days to apply for an adjudicative proceeding from the time notice is given of the opportunity to file such an application.

(4) If an agency is required to hold an adjudicative proceeding, an application for an agency to enter an order includes an application for the agency to conduct appropriate

adjudicative proceedings, whether or not the applicant expressly requests those proceedings.

(5) An adjudicative proceeding commences when the agency or a presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted. [1989 c 175 § 12; 1988 c 288 § 402.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.416 Decision not to conduct an adjudication.** If an agency decides not to conduct an adjudicative proceeding in response to an application, the agency shall furnish the applicant a copy of its decision in writing, with a brief statement of the agency's reasons and of any administrative review available to the applicant. [1988 c 288 § 403.]

**34.05.419 Agency action on applications for adjudication.** After receipt of an application for an adjudicative proceeding, other than a declaratory order, an agency shall proceed as follows:

(1) Except in situations governed by subsection (2) or (3) of this section, within ninety days after receipt of the application or of the response to a timely request made by the agency under subsection (2) of this section, the agency shall do one of the following:

(a) Approve or deny the application, in whole or in part, on the basis of brief or emergency adjudicative proceedings, if those proceedings are available under this chapter for disposition of the matter;

(b) Commence an adjudicative proceeding in accordance with this chapter; or

(c) Dispose of the application in accordance with RCW 34.05.416;

(2) Within thirty days after receipt of the application, the agency shall examine the application, notify the applicant of any obvious errors or omissions, request any additional information the agency wishes to obtain and is permitted by law to require, and notify the applicant of the name, mailing address, and telephone number of an office that may be contacted regarding the application;

(3) If the application seeks relief that is not available when the application is filed but may be available in the future, the agency may proceed to make a determination of eligibility within the time limits provided in subsection (1) of this section. If the agency determines that the applicant is eligible, the agency shall maintain the application on the agency's list of eligible applicants as provided by law and, upon request, shall notify the applicant of the status of the application. [1988 c 288 § 404.]

**34.05.422 Rate changes, licenses.** (1) Unless otherwise provided by law: (a) Applications for rate changes and uncontested applications for licenses may, in the agency's discretion, be conducted as adjudicative proceedings; (b) applications for licenses that are contested by a person having standing to contest under the law and review of denials of applications for licenses or rate changes shall be conducted as adjudicative proceedings; and (c) an agency may not revoke, suspend, or modify a license unless the agency gives notice

of an opportunity for an appropriate adjudicative proceeding in accordance with this chapter or other statute.

(2) An agency with authority to grant or deny a professional or occupational license shall notify an applicant for a new or renewal license not later than twenty days prior to the date of the examination required for that license of any grounds for denial of the license which are based on specific information disclosed in the application submitted to the agency. The agency shall notify the applicant either that the license is denied or that the decision to grant or deny the license will be made at a future date. If the agency fails to give the notification prior to the examination and the applicant is denied licensure, the examination fee shall be refunded to the applicant. If the applicant takes the examination, the agency shall notify the applicant of the result.

(3) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, an existing full, temporary, or provisional license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(4) If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. [1989 c 175 § 13; 1988 c 288 § 405; 1980 c 33 § 1; 1967 c 237 § 8. Formerly RCW 34.04.170.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.425 Presiding officers—Disqualification, substitution.** (1) Except as provided in subsection (2) of this section, in the discretion of the agency head, the presiding officer in an administrative hearing shall be:

(a) The agency head or one or more members of the agency head;

(b) If the agency has statutory authority to do so, a person other than the agency head or an administrative law judge designated by the agency head to make the final decision and enter the final order; or

(c) One or more administrative law judges assigned by the office of administrative hearings in accordance with chapter 34.12 RCW.

(2) An agency expressly exempted under RCW 34.12.020(4) or other statute from the provisions of chapter 34.12 RCW or an institution of higher education shall designate a presiding officer as provided by rules adopted by the agency.

(3) Any individual serving or designated to serve alone or with others as presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is disqualified.

(4) Any party may petition for the disqualification of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification.

(5) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(6) When the presiding officer is an administrative law judge, the provisions of this section regarding disqualification for cause are in addition to the motion of prejudice available under RCW 34.12.050.

(7) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute must be appointed by the appropriate appointing authority.

(8) Any action taken by a duly appointed substitute for an unavailable individual is as effective as if taken by the unavailable individual. [1989 c 175 § 14; 1988 c 288 § 406.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.428 Representation.** (1) A party to an adjudicative proceeding may participate personally or, if the party is a corporation or other artificial person, by a duly authorized representative.

(2) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, if permitted by provision of law, other representative. [1989 c 175 § 15; 1988 c 288 § 407.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.431 Conference—Procedure and participation.**

(1) Agencies may hold prehearing or other conferences for the settlement or simplification of issues. Every agency shall by rule describe the conditions under which and the manner in which conferences are to be held.

(2) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the conference may be conducted by telephone, television, or other electronic means. Each participant in the conference must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place. [1988 c 288 § 408.]

**34.05.434 Notice of hearing.** (1) The agency or the office of administrative hearings shall set the time and place of the hearing and give not less than seven days advance written notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(2) The notice shall include:

(a) Unless otherwise ordered by the presiding officer, the names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(b) If the agency intends to appear, the mailing address and telephone number of the office designated to represent the agency in the proceeding;

(c) The official file or other reference number and the name of the proceeding;

(d) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(e) A statement of the time, place and nature of the proceeding;

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(f) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(g) A reference to the particular sections of the statutes and rules involved;

(h) A short and plain statement of the matters asserted by the agency; and

(i) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with this chapter.

(3) If the agency is unable to state the matters required by subsection (2)(h) of this section at the time the notice is served, the initial notice may be limited to a statement of the issues involved. If the proceeding is initiated by a person other than the agency, the initial notice may be limited to the inclusion of a copy of the initiating document. Thereafter, upon request, a more definite and detailed statement shall be furnished.

(4) The notice may include any other matters considered desirable by the agency. [1988 c 288 § 409; 1980 c 31 § 1; 1967 c 237 § 9; 1959 c 234 § 9. Formerly RCW 34.04.090.]

**34.05.437 Pleadings, briefs, motions, service.** (1) The presiding officer, at appropriate stages of the proceedings, shall give all parties full opportunity to submit and respond to pleadings, motions, objections, and offers of settlement.

(2) At appropriate stages of the proceedings, the presiding officer may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial or final orders.

(3) A party that files a pleading, brief, or other paper with the agency or presiding officer shall serve copies on all other parties, unless a different procedure is specified by agency rule. [1988 c 288 § 410.]

**34.05.440 Default.** (1) Failure of a party to file an application for an adjudicative proceeding within the time limit or limits established by statute or agency rule constitutes a default and results in the loss of that party's right to an adjudicative proceeding, and the agency may proceed to resolve the case without further notice to, or hearing for the benefit of, that party, except that any default or other dispositive order affecting that party shall be served upon him or her or upon his or her attorney, if any.

(2) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, other than failing to timely request an adjudicative proceeding as set out in subsection (1) of this section, the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.

(3) Within seven days after service of a default order under subsection (2) of this section, or such longer period as provided by agency rule, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. [1989 c 175 § 16; 1988 c 288 § 411.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.443 Intervention.** (1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(2) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; and

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(3) The presiding officer shall timely grant or deny each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of the decision granting, denying, or modifying intervention to the petitioner for intervention and to all parties. [1988 c 288 § 412.]

**34.05.446 Subpoenas, discovery, and protective orders.** (1) The presiding officer may issue subpoenas and may enter protective orders. A subpoena may be issued with like effect by the agency or the attorney of record in whose behalf the witness is required to appear.

(2) An agency may by rule determine whether or not discovery is to be available in adjudicative proceedings and, if so, which forms of discovery may be used.

(3) Except as otherwise provided by agency rules, the presiding officer may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 36 of the superior court civil rules. The presiding officer may condition use of discovery on a showing of necessity and unavailability by other means. In exercising such discretion, the presiding officer shall consider: (a) Whether all parties are represented by counsel; (b) whether undue expense or delay in bringing the case to hearing will result; (c) whether the discovery will promote the orderly and prompt conduct of the proceeding; and (d) whether the interests of justice will be promoted.

(4) Discovery orders and protective orders entered under this section may be enforced under the provisions of this chapter on civil enforcement of agency action.

(5) Subpoenas issued under this section may be enforced under RCW 34.05.588(1).

(6) The subpoena powers created by this section shall be statewide in effect.

(7) Witnesses in an adjudicatory proceeding shall be paid the same fees and allowances, in the same manner and under the same conditions, as provided for witnesses in the courts of this state by chapter 2.40 RCW and by RCW 5.56.010,

except that the agency shall have the power to fix the allowance for meals and lodging in like manner as is provided in RCW 5.56.010 as to courts. The person initiating an adjudicative proceeding or the party requesting issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena. [1989 c 175 § 17; 1988 c 288 § 413; 1967 c 237 § 10. Formerly RCW 34.04.105.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.449 Procedure at hearing.** (1) The presiding officer shall regulate the course of the proceedings, in conformity with applicable rules and the prehearing order, if any.

(2) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

(3) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing may be conducted by telephone, television, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place.

(4) The presiding officer shall cause the hearing to be recorded by a method chosen by the agency. The agency is not required, at its expense, to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.

(5) The hearing is open to public observation, except for the parts that the presiding officer states to be closed under a provision of law expressly authorizing closure or under a protective order entered by the presiding officer pursuant to applicable rules. A presiding officer may order the exclusion of witnesses upon a showing of good cause. To the extent that the hearing is conducted by telephone, television, or other electronic means, and is not closed, the availability of public observation is satisfied by giving members of the public an opportunity, at reasonable times, to hear or inspect the agency's record, and to inspect any transcript obtained by the agency. [1989 c 175 § 18; 1988 c 288 § 414.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.452 Rules of evidence—Cross-examination.** (1) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) If not inconsistent with subsection (1) of this section, the presiding officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings.

(3) All testimony of parties and witnesses shall be made under oath or affirmation.

(4) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(5) Official notice may be taken of (a) any judicially cognizable facts, (b) technical or scientific facts within the agency's specialized knowledge, and (c) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed. [1988 c 288 § 415; 1959 c 234 § 10. Formerly RCW 34.04.100.]

**34.05.455 Ex parte communications.** (1) A presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding other than communications necessary to procedural aspects of maintaining an orderly process, with any person employed by the agency without notice and opportunity for all parties to participate, except as provided in this subsection:

(a) Where the ultimate legal authority of an agency is vested in a multimember body, and where that body presides at an adjudication, members of the body may communicate with one another regarding the proceeding;

(b) Any presiding officer may receive aid from legal counsel, or from staff assistants who are subject to the presiding officer's supervision; and

(c) Presiding officers may communicate with other employees or consultants of the agency who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.

(d) This subsection does not apply to communications required for the disposition of ex parte matters specifically authorized by statute.

(2) Unless required for the disposition of ex parte matters specifically authorized by statute or unless necessary to procedural aspects of maintaining an orderly process, a presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding, with any person not employed by the agency who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.

(3) Unless necessary to procedural aspects of maintaining an orderly process, persons to whom a presiding officer may not communicate under subsections (1) and (2) of this section may not communicate with presiding officers without notice and opportunity for all parties to participate.

(4) If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the person, promptly after starting to serve, shall disclose the

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communication in the manner prescribed in subsection (5) of this section.

(5) A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the matter unless a party moves the admission of any portion of the record for purposes of establishing a fact at issue and that portion is admitted pursuant to RCW 34.05.452.

(6) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a presiding officer who receives the communication may be disqualified, and the portions of the record pertaining to the communication may be sealed by protective order.

(7) The agency shall, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule may provide for appropriate sanctions, including default, for any violations of this section. [1988 c 288 § 416.]

**34.05.458 Separation of functions.** (1) A person who has served as investigator, prosecutor, or advocate in an adjudicative proceeding or in its preadjudicative stage, or one who is subject to the authority, direction, or discretion of such a person, may not serve as a presiding officer in the same proceeding.

(2) A person, including an agency head, who has participated in a determination of probable cause or other equivalent preliminary determination in an adjudicative proceeding may serve as presiding officer or assist or advise a presiding officer in the same proceeding unless a party demonstrates grounds for disqualification in accordance with RCW 34.05.425.

(3) A person may serve as presiding officer at successive stages of the same adjudicative proceeding unless a party demonstrates grounds for disqualification in accordance with RCW 34.05.425. [1988 c 288 § 417.]

**34.05.461 Entry of orders.** (1) Except as provided in subsection (2) of this section:

(a) If the presiding officer is the agency head or one or more members of the agency head, the presiding officer may enter an initial order if further review is available within the agency, or a final order if further review is not available;

(b) If the presiding officer is a person designated by the agency to make the final decision and enter the final order, the presiding officer shall enter a final order; and

(c) If the presiding officer is one or more administrative law judges, the presiding officer shall enter an initial order.

(2) With respect to agencies exempt from chapter 34.12 RCW or an institution of higher education, the presiding officer shall transmit a full and complete record of the proceedings, including such comments upon demeanor of witnesses as the presiding officer deems relevant, to each agency official who is to enter a final or initial order after considering the record and evidence so transmitted.

(3) Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction and, if applicable, the action taken on a petition for a stay of effectiveness. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(4) Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

(5) Where it bears on the issues presented, the agency's experience, technical competency, and specialized knowledge may be used in the evaluation of evidence.

(6) If a person serving or designated to serve as presiding officer becomes unavailable for any reason before entry of the order, a substitute presiding officer shall be appointed as provided in RCW 34.05.425. The substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(7) The presiding officer may allow the parties a designated time after conclusion of the hearing for the submission of memos, briefs, or proposed findings.

(8)(a) Except as otherwise provided in (b) of this subsection, initial or final orders shall be served in writing within ninety days after conclusion of the hearing or after submission of memos, briefs, or proposed findings in accordance with subsection (7) of this section unless this period is waived or extended for good cause shown.

(b) This subsection does not apply to the final order of the shorelines hearings board on appeal under RCW 90.58.180(3).

(9) The presiding officer shall cause copies of the order to be served on each party and the agency. [1995 c 347 § 312; 1989 c 175 § 19; 1988 c 288 § 418.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.464 Review of initial orders.** (1) As authorized by law, an agency may by rule provide that initial orders in specified classes of cases may become final without further agency action unless, within a specified period, (a) the agency head upon its own motion determines that the initial order should be reviewed, or (b) a party to the proceedings files a petition for administrative review of the initial order. Upon occurrence of either event, notice shall be given to all parties to the proceeding.

(2) As authorized by law, an agency head may appoint a person to review initial orders and to prepare and enter final agency orders.

(3) RCW 34.05.425 and 34.05.455 apply to any person reviewing an initial order on behalf of an agency as part of the decision process, and to persons communicating with them, to the same extent that it is applicable to presiding officers.

(4) The officer reviewing the initial order (including the agency head reviewing an initial order) is, for the purposes of this chapter, termed the reviewing officer. The reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the reviewing officer upon notice to all the parties. In reviewing findings of fact by presiding officers, the reviewing officers shall give due regard to the presiding officer's opportunity to observe the witnesses.

(5) The reviewing officer shall personally consider the whole record or such portions of it as may be cited by the parties.

(6) The reviewing officer shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.

(7) The reviewing officer shall enter a final order disposing of the proceeding or remand the matter for further proceedings, with instructions to the presiding officer who entered the initial order. Upon remanding a matter, the reviewing officer shall order such temporary relief as is authorized and appropriate.

(8) A final order shall include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3).

(9) The reviewing officer shall cause copies of the final order or order remanding the matter for further proceedings to be served upon each party. [1989 c 175 § 20; 1988 c 288 § 419.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.467 Stay.** A party may submit to the presiding or reviewing officer, as is appropriate to the stage of the proceeding, a petition for stay of effectiveness of a final order within ten days of its service unless otherwise provided by statute or stated in the final order. Disposition of the petition for stay shall be made by the presiding officer, reviewing officer, or agency head as provided by agency rule. Disposition may be made either before or after the effective date of

the final order. Disposition denying a stay is not subject to judicial review. [1988 c 288 § 420.]

**34.05.470 Reconsideration.** (1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The place of filing and other procedures, if any, shall be specified by agency rule.

(2) No petition for reconsideration may stay the effectiveness of an order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the agency's procedural rules for reconsideration, if any, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either: (a) Dispose of the petition; or (b) serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section is not subject to judicial review. [1989 c 175 § 21; 1988 c 288 § 421.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.473 Effectiveness of orders.** (1) Unless a later date is stated in an order or a stay is granted, an order is effective when entered, but:

(a) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the final order;

(b) A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or the nonparty has actual knowledge of the final order;

(c) For purposes of determining time limits for further administrative procedure or for judicial review, the determinative date is the date of service of the order.

(2) Unless a later date is stated in the initial order or a stay is granted, the time when an initial order becomes a final order in accordance with RCW 34.05.461 is determined as follows:

(a) When the initial order is entered, if administrative review is unavailable; or

(b) When the agency head with such authority enters an order stating, after a petition for administrative review has been filed, that review will not be exercised.

(3) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with RCW 34.05.479. [1989 c 175 § 22; 1988 c 288 § 422.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.476 Agency record.** (1) An agency shall maintain an official record of each adjudicative proceeding under this chapter.

(2) The agency record shall include:

(a) Notices of all proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Proffers of proof and objections and rulings thereon;

(g) Proposed findings, requested orders, and exceptions;

(h) The recording prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;

(i) Any final order, initial order, or order on reconsideration;

(j) Staff memoranda or data submitted to the presiding officer, unless prepared and submitted by personal assistants and not inconsistent with RCW 34.05.455; and

(k) Matters placed on the record after an ex parte communication.

(3) Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for agency action in adjudicative proceedings under this chapter and for judicial review of adjudicative proceedings. [1988 c 288 § 423.]

**34.05.479 Emergency adjudicative proceedings.** (1) Unless otherwise provided by law, an agency may use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

(2) The agency may take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication.

(3) The agency shall enter an order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the determination of an immediate danger and the agency's decision to take the specific action.

(4) The agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when entered.

(5) After entering an order under this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) The agency record consists of any documents regarding the matter that were considered or prepared by the agency. The agency shall maintain these documents as its official record.

(7) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency adjudicative proceedings or for judicial review thereof.

(8) This section shall not apply to agency action taken pursuant to a provision of law that expressly authorizes the agency to issue a cease and desist order. The agency may pro-

ceed, alternatively, under that independent authority. [1988 c 288 § 424.]

*Designation of persons for emergency adjudications by utilities and transportation commission: RCW 80.01.060.*

**34.05.4791 Secure community transition facility—Proceeding concerning public safety measures.** A petition brought pursuant to RCW 71.09.342(5) shall be heard under the provisions of RCW 34.05.479 except that the decision of the governor's designee shall be final and is not subject to judicial review. [2002 c 68 § 10.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**34.05.482 Brief adjudicative proceedings—Applicability.** (1) An agency may use brief adjudicative proceedings if:

- (a) The use of those proceedings in the circumstances does not violate any provision of law;
- (b) The protection of the public interest does not require the agency to give notice and an opportunity to participate to persons other than the parties;
- (c) The matter is entirely within one or more categories for which the agency by rule has adopted this section and RCW 34.05.485 through 34.05.494; and
- (d) The issue and interests involved in the controversy do not warrant use of the procedures of RCW 34.05.413 through 34.05.479.

(2) Brief adjudicative proceedings are not authorized for public assistance and food stamp or benefit programs provided for in Title 74 RCW, including but not limited to public assistance as defined in RCW 74.04.005(1). [1998 c 79 § 3; 1988 c 288 § 425.]

**34.05.485 Brief adjudicative proceedings—Procedure.** (1) If not specifically prohibited by law, the following persons may be designated as the presiding officer of a brief adjudicative proceeding:

- (a) The agency head;
- (b) One or more members of the agency head;
- (c) One or more administrative law judges; or
- (d) One or more other persons designated by the agency head.

(2) Before taking action, the presiding officer shall give each party an opportunity to be informed of the agency's view of the matter and to explain the party's view of the matter.

(3) At the time any unfavorable action is taken the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available.

(4) The brief written statement is an initial order. If no review is taken of the initial order as authorized by RCW 34.05.488 and 34.05.491, the initial order shall be the final order. [1989 c 175 § 23; 1988 c 288 § 426.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.488 Brief proceedings—Administrative review—Applicability.** Unless prohibited by any provision

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of law, an agency, on its own motion, may conduct administrative review of an order resulting from brief adjudicative proceedings. An agency shall conduct this review upon the written or oral request of a party if the agency receives the request within twenty-one days after service of the written statement required by RCW 34.05.485(3). [1989 c 175 § 24; 1988 c 288 § 427.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.491 Brief proceedings—Administrative review—Procedures.** Unless otherwise provided by statute:

(1) If the parties have not requested review, the agency may review an order resulting from a brief adjudicative proceeding on its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(2) The reviewing officer may be any person who could have presided at the brief proceeding, but the reviewing officer must be one who is authorized to grant appropriate relief upon review.

(3) The reviewing officer shall give each party an opportunity to explain the party's view of the matter and shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing.

(4) The order on review must be in writing, must include a brief statement of the reasons for the decision, and must be entered within twenty days after the date of the initial order or of the request for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(5) A request for administrative review is deemed to have been denied if the agency does not make a disposition of the matter within twenty days after the request is submitted. [1988 c 288 § 428.]

**34.05.494 Agency record in brief proceedings.** (1) The agency record consists of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. The agency shall maintain these documents as its official record.

(2) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in brief adjudicative proceedings or for the judicial review of brief adjudicative proceedings. [1988 c 288 § 429.]

## PART V

### JUDICIAL REVIEW AND CIVIL ENFORCEMENT

**34.05.510 Relationship between this chapter and other judicial review authority.** This chapter establishes the exclusive means of judicial review of agency action, except:

(1) The provisions of this chapter for judicial review do not apply to litigation in which the sole issue is a claim for money damages or compensation and the agency whose

action is at issue does not have statutory authority to determine the claim.

(2) Ancillary procedural matters before the reviewing court, including intervention, class actions, consolidation, joinder, severance, transfer, protective orders, and other relief from disclosure of privileged or confidential material, are governed, to the extent not inconsistent with this chapter, by court rule.

(3) To the extent that de novo review or jury trial review of agency action is expressly authorized by provision of law. [1988 c 288 § 501.]

**34.05.514 Petition for review—Where filed.** (1) Except as provided in subsections (2) and (3) of this section, proceedings for review under this chapter shall be instituted by paying the fee required under RCW 36.18.020 and filing a petition in the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by the petitioner and affected by the contested decision is located.

(2) For proceedings involving institutions of higher education, the petition shall be filed either in the county in which the principal office of the institution involved is located or in the county of a branch campus if the action involves such branch.

(3) For proceedings conducted by the pollution control hearings board pursuant to chapter 43.21B RCW or as otherwise provided in RCW 90.03.210(2) involving decisions of the department of ecology on applications for changes or transfers of water rights that are the subject of a general adjudication of water rights that is being litigated actively under chapter 90.03 or 90.44 RCW, the petition must be filed with the superior court conducting the adjudication, to be consolidated by the court with the general adjudication. A party to the adjudication shall be a party to the appeal under this chapter only if the party files or is served with a petition for review to the extent required by this chapter. [2001 c 220 § 3. Prior: 1995 c 347 § 113; 1995 c 292 § 9; 1994 c 257 § 23; 1988 c 288 § 502.]

**Intent—Construction—Effective date—2001 c 220:** See notes following RCW 43.21B.110.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**34.05.518 Direct review by court of appeals.** (1) The final decision of an administrative agency in an adjudicative proceeding under this chapter may, except as otherwise provided in chapter 43.21L RCW, be directly reviewed by the court of appeals either (a) upon certification by the superior court pursuant to this section or (b) if the final decision is from an environmental board as defined in subsection (3) of this section, upon acceptance by the court of appeals after a certificate of appealability has been filed by the environmental board that rendered the final decision.

(2) For direct review upon certification by the superior court, an application for direct review must be filed with the superior court within thirty days of the filing of the petition for review in superior court. The superior court may certify a

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case for direct review only if the judicial review is limited to the record of the agency proceeding and the court finds that:

(a) Fundamental and urgent issues affecting the future administrative process or the public interest are involved which require a prompt determination;

(b) Delay in obtaining a final and prompt determination of such issues would be detrimental to any party or the public interest;

(c) An appeal to the court of appeals would be likely regardless of the determination in superior court; and

(d) The appellate court's determination in the proceeding would have significant precedential value.

Procedures for certification shall be established by court rule.

(3)(a) For the purposes of direct review of final decisions of environmental boards, environmental boards include those boards identified in RCW 43.21B.005 and growth management hearings boards as identified in RCW 36.70A.250.

(b) An environmental board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest and either:

(i) Fundamental and urgent statewide or regional issues are raised; or

(ii) The proceeding is likely to have significant precedential value.

(4) The environmental board shall state in the certificate of appealability which criteria it applied, explain how that criteria was met, and file with the certificate a copy of the final decision.

(5) For an appellate court to accept direct review of a final decision of an environmental board, it shall consider the same criteria outlined in subsection (3) of this section, except as otherwise provided in chapter 43.21L RCW.

(6) The procedures for direct review of final decisions of environmental boards include:

(a) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review with the superior court and serve the appropriate environmental board and all parties of record. The application shall request the environmental board to file a certificate of appealability.

(b) If an issue on review is the jurisdiction of the environmental board, the board may file an application for direct review on that issue.

(c) The environmental board shall have thirty days to grant or deny the request for a certificate of appealability and its decision shall be filed with the superior court and served on all parties of record.

(d) If a certificate of appealability is issued, the parties shall have fifteen days from the date of service to file a notice of discretionary review in the superior court, and the notice shall include a copy of the certificate of appealability and a copy of the final decision.

(e) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(f) If a certificate of appealability is denied, review shall be by the superior court. The superior court's decision may be appealed to the court of appeals. [2003 c 393 § 16; 1995 c

382 § 5; 1988 c 288 § 503; 1980 c 76 § 1. Formerly RCW 34.04.133.]

**Implementation—Effective date—2003 c 393:** See RCW 43.21L.900 and 43.21L.901.

**34.05.522 Refusal of review by court of appeals.** The court of appeals may refuse to accept direct review of a case pursuant to RCW 34.05.518 if it finds that the case does not meet the applicable standard in RCW 34.05.518(2) or (5). Rules of Appellate Procedure 2.3 do not apply in this instance. The refusal to accept such review is not subject to further appellate review, notwithstanding anything in Rule 13.3 of the Rules of Appellate Procedure to the contrary. [1995 c 382 § 6; 1988 c 288 § 504; 1980 c 76 § 2. Formerly RCW 34.04.135.]

**34.05.526 Appellate review by supreme court or court of appeals.** An aggrieved party may secure appellate review of any final judgment of the superior court under this chapter by the supreme court or the court of appeals. The review shall be secured in the manner provided by law for review of superior court decisions in other civil cases. [1988 c 288 § 505; 1988 c 202 § 35; 1971 c 81 § 87; 1959 c 234 § 14. Formerly RCW 34.04.140.]

**Reviser's note:** This section was amended by 1988 c 202 § 35, effective June 9, 1988, and by 1988 c 288 § 505, effective July 1, 1989, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1988 c 202:** See note following RCW 2.24.050.

**34.05.530 Standing.** A person has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action. A person is aggrieved or adversely affected within the meaning of this section only when all three of the following conditions are present:

- (1) The agency action has prejudiced or is likely to prejudice that person;
- (2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and
- (3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action. [1988 c 288 § 506.]

**34.05.534 Exhaustion of administrative remedies.** A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the agency whose action is being challenged, or available within any other agency authorized to exercise administrative review, except:

- (1) A petitioner for judicial review of a rule need not have participated in the rule-making proceeding upon which that rule is based, have petitioned for its amendment or repeal, have petitioned the joint administrative rules review committee for its review, or have appealed a petition for amendment or repeal to the governor;

(2) A petitioner for judicial review need not exhaust administrative remedies to the extent that this chapter or any other statute states that exhaustion is not required; or

(3) The court may relieve a petitioner of the requirement to exhaust any or all administrative remedies upon a showing that:

- (a) The remedies would be patently inadequate;
- (b) The exhaustion of remedies would be futile; or
- (c) The grave irreparable harm that would result from having to exhaust administrative remedies would clearly outweigh the public policy requiring exhaustion of administrative remedies. [1997 c 409 § 302; 1995 c 403 § 803; 1988 c 288 § 507.]

**Part headings—Severability—1997 c 409:** See notes following RCW 43.22.051.

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**34.05.542 Time for filing petition for review.** Subject to other requirements of this chapter or of another statute:

(1) A petition for judicial review of a rule may be filed at any time, except as limited by RCW 34.05.375.

(2) A petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order.

(3) A petition for judicial review of agency action other than the adoption of a rule or the entry of an order is not timely unless filed with the court and served on the agency, the office of the attorney general, and all other parties of record within thirty days after the agency action, but the time is extended during any period that the petitioner did not know and was under no duty to discover or could not reasonably have discovered that the agency had taken the action or that the agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this chapter.

(4) Service of the petition on the agency shall be by delivery of a copy of the petition to the office of the director, or other chief administrative officer or chairperson of the agency, at the principal office of the agency. Service of a copy by mail upon the other parties of record and the office of the attorney general shall be deemed complete upon deposit in the United States mail, as evidenced by the postmark.

(5) Failure to timely serve a petition on the office of the attorney general is not grounds for dismissal of the petition.

(6) For purposes of this section, service upon the attorney of record of any agency or party of record constitutes service upon the agency or party of record. [1998 c 186 § 1; 1988 c 288 § 509.]

**34.05.546 Petition for review—Contents.** A petition for review must set forth:

- (1) The name and mailing address of the petitioner;
- (2) The name and mailing address of the petitioner's attorney, if any;
- (3) The name and mailing address of the agency whose action is at issue;

(4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;

(5) Identification of persons who were parties in any adjudicative proceedings that led to the agency action;

(6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

(7) The petitioner's reasons for believing that relief should be granted; and

(8) A request for relief, specifying the type and extent of relief requested. [1988 c 288 § 510.]

**34.05.550 Stay and other temporary remedies.** (1) Unless precluded by law, the agency may grant a stay, in whole or in part, or other temporary remedy.

(2) After a petition for judicial review has been filed, a party may file a motion in the reviewing court seeking a stay or other temporary remedy.

(3) If judicial relief is sought for a stay or other temporary remedy from agency action based on public health, safety, or welfare grounds the court shall not grant such relief unless the court finds that:

(a) The applicant is likely to prevail when the court finally disposes of the matter;

(b) Without relief the applicant will suffer irreparable injury;

(c) The grant of relief to the applicant will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances.

(4) If the court determines that relief should be granted from the agency's action granting a stay or other temporary remedies, the court may remand the matter or may enter an order denying a stay or granting a stay on appropriate terms. [1989 c 175 § 25; 1988 c 288 § 511.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.554 Limitation on new issues.** (1) Issues not raised before the agency may not be raised on appeal, except to the extent that:

(a) The person did not know and was under no duty to discover or could not have reasonably discovered facts giving rise to the issue;

(b) The agency action subject to judicial review is a rule and the person has not been a party in adjudicative proceedings that provided an adequate opportunity to raise the issue;

(c) The agency action subject to judicial review is an order and the person was not notified of the adjudicative proceeding in substantial compliance with this chapter; or

(d) The interests of justice would be served by resolution of an issue arising from:

(i) A change in controlling law occurring after the agency action; or

(ii) Agency action occurring after the person exhausted the last feasible opportunity for seeking relief from the agency.

(2) The court shall remand to the agency for determination any issue that is properly raised pursuant to subsection (1) of this section. [1988 c 288 § 512.]

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**34.05.558 Judicial review of facts confined to record.**

Judicial review of disputed issues of fact shall be conducted by the court without a jury and must be confined to the agency record for judicial review as defined by this chapter, supplemented by additional evidence taken pursuant to this chapter. [1988 c 288 § 513.]

**34.05.562 New evidence taken by court or agency.**

(1) The court may receive evidence in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding:

(a) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action;

(b) Unlawfulness of procedure or of decision-making process; or

(c) Material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record.

(2) The court may remand a matter to the agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs, if:

(a) The agency was required by this chapter or any other provision of law to base its action exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;

(b) The court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that one or more of the parties did not know and was under no duty to discover or could not have reasonably been discovered until after the agency action, and (ii) the interests of justice would be served by remand to the agency;

(c) The agency improperly excluded or omitted evidence from the record; or

(d) A relevant provision of law changed after the agency action and the court determines that the new provision may control the outcome. [1988 c 288 § 514.]

**34.05.566 Agency record for review—Costs.** (1)

Within thirty days after service of the petition for judicial review, or within further time allowed by the court or by other provision of law, the agency shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action. The record shall consist of any agency documents expressing the agency action, other documents identified by the agency as having been considered by it before its action and used as a basis for its action, and any other material described in this chapter as the agency record for the type of agency action at issue, subject to the provisions of this section.

(2) If part of the record has been preserved without a transcript, the agency shall prepare a transcript for inclusion in the record transmitted to the court, except for portions that the parties stipulate to omit in accordance with subsection (4) of this section.

(3) The agency may charge a nonindigent petitioner with the reasonable costs of preparing any necessary copies and transcripts for transmittal to the court. A failure by the peti-

tioner to pay any of this cost to the agency relieves the agency from the responsibility for preparation of the record and transmittal to the court.

(4) The record may be shortened, summarized, or organized temporarily or, by stipulation of all parties, permanently.

(5) The court may tax the cost of preparing transcripts and copies of the record:

(a) Against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(b) In accordance with any provision of law.

(6) Additions to the record pursuant to RCW 34.05.562 must be made as ordered by the court.

(7) The court may require or permit subsequent corrections or additions to the record. [1989 c 175 § 26; 1988 c 288 § 515.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.570 Judicial review.** (1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(ii) From June 10, 2004, until July 1, 2008:

(A) If the petitioner's residence or principal place of business is within the geographical boundaries of the third division of the court of appeals as defined by RCW 2.06.020(3), the petition may be filed in the superior court of Spokane, Yakima, or Thurston county; and

(B) If the petitioner's residence or principal place of business is within the geographical boundaries of district three of the first division of the court of appeals as defined by RCW 2.06.020(1), the petition may be filed in the superior court of Whatcom or Thurston county.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statu-

tory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action. [2004 c 30 § 1; 1995 c 403 § 802; 1989 c 175 § 27; 1988 c 288 § 516; 1977 ex.s. c 52 § 1; 1967 c 237 § 6; 1959 c 234 § 13. Formerly RCW 34.04.130.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.574 Type of relief.** (1) In a review under RCW 34.05.570, the court may (a) affirm the agency action or (b) order an agency to take action required by law, order an agency to exercise discretion required by law, set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter a declaratory judgment order. The court shall set out in its findings and conclusions, as appropriate, each violation or error by the agency under the standards for review set out in this chapter on which the court bases its decision and order. In reviewing matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency. The court shall remand to the agency for modification of agency action, unless remand is impracticable or would cause unnecessary delay.

(2) The sole remedy available to a person who is wrongfully denied licensure based upon a failure to pass an examination administered by a state agency, or under its auspices, is the right to retake the examination free of the defect or defects the court may have found in the examination or the examination procedure.

(3) The court may award damages, compensation, or ancillary relief only to the extent expressly authorized by another provision of law.

(4) If the court sets aside or modifies agency action or remands the matter to the agency for further proceedings, the court may make any interlocutory order it finds necessary to preserve the interests of the parties and the public, pending further proceedings or agency action. [1989 c 175 § 28; 1988 c 288 § 517.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.578 Petition by agency for enforcement.** (1) In addition to other remedies provided by law, an agency may seek enforcement of its rule or order by filing a petition for civil enforcement in the superior court.

(2) The petition must name as respondent each alleged person against whom the agency seeks to obtain civil enforcement.

(3) Venue is determined as in other civil cases.

(4) A petition for civil enforcement filed by an agency may request, and the court may grant, declaratory relief, temporary or permanent injunctive relief, any other civil remedy provided by law, or any combination of the foregoing. [1988 c 288 § 518.]

**34.05.582 Petition by others for enforcement.** (1) Any person who would qualify under this chapter as having standing to obtain judicial review of an agency's failure to enforce an order directed to another person may file a petition for civil enforcement of that order, but the action may not be commenced:

(a) Until at least sixty days after the petitioner has given notice of the alleged violation and of the petitioner's intent to seek civil enforcement to the head of the agency concerned, to the attorney general, and to each person against whom the petitioner seeks civil enforcement;

(b) If the agency has filed and is diligently prosecuting a petition for civil enforcement of the same order against the same person; or

(c) If a petition for review of the same order has been filed and a stay is in effect.

(2) The petition shall name, as respondents, the agency whose order is sought to be enforced and each person against whom the petitioner seeks civil enforcement.

(3) The agency whose order is sought to be enforced may move to dismiss the petition on the grounds that it fails to qualify under this section or that the enforcement would be contrary to the policy of the agency. The court shall grant the motion to dismiss the petition unless the petitioner demonstrates that (a) the petition qualifies under this section and (b) the agency's failure to enforce its order is based on an exercise of discretion that is arbitrary or capricious.

(4) Except to the extent expressly authorized by law, a petition for civil enforcement may not request, and the court may not grant, any monetary payment apart from taxable costs. [1988 c 288 § 519.]

**34.05.586 Defenses, limitations on.** (1) Except as expressly provided in this section, a respondent may not assert as a defense in a proceeding for civil enforcement any fact or issue that the respondent had an opportunity to assert before the agency or a reviewing court and did not, or upon which the final determination of the agency or a reviewing court was adverse to the respondent. A respondent may assert as a defense only the following:

(a) That the rule or order is invalid under RCW 34.05.570(3) (a), (b), (c), (d), (g), or (h), but only when the respondent did not know and was under no duty to discover, or could not reasonably have discovered, facts giving rise to this issue;

(b) That the interest of justice would be served by resolution of an issue arising from:

(i) A change in controlling law occurring after the agency action; or

(ii) Agency action after the respondent has exhausted the last foreseeable opportunity for seeking relief from the agency or from a reviewing court;

(c) That the order does not apply to the respondent or that the respondent has not violated the order; or

(d) A defense specifically authorized by statute to be raised in a civil enforcement proceeding.

(2) The limitations of subsection (1) of this section do not apply to the extent that:

(a) The agency action sought to be enforced is a rule and the respondent has not been a party in an adjudicative proceeding that provided an adequate opportunity to raise the issue; or

(b) The agency action sought to be enforced is an order and the respondent was not notified actually or constructively of the related adjudicative proceeding in substantial compliance with this chapter.

(3) The court, to the extent necessary for the determination of the matter, may take new evidence. [1989 c 175 § 29; 1988 c 288 § 520.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.588 Enforcement of agency subpoena.** (1) If a person fails to obey an agency subpoena issued in an adjudicative proceeding, or obeys the subpoena but refuses to testify or produce documents when requested concerning a matter under examination, the agency or attorney issuing the subpoena may petition the superior court of any county where the hearing is being conducted, where the subpoenaed person resides or is found, or where subpoenaed documents are located, for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, shall set forth in what specific manner the subpoena has not been complied with, and shall request an order of the court to compel compliance. Upon such petition, the court shall enter an order directing the person to appear before the court at a time and place fixed in the order to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the court's show cause order shall be served upon the person. If it appears to the court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were reasonable and relevant, the court shall enter an order that the person appear before the agency at the time and place fixed in the order and testify or produce the required documents, and on failing to obey this order the person shall be dealt with as for contempt of court.

(2) Agencies with statutory authority to issue investigative subpoenas may petition for enforcement of such subpoenas in accordance with subsection (1) of this section. The agency may petition the superior court of any county where the subpoenaed person resides or is found, or where subpoenaed documents are located. If it appears to the court that the subpoena was properly issued, that the investigation is being conducted for a lawfully authorized purpose, and that the testimony or documents required to be produced are adequately specified and relevant to the investigation, the court shall enter an order that the person appear before the agency at the time and place fixed in the order and testify or produce the required documents, and failing to obey this order the person shall be dealt with as for contempt of court.

(3) Petitions for enforcement of agency subpoenas are not subject to RCW 34.05.578 through 34.05.590. [1989 c 175 § 30.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.05.590 Incorporation of other judicial review provisions.** Proceedings for civil enforcement are governed by the following provisions of this chapter on judicial review, as modified where necessary to adapt them to those proceedings:

(1) RCW 34.05.510(2) (ancillary procedural matters); and

(2) RCW 34.05.566 (agency record for judicial review). [1988 c 288 § 521.]

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**34.05.594 Review by higher court.** Decisions on petitions for civil enforcement are reviewable as in other civil cases. [1988 c 288 § 522.]

**34.05.598 Frivolous petitions.** The provisions of RCW 4.84.185 relating to civil actions that are frivolous and advanced without reasonable cause apply to petitions for judicial review under this chapter. [1988 c 288 § 607.]

## PART VI LEGISLATIVE REVIEW

**34.05.610 Joint administrative rules review committee—Members—Appointment—Terms—Vacancies.** (1) There is hereby created a joint administrative rules review committee which shall be a bipartisan committee consisting of four senators and four representatives from the state legislature. The senate members of the committee shall be appointed by the president of the senate, and the house members of the committee shall be appointed by the speaker of the house. Not more than two members from each house may be from the same political party. The appointing authorities shall also appoint one alternate member from each caucus of each house. All appointments to the committee are subject to approval by the caucuses to which the appointed members belong.

(2) Members and alternates shall be appointed as soon as possible after the legislature convenes in regular session in an odd-numbered year, and their terms shall extend until their successors are appointed and qualified at the next regular session of the legislature in an odd-numbered year or until such persons no longer serve in the legislature, whichever occurs first. Members and alternates may be reappointed to the committee.

(3) On or about January 1, 1999, the president of the senate shall appoint the chairperson and the vice chairperson from among the committee membership. The speaker of the house shall appoint the chairperson and the vice chairperson in alternating even-numbered years beginning in the year 2000 from among the committee membership. The secretary of the senate shall appoint the chairperson and the vice chairperson in the alternating even-numbered years beginning in the year 2002 from among the committee membership. Such appointments shall be made in January of each even-numbered year as soon as possible after a legislative session convenes.

(4) The chairperson of the committee shall cause all meeting notices and committee documents to be sent to the members and alternates. A vacancy shall be filled by appointment of a legislator from the same political party as the original appointment. The appropriate appointing authority shall make the appointment within thirty days of the vacancy occurring. [1998 c 280 § 9; 1996 c 318 § 2; 1988 c 288 § 601; 1983 c 53 § 1; 1981 c 324 § 5. Formerly RCW 34.04.210.]

**Legislative affirmation—Severability—1981 c 324:** See notes following RCW 34.05.010.

**34.05.620 Review of proposed rules—Notice.** If the rules review committee finds by a majority vote of its members that a proposed rule is not within the intent of the legislature as expressed in the statute which the rule implements,

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or that an agency may not be adopting a proposed rule in accordance with all applicable provisions of law, the committee shall give the affected agency written notice of its decision. The notice shall be given at least seven days prior to any hearing scheduled for consideration of or adoption of the proposed rule pursuant to RCW 34.05.320. The notice shall include a statement of the review committee's findings and the reasons therefor. When the agency holds a hearing on the proposed rule, the agency shall consider the review committee's decision. [1996 c 318 § 3; 1994 c 249 § 17; 1988 c 288 § 602; 1987 c 451 § 1; 1981 c 324 § 6. Formerly RCW 34.04.220.]

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**Legislative affirmation—Severability—1981 c 324:** See notes following RCW 34.05.010.

**34.05.630 Review of existing rules—Policy and interpretive statements, etc.—Notice—Hearing.** (1) All rules required to be filed pursuant to RCW 34.05.380, and emergency rules adopted pursuant to RCW 34.05.350, are subject to selective review by the committee.

(2) All agency policy and interpretive statements, guidelines, and documents that are of general applicability, or their equivalents, are subject to selective review by the committee to determine whether or not a statement, guideline, or document that is of general applicability, or its equivalent, is being used as a rule that has not been adopted in accordance with all applicable provisions of law.

(3) If the rules review committee finds by a majority vote of its members: (a) That an existing rule is not within the intent of the legislature as expressed by the statute which the rule implements, (b) that the rule has not been adopted in accordance with all applicable provisions of law, or (c) that an agency is using a policy or interpretive statement in place of a rule, the agency affected shall be notified of such finding and the reasons therefor. Within thirty days of the receipt of the rules review committee's notice, the agency shall file notice of a hearing on the rules review committee's finding with the code reviser and mail notice to all persons who have made timely request of the agency for advance notice of its rule-making proceedings as provided in RCW 34.05.320. The agency's notice shall include the rules review committee's findings and reasons therefor, and shall be published in the Washington state register in accordance with the provisions of chapter 34.08 RCW.

(4) The agency shall consider fully all written and oral submissions regarding (a) whether the rule in question is within the intent of the legislature as expressed by the statute which the rule implements, (b) whether the rule was adopted in accordance with all applicable provisions of law, and (c) whether the agency is using a policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, in place of a rule. [1998 c 21 § 1; 1996 c 318 § 4; 1994 c 249 § 18; 1993 c 277 § 1; 1988 c 288 § 603; 1987 c 451 § 2; 1981 c 324 § 7. Formerly RCW 34.04.230.]

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**Legislative affirmation—Severability—1981 c 324:** See notes following RCW 34.05.010.

(2004 Ed.)

**34.05.640 Committee objections to agency intended action—Statement in register and WAC—Suspension of rule.** (1) Within seven days of an agency hearing held after notification of the agency by the rules review committee pursuant to RCW 34.05.620 or 34.05.630, the affected agency shall notify the committee of its intended action on a proposed or existing rule to which the committee objected or on a committee finding of the agency's failure to adopt rules.

(2) If the rules review committee finds by a majority vote of its members: (a) That the proposed or existing rule in question will not be modified, amended, withdrawn, or repealed by the agency so as to conform with the intent of the legislature, (b) that an existing rule was not adopted in accordance with all applicable provisions of law, or (c) that the agency will not replace the policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, with a rule, the rules review committee may, within thirty days from notification by the agency of its intended action, file with the code reviser notice of its objections together with a concise statement of the reasons therefor. Such notice and statement shall also be provided to the agency by the rules review committee.

(3)(a) If the rules review committee makes an adverse finding regarding an existing rule under subsection (2)(a) or (b) of this section, the committee may, by a majority vote of its members, recommend suspension of the rule. Within seven days of such vote the committee shall transmit to the appropriate standing committees of the legislature, the governor, the code reviser, and the agency written notice of its objection and recommended suspension and the concise reasons therefor. Within thirty days of receipt of the notice, the governor shall transmit to the committee, the code reviser, and the agency written approval or disapproval of the recommended suspension. If the suspension is approved by the governor, it is effective from the date of that approval and continues until ninety days after the expiration of the next regular legislative session.

(b) If the rules review committee makes an adverse finding regarding a policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, under subsection (2)(c) of this section, the committee may, by a majority vote of its members, advise the governor of its finding.

(4) The code reviser shall publish transmittals from the rules review committee or the governor issued pursuant to subsection (2) or (3) of this section in the Washington state register and shall publish in the next supplement and compilation of the Washington Administrative Code a reference to the committee's objection or recommended suspension and the governor's action on it and to the issue of the Washington state register in which the full text thereof appears.

(5) The reference shall be removed from a rule published in the Washington Administrative Code if a subsequent adjudicatory proceeding determines that the rule is within the intent of the legislature or was adopted in accordance with all applicable laws, whichever was the objection of the rules review committee. [1998 c 21 § 2; 1996 c 318 § 5; 1994 c 249 § 19; 1993 c 277 § 2; 1988 c 288 § 604; 1987 c 451 § 3; 1981 c 324 § 8. Formerly RCW 34.04.240.]

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**Legislative affirmation—Severability—1981 c 324:** See notes following RCW 34.05.010.

**34.05.650 Recommendations by committee to legislature.** The rules review committee may recommend to the legislature that the original enabling legislation serving as authority for the adoption of any rule reviewed by the committee be amended or repealed in such manner as the committee deems advisable. [1988 c 288 § 605; 1987 c 451 § 4; 1981 c 324 § 9. Formerly RCW 34.04.250.]

**Legislative affirmation—Severability—1981 c 324:** See notes following RCW 34.05.010.

**34.05.655 Petition for review.** (1) Any person may petition the rules review committee for a review of a proposed or existing rule or a proposed or existing policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent. A petition to review a statement, guideline, or document that is of general applicability, or its equivalent, may only be filed for the purpose of requesting the committee to determine whether the statement, guideline, or document that is of general applicability, or its equivalent, is being used as a rule that has not been adopted in accordance with all provisions of law. Within thirty days of the receipt of the petition, the rules review committee shall acknowledge receipt of the petition and describe any initial action taken. If the rules review committee rejects the petition, a written statement of the reasons for rejection shall be included.

(2) A person may petition the rules review committee under subsection (1) of this section requesting review of an existing rule only if the person has petitioned the agency to amend or repeal the rule under RCW 34.05.330(1) and such petition was denied.

(3) A petition for review of a rule under subsection (1) of this section shall:

(a) Identify with specificity the proposed or existing rule to be reviewed;

(b) Identify the specific statute identified by the agency as authorizing the rule, the specific statute which the rule interprets or implements, and, if applicable, the specific statute the department is alleged not to have followed in adopting the rule;

(c) State the reasons why the petitioner believes that the rule is not within the intent of the legislature, or that its adoption was not or is not in accordance with law, and provide documentation to support these statements;

(d) Identify any known judicial action regarding the rule or statutes identified in the petition.

A petition to review an existing rule shall also include a copy of the agency's denial of a petition to amend or repeal the rule issued under RCW 34.05.330(1) and, if available, a copy of the governor's denial issued under RCW 34.05.330(3).

(4) A petition for review of a policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, under subsection (1) of this section shall:

(a) Identify the specific policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, to be reviewed;

(b) Identify the specific statute which the rule interprets or implements;

(c) State the reasons why the petitioner believes that the policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, meets the definition of a rule under RCW 34.05.010 and should have been adopted according to the procedures of this chapter;

(d) Identify any known judicial action regarding the policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, or statutes identified in the petition.

(5) Within ninety days of receipt of the petition, the rules review committee shall make a final decision on the rule for which the petition for review was not previously rejected. [1998 c 21 § 3; 1996 c 318 § 7; 1995 c 403 § 502.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**34.05.660 Review and objection procedures—No presumption established.** It is the express policy of the legislature that establishment of procedures for review of administrative rules by the legislature and the notice of objection required by RCW 34.05.630(3) and 34.05.640(2) in no way serves to establish a presumption as to the legality or constitutionality of a rule in any subsequent judicial proceedings interpreting such rules. [2001 c 64 § 2; 1988 c 288 § 606; 1981 c 324 § 10. Formerly RCW 34.04.260.]

**Legislative affirmation—Severability—1981 c 324:** See notes following RCW 34.05.010.

**34.05.665 Submission of rule for review—State employees protected.** Any individual employed or holding office in any department or agency of state government may submit rules warranting review to the rules review committee. Any such state employee is protected under chapter 42.40 RCW. [1995 c 403 § 503.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**34.05.671 Reports—Advisory boards—Staff.** (1) The rules review committee may make reports from time to time to the members of the legislature and to the public with respect to any of its findings or recommendations. The committee shall keep complete minutes of its meetings.

(2) The committee may establish ad hoc advisory boards, including but not limited to, ad hoc economics or science advisory boards to assist the committee in its rules review functions.

(3) The committee may hire staff as needed to perform functions under this chapter. [1995 c 403 § 505.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**34.05.675 Inspection of properties—Oaths, subpoenas, witnesses, depositions.** In the discharge of any duty

imposed under this chapter, the rules review committee may examine and inspect all properties, equipment, facilities, files, records, and accounts of any state office, department, institution, board, committee, commission, or agency, and administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the deposition of witnesses, either residing within or without the state, to be taken in the manner prescribed by law for taking depositions in civil actions in the superior courts. [1995 c 403 § 506.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**34.05.681 Enforcement—Committee subpoena—Refusal to testify.** In case of the failure on the part of any person to comply with any subpoena issued in [on] behalf of the rules review committee, or on the refusal of any witness to testify to any matters regarding which he or she may be lawfully interrogated, it is the duty of the superior court of any county, or of the judge thereof, on application of the committee, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court. [1995 c 403 § 507.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

## PART IX TECHNICAL PROVISIONS

**34.05.900 Captions and headings.** Section captions and subchapter headings used in this chapter do not constitute any part of the law. [1988 c 288 § 703.]

**34.05.901 Severability—1988 c 288.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1988 c 288 § 704.]

**34.05.902 Effective date—Application—1988 c 288.** RCW 34.05.001 through 34.05.902 shall take effect on July 1, 1989, and shall apply to all rule-making actions and agency proceedings begun on or after that date. Rule-making actions or other agency proceedings begun before July 1, 1989, shall be completed under the applicable provisions of chapter 28B.19 or 34.04 RCW existing immediately before that date in the same manner as if they were not amended by chapter 288, Laws of 1988 or repealed by section 701 of chapter 288, Laws of 1988. [1988 c 288 § 705.]

**Recodification—Correction of statutory references—1988 c 288:** "Parts X through XV of this act shall constitute a new chapter in Title 34 RCW, and the sections amended or set forth in this act shall be recodified in the order they appear in this act. The code reviser shall correct all statutory references to these sections and to the repealed chapters 28B.19 and 34.04 RCW to reflect this recodification and repeal." [1988 c 288 § 706.]

(2004 Ed.)

**34.05.903 Severability—1998 c 280.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1998 c 280 § 14.]

## Chapter 34.08 RCW

### WASHINGTON STATE REGISTER ACT OF 1977

#### Sections

34.08.010	Legislative finding.
34.08.020	Washington State Register—Created—Publication period—Contents.
34.08.030	Preparation and transmittal of material by agencies to code reviser—Rules regarding.
34.08.040	Publication in register deemed official notice—Certification of material.
34.08.050	Institutions of higher education considered state agencies for certain purposes.
34.08.900	Short title.
34.08.905	Effective date—1977 ex.s. c 240.
34.08.910	Severability—1977 ex.s. c 240.

*Regulatory Fairness Act: Chapter 19.85 RCW.*

**34.08.010 Legislative finding.** The legislature finds that a need exists to adequately inform the public on the conduct of the people's business by state government, and that providing adequate notice of the affairs of government enables the public to actively participate in the conduct of state government. The legislature further finds that the promulgation of rules by state agencies has a direct effect on the ability of the people to conduct their personal affairs and knowledgeably deal with state government. It is therefore the intent and purpose of RCW 1.08.110 and 42.30.075 and of this chapter to require the publication of a state register by which the public will be adequately informed of the activities of government and where they may actively participate in the conduct of state government and influence the decision making process of the people's business. [1977 ex.s. c 240 § 1.]

**34.08.020 Washington State Register—Created—Publication period—Contents.** There is hereby created a state publication to be called the Washington State Register, which shall be published on no less than a monthly basis. The register shall contain, but is not limited to, the following materials received by the code reviser's office during the pertinent publication period:

(1)(a) The full text of any proposed new or amendatory rule, as defined in RCW 34.05.010, and the citation of any existing rules the repeal of which is proposed, prior to the public hearing on such proposal. Such material shall be considered, when published, to be the official notification of the intended action, and no state agency or official thereof may take action on any such rule except on emergency rules adopted in accordance with RCW 34.05.350, until twenty days have passed since the distribution date of the register in which the rule and hearing notice have been published or a notice regarding the omission of the rule has been published pursuant to RCW 34.05.210(4) as now or hereafter amended;

(b) The small business economic impact statement, if required by RCW 19.85.030, preceding the full text of the proposed new or amendatory rule;

[Title 34 RCW—page 33]

(2) The full text of any new or amendatory rule adopted, and the citation of any existing rule repealed, on a permanent or emergency basis;

(3) Executive orders and emergency declarations of the governor;

(4) Public meeting notices of any and all agencies of state government, including state elected officials whose offices are created by Article III of the state Constitution or RCW 48.02.010;

(5) Rules of the state supreme court which have been adopted but not yet published in an official permanent codification;

(6) Summaries of attorney general opinions and letter opinions, noting the number, date, subject, and other information, and prepared by the attorney general for inclusion in the register;

(7) Juvenile disposition standards and security guidelines proposed and adopted under RCW 13.40.030;

(8) Proposed and adopted rules of the commission on judicial conduct;

(9) The maximum allowable rates of interest and retail installment contract service charges filed by the state treasurer under RCW 19.52.025 and \*63.14.135. In addition, the highest rate of interest permissible for the current month and the maximum retail installment contract service charge for the current year shall be published in each issue of the register. The publication of the maximum allowable interest rate established pursuant to RCW 19.52.025 shall be accompanied by the following advisement: NOTICE: FEDERAL LAW PERMITS FEDERALLY INSURED FINANCIAL INSTITUTIONS IN THE STATE TO CHARGE THE HIGHEST RATE OF INTEREST THAT MAY BE CHARGED BY ANY FINANCIAL INSTITUTION IN THE STATE. THE MAXIMUM ALLOWABLE RATE OF INTEREST SET FORTH ABOVE MAY NOT APPLY TO A PARTICULAR TRANSACTION; and

(10) A list of corporations dissolved during the preceding month filed by the secretary of state under chapter 23B.14 RCW. [1995 c 47 § 9; 1987 c 186 § 8; 1986 c 60 § 3; 1983 c 2 § 8. Prior: 1982 c 6 § 6; 1981 c 299 § 18; 1980 c 186 § 15; 1977 ex.s. c 240 § 3.]

\*Reviser's note: RCW 63.14.135 was repealed by 1995 c 249 § 1.

**Severability—1983 c 2:** See note following RCW 18.71.030.

**Severability—1982 c 6:** See RCW 19.85.900.

**Severability—1980 c 186:** See note following RCW 34.05.320.

*Schedule of regular meetings of state agencies: RCW 42.30.075.*

**34.08.030 Preparation and transmittal of material by agencies to code reviser—Rules regarding.** All material included in the register pursuant to RCW 34.08.020 shall be prepared by the appropriate agency or official and transmitted to the code reviser in accordance with rules adopted by the code reviser prescribing the style, format, and numbering system therefor, the date of receipt for inclusion within a particular register, and such other requirements as may be necessary for the orderly and efficient publication of the register and the Washington Administrative Code. [1977 ex.s. c 240 § 4.]

[Title 34 RCW—page 34]

**34.08.040 Publication in register deemed official notice—Certification of material.** The publication of any information in the Washington State Register shall be deemed to be official notice of such information, and publication in the register of such information and materials shall be certified to be the true and correct copy of such rules or other information as filed in the code reviser's office. The code reviser shall certify, to any court of record, the publication of any notice or information, and attached to such certification shall be the agency's declaration of compliance with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), and this chapter. [1989 c 175 § 31; 1977 ex.s. c 240 § 5.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.08.050 Institutions of higher education considered state agencies for certain purposes.** For the purposes of the state register and this chapter, an institution of higher education, as defined in RCW 34.05.010, shall be considered to be a state agency. [1989 c 175 § 32; 1977 ex.s. c 240 § 6.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**34.08.900 Short title.** This 1977 amendatory act may be known as the Washington State Register Act of 1977. [1977 ex.s. c 240 § 15.]

**34.08.905 Effective date—1977 ex.s. c 240.** This 1977 amendatory act shall take effect January 1, 1978. [1977 ex.s. c 240 § 16.]

**34.08.910 Severability—1977 ex.s. c 240.** If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 240 § 17.]

## Chapter 34.12 RCW

### OFFICE OF ADMINISTRATIVE HEARINGS

#### Sections

34.12.010	Office created—Conduct of hearings—Chief administrative law judge, appointment, term, qualifications, removal.
34.12.020	Definitions.
34.12.030	Administrative law judges—Appointment and contractual basis—Clerical personnel—Discipline and termination of administrative law judges—Civil service—Rules for operation of office.
34.12.035	State patrol disciplinary hearings.
34.12.037	Human rights commission proceedings.
34.12.038	Local government whistleblower proceedings.
34.12.039	Local government whistleblower proceedings—Costs.
34.12.040	Hearings conducted by administrative law judges—Criteria for assignment.
34.12.050	Administrative law judge—Motion of prejudice against—Request for assignment of.
34.12.060	Initial decision or proposal for decision—Findings of fact and conclusions of law—Inapplicability to state patrol disciplinary hearings.
34.12.070	Record of hearings.
34.12.080	Procedural conduct of hearings—Rules.
34.12.090	Transfer of employees and equipment.
34.12.100	Salaries.
34.12.110	Application of chapter.
34.12.120	Appointment of chief administrative law judge.
34.12.130	Administrative hearings revolving fund—Created, purposes.

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- 34.12.140 Transfers and payments into revolving fund—Limitation on employment security department payments—Allotment by director of financial management—Disbursements from fund by voucher.
- 34.12.150 Accounting procedures.
- 34.12.160 Direct payments by agencies, when authorized.

*Bilingual services for non-English speaking public assistance applicants and recipients: RCW 74.04.025.*

**34.12.010 Office created—Conduct of hearings—Chief administrative law judge, appointment, term, qualifications, removal.** A state office of administrative hearings is hereby created. The office shall be independent of state administrative agencies and shall be responsible for impartial administration of administrative hearings in accordance with the legislative intent expressed by this chapter. Hearings shall be conducted with the greatest degree of informality consistent with fairness and the nature of the proceeding. The office shall be under the direction of a chief administrative law judge, appointed by the governor with the advice and consent of the senate, for a term of five years. The person appointed is required, as a condition of appointment, to be admitted to practice law in the state of Washington, and may be removed for cause. [1981 c 67 § 1.]

**Effective dates—1981 c 67:** "Sections 12 and 37 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The remainder of the act shall take effect July 1, 1982." [1981 c 67 § 40.]

**Severability—1981 c 67:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 67 § 39.]

**34.12.020 Definitions. (Effective until July 1, 2006.)** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Office" means the office of administrative hearings.
- (2) "Administrative law judge" means any person appointed by the chief administrative law judge to conduct or preside over hearings as provided in this chapter.
- (3) "Hearing" means an adjudicative proceeding within the meaning of RCW 34.05.010(1) conducted by a state agency under RCW 34.05.413 through 34.05.476.
- (4) "State agency" means any state board, commission, department, or officer authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the growth management hearings boards, the utilities and transportation commission, the pollution control hearings board, the shorelines hearings board, the forest practices appeals board, the environmental hearings office, the board of industrial insurance appeals, the Washington personnel resources board, the public employment relations commission, the personnel appeals board, and the board of tax appeals. [1995 c 331 § 1; 1994 c 257 § 22; 1993 c 281 § 16; 1989 c 175 § 33; 1982 c 189 § 1; 1981 c 67 § 2.]

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Effective date—1982 c 189:** "This act shall take effect July 1, 1982." [1982 c 189 § 16.]

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

(2004 Ed.)

**34.12.020 Definitions. (Effective July 1, 2006.)** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Office" means the office of administrative hearings.
- (2) "Administrative law judge" means any person appointed by the chief administrative law judge to conduct or preside over hearings as provided in this chapter.
- (3) "Hearing" means an adjudicative proceeding within the meaning of RCW 34.05.010(1) conducted by a state agency under RCW 34.05.413 through 34.05.476.
- (4) "State agency" means any state board, commission, department, or officer authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the growth management hearings boards, the utilities and transportation commission, the pollution control hearings board, the shorelines hearings board, the forest practices appeals board, the environmental hearings office, the board of industrial insurance appeals, the Washington personnel resources board, the public employment relations commission, and the board of tax appeals. [2002 c 354 § 226; 1995 c 331 § 1; 1994 c 257 § 22; 1993 c 281 § 16; 1989 c 175 § 33; 1982 c 189 § 1; 1981 c 67 § 2.]

**Short title—Headings, captions not law—Severability—Effective dates—2002 c 354:** See RCW 41.80.907 through 41.80.910.

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Effective date—1982 c 189:** "This act shall take effect July 1, 1982." [1982 c 189 § 16.]

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**34.12.030 Administrative law judges—Appointment and contractual basis—Clerical personnel—Discipline and termination of administrative law judges—Civil service—Rules for operation of office.** (1) The chief administrative law judge shall appoint administrative law judges to fulfill the duties prescribed in this chapter. All administrative law judges shall have a demonstrated knowledge of administrative law and procedures. The chief administrative law judge may establish different levels of administrative law judge positions.

(2) The chief administrative law judge may also contract with qualified individuals to serve as administrative law judges for specified hearings. Such individuals shall be compensated for their services on a contractual basis for each hearing, in accordance with chapter 43.88 RCW. The chief administrative law judge may not contract with any individual who is at that time an employee of the state.

(3) The chief administrative law judge may appoint such clerical and other specialized or technical personnel as may be necessary to carry on the work of this chapter.

(4) The administrative law judges appointed under subsection (1) of this section are subject to discipline and termination, for cause, by the chief administrative law judge. Upon written request by the person so disciplined or terminated, the chief administrative law judge shall forthwith put the reasons for such action in writing. The person affected has a right of review by the superior court of Thurston county on petition for reinstatement or other remedy filed within thirty days of receipt of such written reasons.

(5) All employees of the office except the chief administrative law judge and the administrative law judges are subject to chapter 41.06 RCW.

(6) The office may adopt rules for its own operation and in furtherance of this chapter in accordance with chapter 34.05 RCW. [1981 c 67 § 3.]

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**34.12.035 State patrol disciplinary hearings.** The chief administrative law judge shall designate an administrative law judge to serve, as the need arises, as presiding officer in state patrol disciplinary hearings conducted under RCW 43.43.090. [1984 c 141 § 6.]

**34.12.037 Human rights commission proceedings.** When requested by the state human rights commission, the chief administrative law judge shall assign an administrative law judge to conduct proceedings under chapter 49.60 RCW. [1985 c 185 § 29.]

**34.12.038 Local government whistleblower proceedings.** When requested by a local government, the chief administrative law judge shall assign an administrative law judge to conduct proceedings under chapter 42.41 RCW. [1992 c 44 § 8.]

**Effective dates—Severability—1992 c 44:** See RCW 42.41.901 and 42.41.902.

**34.12.039 Local government whistleblower proceedings—Costs.** Costs for the services of the office of administrative hearings for the initial twenty-four hours of services on a hearing under chapter 42.41 RCW shall be billed to the local government administrative hearings account. Costs for services beyond the initial twenty-four hours of services shall be allocated to the parties by the administrative law judge, the proportion to be borne by each party at the discretion of the administrative law judge. The charges for these costs shall be billed to the affected local government that shall recover payment from any other party specified by the administrative law judge. [1992 c 44 § 9.]

**Effective date—Severability—1992 c 44:** See RCW 42.41.901 and 42.41.902.

**34.12.040 Hearings conducted by administrative law judges—Criteria for assignment.** Whenever a state agency conducts a hearing which is not presided over by officials of the agency who are to render the final decision, the hearing shall be conducted by an administrative law judge assigned under this chapter. In assigning administrative law judges, the chief administrative law judge shall wherever practical (1) use personnel having expertise in the field or subject matter of the hearing, and (2) assign administrative law judges primarily to the hearings of particular agencies on a long-term basis. [1981 c 67 § 4.]

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**34.12.050 Administrative law judge—Motion of prejudice against—Request for assignment of.** (1) Any party to a hearing being conducted under the provisions of

this chapter (including the state agency, whether or not it is nominally a party) may file with the chief administrative law judge a motion of prejudice, with supporting affidavit, against the administrative law judge assigned to preside at the hearing. The first such motion filed by any party shall be automatically granted.

(2) Any state agency may request from the chief administrative law judge the assignment of an administrative law judge for the purpose of conducting a rule-making or investigatory proceeding. [1981 c 67 § 5.]

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**34.12.060 Initial decision or proposal for decision—Findings of fact and conclusions of law—Inapplicability to state patrol disciplinary hearings.** When an administrative law judge presides at a hearing under this chapter and a majority of the officials of the agency who are to render the final decision have not heard substantially all of the oral testimony and read all exhibits submitted by any party, it shall be the duty of such judge, or in the event of his unavailability or incapacity, of another judge appointed by the chief administrative law judge, to issue an initial decision or proposal for decision including findings of fact and conclusions of law in accordance with RCW 34.05.461 or 34.05.485. However, this section does not apply to a state patrol disciplinary hearing conducted under RCW 43.43.090. [1989 c 175 § 34; 1984 c 141 § 7; 1982 c 189 § 2; 1981 c 67 § 6.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Effective date—1982 c 189:** See note following RCW 34.12.020.

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**34.12.070 Record of hearings.** The chief administrative law judge may establish a method of making a record of all hearings and may employ or contract in order to implement such method. [1981 c 67 § 7.]

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**34.12.080 Procedural conduct of hearings—Rules.** All hearings shall be conducted in conformance with the Administrative Procedure Act, chapter 34.05 RCW. After consultation with affected agencies, the chief administrative law judge may promulgate rules governing the procedural conduct of the hearings. Such rules shall seek the maximum procedural uniformity in agency hearings consistent with demonstrable needs for individual agency variation. [1981 c 67 § 8.]

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**34.12.090 Transfer of employees and equipment.** (1) All state employees who have exclusively or principally conducted or presided over hearings for state agencies prior to July 1, 1982, shall be transferred to the office.

(2) All state employees who have exclusively or principally served as support staff for those employees transferred under subsection (1) of this section shall be transferred to the office.

(3) All equipment or other tangible property in possession of state agencies, used or held exclusively or principally by personnel transferred under subsection (1) of this section shall be transferred to the office unless the office of financial management, in consultation with the head of the agency and the chief administrative law judge, determines that the equipment or property will be more efficiently used by the agency if such property is not transferred. [1981 c 67 § 9.]

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**34.12.100 Salaries.** The chief administrative law judge shall be paid a salary fixed by the governor after recommendation of the state committee on agency officials' salaries. The salaries of administrative law judges appointed under the terms of this chapter shall be determined by the chief administrative law judge after recommendation of the state committee on agency officials' salaries. [1986 c 155 § 10; 1981 c 67 § 10.]

**Contingent effective date—Severability—1986 c 155:** See notes following RCW 43.03.300.

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**34.12.110 Application of chapter.** The creation of the office of administrative hearings and the transfer of duties and personnel under this chapter shall not affect the validity of any rule, action, decision, or proceeding held or promulgated by any state agency before July 1, 1982. This chapter applies to hearings occurring after July 1, 1982. [1981 c 67 § 11.]

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**34.12.120 Appointment of chief administrative law judge.** The governor shall appoint the chief administrative law judge. [1989 c 175 § 35; 1981 c 67 § 12.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**34.12.130 Administrative hearings revolving fund—Created, purposes.** The administrative hearings revolving fund is hereby created in the state treasury for the purpose of centralized funding, accounting, and distribution of the actual costs of the services provided to agencies of the state government by the office of administrative hearings. [1982 c 189 § 9.]

**Effective date—1982 c 189:** See note following RCW 34.12.020.

**34.12.140 Transfers and payments into revolving fund—Limitation on employment security department payments—Allotment by director of financial management—Disbursements from fund by voucher.** The amounts to be disbursed from the administrative hearings revolving fund from time to time shall be transferred thereto by the state treasurer from funds appropriated to any and all agencies for administrative hearings expenses on a quarterly basis. Agencies operating in whole or in part from nonappropriated funds shall pay into the administrative hearings revolving fund such funds as will fully reimburse funds

appropriated to the office of administrative hearings for any services provided activities financed by nonappropriated funds. The funds from the employment security department for the administrative hearings services provided by the office of administrative hearings shall not exceed that portion of the resources provided to the employment security department by the department of labor, employment and training administration, for such administrative hearings services. To satisfy department of labor funding requirements, the office of administrative hearings shall meet or exceed timeliness standards under federal regulations in the conduct of employment security department appeals.

The director of financial management shall allot all such funds to the office of administrative hearings for the operation of the office, pursuant to appropriation, in the same manner as appropriated funds are allocated to other agencies under chapter 43.88 RCW.

Disbursements from the administrative hearings revolving fund shall be pursuant to vouchers executed by the chief administrative law judge or his designee. [1982 c 189 § 10.]

**Effective date—1982 c 189:** See note following RCW 34.12.020.

**34.12.150 Accounting procedures.** The chief administrative law judge shall keep such records as are necessary to facilitate proper allocation of costs to funds and agencies served and the director of financial management shall prescribe appropriate accounting procedures to accurately allocate costs to funds and agencies served. Billings shall be adjusted in line with actual costs incurred at intervals not to exceed six months. [1982 c 189 § 11.]

**Effective date—1982 c 189:** See note following RCW 34.12.020.

**34.12.160 Direct payments by agencies, when authorized.** In cases where there are unanticipated demands for services of the office of administrative hearings or where there are insufficient funds on hand or available for payment through the administrative hearings revolving fund or in other cases of necessity, the chief administrative law judge may request payment for services directly from agencies for whom the services are performed to the extent that revenues or other funds are available. Upon approval by the director of financial management, the agency shall make the requested payment. The payment may be made on either an advance or reimbursable basis as approved by the director of financial management. [1982 c 189 § 12.]

**Effective date—1982 c 189:** See note following RCW 34.12.020.

# Title 35

## CITIES AND TOWNS

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- Clerks*  
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- Corporation counsel, eminent domain by cities, military purposes, for:* RCW 8.04.170, 8.04.180.
- Counties, city harbor in two counties, effect upon assessments:* RCW 36.08.030.
- County highways, open spaces in cities and towns:* Chapter 36.89 RCW.
- County property, transfer to municipality, approval necessary:* RCW 36.34.280.
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Credit card use by local governments: RCW 43.09.2855.

Credit not to be loaned: State Constitution Art. 8 § 7.

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- civil rights, denial by: RCW 9.91.010.
- gambling: Chapters 9.46, 9.47 RCW.

Dams, ditches, etc., restrictions for purpose of fish conservation: Chapter 77.55 RCW.

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Drainage districts, inclusion within: RCW 85.06.230.

Earthquake standards for construction: Chapter 70.86 RCW.

Elective officers, recall: State Constitution Art. 1 §§ 33, 34 (Amendment 8), chapter 29A.56 RCW.

Electors, qualifications of: State Constitution Art. 6 § 1 (Amendment 63).

Electric

- energy, falling waters—Sale or purchase authorized: RCW 43.52.410.
- franchises and rights of way: Chapter 80.32 RCW.
- revenue bonds, mutual savings banks, investment in: RCW 32.20.070, 32.20.100.

Electrical

- apparatus use and construction rules, violation of, penalty: RCW 19.29.050.
- installations, requirements and inspection: Chapter 19.28 RCW.
- utilities, franchises for electrical utilities on streets: RCW 80.32.010.

Electricity, steam generation: RCW 43.21A.610 through 43.21A.642.

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Emergency vehicle, authorized, defined: RCW 46.04.040.

Eminent domain

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- generally: State Constitution Art. 1 § 16 (Amendment 9), Title 8 RCW.
- limited access streets, acquisition of land, by: RCW 47.52.050.
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Fees, special permits for motor vehicle oversize or overweight movement, fees paid to cities and towns, when: RCW 46.44.096.

Ferries, joint acquisition with counties: RCW 36.54.020.

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- payment into police relief and pension fund: RCW 41.20.130.
- superior court jurisdiction to determine legality of: RCW 2.08.010.
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Fire department vehicles, lighting, plates: RCW 46.37.184 through 46.37.188 and 46.37.190.

Fire fighters

- chief as member of volunteer fire fighters' relief and pension board of trustees: RCW 41.24.060.
- civil service, qualifications of applicants for positions: RCW 41.08.070.
- jury duty, exemption from: RCW 2.36.080.
- militia duty, exemption: RCW 38.44.030.

Fire fighters' retirement and pension acts: Chapters 41.16, 41.18, 41.24 RCW.

Fire prevention, areas withdrawn from fire protection and emergency medical districts: RCW 52.08.035.

Fire protection districts

- annexed to or incorporated into city or town, firemen's retirement and job security rights protected: RCW 41.16.250.
- joint operation: RCW 52.08.035.
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Fireworks, permit for: RCW 70.77.260.

First class cities

- birth and death records, furnishing of, fees: RCW 70.58.107.

- elections, names of candidates, order on ballots: RCW 29A.52.210
- elections, nonpartisan primaries: Chapter 29A.52 RCW.
- harbor improvements, joint planning authorized: RCW 88.32.240, 88.32.250.
- public health pooling fund: Chapter 70.12 RCW.
- retirement and pensions: Chapter 41.28 RCW.
- taxes, collection by county treasurer: RCW 36.29.100, 36.29.110.
- vital statistics, primary registration district: RCW 70.58.010.

Flood control

- benefits, liability for: RCW 86.09.529.
- maintenance, state participation in: Chapter 86.26 RCW.

Food and beverage workers' permits: Chapter 69.06 RCW.

Fourth class cities (see Towns, chapter 35.27 RCW).

Franchises and privileges

- bridges jointly owned or operated with state: RCW 47.44.040.
- electric franchises and rights of way on city streets: RCW 80.32.010.

Fresh pursuit, uniform act: Chapter 10.89 RCW.

Funds

- assessment fund for compensation of eminent domain damages by city to be kept separate: RCW 8.12.480.
- city street fund, established, use: RCW 47.24.040.
- city street fund, illegal use of, procedure to correct: RCW 47.08.100.
- current expense, sale of unclaimed property: RCW 63.32.030.
- general, justice and inferior courts act of 1961, bail forfeitures paid into: RCW 3.30.090.
- general, policemen's relief and pension fund, surplus paid into general fund: RCW 41.20.140.
- motor vehicle fund, purposes authorized for use: RCW 36.82.070.
- police pension, surplus funds to general fund: RCW 41.20.140.
- police pension fund, sale of unclaimed property: RCW 63.32.030.
- public health pooling fund, generally: Chapter 70.12 RCW.
- statewide city employees' retirement fund: RCW 41.44.100.
- street, county road and bridge violations, fines paid into: RCW 36.82.210.
- street, directional signs, paid from: RCW 47.36.040.

Gambling activities, cities or towns, as affecting: Chapter 9.46 RCW.

Garbage, eminent domain by cities for garbage dumps: RCW 8.12.030.

Grand jury, inquiry as to misconduct: RCW 10.27.100.

Harbor areas lying in two or more counties, transfer of territory: Chapter 36.08 RCW.

Harbor improvements, joint planning for by first class cities and counties: RCW 88.32.240, 88.32.250.

Harbor line commission and restraint on disposition: State Constitution Art. 15 § 1 (Amendment 15).

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- mentally ill: Chapter 43.20A RCW.
- vital statistics: Chapter 70.58 RCW, RCW 70.58.107.

Health districts: Chapter 70.46 RCW.

Hearses, authority to provide: RCW 68.52.030.

Highway advertising control act of 1961 restricts placing of signs by: Chapter 47.42 RCW.

Highway funds, allocation of: State Constitution Art. 2 § 40 (Amendment 18).

Highways

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- return of street to city or town: RCW 47.24.010.
- roads or streets, cooperative agreements to benefit: RCW 47.28.140.
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Historical materials, expenditure of funds for preservation and exhibition of authorized: RCW 27.48.010.

Hospitalization and medical aid for public employees and dependents, premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Hospitals

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- for mentally ill, private establishments, prescription of standards: RCW 71.12.550.  
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- Judicial officers, inferior, powers:** RCW 2.28.090.
- Labor relations consultants:** RCW 43.09.230.
- Legal publications:** Chapter 65.16 RCW.
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- Militia and military affairs, eminent domain for military purposes:** RCW 8.04.170, 8.04.180.
- Minutes of governmental bodies, open to public:** Chapter 42.32 RCW.
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- Motor vehicle fuel tax**  
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- Motor vehicle fund, allocation of and distribution:** RCW 46.68.110.
- Motor vehicle inspection by:** Chapter 46.32 RCW.
- Motor vehicles, special permits for oversize or overweight movements, collection of fees:** RCW 46.44.096.
- Municipal courts**  
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 contractor's bond: RCW 39.08.030.  
 declaratory judgment as to: Chapter 7.24 RCW.  
 electrical installations: RCW 19.28.010, 19.28.141.  
 eminent domain, authority to acquire recreational facilities by: RCW 67.20.010.  
 eminent domain, ordinance to provide methods of payment of compensation: RCW 8.12.040.  
 evidence, admissible as, when: RCW 5.44.080.

- industrial insurance, benefits to injured employees under:* RCW 51.12.050.
- liquor control, power of municipalities to adopt police regulations:* RCW 66.08.120.
- minimum wage law supplementary to:* RCW 49.46.120.
- payment of lower wages than obligated, penalty:* RCW 49.52.050.
- plots resurvey authorized and regulation of:* RCW 58.10.030, 58.10.040.
- port district regulations, adoption:* RCW 53.08.220.
- recording as evidence of passage:* RCW 5.44.080.
- statewide city employees' retirement, election to join by:* RCW 41.44.050, 41.44.090.
- water distribution system, city may accept conveyance of and agree to maintain by:* RCW 57.08.040.
- Organization under general laws required:* State Constitution Art. 11 § 10 (Amendment 40).
- Outdoor recreation land acquisition or improvement under marine recreation land act:* Chapter 79A.25 RCW.
- Parks and recreation*
  - authority to acquire and operate:* RCW 67.20.010.
  - conditional sales contracts by cities and towns for purchase of property for parks authorized, vote required if exceeds indebtedness:* RCW 39.30.010.
  - districts:* Chapter 36.69 RCW.
  - eminent domain by cities for:* RCW 8.12.030.
  - state tidelands and shorelands:* RCW 79.94.175, 79.94.181.
- Peddlers' and hawkers' licenses:* Chapter 36.71 RCW, RCW 73.04.050, 73.04.060.
- Planning commissions*
  - airport zoning commission, appointment as:* RCW 14.12.070(2).
  - cemeteries, establishment or extension recommendations concerning:* RCW 68.20.080.
- Plats and boundaries:* Title 58 RCW.
- Police*
  - civil service, qualifications of applicants for positions:* RCW 41.12.070.
  - enforcement of traffic laws or regulations:* Chapter 46.64 RCW.
  - health regulations by state board of health, duty to enforce, penalty:* RCW 43.20.050.
  - jury duty, exempt from:* RCW 2.36.080.
  - limited highway access facilities, concurrent jurisdiction:* RCW 47.52.200.
  - militia, exemption from service:* RCW 38.44.030.
  - motor vehicle accident reports:* RCW 46.52.070.
  - motor vehicle dealer's license application, police chief to certify:* RCW 46.70.041.
  - pawnbroker reports to:* RCW 19.60.040.
  - regulations to be enforced:* State Constitution Art. 11 § 11.
  - retirement and pensions, first class cities:* Chapter 41.20 RCW.
  - retirement and pensions, statewide city employees' retirement system:* Chapter 41.44 RCW.
  - second-hand dealers reports to:* RCW 19.60.040.
  - unclaimed property:* Chapter 63.32 RCW.
  - vehicle wreckers' records, inspection by:* RCW 46.80.080, 46.80.150.
- Pollution control*
  - eminent domain by cities for:* RCW 8.12.030.
  - municipal bonding authority:* Chapter 70.95A RCW.
- Population determination, generally:* Chapter 43.62 RCW.
- Port district must submit park or recreational plans to municipal park agency:* RCW 53.08.270.
- Port district regulations, adoption as city ordinance:* RCW 53.08.220.
- Powers of county commissioners to alter boundaries inapplicable where boundary review board created:* RCW 36.93.220.
- Prepayment of taxes and assessments:* RCW 35.21.650.
- Printing:* RCW 43.78.130 through 43.78.160.
- Prisons (see Jails).*
- Property*
  - forest lands, conveying to state for forestry purposes:* RCW 79.10.040.
  - intergovernmental disposition of:* RCW 39.33.010.
  - sale, exchange, or lease to state or political subdivision authorized:* RCW 39.33.010.
  - state highway purposes, acquisition for:* RCW 47.12.040.
- Public buildings, provision to be made for use by aged and handicapped:* Chapter 70.92 RCW.
- Public contracts and indebtedness, generally:* Title 39 RCW.
- Public employment*
  - civil service and retirement rights preserved when elective office assumed:* RCW 41.04.120.
  - subversive person ineligible:* RCW 9.81.040.
  - wage deduction for charitable contributions:* RCW 41.04.035, 41.04.036.
- Public funds, private use prohibited:* State Constitution Art. 11 § 14.
- Public health pooling fund:* Chapter 70.12 RCW.
- Public lands, assessment against:* Chapter 79.44 RCW.
- Public markets, eminent domain by cities for:* RCW 8.12.030.
- Public utility districts*
  - restrictions on use of power facilities:* RCW 54.04.040.
  - tax on revenue:* RCW 54.28.070.
- Public works, liens for labor and materials performed:* Chapter 60.28 RCW.
- Purchases*
  - authority to acquire and operate certain recreational facilities and camps:* Chapter 67.20 RCW.
  - conditional sales contracts for purchase of real or personal property:* RCW 39.30.010.
  - preferential, exceptions:* RCW 19.06.020, 43.78.130 through 43.78.160.
- Railroad*
  - crossings, signals and devices, allocations of funds to defray costs of:* RCW 81.53.271 through 81.53.275, 81.53.281.
  - industrial crossing, inspection, not applicable within limits of first class cities:* RCW 81.54.040.
- Railways, street:* Chapter 81.64 RCW.
- Recall of elective officers:* State Constitution Art. 1 §§ 33, 34 (Amendment 8), chapter 29A.56 RCW.
- Reclamation districts:* Chapter 89.30 RCW.
- Records*
  - destruction of, procedure for:* RCW 40.14.070.
  - historical records, transfer to depository agency, procedure for:* RCW 40.14.070.
- Redistricting by local governments and municipal corporations—Census information for—Plan, prepared when, criteria for, hearing on, request for review of, certification, remand—Sanctions when review request frivolous:* RCW 29A.76.010.
- Referendum, electric utility transmission line construction and maintenance franchise:* RCW 80.32.040.
- Reincorporation, under general laws permitted to cities under special charter:* State Constitution Art. 11 § 10 (Amendment 40).
- River and harbor improvement districts, planning:* RCW 88.32.240.
- Sanitary regulations may be enforced:* State Constitution Art. 11 § 11.
- Sanitation, secretary of health, assistance:* RCW 70.54.040.
- School districts, educational service districts, agreements with other governmental entities for transportation of students or the public, or for other noncommon school purposes—Limitations:* RCW 28A.160.120.
- Second class cities*
  - elections, nonpartisan primaries:* Chapter 29A.52 RCW.
  - eminent domain by cities, construction of chapter as to second class cities:* RCW 8.12.560.
- Senior citizens programs—Authorization to establish and administer:* RCW 36.39.060.
- Service of summons on, personal service:* RCW 4.28.080(2).
- Sewer and water revenue bonds, mutual savings banks, investment in:* RCW 32.20.070, 32.20.100.
- Sewerage improvement districts:* Title 85 RCW.
- Sewerage systems*
  - eminent domain by cities for:* RCW 8.12.030.
  - plans, submission to department of ecology:* RCW 90.48.110.
  - public nuisances concerning:* RCW 7.48.140(2).
- Sexually transmitted disease, treatment and control:* Chapter 70.24 RCW.
- Shorelands*
  - generally:* Title 79 RCW, chapter 90.58 RCW.

- parks or playgrounds, application, grantor exchange:* RCW 79.94.175, 79.94.181.
- Solid and water conservation districts:* Chapter 89.08 RCW.
- Solid waste collection company provisions do not apply to:* RCW 81.77.020.
- Statewide city employees' retirement:* Chapter 41.44 RCW.
- Streets and alleys*
- abandoned state highways as:* RCW 36.75.090.
  - abandonment, waters backed over:* RCW 90.28.020.
  - aid in construction or maintenance of by state or county, procedure:* RCW 47.24.050.
  - as extension of county road, shared maintenance:* RCW 36.75.205.
  - as state highways, jurisdiction, maintenance and control:* RCW 47.24.020.
  - closure or restrictions on traffic authorized:* Chapter 47.48 RCW.
  - collection and removal of glass containers:* RCW 47.40.090.
  - construction and maintenance aid by state or county, procedure:* RCW 47.24.050.
  - county bridges across:* RCW 36.75.200.
  - county may aid in construction and maintenance of:* RCW 47.24.050.
  - dedication of county land for:* RCW 36.34.290, 36.34.300.
  - dedication upon replat:* RCW 79.94.110.
  - defined, motor vehicle law:* RCW 46.04.120.
  - defined, state highway law:* RCW 47.04.010(6).
  - eminent domain, for:* RCW 8.12.030.
  - franchise rights on limited access facility and when joint governmental facility:* RCW 47.52.090.
  - lighting systems, water-sewer district powers in regard to:* RCW 57.08.060.
  - limited access facilities, generally:* Chapter 47.52 RCW.
  - obstructing is nuisance:* RCW 7.48.120.
  - obstructing or interfering with, public nuisance, penalty:* RCW 9.66.010.
  - state highways as, franchises across bridges jointly owned and operated:* RCW 47.44.040.
  - state highways as, generally:* Chapter 47.24 RCW.
  - state land, easement or right of way over for city streets:* RCW 79.36.440.
  - street materials, sale of material to cities and towns from public lands, disposition of proceeds:* RCW 79.15.320.
  - telecommunications companies' use of rights of way:* RCW 80.36.040.
  - tidelands and shorelands platting, dedication to public use:* RCW 79.93.010.
  - traffic control devices for, generally:* Chapters 46.61, 47.36 RCW.
  - vacation of by replat:* RCW 79.94.120, 79.94.140.
- Taverns, music permit:* RCW 66.28.080.
- Tax lien, acquisition by governmental unit of property subject to:* RCW 84.60.050, 84.60.070.
- Tax liens, priority of:* RCW 84.60.010.
- Taxation*
- collection by county treasurer:* Chapter 36.29 RCW.
  - electricity, sale of by public utility districts:* RCW 54.28.070.
  - excess levies authorized, when, procedure:* RCW 84.52.052.
  - firemen's pension fund, property tax for:* RCW 41.16.060.
  - insurance companies, state preemption:* RCW 48.14.020(4).
  - motor vehicle fuel excise tax, preemption by state:* RCW 82.36.440.
  - power of:* State Constitution Art. 11 § 12.
  - preemption, excise taxes:* RCW 82.02.020.
  - preemption, motor vehicle fuel tax:* RCW 82.36.440.
  - property tax*
    - authorized to assess and collect general:* State Constitution Art. 7 § 9.
    - limitation on levies:* State Constitution Art. 7 § 2 (Amendments 55, 59), RCW 84.52.050.
    - local taxes not to be imposed by legislature:* State Constitution Art. 11 § 12.
    - power to assess and collect rests in city:* State Constitution Art. 11 § 12.
    - uniformity in respect to persons and property required:* State Constitution Art. 7 § 9.
  - public utility district's gross revenue:* RCW 54.28.070.
  - refunding bonds, tax levy to meet payments and interest:* RCW 39.52.035.
  - sales and use taxes:* Chapter 82.14 RCW.
- Taxing district relief act:* Chapter 39.64 RCW.
- Teletypewriter communications network, connection with, participation in:* RCW 43.89.030.
- Tidelands*
- eminent domain, drainage:* RCW 8.12.030.
  - extension of streets over:* State Constitution Art. 15 § 3.
  - ownership of:* State Constitution Art. 17 §§ 1, 2.
  - rentals, receipt by:* RCW 79.92.110.
  - sale of, authority to sell to cities and towns:* RCW 79.94.160.
- Toll facilities, contributions by cities and towns for authorized, financing, reimbursement:* RCW 47.56.250.
- Towns*
- actions against:* RCW 4.08.120.
  - actions by in corporate name:* RCW 4.08.110.
  - charter, amendment of by special act, prohibited:* State Constitution Art. 2 § 28(8).
  - corporate stock or bonds not to be owned by:* State Constitution Art. 8 § 7.
  - credit not to be loaned, exception:* State Constitution Art. 8 § 7.
  - indebtedness:* State Constitution Art. 8 § 6 (Amendment 27).
  - limitation upon actions by:* RCW 4.16.160.
  - moneys, deposited with treasurer:* State Constitution Art. 11 § 15.
  - moneys, use of, by official, a felony:* State Constitution Art. 11 § 14.
  - officers, salaries of, not to be changed during term:* State Constitution Art. 11 § 8.
  - officers, vacancies, not to be extended:* State Constitution Art. 11 § 8.
  - organization under general laws required:* State Constitution Art. 11 § 10 (Amendment 40).
  - plats, regulation of surveys and plats:* RCW 58.10.040.
  - plats, resurvey and correction of:* RCW 58.10.030.
  - police department, control and direction of:* State Constitution Art. 11 § 11.
  - sanitary regulations may be enforced:* State Constitution Art. 11 § 11.
  - service of summons on, personal service:* RCW 4.28.080(2).
  - taxation, power of:* State Constitution Art. 11 § 12.
- Trade centers—Annual service fee—Distribution to cities:* RCW 53.29.030.
- Traffic schools:* Chapter 46.83 RCW.
- Transportation centers authorized:* Chapter 81.75 RCW.
- Transportation systems*
- exempt from motor freight carrier law:* RCW 81.80.040(4).
  - motor vehicle fuel tax refunds:* RCW 82.36.275.
- Trees, plants, shrubs or vegetation, duty to disinfect or destroy:* RCW 15.08.230.
- Trusts for employee benefits:* Chapter 49.64 RCW.
- Unclaimed property in hands of city police:* Chapter 63.32 RCW.
- Uniform state standard of traffic devices, copy of to be furnished to:* RCW 47.36.030.
- Urban arterials, planning, construction, funds, bond issue, etc.:* Chapter 47.26 RCW.
- Utility poles, attachment of objects to, penalty:* RCW 70.54.090.
- Vacancies in public office, causes, how filled:* Chapter 42.12 RCW.
- Vehicle wreckers' regulation by, to conform with chapter 46.80 RCW:* RCW 46.80.160.
- Venue of actions against public officers:* RCW 4.12.020(2).
- Veterans' organizations, providing of meeting places for:* RCW 73.04.070.
- Veterans preference in public employment, reemployment:* Chapter 73.16 RCW.
- Warrants*
- interest rate:* RCW 39.56.020.
  - rate fixed by issuing officer:* RCW 39.56.030.
- Washington clean air act:* Chapter 70.94 RCW.
- Water distribution systems, conveyance by water districts:* Chapter 57.08 RCW.
- Water-sewer districts*
- boundaries identical with, dissolution procedure:* RCW 57.04.110.
  - inclusion within boundaries:* RCW 57.04.020.
  - labor and materials:* RCW 57.08.050.
- Water pollution*
- depositing unwholesome matter in waters, public nuisance, penalty:* RCW 9.66.050.
  - public utility districts, powers in regard to:* RCW 54.16.050.
  - shellfish sanitation control, pollution laws and rules and regulations applied to:* RCW 69.30.130.
  - water supply, eminent domain by cities to prevent:* RCW 8.12.030.

*water supply, generally:* RCW 70.54.010.  
*watersheds in adjoining state:* RCW 70.54.030.

*Water recreation facilities:* Chapter 70.90 RCW.

*Water revenue bonds, mutual savings banks, investment in:* RCW 32.20.070, 32.20.100.

*Water systems, bonds, refunding:* Chapter 39.52 RCW.

*Watercourses and waterways*  
*city streets, improvement of slopes:* RCW 79.93.030.  
*vacation of, grounds for, procedure:* RCW 79.93.060.

*Watersheds*  
*eminent domain for:* RCW 8.12.030, 8.28.050.  
*state land, condemnation or purchase by city or town permitted:* RCW 79.10.070.

*Weeds, duty to destroy, extermination areas:* RCW 17.04.160.

*Weights and measures, city sealer:* RCW 19.94.280.

*Wharves and landings*  
*as part of state highway system:* Chapter 47.24 RCW.  
*authorization of private construction:* RCW 88.24.030.

**Chapter 35.01 RCW**

**MUNICIPAL CORPORATIONS CLASSIFIED**

Sections

- 35.01.010 First class city.
- 35.01.020 Second class city.
- 35.01.040 Town.

*Combined city and county municipal corporations:* State Constitution Art. 11 § 16 (Amendment 58).

*Determining population*  
*generally:* Chapter 43.62 RCW.  
*of annexed territory:* RCW 35.13.260.

*First class cities, generally:* Chapter 35.22 RCW.

*Metropolitan municipal corporations:* Chapter 35.58 RCW.

*Second class cities, generally:* Chapter 35.23 RCW.

*Towns, generally:* Chapter 35.27 RCW.

**35.01.010 First class city.** A first class city is a city with a population of ten thousand or more at the time of its organization or reorganization that has a charter adopted under Article XI, section 10, of the state Constitution. [1994 c 81 § 3; 1965 c 7 § 35.01.010. Prior: 1955 c 319 § 2; prior: (i) 1890 p 140 § 11, part; RRS § 8932, part. (ii) 1907 c 248 § 1, part; 1890 p 140 § 12, part; RRS § 8933, part.]

**35.01.020 Second class city.** A second class city is a city with a population of fifteen hundred or more at the time of its organization or reorganization that does not have a charter adopted under Article XI, section 10, of the state Constitution, and does not operate under Title 35A RCW. [1997 c 361 § 9; 1994 c 81 § 4; 1965 c 7 § 35.01.020. Prior: 1955 c 319 § 3; prior: (i) 1890 p 140 § 11, part; RRS § 8932, part. (ii) 1907 c 248 § 1, part; 1890 p 140 § 12, part; RRS § 8933, part.]

**35.01.040 Town.** A town has a population of less than fifteen hundred at the time of its organization and does not operate under Title 35A RCW. [1997 c 361 § 10; 1994 c 81 § 5; 1965 c 7 § 35.01.040. Prior: 1963 c 119 § 2; 1955 c 319 § 5; prior: (i) 1890 p 140 § 11, part; RRS § 8932, part. (ii) 1890 p 141 § 13; RRS § 8934.]

**Chapter 35.02 RCW**

**INCORPORATION PROCEEDINGS**

Sections

- 35.02.001 Actions subject to review by boundary review board.
- 35.02.005 Purpose.
- 35.02.010 Authority for incorporation—Number of inhabitants required.
- 35.02.015 Proposed incorporations—Notice to county—Boundary review board hearing.
- 35.02.017 County auditor shall provide identification number.
- 35.02.020 Petition for incorporation—Signatures—Filing deadline.
- 35.02.030 Petition for incorporation—Contents.
- 35.02.035 Petition—Auditor's duties.
- 35.02.037 Petition—Notice of certification.
- 35.02.039 Public hearing—Time limitations.
- 35.02.040 Public hearing—Publication of notice.
- 35.02.070 Public hearing by county legislative authority—Establishment of boundaries—Limitations.
- 35.02.078 Elections—Question of incorporation—Nomination and election of officers.
- 35.02.086 Elections—Candidates—Filing—Withdrawal—Ballot position.
- 35.02.090 Elections—Conduct—Voters' qualifications.
- 35.02.100 Election on question of incorporation—Notice—Contents.
- 35.02.110 Election on question of incorporation—Ballots.
- 35.02.120 Election on question of incorporation—Certification of results.
- 35.02.125 Newly incorporated city or town—Liability for costs of elections.
- 35.02.130 Newly incorporated city or town—Effective date of incorporation—Powers during interim period—Terms of elected officers—First municipal election.
- 35.02.132 Newly incorporated city or town—Budgets.
- 35.02.135 Newly incorporated city or town—May borrow from municipal sales and use tax equalization account.
- 35.02.137 Newly incorporated city or town—Moratoria on development permits and approvals.
- 35.02.139 Newly incorporated city or town—First general election of councilmembers or commissioners—Initial, subsequent terms.
- 35.02.140 Disposition of uncollected road district taxes.
- 35.02.150 Pending final disposition of petition no other petition for incorporation to be acted upon—Withdrawal or substitution—Action on petition for annexation authorized.
- 35.02.155 Effect of proposed annexation on petition.
- 35.02.160 Cancellation, acquisition of franchise or permit for operation of public service business in territory incorporated—Regulation of solid waste collection.
- 35.02.170 Use of right of way line as corporate boundary—When right of way may be included.
- 35.02.180 Ownership of county roads to revert to city or town—Territory within city or town to be removed from fire protection, road, and library districts.
- 35.02.190 Annexation/incorporation of fire protection district—Transfer of assets when at least sixty percent of assessed valuation is annexed or incorporated in city or town.
- 35.02.200 Annexation/incorporation of fire protection district—Ownership of assets of fire protection district—When less than sixty percent.
- 35.02.202 Annexation/incorporation of fire protection district—Delay of transfer.
- 35.02.205 Annexation/incorporation of fire protection district—Distribution of assets of district when less than five percent of district annexed—Distribution agreement—Arbitration.
- 35.02.210 Fire protection district and library district—Continuation of services at option of city or town.
- 35.02.220 Duty of county and road, library, and fire districts to continue services during transition period—Road maintenance and law enforcement services.
- 35.02.225 County may contract to provide essential services.
- 35.02.230 Incorporation of city or town located in more than one county—Powers and duties of county after incorporation—Costs.
- 35.02.240 Incorporation of city or town located in more than one county—Taxes—Powers and duties of county after incorporation—Costs.
- 35.02.250 Corporate powers in dealings with federal government.
- 35.02.260 Duty of department of community, trade, and economic development to assist newly incorporated cities and towns.
- 35.02.270 Other local governments and state agencies—May assist newly incorporated cities and towns.

*Combined city and county municipal corporations: State Constitution Art. 11 § 16 (Amendment 58).*

*Fire protection districts, effect upon: Chapter 52.22 RCW.*

*Incorporation of municipalities: State Constitution Art. 11 § 10 (Amendment 40).*

*Incorporation proceedings exempt from State Environmental Policy Act: RCW 36.93.170, 43.21C.220.*

**35.02.001 Actions subject to review by boundary review board.** The incorporation of a city or town is subject to review by a boundary review board under chapter 36.93 RCW if a boundary review board exists in the county in which all or any portion of the territory proposed to be incorporated is located. [1994 c 216 § 11; 1989 c 84 § 25.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**35.02.005 Purpose.** The purpose of chapter 35.02 RCW is to provide a clear and uniform process for the incorporation of cities or towns operating under either Title 35 or 35A RCW. An incorporation may result in the creation of a second class city or town operating under Title 35 RCW or a noncharter code city operating under Title 35A RCW. [1994 c 81 § 6; 1986 c 234 § 1.]

**35.02.010 Authority for incorporation—Number of inhabitants required.** Any contiguous area containing not less than one thousand five hundred inhabitants lying outside the limits of an incorporated city or town may become incorporated as a city or town operating under Title 35 or 35A RCW as provided in this chapter: PROVIDED, That no area which lies within five air miles of the boundary of any city having a population of fifteen thousand or more shall be incorporated which contains less than three thousand inhabitants. [1994 c 216 § 12; 1986 c 234 § 2; 1969 c 48 § 1; 1965 c 7 § 35.02.010. Prior: 1963 c 57 § 1; 1890 p 131 § 1; 1888 p 221 § 1; 1877 p 173 § 1; 1871 p 51 § 1; RRS § 8883.]

**Reviser's note:** The current definition of "town" under RCW 35.01.040 precludes the incorporation of a town under this section.

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**Validation—1961 ex.s. c 16:** Validation of certain incorporations and annexations—Municipal corporations of the fourth class: See note following RCW 35.21.010.

**Validating—1899 c 61:** "Any municipal corporation which has been incorporated under the existing laws of this state shall be a valid municipal corporation notwithstanding a failure to publish the notice of the election held or to be held for the purpose of determining whether such city should or shall become incorporated, for the length of time required by law governing such incorporation: PROVIDED, A notice fulfilling in other respects the requirements of law shall have been published for one week prior to such election in a newspaper printed and published within the boundaries of the corporation." [1899 c 61 p 103 § 1.]

**Validating—1893 c 80:** "The incorporation of all cities and towns in this state heretofore had or attempted under sections one, two and three of an act entitled 'An act providing for the organization, classification, incorporation and government of municipal corporations, and declaring an emergency,' approved March 24, 1890, and the re-incorporation of all cities and towns in this state heretofore had or attempted under sections one, four and five of said act, under which attempted incorporation or re-incorporation an organized government has been maintained since the date thereof, is hereby for all purposes declared legal and valid, and such cities and towns are hereby declared duly incorporated. And all contracts and obligations heretofore made, entered into or incurred by any such city or town so incorporated or re-incorporated are hereby declared legal and valid and of full force and effect." [1893 c 80 p 183 § 1.]

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**Validating—1890 c 7:** "When so incorporated, the debts due from such town, village or city to any person, firm or corporation may be assumed and paid by the municipal authorities of such town, village or city; and all debts due to such town, village or city from any person, firm or corporation shall be deemed ratified, and may be collected in the same manner and in all respects as though such original incorporation were valid." [1890 c 7 p 136 § 7.]

**35.02.015 Proposed incorporations—Notice to county—Boundary review board hearing.** Any person proposing the incorporation of a city or town shall file a notice of the proposed incorporation with the county legislative authority of the county in which all or the major portion of the proposed city or town is located. The notice shall include the matters required to be included in the incorporation petition under RCW 35.02.030 and be accompanied by both a one hundred dollar filing fee and an affidavit from the person stating that he or she is a registered voter residing in the proposed city or town.

The county legislative authority shall promptly notify the boundary review board of the proposed incorporation, which shall hold a public meeting on the proposed incorporation within thirty days of the notice being filed where persons favoring and opposing the proposed incorporation may state their views. If a boundary review board does not exist in the county, the county legislative authority shall provide the public meeting. The public meeting shall be held at a location in or near the proposed city or town. Notice of the public meeting shall be published in a newspaper of general circulation in the area proposed to be incorporated at least once ten days prior to the public meeting. [1994 c 216 § 1.]

**Effective date—1994 c 216:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 216 § 21.]

**35.02.017 County auditor shall provide identification number.** Within one working day after the public meeting under RCW 35.02.015, the county auditor shall provide an identification number for the incorporation effort to the person who made the notice of proposing the incorporation. The identification number shall be included on the petition proposing the incorporation.

The petition proposing the incorporation may retain the proposed boundaries and other matters as described in the notice, or may alter the proposed boundaries and other matters. [1994 c 216 § 2.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**35.02.020 Petition for incorporation—Signatures—Filing deadline.** A petition for incorporation must be signed by registered voters resident within the limits of the proposed city or town equal in number to at least ten percent of the number of voters residing within the proposed city or town and filed with the auditor of the county in which all, or the largest portion of, the proposed city or town is located. The petition must be filed with the auditor by no later than one hundred eighty days after the date the public meeting on the proposed incorporation was held under RCW 35.02.015, or the next regular business day following the one hundred eightieth day if the one hundred eightieth day is not a regular business day. [1994 c 216 § 4; 1986 c 234 § 3; 1965 c 7 §

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35.02.020. Prior: 1957 c 173 § 2; prior: 1953 c 219 § 1; 1890 p 131 § 2, part; 1888 p 221 §§ 1, 2, part; 1877 p 173 §§ 1, 2, part; 1871 p 51 § 1, part; RRS § 8884, part.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**35.02.030 Petition for incorporation—Contents.** The petition for incorporation shall: (1) Indicate whether the proposed city or town shall be a noncharter code city operating under Title 35A RCW, or a city or town operating under Title 35 RCW; (2) indicate the form or plan of government the city or town is to have; (3) set forth and particularly describe the proposed boundaries of the proposed city or town; (4) state the name of the proposed city or town; (5) state the number of inhabitants therein, as nearly as may be; and (6) pray that the city or town be incorporated. The petition shall conform to the requirements for form prescribed in RCW 35A.01.040. The petition shall include the identification number provided under RCW 35.02.017 and state the last date by which the petition may be filed, as determined under RCW 35.02.020.

If the proposed city or town is located in more than one county, the petition shall be prepared in such a manner as to indicate the different counties within which the signators reside.

A city or town operating under Title 35 RCW may have a mayor/council, council/manager, or commission form of government. A city operating under Title 35A RCW may have a mayor/council or council/manager plan of government.

If the petition fails to specify the matters described in subsection (1) of this section, the proposal shall be to incorporate as a noncharter code city. If the petition fails to specify the matter described in subsection (2) of this section, the proposal shall be to incorporate with a mayor/council form or plan of government. [1994 c 216 § 3; 1986 c 234 § 4; 1965 c 7 § 35.02.030. Prior: 1957 c 173 § 3; prior: 1953 c 219 § 2; 1890 p 131 § 2, part; 1888 p 221 §§ 1, 2, part; 1877 p 173 §§ 1, 2, part; 1871 p 51 § 1, part; RRS § 8884, part.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**35.02.035 Petition—Auditor's duties.** The county auditor shall within thirty days from the time of receiving said petition determine if the petition contains a sufficient number of valid signatures. If the proposed city or town is located in more than one county, the auditor shall immediately transmit a copy of the petition to the auditor of the other county or counties within which the proposed city or town is located. Each of these other county auditors shall certify the number of valid signatures thereon of voters residing in the county and transmit the certification to the auditor of the county with whom the petition was originally filed. This auditor shall determine if the petition contains a sufficient number of valid signatures. If the petition is certified as having sufficient valid signatures, the county auditor shall transmit said petition, accompanied by the certificate of sufficiency, to the county legislative authority or authorities of the county or counties within which the proposed city or town is located. [1986 c 234 § 5; 1965 c 7 § 35.02.035. Prior: 1953 c 219 § 8.]

(2004 Ed.)

**35.02.037 Petition—Notice of certification.** The county auditor who certifies the sufficiency of the petition shall notify the person or persons who submitted the petition of its sufficiency within five days of when the determination of sufficiency is made. Notice shall be by certified mail and may additionally be made by telephone. If a boundary review board or boards exists in the county or counties in which the proposed city or town is located, the petitioners shall file notice of the proposed incorporation with the boundary review board or boards. [1986 c 234 § 6.]

**35.02.039 Public hearing—Time limitations.** (1) The county legislative authority of the county in which the proposed city or town is located shall hold a public hearing on the proposed incorporation if no boundary review board exists in the county. The public hearing shall be held within sixty days of when the county auditor notifies the legislative authority of the sufficiency of the petition if no boundary review board exists in the county, or within ninety days of when notice of the proposal is filed with the boundary review board if the boundary review board fails to take jurisdiction over the proposal. The public hearing may be continued to other days, not extending more than sixty days beyond the initial hearing date. If the boundary review board takes jurisdiction, the county legislative authority shall not hold a public hearing on the proposal.

(2) If the proposed city or town is located in more than one county, a public hearing shall be held in each of the counties by the county legislative authority or boundary review board. Joint public hearings may be held by two or more county legislative authorities, or two or more boundary review boards. [1994 c 216 § 14; 1986 c 234 § 7.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**35.02.040 Public hearing—Publication of notice.** Notice of the public hearing by the county legislative authority on the proposed incorporation shall be by one publication in not more than ten nor less than three days prior to the date set for said hearing in one or more newspapers of general circulation within the area proposed to be incorporated. Said notice shall contain the time and place of said hearing. [1986 c 234 § 8; 1965 c 7 § 35.02.040. Prior: 1957 c 173 § 4; prior: 1953 c 219 § 3; 1890 p 131 § 2, part; 1888 p 221 §§ 1, 2, part; 1877 p 173 §§ 1, 2, part; 1871 p 51 § 1, part; RRS § 8884, part.]

**35.02.070 Public hearing by county legislative authority—Establishment of boundaries—Limitations.** (1) If a county legislative authority holds a public hearing on a proposed incorporation, it shall establish and define the boundaries of the proposed city or town, being authorized to decrease or increase the area proposed in the petition under the same restrictions that a boundary review board may modify the proposed boundaries. The county legislative authority, or the boundary review board if it takes jurisdiction, shall determine the number of inhabitants within the boundaries it has established.

(2) A county legislative authority shall disapprove the proposed incorporation if, without decreasing the area proposed in the petition, it does not conform with RCW

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35.02.010. A county legislative authority may not otherwise disapprove a proposed incorporation.

(3) A county legislative authority or boundary review board has jurisdiction only over that portion of a proposed city or town located within the boundaries of the county. [1994 c 216 § 17; 1986 c 234 § 9; 1975 1st ex.s. c 220 § 3; 1965 c 7 § 35.02.070. Prior: 1963 c 57 § 2; 1957 c 173 § 7; prior: 1890 p 131 § 2, part; 1888 p 221 §§ 1, 2, part; 1877 p 173 §§ 1, 2, part; 1871 p 51 § 1, part; RRS § 8884, part.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**Legislative finding, intent—1975 1st ex.s. c 220:** See note following RCW 35.02.170.

*Incorporation subject to approval by boundary review board:* RCW 36.93.090.

**35.02.078 Elections—Question of incorporation—Nomination and election of officers.** An election shall be held in the area proposed to be incorporated to determine whether the proposed city or town shall be incorporated when the boundary review board takes action on the proposal other than disapproving the proposal, or if the county legislative authority does not disapprove the proposal as provided in RCW 35.02.070. Voters at this election shall determine if the area is to be incorporated.

The initial election on the question of incorporation shall be held at the next special election date specified in \*RCW 29.13.020 that occurs sixty or more days after the final public hearing by the county legislative authority or authorities, or action by the boundary review board or boards. The county legislative authority or authorities shall call for this election and, if the incorporation is approved, shall call for other elections to elect the elected officials as provided in this section. If the vote in favor of the incorporation receives forty percent or less of the total vote on the question of incorporation, no new election on the question of incorporation for the area or any portion of the area proposed to be incorporated may be held for a period of three years from the date of the election in which the incorporation failed.

If the incorporation is authorized as provided by RCW 35.02.120, separate elections shall be held to nominate and elect persons to fill the various elective offices prescribed by law for the population and type of city or town, and to which it will belong. The primary election to nominate candidates for these elective positions shall be held at the next special election date, as specified in \*RCW 29.13.020, that occurs sixty or more days after the election on the question of incorporation. The election to fill these elective positions shall be held at the next special election date, as specified in \*RCW 29.13.020, that occurs thirty or more days after certification of the results of the primary election. [1994 c 216 § 18; 1986 c 234 § 10.]

**\*Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**35.02.086 Elections—Candidates—Filing—Withdrawal—Ballot position.** Each candidate for a city or town elective position shall file a declaration of candidacy with the county auditor of the county in which all or the major portion of the city or town is located, not more than forty-five nor less than thirty days prior to the primary election at which the ini-

tial elected officials are nominated. The elective positions shall be as provided in law for the type of city or town and form or plan of government specified in the petition to incorporate, and for the population of the city or town as determined by the county legislative authority or boundary review board where applicable. Any candidate may withdraw his or her declaration at any time within five days after the last day allowed for filing declaration of candidacy. All names of candidates to be voted upon shall be printed upon the ballot alphabetically in groups under the designation of the respective titles of offices for which they are candidates. Names of candidates printed upon the ballot need not be rotated. [1986 c 234 § 11; 1965 c 7 § 35.02.086. Prior: 1953 c 219 § 9.]

**35.02.090 Elections—Conduct—Voters' qualifications.** The elections on the proposed incorporation and for the nomination and election of the initial elected officials shall be conducted in accordance with the general election laws of the state, except as provided in this chapter. No person is entitled to vote thereat unless he or she is a qualified elector of the county, or any of the counties in which the proposed city or town is located, and has resided within the limits of the proposed city or town for at least thirty days next preceding the date of election. [1986 c 234 § 12; 1965 c 7 § 35.02.090. Prior: 1890 p 133 § 3, part; RRS § 8885, part.]

**35.02.100 Election on question of incorporation—Notice—Contents.** The notice of election on the question of the incorporation shall be given as provided by \*RCW 29.27.080 but shall further describe the boundaries of the proposed city or town, its name, and the number of inhabitants ascertained by the county legislative authority or the boundary review board to reside in it. [1986 c 234 § 13; 1965 c 7 § 35.02.100. Prior: 1957 c 173 § 9; prior: 1953 c 219 § 5; 1890 p 131 § 2, part; 1888 p 221 §§ 1, 2, part; 1877 p 173 §§ 1, 2, part; 1871 p 51 § 1, part; RRS § 8884, part.]

**\*Reviser's note:** RCW 29.27.080 was recodified as RCW 29A.52.350 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.52.350 was subsequently repealed by 2004 c 271 § 193.

**35.02.110 Election on question of incorporation—Ballots.** The ballots in the initial election on the question of incorporation shall contain the words "for incorporation" and "against incorporation" or words equivalent thereto. [1986 c 234 § 14; 1965 c 7 § 35.02.110. Prior: 1957 c 173 § 10; prior: 1890 p 131 § 2, part; 1888 p 221 §§ 1, 2, part; 1877 p 173 §§ 1, 2, part; 1871 p 51 § 1, part; RRS § 8884, part.]

**35.02.120 Election on question of incorporation—Certification of results.** If the results reveal that a majority of the votes cast are for incorporation, the city or town shall become incorporated as provided in RCW 35.02.130. If the proposed city or town is located in more than one county, the auditors of the county or counties in which the smaller portion or portions of the proposed city or town is located shall forward a certified copy of the election results to the auditor of the county within which the major portion is located. This auditor shall add these totals to the totals in his or her county and certify the results to each of the county legislative authorities. [1986 c 234 § 15; 1965 c 7 § 35.02.120. Prior: 1953 c 219 § 6; 1890 p 133 § 3, part; RRS § 8885, part.]

*Canvassing returns, generally: Chapter 29A.60 RCW.*

*Conduct of elections—Canvass: RCW 29A.60.010.*

**35.02.125 Newly incorporated city or town—Liability for costs of elections.** A newly incorporated city or town shall be liable for its proportionate share of the costs of all elections, after the election on whether the area should be incorporated, at which an issue relating to the city or town is placed before the voters, as if the city or town was in existence after the election at which voters authorized the area to incorporate. [1991 c 360 § 2.]

**35.02.130 Newly incorporated city or town—Effective date of incorporation—Powers during interim period—Terms of elected officers—First municipal election.** The city or town officially shall become incorporated at a date from one hundred eighty days to three hundred sixty days after the date of the election on the question of incorporation. An interim period shall exist between the time the newly elected officials have been elected and qualified and this official date of incorporation. During this interim period, the newly elected officials are authorized to adopt ordinances and resolutions which shall become effective on or after the official date of incorporation, and to enter into contracts and agreements to facilitate the transition to becoming a city or town and to ensure a continuation of governmental services after the official date of incorporation. Periods of time that would be required to elapse between the enactment and effective date of such ordinances, including but not limited to times for publication or for filing referendums, shall commence upon the date of such enactment as though the city or town were officially incorporated.

During this interim period, the city or town governing body may adopt rules establishing policies and procedures under the state environmental policy act, chapter 43.21C RCW, and may use these rules and procedures in making determinations under the state environmental policy act, chapter 43.21C RCW.

During this interim period, the newly formed city or town and its governing body shall be subject to the following as though the city or town were officially incorporated: RCW 4.24.470 relating to immunity; chapter 42.17 RCW relating to open government; chapter 40.14 RCW relating to the preservation and disposition of public records; chapters 42.20 and 42.23 RCW relating to ethics and conflicts of interest; chapters 42.30 and 42.32 RCW relating to open public meetings and minutes; RCW 35.22.288, 35.23.221, 35.27.300, 35A.12.160, as appropriate, and chapter 35A.65 RCW relating to the publication of notices and ordinances; RCW 35.21.875 and 35A.21.230 relating to the designation of an official newspaper; RCW 36.16.138 relating to liability insurance; RCW 35.22.620, 35.23.352, and 35A.40.210, as appropriate, and statutes referenced therein relating to public contracts and bidding; and chapter 39.34 RCW relating to interlocal cooperation. Tax anticipation or revenue anticipation notes or warrants and other short-term obligations may be issued and funds may be borrowed on the security of these instruments during this interim period, as provided in chapter 39.50 RCW. Funds also may be borrowed from federal, state, and other governmental agencies in the same manner as if the city or town were officially incorporated.

RCW 84.52.020 and 84.52.070 shall apply to the extent that they may be applicable, and the governing body of such city or town may take appropriate action by ordinance during the interim period to adopt the property tax levy for its first full calendar year following the interim period.

The governing body of the new city or town may acquire needed facilities, supplies, equipment, insurance, and staff during this interim period as if the city or town were in existence. An interim city manager or administrator, who shall have such administrative powers and duties as are delegated by the governing body, may be appointed to serve only until the official date of incorporation. After the official date of incorporation the governing body of such a new city organized under the council manager form of government may extend the appointment of such an interim manager or administrator with such limited powers as the governing body determines, for up to ninety days. This governing body may submit ballot propositions to the voters of the city or town to authorize taxes to be collected on or after the official date of incorporation, or authorize an annexation of the city or town by a fire protection district or library district to be effective immediately upon the effective date of the incorporation as a city or town.

The boundaries of a newly incorporated city or town shall be deemed to be established for purposes of RCW 84.09.030 on the date that the results of the initial election on the question of incorporation are certified or the first day of January following the date of this election if the newly incorporated city or town does not impose property taxes in the same year that the voters approve the incorporation.

The newly elected officials shall take office immediately upon their election and qualification with limited powers during this interim period as provided in this section. They shall acquire their full powers as of the official date of incorporation and shall continue in office until their successors are elected and qualified at the next general municipal election after the official date of incorporation: PROVIDED, That if the date of the next general municipal election is less than twelve months after the date of the first election of councilmembers, those initially elected councilmembers shall serve until their successors are elected and qualified at the next following general municipal election as provided in \*RCW 29.04.170. For purposes of this section, the general municipal election shall be the date on which city and town general elections are held throughout the state of Washington, pursuant to \*RCW 29.13.020.

In any newly incorporated city that has adopted the council-manager form of government, the term of office of the mayor, during the interim period only, shall be set by the council, and thereafter shall be as provided by law.

The official date of incorporation shall be on a date from one hundred eighty to three hundred sixty days after the date of the election on the question of incorporation, as specified in a resolution adopted by the governing body during this interim period. A copy of the resolution shall be filed with the county legislative authority of the county in which all or the major portion of the newly incorporated city or town is located. If the governing body fails to adopt such a resolution, the official date of incorporation shall be three hundred sixty days after the date of the election on the question of incorporation. The county legislative authority of the county in

which all or the major portion of the newly incorporated city or town is located shall file a notice with the county assessor that the city or town has been authorized to be incorporated immediately after the favorable results of the election on the question of incorporation have been certified. The county legislative authority shall file a notice with the secretary of state that the city or town is incorporated as of the official date of incorporation. [1997 c 361 § 11; 1994 c 154 § 308; 1991 c 360 § 3; 1986 c 234 § 16; 1965 c 7 § 35.02.130. Prior: 1953 c 219 § 7; 1890 p 133 § 3, part; RRS § 8885, part.]

**\*Reviser's note:** RCW 29.04.170 and 29.13.020 were recodified as RCW 29A.20.040 and 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Parts and captions not law—Effective date—Severability—1994 c 154:** See RCW 42.52.902, 42.52.904, and 42.52.905.

*Times for holding elections: RCW 29A.04.311 through 29A.04.330.*

**35.02.132 Newly incorporated city or town—Budgets.** The newly elected officials shall adopt an interim budget for the interim period or until January 1 of the following year, whichever occurs first. A second interim budget shall be adopted for any period between January 1 and the official date of incorporation. These interim budgets shall be adopted in consultation with the state auditor.

The governing body shall adopt a budget for the newly incorporated city or town for the period between the official date of incorporation and January 1 of the following year. The mayor or governing body, whichever is appropriate shall prepare or the governing body may direct the interim city manager to prepare a preliminary budget in detail to be made public at least sixty days before the official date of incorporation as a recommendation for the final budget. The mayor, governing body, or the interim city manager shall submit as a part of the preliminary budget a budget message that contains an explanation of the budget document, an outline of the recommended financial policies and programs of the city or town for the ensuing fiscal year, and a statement of the relation of the recommended appropriation to such policies and programs. Immediately following the release of the preliminary budget, the governing body shall cause to be published a notice once each week for two consecutive weeks of a public hearing to be held at least twenty days before the official date of incorporation on the fixing of the final budget. Any taxpayer may appear and be heard for or against any part of the budget. The governing body may make such adjustments and changes as it deems necessary and may adopt the final budget at the conclusion of the public hearing or at any time before the official date of incorporation. [1995 c 301 § 33; 1991 c 360 § 4.]

**35.02.135 Newly incorporated city or town—May borrow from municipal sales and use tax equalization account.** Upon the certification of election of officers, the governing body may by resolution borrow money from the municipal sales and use tax equalization account, up to one hundred thousand dollars or five dollars per capita based on the population estimate required by RCW 35.02.030, which-ever is less.

The loan authorized by this section shall be repaid over a three-year period. The state treasurer shall withhold moneys from the funds otherwise payable to the city or town that has

obtained such a loan, either from the municipal sales and use tax equalization account or from sales and use tax entitlements otherwise distributable to such city or town, so that the account is fully reimbursed over the three-year period. The state treasurer shall adopt by rule procedures to accomplish the purpose of this section on a reasonable and equitable basis over the three-year period. [1991 c 360 § 5.]

**35.02.137 Newly incorporated city or town—Moratoria on development permits and approvals.** During the interim period, the governing body of the newly formed city or town may adopt resolutions establishing moratoria during the interim transition period on the filing of applications with the county for development permits or approvals, including, but not limited [to], subdivision approvals, short subdivision approvals, and building permits. [1991 c 360 § 11.]

**35.02.139 Newly incorporated city or town—First general election of councilmembers or commissioners—Initial, subsequent terms.** An election shall be held to elect city or town elected officials at the next municipal general election occurring more than twelve months after the date of the first election of councilmembers or commissioners. Candidates shall run for specific council or commission positions. The staggering of terms of members of the city or town council shall be established at this election, where the simple majority of the persons elected as councilmembers receiving the greatest numbers of votes shall be elected to four-year terms of office and the remainder of the persons elected as councilmembers shall be elected to two-year terms of office. Newly elected councilmembers or newly elected commissioners shall serve until their successors are elected and qualified. The terms of office of newly elected commissioners shall not be staggered, as provided in chapter 35.17 RCW. All councilmembers and commissioners who are elected subsequently shall be elected to four-year terms of office and shall serve until their successors are elected and qualified and assume office in accordance with \*RCW 29.04.170. [1994 c 223 § 9.]

**\*Reviser's note:** RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**35.02.140 Disposition of uncollected road district taxes.** Whenever in any territory forming a part of an incorporated city or town which is part of a road district, and road district regular property taxes are collectable on any property within such territory, the same shall, when collected by the county treasurer, be paid to such city or town and placed in the city or town street fund by the city or town; except that road district taxes that are delinquent before the date of incorporation shall be paid to the county and placed in the county road fund. This section shall not apply to excess property tax levies securing general indebtedness or any special assessments due in behalf of such property. [2001 c 299 § 1; 1986 c 234 § 20; 1965 c 7 § 35.02.140. Prior: 1957 c 180 § 1.]

*County road districts: RCW 36.75.060.*

**35.02.150 Pending final disposition of petition no other petition for incorporation to be acted upon—Withdrawal or substitution—Action on petition for annex-**

**ation authorized.** After the filing of any petition for incorporation with the county auditor, and pending its final disposition as provided for in this chapter, no other petition for incorporation which embraces any of the territory included therein shall be acted upon by the county auditor, the county legislative authority, or the boundary review board, or by any other public official or body that might otherwise be empowered to receive or act upon such a petition: PROVIDED, That any petition for incorporation may be withdrawn by a majority of the signers thereof at any time before such petition has been certified by the county auditor to the county legislative authority: PROVIDED FURTHER, That a new petition may be substituted therefor that embraces other or different boundaries, incorporation as a city or town operating under a different title of law, or for incorporation as a city or town operating under a different plan or form of government, by a majority of the signers of the original incorporation petition, at any time before the original petition has been certified by the county auditor to the county legislative authority, in which case the same proceedings shall be taken as in the case of an original petition. A boundary review board, county auditor, county legislative authority, or any other public official or body may act upon a petition for annexation before considering or acting upon a petition for incorporation which embraces some or all of the same territory, without regard to priority of filing. [1986 c 234 § 23; 1982 c 220 § 3; 1973 1st ex.s. c 164 § 1; 1965 c 7 § 35.02.150. Prior: 1961 c 200 § 1.]

**Severability—1982 c 220:** See note following RCW 36.93.100.

### **35.02.155 Effect of proposed annexation on petition.**

For a period of ninety days after a petition proposing the incorporation of a city or town is filed with the county auditor, a petition or resolution proposing the annexation of any portion of the territory included in the incorporation proposal may be filed or adopted and the proposed annexation may continue following the applicable statutory procedures. Territory that ultimately is annexed, as a result of the filing of such an annexation petition or adoption of such an annexation resolution during this ninety-day period, shall be withdrawn from the incorporation proposal.

A proposed annexation of a portion of the territory included within the proposed incorporation, that is initiated by the filing of an annexation petition or adoption of an annexation resolution after this ninety-day period, shall be held in abeyance and may not occur unless: (1) The boundary review board modifies the boundaries of the proposed incorporation to remove the territory from the proposed incorporation; (2) the boundary review board rejects the proposed incorporation and the proposed city or town has a population of less than seven thousand five hundred; or (3) voters defeat the ballot proposition authorizing the proposed incorporation. [1994 c 216 § 5.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

### **35.02.160 Cancellation, acquisition of franchise or permit for operation of public service business in territory incorporated—Regulation of solid waste collection.**

The incorporation of any territory as a city or town shall cancel, as of the effective date of such incorporation, any franchise or permit theretofore granted to any person, firm or cor-

poration by the state of Washington, or by the governing body of such incorporated territory, authorizing or otherwise permitting the operation of any public transportation, garbage disposal or other similar public service business or facility within the limits of the incorporated territory, but the holder of any such franchise or permit canceled pursuant to this section shall be forthwith granted by the incorporating city or town a franchise to continue such business within the incorporated territory for a term of not less than the remaining term of the original franchise or permit, or not less than seven years, whichever is the shorter period, and the incorporating city or town, by franchise, permit or public operation, shall not extend similar or competing services to the incorporated territory except upon a proper showing of the inability or refusal of such person, firm or corporation to adequately service said incorporated territory at a reasonable price: PROVIDED, That the provisions of this section shall not preclude the purchase by the incorporating city or town of said franchise, business, or facilities at an agreed or negotiated price, or from acquiring the same by condemnation upon payment of damages, including a reasonable amount for the loss of the franchise or permit. In the event that any person, firm or corporation whose franchise or permit has been canceled by the terms of this section shall suffer any measurable damages as a result of any incorporation pursuant to the provisions of chapter 35.02 RCW, such person, firm or corporation shall have a right of action against any city or town causing such damages.

After the incorporation of any city or town, the utilities and transportation commission shall continue to regulate solid waste collection within the limits of the incorporated city or town until such time as the city or town notifies the commission, in writing, of its decision to contract for solid waste collection or provide solid waste collection itself pursuant to RCW 81.77.020. In the event the incorporated city or town at any time decides to contract for solid waste collection or decides to undertake solid waste collection itself, the holder of any such franchise or permit that is so canceled in whole or in part shall be forthwith granted by the incorporated city or town a franchise to continue such business within the incorporated territory for a term of not less than the remaining term of the original franchise or permit, or not less than seven years, whichever is the shorter period, and the incorporated city or town, by franchise, permit, or public operation, shall not extend similar or competing services to the incorporated territory except upon a proper showing of the inability or refusal of such person, firm, or corporation to adequately service the incorporated territory at a reasonable price. Upon the effective date specified by the city or town council's ordinance or resolution to have the city or town contract for solid waste collection or undertake solid waste collection itself, the transition period specified in this section begins to run. This section does not preclude the purchase by the incorporated city or town of the franchise, business, or facilities at an agreed or negotiated price, or from acquiring the same by condemnation upon payment of damages, including a reasonable amount for the loss of the franchise or permit. In the event that any person, firm, or corporation whose franchise or permit has been canceled in whole or in part by the terms of this section suffers any measurable damages as a result of any incorporation pursuant to this chapter,

such person, firm, or corporation has a right of action against any city or town causing such damages. [1997 c 171 § 1; 1986 c 234 § 24; 1965 ex.s. c 42 § 1.]

**Severability—1997 c 171:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 171 § 5.]

**35.02.170 Use of right of way line as corporate boundary—When right of way may be included.** The right of way line of any public street, road or highway, or any segment thereof, may be used to define a part of a corporate boundary in an incorporation proceeding. The boundaries of a newly incorporated city or town shall not include a portion of the right of way of any public street, road or highway except where the boundary runs from one edge of the right of way to the other edge of the right of way. [1989 c 84 § 7; 1986 c 234 § 25; 1975 1st ex.s. c 220 § 2.]

**Legislative finding, intent—1975 1st ex.s. c 220:** "The legislature finds that the use of centerlines of public streets, roads and highways as boundaries of incorporated cities and towns has resulted in divided jurisdiction over such public ways causing inefficiencies and waste in their construction, improvement and maintenance and impairing effective traffic law enforcement. It is the intent of this act to preclude the use of highway centerlines as corporate boundaries in the future and to encourage counties and cities and towns by agreement to revise existing highway centerline boundaries to coincide with highway right of way lines." [1975 1st ex.s. c 220 § 1.] For codification of 1975 1st ex.s. c 220, see Codification Tables, Volume 0.

*Revision of corporate boundary by substituting right of way lines: RCW 35.21.790.*

**35.02.180 Ownership of county roads to revert to city or town—Territory within city or town to be removed from fire protection, road, and library districts.** The ownership of all county roads located within the boundaries of a newly incorporated city or town shall revert to the city or town and become streets as of the official date of incorporation. However, any special assessments attributable to these county roads shall continue to exist and be collected as if the incorporation had not occurred. Property within the newly incorporated city or town shall continue to be subject to any indebtedness attributable to these roads and any related property tax levies.

The territory included within the newly incorporated city or town shall be removed from the road district as of the official date of incorporation. The territory included within the newly incorporated city or town shall be removed from a fire protection district or districts or library district or districts in which it was located, as of the official date of incorporation, unless the fire protection district or districts have annexed the city or town during the interim period as provided in \*RCW 52.04.160 through 52.04.200, or the library district or districts have annexed the city or town during the interim period as provided in \*\*RCW 27.12.260 through 27.12.290. [1986 c 234 § 17.]

**Reviser's note:** \*(1) RCW 52.04.160 has been decodified and RCW 52.04.170 through 52.04.200 have been recodified as RCW 52.04.061 through 52.04.101, pursuant to 1984 c 230 § 89.

\*\*\*(2) The reference to "RCW 27.12.260 through 27.12.290" appears to be erroneous. RCW 27.12.360 through 27.12.395 relates to annexation of a city or town by a library district.

**35.02.190 Annexation/incorporation of fire protection district—Transfer of assets when at least sixty per-**

**cent of assessed valuation is annexed or incorporated in city or town.** If a portion of a fire protection district including at least sixty percent of the assessed valuation of the real property of the district is annexed to or incorporated into a city or town, ownership of all of the assets of the district shall be vested in the city or town, or, if the city or town has been annexed by another fire protection district, in the other fire protection district, upon payment in cash, properties or contracts for fire protection services to the district within one year of the date on which the city or town withdraws from the fire protection district pursuant to RCW 52.04.161, of a percentage of the value of said assets equal to the percentage of the value of the real property in entire district remaining outside the incorporated or annexed area. The fire protection district may elect, by a vote of a majority of the persons residing outside the annexed or incorporated area who vote on the proposition, to require the annexing or incorporating city or town or fire protection district to assume responsibility for the provision of fire protection, and for the operation and maintenance of the district's property, facilities, and equipment throughout the district and to pay the city or town or fire protection district a reasonable fee for such fire protection, operation, and maintenance. When at least sixty percent, but less than one hundred percent, valuation of the real estate of a district is annexed to or incorporated into a city or town, a proportionate share of the liabilities of the district at the time of such annexation or incorporation, equal to the percentage of the total assessed valuation of the real estate of the district that has been annexed or incorporated, shall be transferred to the annexing or incorporating city or town.

If all of a fire protection district is included in an area that incorporates as a city or town or is annexed to a city or town or fire protection district, all of the assets and liabilities of the fire protection district shall be transferred to the newly incorporated city or town on the date on which the fire protection district ceases to provide fire protection services pursuant to RCW 52.04.161 or to the city or town or fire protection district upon the annexation. [1993 c 262 § 3; 1989 c 76 § 2; 1986 c 234 § 18; 1981 c 332 § 5; 1965 c 7 § 35.13.247. Prior: 1963 c 231 § 3. Formerly RCW 35.13.247.]

**Severability—1981 c 332:** See note following RCW 35.13.165.

**35.02.200 Annexation/incorporation of fire protection district—Ownership of assets of fire protection district—When less than sixty percent.** (1) If a portion of a fire protection district including less than sixty percent of the assessed value of the real property of the district is annexed to or incorporated into a city or town, the ownership of all assets of the district shall remain in the district and the district shall pay to the city or town, or, if the city or town has been annexed by another fire protection district, to the other fire protection district within one year or within such period of time as the district continues to collect taxes in such incorporated or annexed areas, in cash, properties or contracts for fire protection services, a percentage of the value of said assets equal to the percentage of the value of the real property in the entire district lying within the area so incorporated or annexed: PROVIDED, That if the area annexed or incorporated includes less than five percent of the area of the district,

no payment shall be made to the city or town or fire protection district except as provided in RCW 35.02.205.

(2) As provided in RCW 35.02.210, the fire protection district from which territory is removed as a result of an incorporation or annexation shall provide fire protection to the incorporated or annexed area for such period as the district continues to collect taxes levied in such annexed or incorporated area.

(3) For the purposes of this section, the word "assets" shall mean the total assets of the fire district, reduced by its liabilities, including bonded indebtedness, the same to be determined by usual and accepted accounting methods. The amount of said liability shall be determined by reference to the fire district's balance sheet, produced in the regular course of business, which is nearest in time to the certification of the annexation of fire district territory by the city or town. [1997 c 245 § 2. Prior: 1989 c 267 § 1; 1989 c 76 § 3; 1986 c 234 § 19; 1967 c 146 § 1; 1965 c 7 § 35.13.248; prior: 1963 c 231 § 4. Formerly RCW 35.13.248.]

**35.02.202 Annexation/incorporation of fire protection district—Delay of transfer.** During the interim period, the governing body of the newly formed city or town and the board of fire commissioners may by written agreement delay the transfer of the district's assets and liabilities, and the city's or town's responsibility for the provision of fire protection, that would otherwise occur under RCW 35.02.190 or 35.02.200 for up to one year after the official date of incorporation. During the one-year period, the fire protection district may annex the city or town pursuant to chapter 52.04 RCW and retain the responsibility for fire protection. [1991 c 360 § 7.]

**35.02.205 Annexation/incorporation of fire protection district—Distribution of assets of district when less than five percent of district annexed—Distribution agreement—Arbitration.** (1) A distribution of assets from the fire protection district to the city or town shall occur as provided in this section upon the annexation or, in the case of an incorporation, on the date on which the city or town withdraws from the fire protection district pursuant to RCW 52.04.161, of an area by the city or town that constitutes less than five percent of the area of the fire protection district upon the adoption of a resolution by the city or town finding that the annexation or incorporation will impose a significant increase in the fire suppression responsibilities of the city or town with a corresponding reduction in fire suppression responsibilities by the fire protection district. Such a resolution must be adopted within sixty days of the effective date of the annexation, or within sixty days of the official date of incorporation of the city. If the fire protection district does not concur in the finding within sixty days of when a copy of the resolution is submitted to the board of commissioners, arbitration shall proceed under subsection (3) of this section over this issue.

(2) An agreement on the distribution of assets from the fire protection district to the city or town shall be entered into by the city or town and the fire protection district within ninety days of the concurrence by the fire protection district under subsection (1) of this section, or within ninety days of

a decision by the arbitrators under subsection (3) of this section that a significant increase in the fire protection responsibilities will be imposed upon the city or town as a result of the incorporation or annexation. A distribution shall be based upon the extent of the increased fire suppression responsibilities with a corresponding reduction in fire suppression responsibilities by the fire protection district, and shall consider the impact of any debt obligation that may exist on the property that is so annexed or incorporated. If an agreement is not entered into after this ninety-day period, arbitration shall proceed under subsection (3) of this section concerning this issue unless both parties have agreed to an extension of this period.

(3) Arbitration shall proceed under this subsection over the issue of whether a significant increase in the fire protection responsibilities will be imposed upon the city or town as a result of the annexation or incorporation with a corresponding reduction in fire suppression responsibilities by the fire protection district, or over the distribution of assets from the fire protection district to the city or town if such a significant increase in fire protection responsibilities will be imposed. A board of arbitrators shall be established for an arbitration that is required under this section. The board of arbitrators shall consist of three persons, one of whom is appointed by the city or town within sixty days of the date when arbitration is required, one of whom is appointed by the fire protection district within sixty days of the date when arbitration is required, and one of whom is appointed by agreement of the other two arbitrators within thirty days of the appointment of the last of these other two arbitrators who is so appointed. If the two are unable to agree on the appointment of the third arbitrator within this thirty-day period, then the third arbitrator shall be appointed by a judge in the superior court of the county within which all or the greatest portion of the area that was so annexed or incorporated lies. The determination by the board of arbitrators shall be binding on both the city or town and the fire protection district. [1993 c 262 § 4; 1989 c 267 § 3.]

**35.02.210 Fire protection district and library district—Continuation of services at option of city or town.** At the option of the governing body of a newly incorporated city or town, any fire protection district or library district serving any part of the area so incorporated shall continue to provide services to such area until the city or town receives its own property tax receipts. [1991 c 360 § 8; 1986 c 234 § 21; 1967 ex.s. c 119 § 35A.03.160. Formerly RCW 35A.03.160.]

**35.02.220 Duty of county and road, library, and fire districts to continue services during transition period—Road maintenance and law enforcement services.** The approval of an incorporation by the voters of a proposed city or town, and the existence of a transition period to become a city or town, shall not remove the responsibility of any county, road district, library district, or fire district, within which the area is located, to continue providing services to the area until the official date of the incorporation.

A county shall continue to provide the following services to a newly incorporated city or town, or that portion of the

county within which the newly incorporated city or town is located, at the preincorporation level as follows:

(1) Law enforcement services shall be provided for a period not to exceed sixty days from the official date of the incorporation or until the city or town is receiving or could have begun receiving sales tax distributions under RCW 82.14.030(1), whichever is the shortest time period.

(2) Road maintenance shall be for a period not to exceed sixty days from the official date of the incorporation or until forty percent of the anticipated annual tax distribution from the road district tax levy is made to the newly incorporated city or town pursuant to RCW 35.02.140, whichever is the shorter time period. [1991 c 360 § 9; 1986 c 234 § 22; 1985 c 143 § 1. Formerly RCW 35.21.763.]

**35.02.225 County may contract to provide essential services.** It is the desire of the legislature that the citizens of newly incorporated cities or towns receive uninterrupted and adequate services in the period prior to the city or town government attaining the ability to provide such service levels. In addition to the services provided under RCW 35.02.220, it is the purpose of this section to permit the county or counties in which a newly incorporated city or town is located to contract with the newly incorporated city or town for the continuation of essential services until the newly incorporated city or town has attained the ability to provide such services at least at the levels provided by the county before the incorporation. These essential services may include but are not limited to, law enforcement, road and street maintenance, drainage, and other utility services previously provided by the county before incorporation. The contract should be negotiated on the basis of the county's cost to provide services without consideration of capital assets which do not continue to be amortized for principal and interest or depreciated by the county. The exception for not considering capital assets which are no longer amortized for principal and interest or depreciated is recognition of the preexisting financial investment of citizens of the newly incorporated city or town have made in county capital assets.

Nothing in this section limits the ability of the county and the newly incorporated city or town to contract for higher service levels or for other time periods than those imposed by this section. [1985 c 332 § 7. Formerly RCW 35.21.764.]

**35.02.230 Incorporation of city or town located in more than one county—Powers and duties of county after incorporation—Costs.** After incorporation of a city or town located in more than one county, all purposes essential to the maintenance, operation, and administration of the city or town whenever any action is required or may be performed by the county, county legislative authority, or any county officer or board, such action shall be performed by the respective county, county legislative authority, officer, or board of the county of that part of the city or town in which the largest number of inhabitants reside as of the date of the incorporation of the proposed city or town except as provided in RCW 35.02.240, and all costs incurred shall be borne proportionately by each county in that ratio which the number of inhabitants residing in that part of each county forming a part of the proposed city or town bears to the total number of

inhabitants residing within the whole of the city or town. [1986 c 234 § 26; 1965 c 7 § 35.04.150. Prior: 1955 c 345 § 15. Formerly RCW 35.04.150.]

**35.02.240 Incorporation of city or town located in more than one county—Taxes—Powers and duties of county after incorporation—Costs.** In the case of evaluation, assessment, collection, apportionment, and any other allied power or duty relating to taxes in connection with the city or town, the action shall be performed by the county, county legislative authority, or county officer or board of the county for that area of the city or town which is located within the respective county, and all materials, information, and other data and all moneys collected shall be submitted to the proper officer of the county of that part of the city or town in which the largest number of inhabitants reside. Any power which may be or duty which shall be performed in connection therewith shall be performed by the county, county legislative authority, officer, or board receiving such as though only a city or town in a single county were concerned. All moneys collected from such area constituting a part of such city or town that should be paid to such city or town shall be delivered to the treasurer thereof, and all other materials, information, or data relating to the city or town shall be submitted to the appropriate city or town officials.

Any costs or expenses incurred under this section shall be borne proportionately by each county involved. [1986 c 234 § 27; 1965 c 7 § 35.04.160. Prior: 1955 c 345 § 16. Formerly RCW 35.04.160.]

**35.02.250 Corporate powers in dealings with federal government.** Any city or town incorporated as provided in this chapter shall, in addition to all other powers, duties and benefits of a city or town of the same type or class, be authorized to purchase, acquire, lease, or administer any property, real or personal, or property rights and improvements thereon owned by the federal government on such terms and conditions as may be mutually agreed upon, when authorized to do so by the United States government, and thereafter to sell, transfer, exchange, lease, or otherwise dispose of any such property, and to execute contracts with the federal government with respect to supplying water and for other utility services. [1986 c 234 § 28; 1965 c 7 § 35.04.170. Prior: 1955 c 345 § 17. Formerly RCW 35.04.170.]

**35.02.260 Duty of department of community, trade, and economic development to assist newly incorporated cities and towns.** The department of community, trade, and economic development shall identify federal, state, and local agencies that should receive notification that a new city or town is about to incorporate and shall assist newly formed cities and towns during the interim period before the official date of incorporation in providing such notification to the identified agencies. [1995 c 399 § 34; 1991 c 360 § 6.]

**35.02.270 Other local governments and state agencies—May assist newly incorporated cities and towns.** Cities, towns, counties, and other local government agencies and state agencies may make loans of staff and equipment, and technical and financial assistance to the newly formed

city or town during the interim period to facilitate the transition to an incorporated city or town. Such loans and assistance may be without compensation. [1991 c 360 § 12.]

**Chapter 35.06 RCW**

**ADVANCEMENT OF CLASSIFICATION**

Sections

- 35.06.010 Population requirements for advance in classification.
- 35.06.070 Procedure for advancement—Ballot proposition—Notification of secretary of state.
- 35.06.080 Election of new officers.

*Municipal corporations classified: Chapter 35.01 RCW.*

*Population determinations: Chapter 43.62 RCW.*

**35.06.010 Population requirements for advance in classification.** A city or town which has at least ten thousand inhabitants may become a first class city by adopting a charter under Article XI, section 10, of the state Constitution in chapter 35.22 RCW.

A town which has at least fifteen hundred inhabitants may reorganize and advance its classification to become a second class city as provided in this chapter. [1994 c 81 § 7; 1965 c 7 § 35.06.010. Prior: 1955 c 319 § 6; prior: (i) 1907 c 248 § 1, part; 1890 p 140 § 12, part; RRS § 8933, part. (ii) 1890 p 141 § 14; RRS § 8936.]

**35.06.070 Procedure for advancement—Ballot proposition—Notification of secretary of state.** A ballot proposition authorizing an advancement in classification of a town to a second class city shall be submitted to the voters of the town if either: (1) Petitions proposing the advancement are submitted to the town clerk that have been signed by voters of the town equal in number to at least ten percent of the voters of the town voting at the last municipal general election; or (2) the town council adopts a resolution proposing the advancement. The clerk shall immediately forward the petitions to the county auditor who shall review the signatures and certify the sufficiency of the petitions.

A ballot proposition authorizing an advancement shall be submitted to the town voters at the next municipal general election occurring forty-five or more days after the petitions are submitted if the county auditor certifies the petitions as having sufficient valid signatures. The town shall be advanced to a second class city if the ballot proposition is approved by a simple majority vote, effective when the corporation is actually reorganized and the new officers are elected and qualified. The county auditor shall notify the secretary of state if the advancement of a town to a second class city is approved. [1994 c 81 § 8; 1965 c 7 § 35.06.070. Prior: 1890 p 142 § 21; RRS § 8942.]

**35.06.080 Election of new officers.** The first election of officers of the new corporation after the advancement of classification is approved shall be at the next general municipal election and the officers of the old corporation, as altered by the election when the advancement was approved, shall remain in office until the officers of the new corporation are elected and qualified and assume office in accordance with \*RCW 29.04.170. A primary shall be held where necessary to nominate candidates for the elected offices of the corpora-

tion as a second class city. Candidates for city council positions shall run for specific council positions. The council of the old corporation may adopt a resolution providing that the offices of city attorney, clerk, and treasurer are appointive.

The three persons who are elected to council positions one through six receiving the greatest number of votes shall be elected to four-year terms of office and the other three persons who are elected to council positions one through six, and the person elected to council position seven, shall be elected to two-year terms of office. The person elected as mayor and the persons elected to any other elected office shall be elected to four-year terms of office. All successors to all elected positions, other than council position number seven, shall be elected to four-year terms of office and successors to council position number seven shall be elected to two-year terms of office.

There shall be no election of town offices at this election when the first officers of the new corporation are elected and the offices of the town shall expire when the officers of the new corporation assume office.

The ordinances, bylaws, and resolutions adopted by the old corporation shall, as far as consistent with the provisions of this title, continue in force until repealed by the council of the new corporation.

The council and officers of the town shall, upon demand, deliver to the proper officers of the new corporation all books of record, documents, and papers in their possession belonging to the old corporation. [1994 c 81 § 9; 1965 c 106 § 1; 1965 c 7 § 35.06.080. Prior: 1890 p 143 § 22; RRS § 8942.]

\*Reviser's note: RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Chapter 35.07 RCW**

**DISINCORPORATION**

Sections

- 35.07.001 Actions subject to review by boundary review board.
- 35.07.010 Authority for disincorporation.
- 35.07.020 Petition—Requisites.
- 35.07.040 Calling election—Receiver.
- 35.07.050 Notice of election.
- 35.07.060 Ballots.
- 35.07.070 Conduct of election.
- 35.07.080 Canvass of returns.
- 35.07.090 Effect of disincorporation—Powers—Officers.
- 35.07.100 Effect of disincorporation—Existing contracts.
- 35.07.110 Effect of disincorporation—Streets.
- 35.07.120 Receiver—Qualification—Bond.
- 35.07.130 Elected receiver—Failure to qualify—Court to appoint.
- 35.07.140 No receiver elected though indebtedness exists—Procedure.
- 35.07.150 Duties of receiver—Claims—Priority.
- 35.07.160 Receiver may sue and be sued.
- 35.07.170 Receiver—Power to sell property.
- 35.07.180 Receiver—Power to levy taxes.
- 35.07.190 Receiver's compensation.
- 35.07.200 Receiver—Removal for cause.
- 35.07.210 Receiver—Successive appointments.
- 35.07.220 Receiver—Final account and discharge.
- 35.07.225 Applicability of general receivership law.
- 35.07.230 Involuntary dissolution of towns—Authorized.
- 35.07.240 Involuntary dissolution of towns—Notice of hearing.
- 35.07.250 Involuntary dissolution of towns—Hearing.
- 35.07.260 Involuntary dissolution of towns—Alternative forms of order.

*Census to be made in decennial periods: State Constitution Art. 2 § 3.*

*Obligations of contract: State Constitution Art. 1 § 23.*

*Population determinations: Chapter 43.62 RCW.*

**35.07.001 Actions subject to review by boundary review board.** Actions taken under chapter 35.07 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 26.]

**35.07.010 Authority for disincorporation.** Cities and towns may disincorporate. [1994 c 81 § 10; 1965 c 7 § 35.07.010. Prior: 1897 c 69 § 1; RRS § 8914.]

**35.07.020 Petition—Requisites.** The petition for disincorporation must be signed by a majority of the registered voters thereof and filed with the city or town council. [1965 c 7 § 35.07.020. Prior: 1897 c 69 § 2, part; RRS § 8915, part.]

**35.07.040 Calling election—Receiver.** The council shall cause an election to be called upon the proposition of disincorporation. If the city or town has any indebtedness or outstanding liabilities, it shall order the election of a receiver at the same time. [1997 c 361 § 4; 1965 c 7 § 35.07.040. Prior: 1897 c 69 § 2, part; RRS § 8915, part.]

**35.07.050 Notice of election.** Notice of such election shall be given as provided in \*RCW 29.27.080. [1965 c 7 § 35.07.050. Prior: 1897 c 69 § 3; RRS § 8916.]

**\*Reviser's note:** RCW 29.27.080 was recodified as RCW 29A.52.350 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.52.350 was subsequently repealed by 2004 c 271 § 193.

**35.07.060 Ballots.** The ballots for the election shall be printed at the expense of the municipality and there shall be printed thereon the words "for dissolution" in one line and the words "against dissolution" in another line and in other and separate lines, the names of each of the lawfully nominated candidates for receiver. In all other respects the ballots shall be in conformity with the law regulating elections in such cities and towns. [1965 c 7 § 35.07.060. Prior: 1897 c 69 § 4; RRS § 8917.]

**35.07.070 Conduct of election.** The election shall be conducted as other elections are required by law to be conducted in the city or town except as in this chapter otherwise provided. [1965 c 7 § 35.07.070. Prior: 1897 c 69 § 5; RRS § 8918.]

*Conduct of elections—Canvass: RCW 29A.60.010.*

**35.07.080 Canvass of returns.** The result of the election, together with the ballots cast, shall be certified by the canvassing authority to the council which shall meet within one week thereafter and shall declare the result which shall be made a matter of record in the journal of the council proceedings. If the vote "For dissolution" be a majority of the registered voters of such city or town voting at such election, such corporation shall be deemed dissolved. [1965 c 7 § 35.07.080. Prior: 1933 c 128 § 1, part; 1897 c 69 § 6, part; Rem. Supp. §8919, part.]

*Canvassing returns, generally: Chapter 29A.60 RCW.*

**35.07.090 Effect of disincorporation—Powers—Officers.** Upon disincorporation of a city or town, its powers and privileges as such, are surrendered to the state and it is

absolved from any further duty to the state or its own inhabitants and all the offices appertaining thereto shall cease to exist immediately upon the entry of the result: PROVIDED, That if a receiver is required, the officers shall continue in the exercise of all their powers until a receiver has qualified as such, and thereupon shall surrender to him all property, money, vouchers, records and books of the city or town including those in any manner pertaining to its business. [1965 c 7 § 35.07.090. Prior: 1933 c 128 § 1, part; 1897 c 69 § 6, part; RRS § 8919, part.]

**35.07.100 Effect of disincorporation—Existing contracts.** Disincorporation shall not impair the obligation of any contract. If any franchise lawfully granted has not expired at the time of disincorporation, the disincorporation does not impair any right thereunder and does not imply any authority to interfere therewith to any greater extent than the city or town might have, if it had remained incorporated. [1965 c 7 § 35.07.100. Prior: 1897 c 69 § 18; RRS § 8931.]

*Obligations of contract shall not be impaired: State Constitution Art. 1 § 23.*

**35.07.110 Effect of disincorporation—Streets.** Upon disincorporation of a city or town, its streets and highways pass to the control of the state and shall remain public highways until closed in pursuance of law; and the territory embraced therein shall be made into a new road district or annexed to adjoining districts as may be ordered by the board of county commissioners of the county embracing such city or town. [1965 c 7 § 35.07.110. Prior: 1897 c 69 § 17; RRS § 8930.]

**35.07.120 Receiver—Qualification—Bond.** The receiver must qualify within ten days after he has been declared elected, by filing with the county auditor a bond equal in penalty to the audited indebtedness and the established liabilities of the city or town with sureties approved by the board of county commissioners, or if the board is not in session, by the judge of the superior court of the county. The bond shall run to the state and shall be conditioned for the faithful performance of his duties as receiver and the prompt payment in the order of their priority of all lawful claims finally established as the funds come into his hands to discharge them. The bond shall be filed with the county auditor and shall be a public record and shall be for the benefit of every person who may be injured by the receiver's failure to discharge his duty. [1965 c 7 § 35.07.120. Prior: 1897 c 69 § 7; RRS § 8920.]

**35.07.130 Elected receiver—Failure to qualify—Court to appoint.** If the person elected receiver fails to qualify as such within the prescribed time, the council shall file in the superior court of the county a petition setting forth the fact of the election, its result and the failure of the person elected receiver to qualify within the prescribed time and praying for the appointment of another person as receiver. Notice of the filing of the petition and of the time fixed for hearing thereon must be served upon the person elected receiver at least three days before the time fixed for the hearing. If he cannot be found within the county, no notice need be served, and the court may proceed with full jurisdiction to

determine the matter upon the hearing. Unless good cause to the contrary is shown, the court shall appoint some suitable person to act as receiver, who shall qualify as required by RCW 35.07.120 within ten days from the date of his appointment.

If the council fails to procure the appointment of a receiver, any person qualified to vote in the city or town may file such a petition and make such application. [1965 c 7 § 35.07.130. Prior: 1897 c 69 § 8; RRS § 8921.]

**35.07.140 No receiver elected though indebtedness exists—Procedure.** If no receiver is elected upon the supposition that no indebtedness existed and it transpires that the municipality does have indebtedness or an outstanding liability, any interested person may file a petition in the superior court asking for the appointment of a receiver, and unless the indebtedness or liability is discharged, the court shall appoint some suitable person to act as receiver who shall qualify as required of any other receiver hereunder, within ten days from the date of his appointment. [1965 c 7 § 35.07.140. Prior: 1897 c 69 § 15; RRS § 8928.]

**35.07.150 Duties of receiver—Claims—Priority.** The receiver, upon qualifying, shall take possession of all the property, money, vouchers, records and books of the former municipality including those in any manner pertaining to its business and proceed to wind up its affairs. He shall have authority to pay:

(1) All outstanding warrants and bonds in the order of their maturity with due regard to the fund on which they are properly a charge;

(2) All lawful claims against the corporation which have been audited and allowed by the council;

(3) All lawful claims which may be presented to him within the time limited by law for the presentation of such claims, but no claim shall be allowed or paid which is not presented within six months from the date of the disincorporation election;

(4) All claims that by final adjudication may come to be established as lawful claims against the corporation.

As between warrants, bonds and other claims, their priority shall be determined with regard to the fund on which they are properly a charge. [1965 c 7 § 35.07.150. Prior: 1897 c 69 § 9; RRS § 8922.]

*Accident claims, audits: Chapter 35.31 RCW, RCW 35.23.261.*

**35.07.160 Receiver may sue and be sued.** The receiver shall have the right to sue and be sued in all cases necessary or proper for the purpose of winding up the affairs of the former city or town and shall be subject to suit in all cases wherein the city or town might have been sued, subject to the limitations provided in this chapter. [1965 c 7 § 35.07.160. Prior: 1897 c 69 § 12; RRS § 8925.]

**35.07.170 Receiver—Power to sell property.** The receiver shall be authorized to sell at public auction after such public notice as the sheriff is required to give of like property sold on execution, all the property of the former municipality except such as is necessary for his use in winding up its

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affairs, and excepting also such as has been dedicated to public use.

Personal property shall be sold for cash.

Real property may be sold for all cash, or for one-half cash and the remainder in deferred payments, the last payment not to be later than one year from date of sale. Title shall not pass until all deferred payments have been fully paid. [1965 c 7 § 35.07.170. Prior: 1897 c 69 § 10, part; RRS § 8923.]

**35.07.180 Receiver—Power to levy taxes.** In the same manner and to the same extent as the proper authorities of the former city or town could have done had it not been disincorporated, the receiver shall be authorized to levy taxes on all taxable property, to receive the taxes when collected and to apply them together with the proceeds arising from sales to the extinguishment of the obligations of the former city or town.

After all the lawful claims against the former city or town have been paid excepting bonds not yet due, no levy greater than fifty cents per thousand dollars of assessed value shall be made; nor shall the levy be greater than sufficient to meet the accruing interest until the bonds mature. [1973 1st ex.s. c 195 § 11; 1965 c 7 § 35.07.180. Prior: 1897 c 69 § 10, part; RRS § 8923, part.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**35.07.190 Receiver's compensation.** The receiver shall be entitled to deduct from any funds coming into his hands a commission of six percent on the first thousand dollars, five percent on the second thousand and four percent on any amount over two thousand dollars as his full compensation exclusive of necessary traveling expenses and necessary disbursements, but not exclusive of attorney's fees. [1965 c 7 § 35.07.190. Prior: 1897 c 69 § 11; RRS § 8924.]

**35.07.200 Receiver—Removal for cause.** The receiver shall proceed to wind up the affairs of the corporation with diligence and for negligence or misconduct in the discharge of his duties may be removed by the superior court upon a proper showing made by a taxpayer of the former city or town or by an unsatisfied creditor thereof. [1965 c 7 § 35.07.200. Prior: 1897 c 69 § 13, part; RRS § 8926, part.]

**35.07.210 Receiver—Successive appointments.** In the case of removal, death, or resignation of a receiver, the court may appoint a new receiver to take charge of the affairs of the former city or town. [1965 c 7 § 35.07.210. Prior: 1897 c 69 § 13, part; RRS § 8926, part.]

**35.07.220 Receiver—Final account and discharge.** Upon the final payment of all lawful demands against the former city or town, the receiver shall file a final account, together with all vouchers, with the clerk of the superior court. Any funds remaining in his hands shall be paid to the county treasurer for the use of the school district in which the former city or town was situated; and thereupon the receivership shall be at an end. [1965 c 7 § 35.07.220. Prior: 1897 c 69 § 14; RRS § 8927.]

**35.07.225 Applicability of general receivership law.**

The provisions of Title 7 RCW generally applicable to receivers and receiverships do not apply to receivers elected or appointed under this chapter. [2004 c 165 § 43.]

**Purpose—Captions not law—2004 c 165:** See notes following RCW 7.60.005.

**35.07.230 Involuntary dissolution of towns—Authorized.** If any town fails for two successive years to hold its regular municipal election, or if the officers elected at the regular election of any town fail for two successive years to qualify and the government of the town ceases to function by reason thereof, the state auditor may petition the superior court of the county for an order, dissolving the town. In addition to stating the facts which would justify the entry of such an order, the petition shall set forth a detailed statement of the assets and liabilities of the town insofar as they can be ascertained. [1995 c 301 § 34; 1965 c 7 § 35.07.230. Prior: 1925 ex.s. c 76 § 1; RRS § 8931-1.]

**35.07.240 Involuntary dissolution of towns—Notice of hearing.** Upon the filing of a petition for the involuntary dissolution of a town, the superior court shall enter an order fixing the time for hearing thereon at a date not less than thirty days from date of filing. The state auditor shall give notice of the hearing by publication in a newspaper of general circulation in the county, once a week for three successive weeks, and by posting in three public places in the town, stating therein the purpose of the petition and the date and place of hearing thereon. [1985 c 469 § 18; 1965 c 7 § 35.07.240. Prior: 1925 ex.s. c 76 § 2; RRS § 8931-2.]

**35.07.250 Involuntary dissolution of towns—Hearing.** Any person owning property in or qualified to vote in the town may appear at the hearing and file written objections to the granting of the petition. If the court finds that the town has failed for two successive years to hold its regular municipal election or that its officers elected at a regular election have failed to qualify for two successive years thereby causing the government of the town to cease to function, it shall enter an order for disincorporation of the town. [1965 c 7 § 35.07.250. Prior: 1925 ex.s. c 76 § 3, part; RRS § 8931-3, part.]

**35.07.260 Involuntary dissolution of towns—Alternative forms of order.** (1) If the court finds that the town has no indebtedness and no assets, the order of dissolution shall be effective forthwith.

(2) If the court finds that the town has assets, but no indebtedness or liabilities, it shall order a sale of the assets other than cash by the sheriff in the manner provided by law for the sale of property on execution. The proceeds of the sale together with any money on hand in the treasury of the town, after deducting the costs of the proceeding and sale, shall be paid into the county treasury and placed to the credit of the school district in which the town is located.

(3) If the court finds that the town has indebtedness or liabilities and assets other than cash, it shall order the sale of the assets as provided in subsection (2) hereof and that the proceeds thereof and the cash on hand shall be applied to the payment of the indebtedness and liabilities.

(4) If the court finds that the town has indebtedness or liabilities, but no assets or that the assets are insufficient to pay the indebtedness and liabilities, it shall order the board of county commissioners to levy from year to year a tax on the taxable property within the boundaries of the former town until the indebtedness and liabilities are paid. All taxes delinquent at the date of dissolution when collected shall be applied to the payment of the indebtedness and liabilities. Any balance remaining from the collection of delinquent taxes and taxes levied under order of the court, after payment of the indebtedness and liabilities shall be placed to the credit of the school district in which the town is located. [1965 c 7 § 35.07.260. Prior: 1925 ex.s. c 76 § 3, part; RRS § 8931-3, part.]

**Chapter 35.10 RCW****CONSOLIDATION AND ANNEXATION OF CITIES AND TOWNS**

## Sections

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*Census to be conducted in decennial periods: State Constitution Art. 2 § 3. Consolidation and annexation exempt from state environmental policy act: RCW 43.21C.225.*

*Population determinations: Chapter 43.62 RCW.*

*Procedure to attack consolidation or annexation affecting a city of the second class: RCW 35.23.545.*

**35.10.001 Actions subject to review by boundary review board.** Actions taken under chapter 35.10 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 27.]

**35.10.203 Purpose.** The purpose of this chapter is to establish clear and uniform provisions of law governing the consolidation of all types and classes of cities. [1985 c 281 § 1.]

**35.10.207 "City" defined.** As used in this chapter, the term "city" means any city or town. [1985 c 281 § 2.]

**35.10.217 Methods for annexation.** The following methods are available for the annexation of all or a part of a city or town to another city or town:

(1) A petition for an election to vote upon the annexation, which proposed annexation is approved by the legislative body of the city or town from which the territory will be taken, may be submitted to the legislative body of the city or town to which annexation is proposed. An annexation under this subsection shall otherwise conform with the requirements for and procedures of a petition and election method of annexing unincorporated territory under chapter 35.13 RCW, except for the requirement for the approval of the annexation by the city or town from which the territory would be taken.

(2) The legislative body of a city or town may on its own initiative by resolution indicate its desire to be annexed to a city or town either in whole or in part, or the legislative body of a city or town proposing to annex all or part of another city or town may initiate the annexation by adopting a resolution indicating that desire. In case such resolution is passed, such resolution shall be transmitted to the other affected city or town. The annexation is effective if the other city or town adopts a resolution concurring in the annexation, unless the owners of property in the area proposed to be annexed, equal in value to sixty percent or more of the assessed valuation of the property in the area, protest the proposed annexation in writing to the legislative body of the city or town proposing to annex the area, within thirty days of the adoption of the second resolution accepting the annexation. Notices of the public hearing at which the second resolution is adopted shall be mailed to the owners of the property within the area proposed to be annexed in the same manner that notices of a hearing on a proposed local improvement district are required to be mailed by a city or town as provided in chapter 35.43 RCW. An annexation under this subsection shall be potentially subject to review by a boundary review board or other annexation review board after the adoption of the initial resolution, and the second resolution may not be adopted until the proposed annexation has been approved by the board.

(3) The owners of property located in a city or town may petition for annexation to another city or town. An annexation under this subsection shall conform with the requirements for and procedures of a direct petition method of annexing unincorporated territory, except that the legislative body of the city or town from which the territory would be taken must approve the annexation before it may proceed.

(4) All annexations under this section are subject to potential review by the local boundary review board or

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annexation review board. [1986 c 253 § 1; 1985 c 281 § 15; 1969 ex.s. c 89 § 4.]

**35.10.240 Annexation—Canvass of votes.** In all cases of annexation, the county canvassing board or boards shall canvass the votes cast thereat.

In an election on the question of the annexation of all or a part of a city to another city, the votes cast in the city or portion thereof to be annexed shall be canvassed, and if a majority of the votes cast be in favor of annexation, the results shall be included in a statement indicating the total number of votes cast.

A proposition for the assumption of indebtedness outside the constitutional and/or statutory limits by the other city or cities in which the indebtedness did not originate shall be deemed approved if a majority of at least three-fifths of the voters of each city in which the indebtedness did not originate votes in favor thereof, and the number of persons voting on such proposition constitutes not less than forty percent of the total number of votes cast in such cities in which indebtedness did not originate at the last preceding general election: PROVIDED, HOWEVER, That if general obligation bond indebtedness was incurred by action by the city legislative body, a proposition for the assumption of such indebtedness by the other city or cities in which such indebtedness did not originate shall be deemed approved if a majority of the voters of each city in which such indebtedness did not originate votes in favor thereof.

A duly certified copy of such statement of an annexation election shall be filed with the legislative body of each of the cities affected and recorded upon its minutes, and it shall be the duty of the clerk, or other officer performing the duties of clerk, of each of such legislative bodies, to transmit to the secretary of state and the office of financial management a duly certified copy of the record of such statement. [1985 c 281 § 16; 1981 c 157 § 1; 1973 1st ex.s. c 195 § 12; 1969 ex.s. c 89 § 7; 1967 c 73 § 17; 1965 c 7 § 35.10.240. Prior: 1929 c 64 § 5; RRS § 8909-5. Formerly RCW 35.10.070.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**Validating—1929 c 64:** "That the attempted consolidation of two or more contiguous municipal corporations pursuant to the provisions of either chapter 167 of the Laws of 1927 or chapter 293 of the Laws of 1927 be, and any such consolidation of any such cities or towns, is hereby in all respects validated." [1929 c 64 § 16.]

*Canvassing returns, generally:* Chapter 29A.60 RCW.

*Conduct of elections—Canvass:* RCW 29A.60.010.

**35.10.265 Annexation—When effective—Ordinance.** Immediately after the filing of the statement of an annexation election, the legislative body of the annexing city may, if it deems it wise or expedient, adopt an ordinance providing for the annexation. Upon the date fixed in the ordinance of annexation, the area annexed shall become a part of the annexing city. The clerk of the annexing city shall transmit a certified copy of this ordinance to the secretary of state and the office of financial management. [1985 c 281 § 17; 1981 c 157 § 3; 1969 ex.s. c 89 § 10.]

**35.10.300 Disposition of property and assets following consolidation or annexation.** Upon the consolidation of

two or more cities, or the annexation of any city to another city, as provided in this chapter, the title to all property and assets owned by, or held in trust for, such former city shall vest in such consolidated city, or annexing city, as the case may be: PROVIDED, That if any such former city, shall be indebted, the proceeds of the sale of any such property and assets not required for the use of such consolidated city, or annexing city, shall be applied to the payment of such indebtedness, if any exist at the time of such sale. [1985 c 281 § 18; 1969 ex.s. c 89 § 12; 1965 c 7 § 35.10.300. Prior: 1929 c 64 § 11; RRS § 8909-11. Formerly RCW 35.10.100 and 35.11.080, part.]

**35.10.310 Assets and liabilities of component cities—Taxation to pay claims.** Such consolidation, or annexation, shall in no wise affect or impair the validity of claim or chose in action existing in favor of or against, any such former city so consolidated or annexed, or any proceeding pending in relation thereto, but such consolidated or annexing city shall collect such claims in favor of such former cities, and shall apply the proceeds to the payment of any just claims against them respectively, and shall when necessary levy and collect taxes against the taxable property within any such former city sufficient to pay all just claims against it. [1985 c 281 § 19; 1969 ex.s. c 89 § 13; 1965 c 7 § 35.10.310. Prior: 1929 c 64 § 12; RRS § 8909-12. Formerly RCW 35.10.110, 35.10.130, part, and 35.11.080, part.]

**35.10.315 Adoption of final budget and levy of property taxes.** Upon the consolidation of two or more cities, or the annexation of any city after March 1st and prior to the date of adopting the final budget and levying the property tax dollar rate in that year for the next calendar year, the legislative body of the consolidated city or the annexing city is authorized to adopt the final budget and to levy the property tax dollar rate for the consolidated cities and any city annexed. [1985 c 281 § 20; 1973 1st ex.s. c 195 § 13; 1969 ex.s. c 89 § 14.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**35.10.317 Receipt of state funds.** Upon the consolidation of two or more cities, or the annexation of any city, the consolidated or annexing city shall receive all state funds to which the component cities would have been entitled to receive during the year when such consolidation or annexation became effective. [1985 c 281 § 21; 1969 ex.s. c 89 § 15.]

**35.10.320 Continuation of ordinances.** All ordinances in force within any such former city or cities, at the time of consolidation or annexation, not in conflict with the laws governing the consolidated city, or with the ordinances of the former city having the largest population, as shown by the last determination of the office of financial management shall remain in full force and effect until superseded or repealed by the legislative body of the consolidated or annexing city, and shall be enforced by such city, but all ordinances of such former cities, in conflict with such ordinances shall be deemed repealed by, and from and after, such consolidation

or annexation, but nothing in this section shall be construed to discharge any person from any liability, civil or criminal, for any violation of any ordinance of such former city or cities incurred prior to such consolidation or annexation. [1985 c 281 § 22; 1981 c 157 § 4; 1969 ex.s. c 89 § 16; 1965 c 7 § 35.10.320. Prior: 1929 c 64 § 13; RRS § 8909-13. Formerly RCW 35.10.120 and 35.11.080, part.]

**35.10.331 Unassumed indebtedness.** Unless indebtedness approved by the voters, contracted, or incurred prior to the date of consolidation or annexation as provided herein has been assumed by the voters in the other city or cities in which such indebtedness did not originate, such indebtedness continues to be the obligation of the city in which it originated, and the legislative body of the consolidated or annexing city shall continue to levy the necessary taxes within the former city that incurred this indebtedness to amortize such indebtedness. [1985 c 281 § 23; 1969 ex.s. c 89 § 17.]

**35.10.350 Cancellation, acquisition of franchise or permit for operation of public service business in territory annexed.** See RCW 35.13.280.

**35.10.360 Annexation—Transfer of fire department employees.** Upon the annexation of two or more cities or code cities, any employee of the fire department of the former city or cities who (1) was at the time of annexation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire department of the annexed city or code city, as the case may be, (2) will, as a direct consequence of annexation, be separated from the employ of the former city, code city or town, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer employment to the fire department of the annexing city, as provided in this section and RCW 35.10.365 and 35.10.370.

For purposes of this section and RCW 35.10.365 and 35.10.370, employee means an individual whose employment has been terminated because of annexation by a city, code city or town. [1986 c 254 § 4.]

**35.10.365 Annexation—Transfer of fire department employees—Rights and benefits.** (1) An eligible employee may transfer into the civil service system of the annexing city, code city, or town by filing a written request with the city, code city, or town civil service commission. Upon receipt of such request by the civil service commission the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees in the position filled, but if the transferring employee has already completed a probationary period as a fire fighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period, (c) receive a salary at least equal to that of other new employees in the position filled, and (d) in all other matters, such as retirement, sick leave, and vacation, have, within the

city, code city, or town civil service system, all the rights, benefits, and privileges to which he or she would have been entitled as a member of the annexed city, code city, or town fire department from the beginning of his or her employment with the former city or code city fire department: PROVIDED, That for purposes of layoffs by the annexing city or code city, only the time of service accrued with the annexing city or code city shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. A record of the employee's service with the former city or code city fire department shall be transmitted to the applicable civil service commission which shall be credited to such employee as a part of the period of employment in the annexed city, code city, or town fire department. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the annexing city, code city, or town fire department as the department determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.10.360 and 35.10.370 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the city, code city, or town fire department when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the city, code city, or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. [1994 c 73 § 1; 1986 c 254 § 5.]

**Effective date—1994 c 73:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994]." [1994 c 73 § 6.]

**35.10.370 Annexation—Transfer of fire department employees—Notice—Time limitation.** If, as a result of annexation of two or more cities, or code cities any employee is laid off who is eligible to transfer to the city, code city or town fire department under this section and RCW 35.10.360 and 35.10.365 the fire department shall notify the employee of the right to transfer and the employee shall have ninety days to transfer employment to the annexing city or code city fire department. [1986 c 254 § 6.]

**35.10.400 Consolidation.** Two or more contiguous cities located in the same or different counties may consolidate into one city by proceedings in conformity with the provisions of this chapter. When cities are separated by water and/or tide or shore lands they shall be deemed contiguous for all the purposes of this chapter and, upon a consolidation of such cities under the provisions of this chapter, any such intervening water and/or tide or shore lands shall become a part of the consolidated city. The consolidated city shall

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become a noncharter code city operating under Title 35A RCW. [1985 c 281 § 3.]

**35.10.410 Consolidation—Submission of ballot proposal—Initiation by resolution of legislative body.** The submission of a ballot proposal to the voters of two or more contiguous cities for the consolidation of these contiguous cities may be caused by the adoption of a joint resolution, by a majority vote of each city legislative body, seeking consolidation of such contiguous cities. The joint resolution shall provide for submission of the question to the voters at the next general municipal election, if one is to be held more than ninety days but not more than one hundred eighty days after the passage of the joint resolution, or shall call for a special election to be held for that purpose at the next special election date, as specified in \*RCW 29.13.020, that occurs ninety or more days after the passage of the joint resolution. The legislative bodies of the cities also shall notify the county legislative authority of each county in which the cities are located of the proposed consolidation. [1985 c 281 § 4.]

**\*Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**35.10.420 Consolidation—Submission of ballot proposal—Initiation by petition.** The submission of a ballot proposal to the voters of two or more contiguous cities for the consolidation of these contiguous cities may also be caused by the filing of a petition with the legislative body of each such city, signed by the voters of each city in number equal to not less than ten percent of voters who voted in the city at the last general municipal election therein, seeking consolidation of such contiguous cities. A copy of the petition shall be forwarded immediately by each city to the auditor of the county or counties within which that city is located.

The county auditor or auditors shall determine the sufficiency of the signatures in each petition within ten days of receipt of the copies and immediately notify the cities proposed to be consolidated of the sufficiency. If each of the petitions is found to have sufficient valid signatures, the auditor or auditors shall call a special election at which the question of whether such cities shall consolidate shall be submitted to the voters of each of such cities. If a general election is to be held more than ninety days but not more than one hundred eighty days after the filing of the last petition, the question shall be submitted at that election. Otherwise the question shall be submitted at a special election to be called for that purpose at the next special election date, as specified in \*RCW 29.13.020, that occurs ninety or more days after the date when the last petition was filed.

If each of the petitions is found to have sufficient valid signatures, the auditor or auditors also shall notify the county legislative authority of each county in which the cities are located of the proposed consolidation.

Petitions shall conform with the requirements for form prescribed in RCW 35A.01.040, except different colored paper may be used on petitions circulated in the different cities. A legal description of the cities need not be included in the petitions. [1995 c 196 § 7; 1985 c 281 § 5.]

**\*Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**35.10.430 Consolidation—Form of government.** A joint resolution or petition shall prescribe the form or plan of government of the proposed consolidated city, or shall provide that a ballot proposition to determine the form or plan of government shall be submitted to the voters of the cities proposed to be consolidated. The plans or forms of government include: Mayor/council, council/manager, and commission. If a commission form or plan of government is prescribed or chosen by the voters, the commission shall be subject to chapter 35.17 RCW and the noncharter code city shall be assumed to have had a commission plan or form of government prior to its becoming a noncharter code city, as provided in RCW 35A.02.130. However, three commissioners would be elected at the election provided in RCW 35.10.480. [1985 c 281 § 6.]

**35.10.440 Consolidation—Assumption of general obligation indebtedness.** A joint resolution or a petition may contain a proposal that a general obligation indebtedness of one or more of the cities proposed to be consolidated shall be assumed by the proposed consolidated city, in which event, the joint resolution or petition shall specify the improvement or service for which such general obligation indebtedness was incurred and state the amount of any such indebtedness then outstanding and the rate of interest payable thereon. [1985 c 281 § 7.]

**35.10.450 Consolidation—Public meetings on proposal—Role of boundary review board.** The county legislative authority, or the county legislative authorities jointly, shall set the date, time, and place for one or more public meetings on the proposed consolidation, and name a person or persons to chair the meetings. There shall be at least one public meeting in each county in which one or more of the cities proposed to be consolidated is located. A county legislative authority may name the members of the boundary review board, if one exists in the county, to chair one or more of the public meetings held in that county. In addition to any meeting held by the county, a boundary review board, if requested by a majority of the county legislative authority, may hold a public meeting on proposed consolidation of cities. The meeting shall be limited to receiving comments and written materials from citizens and city officials on the proposed consolidation of that portion of cities located in the county which the boundary review board serves. The record and proceedings of the boundary review board are supplemental and advisory to the consolidation of cities. If a boundary review board meets pursuant to this section, the boundary review board may include, as part of its record, comments pertaining to the probable environmental impact of the proposed consolidation. The record of the meeting and advisory comments of the board, if any, must be filed with the county legislative authority no later than twenty days before the date of the election at which the question of consolidating the cities is presented to the voters. The boundary review board shall not have any authority or jurisdiction on city consolidations under chapter 36.93 RCW. A public meeting shall be held at each specified date, time, and place. The public meetings of the county or the boundary review board shall be held at least twenty but not more than forty-five days before the

date of the election at which the question of consolidating the cities is presented to the voters.

At each public meeting, each city proposed to be consolidated shall present testimony and written materials concerning the following topics: (1) The rate or rates of property taxes imposed by the city, and the purposes of these levies; (2) the excise taxes imposed by the city, including the tax bases and rates; and (3) the indebtedness of the city, including general indebtedness, both voter-approved and nonvoter-approved, as well as the city's special indebtedness, such as revenue bond indebtedness. Any interested person, including the officials of the cities proposed to be consolidated, may present information concerning the proposed consolidation and testify for or against the proposed consolidations.

Notice of each public meeting shall be published by the county within whose boundaries the public meeting is held in the normal manner notices of county hearings are published. [1985 c 281 § 8.]

**35.10.460 Consolidation—Ballot questions.** If a proposal for assumption of indebtedness is to be submitted to the voters of a city in which the indebtedness did not originate, the proposal shall be separately stated and the ballots shall contain, as a separate proposition to be voted on, the words "For Assumption of Indebtedness to be paid by the levy of annual property taxes in excess of regular property taxes" and "Against Assumption of Indebtedness to be paid by the levy of annual property taxes in excess of regular property taxes" or words equivalent thereto. If the question of the form or plan of government is to be submitted to the voters, the question shall be separately stated and the ballots shall contain, as a separate proposition to be voted on, the option of a voter to select one of the three forms or plans of government. If the question of the name of the proposed consolidated city is to be submitted to the voters, the question shall be separately stated and the ballots shall contain, as a separate proposition to be voted on, the option of a voter to select one of the names of the proposed consolidated city. [1995 c 196 § 1; 1985 c 281 § 9.]

**35.10.470 Consolidation—Canvass of votes.** The county canvassing board in each county involved shall canvass the returns in each election. The votes cast in each of such cities shall be canvassed separately, and the statement shall show the whole number of votes cast, the number of votes cast in each city for consolidation, and the number of votes cast in each city against such consolidation. If a proposal for assumption or indebtedness was voted upon in a city in which the indebtedness did not originate, the statement shall show the number of votes cast in such a city for assumption of indebtedness and the number of votes cast against assumption of indebtedness. If a question of the form or plan of government was voted upon, the statement shall show the number of votes cast in each city for each of the optional forms or plans of government. If a name for the proposed consolidated city was voted upon, the statement shall show the number of votes cast in each city for each optional name. A certified copy of such statement shall be filed with the legislative body of each of the cities proposed to be consolidated.

If it appears from such statement of canvass that a majority of the votes cast in each of the cities were in favor of consolidation, the consolidation shall be authorized and shall be effective when the newly elected legislative body members assume office, as provided in RCW 35.10.480.

If a question of the form or plan of government was voted upon, that form or plan receiving the greatest combined number of votes shall become the form or plan of government for the consolidated city. If two or three of the forms or plans of government received the same highest number of votes, the form or plan of government shall be chosen by lot between those receiving the same highest number, where the mayor of the largest of the cities proposed to be consolidated draws the lot at a public meeting.

If a proposition to assume indebtedness was submitted to voters of a city in which the indebtedness did not originate, the proposition shall be deemed approved if approved by a majority of at least three-fifths of the voters of the city, and the number of persons voting on the proposition constitutes not less than forty percent of the number of votes cast in the city at the last preceding general election. Approval of the proposition authorizes annual property taxes to be levied on the property within the city in which the indebtedness did not originate that are in excess of regular property taxes. However, if the general indebtedness in question was incurred by action of a city legislative body, a proposition for assuming the indebtedness need only be approved by a simple majority vote of the voters of the city in which such indebtedness did not originate.

If a question of the name of the proposed consolidated city was voted upon, that name receiving the greatest combined number of votes shall become the name of the consolidated city. If two proposed names receive the same number of votes, the name shall be chosen by lot, where the mayor of the largest of the cities proposed to be consolidated draws the lot at a public meeting. [1995 c 196 § 2; 1985 c 281 § 10.]

**35.10.480 Consolidation—Elections of officials—Effective date of consolidation.** If the voters of each of the cities proposed to consolidate approve the consolidation, elections to nominate and elect the elected officials of the consolidated city shall be held at times specified in RCW 35A.02.050. If the joint resolution or the petitions prescribe that councilmembers of the consolidated city shall be elected from wards, then the councilmembers shall be elected from wards under RCW 35A.12.180. Terms shall be established as if the city is initially incorporating.

The newly elected officials shall take office immediately upon their qualification. The effective date of the consolidation shall be when a majority of the newly elected members of the legislative body assume office. The clerk of the newly consolidated city shall transmit a duly certified copy of an abstract of the votes to authorize the consolidation and of the election of the newly elected city officials to the secretary of state and the office of financial management. [1995 c 196 § 3; 1985 c 281 § 11.]

**35.10.490 Consolidation—Name of city.** A joint resolution or the petitions may prescribe the name of the proposed consolidated city or may provide that a ballot proposition to

determine the name of the proposed consolidated city be submitted to the voters of the cities proposed to be consolidated. If two alternative names are submitted, the name receiving the simple majority vote of the voters voting on the question shall become the name of the consolidated city. If the name for the proposed consolidated city is not prescribed by the joint resolution or petition, or a proposition on the name is not submitted to the voters of the cities proposed to be consolidated, then the newly consolidated city shall be known as the city of . . . . . (listing the names of the cities that were consolidated in alphabetical order). The legislative body of the newly consolidated city may present another name or two names for the newly consolidated city to the city voters for their approval or rejection at the next municipal general election held after the effective date of the consolidation. If only one alternative name is submitted, this alternative name shall become the name of the consolidated city if approved by a simple majority vote of the voters voting on the question. If two alternative names are submitted, the name receiving the simple majority vote of the voters voting on the question shall become the name of the consolidated city. [1995 c 196 § 4; 1985 c 281 § 12.]

**35.10.500 Consolidation—Costs of election and public meetings.** If consolidation is authorized, the costs of such election and the public meetings shall be borne by the city formed by such consolidation. If the consolidation is not authorized, the costs of election and the public meetings shall be borne proportionately by each city affected, in that ratio in which the number of inhabitants residing in the total area in which the election was held, as shown by the figures released at the most recent state or federal census or by a determination of the office of financial management. [1985 c 281 § 13.]

**35.10.510 Consolidation—Transfer of fire department employees.** Upon the consolidation of two or more cities or code cities, any employee of the fire department of the former city or cities who (1) was at the time of consolidation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire department of the consolidated city or code city, as the case may be, (2) will, as a direct consequence of consolidation, be separated from the employ of the former city, code city or town, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer employment to the fire department of the consolidated city, as provided in this section and RCW 35.10.520 and 35.10.530.

For purposes of this section and RCW 35.10.520 and 35.10.530, employee means an individual whose employment has been terminated because of a consolidation of two or more cities, code cities or towns. [1986 c 254 § 1.]

**Effective date—Legislative study—1986 c 254 §§ 1-3:** "Sections 1 through 3 of this act shall take effect July 1, 1987. The appropriate committees of the senate and house of representatives shall conduct a study of the transfer rights of employees during the consolidation of cities and code cities and make recommendations to the legislature at the start of the 1987 legislative session." [1986 c 254 § 16.]

**35.10.520 Consolidation—Transfer of fire department employees—Rights and benefits.** (1) An eligible employee may transfer into the civil service system of the consolidated city or code city by filing a written request with the civil service commission of the consolidated city. Upon receipt of such request by the civil service commission the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees in the position filled, but if the transferring employee has already completed a probationary period as a fire fighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period, (c) receive a salary at least equal to that of other new employees in the position filled, and (d) in all other matters, such as retirement, sick leave, and vacation, have, within the city or code city civil service system, all the rights, benefits, and privileges to which he or she would have been entitled as a member of the consolidated city fire department from the beginning of his or her employment with the former city or code city fire department: PROVIDED, That for purposes of layoffs by the consolidated city or code city, only the time of service accrued with the consolidated city or code city shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the consolidating fire agencies and consolidated agencies and the consolidating and consolidated fire agencies. A record of the employee's service with the former city or code city fire department shall be transmitted to the applicable civil service commission and shall be credited to such employee as a part of the period of employment in the consolidated city fire department. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the consolidated city or code city fire department as the department determines are needed to provide services. These needed employees shall be taken in order of greatest seniority from any of the seniority lists of the consolidating city or code city and the remaining employees who transfer as provided in this section and RCW 35.10.510 and 35.10.530 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the fire department when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the city, code city, or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the consolidating fire agencies and consolidated fire agency and the consolidating and consolidated fire agencies.

(3) The consolidated city or code city shall retain the right to select the fire chief and assistant fire chiefs regardless of seniority. [1994 c 73 § 2; 1986 c 254 § 2.]

**Effective date—1994 c 73:** See note following RCW 35.10.365.

**Effective date—Legislative study—1986 c 254 §§ 1-3:** See note following RCW 35.10.510.

**35.10.530 Consolidation—Transfer of fire department employees—Notice—Time limitation.** If, as a result of consolidation of two or more cities, or code cities, any employee is laid off who is eligible to transfer to the city fire department pursuant to this section and RCW 35.10.510 and 35.10.520, the city fire department shall notify the employee of the right to so transfer and the employee shall have ninety days to transfer employment to the consolidating city, or code city fire department. [1986 c 254 § 3.]

**Effective date—Legislative study—1986 c 254 §§ 1-3:** See note following RCW 35.10.510.

**35.10.540 Consolidation—Creation of community municipal corporation.** Voters of one or more of the cities that are proposed to be consolidated may have a ballot proposition submitted to them authorizing the simultaneous creation of a community municipal corporation and election of community council members as provided for under chapter 35.14 RCW. The joint resolution that initiates a consolidation under RCW 35.10.410 may provide for the question of whether a community municipal corporation shall be created to be submitted to the voters of one or more of the cities that are proposed to be consolidated as a separate ballot measure from the ballot measure authorizing the consolidation or as part of the same ballot measure authorizing the consolidation. The petitions that are signed by the voters of each of the cities that are proposed to be consolidated under RCW 35.10.420 may provide for the question of whether to create a community municipal corporation to be submitted to the voters of that city as a separate ballot measure from the ballot measure authorizing the consolidation or as part of the same ballot measure authorizing the consolidation.

The ballots shall contain the words "For consolidation and creation of community municipal corporation" and "Against consolidation and creation of community municipal corporation," or "For creation of community municipal corporation" and "Against creation of community municipal corporation," as the case may be. Approval of either optional ballot proposition shall be by simple majority vote of the voters voting on the proposition, but the consolidation must be authorized by the voters of each city proposed to be consolidated before a community municipal corporation is created. [1993 c 75 § 2.]

**35.10.550 Consolidation—Wards.** Unless a commission form of government is prescribed or submitted to the voters under RCW 35.10.430, a joint resolution or petition may prescribe that wards be used to elect the councilmembers of the consolidated city. The joint resolution or petition must contain a map of the proposed consolidated city that clearly delineates the boundaries of each ward. Each ward in the proposed consolidated city shall contain approximately the same population. To the greatest extent possible, the integrity of the boundaries of the cities that are proposed to be consolidated shall be respected when the wards are drawn so that the territory within each city is: (1) Included within the fewest number of wards, to the extent the city has a population that is greater than the maximum population established

for each ward; or (2) included wholly within one ward, to the extent the city has a population that is equal to or less than the maximum population established for each ward. After the election specified in RCW 35.10.480, election wards may be modified in the manner specified in RCW 35A.12.180. [1995 c 196 § 6.]

**35.10.900 Severability—1969 ex.s. c 89.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 89 § 19.]

**35.10.905 Severability—1985 c 281.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 281 § 31.]

### Chapter 35.13 RCW

#### ANNEXATION OF UNINCORPORATED AREAS

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*Annexation of fire protection district territory: RCW 35.02.190 through 35.02.205.*

*Consolidation and annexation of cities and towns: Chapter 35.10 RCW.*

*Local governmental organizations, actions affecting boundaries, review by boundary review board: Chapter 36.93 RCW.*

*Population determinations: Chapter 43.62 RCW.*

*Procedure to attack consolidation or annexation affecting a city of the second class: RCW 35.23.545.*

*Provisions relating to city annexation review boards not applicable where boundary review board created: RCW 36.93.220.*

**35.13.001 Actions subject to review by boundary review board.** Actions taken under chapter 35.13 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 28.]

**35.13.005 Annexations beyond urban growth areas prohibited.** No city or town located in a county in which urban growth areas have been designated under RCW 36.70A.110 may annex territory beyond an urban growth area. [1990 1st ex.s. c 17 § 30.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**35.13.010 Authority for annexation—Consent of county commissioners for certain property.** Any portion of a county not incorporated as part of a city or town but lying contiguous thereto may become a part of the city or town by annexation: PROVIDED, That property owned by a county, and used for the purpose of an agricultural fair as provided in chapter 15.76 RCW or chapter 36.37 RCW shall not be subject to annexation without the consent of the majority of the board of county commissioners. An area proposed to be annexed to a city or town shall be deemed contiguous thereto even though separated by water or tide or shore lands on which no bona fide residence is maintained by any person. [1965 c 7 § 35.13.010. Prior: 1959 c 311 § 1; prior: (i) 1937 c 110 § 1; 1907 c 245 § 1; RRS § 8896. (ii) 1945 c 128 § 1; Rem. Supp. 1945 § 8909-10.]

**Validation—1961 ex.s. c 16:** Validation of certain incorporations and annexations—Municipal corporations of the fourth class: See note following RCW 35.21.010.

**35.13.015 Election method—Resolution for election—Contents of resolution.** In addition to the method prescribed by RCW 35.13.020 for the commencement of annexation proceedings, the legislative body of any city or town may, whenever it shall determine by resolution that the best interests and general welfare of such city or town would be served by the annexation of unincorporated territory contiguous to such city or town, file a certified copy of the resolution with the board of county commissioners of the county in which said territory is located. The resolution of the city or town initiating such election shall, subject to RCW 35.02.170, describe the boundaries of the area to be annexed, as nearly as may be state the number of voters residing therein, pray for the calling of an election to be held among the qualified voters therein upon the question of annexation, and provide that said city or town will pay the cost of the annexation election. The resolution may require that there also be submitted to the electorate of the territory sought to be annexed a proposition that all property within the area annexed shall, upon annexation, be assessed and taxed at the same rate and on the same basis as the property of such annexing city or town is assessed and taxed to pay for all or any portion of the then outstanding indebtedness of the city or town to which said area is annexed, approved by the voters,

contracted, or incurred prior to, or existing at, the date of annexation. Whenever a city or town has prepared and filed a comprehensive plan for the area to be annexed as provided for in RCW 35.13.177 and 35.13.178, the resolution initiating the election may also provide for the simultaneous adoption of the comprehensive plan upon approval of annexation by the electorate of the area to be annexed. The resolution initiating the election may also provide for the simultaneous creation of a community municipal corporation and election of community council members as provided for in RCW 35.14.010 through 35.14.060 upon approval of annexation by the electorate of the area to be annexed. In cities under the optional municipal code the resolution initiating the election may also provide for the simultaneous inclusion of the annexed area into a named existing community municipal corporation. The proposition for the creation of a community municipal corporation may be submitted as part of the annexation proposition or may be submitted as a separate proposition. The proposition for inclusion within a named existing community municipal corporation shall be submitted as part of the annexation proposition. [1975 1st ex.s. c 220 § 6; 1973 1st ex.s. c 164 § 2; 1970 ex.s. c 52 § 6; 1967 c 73 § 7; 1965 ex.s. c 88 § 3; 1965 c 7 § 35.13.015. Prior: 1961 c 282 § 1.]

**Legislative finding, intent—1975 1st ex.s. c 220:** See note following RCW 35.02.170.

*Community municipal corporations: Chapter 35.14 RCW.*

**35.13.020 Election method—Petition for election—Signers—Rate of assessment in annexed area—Comprehensive plan—Community municipal corporation—Filing and approval—Costs.** A petition for an election to vote upon the annexation of a portion of a county to a contiguous city or town signed by qualified voters resident in the area equal in number to twenty percent of the votes cast at the last election may be filed in the office of the board of county commissioners: PROVIDED, That any such petition shall first be submitted to the prosecuting attorney who shall, within twenty-one days after submission, certify or refuse to certify the petition as set forth in \*RCW 35.13.025. If the prosecuting attorney certifies the petition, it shall be filed with the legislative body of the city or town to which the annexation is proposed, and such legislative body shall, by resolution entered within sixty days from the date of presentation, notify the petitioners, either by mail or by publication in the same manner notice of hearing is required by RCW 35.13.040 to be published, of its approval or rejection of the proposed action. The petition may also provide for the simultaneous creation of a community municipal corporation and election of community council members as provided for in RCW 35.14.010 through 35.14.060. In approving the proposed action, the legislative body may require that there also be submitted to the electorate of the territory to be annexed, a proposition that all property within the area to be annexed shall, upon annexation be assessed and taxed at the same rate and on the same basis as the property of such annexing city or town is assessed and taxed to pay for all or any portion of the then outstanding indebtedness of the city or town to which said area is annexed, approved by the voters, contracted, or incurred prior to, or existing at, the date of annexation. Only after the legislative body has completed preparation and filing of a comprehensive plan for the area to be annexed as provided for in

RCW 35.13.177 and 35.13.178, the legislative body in approving the proposed action, may require that the comprehensive plan be simultaneously adopted upon approval of annexation by the electorate of the area to be annexed. The approval of the legislative body shall be a condition precedent to the filing of such petition with the board of county commissioners as hereinafter provided. The costs of conducting such election shall be a charge against the city or town concerned. The proposition or questions provided for in this section may be submitted to the voters either separately or as a single proposition. [1981 c 332 § 3; 1973 1st ex.s. c 164 § 3; 1967 c 73 § 8; 1965 ex.s. c 88 § 4; 1965 c 7 § 35.13.020. Prior: 1961 c 282 § 7; prior: 1951 c 248 § 6; 1907 c 245 § 2, part; RRS § 8897, part.]

**\*Reviser's note:** RCW 35.13.025 was repealed by 1989 c 351 § 10.

**Severability—1981 c 332:** See note following RCW 35.13.165.

### **35.13.030 Election method—Petition for election—**

**Content.** A petition filed with the county commissioners to call an annexation election shall, subject to RCW 35.02.170, particularly describe the boundaries of the area proposed to be annexed, state the number of voters residing therein as nearly as may be, state the provisions, if any there be, relating to assumption of debt by the owners of property of the area proposed to be annexed, and/or the simultaneous adoption of a comprehensive plan for the area proposed to be annexed, and shall pray for the calling of an election to be held among the qualified voters therein upon the question of annexation. If the petition also provides for the creation of a community municipal corporation and election of community council members, the petition shall also describe the boundaries of the proposed service area, state the number of voters residing therein as nearly as may be, and pray for the election of community council members by the qualified voters residing in the service area. [1975 1st ex.s. c 220 § 7; 1967 c 73 § 9; 1965 ex.s. c 88 § 5; 1965 c 7 § 35.13.030. Prior: 1961 c 282 § 8; prior: 1907 c 245 § 2, part; RRS § 8897, part.]

**Legislative finding, intent—1975 1st ex.s. c 220:** See note following RCW 35.02.170.

**35.13.040 Election method—Hearing—Notice.** Upon the filing of approval by the review board of a twenty percent annexation petition under the election method to call an annexation election, the board of county commissioners at its next meeting shall fix a date for hearing thereon to be held not less than two weeks nor more than four weeks thereafter, of which hearing the petitioners must give notice by publication once each week at least two weeks prior thereto in some newspaper of general circulation in the area proposed to be annexed. Upon the day fixed, the board shall hear the petition, and if it complies with the requirements of law and has been approved by the review board, shall grant it. The hearing may be continued from time to time for an aggregate period not exceeding two weeks. [1973 1st ex.s. c 164 § 4; 1965 c 7 § 35.13.040. Prior: 1961 c 282 § 9; prior: 1907 c 245 § 2, part; RRS § 8897, part.]

**35.13.050 Election method—Petition or resolution for election—Others covering same area barred from consideration, withdrawal.** After the filing with the board

of county commissioners of a petition or resolution pursuant to RCW 35.13.015 to call an annexation election, pending the hearing under the twenty percent annexation petition under the election method and pending the election to be called thereunder, the board of county commissioners shall not consider any other petition or resolution involving any portion of the territory embraced therein: PROVIDED, That the petition or resolution may be withdrawn or a new petition or resolution embracing other or different boundaries substituted therefor by a majority of the signers thereof, or in the case of a resolution, by the legislative body of the city or town, and the same proceeding shall be taken as in the case of an original petition or resolution. [1973 1st ex.s. c 164 § 5; 1965 c 7 § 35.13.050. Prior: 1961 c 282 § 10; prior: 1907 c 245 § 2, part; RRS § 8897, part.]

### **35.13.060 Election method—Fixing date of election.**

Upon granting the petition under the twenty percent annexation petition under the election method, and after the auditor has certified the petition as being sufficient, the legislative body of the city or town shall indicate to the county auditor its preference for the date of the election on the annexation to be held, which shall be one of the dates for special elections provided under \*RCW 29.13.020 that is sixty or more days after the date the preference is indicated. The county auditor shall call the special election at the special election date indicated by the city or town. [1989 c 351 § 2; 1973 1st ex.s. c 164 § 6; 1965 c 7 § 35.13.060. Prior: 1961 c 282 § 12; prior: 1907 c 245 § 3, part; RRS § 8898, part.]

**\*Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

*Election method, date for annexation election if review board's determination favorable: RCW 35.13.174.*

### **35.13.070 Election method—Conduct of election.**

An annexation election shall be held in accordance with the general election laws of the state, and only registered voters who have resided in the area proposed to be annexed for ninety days immediately preceding the election shall be allowed to vote therein. [1965 c 7 § 35.13.070. Prior: 1961 c 282 § 15; prior: 1907 c 245 § 4, part; RRS § 8899, part.]

*Conduct of elections: RCW 29A.60.010.*

### **35.13.080 Election method—Notice of election.**

Notice of an annexation election shall particularly describe the boundaries of the area proposed to be annexed, describe the boundaries of the proposed service area if the simultaneous creation of a community municipal corporation is provided for, state the objects of the election as prayed in the petition or as stated in the resolution and require the voters to cast ballots which shall contain the words "For annexation" and "Against annexation" or words equivalent thereto, or contain the words "For annexation and adoption of comprehensive plan" and "Against annexation and adoption of comprehensive plan" or words equivalent thereto in case the simultaneous adoption of a comprehensive plan is proposed, and, if appropriate, the words "For creation of community municipal corporation" and "Against creation of community municipal corporation" or words equivalent thereto, or contain the words "For annexation and creation of community municipal corporation" and "Against annexation and creation

of community municipal corporation" or words equivalent thereto in case the simultaneous creation of a community municipal corporation is proposed, and which in case the assumption of indebtedness is proposed, shall contain as a separate proposition, the words "For assumption of indebtedness" and "Against assumption of indebtedness" or words equivalent thereto and if only a portion of the indebtedness of the annexing city or town is to be assumed, an appropriate separate proposition for and against the assumption of such portion of the indebtedness shall be submitted to the voters. If the creation of a community municipal corporation and election of community council members is provided for, the notice shall also require the voters within the service area to cast ballots for candidates for positions on such council. The notice shall be posted for at least two weeks prior to the date of election in four public places within the area proposed to be annexed and published in accordance with the notice required by \*RCW 29.27.080 prior to the date of election in a newspaper of general circulation in the area proposed to be annexed. [1973 1st ex.s. c 164 § 7; 1967 c 73 § 10; 1965 ex.s. c 88 § 6; 1965 c 7 § 35.13.080. Prior: 1961 c 282 § 13; prior: 1907 c 245 § 3, part; RRS § 8898, part.]

\*Reviser's note: RCW 29.27.080 was recodified as RCW 29A.52.350 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.52.350 was subsequently repealed by 2004 c 271 § 193.

**35.13.090 Election method—Vote required—Proposition for assumption of indebtedness—Certification.** (1)

The proposition for or against annexation or for or against annexation and adoption of the comprehensive plan, or for or against creation of a community municipal corporation, or any combination thereof, as the case may be, shall be deemed approved if a majority of the votes cast on that proposition are cast in favor of annexation or in favor of annexation and adoption of the comprehensive plan, or for creation of the community municipal corporation, or any combination thereof, as the case may be.

(2) If a proposition for or against assumption of all or any portion of indebtedness was submitted to the registered voters, it shall be deemed approved if a majority of at least three-fifths of the registered voters of the territory proposed to be annexed voting on such proposition vote in favor thereof, and the number of registered voters voting on such proposition constitutes not less than forty percent of the total number of votes cast in such territory at the last preceding general election.

(3) If either or both propositions were approved by the registered voters, the county auditor shall on completion of the canvassing of the returns transmit to the county legislative authority and to the clerk of the city or town to which annexation is proposed a certificate of the election results, together with a certified abstract of the vote showing the whole number who voted at the election, the number of votes cast for annexation and the number cast against annexation or for annexation and adoption of the comprehensive plan and the number cast against annexation and adoption of the comprehensive plan or for creation of a community municipal corporation and the number cast against creation of a community municipal corporation, or any combination thereof, as the case may be.

(4) If a proposition for assumption of all or of any portion of indebtedness was submitted to the registered voters, the abstract shall include the number of votes cast for assumption of indebtedness and the number of votes cast against assumption of indebtedness, together with a statement of the total number of votes cast in such territory at the last preceding general election.

(5) If the proposition for creation of a community municipal corporation was submitted and approved, the abstract shall include the number of votes cast for the candidates for community council positions and certificates of election shall be issued pursuant to \*RCW 29.27.100 to the successful candidates who shall assume office as soon as qualified. [1996 c 286 § 1; 1973 1st ex.s. c 164 § 8; 1967 c 73 § 11; 1965 ex.s. c 88 § 7; 1965 c 7 § 35.13.090. Prior: 1961 c 282 § 16; prior: 1907 c 245 § 4, part; RRS § 8899, part.]

\*Reviser's note: RCW 29.27.100 was recodified as RCW 29A.52.360 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**35.13.095 Election method—Vote required for annexation with assumption of indebtedness—Without assumption of indebtedness.**

A city or town may cause a proposition authorizing an area to be annexed to the city or town to be submitted to the qualified voters of the area proposed to be annexed in the same ballot proposition as the question to authorize an assumption of indebtedness. If the measures are combined, the annexation and the assumption of indebtedness shall be authorized only if the proposition is approved by at least three-fifths of the voters of the area proposed to be annexed voting on the proposition, and the number of persons voting on the proposition constitutes not less than forty percent of the total number of votes cast in the area at the last preceding general election.

However, the city or town council may adopt a resolution accepting the annexation, without the assumption of indebtedness, where the combined ballot proposition is approved by a simple majority vote of the voters voting on the proposition. [1989 c 84 § 22.]

**35.13.100 Election method—Ordinances required upon voter approval—Assumption of indebtedness.**

If a proposition relating to annexation or annexation and adoption of the comprehensive plan or creation of a community municipal corporation, or both, as the case may be was submitted to the voters and such proposition was approved, the legislative body shall adopt an ordinance providing for the annexation or adopt ordinances providing for the annexation and adoption of the comprehensive plan, or adopt an ordinance providing for the annexation and creation of a community municipal corporation, as the case may be. If a proposition for annexation or annexation and adoption of the comprehensive plan or creation of a community municipal corporation, as the case may be, and a proposition for assumption of all or of any portion of indebtedness were both submitted, and were approved, the legislative body shall adopt an ordinance providing for the annexation or annexation and adoption of the comprehensive plan or annexation and creation of a community municipal corporation including the assumption of all or of any portion of indebtedness. If the propositions were submitted and only the annexation or annexation and adoption of the comprehensive plan or annex-

ation and creation of a community municipal corporation proposition was approved, the legislative body may, if it deems it wise or expedient, adopt an ordinance providing for the annexation or adopt ordinances providing for the annexation and adoption of the comprehensive plan, or adopt ordinances providing for the annexation and creation of a community municipal corporation, as the case may be. [1996 c 286 § 2; 1973 1st ex.s. c 164 § 9; 1967 c 73 § 12; 1965 ex.s. c 88 § 8; 1965 c 7 § 35.13.100. Prior: 1961 c 282 § 17; 1957 c 239 § 2; prior: 1907 c 245 § 5, part; RRS § 8900, part.]

**35.13.110 Election method—Effective date of annexation or annexation and comprehensive plan or annexation and creation of community municipal corporation, taxation of area annexed.** Upon the date fixed in the ordinance of annexation, the area annexed shall become a part of the city or town. Upon the date fixed in the ordinances of annexation and adoption of the comprehensive plan, the area annexed shall become a part of the city or town and property in the annexed area shall be subject to and a part of the comprehensive plan, as prepared and filed as provided for in RCW 35.13.177 and 35.13.178. Upon the date fixed in the ordinances of annexation and creation of a community municipal corporation, the area annexed shall become a part of the city or town, the community municipal corporation shall be deemed organized, and property in the service area shall be deemed subject to the powers granted to such corporation as provided for in \*this 1967 amendatory act. All property within the territory hereafter annexed shall, if the proposition approved by the people so provides after June 12, 1957, be assessed and taxed at the same rate and on the same basis as the property of such annexing city is assessed and taxed to pay for all or any portion of the then outstanding indebtedness of the city or town to which said area is annexed, approved by the voters, contracted, or incurred prior to, or existing at, the date of annexation. [1973 1st ex.s. c 164 § 10; 1967 c 73 § 13; 1965 ex.s. c 88 § 9; 1965 c 7 § 35.13.110. Prior: 1957 c 239 § 3; prior: 1907 c 245 § 5, part; RRS § 8900, part.]

**\*Reviser's note:** The language "this 1967 amendatory act" first appeared in the amendment to this section by section 13, chapter 73, Laws of 1967. For the codification of chapter 73, Laws of 1967, see note following RCW 35.14.010.

**35.13.120 Election method is alternative.** The method of annexation provided for in RCW 35.13.020 to 35.13.110 shall be an alternative method, not superseding any other. [1965 c 7 § 35.13.120. Prior: 1937 c 110 § 2; 1907 c 245 § 6; RRS § 8901.]

**35.13.125 Direct petition method—Commencement of proceedings—Notice to legislative body—Meeting—Assumption of indebtedness—Comprehensive plan.** Proceedings for the annexation of territory pursuant to RCW 35.13.130, 35.13.140, 35.13.150, 35.13.160 and 35.13.170 shall be commenced as provided in this section. Prior to the circulation of a petition for annexation, the initiating party or parties who, except as provided in RCW 28A.335.110, shall be either not less than ten percent of the residents of the area to be annexed or the owners of not less than ten percent in value, according to the assessed valuation for general tax-

tion of the property for which annexation is petitioned, shall notify the legislative body of the city or town in writing of their intention to commence annexation proceedings. The legislative body shall set a date, not later than sixty days after the filing of the request, for a meeting with the initiating parties to determine whether the city or town will accept, reject, or geographically modify the proposed annexation, whether it shall require the simultaneous adoption of the comprehensive plan if such plan has been prepared and filed for the area to be annexed as provided for in RCW 35.13.177 and 35.13.178, and whether it shall require the assumption of all or of any portion of existing city or town indebtedness by the area to be annexed. If the legislative body requires the assumption of all or of any portion of indebtedness and/or the adoption of a comprehensive plan, it shall record this action in its minutes and the petition for annexation shall be so drawn as to clearly indicate this fact. There shall be no appeal from the decision of the legislative body. [1990 c 33 § 565; 1989 c 351 § 3; 1973 1st ex.s. c 164 § 11; 1971 c 69 § 1; 1965 ex.s. c 88 § 10; 1965 c 7 § 35.13.125. Prior: 1961 c 282 § 18.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—1971 c 69:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 c 69 § 5.]

**35.13.130 Direct petition method—Petition—Signers—Content.** A petition for annexation of an area contiguous to a city or town may be made in writing addressed to and filed with the legislative body of the municipality to which annexation is desired. Except where all the property sought to be annexed is property of a school district, and the school directors thereof file the petition for annexation as in RCW 28A.335.110 authorized, the petition must be signed by the owners of not less than seventy-five percent in value according to the assessed valuation for general taxation of the property for which annexation is petitioned: PROVIDED, That in cities and towns with populations greater than one hundred sixty thousand located east of the Cascade mountains, the owner of tax exempt property may sign an annexation petition and have the tax exempt property annexed into the city or town, but the value of the tax exempt property shall not be used in calculating the sufficiency of the required property owner signatures unless only tax exempt property is proposed to be annexed into the city or town. The petition shall set forth a description of the property according to government legal subdivisions or legal plats which is in compliance with RCW 35.02.170, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. If the legislative body has required the assumption of all or of any portion of city or town indebtedness by the area annexed, and/or the adoption of a comprehensive plan for the area to be annexed, these facts, together with a quotation of the minute entry of such requirement or requirements shall be set forth in the petition. [1990 c 33 § 566; 1981 c 66 § 1; 1975 1st ex.s. c 220 § 8; 1973 1st ex.s. c 164 § 12; 1971 c 69 § 2; 1965 ex.s. c 88 § 11; 1965 c 7 § 35.13.130. Prior: 1961 c 282 § 19; 1945 c 128 § 3; Rem. Supp. 1945 § 8908-12.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—1981 c 66:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 66 § 2.]

**Legislative finding, intent—1975 1st ex.s. c 220:** See note following RCW 35.02.170.

**Severability—1971 c 69:** See note following RCW 35.13.125.

### 35.13.140 Direct petition method—Notice of hearing.

Whenever a petition for annexation is filed with the city or town council, or commission in those cities having a commission form of government, which meets the requirements herein specified, of which fact satisfactory proof may be required by the council or commission, the council or commission may entertain the same, fix a date for a public hearing thereon and cause notice of the hearing to be published in one issue of a newspaper of general circulation in the city or town. The notice shall also be posted in three public places within the territory proposed for annexation, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. The expense of publication and posting of the notice shall be borne by the signers of the petition. [1965 c 7 § 35.13.140. Prior: 1945 c 128 § 2; Rem. Supp. 1945 § 8908-11.] [SLC-RO-8.]

**35.13.150 Direct petition method—Ordinance providing for annexation.** Following the hearing, the council or commission shall determine by ordinance whether annexation shall be made. Subject to RCW 35.02.170, they may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the ordinance a certified copy shall be filed with the board of county commissioners of the county in which the annexed property is located. [1975 1st ex.s. c 220 § 9; 1965 c 7 § 35.13.150. Prior: 1957 c 239 § 5; prior: 1945 c 128 § 4, part; Rem. Supp. 1945 § 8908-13, part.]

**Legislative finding, intent—1975 1st ex.s. c 220:** See note following RCW 35.02.170.

**35.13.160 Direct petition method—Effective date of annexation or annexation and comprehensive plan—Assessment, taxation of territory annexed.** Upon the date fixed in the ordinance of annexation the area annexed shall become part of the city or town. All property within the territory hereafter annexed shall, if the annexation petition so provided, be assessed and taxed at the same rate and on the same basis as the property of such annexing city or town is assessed and taxed to pay for all or of any portion of the then outstanding indebtedness of the city or town to which said area is annexed, approved by the voters, contracted, or incurred prior to, or existing at, the date of annexation. If the annexation petition so provided, all property in the annexed area shall be subject to and a part of the comprehensive plan as prepared and filed as provided for in RCW 35.13.177 and 35.13.178. [1973 1st ex.s. c 164 § 13; 1965 ex.s. c 88 § 12; 1965 c 7 § 35.13.160. Prior: 1961 c 282 § 20; 1957 c 239 § 6; prior: (i) 1945 c 128 § 4, part; Rem. Supp. 1945 § 8908-13, part. (ii) 1945 c 128 § 5; Rem. Supp. 1945 § 8908-14.]

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**35.13.165 Termination of annexation proceedings in cities over four hundred thousand—Declarations of termination filed by property owners.** At any time before the date is set for an annexation election under RCW 35.13.060 or 35.13.174, all further proceedings to annex shall be terminated upon the filing of verified declarations of termination signed by:

(1) Owners of real property consisting of at least sixty percent of the assessed valuation in the area proposed to be annexed; or

(2) Sixty percent of the owners of real property in the area proposed to be annexed.

As used in this subsection, the term "owner" shall include individuals and corporate owners. In determining who is a real property owner for purposes of this section, all owners of a single parcel shall be considered as one owner. No owner may be entitled to sign more than one declaration of termination.

Following the termination of such proceedings, no other petition for annexation affecting any portion of the same property may be considered by any government body for a period of five years from the date of filing.

The provisions of this section shall apply only to cities with a population greater than four hundred thousand. [1989 c 351 § 7; 1981 c 332 § 2.]

**Severability—1981 c 332:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 332 § 11.]

**35.13.170 Direct petition method is alternative.** The method of annexation provided for in RCW 35.13.130 to 35.13.160 shall be an alternative method, not superseding any other. [1965 c 7 § 35.13.170. Prior: 1945 c 128 § 6; Rem. Supp. 1945 § 8908-15.]

**35.13.171 Review board—Convening—Composition.** Within thirty days after the filing of a city's or town's annexation resolution pursuant to RCW 35.13.015 with the board of county commissioners or within thirty days after filing with the county commissioners a petition calling for an election on annexation, as provided in RCW 35.13.020, or within thirty days after approval by the legislative body of a city or town of a petition of property owners calling for annexation, as provided in RCW 35.13.130, the mayor of the city or town concerned that is not subject to the jurisdiction of a boundary review board under chapter 36.93 RCW, shall convene a review board composed of the following persons:

(1) The mayor of the city or town initiating the annexation by resolution, or the mayor in the event of a twenty percent annexation petition pursuant to RCW 35.13.020, or an alternate designated by the mayor;

(2) The chairman of the board of county commissioners of the county wherein the property to be annexed is situated, or an alternate designated by him or her;

(3) The director of community, trade, and economic development, or an alternate designated by the director;

Two additional members to be designated, one by the mayor of the annexing city, which member shall be a resident property owner of the city, and one by the chairman of the county legislative authority, which member shall be a resi-

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dent of and a property owner or a resident or a property owner if there be no resident property owner in the area proposed to be annexed, shall be added to the original membership and the full board thereafter convened upon call of the mayor: PROVIDED FURTHER, That three members of the board shall constitute a quorum. [1995 c 399 § 35; 1985 c 6 § 2; 1973 1st ex.s. c 164 § 14; 1965 c 7 § 35.13.171. Prior: 1961 c 282 § 2.]

**35.13.172 When review procedure may be dispensed with.** Whenever a petition is filed as provided in RCW 35.13.020 or a resolution is adopted by the city or town council, as provided in RCW 35.13.015, and the area proposed for annexation is less than ten acres and less than eight hundred thousand dollars in assessed valuation, such review procedures shall be dispensed with. [1981 c 260 § 6. Prior: 1973 1st ex.s. c 195 § 14; 1973 1st ex.s. c 164 § 15; 1965 c 7 § 35.13.172; prior: 1961 c 282 § 3.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**35.13.173 Determination by review board—Factors considered—Filing of findings.** The review board shall by majority action, within three months, determine whether the property proposed to be annexed is of such character that such annexation would be in the public interest and for the public welfare, and in the best interest of the city, county, and other political subdivisions affected. The governing officials of the city, county, and other political subdivisions of the state shall assist the review board insofar as their offices can, and all relevant information and records shall be furnished by such offices to the review board. In making their determination the review board shall be guided, but not limited, by their findings with respect to the following factors:

- (1) The immediate and prospective populations of the area to be annexed;
- (2) The assessed valuation of the area to be annexed, and its relationship to population;
- (3) The history of and prospects for construction of improvements in the area to be annexed;
- (4) The needs and possibilities for geographical expansion of the city;
- (5) The present and anticipated need for governmental services in the area proposed to be annexed, including but not limited to water supply, sewage and garbage disposal, zoning, streets and alleys, curbs, sidewalks, police and fire protection, playgrounds, parks, and other municipal services, and transportation and drainage;
- (6) The relative capabilities of the city, county, and other political subdivisions to provide governmental services when the need arises;
- (7) The existence of special districts except school districts within the area proposed to be annexed, and the impact of annexation upon such districts;
- (8) The elimination of isolated unincorporated areas existing without adequate economical governmental services;
- (9) The immediate and potential revenues that would be derived by the city as a result of annexation, and their relation to the cost of providing service to the area.

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Whether the review board determines for or against annexation, its reasons therefor, along with its findings on the specified factors and other material considerations shall:

(1) In the case of a petition signed by registered voters calling for an election on annexation, be filed with the board of county commissioners;

(2) In the case of a resolution of a city or town initiating annexation proceedings pursuant to RCW 35.13.015, be filed with the board of county commissioners.

Such findings need not include specific data on every point listed, but shall indicate that all factors were considered.

A favorable determination by the review board is an essential condition precedent to the annexation of territory to a city or town under either the resolution method pursuant to RCW 35.13.015, or under the twenty percent annexation petition under the election method. [1973 1st ex.s. c 164 § 16; 1965 c 7 § 35.13.173. Prior: 1961 c 282 § 4.]

**35.13.174 Date for annexation election if review board's determination favorable.** Upon receipt by the board of county commissioners of a determination by a majority of the review board favoring annexation of the proposed area that has been initiated by resolution pursuant to RCW 35.13.015 by the city or town legislative body, the board of county commissioners, or the city or town legislative body for any city or town within an urban growth area designated under RCW 36.70A.110, shall fix a date on which an annexation election shall be held, which date will be not less than thirty days nor more than sixty days thereafter. [1997 c 429 § 38; 1973 1st ex.s. c 164 § 17; 1965 c 7 § 35.13.174. Prior: 1961 c 282 § 5.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

*Petition method—Fixing date of annexation election:* RCW 35.13.060.

*Times for holding elections:* RCW 29A.04.311 through 29A.04.330.

**35.13.176 Territory subject to annexation proposal—When annexation by another city or incorporation allowed.** After a petition proposing an annexation by a city or town is filed with the city or town or the governing body of the city or town, or after a resolution proposing an annexation by a city or town has been adopted by the city or town governing body, no territory included in the proposed annexation may be annexed by another city or town or incorporated into a city or town unless: (1) The boundary review board modifies the boundaries of the proposed annexation and removes the territory; (2) the boundary review board or review board created under RCW 35.13.171 rejects the proposed annexation; or (3) the city or town governing body rejects the proposed annexation or voters defeat the ballot proposition authorizing the annexation. [1994 c 216 § 7.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**35.13.177 Comprehensive land use plan for area to be annexed—Contents—Purpose.** The legislative body of any city or town acting through a planning commission created pursuant to chapter 35.63 RCW, or pursuant to its granted powers, may prepare a comprehensive land use plan to become effective upon the annexation of any area which might reasonably be expected to be annexed by the city or

town at any future time. Such comprehensive plan, to the extent deemed reasonably necessary by the legislative body to be in the interest of health, safety, morals and the general welfare may provide, among other things, for:

(1) The regulation and restriction within the area to be annexed of the location and the use of buildings, structures and land for residence, trade, industrial and other purposes; the height, number of stories, size, construction and design of buildings and other structures; the size of yards, courts and other open spaces on the lot or tract; the density of population; the set-back of buildings along highways, parks or public water frontages; and the subdivision and development of land;

(2) The division of the area to be annexed into districts or zones of any size or shape, and within such districts or zones regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land;

(3) The appointment of a board of adjustment, to make, in appropriate cases and subject to appropriate conditions and safeguards established by ordinance, special exceptions in harmony with the general purposes and intent of the comprehensive plan; and

(4) The time interval following an annexation during which the ordinance or resolution adopting any such plan or regulations, or any part thereof must remain in effect before it may be amended, supplemented or modified by subsequent ordinance or resolution adopted by the annexing city or town.

All such regulations and restrictions shall be designed, among other things, to encourage the most appropriate use of land throughout the area to be annexed; to lessen traffic congestion and accidents; to secure safety from fire; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to promote a coordinated development of the unbuilt areas; to encourage the formation of neighborhood or community units; to secure an appropriate allotment of land area in new developments for all the requirements of community life; to conserve and restore natural beauty and other natural resources; to facilitate the adequate provision of transportation, water, sewerage and other public uses and requirements. [1965 ex.s. c 88 § 1.]

**35.13.178 Comprehensive land use plan for area to be annexed—Hearings on proposed plan—Notice—Filing.** The legislative body of the city or town shall hold two or more public hearings, to be held at least thirty days apart, upon the proposed comprehensive plan, giving notice of the time and place thereof by publication in a newspaper of general circulation in the annexing city or town and the area to be annexed. A copy of the ordinance or resolution adopting or embodying such proposed plan or any part thereof or any amendment thereto, duly certified as a true copy by the clerk of the annexing city or town, shall be filed with the county auditor. A like certified copy of any map or plat referred to or adopted by the ordinance or resolution shall likewise be filed with the county auditor. The auditor shall record the ordinance or resolution and keep on file the map or plat. [1965 ex.s. c 88 § 2.]

**35.13.180 Annexation for municipal purposes.** City and town councils of second class cities and towns may by a

majority vote annex new unincorporated territory outside the city or town limits, whether contiguous or noncontiguous for park, cemetery, or other municipal purposes when such territory is owned by the city or town or all of the owners of the real property in the territory give their written consent to the annexation. [1994 c 81 § 11; 1983 1st ex.s. c 68 § 1; 1981 c 332 § 4; 1965 c 7 § 35.13.180. Prior: 1907 c 228 § 4; RRS § 9202.]

**Severability—1981 c 332:** See note following RCW 35.13.165.

**35.13.182 Annexation of unincorporated island of territory—Resolution—Notice of hearing.** (1) The legislative body of a city or town planning under chapter 36.70A RCW as of June 30, 1994, may resolve to annex territory to the city or town if there is, within the city or town, unincorporated territory containing residential property owners within the same county and within the same urban growth area designated under RCW 36.70A.110 as the city or town:

(a) Containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to the city or town; or

(b) Of any size and having at least eighty percent of the boundaries of the area contiguous to the city if the area existed before June 30, 1994.

(2) The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing in the area as nearly as may be, and set a date for a public hearing on the resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the city or town and one or more newspapers of general circulation within the area to be annexed.

(3) For purposes of subsection (1)(b) of this section, territory bounded by a river, lake, or other body of water is considered contiguous to a city that is also bounded by the same river, lake, or other body of water. [1998 c 286 § 1; 1997 c 429 § 37.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**35.13.1821 Annexation of unincorporated island of territory—Referendum—Election.** The annexation ordinance provided for in RCW 35.13.182 is subject to referendum for forty-five days after its passage. Upon the filing of a timely and sufficient referendum petition with the legislative body, signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation shall be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose not less than forty-five days nor more than ninety days after the filing of the referendum petition. Notice of the election shall be given as provided in RCW 35.13.080 and the election shall be conducted as provided in the general election law. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation ordinance, if no timely and sufficient referendum petition has been filed,

the area annexed shall become a part of the city or town upon the date fixed in the ordinance of annexation. [1998 c 286 § 2.]

**35.13.1822 Annexation of unincorporated island of territory—Notice, hearing.** On the date set for hearing as provided in RCW 35.13.182(2), residents or property owners of the area included in the resolution for annexation shall be afforded an opportunity to be heard. The legislative body may provide by ordinance for annexation of the territory described in the resolution, but the effective date of the ordinance shall be not less than forty-five days after the passage thereof. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the area to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of such requirements. [1998 c 286 § 3.]

**35.13.185 Annexation of federal areas by first class city.** Any unincorporated area contiguous to a first class city may be annexed thereto by an ordinance accepting a gift, grant, lease or cession of jurisdiction from the government of the United States of the right to occupy or control it. [1965 c 7 § 35.13.185. Prior: 1957 c 239 § 7.]

**35.13.190 Annexation of federal areas by second class cities and towns.** Any unincorporated area contiguous to a second class city or town may be annexed thereto by an ordinance accepting a gift, grant, or lease from the government of the United States of the right to occupy, control, improve it or sublet it for commercial, manufacturing, or industrial purposes: PROVIDED, That this shall not apply to any territory more than four miles from the corporate limits existing before such annexation. [1994 c 81 § 12; 1965 c 7 § 35.13.190. Prior: 1915 c 13 § 1, part; RRS § 8906, part.]

**Validating—1915 c 13:** "All ordinances heretofore passed by the legislative authority of any such incorporated city for the purpose of accepting any gift, grant or lease of or annexing any territory as hereinabove provided are hereby validated." [1915 c 13 § 3.]

**35.13.200 Annexation of federal areas by second class cities and towns—Annexation ordinance—Provisions.** In the ordinance annexing territory pursuant to a gift, grant, or lease from the government of the United States, a second class city or town may include such tide and shore lands as may be necessary or convenient for the use thereof, may include in the ordinance an acceptance of the terms and conditions attached to the gift, grant, or lease and may provide in the ordinance for the annexed territory to become a separate ward of the city or town or part or parts of adjacent wards. [1994 c 81 § 13; 1965 c 7 § 35.13.200. Prior: (i) 1915 c 13 § 1, part; RRS § 8906, part. (ii) 1915 c 13 § 2, part; RRS § 8907, part.]

**35.13.210 Annexation of federal areas by second class cities and towns—Authority over annexed territory.**

A second class city or town may cause territory annexed pursuant to a gift, grant, or lease of the government of the United States to be surveyed, subdivided and platted into lots, blocks, or tracts and lay out, reserve for public use, and improve streets, roads, alleys, slips, and other public places. It may grant or sublet any lot, block, or tract therein for commercial, manufacturing, or industrial purposes and reserve, receive and collect rents therefrom. It may expend the rents received therefrom in making and maintaining public improvements therein, and if any surplus remains at the end of any fiscal year, may transfer it to the city's or town's current expense fund. [1994 c 81 § 14; 1965 c 7 § 35.13.210. Prior: 1915 c 13 § 2, part; RRS § 8907, part.]

**35.13.215 Annexation of fire districts—Transfer of employees.** If any portion of a fire protection district is annexed to or incorporated into a city, code city or town, any employee of the fire protection district who (1) was at the time of such annexation or incorporation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the city, code city or town fire department (2) will, as a direct consequence of annexation or incorporation, be separated from the employ of the fire protection district, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer employment to the civil service system of the city, code city or town fire department as provided for in this section and RCW 35.13.225 and 35.13.235.

For purposes of this section and RCW 35.13.225 and 35.13.235, employee means an individual whose employment with a fire protection district has been terminated because the fire protection district was annexed by a city, code city or town for purposes of fire protection. [1986 c 254 § 7.]

**35.13.225 Annexation of fire districts—Transfer of employees—Rights and benefits.** (1) An eligible employee may transfer into the civil service system of the city, code city, or town fire department by filing a written request with the city, code city, or town civil service commission and by giving written notice thereof to the board of commissioners of the fire protection district. Upon receipt of such request by the civil service commission the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees of the city, code city, or town fire department in the position filled, but if the transferring employee has already completed a probationary period as a fire fighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period, (c) receive a salary at least equal to that of other new employees of the city, code city, or town fire department in the position filled, and (d) in all other matters, such as retirement, sick leave, and vacation, have, within the city, code city, or town civil service system, all the rights, benefits, and privileges to which he or she would have

been entitled as a member of the city, code city, or town fire department from the beginning of employment with the fire protection district: PROVIDED, That for purposes of layoffs by the annexing fire agency, only the time of service accrued with the annexing agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. The board of commissioners of the fire protection district shall, upon receipt of such notice, transmit to any applicable civil service commission a record of the employee's service with the fire protection district which shall be credited to such employee as a part of the period of employment in the city, code city, or town fire department. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the city, code city, or town fire department as the department determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.13.215 and 35.13.235 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the city, code city, or town fire department when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the city, code city, or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. [1994 c 73 § 3; 1986 c 254 § 8.]

**Effective date—1994 c 73:** See note following RCW 35.10.365.

**35.13.235 Annexation of fire districts—Transfer of employees—Notice—Time limitation.** If any portion of a fire protection district is annexed to or incorporated into a city, code city or town, and as a result any employee is laid off who is eligible to transfer to the city, code city or town fire department under this section and RCW 35.13.215 and 35.13.225 the fire protection district shall notify the employee of the right to transfer and the employee shall have ninety days to transfer employment to the city, code city or town fire department. [1986 c 254 § 9.]

**35.13.249 Annexation of fire districts—Ownership of assets of fire protection district—Outstanding indebtedness not affected.** When any portion of a fire protection district is annexed by or incorporated into a city or town, any outstanding indebtedness, bonded or otherwise, shall remain an obligation of the taxable property annexed or incorporated as if the annexation or incorporation had not occurred. [1965 c 7 § 35.13.249. Prior: 1963 c 231 § 5.]

**35.13.260 Determining population of annexed territory—Certificate—As basis for allocation of state funds—Revised certificate.** Whenever any territory is

annexed to a city or town, a certificate as hereinafter provided shall be submitted in triplicate to the office of financial management, hereinafter in this section referred to as "the office", within thirty days of the effective date of annexation specified in the relevant ordinance. After approval of the certificate, the office shall retain the original copy in its files, and transmit the second copy to the department of transportation and return the third copy to the city or town. Such certificates shall be in such form and contain such information as shall be prescribed by the office. A copy of the complete ordinance containing a legal description and a map showing specifically the boundaries of the annexed territory shall be attached to each of the three copies of the certificate. The certificate shall be signed by the mayor and attested by the city clerk. Upon request, the office shall furnish certification forms to any city or town.

The resident population of the annexed territory shall be determined by, or under the direction of, the mayor of the city or town. Such population determination shall consist of an actual enumeration of the population which shall be made in accordance with practices and policies, and subject to the approval of, the office. The population shall be determined as of the effective date of annexation as specified in the relevant ordinance.

Until an annexation certificate is filed and approved as provided herein, such annexed territory shall not be considered by the office in determining the population of such city or town.

Upon approval of the annexation certificate, the office shall forward to each state official or department responsible for making allocations or payments to cities or towns, a revised certificate reflecting the increase in population due to such annexation. Upon and after the date of the commencement of the next quarterly period, the population determination indicated in such revised certificate shall be used as the basis for the allocation and payment of state funds to such city or town.

For the purposes of this section, each quarterly period shall commence on the first day of the months of January, April, July, and October. Whenever a revised certificate is forwarded by the office thirty days or less prior to the commencement of the next quarterly period, the population of the annexed territory shall not be considered until the commencement of the following quarterly period. [1979 c 151 § 25; 1975 1st ex.s. c 31 § 1; 1969 ex.s. c 50 § 1; 1967 ex.s. c 42 § 2; 1965 c 7 § 35.13.260. Prior: 1961 c 51 § 1; 1957 c 175 § 14; prior: 1951 c 248 § 5, part.]

**Effective date—1967 ex.s. c 42:** See note following RCW 3.30.010.

**Savings—1967 ex.s. c 42:** See note following RCW 3.30.010.

*Allocations to cities and towns from motor vehicle fund:* RCW 46.68.110.

*Census to be conducted in decennial periods:* State Constitution Art. 2 § 3.

*Population determinations, office of financial management:* Chapter 43.62 RCW.

**35.13.270 Road district taxes collected in annexed territory—Disposition—Notification of annexation.** Whenever any territory is annexed to a city or town which is part of a road district of the county and road district taxes have been levied but not collected on any property within the annexed territory, the same shall when collected by the

county treasurer be paid to the city or town and by the city or town placed in the city or town street fund; except that road district taxes that are delinquent before the date of annexation shall be paid to the county and placed in the county road fund. This section shall not apply to any special assessments due in behalf of such property. The city or town is required to provide notification, by certified mail, that includes a list of annexed parcel numbers, to the county treasurer and assessor at least thirty days before the effective date of the annexation. The county treasurer is only required to remit to the city or town those road taxes collected thirty days or more after receipt of the notification. [2001 c 299 § 2; 1998 c 106 § 1; 1965 c 7 § 35.13.270. Prior: 1957 c 175 § 15; prior: 1951 c 248 § 5, part.]

**35.13.280 Cancellation, acquisition of franchise or permit for operation of public service business in territory annexed—Regulation of solid waste collection.** The annexation by any city or town of any territory pursuant to those provisions of chapter 35.10 RCW which relate to the annexation of a city or town to a city or town, or pursuant to the provisions of chapter 35.13 RCW shall cancel, as of the effective date of such annexation, any franchise or permit theretofore granted to any person, firm or corporation by the state of Washington, or by the governing body of such annexed territory, authorizing or otherwise permitting the operation of any public transportation, garbage disposal or other similar public service business or facility within the limits of the annexed territory, but the holder of any such franchise or permit canceled pursuant to this section shall be forthwith granted by the annexing city or town a franchise to continue such business within the annexed territory for a term of not less than seven years from the date of issuance thereof, and the annexing city or town, by franchise, permit or public operation, shall not extend similar or competing services to the annexed territory except upon a proper showing of the inability or refusal of such person, firm or corporation to adequately service said annexed territory at a reasonable price: PROVIDED, That the provisions of this section shall not preclude the purchase by the annexing city or town of said franchise, business, or facilities at an agreed or negotiated price, or from acquiring the same by condemnation upon payment of damages, including a reasonable amount for the loss of the franchise or permit. In the event that any person, firm or corporation whose franchise or permit has been canceled by the terms of this section shall suffer any measurable damages as a result of any annexation pursuant to the provisions of the laws above-mentioned, such person, firm or corporation shall have a right of action against any city or town causing such damages.

After an annexation by a city or town, the utilities and transportation commission shall continue to regulate solid waste collection within the limits of the annexed territory until such time as the city or town notifies the commission, in writing, of its decision to contract for solid waste collection or provide solid waste collection itself pursuant to RCW 81.77.020. In the event the annexing city or town at any time decides to contract for solid waste collection or decides to undertake solid waste collection itself, the holder of any such franchise or permit that is so canceled in whole or in part shall be forthwith granted by the annexing city or town a franchise

to continue such business within the annexed territory for a term of not less than the remaining term of the original franchise or permit, or not less than seven years, whichever is the shorter period, and the city or town, by franchise, permit, or public operation, shall not extend similar or competing services to the annexed territory except upon a proper showing of the inability or refusal of such person, firm, or corporation to adequately service the annexed territory at a reasonable price. Upon the effective date specified by the city or town council's ordinance or resolution to have the city or town contract for solid waste collection or undertake solid waste collection itself, the transition period specified in this section begins to run. This section does not preclude the purchase by the annexing city or town of the franchise, business, or facilities at an agreed or negotiated price, or from acquiring the same by condemnation upon payment of damages, including a reasonable amount for the loss of the franchise or permit. In the event that any person, firm, or corporation whose franchise or permit has been canceled by the terms of this section suffers any measurable damages as a result of any annexation pursuant to this chapter, such person, firm, or corporation has a right of action against any city or town causing such damages. [1997 c 171 § 2; 1994 c 81 § 15; 1983 c 3 § 54; 1965 c 7 § 35.13.280. Prior: 1957 c 282 § 1.]

**Severability—1997 c 171:** See note following RCW 35.02.160.

**35.13.290 When right of way may be included—Use of right of way line as corporate boundary.** The boundaries of a city or town arising from an annexation of territory shall not include a portion of the right of way of any public street, road, or highway except where the boundary runs from one edge of the right of way to the other edge of the right of way. However, the right of way line of any public street, road, or highway, or any segment thereof, may be used to define a part of a corporate boundary in an annexation proceeding. [1989 c 84 § 8.]

**35.13.300 Boundary line adjustment—Purpose—Definition.** The purpose of RCW 35.13.300 through 35.13.330 is to establish a process for the adjustment of existing or proposed city boundary lines to avoid a situation where a common boundary line is or would be located within a right of way of a public street, road, or highway, or a situation where two cities are separated or would be separated by only the right of way of a public street, road, or highway, other than situations where a boundary line runs from one edge of the right of way to the other edge of the right of way.

As used in RCW 35.13.300 through 35.13.330, "city" includes every city or town in the state, including a code city operating under Title 35A RCW. [1989 c 84 § 12.]

**35.13.310 Boundary line adjustment—Agreement—Not subject to review.** (1) This section provides a method to adjust the boundary lines between two cities where the two cities share a common boundary within a right of way of a public street, road, or highway, or the two cities have a portion of their boundaries separated only by all or part of the right of way of a public street, road, or highway. However, this section does not apply to situations where a boundary

line runs from one edge of the right of way to the other edge of the right of way.

(2) The councils of any two cities in a situation described in subsection (1) of this section may enter into an agreement to alter those portions of their boundaries that are necessary to eliminate this situation and create a partial common boundary on either edge of the right of way of the public street, road, or highway. An agreement made under this section shall include only boundary line adjustments between the two cities that are necessary to eliminate the situation described in subsection (1) of this section.

A boundary line adjustment under this section is not subject to potential review by a boundary review board. [1989 c 84 § 13.]

**35.13.320 Boundary line adjustment—When adjustment required—Limitation—Not subject to review.** The councils of any two cities that will be in a situation described in RCW 35.13.310(1) as the result of a proposed annexation by one of the cities may enter into an agreement to adjust those portions of the annexation proposal and the boundaries of the city that is not proposing the annexation. Such an agreement shall not be effective unless the annexation is made.

The annexation proposal shall proceed if such an agreement were not made, but any resulting boundaries between the two cities that meet the descriptions of RCW 35.13.310(1) shall be adjusted by agreement between the two cities within one hundred eighty days of the effective date of the annexation, or the county legislative authority of the county within which the right of way is located shall adjust the boundaries within a sixty-day period immediately following the one hundred eightieth day.

An agreement or adjustment made by a county under this section shall include only boundary line adjustments between the two cities that are necessary to eliminate the situation described in RCW 35.13.310(1).

A boundary line adjustment under this section is not subject to potential review by a boundary review board. [1989 c 84 § 14.]

**35.13.330 Boundary line adjustment—Agreement pending incorporation—Limitation—Not subject to review.** (1) The purpose of this section is to avoid situations arising where the boundaries of an existing city and a newly incorporated city would create a situation described in RCW 35.13.310(1).

(2) A boundary review board that reviews the boundaries of a proposed incorporation may enter into an agreement with the council of a city, that would be in a situation described in subsection (1) of this section as the result of a proposed incorporation of a city, to adjust the boundary line of the city and those of the city proposed to be incorporated to avoid this situation described in subsection (1) of this section if the incorporation were to be approved by the voters. Such an agreement shall not be effective unless the incorporation occurs.

The incorporation proposal shall proceed if such an agreement were not made, but any resulting boundaries between the two cities that meet create a situation described in RCW 35.13.310(1) shall be adjusted by agreement

between the two cities within one hundred eighty days of the official date of the incorporation, or the county legislative authority of the county within which the right of way is located shall adjust the boundaries within a sixty-day period immediately following the one hundred eightieth day.

An agreement or adjustment made by a county under this section shall include only boundary line adjustments between the two cities that are necessary to eliminate the situation described in RCW 35.13.310(1).

A boundary line adjustment under this section is not subject to potential review by a boundary review board. [1989 c 84 § 15.]

**35.13.340 Boundary line adjustment—Inclusion or exclusion of remaining portion of parcel—When subject to review—Definition.** The boundaries of a city shall be adjusted to include or exclude the remaining portion of a parcel of land located partially within and partially without \*of the boundaries of that city upon the governing body of the city adopting a resolution approving such an adjustment that was requested in a petition signed by the owner of the parcel. A boundary adjustment made pursuant to this section shall not be subject to potential review by the boundary review board of the county within which the parcel is located if the remaining portion of the parcel to be included or excluded from the city is located in the unincorporated area of the county and the adjustment is approved by resolution of the county legislative authority or in writing by a county official or employee of the county who is designated by ordinance of the county to make such approvals.

Where part of a single parcel of land is located within the boundaries of one city, and the remainder of the parcel is located within the boundaries of a second city that is located immediately adjacent to the first city, the boundaries of the two cities may be adjusted so that all of the parcel is located within either of the cities, if the adjustment was requested in a petition signed by the property owner and is approved by both cities. Approval by a city may be through either resolution of its city council, or in writing by an official or employee of the city who has been designated by ordinance of the city to make such approvals. Such an adjustment is not subject to potential review by the boundary review board of the county in which the parcel is located.

Whenever a portion of a public right of way is located on such a parcel, the boundary adjustment shall be made in such a manner as to include all or none of that portion of the public right of way within the boundaries of the city.

As used in this section, "city" shall include any city or town, including a code city. [1989 c 84 § 24.]

**\*Reviser's note:** The word "of" appears to be unnecessary.

**35.13.350 Providing annexation information to public.** A city or town can provide factual public information on the effects of a pending annexation proposed for the city or town. [1989 c 351 § 8.]

**35.13.360 Transfer of county sheriff's employees—Purpose.** It is the purpose of RCW 35.13.360 through 35.13.400 to require the lateral transfer of any qualified county sheriff's employee who, by reason of annexation or

incorporation of an unincorporated area of a county, will or is likely to be laid off due to sheriff's department cutbacks resulting from the loss of the unincorporated law enforcement responsibility. [1993 c 189 § 2.]

### **35.13.370 Transfer of county sheriff's employees—**

**When authorized.** When any portion of an unincorporated area of a county is to be annexed or incorporated into a city, code city, or town, any employee of the sheriff's office of the county may transfer his or her employment to the police department of the city, code city, or town as provided in RCW 35.13.360 through 35.13.400 if the employee: (1) Was, at the time the annexation or incorporation occurred, employed exclusively or principally in performing the powers, duties, and functions of the county sheriff's office; (2) will, as a direct consequence of the annexation or incorporation, be separated from the employ of the county; and (3) can perform the duties and meets the city's, code city's or town's minimum standards and qualifications of the position to be filled within their police department.

Nothing in this section or RCW 35.13.380 requires a city, code city, or town to accept the voluntary transfer of employment of a person who will not be laid off due to his or her seniority status. [1993 c 189 § 3.]

### **35.13.380 Transfer of county sheriff's employees—**

**Conditions, limitations.** (1) An eligible employee under RCW 35.13.370 may transfer into the civil service system for the police department by filing a written request with the civil service commission of the affected city, code city, or town and by giving written notice thereof to the legislative authority of the county. Upon receipt of such request by the civil service commission the transfer shall be made. The employee so transferring will: (a) Be on probation for the same period as are new employees in the same classification of the police department; (b) be eligible for promotion after completion of the probationary period in compliance with existing civil service rules pertaining to lateral transfers based upon combined service time; (c) receive a salary at least equal to that of other new employees in the same classification of the police department; and (d) in all other matters, such as sick leave and vacation, have, within the civil service system, all the rights, benefits, and privileges that the employee would have been entitled to had he or she been a member of the police department from the beginning of his or her employment with the county. The county is responsible for compensating an employee for benefits accrued while employed with the sheriff's office unless a different agreement is reached between the county and the city, code city, or town. No accrued benefits are transferable to the recipient agency unless the recipient agency agrees to accept the accrued benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency. The county shall, upon receipt of such notice, transmit to the civil service commission a record of the employee's service with the county which shall be credited to the employee as a part of his or her period of employment in the police department. For purposes of layoffs by the city, code city, or town, only the time of service accrued with the city, code city, or town shall apply unless an agreement is reached between the col-

lective bargaining representatives of the police department and sheriff's office employees and the police department and sheriff's office.

(2) Only as many of the transferring employees shall be placed upon the payroll of the police department as the city, code city, or town determines are needed to provide an adequate level of law enforcement service. The needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in RCW 35.13.360 through 35.13.400 shall head the list of their respective class or job listing exclusive of rank in the civil service system in order of their seniority, so that they shall be the first to be employed in the police department as vacancies become available. Employees who are not immediately hired by the city, code city, or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the police department and sheriff's office employees and the police department and sheriff's office. The county sheriff's office must rehire former employees who are placed on the city's reemployment list before it can hire anyone else to perform the same duties previously performed by these employees who were laid off.

(3) The thirty-six month period contained in subsection (2) of this section shall commence:

(a) On the effective date of the annexation in cases of annexation; and

(b) On the date when the city creates its own police department in cases of incorporation.

(4) The city, code city, or town shall retain the right to select the police chief regardless of seniority. [1993 c 189 § 4.]

### **35.13.390 Transfer of county sheriff's employees—**

**Rules.** In addition to its other duties prescribed by law, the civil service commission shall make rules necessary to provide for the orderly integration of employees of a county sheriff's office to the police department of the city, code city, or town pursuant to RCW 35.13.360 through 35.13.400. [1993 c 189 § 5.]

### **35.13.400 Transfer of county sheriff's employees— Notification of right to transfer—Time for filing transfer request.**

When any portion of an unincorporated area of a county is to be annexed or incorporated into a city, code city, or town and layoffs will result in the county sheriff's office, employees so affected shall be notified of their right to transfer. The affected employees shall have ninety days after the commencement of the thirty-six month period as specified in RCW 35.13.380(3) to file a request to transfer their employment to the police department of the city, code city, or town under RCW 35.13.360 through 35.13.400. [1993 c 189 § 6.]

**35.13.410 Alternative direct petition method—Commencement of proceedings—Notice to legislative body—Meeting—Assumption of indebtedness—Comprehensive plan.** Proceedings for the annexation of territory pursuant to this section and RCW 35.13.420 shall be commenced as provided in this section. Before the circulation of a petition for

annexation, the initiating party or parties who, except as provided in RCW 28A.335.110, shall be either not less than ten percent of the residents of the area to be annexed or the owners of not less than ten percent of the acreage for which annexation is petitioned, shall notify the legislative body of the city or town in writing of their intention to commence annexation proceedings. The legislative body shall set a date, not later than sixty days after the filing of the request, for a meeting with the initiating parties to determine whether the city or town will accept, reject, or geographically modify the proposed annexation, whether it shall require the simultaneous adoption of the comprehensive plan if such plan has been prepared and filed for the area to be annexed as provided for in RCW 35.13.177 and 35.13.178, and whether it shall require the assumption of all or any portion of existing city or town indebtedness by the area to be annexed. If the legislative body requires the assumption of all or any portion of indebtedness and/or the adoption of a comprehensive plan, it shall record this action in its minutes and the petition for annexation shall be so drawn as to clearly indicate this fact. There shall be no appeal from the decision of the legislative body. [2003 c 331 § 2.]

**Intent—2003 c 331:** "The legislature recognizes that on March 14, 2002, the Washington state supreme court decided in *Grant County Fire Protection District No. 5 v. City of Moses Lake*, 145 Wn.2d 702 (2002), that the petition method of annexation authorized by RCW 35.13.125 through 35.13.160 and 35A.14.120 through 35A.14.150 is unconstitutional. The legislature also recognizes that on October 11, 2002, the Washington state supreme court granted a motion for reconsideration of this decision. The legislature intends to provide a new method of direct petition annexation that enables property owners and registered voters to participate in an annexation process without the constitutional defect identified by the court." [2003 c 331 § 1.]

**Severability—2003 c 331:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 331 § 14.]

**Effective date—2003 c 331:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2003]." [2003 c 331 § 15.]

**35.13.420 Alternative direct petition method—Petition—Signers—Content.** (1) A petition for annexation of an area contiguous to a city or town may be made in writing addressed to and filed with the legislative body of the municipality to which annexation is desired. Except where all the property sought to be annexed is property of a school district, and the school directors thereof file the petition for annexation as in RCW 28A.335.110, the petition must be signed by the owners of a majority of the acreage for which annexation is petitioned and a majority of the registered voters residing in the area for which annexation is petitioned.

(2) If no residents exist within the area proposed for annexation, the petition must be signed by the owners of a majority of the acreage for which annexation is petitioned.

(3) The petition shall set forth a legal description of the property proposed to be annexed that complies with RCW 35.02.170, and shall be accompanied by a drawing that outlines the boundaries of the property sought to be annexed. If the legislative body has required the assumption of all or any portion of city or town indebtedness by the area annexed, and/or the adoption of a comprehensive plan for the area to be annexed, these facts, together with a quotation of the minute

entry of such requirement or requirements, shall be set forth in the petition. [2003 c 331 § 3.]

**Intent—Severability—Effective date—2003 c 331:** See notes following RCW 35.13.410.

**35.13.430 Alternative direct petition method—Notice of hearing.** When a petition for annexation is filed with the city or town council, or commission in those cities having a commission form of government, that meets the requirements of RCW 35.13.410, 35.13.420, and 35.21.005, of which fact satisfactory proof may be required by the council or commission, the council or commission may entertain the same, fix a date for a public hearing thereon and cause notice of the hearing to be published in one issue of a newspaper of general circulation in the city or town. The notice shall also be posted in three public places within the territory proposed for annexation, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. The expense of publication and posting of the notice shall be borne by the signers of the petition. [2003 c 331 § 4.]

**Intent—Severability—Effective date—2003 c 331:** See notes following RCW 35.13.410.

**35.13.440 Alternative direct petition method—Ordinance providing for annexation.** Following the hearing, the council or commission shall determine by ordinance whether annexation shall be made. Subject to the provisions of RCW 35.13.410, 35.13.460, and 35.21.005, they may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the ordinance a certified copy shall be filed with the board of county commissioners of the county in which the annexed property is located. [2003 c 331 § 5.]

**Intent—Severability—Effective date—2003 c 331:** See notes following RCW 35.13.410.

**35.13.450 Alternative direct petition method—Effective date of annexation and comprehensive plan—Assessment, taxation of territory annexed.** Upon the date fixed in the ordinance of annexation, the area annexed shall become part of the city or town. All property within the annexed territory shall, if the annexation petition so provided, be assessed and taxed at the same rate and on the same basis as the property of such annexing city or town is assessed and taxed to pay for all or of any portion of the then outstanding indebtedness of the city or town to which the area is annexed, approved by the voters, contracted, or incurred before, or existing at, the date of annexation. If the annexation petition so provided, all property in the annexed area is subject to and is a part of the comprehensive plan as prepared and filed as provided for in RCW 35.13.177 and 35.13.178. [2003 c 331 § 6.]

**Intent—Severability—Effective date—2003 c 331:** See notes following RCW 35.13.410.

**35.13.460 Alternative direct petition method—Method is alternative.** The method of annexation provided for in RCW 35.13.410 through 35.13.450 is an alternative method, and does not supersede any other method. [2003 c 331 § 7.]

**Intent—Severability—Effective date—2003 c 331:** See notes following RCW 35.13.410.

**35.13.470 Annexation of territory within urban growth areas—Interlocal agreement—Public hearing—Ordinance providing for annexation.** (1) The legislative body of a county, city, or town planning under chapter 36.70A RCW and subject to the requirements of RCW 36.70A.215 may initiate an annexation process for unincorporated territory by adopting a resolution commencing negotiations for an interlocal agreement as provided in chapter 39.34 RCW between a county and any city or town within the county. The territory proposed for annexation must meet the following criteria: (a) Be within the city or town urban growth area designated under RCW 36.70A.110, and (b) at least sixty percent of the boundaries of the territory proposed for annexation must be contiguous to the annexing city or town or one or more cities or towns.

(2) If the territory proposed for annexation has been designated in an adopted county comprehensive plan as part of an urban growth area, urban service area, or potential annexation area for a specific city or town, or if the urban growth area territory proposed for annexation has been designated in a written agreement between a city or town and a county for annexation to a specific city or town, the designation or designations shall receive full consideration before a city or county may initiate the annexation process provided for in RCW 35.13.480.

(3) The agreement shall describe the boundaries of the territory to be annexed. A public hearing shall be held by each legislative body, separately or jointly, before the agreement is executed. Each legislative body holding a public hearing shall, separately or jointly, publish the agreement at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the territory proposed for annexation.

(4) Following adoption and execution of the agreement by both legislative bodies, the city or town legislative body shall adopt an ordinance providing for the annexation of the territory described in the agreement. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the territory to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of the requirements. Any territory to be annexed through an ordinance adopted under this section is annexed and becomes a part of the city or town upon the date fixed in the ordinance of annexation, which date may not be fewer than forty-five days after adoption of the ordinance. [2003 c 299 § 1.]

**35.13.480 Annexation of territory within urban growth areas—County may initiate process with other cities or towns, when—Interlocal agreement—Public hearing—Ordinance providing for annexation—Referendum—Election, when necessary.** (1) The legislative body of any county planning under chapter 36.70A RCW and sub-

ject to the requirements of RCW 36.70A.215 may initiate an annexation process with the legislative body of any other cities or towns that are contiguous to the territory proposed for annexation in RCW 35.13.470 if:

(a) The county legislative body initiated an annexation process as provided in RCW 35.13.470; and

(b) The affected city or town legislative body adopted a responsive resolution rejecting the proposed annexation or declined to create the requested interlocal agreement with the county; or

(c) More than one hundred eighty days have passed since adoption of a county resolution as provided for in RCW 35.13.470 and the parties have not adopted or executed an interlocal agreement providing for the annexation of unincorporated territory. The legislative body for either the county or an affected city or town may, however, pass a resolution extending the negotiation period for one or more six-month periods if a public hearing is held and findings of fact are made prior to each extension.

(2) Any county initiating the process provided for in subsection (1) of this section must do so by adopting a resolution commencing negotiations for an interlocal agreement as provided in chapter 39.34 RCW between the county and any city or town within the county. The annexation area must be within an urban growth area designated under RCW 36.70A.110 and at least sixty percent of the boundaries of the territory to be annexed must be contiguous to one or more cities or towns.

(3) The agreement shall describe the boundaries of the territory to be annexed. A public hearing shall be held by each legislative body, separately or jointly, before the agreement is executed. Each legislative body holding a public hearing shall, separately or jointly, publish the agreement at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the territory proposed for annexation.

(4) Following adoption and execution of the agreement by both legislative bodies, the city or town legislative body shall adopt an ordinance providing for the annexation. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the territory to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of the requirements. Any area to be annexed through an ordinance adopted under this section is annexed and becomes a part of the city or town upon the date fixed in the ordinance of annexation, which date may not be less than forty-five days after adoption of the ordinance.

(5) The annexation ordinances provided for in RCW 35.13.470(4) and subsection (4) of this section are subject to referendum for forty-five days after passage. Upon the filing of a timely and sufficient referendum petition with the legislative body, signed by registered voters in number equal to not less than fifteen percent of the votes cast in the last general state election in the area to be annexed, the question of annexation shall be submitted to the voters of the area in a

general election if one is to be held within ninety days or at a special election called for that purpose not less than forty-five days nor more than ninety days after the filing of the referendum petition. Notice of the election shall be given as provided in RCW 35.13.080 and the election shall be conducted as provided in the general election law. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation ordinance, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the city or town upon the date fixed in the ordinance of annexation.

(6) If more than one city or town adopts interlocal agreements providing for annexation of the same unincorporated territory as provided by this section, an election shall be held in the area to be annexed pursuant to RCW 35.13.070 and 35.13.080. In addition to the provisions of RCW 35.13.070 and 35.13.080, the ballot shall also contain a separate proposition allowing voters to cast votes in favor of annexation to any one city or town participating in an interlocal agreement as provided by this section. If a majority of voters voting on the proposition vote against annexation, the proposition is defeated. If, however, a majority of voters voting in the election approve annexation, the area shall be annexed to the city or town receiving the highest number of votes among those cast in favor of annexation.

(7) Costs for an election required under subsection (6) of this section shall be borne by the county. [2003 c 299 § 2.]

**35.13.900 Application of chapter to annexations involving water or sewer service.** Nothing in this chapter precludes or otherwise applies to an annexation by a city or town of unincorporated territory as authorized by RCW 57.24.170, 57.24.190, and 57.24.210. [1996 c 230 § 1601; 1995 c 279 § 3.]

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**Chapter 35.13A RCW**

**WATER OR SEWER DISTRICTS—ASSUMPTION OF JURISDICTION**

Sections

35.13A.010	Definitions.
35.13A.020	Assumption authorized—Disposition of properties and rights—Outstanding indebtedness—Management and control.
35.13A.030	Assumption of control if sixty percent or more of area or valuation within city.
35.13A.0301	Assumption of water-sewer district before July 1, 1999—Limitations.
35.13A.040	Assumption of control if less than sixty percent of area or valuation within city.
35.13A.050	Territory containing facilities within or without city—Duties of city or district—Rates and charges—Assumption of responsibility—Outstanding indebtedness—Properties and rights.
35.13A.060	District in more than one city—Assumption of responsibilities—Duties of cities.
35.13A.070	Contracts.
35.13A.080	Dissolution of water district or sewer district.
35.13A.090	Employment and rights of district employees.
35.13A.100	Assumption of substandard water system—Limited immunity from liability.
35.13A.900	Severability—1971 ex.s. c 95.

**35.13A.010 Definitions.** Whenever used in this chapter, the following words shall have the following meanings:

(1) The words "district," "water district," and "sewer district" shall mean a "water-sewer district" as that term is used in Title 57 RCW.

(2) The word "city" shall mean a city or town of any class and shall also include any code city as defined in chapter 35A.01 RCW.

(3) The word "indebtedness" shall include general obligation, revenue, and special indebtedness and temporary, emergency, and interim loans. [1998 c 326 § 1; 1971 ex.s. c 95 § 1.]

**Effective date—1998 c 326:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 3, 1998]." [1998 c 326 § 4.]

**35.13A.020 Assumption authorized—Disposition of properties and rights—Outstanding indebtedness—Management and control.**

(1) Whenever all of the territory of a district is included within the corporate boundaries of a city, the city legislative body may adopt a resolution or ordinance to assume jurisdiction over all of the district.

(2) Upon the assumption, all real and personal property, franchises, rights, assets, taxes levied but not collected for the district for other than indebtedness, water, sewer, and drainage facilities, and all other facilities and equipment of the district shall become the property of the city subject to all financial, statutory, or contractual obligations of the district for the security or performance of which the property may have been pledged. The city, in addition to its other powers, shall have the power to manage, control, maintain, and operate the property, facilities and equipment and to fix and collect service and other charges from owners and occupants of properties so served by the city, subject, however, to any outstanding indebtedness, bonded or otherwise, of the district payable from taxes, assessments, or revenues of any kind or nature and to any other contractual obligations of the district.

(3) The city may by resolution or ordinance of its legislative body, assume the obligation of paying such district indebtedness and of levying and of collecting or causing to be collected the district taxes, assessments, and utility rates and charges of any kind or nature to pay and secure the payment of the indebtedness, according to all of the terms, conditions and covenants incident to the indebtedness, and shall assume and perform all other outstanding contractual obligation of the district in accordance with all of their terms, conditions, and covenants. An assumption shall not be deemed to impair the obligation of any indebtedness or other contractual obligation. During the period until the outstanding indebtedness of the district has been discharged, the territory of the district and the owners and occupants of property therein, shall continue to be liable for its and their proportionate share of the indebtedness, including any outstanding assessments levied within any local improvement district or utility local improvement district thereof. The city shall assume the obligation of causing the payment of the district's indebtedness, collecting the district's taxes, assessments, and charges, and observing and performing the other district contractual obligations. The legislative body of the city shall act as the officers of the district for the purpose of certifying the amount of

any property tax to be levied and collected therein, and causing service and other charges and assessments to be collected from the property or owners or occupants thereof, enforcing the collection and performing all other acts necessary to ensure performance of the district's contractual obligations in the same manner and by the same means as if the territory of the district had not been included within the boundaries of a city.

When a city assumes the obligation of paying the outstanding indebtedness, and if property taxes or assessments have been levied and service and other charges have accrued for this purpose but have not been collected by the district prior to the assumption, the same when collected shall belong and be paid to the city and be used by the city so far as necessary for payment of the indebtedness of the district existing and unpaid on the date the city assumes the indebtedness. Any funds received by the city which have been collected for the purpose of paying any bonded or other indebtedness of the district, shall be used for the purpose for which they were collected and for no other purpose. Any outstanding indebtedness shall be paid as provided in the terms, conditions, and covenants of the indebtedness. All funds of the district on deposit with the county treasurer at the time of title transfer shall be used by the city solely for the benefit of the assumed utility and shall not be transferred to or used for the benefit of the city's general fund. [1999 c 153 § 28; 1998 c 326 § 2; 1971 ex.s. c 95 § 2.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**Effective date—1998 c 326:** See note following RCW 35.13A.010.

**35.13A.030 Assumption of control if sixty percent or more of area or valuation within city.** Whenever a portion of a district equal to at least sixty percent of the area or sixty percent of the assessed valuation of the real property lying within such district, is included within the corporate boundaries of a city, the city may assume by ordinance the full and complete management and control of that portion of the entire district not included within another city, whereupon the provisions of RCW 35.13A.020 shall be operative; or the city may proceed directly under the provisions of RCW 35.13A.050. [1999 c 153 § 29; 1971 ex.s. c 95 § 3.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**35.13A.0301 Assumption of water-sewer district before July 1, 1999—Limitations.** During the period commencing with April 3, 1998, and running through July 1, 1999, a city may not assume jurisdiction of all or a portion of a water-sewer district under RCW 35.13A.030 or 35.13A.040, unless voters of the entire water-sewer district approve a ballot proposition authorizing the assumption under general election law with the city paying for the election costs, and during the same period a water-sewer district may not:

- (1) Merge or consolidate with another water-sewer district unless each city that is partially included within any of the districts proposing to merge or consolidate indicates that it has no interest in assuming jurisdiction of the district; or
- (2) Take any action that would establish different contractual obligations, requirements for retiring indebtedness,

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authority to issue debt in parity with the district's existing outstanding indebtedness, rates of compensation, or terms of employment contracts, if a city assumes jurisdiction of all or a portion of the district. Nothing in this subsection shall be construed to prevent a district from issuing obligations on a parity with its outstanding obligations, to repeat terms and conditions of obligations provided with respect to earlier parity obligations, or to provide covenants that are customary for obligations of similar utilities whether those utilities are operated by cities or special purpose districts. [1998 c 326 § 3.]

**Effective date—1998 c 326:** See note following RCW 35.13A.010.

**35.13A.040 Assumption of control if less than sixty percent of area or valuation within city.** Whenever the portion of a district included within the corporate boundaries of a city is less than sixty percent of the area of the district and less than sixty percent of the assessed valuation of the real property within the district, the city may elect to proceed under the provisions of RCW 35.13A.050. [1999 c 153 § 30; 1971 ex.s. c 95 § 4.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**35.13A.050 Territory containing facilities within or without city—Duties of city or district—Rates and charges—Assumption of responsibility—Outstanding indebtedness—Properties and rights.** When electing under RCW 35.13A.030 or 35.13A.040 to proceed under this section, the city may assume, by ordinance, jurisdiction of the district's responsibilities, property, facilities and equipment within the corporate limits of the city: PROVIDED, That if on the effective date of such an ordinance the territory of the district included within the city contains any facilities serving or designed to serve any portion of the district outside the corporate limits of the city or if the territory lying within the district and outside the city contains any facilities serving or designed to serve territory included within the city (which facilities are hereafter in this section called the "serving facilities"), the city or district shall for the economically useful life of any such serving facilities make available sufficient capacity therein to serve the sewage or water requirements of such territory, to the extent that such facilities were designed to serve such territory at a rate charged to the municipality being served which is reasonable to all parties.

In the event a city proceeds under this section, the district may elect upon a favorable vote of a majority of all voters within the district voting upon such propositions to require the city to assume responsibility for the operation and maintenance of the district's property, facilities and equipment throughout the entire district and to pay the city a charge for such operation and maintenance which is reasonable under all of the circumstances.

A city acquiring property, facilities and equipment under the provisions of this section shall acquire such property, facilities and equipment, and fix and collect service and other charges from owners and occupants of properties served by the city, subject, to any contractual obligations of the district which relate to the property, facilities, or equipment so acquired by the city or which are secured by taxes, assessments or revenues from the territory of the district included within the city. In such cases, the property included within

the city and the owners and occupants thereof shall continue to be liable for payment of its and their proportionate share of any outstanding district indebtedness. The district and its officers shall continue to levy taxes and assessments on and to collect service and other charges from such property, or owners or occupants thereof, to enforce such collections, and to perform all other acts necessary to insure performance of the district's contractual obligations in the same manner and by the same means as if the territory of the district had not been included within the boundaries of a city. [1971 ex.s. c 95 § 5.]

**35.13A.060 District in more than one city—Assumption of responsibilities—Duties of cities.** Whenever more than one city, in whole or in part, is included within a district, the city which has within its boundaries sixty percent or more of the area of the assessed valuation of the district (in this section referred to as the "principal city") may, with the approval of any other city containing part of such district, assume responsibility for operation and maintenance of the district's property, facilities and equipment within such other city and make and enforce such charges for operation, maintenance and retirement of indebtedness as may be reasonable under all the circumstances.

Any other city having less than sixty percent in area or assessed valuation of such district, within its boundaries may install facilities and create local improvement districts or otherwise finance the cost of installation of such facilities and if such facilities have been installed in accordance with reasonable standards fixed by the principal city, such other city may connect such facilities to the utility system of such district operated by the principal city upon providing for payment by the owners or occupants of properties served thereby, of such charges established by the principal city as may be reasonable under the circumstances. [1999 c 153 § 31; 1971 ex.s. c 95 § 6.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**35.13A.070 Contracts.** Notwithstanding any provision of this chapter to the contrary, one or more cities and one or more districts may, through their legislative authorities, authorize a contract with respect to the rights, powers, duties, and obligation of such cities, or districts with regard to the use and ownership of property, the providing of services, the maintenance and operation of facilities, allocation of cost, financing and construction of new facilities, application and use of assets, disposition of liabilities and debts, the performance of contractual obligations, and any other matters arising out of the inclusion, in whole or in part, of the district or districts within any city or cities, or the assumption by the city of jurisdiction of a district under \*RCW 35.13A.110. The contract may provide for the furnishing of services by any party thereto and the use of city or district facilities or real estate for such purpose, and may also provide for the time during which such district or districts may continue to exercise any rights, privileges, powers, and functions provided by law for such district or districts as if the district or districts or portions thereof were not included within a city or were not subject to an assumption of jurisdiction under \*RCW 35.13A.110, including but not by way of limitation, the right

to promulgate rules and regulations, to levy and collect special assessments, rates, charges, service charges, and connection fees, to adopt and carry out the provisions of a comprehensive plan, and amendments thereto, for a system of improvements, and to issue general obligation bonds or revenue bonds in the manner provided by law. The contract may provide for the transfer to a city of district facilities, property, rights, and powers as provided in RCW 35.13A.030, 35.13A.050, and \*35.13A.110, whether or not sixty percent or any of the area or assessed valuation of real estate lying within the district or districts is included within such city. The contract may provide that any party thereto may authorize, issue, and sell revenue bonds to provide funds for new water or sewer improvements or to refund any water revenue, sewer revenue, or combined water and sewer revenue bonds outstanding of any city, or district which is a party to such contract if such refunding is deemed necessary, providing such refunding will not increase interest costs. The contract may provide that any party thereto may authorize and issue, in the manner provided by law, general obligation or revenue bonds of like amounts, terms, conditions, and covenants as the outstanding bonds of any other party to the contract, and such new bonds may be substituted or exchanged for such outstanding bonds. However, no such exchange or substitution shall be effected in such a manner as to impair the obligation or security of any such outstanding bonds. [1997 c 426 § 2; 1971 ex.s. c 95 § 7.]

**\*Reviser's note:** RCW 35.13A.110 expired December 31, 1998.

**35.13A.080 Dissolution of water district or sewer district.** In any of the cases provided for in RCW 35.13A.020, 35.13A.030, 35.13A.050, and \*35.13A.110, and notwithstanding any other method of dissolution provided by law, dissolution proceedings may be initiated by either the city or the district, or both, when the legislative body of the city and the governing body of the district agree to, and petition for, dissolution of the district.

The petition for dissolution shall be signed by the chief administrative officer of the city and the district, upon authorization of the legislative body of the city and the governing body of the district, respectively and such petition shall be presented to the superior court of the county in which the city is situated.

If the petition is thus authorized by both the city and district, and title to the property, facilities, and equipment of the district has passed to the city pursuant to action taken under this chapter, all indebtedness and local improvement district or utility local improvement district assessments of the district have been discharged or assumed by and transferred to the city, and the petition contains a statement of the distribution of assets and liabilities mutually agreed upon by the city and the district and a copy of the agreement between such city and the district is attached thereto, a hearing shall not be required and the court shall, if the interests of all interested parties have been protected, enter an order dissolving the district.

In any of the cases provided for in RCW 35.13A.020, 35.13A.030, and \*35.13A.110, if the petition for an order of dissolution is signed on behalf of the city alone or the district alone, or there is no mutual agreement on the distribution of

assets and liabilities, the superior court shall enter an order fixing a hearing date not less than sixty days from the day the petition is filed, and the clerk of the court of the county shall give notice of such hearing by publication in a newspaper of general circulation in the district once a week for three successive weeks and by posting in three public places in the district at least twenty-one days before the hearing. The notice shall set forth the filing of the petition, its purposes, and the date and place of hearing thereon.

After the hearing the court shall enter its order with respect to the dissolution of the district. If the court finds that such district should be dissolved and the functions performed by the city, the court shall provide for the transfer of assets and liabilities to the city. The court may provide for the dissolution of the district upon such conditions as the court may deem appropriate. A certified copy of the court order dissolving the district shall be filed with the county auditor. If the court does not dissolve the district, it shall state the reasons for declining to do so. [1997 c 426 § 3; 1971 ex.s. c 95 § 8.]

\*Reviser's note: RCW 35.13A.110 expired December 31, 1998.

**35.13A.090 Employment and rights of district employees.** Whenever a city acquires all of the facilities of a district, pursuant to this chapter, such a city shall offer to employ every full time employee of the district who is engaged in the operation of such a district's facilities on the date on which such city acquires the district facilities. When a city acquires any portion of the facilities of such a district, such a city shall offer to employ full time employees of the district as of the date of the acquisition of the facilities of the district who are not longer needed by the district.

Whenever a city employs a person who was employed immediately prior thereto by the district, arrangements shall be made:

(1) For the retention of all sick leave standing to the employee's credit in the plan of such district.

(2) For a vacation with pay during the first year of employment equivalent to that to which he would have been entitled if he had remained in the employment of the district. [1999 c 153 § 32; 1971 ex.s. c 95 § 9.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**35.13A.100 Assumption of substandard water system—Limited immunity from liability.** A city assuming responsibility for a water system that is not in compliance with state or federal requirements for public drinking water systems, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements for public drinking water systems, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the city has submitted and is complying with a plan and schedule of improvements approved by the department of health. This immunity shall expire on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith. [1994 c 292 § 5.]

**Findings—Intent—1994 c 292:** See note following RCW 57.04.050.

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**35.13A.900 Severability—1971 ex.s. c 95.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 95 § 12.]

## Chapter 35.14 RCW

### COMMUNITY MUNICIPAL CORPORATIONS

#### Sections

35.14.010	When community municipal corporation may be organized—Service areas—Territory.
35.14.020	Community council—Membership—Election—Terms.
35.14.030	Community council—Employees—Office—Officers—Quorum—Meetings—Compensation and expenses.
35.14.040	Ordinances or resolutions of city applying to land, buildings or structures within corporation, effectiveness—Zoning ordinances, resolutions or land use controls to remain in effect upon annexation or consolidation—Comprehensive plan.
35.14.050	Powers and duties of community municipal corporation.
35.14.060	Original term of existence of community municipal corporation—Continuation of existence—Procedure.

**35.14.010 When community municipal corporation may be organized—Service areas—Territory.** Whenever unincorporated territory is annexed by a city or town pursuant to the provisions of chapter 35.13 RCW, or whenever unincorporated territory is annexed to a code city pursuant to the provisions of chapter 35A.14 RCW, community municipal corporations may be organized for the territory comprised of all or a part of an unincorporated area annexed to a city or town pursuant to chapter 35.13 or 35A.14 RCW, if: (1) The service area is such as would be eligible for incorporation as a city or town; or (2) the service area has a minimum population of not less than three hundred inhabitants and ten percent of the population of the annexing city or town; or (3) the service area has a minimum population of not less than one thousand inhabitants.

Whenever two or more cities are consolidated pursuant to the provisions of chapter 35.10 RCW, a community municipal corporation may be organized within one or more of the consolidating cities.

No territory shall be included in the service area of more than one community municipal corporation. Whenever a new community municipal corporation is formed embracing all of the territory of an existing community municipal corporation, the prior existing community municipal corporation shall be deemed to be dissolved on the effective date of the new corporation. [1993 c 75 § 1; 1985 c 281 § 24; 1967 c 73 § 1.]

**Severability—1985 c 281:** See RCW 35.10.905.

**35.14.020 Community council—Membership—Election—Terms.** A community municipal corporation shall be governed by a community council composed of five members. Initial council members shall be elected concurrently with the annexation election to consecutively numbered positions from qualified electors residing within the service area. Declarations of candidacy and withdrawals shall be in the same manner as is provided for members of the city council or other legislative body of the city to which annexation is proposed. Subsequent council membership shall be the same in number as the initial council and such members shall be elected to consecutively numbered positions at the continua-

tion election pursuant to RCW 35.14.060 from qualified electors residing within the service area.

Terms of original council members shall be coexistent with the original term of existence of the community municipal corporation and until their successors are elected and qualified. Vacancies in any council shall be filled for the remainder of the unexpired term by a majority vote of the remaining members. [1985 c 281 § 25; 1967 c 73 § 2.]

**Severability—1985 c 281:** See RCW 35.10.905.

**35.14.030 Community council—Employees—Office—Officers—Quorum—Meetings—Compensation and expenses.** Each community council shall be staffed by a deputy to the city clerk of the city with which the service area is consolidated or annexed and shall be provided with such other clerical and technical assistance and a properly equipped office as may be necessary to carry out its functions.

Each community council shall elect a chairman and vice chairman from its membership. A majority of the council shall constitute a quorum. Each action of the community municipal corporation shall be by resolution approved by vote of the majority of all the members of the community council. Meetings shall be held at such times and places as provided in the rules of the community council. Members of the community council shall receive no compensation.

The necessary expenses of the community council shall be budgeted and paid by the city. [1967 c 73 § 3.]

**35.14.040 Ordinances or resolutions of city applying to land, buildings or structures within corporation, effectiveness—Zoning ordinances, resolutions or land use controls to remain in effect upon annexation or consolidation—Comprehensive plan.** The adoption, approval, enactment, amendment, granting or authorization by the city council or commission of any ordinance or resolution applying to land, buildings or structures within any community council corporation shall become effective within such community municipal corporation either on approval by the community council, or by failure of the community council to disapprove within sixty days of final enactment, with respect to the following:

- (1) Comprehensive plan;
- (2) Zoning ordinance;
- (3) Conditional use permit, special exception or variance;
- (4) Subdivision ordinance;
- (5) Subdivision plat;
- (6) Planned unit development.

Disapproval by the community council shall not affect the application of any ordinance or resolution affecting areas outside the community municipal corporation.

Upon annexation or consolidation, pending the effective enactment or amendment of a zoning or land use control ordinance, without disapproval of the community municipal corporation, affecting land, buildings, or structures within a community municipal corporation, the zoning ordinance, resolution or land use controls applicable to the annexed or consolidated area, prior to the annexation or consolidation, shall remain in effect within the community municipal corporation

and be enforced by the city to which the area is annexed or consolidated.

Whenever the comprehensive plan of the city, insofar as it affects the area of the community municipal corporation has been submitted as part of an annexation proposition and approved by the voters of the area proposed for annexation pursuant to chapter 88, Laws of 1965 extraordinary session, such action shall have the same force and effect as approval by the community council of the comprehensive plan, zoning ordinance and subdivision ordinance. [1967 c 73 § 4.]

**35.14.050 Powers and duties of community municipal corporation.** In addition to powers and duties relating to approval of zoning regulations and restrictions as set forth in RCW 35.14.040, a community municipal corporation acting through its community council may:

- (1) Make recommendations concerning any proposed comprehensive plan or other proposal which directly or indirectly affects the use of property or land within the service area;
- (2) Provide a forum for consideration of the conservation, improvement or development of property or land within the service area; and
- (3) Advise, consult, and cooperate with the legislative authority of the city on any local matters directly or indirectly affecting the service area. [1967 c 73 § 5.]

**35.14.060 Original term of existence of community municipal corporation—Continuation of existence—Procedure.** The original terms of existence of any community municipal corporation shall be for at least four years and until the first Monday in January next following a regular municipal election held in the city.

Any such community municipal corporation may be continued thereafter for additional periods of four years' duration with the approval of the voters at an election held and conducted in the manner provided for in this section.

Authorization for a community municipal corporation to continue its term of existence for each additional period of four years may be initiated pursuant to a resolution or a petition in the following manner:

- (1) A resolution praying for such continuation may be adopted by the community council and shall be filed not less than seven months prior to the end of the term of existence of such corporation with the city council or other legislative body of the city in which the service area is located.
- (2) A petition for continuation shall be signed by at least ten percent of the registered voters residing within the service area and shall be filed not less than six months prior to the end of the term of existence of such corporation with the city council or other legislative body of the city in which the service area is located.

At the same election at which a proposition is submitted to the voters of the service area for the continuation of the community municipal corporation for an additional period of four years, the community council members of such municipal corporation shall be elected. The positions on such council shall be the same in number as the original or initial council and shall be numbered consecutively and elected at large. Declarations of candidacy and withdrawals shall be in the

same manner as is provided for members of the city council or other legislative body of the city.

Upon receipt of a petition, the city clerk shall examine the signatures thereon and certify to the sufficiency thereof. No person may withdraw his name from a petition after it has been filed.

Upon receipt of a valid resolution or upon duly certifying a petition for continuation of a community municipal corporation, the city clerk with whom the resolution or petition was filed shall cause a proposition on continuation of the term of existence of the community municipal corporation to be placed on the ballot at the next city general election. No person shall be eligible to vote on such proposition at such election unless he is a qualified voter and resident of the service area.

The ballots shall contain the words "For continuation of community municipal corporation" and "Against continuation of community municipal corporation" or words equivalent thereto, and shall also contain the names of the candidates to be voted for to fill the positions on the community council. The names of all candidates to be voted upon shall be printed on the ballot alphabetically in groups under the numbered position on the council for which they are candidates.

If the results of the election as certified by the county canvassing board reveal that a majority of the votes cast are for continuation, the municipal corporation shall continue in existence for an additional period of four years, and certificates of election shall be issued to the successful candidates who shall assume office at the same time as members of the city council or other legislative body of the city. [1967 c 73 § 6.]

## Chapter 35.16 RCW

### REDUCTION OF CITY LIMITS

#### Sections

35.16.001	Actions subject to review by boundary review board.
35.16.010	Petition, resolution for election.
35.16.030	Canvassing the returns—Abstract of vote.
35.16.040	Ordinance to reduce boundaries.
35.16.050	Recording of ordinance and plat on effective date of reduction.
35.16.060	Effect of exclusion as to liability for indebtedness.
35.16.070	Previously granted franchises in excluded territory.

**35.16.001 Actions subject to review by boundary review board.** Actions taken under chapter 35.16 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 29.]

**35.16.010 Petition, resolution for election.** Upon the filing of a petition which is sufficient as determined by RCW 35A.01.040 requesting the exclusion from the boundaries of a city or town of an area described by metes and bounds or by reference to a recorded plat or government survey, signed by qualified voters of the city or town equal in number to not less than ten percent of the number of voters voting at the last general municipal election, the city or town legislative body shall submit the question to the voters. As an alternate method, the legislative body of the city or town may by resolution submit a proposal to the voters for excluding such a described area from the boundaries of the city or town. The question shall be submitted at the next general municipal election if one is to

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be held within one hundred eighty days or at a special election called for that purpose not less than ninety days nor more than one hundred eighty days after the certification of sufficiency of the petition or the passage of the resolution. The petition or resolution shall set out and describe the territory to be excluded from the city or town, together with the boundaries of the city or town as it will exist after such change is made. [1994 c 273 § 1; 1965 c 7 § 35.16.010. Prior: (i) 1895 c 93 § 1, part; RRS § 8902, part. (ii) 1895 c 93 § 4, part; RRS § 8905, part.]

*Times for holding elections: RCW 29A.04.311 through 29A.04.330.*

#### **35.16.030 Canvassing the returns—Abstract of vote.**

The election returns shall be canvassed as provided in \*RCW 29.13.040. If three-fifths of the votes cast on the proposition favor the reduction of the corporate limits, the legislative body of the city or town, by an order entered on its minutes, shall direct the clerk to make and transmit to the office of the secretary of state a certified abstract of the vote. The abstract shall show the total number of voters voting, the number of votes cast for reduction and the number of votes cast against reduction. [1994 c 273 § 3; 1965 c 7 § 35.16.030. Prior: 1895 c 93 § 1, part; RRS § 8902, part.]

**\*Reviser's note:** RCW 29.13.040 was recodified as RCW 29A.60.010 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

*Canvassing returns, generally: Chapter 29A.60 RCW.*

*Conduct of election—Canvass: RCW 29A.60.010.*

**35.16.040 Ordinance to reduce boundaries.** Promptly after the filing of the abstract of votes with the office of the secretary of state, the legislative body of the city or town shall adopt an ordinance defining and fixing the corporate limits after excluding the area as determined by the election. The ordinance shall also describe the excluded territory by metes and bounds or by reference to a recorded plat or government survey and declare it no longer a part of the city or town. [1994 c 273 § 4; 1965 c 7 § 35.16.040. Prior: 1895 c 93 § 2; RRS § 8903.]

**35.16.050 Recording of ordinance and plat on effective date of reduction.** A certified copy of the ordinance defining the reduced city or town limits together with a map showing the corporate limits as altered shall be filed in accordance with \*RCW 29.15.026 and recorded in the office of the county auditor of the county in which the city or town is situated, upon the effective date of the ordinance. The new boundaries of the city or town shall take effect immediately after they are filed and recorded with the county auditor. [1996 c 286 § 3; 1994 c 273 § 5; 1965 c 7 § 35.16.050. Prior: 1895 c 93 § 3; RRS § 8904.]

**\*Reviser's note:** RCW 29.15.026 was recodified as RCW 29A.76.020 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**35.16.060 Effect of exclusion as to liability for indebtedness.** The exclusion of an area from the boundaries of a city or town shall not exempt any real property therein from taxation for the purpose of paying any indebtedness of the city or town existing at the time of its exclusion, and the interest thereon. [1965 c 7 § 35.16.060. Prior: 1895 c 93 § 4, part; RRS § 8905, part.]

**35.16.070 Previously granted franchises in excluded territory.** In regard to franchises previously granted for operation of any public service business or facility within the territory excluded from a city or town by proceedings under this chapter, the rights, obligations, and duties of the legislative body of the county or other political subdivision having jurisdiction over such territory and of the franchise holder shall be as provided in RCW 35.02.160, relating to inclusion of territory by an incorporation. [1994 c 273 § 6.]

### Chapter 35.17 RCW

## COMMISSION FORM OF GOVERNMENT

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*Imposition or increase of business and occupation tax—Referendum procedure required—Exclusive procedure: RCW 35.21.706.*

*Population determinations: Chapter 43.62 RCW.*

**35.17.010 Definition of commission form.** The commission form of city government means a city government in which the legislative powers and duties are exercised by a commission of three, consisting of a mayor, a commissioner of finance and accounting, and a commissioner of streets and public improvements, and in which the executive and admin-

istrative powers and duties are distributed among the three departments as follows:

(1) Department of public safety of which the mayor shall be the superintendent;

(2) Department of finance and accounting of which the commissioner of finance and accounting shall be the superintendent;

(3) Department of streets and public improvements of which the commissioner of streets and public improvement shall be the superintendent. [1965 c 7 § 35.17.010. Prior: (i) 1911 c 116 § 11, part; RRS § 9100, part. (ii) 1943 c 25 § 3, part; 1911 c 116 § 12, part; Rem. Supp. 1943 § 9101, part.]

**35.17.020 Elections—Terms of commissioners—Vacancies.** (1) All regular elections in cities organized under the statutory commission form of government shall be held quadrennially in the odd-numbered years on the dates provided in \*RCW 29.13.020. However, after commissioners are elected at the next general election occurring in 1995 or 1997, regular elections in cities organized under a statutory commission form of government shall be held biennially at municipal general elections.

(2) The commissioners shall be nominated and elected at large. Their terms shall be for four years and until their successors are elected and qualified and assume office in accordance with \*RCW 29.04.170. However, at the next regular election of a city organized under a statutory commission form of government, the terms of office of commissioners shall occur with the person who is elected as a commissioner receiving the least number of votes being elected to a two-year term of office and the other two persons who are elected being elected to four-year terms of office. Thereafter, commissioners shall be elected to four-year terms of office.

(3) Vacancies on a commission shall occur and shall be filled as provided in chapter 42.12 RCW, except that in every instance a person shall be elected to fill the remainder of the unexpired term at the next general municipal election that occurs twenty-eight or more days after the occurrence of the vacancy. [1994 c 223 § 10; 1994 c 119 § 1; 1979 ex.s. c 126 § 17; 1965 c 7 § 35.17.020. Prior: 1963 c 200 § 12; 1959 c 86 § 2; 1955 c 55 § 9; prior: (i) 1911 c 116 § 5; RRS § 9094. (ii) 1943 c 25 § 1, part; 1911 c 116 § 3, part; Rem. Supp. 1943 § 9092, part.]

**Reviser's note:** \*(1) RCW 29.13.020 and 29.04.170 were recodified as RCW 29A.04.330 and 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

(2) This section was amended by 1994 c 119 § 1 and by 1994 c 223 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**35.17.030 Laws applicable.** Cities organized under the commission form have all the powers of cities of the second class and shall be governed by the statutes applicable to cities of that class to the extent to which they are appropriate and not in conflict with provisions specifically applicable to cities organized under the commission form. [1965 c 7 § 35.17.030. Prior: (i) 1911 c 116 § 11, part; RRS § 9100, part. (ii) 1911 c 116 § 4, part; RRS § 9093, part.]

*Second class cities: Chapter 35.23 RCW.*

**35.17.035 Second class cities, parking meter revenue for revenue bonds.** See RCW 35.23.454.

**35.17.040 Offices.** The commission shall have and maintain an office at the city hall, or such other place as the city may provide. [1965 c 7 § 35.17.040. Prior: 1955 c 309 § 3; prior: 1943 c 25 § 4, part; 1911 c 116 § 14, part; Rem. Supp. 1943 § 9103, part.]

**35.17.050 Meetings.** Regular meetings of the commission shall be held on the second Monday after the election of the commissioners and thereafter at least once each week on a day to be fixed by ordinance. Special meetings may be called by the mayor or two commissioners. All meetings of the commission shall be open to the public. [1965 c 7 § 35.17.050. Prior: 1911 c 116 § 15, part; RRS § 9104, part.]

**35.17.060 President.** The mayor shall be president of the commission. He shall preside at its meetings when present and shall oversee all departments and recommend to the commission, action on all matters requiring attention in any department. [1965 c 7 § 35.17.060. Prior: 1911 c 116 § 15, part; RRS § 9104, part.]

**35.17.070 Vice president.** The commissioner of finance and accounting shall be vice president of the commission. In the absence or inability of the mayor, he shall perform the duties of president. [1965 c 7 § 35.17.070. Prior: 1911 c 116 § 15, part; RRS § 9104, part.]

**35.17.080 Employees of commission.** The commission shall appoint by a majority vote a city clerk and such other officers and employees as the commission may by ordinance provide. Any officer or employee appointed by the commission may be discharged at any time by vote of a majority of the members of the commission. Any commissioner may perform any duties pertaining to his department but without additional compensation therefor. [1965 c 7 § 35.17.080. Prior: 1943 c 25 § 3, part; 1911 c 116 § 12, part; Rem. Supp. 1943 § 9101, part.]

**35.17.090 Distribution of powers—Assignment of duties.** The commission by ordinance shall determine what powers and duties are to be performed in each department, shall prescribe the powers and duties of the various officers and employees and make such rules and regulations for the efficient and economical conduct of the business of the city as it may deem necessary and proper. The commission may assign particular officers and employees to one or more departments and may require an officer or employee to perform duties in two or more departments. [1965 c 7 § 35.17.090. Prior: 1911 c 116 § 11, part; RRS § 9100, part.]

**35.17.100 Bonds of commissioners and employees.** Every member of the city commission, before qualifying, shall give a good and sufficient bond to the city in a sum equivalent to five times the amount of his annual salary, conditioned for the faithful performance of the duties of his office. The bonds must be approved by a judge of the superior court for the county in which the city is located and filed with

the clerk thereof. The commission, by resolution, may require any of its appointees to give bond to be fixed and approved by the commission and filed with the mayor. [1965 c 7 § 35.17.100. Prior: 1911 c 116 § 6; RRS § 9095.]

**35.17.105 Clerk may take acknowledgments.** The clerk or deputy clerk of any city having a commission form of government shall, without charge, take acknowledgments and administer oaths required by law on all claims and demands against the city. [1965 c 7 § 35.17.105.]

**35.17.108 Salaries of mayor and commissioners.** The annual salaries of the mayor and the commissioners of any city operating under a commission form of government shall be as fixed by charter or ordinance of said city. The power and authority conferred by this section shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of any such city. [1967 c 100 § 1.]

**35.17.120 Officers and employees—Salaries and wages.** All appointive officers and employees shall receive such compensation as the commission shall fix by ordinance, payable monthly or at such shorter periods as the commission may determine. [1965 c 7 § 35.17.120. Prior: 1943 c 25 § 4, part; 1911 c 116 § 14, part; Rem. Supp. 1943 § 9103, part.]

**35.17.130 Officers and employees—Creation—Removal—Changes in compensation.** The commission shall have power from time to time to create, fill and discontinue offices and employments other than those herein prescribed, according to their judgment of the needs of the city; and may, by majority vote of all the members, remove any such officer or employees, except as otherwise provided for in this chapter; and may by resolution, or otherwise, prescribe, limit or change the compensation of such officers or employees. [1965 c 7 § 35.17.130. Prior: 1911 c 116 § 13; RRS § 9102.]

**35.17.150 Officers and employees—Passes, free services prohibited, exceptions—Penalty.** No officer or employee, elected or appointed, shall receive from any enterprise operating under a public franchise any frank, free ticket, or free service or receive any service upon terms more favorable than are granted to the public generally: PROVIDED, That the provisions of this section shall not apply to free transportation furnished to policemen and firemen in uniform nor to free service to city officials provided for in the franchise itself.

Any violation of the provisions of this section shall be a misdemeanor. [1965 c 7 § 35.17.150. Prior: 1961 c 268 § 11; prior: 1911 c 116 § 17, part; RRS § 9106, part.]

**35.17.170 Financial statements—Monthly—Annual.** The commission shall each month print in pamphlet form a detailed itemized statement of all receipts and expenses of the city and a summary of its proceedings during the preceding month and furnish copies thereof to the state library, the city library, the newspapers of the city, and to persons who apply

therefor at the office of the city clerk. At the end of each year the commission shall cause a complete examination of all the books and accounts of the city to be made by competent accountants and shall publish the result of such examination to be made in the manner above provided for publication of statements of monthly expenditures. [1965 c 7 § 35.17.170. Prior: 1911 c 116 § 18; RRS § 9107.]

**35.17.180 Legislative power—How exercised.** Each member of the commission shall have the right to vote on all questions coming before the commission. Two members of the commission shall constitute a quorum and the affirmative vote of at least two members shall be necessary to adopt any motion, resolution, ordinance, or course of action.

Every measure shall be reduced to writing and read before the vote is taken and upon every vote the yeas and nays shall be called and recorded. [1965 c 7 § 35.17.180. Prior: 1911 c 116 § 10, part; RRS § 9099, part.]

**35.17.190 Legislative ordinances and resolutions.** Every resolution and ordinance adopted by the commission shall be signed by the mayor or by two members of the commission and filed and recorded within five days of its passage. The mayor shall have no veto power. [1965 c 7 § 35.17.190. Prior: 1911 c 116 § 10, part; RRS § 9099, part.]

**35.17.200 Legislative—Appropriations of money.** No money shall be appropriated except by ordinance and every such ordinance complete in the form in which it is finally passed shall remain on file with the city clerk for public inspection at least one week before final passage. [1965 c 7 § 35.17.200. Prior: 1911 c 116 § 16, part; RRS § 9105, part.]

**35.17.210 Legislative—Street improvements.** Every ordinance or resolution ordering any street improvement or sewer complete in the form in which it is finally passed shall remain on file with the city clerk for public inspection at least one week before final passage. [1965 c 7 § 35.17.210. Prior: 1911 c 116 § 16, part; RRS § 9105, part.]

**35.17.220 Legislative—Franchises—Referendum.** No franchise or right to occupy or use the streets, highways, bridges or other public places shall be granted, renewed, or extended except by ordinance and every such ordinance complete in the form in which it is finally passed shall remain on file with the city clerk for at least one week before final passage and if the franchise or grant is for interurban or street railways, gas or water works, electric light or power plants, heating plants, telegraph or telephone systems or other public service utilities, the ordinance must be submitted to a vote of the people at a general or special election and approved by a majority of those voting thereon. [1965 c 7 § 35.17.220. Prior: 1911 c 116 § 16, part; RRS § 9105, part.]

*Times for holding elections: RCW 29A.04.311 through 29A.04.330.*

**35.17.230 Legislative—Ordinances—Time of going into effect.** Ordinances shall not go into effect before thirty days from the time of final passage and are subject to referendum during the interim except:

- (1) Ordinances initiated by petition;
- (2) Ordinances necessary for immediate preservation of public peace, health, and safety which contain a statement of urgency and are passed by unanimous vote of all the commissioners;
- (3) Ordinances providing for local improvement districts. [1965 c 7 § 35.17.230. Prior: (i) 1911 c 116 § 22, part; RRS § 9111, part. (ii) 1911 c 116 § 21, part; RRS § 9110, part.]

**35.17.240 Legislative—Referendum—Filing suspends ordinance.** Upon the filing of a referendum petition praying therefor, the commission shall reconsider an ordinance subject to referendum and upon reconsideration shall defeat it in its entirety or shall submit it to a vote of the people. The operation of an ordinance so protested against shall be suspended until the referendum petition is finally found insufficient or until the ordinance protested against has received a majority of the votes cast thereon at the election. [1965 c 7 § 35.17.240. Prior: 1911 c 116 § 22, part; RRS § 9111, part.]

**35.17.250 Legislative—Referendum—Petitions and conduct of elections.** All provisions applicable to the character, form, and number of signatures required for an initiative petition, to the examination and certification thereof, and to the submission to the vote of the people of the ordinance proposed thereby, shall apply to a referendum petition and to the ordinance sought to be defeated thereby. [1965 c 7 § 35.17.250. Prior: 1911 c 116 § 22, part; RRS § 9111, part.]

**35.17.260 Legislative—Ordinances by initiative petition.** Ordinances may be initiated by petition of registered voters of the city filed with the commission. If the petition accompanying the proposed ordinance is signed by the registered voters in the city equal in number to twenty-five percent of the votes cast for all candidates for mayor at the last preceding city election, and if it contains a request that, unless passed by the commission, the ordinance be submitted to a vote of the registered voters of the city, the commission shall either:

- (1) Pass the proposed ordinance without alteration within twenty days after the county auditor's certificate of sufficiency has been received by the commission; or
- (2) Immediately after the county auditor's certificate of sufficiency for the petition is received, cause to be called a special election to be held on the next election date, as provided in \*RCW 29.13.020, that occurs not less than forty-five days thereafter, for submission of the proposed ordinance without alteration, to a vote of the people unless a general election will occur within ninety days, in which event submission must be made on the general election ballot. [1996 c 286 § 4; 1965 c 7 § 35.17.260. Prior: 1911 c 116 § 21, part; RRS § 9110, part.]

**\*Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**35.17.270 Legislative—Initiative petition—Submission procedures.** The petitioner preparing an initiative petition for submission to the commission shall follow the procedure

dures established in RCW 35.21.005. [1996 c 286 § 5; 1965 c 7 § 35.17.270. Prior: (i) 1911 c 116 § 21, part; RRS § 9110, part. (ii) 1911 c 116 § 20, part; RRS § 9109, part. (iii) 1911 c 116 § 24; RRS § 9113.]

**35.17.280 Legislative—Initiative petition—Checking by clerk.** Within ten days from the filing of a petition submitting a proposed ordinance the city clerk shall ascertain and append to the petition his certificate stating whether or not it is signed by a sufficient number of registered voters, using the registration records and returns of the preceding municipal election for his sources of information, and the commission shall allow him extra help for that purpose, if necessary. If the signatures are found by the clerk to be insufficient the petition may be amended in that respect within ten days from the date of the certificate. Within ten days after submission of the amended petition the clerk shall make an examination thereof and append his certificate thereto in the same manner as before. If the second certificate shall also show the number of signatures to be insufficient, the petition shall be returned to the person filing it. [1965 c 7 § 35.17.280. Prior: (i) 1911 c 116 § 20, part; RRS § 9109, part. (ii) 1911 c 116 § 21, part; RRS § 9110, part.]

**35.17.290 Legislative—Initiative petition—Appeal to court.** If the clerk finds the petition insufficient or if the commission refuses either to pass an initiative ordinance or order an election thereon, any taxpayer may commence an action in the superior court against the city and procure a decree ordering an election to be held in the city for the purpose of voting upon the proposed ordinance if the court finds the petition to be sufficient. [1965 c 7 § 35.17.290. Prior: (i) 1911 c 116 § 20, part; RRS § 9109, part. (ii) 1911 c 116 § 21, part; RRS § 9110, part.]

**35.17.300 Legislative—Initiative—Conduct of election.** Publication of notice, the election, the canvass of the returns and declaration of the results, shall be conducted in all respects as are other city elections. Any number of proposed ordinances may be voted on at the same election, but there shall not be more than one special election for that purpose during any one six-month period. [1965 c 7 § 35.17.300. Prior: (i) 1911 c 116 § 20, part; RRS § 9109, part. (ii) 1911 c 116 § 21, part; RRS § 9110, part.]

*Canvassing returns, generally: Chapter 29A.60 RCW.*

*Conduct of elections—Canvass: RCW 29A.60.010.*

**35.17.310 Legislative—Initiative—Notice of election.** The city clerk shall cause any ordinance or proposition required to be submitted to the voters at an election to be published once in each of the daily newspapers in the city not less than five nor more than twenty days before the election, or if no daily newspaper is published in the city, publication shall be made in each of the weekly newspapers published therein. This publication shall be in addition to the notice required in \*chapter 29.27 RCW. [1965 c 7 § 35.17.310. Prior: 1911 c 116 § 21, part; RRS § 9110, part.]

**\*Reviser's note:** RCW 29.27.0665, containing ballot title notice requirements, has been recodified as RCW 29A.36.080 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

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**35.17.330 Legislative—Initiative—Effective date—Record.** If the number of votes cast thereon favor the proposed ordinance, it shall become effective immediately and shall be made a part of the record of ordinances of the city. [1965 c 7 § 35.17.330. Prior: 1911 c 116 § 21, part; RRS § 9110, part.]

**35.17.340 Legislative—Initiative—Repeal or amendment.** Upon the adoption of an ordinance initiated by petition, the city clerk shall write on the margin of the record thereof "ordinance by petition No. . . .," or "ordinance by vote of the people," and it cannot be repealed or amended except by a vote of the people. [1965 c 7 § 35.17.340. Prior: 1911 c 116 § 21, part; RRS § 9110, part.]

**35.17.350 Legislative—Initiative—Repeal or amendment—Method.** The commission may by means of an ordinance submit a proposition for the repeal or amendment of an ordinance, initiated by petition, by submitting it to a vote of the people at any general election and if a majority of the votes cast upon the proposition favor it, the ordinance shall be repealed or amended accordingly.

A proposition of repeal or amendment must be published before the election thereon as is an ordinance initiated by petition when submitted to election. [1965 c 7 § 35.17.350. Prior: 1911 c 116 § 21, part; RRS § 9110, part.]

**35.17.360 Legislative—Initiative—Repeal or amendment—Record.** Upon the adoption of a proposition to repeal or amend an ordinance initiated by petition, the city clerk shall write upon the margin of the record of the ordinance "repealed (or amended) by ordinance No. . . .," or "repealed (or amended) by vote of the people." [1965 c 7 § 35.17.360. Prior: 1911 c 116 § 21, part; RRS § 9110, part.]

**35.17.370 Organization on commission form—Eligibility—Census.** Any city having a population of two thousand and less than thirty thousand may organize as a city under the commission form of government. The requisite population shall be determined by the last preceding state or federal census or the council may cause a census to be taken by one or more suitable persons, in which the full name of each person in the city shall be plainly written, the names alphabetically arranged and regularly numbered in a complete series, verified before an officer authorized to administer oaths and filed with the city clerk. [1965 c 7 § 35.17.370. Prior: 1927 c 210 § 1; 1911 c 116 § 1; RRS § 9090.]

*Census to be conducted in decennial periods: State Constitution Art. 2 § 3.*

*Determination of population: Chapter 43.62 RCW.*

**35.17.380 Organization—Petition.** Upon petition of electors in any city equal in number to twenty-five percent of the votes cast for all candidates for mayor at the last preceding city election therein, the mayor by proclamation shall cause to be submitted the question of organizing the city under the commission form of government at a special election at a time specified therein and within sixty days after the filing of the petition. If the plan is not adopted at the special election called, it shall not be resubmitted to the voters of the

city for adoption within two years thereafter. [1965 c 7 § 35.17.380. Prior: 1911 c 116 § 2, part; RRS § 9091, part.]

**35.17.390 Organization—Ballots.** The proposition on the ballot shall be: "Shall the proposition to organize the city of (name of city) under the commission form of government be adopted?" followed by the words: "For organization as a city under commission form" and "against organization as a city under commission form." The election shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other city elections. If a majority of the votes cast are in favor thereof the city shall proceed to elect a mayor and two commissioners. [1965 c 7 § 35.17.390. Prior: 1911 c 116 § 2, part; RRS § 9091, part.]

*Canvassing returns, generally: Chapter 29A.60 RCW.*

*Conduct of elections—Canvass: RCW 29A.60.010.*

**35.17.400 Organization—Election of officers—Term.** The first election of commissioners shall be held at the next special election that occurs at least sixty days after the election results are certified where the proposition to organize under the commission form was approved by city voters, and the commission first elected shall commence to serve as soon as they have been elected and have qualified and shall continue to serve until their successors have been elected and qualified and have assumed office in accordance with \*RCW 29.04.170. The date of the second election for commissioners shall be in accordance with \*RCW 29.13.020 such that the term of the first commissioners will be as near as possible to, but not in excess of, four years calculated from the first day in January in the year after the year in which the first commissioners were elected. [1994 c 223 § 11; 1979 ex.s. c 126 § 18; 1965 c 7 § 35.17.400. Prior: 1963 c 200 § 13; 1955 c 55 § 10; prior: 1943 c 25 § 1, part; 1911 c 116 § 3, part; Rem. Supp. 1943 § 9092, part.]

\*Reviser's note: RCW 29.04.170 and 29.13.020 were recodified as RCW 29A.20.040 and 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**35.17.410 Organization—Effect on ordinances—Boundaries—Property.** All bylaws, ordinances and resolutions in force when a city organizes under the commission form shall remain in force until amended or repealed.

The boundaries of a city reorganized under the commission form shall not be changed thereby.

All rights and property vested in the city before reorganization under the commission form shall vest in the city as reorganized and no right or liability either in favor of or against it, existing at the time and no suit or prosecution shall be affected by the change. [1965 c 7 § 35.17.410. Prior: 1911 c 116 § 4, part; RRS § 9093, part.]

**35.17.420 Organization—Revision of appropriations.** If, at the beginning of the term of office of the first commission elected in a city organized under the commission form, the appropriations for the expenditures of the city for the current fiscal year have been made, the commission, by

ordinance, may revise them. [1965 c 7 § 35.17.420. Prior: 1911 c 116 § 19; RRS § 9108.]

**35.17.430 Abandonment of commission form.** Any city which has operated under the commission form for more than six years may again reorganize as a noncommission city without changing its classification unless it desires to do so. [1965 ex.s. c 47 § 3; 1965 c 7 § 35.17.430. Prior: 1911 c 116 § 23, part; RRS § 9112, part.]

**35.17.440 Abandonment—Method.** Upon the filing of a petition praying therefor, signed by not less than twenty-five percent of the registered voters resident in the city, a special election shall be called at which the following proposition only shall be submitted: "Shall the city of (name of city) abandon its organization as a city under the commission form and become a city under the general laws governing cities of like population?" [1965 c 7 § 35.17.440. Prior: 1911 c 116 § 23, part; RRS § 9112, part.]

**35.17.450 Abandonment—Conduct of election—Canvass.** The sufficiency of the petition for the abandonment of the commission form of city government shall be determined, the election ordered and conducted, the returns canvassed and the results declared as required by the provisions applicable to the proceedings for the enactment of an ordinance by initiative petition to the extent to which they are appropriate. [1965 c 7 § 35.17.450. Prior: 1911 c 116 § 23, part; RRS § 9112, part.]

**35.17.460 Abandonment—Effect.** If a majority of the votes cast upon the proposition of abandoning the commission form of city government favor the proposition, the city shall be reorganized under general laws immediately upon the first election of city officers, which shall be held on the date of the next general city election of cities of its class. The change in form of government shall not affect the property, rights, or liabilities of the city. [1965 c 7 § 35.17.460. Prior: 1911 c 116 § 23, part; RRS § 9112, part.]

## Chapter 35.18 RCW

### COUNCIL-MANAGER PLAN

#### Sections

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**35.18.005 Definition—"Councilman."** As used in this title, the term "councilman" or "councilmen" means councilmember or councilmembers. [1981 c 213 § 1.]

**35.18.010 The council-manager plan.** Under the council-manager plan of city government, the councilmen shall be the only elective officials. The council shall appoint an officer whose title shall be "city manager" who shall be the chief executive officer and head of the administrative branch of city or town government. The city manager shall be responsible to the council for the proper administration of all affairs of the city or town. [1965 c 7 § 35.18.010. Prior: 1955 c 337 § 2; prior: (i) 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part. (ii) 1943 c 271 § 12, part; Rem. Supp. 1943 § 9198-21, part. (iii) 1949 c 84 § 2, part; 1943 c 271 § 17, part; Rem. Supp. 1949 § 9198-26, part.]

**35.18.020 Number of councilmembers—Wards, districts—Terms—Vacancies.** (1) The number of councilmembers in a city or town operating with a council-manager plan of government shall be based upon the latest population of the city or town that is determined by the office of financial management as follows:

- (a) A city or town having not more than two thousand inhabitants, five councilmembers; and
- (b) A city or town having more than two thousand, seven councilmembers.

(2) Except for the initial staggering of terms, councilmembers shall serve for four-year terms of office. All councilmembers shall serve until their successors are elected and qualified and assume office in accordance with \*RCW 29.04.170. Councilmembers may be elected on a city-wide or town-wide basis, or from wards or districts, or any combination of these alternatives. Candidates shall run for specific positions. Wards or districts shall be redrawn as provided in \*\*chapter 29.70 RCW. Wards or districts shall be used as follows: (a) Only a resident of the ward or district may be a candidate for, or hold office as, a councilmember of the ward or district; and (b) only voters of the ward or district may vote at a primary to nominate candidates for a councilmember of the ward or district. Voters of the entire city or town may vote at the general election to elect a councilmember of a ward or district, unless the city or town had prior to January 1, 1994, limited the voting in the general election for any or all council positions to only voters residing within the ward or district associated with the council positions. If a city or town had so limited the voting in the general election to only voters resid-

ing within the ward or district, then the city or town shall be authorized to continue to do so.

(3) When a city or town has qualified for an increase in the number of councilmembers from five to seven by virtue of the next succeeding population determination made by the office of financial management, two additional council positions shall be filled at the next municipal general election with the person elected to one of the new council positions receiving the greatest number of votes being elected for a four-year term of office and the person elected to the other additional council position being elected for a two-year term of office. The two additional councilmembers shall assume office immediately when qualified in accordance with \*RCW 29.01.135, but the term of office shall be computed from the first day of January after the year in which they are elected. Their successors shall be elected to four-year terms of office.

Prior to the election of the two new councilmembers, the city or town council shall fill the additional positions by appointment not later than forty-five days following the release of the population determination, and each appointee shall hold office only until the new position is filled by election.

(4) When a city or town has qualified for a decrease in the number of councilmembers from seven to five by virtue of the next succeeding population determination made by the office of financial management, two council positions shall be eliminated at the next municipal general election if four council positions normally would be filled at that election, or one council position shall be eliminated at each of the next two succeeding municipal general elections if three council positions normally would be filled at the first municipal general election after the population determination. The council shall by ordinance indicate which, if any, of the remaining positions shall be elected at-large or from wards or districts.

(5) Vacancies on a council shall occur and shall be filled as provided in chapter 42.12 RCW. [1994 c 223 § 12; 1981 c 260 § 7. Prior: 1979 ex.s. c 126 § 19; 1979 c 151 § 26; 1956 c 7 § 35.18.020; prior: 1959 c 76 § 1; 1955 c 337 § 3; prior: (i) 1943 c 271 § 6; Rem. Supp. 1943 § 9198-15. (ii) 1943 c 271 § 4, part; Rem. Supp. 1943 § 9198-13, part.]

**Reviser's note:** \*(1) RCW 29.04.170 and 29.01.135 were recodified as RCW 29A.20.040 and 29A.04.133, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004.

\*\* (2) Chapter 29.70 RCW was recodified as chapter 29A.76 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

*Population determinations, office of financial management: Chapter 43.62 RCW.*

*Times for holding elections: RCW 29A.04.311 through 29A.04.330.*

**35.18.030 Laws applicable to council-manager cities—Civil service.** A city or town organized under the council-manager plan shall have all the powers which cities of its class have and shall be governed by the statutes applicable to such cities to the extent to which they are appropriate and not in conflict with the provisions specifically applicable to cities organized under the council-manager plan.

Any city adopting a council-manager form of government may adopt any system of civil service which would be available to it under any other form of city government. Any state law relative to civil service in cities of the class of a city

under the council-manager type of government shall be applicable thereto. [1965 c 7 § 35.18.030. Prior: (i) 1949 c 84 § 4; Rem. Supp. 1949 § 9198-33. (ii) 1943 c 271 § 10, part; Rem. Supp. 1943 § 9198-19, part. (iii) 1943 c 271 § 21; Rem. Supp. 1943 § 9198-30.]

**35.18.035 Second class cities, parking meter revenue for revenue bonds.** See RCW 35.23.454.

**35.18.040 City manager—Qualifications.** The city manager need not be a resident. He shall be chosen by the council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office. No person elected to membership on the council shall be eligible for appointment as city manager until one year has elapsed following the expiration of the term for which he was elected. [1965 c 7 § 35.18.040. Prior: 1955 c 337 § 4; prior: (i) 1949 c 84 § 2, part; 1943 c 271 § 17, part; Rem. Supp. 1949 § 9198-26, part. (ii) 1943 c 271 § 12, part; Rem. Supp. 1943 § 9198-21, part.]

**35.18.050 City manager—Bond and oath.** Before entering upon the duties of his office the city manager shall take the official oath for the support of the government and the faithful performance of his duties and shall execute and file with the clerk of the council a bond in favor of the city or town in such sum as may be fixed by the council. [1965 c 7 § 35.18.050. Prior: 1955 c 337 § 5; prior: 1943 c 271 § 12, part; Rem. Supp. 1943 § 9198-21, part.]

**35.18.060 City manager—Authority.** The powers and duties of the city manager shall be:

(1) To have general supervision over the administrative affairs of the municipality;

(2) To appoint and remove at any time all department heads, officers, and employees of the city or town, except members of the council, and subject to the provisions of any applicable law, rule, or regulation relating to civil service: PROVIDED, That the council may provide for the appointment by the mayor, subject to confirmation by the council, of the city planning commission, and other advisory citizens' committees, commissions and boards advisory to the city council: PROVIDED FURTHER, That the city manager shall appoint the municipal judge to a term of four years, subject to confirmation by the council. The municipal judge may be removed only on conviction of malfeasance or misconduct in office, or because of physical or mental disability rendering him incapable of performing the duties of his office. The council may cause an audit to be made of any department or office of the city or town government and may select the persons to make it, without the advice or consent of the city manager;

(3) To attend all meetings of the council at which his attendance may be required by that body;

(4) To see that all laws and ordinances are faithfully executed, subject to the authority which the council may grant the mayor to maintain law and order in times of emergency;

(5) To recommend for adoption by the council such measures as he may deem necessary or expedient;

(6) To prepare and submit to the council such reports as may be required by that body or as he may deem it advisable to submit;

(7) To keep the council fully advised of the financial condition of the city or town and its future needs;

(8) To prepare and submit to the council a tentative budget for the fiscal year;

(9) To perform such other duties as the council may determine by ordinance or resolution. [1987 c 3 § 5; 1965 ex.s. c 116 § 1; 1965 c 7 § 35.18.060. Prior: 1955 c 337 § 6; prior: (i) 1949 c 84 § 2, part; 1943 c 271 § 17, part; Rem. Supp. 1949 § 9198-26, part. (ii) 1949 c 84 § 1; 1943 c 271 § 15; Rem. Supp. 1949 § 9198-24. (iii) 1949 c 84 § 3, part; 1943 c 271 § 18, part; Rem. Supp. 1949 § 9198-27, part.]

**Severability—1987 c 3:** See note following RCW 3.46.020.

**35.18.070 City manager—May serve two or more cities.** Whether the city manager shall devote his full time to the affairs of one city or town shall be determined by the council. A city manager may serve two or more cities or towns in that capacity at the same time. [1965 c 7 § 35.18.070. Prior: 1943 c 271 § 13; Rem. Supp. 1943 § 9198-22.]

**35.18.080 City manager—Creation of departments.** On recommendation of the city manager, the council may create such departments, offices and employments as may be found necessary and may determine the powers and duties of each department or office. [1965 c 7 § 35.18.080. Prior: 1943 c 271 § 16; Rem. Supp. 1943 § 9198-25.]

**35.18.090 City manager—Department heads—Authority.** The city manager may authorize the head of a department or office responsible to him to appoint and remove subordinates in such department or office. Any officer or employee who may be appointed by the city manager, or by the head of a department or office, except one who holds his position subject to civil service, may be removed by the manager or other such appointing officer at any time. Subject to the provisions of RCW 35.18.060, the decision of the manager or other appointing officer, shall be final and there shall be no appeal therefrom to any other office, body, or court whatsoever. [1965 c 7 § 35.18.090. Prior: 1955 c 337 § 7; prior: (i) 1949 c 84 § 2, part; 1943 c 271 § 17, part; Rem. Supp. 1949 § 9198-26, part. (ii) 1949 c 84 § 3, part; 1943 c 271 § 18, part; Rem. Supp. 1949 § 9198-27, part.]

**35.18.100 City manager—Appointment of subordinates—Qualifications—Terms.** Appointments made by or under the authority of the city manager shall be on the basis of executive and administrative ability and of the training and experience of the appointees in the work which they are to perform. Residence within the city or town shall not be a requirement. All such appointments shall be without definite term. [1965 c 7 § 35.18.100. Prior: 1955 c 337 § 8; prior: 1949 c 84 § 2, part; 1943 c 271 § 17, part; Rem. Supp. 1949 § 9198-26, part.]

**35.18.110 City manager—Interference by councilmembers.** Neither the council, nor any of its committees or members shall direct or request the appointment of any

person to, or his removal from, office by the city manager or any of his subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the manager and neither the council nor any committee or member thereof shall give orders to any subordinate of the city manager, either publicly or privately: PROVIDED, HOWEVER, That nothing herein shall be construed to prohibit the council, while in open session, from fully and freely discussing with the city manager anything pertaining to appointments and removals of city officers and employees and city affairs. [1965 c 7 § 35.18.110. Prior: 1955 c 337 § 14; prior: 1943 c 271 § 19, part; Rem. Supp. 1943 § 9198-28, part.]

**35.18.120 City manager—Removal—Resolution and notice.** The city manager shall be appointed for an indefinite term and may be removed by a majority vote of the council.

At least thirty days before the effective date of his removal, the city manager must be furnished with a formal statement in the form of a resolution passed by a majority vote of the city council stating the council's intention to remove him and the reasons therefor. Upon passage of the resolution stating the council's intention to remove the manager, the council by a similar vote may suspend him from duty, but his pay shall continue until his removal becomes effective. [1965 c 7 § 35.18.120. Prior: 1955 c 337 § 17; prior: 1943 c 271 § 14, part; Rem. Supp. 1943 § 9198-23, part.]

**35.18.130 City manager—Removal—Reply and hearing.** The city manager may, within thirty days from the date of service upon him of a copy thereof, reply in writing to the resolution stating the council's intention to remove him. In the event no reply is timely filed, the resolution shall upon the thirty-first day from the date of such service, constitute the final resolution removing the manager, and his services shall terminate upon that day. If a reply shall be timely filed with its clerk, the council shall fix a time for a public hearing upon the question of the manager's removal and a final resolution removing the manager shall not be adopted until a public hearing has been had. The action of the council in removing the manager shall be final. [1965 c 7 § 35.18.130. Prior: 1955 c 337 § 18; prior: 1943 c 271 § 14, part; Rem. Supp. 1943 § 9198-23, part.]

**35.18.140 City manager—Substitute.** The council may designate a qualified administrative officer of the city or town to perform the duties of manager:

- (1) Upon the adoption of the council-manager plan, pending the selection and appointment of a manager; or
- (2) Upon the termination of the services of a manager, pending the selection and appointment of a new manager; or
- (3) During the absence, disability, or suspension of the manager. [1965 c 7 § 35.18.140. Prior: 1955 c 337 § 19; prior: 1943 c 271 § 14, part; Rem. Supp. 1943 § 9198-23, part.]

**35.18.150 Council—Eligibility.** Only a qualified elector of the city or town may be a member of the council and upon ceasing to be such, or upon being convicted of a crime

involving moral turpitude, or of violating the provisions of RCW 35.18.110, he shall immediately forfeit his office. [1965 c 7 § 35.18.150. Prior: 1955 c 337 § 15; prior: (i) 1943 c 271 § 19, part; Rem. Supp. 1943 § 9198-28, part. (ii) 1943 c 271 § 9, part; Rem. Supp. 1943 § 9198-18, part.]

**35.18.160 Council—Authority.** The council shall have all of the powers which inhere in the city or town not reserved to the people or vested in the city manager, including but not restricted to the authority to adopt ordinances and resolutions. [1965 c 7 § 35.18.160. Prior: (i) 1943 c 271 § 9, part; Rem. Supp. 1943 § 9198-18, part. (ii) 1943 c 271 § 10, part; Rem. Supp. 1943 § 9198-19, part.]

**35.18.170 Council meetings.** The council shall meet at the times and places fixed by ordinance but must hold at least one regular meeting each month. The clerk shall call special meetings of the council upon request of the mayor or any two members. At all meetings of the city council, a majority of the councilmen shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. Requests for special meetings shall state the subject to be considered and no other subject shall be considered at a special meeting.

All meetings of the council and of committees thereof shall be open to the public and the rules of the council shall provide that citizens of the city or town shall have a reasonable opportunity to be heard at any meetings in regard to any matter being considered thereat. [1965 c 7 § 35.18.170. Prior: 1955 c 337 § 20; prior: 1943 c 271 § 7; Rem. Supp. 1943 § 9198-16.]

**35.18.180 Council—Ordinances—Recording.** No ordinance, resolution, or order, including those granting a franchise or valuable privilege, shall have any validity or effect unless passed by the affirmative vote of at least a majority of the members of the city or town council. Every ordinance or resolution adopted shall be signed by the mayor or two members, filed with the clerk within two days and by him recorded. [1965 c 7 § 35.18.180. Prior: 1959 c 76 § 3; 1943 c 271 § 11; Rem. Supp. 1943 § 9198-20.]

**35.18.190 Mayor—Election—Vacancy.** Biennially at the first meeting of the new council the members thereof shall choose a chairman from among their number who shall have the title of mayor. In addition to the powers conferred upon him as mayor, he shall continue to have all the rights, privileges and immunities of a member of the council. If a vacancy occurs in the office of mayor, the members of the council at their next regular meeting shall select a mayor from among their number for the unexpired term. [1969 c 101 § 1; 1965 c 7 § 35.18.190. Prior: 1955 c 337 § 9; prior: 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part.]

**35.18.200 Mayor—Duties.** The mayor shall preside at meetings of the council, and be recognized as the head of the city or town for all ceremonial purposes and by the governor for purposes of military law.

He shall have no regular administrative duties, but in time of public danger or emergency, if so authorized by the council, shall take command of the police, maintain law, and enforce order. [1965 c 7 § 35.18.200. Prior: 1955 c 337 § 10; prior: 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part.]

**35.18.210 Mayor pro tempore.** In case of the mayor's absence, a mayor pro tempore selected by the members of the council from among their number shall act as mayor during the continuance of the absence. [1969 c 101 § 2; 1965 c 7 § 35.18.210. Prior: 1955 c 337 § 11; prior: 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part.]

**35.18.220 Salaries.** Each member of the council shall receive such compensation as may be provided by law to cities of the class to which it belongs. The city manager and other officers or assistants shall receive such salary or compensation as the council shall fix by ordinance and shall be payable at such times as the council may determine. [1965 c 7 § 35.18.220. Prior: (i) 1943 c 271 § 9, part; Rem. Supp. 1943 § 9198-18, part. (ii) 1943 c 271 § 20; Rem. Supp. 1943 § 9198-29.]

**35.18.230 Organization on council-manager plan—Eligibility.** Any city or town having a population of less than thirty thousand may be organized as a council-manager city or town under this chapter. [1965 c 7 § 35.18.230. Prior: 1959 c 76 § 2; 1943 c 271 § 1; Rem. Supp. 1943 § 9198-10.]

**35.18.240 Organization—Petition.** Petitions to reorganize a city or town on the council-manager plan must be signed by registered voters resident therein equal in number to at least twenty percent of the votes cast for all candidates for mayor at the last preceding municipal election. In addition to the signature and residence addresses of the petitioners thereon, a petition must contain an affidavit stating the number of signers thereon at the time the affidavit is made.

Petitions containing the required number of signatures shall be accepted by the city or town clerk as prima facie valid until their invalidity has been proved.

A variation on such petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names or both shall not invalidate the signature on the petition if the surname and handwriting are the same. Signatures, including the original, of any voter who has signed such petitions two or more times shall be stricken. [1965 c 7 § 35.18.240. Prior: 1955 c 337 § 22; prior: (i) 1943 c 271 § 2, part; Rem. Supp. 1943 § 9198-11, part. (ii) 1943 c 271 § 5; Rem. Supp. 1943 § 9198-14.]

**35.18.250 Organization—Election procedure.** Upon the filing of a petition for the adoption of the council-manager plan of government, or upon resolution of the council to that effect, the mayor, only after the petition has been found to be valid, by proclamation issued within ten days after the filing of the petition or the resolution with the clerk, shall cause the question to be submitted at a special election to be held at a time specified in the proclamation, which shall be as

soon as possible after the sufficiency of the petition has been determined or after the said resolution of the council has been enacted, but in no event shall said special election be held during the ninety day period immediately preceding any regular municipal election therein. All acts necessary to hold this election, including legal notice, jurisdiction and canvassing of returns, shall be conducted in accordance with existing law. [1965 c 7 § 35.18.250. Prior: 1959 c 76 § 4; 1955 c 337 § 23; prior: 1943 c 271 § 2, part; Rem. Supp. 1943 § 9198-11, part.]

*Canvassing returns, generally: Chapter 29A.60 RCW.*

*Conduct of elections—Canvass: RCW 29A.60.010.*

*Times for holding elections: RCW 29A.04.311 through 29A.04.330.*

**35.18.260 Organization—Ballots.** At the election for organization on the council-manager plan, the proposition on the ballots shall be: "Shall the city (or town) of . . . . adopt the council-manager plan of municipal government?" followed by the words:

"For organization as a council-manager city or town . . . ."

"Against organization as a council-manager city or town . . . ."

The election shall be conducted, the vote canvassed and the results declared in the same manner as provided by law in respect to other municipal elections. [1965 c 7 § 35.18.260. Prior: 1943 c 271 § 3; Rem. Supp. 1943 § 9198-12.]

**35.18.270 Organization—Election of council, procedure.** If the majority of the votes cast at a special election for organization on the council-manager plan favor the plan, the city or town shall elect the council required under the council-manager plan in number according to its population at the next municipal general election. However, special elections shall be held to nominate and elect the new city councilmembers at the next primary and general election held in an even-numbered year if the next municipal general election is more than one year after the date of the election at which the voters approved the council-manager plan. The staggering of terms of office shall occur at the election when the new councilmembers are elected, where the simple majority of the persons elected as councilmembers receiving the greatest numbers of votes shall be elected to four-year terms of office if the election is held in an odd-numbered year, or three-year terms of office if the election is held in an even-numbered year, and the remainder of the persons elected as councilmembers shall be elected to two-year terms of office if the election is held in an odd-numbered year, or one-year terms of office if the election is held in an even-numbered year. The initial councilmembers shall take office immediately when they are elected and qualified, but the lengths of their terms of office shall be calculated from the first day in January in the year following the election. [1994 c 223 § 13; 1979 ex.s. c 126 § 20; 1965 c 7 § 35.18.270. Prior: 1959 c 76 § 5; 1955 c 337 § 12; prior: (i) 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part. (ii) 1943 c 271 § 4, part; Rem. Supp. 1943 § 9198-13, part.]

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**35.18.280 Organization—Holding over by incumbent officials and employees.** Councilmen shall take office at the times provided by RCW 35.18.270 as now or hereafter amended. The other city officials and employees who are incumbent at the time the council-manager plan takes effect shall hold office until their successors have been selected in accordance with the provisions of this chapter. [1965 c 7 § 35.18.280. Prior: 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part.]

**35.18.285 Organization—First council may revise budget.** If, at the beginning of the term of office of the first council elected in a city organized under the council-manager plan, the appropriations for the expenditures of the city for the current fiscal year have been made, the council, by ordinance, may revise them but may not exceed the total appropriations for expenditures already specified in the budget for the year. [1965 c 7 § 35.18.285. Prior: 1955 c 337 § 24.]

**35.18.290 Abandonment of council-manager plan.** Any city or town which has operated under the council-manager plan for more than six years may abandon such organization and accept the provisions of the general laws then applicable to municipalities upon the petition of not less than twenty percent of the registered voters therein, without changing its classification unless it desires to do so. [1965 ex.s. c 47 § 4; 1965 c 7 § 35.18.290. Prior: 1943 c 271 § 22, part; Rem. Supp. 1943 § 9198-31, part.]

**35.18.300 Abandonment—Method.** The sufficiency of the petition for abandonment of the council-manager form of government shall be determined, the election ordered and conducted, and the results declared generally as provided for the procedure for reorganizing under the council-manager plan so far as those provisions are applicable. [1965 c 7 § 35.18.300. Prior: 1943 c 271 § 23, part; Rem. Supp. 1943 § 9198-32, part.]

*Organization on council-manager plan: RCW 35.18.240 through 35.18.285.*

**35.18.310 Abandonment—Special election necessary.** The proposition to abandon the council-manager plan must be voted on at a special election called for that purpose at which the only proposition to be voted on shall be: "Shall the city (or town) of . . . . . abandon its organization under the council-manager plan and become a city (or town) under the general law governing cities (or towns) of . . . . . class?" [1965 c 7 § 35.18.310. Prior: 1943 c 271 § 22 part; Rem. Supp. 1943 § 9198-31, part.]

**35.18.320 Abandonment—Effect.** If a majority of votes cast at the special election favor the abandonment of the council-manager form of government, the officers elected at the next succeeding biennial election shall be those then prescribed for cities or towns of like class. Upon the qualification of such officers, the municipality shall again become organized under the general laws of the state, but such change shall not affect in any manner or degree the property, rights, or liabilities of the corporation but shall merely extend to such change in its form of government. [1965 c 7 §

35.18.320. Prior: 1943 c 271 § 23, part; Rem. Supp. 1943 § 9198-32, part.]

## Chapter 35.20 RCW

### MUNICIPAL COURTS—CITIES OVER FOUR HUNDRED THOUSAND

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- 35.20.921 Severability—1969 ex.s. c 147.

**Rules of court:** See *Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ)*.

*Courts of limited jurisdiction: Title 3 RCW.*

*Courts of record: Title 2 RCW.*

*Rights of accused: State Constitution Art. 1 § 22 (Amendment 10).*

*Rules for courts of limited jurisdiction: Volume 0.*

**35.20.010 Municipal court established—Termination of court—Agreement covering costs of handling resulting criminal cases—Arbitration—Notice.** (1) There is hereby created and established in each incorporated city of this state having a population of more than four hundred thousand inhabitants, as shown by the federal or state census, whichever is the later, a municipal court, which shall be styled "The Municipal Court of . . . . . (name of city)," hereinafter designated and referred to as the municipal court, which court shall have jurisdiction and shall exercise all the powers by this chapter declared to be vested in such municipal court, together with such powers and jurisdiction as is generally conferred in this state either by common law or statute.

(2) A municipality operating a municipal court under this section may terminate that court if the municipality has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a

result of the termination. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW.

(3) A city that has entered into an agreement for court services with the county must provide written notice of the intent to terminate the agreement to the county legislative authority not less than one year prior to February 1st of the year in which all district court judges are subject to election. A city that terminates an agreement for court services to be provided by a district court may terminate the agreement only at the end of a four-year district court judicial term.

(4) A county that wishes to terminate an agreement with a city for the provision of court services must provide written notice of the intent to terminate the agreement to the city legislative authority not less than one year prior to the expiration of the agreement. [2001 c 68 § 3; 1984 c 258 § 201; 1975 c 33 § 4; 1965 c 7 § 35.20.010. Prior: 1955 c 290 § 1.]

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Severability—1975 c 33:** See note following RCW 35.21.780.

**35.20.020 Sessions—Judges may act as magistrates—Night court.** The municipal court shall be always open except on nonjudicial days. It shall hold regular and special sessions at such times as may be prescribed by the judges thereof. The judges shall have the power to act as magistrates in accordance with the provisions of chapter 10.16 RCW. The legislative body of the city may by ordinance authorize a department of the municipal court to act as a night court, and shall appropriate the necessary funds therefor. [1965 c 7 § 35.20.020. Prior: 1955 c 290 § 2.]

**35.20.030 Jurisdiction—Maximum penalties for criminal violations—Review—Costs.** The municipal court shall have jurisdiction to try violations of all city ordinances and all other actions brought to enforce or recover license penalties or forfeitures declared or given by any such ordinances. It is empowered to forfeit cash bail or bail bonds and issue execution thereon, to hear and determine all causes, civil or criminal, arising under such ordinances, and to pronounce judgment in accordance therewith: PROVIDED, That for a violation of the criminal provisions of an ordinance no greater punishment shall be imposed than a fine of five thousand dollars or imprisonment in the city jail not to exceed one year, or both such fine and imprisonment, but the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. All civil and criminal proceedings in municipal court, and judgments rendered therein, shall be subject to review in the superior court by writ of review or on appeal: PROVIDED, That an appeal from the court's determination or order in a traffic infraction proceeding may be taken only in accordance with RCW 46.63.090(5). Costs in civil and criminal cases may be

taxed as provided in district courts. A municipal court participating in the program established by the office of the administrator for the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program. [2000 c 111 § 7; 1993 c 83 § 3; 1984 c 258 § 801; 1979 ex.s. c 136 § 23; 1965 c 7 § 35.20.030. Prior: 1955 c 290 § 3.]

**Effective date—1993 c 83:** See note following RCW 35.21.163.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**35.20.090 Trial by jury—Juror's fees.** In all civil cases and criminal cases where jurisdiction is concurrent with district courts as provided in RCW 35.20.250, within the jurisdiction of the municipal court, the plaintiff or defendant may demand a jury, which shall consist of six citizens of the state who shall be impaneled and sworn as in cases before district courts, or the trial may be by a judge of the municipal court: PROVIDED, That no jury trial may be held on a proceeding involving a traffic infraction. A defendant requesting a jury shall pay to the court a fee which shall be the same as that for a jury in district court. Where there is more than one defendant in an action and one or more of them requests a jury, only one jury fee shall be collected by the court. Each juror may receive up to twenty-five dollars but in no case less than ten dollars for each day in attendance upon the municipal court, and in addition thereto shall receive mileage at the rate determined under RCW 43.03.060: PROVIDED, That the compensation paid jurors shall be determined by the legislative authority of the city and shall be uniformly applied. Trial by jury shall be allowed in criminal cases involving violations of city ordinances commencing January 1, 1972, unless such incorporated city affected by this chapter has made provision therefor prior to January 1, 1972. [1987 c 202 § 195; 1980 c 148 § 6. Prior: 1979 ex.s. c 136 § 24; 1979 ex.s. c 135 § 8; prior: 1977 ex.s. c 248 § 3; 1977 ex.s. c 53 § 3; 1969 ex.s. c 147 § 8; 1965 c 7 § 35.20.090; prior: 1955 c 290 § 9.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**Effective date—1980 c 148:** See note following RCW 46.10.090.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**Severability—1979 ex.s. c 135:** See note following RCW 2.36.080.

**35.20.100 Departments of court—Jurisdiction and venue—Presiding judge—Costs of election.** There shall be three departments of the municipal court, which shall be designated as Department Nos. 1, 2 and 3. However, when the administration of justice and the accomplishment of the work of the court make additional departments necessary, the legislative body of the city may create additional departments as they are needed. The departments shall be established in such places as may be provided by the legislative body of the city, and each department shall be presided over by a municipal judge. However, notwithstanding the priority of action rule, for a defendant incarcerated at a jail facility outside the city limits but within the county in which the city is located, the city may, pursuant to an interlocal agreement under chapter

39.34 RCW, contract with the county to transfer jurisdiction and venue over the defendant to a district court and to provide all judicial services at the district court as would be provided by a department of the municipal court. The judges shall select, by majority vote, one of their number to act as presiding judge of the municipal court for a term of one year, and he or she shall be responsible for administration of the court and assignment of calendars to all departments. A change of venue from one department of the municipal court to another department shall be allowed in accordance with the provisions of RCW 3.66.090 in all civil and criminal proceedings. The city shall assume the costs of the elections of the municipal judges in accordance with the provisions of \*RCW 29.13.045. [1997 c 25 § 1; 1984 c 258 § 71; 1972 ex.s. c 32 § 1; 1969 ex.s. c 147 § 1; 1967 c 241 § 2; 1965 c 7 § 35.20.100. Prior: 1955 c 290 § 10.]

\*Reviser's note: RCW 29.13.045 was recodified as RCW 29A.04.410 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Effective date—1997 c 25:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 15, 1997]." [1997 c 25 § 2.]

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Application—1967 c 241:** See note following RCW 3.66.090.

**Severability—1967 c 241:** See RCW 3.74.932.

**35.20.105 Court administrator.** There shall be a court administrator of the municipal court appointed by the judges of the municipal court, subject to confirmation by a majority of the legislative body of the city, and removable by the judges of the municipal court subject to like confirmation. Before entering upon the duties of his office the court administrator shall take and subscribe an oath the same as required for officers of the city, and shall execute a penal bond in such sum and with such sureties as the legislative body of the city may direct and subject to their approval, conditioned for the faithful performance of his duties, and that he will pay over to the treasurer of said city all moneys belonging to the city which shall come into his hands as such court administrator. The court administrator shall be paid such compensation as the legislative body of the city may deem reasonable. The court administrator shall act under the supervision and control of the presiding judge of the municipal court and shall supervise the functions of the chief clerk and director of the traffic violations bureau or similar agency of the city, and perform such other duties as may be assigned to him by the presiding judge of the municipal court. [1969 ex.s. c 147 § 2.]

**35.20.110 Seal of court—Extent of process.** The municipal court shall have a seal which shall be the vignette of George Washington, with the words "Seal of The Municipal Court of . . . . . (name of city), State of Washington," surrounding the vignette. All process from such court runs throughout the state. The supreme court may determine by rule what process must be issued under seal. [1999 c 152 § 3; 1965 c 7 § 35.20.110. Prior: 1955 c 290 § 11.]

**35.20.120 Expenses of court.** All blanks, books, papers, stationery and furniture necessary for the transaction (2004 Ed.)

of business and the keeping of records of the court shall be furnished at the expense of the city, except those expenses incidental to the operation of the court in matters brought before the court because of concurrent jurisdiction with the district court, which expense shall be borne by the county and paid out of the county treasury. All other expenses on account of such court which may be authorized by the city council or the county commissioners and which are not specifically mentioned in this chapter, shall be paid respectively out of the city treasury and county treasury. [1987 c 202 § 196; 1965 c 7 § 35.20.120. Prior: 1955 c 290 § 12.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**35.20.131 Director of traffic violations.** There shall be a director of the traffic violations bureau or such similar agency of the city as may be created by ordinance of said city. Said director shall be appointed by the judges of the municipal court subject to such civil service laws and rules as may be provided in such city. Said director shall act under the supervision of the court administrator of the municipal court and shall be responsible for the supervision of the traffic violations bureau or similar agency of the city. Upon \*this 1969 amendatory act becoming effective those employees connected with the traffic violations bureau under civil service status shall be continued in such employment and such classification. Before entering upon the duties of his office said director shall take and subscribe an oath the same as required for officers of the city and shall execute a penal bond in such sum and with such sureties as the legislative body of the city may direct and subject to their approval, conditioned for the faithful performance of his duties, and that he will faithfully account to and pay over to the treasurer of said city all moneys belonging to the city which shall come into his hands as such director. Said director shall be paid such compensation as the legislative body of the city may deem reasonable. [1969 ex.s. c 147 § 3.]

\*Reviser's note: "this 1969 amendatory act" [1969 ex.s. c 147] became effective August 11, 1969.

**35.20.140 Monthly meeting of judges—Rules and regulations of court.** It shall be the duty of the judges to meet together at least once each month, except during the months of July and August, at such hour and place as they may designate, and at such other times as they may desire, for the consideration of such matters pertaining to the administration of justice in said court as may be brought before them. At these meetings they shall receive and investigate, or cause to be investigated, all complaints presented to them pertaining to the court and the employees thereof, and shall take such action as they may deem necessary or proper with respect thereto. They shall have power and it shall be their duty to adopt, or cause to be adopted, rules and regulations for the proper administration of justice in said court. [1965 c 7 § 35.20.140. Prior: 1955 c 290 § 14.]

**35.20.150 Election of judges—Vacancies.** The municipal judges shall be elected on the first Tuesday after the first Monday in November, 1958, and on the first Tuesday after the first Monday of November every fourth year thereafter by the electorate of the city in which the court is located. The

auditor of the county concerned shall designate by number each position to be filled in the municipal court, and each candidate at the time of the filing of his declaration of candidacy shall designate by number so assigned the position for which he is a candidate, and the name of such candidate shall appear on the ballot only for such position. The name of the person who receives the greatest number of votes and of the person who receives the next greatest number of votes at the primary for a single nonpartisan position shall appear on the general election ballot under the designation therefor. Elections for municipal judge shall be nonpartisan. They shall hold office for a term of four years and until their successors are elected and qualified. The term of office shall start on the second Monday in January following such election. Any vacancy in the municipal court due to a death, disability or resignation of a municipal court judge shall be filled by the mayor, to serve out the unexpired term. Such appointment shall be subject to confirmation by the legislative body of the city. [1975-'76 2nd ex.s. c 120 § 7; 1965 c 7 § 35.20.150. Prior: 1961 c 213 § 1; 1955 c 290 § 15.]

**Severability—1975-'76 2nd ex.s. c 120:** See note following RCW 29A.52.210.

*Times for holding elections: RCW 29A.04.311 through 29A.04.330.*

**35.20.155 Municipal court commissioners—Appointment, powers.** When so authorized by the city legislative authority, the judges of the city may appoint one or more municipal court commissioners. A commissioner must be a registered voter of the city, and shall hold office at the pleasure of the appointing judges. A person appointed as a commissioner authorized to hear or dispose of cases must be a lawyer who is admitted to the practice of law in the state of Washington. A commissioner has such power, authority, and jurisdiction in criminal and civil matters as the appointing judges possess and may prescribe. [1996 c 16 § 3.]

**35.20.160 Judges' salaries.** The total of the salaries of each municipal judge under this chapter shall be fixed by the legislative body of the city at not less than nine thousand dollars per annum, to be paid in monthly or semimonthly installments as for other officials of the city, and such total salaries shall not be more than the salaries paid the superior court judges in the county in which the court is located. [1965 c 147 § 3; 1965 c 7 § 35.20.160. Prior: 1955 c 290 § 16.]

*Cities over four hundred thousand, district court judges' salaries: RCW 3.58.010.*

**35.20.170 Qualifications of judges—Practice of law prohibited.** No person shall be eligible to the office of judge of the municipal court unless he shall have been admitted to practice law before the courts of record of this state and is an elector of the city in which he files for office. No judge of said court during his term of office shall engage either directly or indirectly in the practice of law. [1965 c 7 § 35.20.170. Prior: 1955 c 290 § 17.]

**35.20.180 Judges' oath of office, official bonds.** Every judge of such municipal court, before he enters upon the duties of his office, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I

will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge of the municipal court of the city of . . . . (naming such city) according to the best of my ability; and I do further certify that I do not advocate, nor am I a member of an organization that advocates, the overthrow of the government of the United States by force or violence." The oath shall be filed in the office of the county auditor. He shall also give such bonds to the state and city for the faithful performance of his duties as may be by law or ordinance directed. [1965 c 7 § 35.20.180. Prior: 1955 c 290 § 18.]

**35.20.190 Additional judge.** Whenever the number of departments of the municipal court is increased, the mayor of such city shall appoint a qualified person as provided in RCW 35.20.170 to act as municipal judge until the next general election. He shall be paid salaries in accordance with the provisions of this chapter and provided with the necessary court, office space and personnel as authorized herein. [1967 c 241 § 4; 1965 c 7 § 35.20.190. Prior: 1955 c 290 § 19.]

**Application—1967 c 241:** See note following RCW 3.66.090.

**Severability—1967 c 241:** See RCW 3.74.932.

**35.20.200 Judges pro tempore.** The presiding municipal court judge shall, from attorneys residing in the city and qualified to hold the position of judge of the municipal court as provided in RCW 35.20.170, appoint judges pro tempore who shall act in the absence of the regular judges of the court or in addition to the regular judges when the administration of justice and the accomplishment of the work of the court make it necessary. The presiding municipal court judge may appoint, as judges pro tempore, any full-time district court judges serving in the county in which the city is situated. The term of office must be specified in writing. While acting as judge of the court, judges pro tempore shall have all of the powers of the regular judges. Before entering upon his or her duties, each judge pro tempore shall take, subscribe and file an oath as is taken by a municipal judge. Judges pro tempore shall not practice before the municipal court during their term of office as judge pro tempore. Such municipal judges pro tempore shall receive such compensation as shall be fixed by ordinance by the legislative body of the city and such compensation shall be paid by the city except that district court judges shall not be compensated by the city other than pursuant to an interlocal agreement. [2000 c 55 § 2; 1996 c 16 § 2; 1990 c 182 § 1; 1972 ex.s. c 32 § 2; 1965 c 7 § 35.20.200. Prior: 1955 c 290 § 20.]

*Judges pro tempore appointments: RCW 3.02.060.*

**35.20.205 Judicial officers—Hearing examiner.** The judges of the municipal court may employ judicial officers to assist in the administration of justice and the accomplishment of the work of the court as said work may be assigned to it by statute or ordinance. The duties and responsibilities of such officers shall be judicial in nature and shall be fixed by court rule as adopted by the municipal court judges or fixed by ordinance of the city. The judicial officers may be authorized to hear and determine cases involving the commission of traffic infractions as provided in chapter 46.63 RCW. The

\*mayor may appoint the judicial officers as judges pro tempore pursuant to RCW 35.20.200: PROVIDED, That the judicial officer need not be a resident of the city.

To utilize the services of such judicial officers for the purpose of hearing contested matters relating to the interest of the city and its citizens and the operation of the various departments of the city, the city may by ordinance create the office of hearing examiner in the municipal court and assign to it judicial duties and responsibilities. [1980 c 128 § 7; 1975 1st ex.s. c 214 § 1.]

**\*Reviser's note:** "Mayor" was replaced by "presiding municipal court judge" as the appointing authority for judges pro tempore in RCW 35.20.200, by 2000 c 55 § 2.

**Effective date—Severability—1980 c 128:** See notes following RCW 46.63.060.

**35.20.210 Clerks of court.** There shall be a chief clerk of the municipal court appointed by the judges of the municipal court subject to such civil service laws and rules as may be provided in such city. After August 11, 1969, those employees connected with the court under civil service status shall be continued in such employment and such classification. Before the chief clerk enters upon the duties of the chief clerk's office, the chief clerk shall take and subscribe an oath the same as required for officers of the city, and shall execute a penal bond in such sum and with such sureties as the legislative body of the city may direct and subject to their approval, conditioned that the chief clerk will faithfully account to and pay over to the treasurer of said city all moneys coming into his or her hands as such clerk, and that he or she will faithfully perform the duties of his or her office to the best of his or her knowledge and ability. Upon the recommendation of the judges of the municipal court, the legislative body of the city may provide for the appointment of such assistant clerks of the municipal court as said legislative body deems necessary, with such compensation as said legislative body may deem reasonable and such assistant clerks shall be subject to such civil service as may be provided in such city: PROVIDED, That the judges of the municipal court shall appoint such clerks as the board of county commissioners may determine to handle cases involving violations of state law, wherein the court has concurrent jurisdiction with the district and superior court. All clerks of the court shall have power to administer oaths, swear and acknowledge signatures of those persons filing complaints with the court, take testimony in any action, suit or proceeding in the court relating to the city or county for which they are appointed, and may certify any records and documents of the court pertaining thereto. They shall give bond for the faithful performance of their duties as required by law. [1987 c 202 § 197; 1969 ex.s. c 147 § 4; 1965 c 7 § 35.20.210. Prior: 1955 c 290 § 21.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**35.20.220 Powers and duties of chief clerk—Remittance by city treasurer—Interest—Disposition.** (1) The chief clerk, under the supervision and direction of the court administrator of the municipal court, shall have the custody and care of the books, papers and records of said court; he shall be present by himself or deputy during the session of said court, and shall have the power to swear all witnesses and jurors, and administer oaths and affidavits, and take

acknowledgments. He shall keep the records of said court, and shall issue all process under his hand and the seal of said court, and shall do and perform all things and have the same powers pertaining to his office as the clerks of the superior courts have in their office. He shall receive all fines, penalties and fees of every kind, and keep a full, accurate and detailed account of the same; and shall on each day pay into the city treasury all money received for said city during the day previous, with a detailed account of the same, and taking the treasurer's receipt therefor.

(2) Except as provided in RCW 10.99.080, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the public safety and education account as provided in RCW 43.08.250, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts. [2004 c 15 § 9; 1995 c 291 § 4; 1988 c 169 § 6; 1985 c 389 § 8; 1984 c 258 § 319; 1969 ex.s. c 147 § 5; 1965 c 7 § 35.20.220. Prior: 1955 c 290 § 22.]

**Intent—2004 c 15:** See note following RCW 10.99.080.

**Effective date—1985 c 389:** See note following RCW 27.24.070.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.46.120.

**35.20.230 Director of probation services—Probation officers—Bailiffs.** The judges of the municipal court shall appoint a director of probation services who shall, under the direction and supervision of the court administrator of the municipal court, supervise the probation officers of the municipal court. The judges of the municipal court shall also appoint a bailiff for the court, together with such number of probation officers and additional bailiffs as may be authorized by the legislative body of the city. The director of probation services, probation officers, and bailiff or bailiffs shall be paid by the city treasurer in such amount as is deemed rea-

sonable by the legislative body of the city: PROVIDED, That such additional probation officers and bailiffs of the court as may be authorized by the county commissioners shall be paid from the county treasury. [1998 c 238 § 1; 1969 ex.s. c 147 § 6; 1965 c 7 § 35.20.230. Prior: 1955 c 290 § 23.]

### 35.20.240 First judges—Transfer of equipment.

Upon the effective date of this chapter (June 8, 1955), any justice of the peace who was the duly appointed and acting police justice of the city shall become a judge of the municipal court upon his filing his oath of office and bond as required by this chapter, and shall serve as a judge of said municipal court until the regularly elected judges of the court shall qualify following their election in 1958, or thereafter as provided in RCW 35.20.150. Such judge shall be paid salaries in accordance with this chapter while so serving. Such salaries from the city and county shall be in lieu of those now (June 8, 1955) being paid to the justice of the peace acting as police justice of the city court: PROVIDED, That upon the justices of the peace qualifying as municipal judges under this chapter, the number of justices of the peace for such city shall be reduced accordingly as provided in RCW 35.20.190. Should any justice of the peace acting as police judge fail to qualify as a judge of the municipal court, the mayor of such city shall designate one of the other justices of the peace of that city to act as municipal judge until the next general election in November, 1958, and the qualifying of the regularly elected judge. All furniture and equipment belonging to the city and county in which the court is situated, now under the care and custody of the justice of the peace and municipal judge, shall be transferred to the municipal court for use in the operation and maintenance of such court. [1965 c 7 § 35.20.240. Prior: 1955 c 290 § 24.]

**Reviser's note:** Justices of the peace and courts to be construed to mean district judges and courts. See RCW 3.30.015.

**35.20.250 Concurrent jurisdiction with superior court and district court.** The municipal court shall have concurrent jurisdiction with the superior court and district court in all civil and criminal matters as now provided by law for district judges, and a judge thereof may sit in preliminary hearings as magistrate. Fines, penalties, and forfeitures before the court under the provisions of this section shall be paid to the county treasurer as provided for district court and commitments shall be to the county jail. Appeals from judgment or order of the court in such cases shall be governed by the law pertaining to appeals from judgments or orders of district judges operating under chapter 3.30 RCW. [1987 c 202 § 198; 1979 ex.s. c 136 § 25; 1969 ex.s. c 147 § 7; 1965 c 7 § 35.20.250. Prior: 1955 c 290 § 25.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**35.20.255 Deferral or suspension of sentences—Probation—Maximum term.** Judges of the municipal court, in their discretion, shall have the power in all criminal proceedings within their jurisdiction including violations of city ordinances, to defer imposition of any sentence, suspend all or part of any sentence including installment payment of fines, fix the terms of any such deferral or suspension, and provide

for such probation as in their opinion is reasonable and necessary under the circumstances of the case, but in no case shall it extend for more than five years from the date of conviction for a defendant to be sentenced under RCW 46.61.5055 and two years from the date of conviction for all other offenses. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. However, the jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720. Any time before entering an order terminating probation, the court may modify or revoke its order suspending or deferring the imposition or execution of the sentence. [2001 c 94 § 3; 1999 c 56 § 3; 1983 c 156 § 8; 1969 ex.s. c 147 § 9.]

**35.20.260 Subpoenas—Witness fees.** The court shall have authority to subpoena witnesses as now authorized in superior courts throughout the state. Such witnesses shall be paid according to law with mileage as authorized for witnesses to such cases. [1965 c 7 § 35.20.260. Prior: 1955 c 290 § 26.]

**35.20.270 Warrant officer—Position created—Authority—Service of criminal and civil process—Jurisdiction—Costs.** (1) The position of warrant officer is hereby created and shall be maintained by the city within the city police department. The number and qualifications of warrant officers shall be fixed by ordinance, and their compensation shall be paid by the city.

(2) Warrant officers shall be vested only with the special authority to make arrests authorized by warrants and other arrests as are authorized by ordinance.

(3) All criminal and civil process issuing out of courts created under this title shall be directed to the chief of police of the city served by the court and/or to the sheriff of the county in which the court is held and/or the warrant officers and be by them executed according to law in any county of this state.

(4) No process of courts created under this title shall be executed outside the corporate limits of the city served by the court unless the person authorized by the process first contacts the applicable law enforcement agency in whose jurisdiction the process is to be served.

(5) Upon a defendant being arrested in another city or county the cost of arresting or serving process thereon shall be borne by the court issuing the process including the cost of returning the defendant from any county of the state to the city.

(6) Warrant officers shall not be entitled to death, disability, or retirement benefits pursuant to chapter 41.26 RCW on the basis of service as a warrant officer as described in this section. [1992 c 99 § 1; 1977 ex.s. c 108 § 1.]

**35.20.910 Construction of other laws.** All acts or parts of acts which are inconsistent or conflicting with the provisions of this chapter, are hereby repealed or modified accord-

ingly. No provision of this chapter shall be construed as repealing or anywise limiting or affecting the jurisdiction of district judges under the general laws of this state. [1987 c 202 § 199; 1965 c 7 § 35.20.910. Prior: 1955 c 290 § 28.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**35.20.921 Severability—1969 ex.s. c 147.** If any provision of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 147 § 11.]

### Chapter 35.21 RCW

#### MISCELLANEOUS PROVISIONS

##### Sections

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**35.21.005 Sufficiency of petitions.** Wherever in this title petitions are required to be signed and filed, the following rules shall govern the sufficiency thereof:

(1) A petition may include any page or group of pages containing an identical text or prayer intended by the circulators, signers or sponsors to be presented and considered as one petition and containing the following essential elements when applicable, except that the elements referred to in (d) and (e) of this subsection are essential for petitions referring or initiating legislative matters to the voters, but are directory as to other petitions:

(a) The text or prayer of the petition which shall be a concise statement of the action or relief sought by petitioners and shall include a reference to the applicable state statute or city ordinance, if any;

(b) If the petition initiates or refers an ordinance, a true copy thereof;

(c) If the petition seeks the annexation, incorporation, withdrawal, or reduction of an area for any purpose, an accurate legal description of the area proposed for such action and if practical, a map of the area;

(d) Numbered lines for signatures with space provided beside each signature for the name and address of the signer and the date of signing;

(e) The warning statement prescribed in subsection (2) of this section.

(2) Petitions shall be printed or typed on single sheets of white paper of good quality and each sheet of petition paper having a space thereon for signatures shall contain the text or prayer of the petition and the following warning:

#### WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the name and address of the signer and the date of signing.

(3) The term "signer" means any person who signs his or her own name to the petition.

(4) To be sufficient a petition must contain valid signatures of qualified registered voters or property owners, as the case may be, in the number required by the applicable statute or ordinance. Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters, or to the county assessor for petitions signed by property owners for determination of sufficiency. The officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness and shall file with the officer receiving the petition for filing a certificate stating the date upon which such determination was begun, which date shall be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the appropriate filing officer prior to such terminal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the receiving officer prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and the petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn.

(5) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(6) A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(7) Signatures, including the original, of any person who has signed a petition two or more times shall be stricken.

(8) Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken.

(9) When petitions are required to be signed by the owners of property, the determination shall be made by the county assessor. Where validation of signatures to the petition is required, the following shall apply:

(a) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse;

(b) In the case of mortgaged property, the signature of the mortgagor shall be sufficient, without the signature of his or her spouse;

(c) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient, without the signature of his or her spouse;

(d) Any officer of a corporation owning land within the area involved who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign on

behalf of such corporation, and shall attach to the petition a certified excerpt from the bylaws of such corporation showing such authority;

(e) When property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property; and

(f) When a parcel of property is owned by multiple owners, the signature of an owner designated by the multiple owners is sufficient.

(10) The officer or officers responsible for determining the sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed. [2003 c 331 § 8; 1996 c 286 § 6.]

**Intent—Severability—Effective date—2003 c 331:** See notes following RCW 35.13.410.

**35.21.010 General corporate powers—Towns, restrictions as to area.** (1) Municipal corporations now or hereafter organized as bodies politic and corporate under the name of the city of . . . . ., or the town of . . . . ., as the case may be, and as such may sue and be sued, contract or be contracted with, acquire, hold, possess and dispose of property, subject to the restrictions contained in other chapters of this title, having a common seal, and change or alter the same at pleasure, and exercise such other powers, and have such other privileges as are conferred by this title. However, not more than two square miles in area shall be included within the corporate limits of a town having a population of fifteen hundred or less, or located in a county with a population of one million or more, and not more than three square miles in area shall be included within the corporate limits of a town having a population of more than fifteen hundred in a county with a population of less than one million, nor shall more than twenty acres of unplatted land belonging to any one person be taken within the corporate limits of a town without the consent of the owner of such unplatted land.

(2) Notwithstanding subsections (1) and (3) of this section, a town located in three or more counties is excluded from a limitation in square mileage.

(3) Except as provided in subsection (2) of this section, the original incorporation of a town shall be limited to an area of not more than one square mile and a population as prescribed in RCW 35.01.040. [1995 c 196 § 5; 1991 c 363 § 37; 1965 c 138 § 1; 1965 c 7 § 35.21.010. Prior: 1963 c 119 § 1; 1890 p 141 § 15, part; RRS § 8935.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Validation of certain incorporations and annexations—Municipal corporations of the fourth class—1961 ex.s. c 16:** "Any incorporation of a municipal corporation of the fourth class and any annexation of territory to a municipal corporation of the fourth class prior to March 31, 1961, which is otherwise valid except for compliance with the limitation to the area of one square mile as prescribed by section 15, page 141, Laws of 1889-90, is hereby validated and declared to be a valid incorporation or annexation in all respects." [1961 ex.s. c 16 § 1.]

**35.21.015 Salary commissions.** (1) Salaries for elected officials of towns and cities may be set by salary commissions established in accordance with city charter or by ordinance and in conformity with this section.

(2) The members of such commissions shall be appointed in accordance with the provisions of a city charter, or as specified in this subsection:

(a) Shall be appointed by the mayor with approval of the city council;

(b) May not be appointed to more than two terms;

(c) May only be removed during their terms of office for cause of incapacity, incompetence, neglect of duty, or malfeasance in office or for a disqualifying change of residence; and

(d) May not include any officer, official, or employee of the city or town or any of their immediate family members. "Immediate family member" as used in this subsection means the parents, spouse, siblings, children, or dependent relatives of the officer, official, or employee, whether or not living in the household of the officer, official, or employee.

(3) Any change in salary shall be filed by the commission with the city clerk and shall become effective and incorporated into the city or town budget without further action of the city council or salary commission.

(4) Salary increases established by the commission shall be effective as to all city or town elected officials, regardless of their terms of office.

(5) Salary decreases established by the commission shall become effective as to incumbent city or town elected officials at the commencement of their next subsequent terms of office.

(6) Salary increases and decreases shall be subject to referendum petition by the people of the town or city in the same manner as a city ordinance upon filing of such petition with the city clerk within thirty days after filing of the salary schedule. In the event of the filing of a valid referendum petition, the salary increase or decrease shall not go into effect until approved by vote of the people.

(7) Referendum measures under this section shall be submitted to the voters of the city or town at the next following general or municipal election occurring thirty days or more after the petition is filed, and shall be otherwise governed by the provisions of the state Constitution, or city charter, or laws generally applicable to referendum measures.

(8) The action fixing the salary by a commission established in conformity with this section shall supersede any other provision of state statute or city or town ordinance related to municipal budgets or to the fixing of salaries.

(9) Salaries for mayors and councilmembers established under an ordinance or charter provision in existence on July 22, 2001, that substantially complies with this section shall remain in effect unless and until changed in accordance with such charter provision or ordinance. [2001 c 73 § 4.]

**Findings—Intent—2001 c 73:** "The legislature hereby finds and declares that:

(1) Article XXX, section 1 of the state Constitution permits midterm salary increases for municipal officers who do not fix their own compensation;

(2) The Washington citizens' commission on salaries for elected officials established pursuant to Article XXVIII, section 1 of the state Constitution with voter approval has assured that the compensation for state and county elected officials will be fair and certain, while minimizing the dangers of midterm salary increases being used to influence those officers in the performance of their duties;

(3) The same public benefits of independent salary commissions should be extended to the setting of compensation of municipal elected officers; and

(4) This act is intended to clarify the intent of the legislature that existing state law authorizes:

(a) The establishment of independent salary commissions to set the salaries of city or town elected officials, county commissioners, and county councilmembers; and

(b) The authority of the voters of such cities, towns, and counties to review commission decisions to increase or decrease such salaries by means of referendum." [2001 c 73 § 1.]

**Severability—2001 c 73:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 73 § 6.]

**35.21.020 Auditoriums, art museums, swimming pools, etc.—Power to acquire.** Any city or town in this state acting through its council or other legislative body, and any separately organized park district acting through its board of park commissioners or other governing officers, shall have power to acquire by donation, purchase or condemnation, and to construct and maintain public auditoriums, art museums, swimming pools, and athletic and recreational fields, including golf courses, buildings and facilities within or without its parks, and to use or let the same for such public and private purposes for such compensation and rental and upon such conditions as its council or other legislative body or board of park commissioners shall from time to time prescribe. [1965 c 7 § 35.21.020. Prior: 1947 c 28 § 1; 1937 c 98 § 1; Rem. Supp. 1947 § 8981-4.]

*Acquisition of property for parks, recreational, viewpoint, greenbelt, conservation, historic, scenic or view purposes: RCW 36.34.340.*

**35.21.030 Auxiliary water systems for protection from fire.** Any city or town shall have power to provide for the protection of such city or town, or any part thereof, from fire, and to establish, construct and maintain an auxiliary water system, or systems, or extensions thereof, or additions thereto, and the structures and works necessary therefor or forming a part thereof, including the acquisition or damaging of lands, rights-of-way, rights, property, water rights, and the necessary sources of supply of water for such purposes, within or without the corporate limits of such city or town, and to manage, regulate and control the same. [1965 c 7 § 35.21.030. Prior: 1911 c 98 § 5; RRS § 9356.]

**35.21.070 Cumulative reserve fund—Authority to create.** Any city or town may establish by ordinance a cumulative reserve fund in general terms for several different municipal purposes as well as for a very specific municipal purpose, including that of buying any specified supplies, material or equipment, or the construction, alteration or repair of any public building or work, or the making of any public improvement, or for creation of a revenue stabilization fund for future operations. The ordinance shall designate the fund as "cumulative reserve fund for . . . . . (naming purpose or purposes for which fund is to be accumulated and expended)." The moneys in the fund may be allowed to accumulate from year to year until the legislative authority of the city or town shall determine to expend the moneys in the fund for the purpose or purposes specified: PROVIDED, That any moneys in the fund shall never be expended for any other purpose or purposes than those specified, without an approving vote by a two-thirds majority of the members of the legislative authority of the city or town. [1983 c 173 § 1; 1965 c

(2004 Ed.)

7 § 35.21.070. Prior: 1953 c 38 § 1; 1941 c 60 § 1; Rem. Supp. 1941 § 9213-5.]

**35.21.080 Cumulative reserve fund—Annual levy for—Application of budget law.** An item for said cumulative reserve fund may be included in the city or town's annual budget or estimate of amounts required to meet public expense for the ensuing year and a tax levy made within the limits and as authorized by law for said item; and said item and levy may be repeated from year to year until, in the judgment of the legislative body of the city or town, the amount required for the specified purpose or purposes has been raised or accumulated. Any moneys in said fund at the end of the fiscal year shall not lapse nor shall the same be a surplus available or which may be used for any other purpose or purposes than those specified, except as herein provided. [1965 c 7 § 35.21.080. Prior: 1953 c 38 § 2; 1941 c 60 § 2; Rem. Supp. 1941 § 9213-6.]

**35.21.085 Payrolls fund—Claims fund.** The legislative authority of any city or town is authorized to create the following special funds:

(1) Payrolls—into which moneys may be placed from time to time as directed by the legislative authority from any funds available and upon which warrants may be drawn and cashed for the purpose of paying any moneys due city employees for salaries and wages. The accounts of the city or town shall be so kept that they shall show the department or departments and amounts to which the payment is properly chargeable.

(2) Claims—into which may be paid moneys from time to time from any funds which are available and upon which warrants may be issued and paid in payment of claims against the city or town for any purpose. The accounts of the city or town shall be so kept that they shall show the department or departments and the respective amounts for which the warrant is issued and paid. [1965 c 7 § 35.21.085. Prior: 1953 c 27 § 1.]

**35.21.086 Payrolls fund—Transfers from insolvent funds.** Transfers from an insolvent fund to the payrolls fund or claims fund shall be by warrant. [1965 c 7 § 35.21.086. Prior: 1953 c 27 § 2.]

**35.21.087 Employee checks, drafts, warrants—City, town may cash.** Any city or town is hereby authorized, at its option and after the adoption of the appropriate ordinance, to accept in exchange for cash a payroll check, draft, or warrant; expense check, draft, or warrant; or personal check from a city or town employee in accordance with the following conditions:

(1) The check, warrant, or draft must be drawn to the order of cash or bearer and be immediately payable by a drawee financial institution;

(2) The person presenting the check, draft, or warrant to the city or town must produce identification as outlined by the city or town in the authorizing ordinance;

(3) The payroll check, draft, or warrant or expense check, draft, or warrant must have been issued by the city or town; and

(4) Personal checks cashed pursuant to this authorization cannot exceed two hundred dollars.

In the event that any personal check cashed for a city or town employee by the city or town under this section is dishonored by the drawee financial institution when presented for payment, the city or town is authorized, after notice to the drawer or endorser of the dishonor, to withhold from the drawer's or endorser's next payroll check, draft, or warrant the full amount of the dishonored check. [1991 c 185 § 1.]

**35.21.088 Equipment rental fund.** Any city or town may create, by ordinance, an "equipment rental fund," hereinafter referred to as "the fund," in any department of the city or town to be used as a revolving fund to be expended for salaries, wages, and operations required for the repair, replacement, purchase, and operation of equipment, and for the purchase of equipment, materials, and supplies to be used in the administration and operation of the fund.

The legislative authority of a city or town may transfer any equipment, materials or supplies of any office or department to the equipment rental fund either without charge, or may grant a credit to such office or department equivalent to the value of the equipment, materials or supplies transferred. An office or department receiving such a credit may use it any time thereafter for renting or purchasing equipment, materials, supplies or services from the equipment rental fund.

Money may be placed in the fund from time to time by the legislative authority of the city or town. Cities and towns may purchase and sell equipment, materials and supplies by use of such fund, subject to any laws governing the purchase and sale of property. Such equipment, materials and supplies may be rented for the use of various offices and departments of any city or town or may be rented by any such city or town to governmental agencies. The proceeds received by any city or town from the sale or rental of such property shall be placed in the fund, and the purchase price of any such property or rental payments made by a city or town shall be made from moneys available in the fund. The ordinance creating the fund shall designate the official or body that is to administer the fund and the terms and charges for the rental for the use of any such property which has not been purchased for its own use out of its own funds and may from time to time amend such ordinance.

There shall be paid monthly into the fund out of the moneys available to the department using any equipment, materials, and/or supplies, which have not been purchased by that department for its own use and out of its own funds, reasonable rental charges fixed by the legislative authority of the city or town, and moneys in the fund shall be retained there from year to year so long as the legislative authority of the city or town desires to do so.

Every city having a population of more than eight thousand, according to the last official census, shall establish such an equipment rental fund in its street department or any other department of city government. Such fund shall acquire the equipment necessary to serve the needs of the city street department. Such fund may, in addition, be created to service any other departments of city government or other governmental agencies as authorized hereinabove. [1965 c 7 § 35.21.088. Prior: 1963 c 115 § 7; 1953 c 67 § 1.]

*Census to be conducted in decennial periods: State Constitution Art. 2 § 3.  
Determination of population: Chapter 43.62 RCW.*

**35.21.090 Dikes, levees, embankments—Authority to construct.** Any city or town shall have power to provide for the protection of such city or town, or any part thereof, from overflow, and to establish, construct and maintain dikes, levees, embankments, or other structures and works, or to open, deepen, straighten or otherwise enlarge natural water-courses, waterways and other channels, including the acquisition or damaging of lands, rights-of-way, rights and property therefor, within or without the corporate limits of such city or town, and to manage, regulate and control the same. [1965 c 7 § 35.21.090. Prior: 1911 c 98 § 4; 1907 c 241 § 68; RRS § 9355.]

*Eminent domain: Chapter 8.12 RCW.*

**35.21.100 Donations—Authority to accept and use.** Every city and town by ordinance may accept any money or property donated, devised, or bequeathed to it and carry out the terms of the donation, devise, or bequest, if within the powers granted by law. If no terms or conditions are attached to the donation, devise, or bequest, the city or town may expend or use it for any municipal purpose. [1965 c 7 § 35.21.100. Prior: 1941 c 80 § 1; Rem. Supp. 1941 § 9213-8.]

**35.21.110 Ferries—Authority to acquire and maintain.** Any incorporated city or town within the state is authorized to construct, or condemn and purchase, or purchase, and to maintain a ferry across any unfordable stream adjoining and within one mile of its limits, together with all necessary grounds, roads, approaches and landings necessary or appertaining thereto located within one mile of the limits of such city or town, with full jurisdiction and authority to manage, regulate and control the same beyond the limits of the corporation and to operate the same free or for toll. [1965 c 7 § 35.21.110. Prior: 1895 c 130 § 1; RRS § 5476.]

**35.21.120 Solid waste handling system—Contracts.** A city or town may by ordinance provide for the establishment of a system or systems of solid waste handling for the entire city or town or for portions thereof. A city or town may provide for solid waste handling by or under the direction of officials and employees of the city or town or may award contracts for any service related to solid waste handling including contracts entered into under RCW 35.21.152. Contracts for solid waste handling may provide that a city or town provide for a minimum periodic fee or other method of compensation in consideration of the operational availability of a solid waste handling system, plant, site, or other facility at a specified minimum level, without regard to the ownership of the system, plant, site, or other facility, or the amount of solid waste actually handled during all or any part of the contract period. When a minimum level of solid waste is specified in a contract for solid waste handling, there shall be a specific allocation of financial responsibility in the event the amount of solid waste handled falls below the minimum level provided in the contract.

As used in this chapter, the terms "solid waste" and "solid waste handling" shall be as defined in RCW 70.95.030.

[1989 c 399 § 1; 1986 c 282 § 18; 1965 c 7 § 35.21.120. Prior: 1943 c 270 § 1, part; Rem. Supp. 1943 § 9504-1, part.]

**Severability—Legislative findings—Construction—Liberal construction—Supplemental powers—1986 c 282:** See notes following RCW 35.21.156.

*Contracts with vendors for solid waste handling:* RCW 35.21.156.

**35.21.130 Solid waste or recyclable materials collection—Ordinance.** A solid waste or recyclable materials collection ordinance may:

(1) Require property owners and occupants of premises to use the solid waste collection and disposal system or recyclable materials collection and disposal system, and to dispose of their solid waste and recyclable materials as provided in the ordinance: PROVIDED, That a solid waste or recycling ordinance shall not require any retail enterprise engaged in the sale of consumer-packaged products to locate or place a public recycling collection site or buy-back center upon or within a certain distance of the retail establishment as a condition of engaging in the sale of consumer-packaged products; and

(2) Fix charges for solid waste collection and disposal, recyclable materials collection and disposal, or both, and the manner and time of payment therefor including therein a provision that upon failure to pay the charges, the amount thereof shall become a lien against the property for which the solid waste or recyclable materials collection service is rendered. The ordinance may also provide penalties for its violation. [1989 c 431 § 51; 1965 c 7 § 35.21.130. Prior: 1943 c 270 § 1, part; Rem. Supp. 1943 § 9504-1, part.]

**Severability—1989 c 431:** See RCW 70.95.901.

**35.21.135 Solid waste or recyclable materials collection—Curbside recycling—Reduced rate.** (1) Each city or town providing by ordinance or resolution a reduced solid waste collection rate to residents participating in a residential curbside recycling program implemented under RCW 70.95.090, may provide a similar reduced rate to residents participating in any other recycling program, if such program is approved by the jurisdiction. Nothing in this section shall be interpreted to reduce the authority of a city to adopt ordinances under RCW 35.21.130(1).

(2) For the purposes of this section, "reduced rate" means a residential solid waste collection rate incorporating a rebate, refund, or discount. Reduced rate shall not include residential solid waste collection rate based on the volume or weight of solid waste set out for collection. [1991 c 319 § 404.]

**Severability—Part headings not law—1991 c 319:** See RCW 70.95F.900 and 70.95F.901.

**35.21.140 Garbage—Notice of lien—Foreclosure.** A notice of the city's or town's lien for garbage collection and disposal service specifying the charges, the period covered by the charges and giving the legal description of the premises sought to be charged, shall be filed with the county auditor within the time required and shall be foreclosed in the manner and within the time prescribed for liens for labor and material. [1965 c 7 § 35.21.140. Prior: 1943 c 270 § 1, part; Rem. Supp. 1943 § 9504-1, part.]

(2004 Ed.)

**35.21.150 Garbage—Lien—Priority.** The garbage collection and disposal service lien shall be prior to all liens and encumbrances filed subsequent to the filing of the notice of it with the county auditor, except the lien of general taxes and local improvement assessments whether levied prior or subsequent thereto. [1965 c 7 § 35.21.150. Prior: 1943 c 270 § 1, part; Rem. Supp. 1943 § 9504-1, part.]

**35.21.152 Solid waste handling—Agreements—Purposes—Terms and conditions.** A city or town may construct, lease, condemn, purchase, acquire, add to, alter, and extend systems, plants, sites, or other facilities for solid waste handling, and shall have full jurisdiction and authority to manage, regulate, maintain, utilize, operate, control, and establish the rates and charges for those solid waste handling systems, plants, sites, or other facilities owned or operated by the city or town. A city or town may enter into agreements with public or private parties to: (1) Construct, lease, purchase, acquire, manage, maintain, utilize, or operate publicly or privately owned or operated solid waste handling systems, plants, sites, or other facilities; (2) establish rates and charges for those systems, plants, sites, or other facilities; (3) designate particular publicly or privately owned or operated systems, plants, sites, or other facilities as disposal sites; and (4) sell the materials or products of those systems, plants, or other facilities. Any agreement entered into shall be for such term and under such conditions as may be determined by the legislative authority of the city or town. [1989 c 399 § 2; 1977 ex.s. c 164 § 1; 1975 1st ex.s. c 208 § 1.]

**35.21.154 Solid waste—Compliance with chapter 70.95 RCW required.** Nothing in RCW 35.21.152 will relieve a city or town of its obligations to comply with the requirements of chapter 70.95 RCW. [1989 c 399 § 3; 1975 1st ex.s. c 208 § 3.]

**35.21.156 Solid waste—Contracts with vendors for solid waste handling systems, plants, sites, or facilities—Requirements—Vendor selection procedures.** (1) Notwithstanding the provisions of any city charter, or any law to the contrary, and in addition to any other authority provided by law, the legislative authority of a city or town may contract with one or more vendors for one or more of the design, construction, or operation of, or other service related to, the systems, plants, sites, or other facilities for solid waste handling in accordance with the procedures set forth in this section. Solid waste handling systems, plants, sites, or other facilities constructed, purchased, acquired, leased, added to, altered, extended, maintained, managed, utilized, or operated pursuant to this section, RCW 35.21.120 and 35.21.152, whether publicly or privately owned, shall be in substantial compliance with the solid waste management plan applicable to the city or town adopted pursuant to chapter 70.95 RCW. Agreements relating to such solid waste handling systems, plants, sites, or other facilities may be for such term and may contain such covenants, conditions, and remedies as the legislative authority of a city or town may deem necessary or appropriate. When a contract for design services is entered into separately from other services permitted under this section, procurement shall be in accordance with chapter 39.80 RCW.

(2) If the legislative authority of the city or town decides to proceed with the consideration of qualifications or proposals for services from vendors, the city or town shall publish notice of its requirements and request submission of qualifications statements or proposals. The notice shall be published in the official newspaper of the city or town at least once a week for two weeks not less than sixty days before the final date for the submission of qualifications statements or proposals. The notice shall state in summary form (a) the general scope and nature of the design, construction, operation, or other service, (b) the name and address of a representative of the city or town who can provide further details, (c) the final date for the submission of qualifications statements or proposals, (d) an estimated schedule for the consideration of qualifications, the selection of vendors, and the negotiation of a contract or contracts for services, (e) the location at which a copy of any request for qualifications or request for proposals will be made available, and (f) the criteria established by the legislative authority to select a vendor or vendors, which may include but shall not be limited to the vendor's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability and financial resources; cost of the services, nature of facility design proposed by the vendor; system reliability; performance standards required for the facilities; compatibility with existing service facilities operated by the public body or other providers of service to the public; project performance guarantees; penalty and other enforcement provisions; environmental protection measures to be used; consistency with the applicable comprehensive solid waste management plan; and allocation of project risks.

(3) If the legislative authority of the city or town decides to proceed with the consideration of qualifications or proposals, it may designate a representative to evaluate the vendors who submitted qualifications statements or proposals and conduct discussions regarding qualifications or proposals with one or more vendors. The legislative authority or representative may request submission of qualifications statements and may later request more detailed proposals from one or more vendors who have submitted qualifications statements, or may request detailed proposals without having first received and evaluated qualifications statements. The legislative authority or its representative shall evaluate the qualifications or proposals, as applicable. If two or more vendors submit qualifications or proposals that meet the criteria established by the legislative authority of the city or town, discussions and interviews shall be held with at least two vendors. Any revisions to a request for qualifications or request for proposals shall be made available to all vendors then under consideration by the city or town and shall be made available to any other person who has requested receipt of that information.

(4) Based on criteria established by the legislative authority of the city or town, the representative shall recommend to the legislative authority a vendor or vendors that are initially determined to be the best qualified to provide one or more of the design, construction or operation of, or other service related to, the proposed project or services. The legislative authority may select one or more qualified vendors for one or more of the design, construction, or operation of, or other service related to, the proposed project or services.

(5) The legislative authority or its representative may attempt to negotiate a contract with the vendor or vendors selected for one or more of the design, construction, or operation of, or other service related to, the proposed project or services on terms that the legislative authority determines to be fair and reasonable and in the best interest of the city or town. If the legislative authority or its representative is unable to negotiate such a contract with any one or more of the vendors first selected on terms that it determines to be fair and reasonable and in the best interest of the city or town, negotiations with any one or more of the vendors shall be terminated or suspended and another qualified vendor or vendors may be selected in accordance with the procedures set forth in this section. If the legislative authority decides to continue the process of selection, negotiations shall continue with a qualified vendor or vendors in accordance with this section at the sole discretion of the legislative authority until an agreement is reached with one or more qualified vendors, or the process is terminated by the legislative authority. The process may be repeated until an agreement is reached.

(6) Prior to entering into a contract with a vendor, the legislative authority of the city or town shall make written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the contract, that the contract is financially sound, and that it is advantageous for the city or town to use this method for awarding contracts compared to other methods.

(7) Each contract shall include a project performance bond or bonds or other security by the vendor that in the judgment of the legislative authority of the city or town is sufficient to secure adequate performance by the vendor.

(8) The provisions of chapters 39.12, 39.19, and \*39.25 RCW shall apply to a contract entered into under this section to the same extent as if the systems and plants were owned by a public body.

(9) The vendor selection process permitted by this section shall be supplemental to and shall not be construed as a repeal of or limitation on any other authority granted by law.

The alternative selection process provided by this section may not be used in the selection of a person or entity to construct a publicly owned facility for the storage or transfer of solid waste or solid waste handling equipment unless the facility is either (a) privately operated pursuant to a contract greater than five years, or (b) an integral part of a solid waste processing facility located on the same site. Instead, the applicable provisions of RCW 35.22.620, and 35.23.352, and chapters 39.04 and 39.30 RCW shall be followed. [1989 c 399 § 7; 1986 c 282 § 17. Formerly RCW 35.92.024.]

**\*Reviser's note:** Chapter 39.25 RCW was repealed by 1994 c 138 § 2.

**Legislative findings—Construction—1986 c 282 §§ 17-20:** "The legislature finds that the regulation, management, and disposal of solid waste through waste reduction, recycling, and the use of resource recovery facilities of the kind described in RCW 35.92.022 and 36.58.040 should be conducted in a manner substantially consistent with the priorities and policies of the solid waste management act, chapter 70.95 RCW. Nothing contained in sections 17 through 20 of this act shall detract from the powers, duties, and functions given to the utilities and transportation commission in chapter 81.77 RCW." [1986 c 282 § 16.]

**Liberal construction—Supplemental powers—1986 c 282 §§ 16-20:** "Sections 16 through 20 of this act, being necessary for the health and welfare of the state and its inhabitants, shall be liberally construed to effect its purposes. Sections 16 through 20 of this act shall be deemed to provide an alternative method for the performance of those subjects authorized by these

sections and shall be regarded as supplemental and additional to powers conferred by the Washington state Constitution, other state laws, and the charter of any city or county." [1986 c 282 § 21.]

**Severability—1986 c 282:** See RCW 82.18.900.

**35.21.157 Solid waste collection—Rate increase notice.** (1) A city that contracts for the collection of solid waste, or provides for the collection of solid waste directly, shall notify the public of each proposed rate increase for a solid waste handling service. The notice may be mailed to each affected ratepayer or published once a week for two consecutive weeks in a newspaper of general circulation in the collection area. The notice shall be available to affected ratepayers at least forty-five days prior to the proposed effective date of the rate increase.

(2) For purposes of this section, "solid waste handling" has the same meaning as provided in RCW 70.95.030. [1994 c 161 § 2.]

**Findings—Declaration—1994 c 161:** "The legislature finds that local governments and private waste management companies have significantly changed solid waste management services in an effort to preserve landfill space and to avoid costly environmental cleanups of municipal landfills. The legislature recognizes that these new services have enabled the state to achieve one of the nation's highest recycling rates.

The legislature also finds that the need to pay for the cleanup of past disposal practices and to provide new recycling services has caused solid waste rates to increase substantially. The legislature further finds that private solid waste collection companies regulated by the utilities and transportation commission are required to provide public notice but that city-managed solid waste collection systems are not. The legislature declares it to be in the public interest for city-managed systems to provide public notice of solid waste rate increases." [1994 c 161 § 1.]

**35.21.158 Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation—Application of chapter.** Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 33.]

**Severability—1989 c 431:** See RCW 70.95.901.

**35.21.160 Jurisdiction over adjacent waters.** The powers and jurisdiction of all incorporated cities and towns of the state having their boundaries or any part thereof adjacent to or fronting on any bay or bays, lake or lakes, sound or sounds, river or rivers, or other navigable waters are hereby extended into and over such waters and over any tidelands intervening between any such boundary and any such waters to the middle of such bays, sounds, lakes, rivers, or other waters in every manner and for every purpose that such powers and jurisdiction could be exercised if the waters were within the city or town limits. In calculating the area of any town for the purpose of determining compliance with the limitation on the area of a town prescribed by RCW 35.21.010, the area over which jurisdiction is conferred by this section

shall not be included. [1969 c 124 § 1; 1965 c 7 § 35.21.160. Prior: 1961 c 277 § 4; 1909 c 111 § 1; RRS § 8892.]

**35.21.163 Penalty for act constituting a crime under state law—Limitation.** Except as limited by the maximum penalty authorized by law, no city, code city, or town, may establish a penalty for an act that constitutes a crime under state law that is different from the penalty prescribed for that crime by state statute. [1993 c 83 § 1.]

**Effective date—1993 c 83:** "This act shall take effect July 1, 1994." [1993 c 83 § 11.]

**35.21.165 Driving while under the influence of liquor or drug—Minimum penalties.** Except as limited by the maximum penalties authorized by law, no city or town may establish a penalty for an act that constitutes the crime of driving while under the influence of intoxicating liquor or any drug, as provided in RCW 46.61.502, or the crime of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as provided in RCW 46.61.504, that is less than the penalties prescribed for those crimes in RCW 46.61.5055. [1995 c 332 § 8; 1994 c 275 § 36; 1983 c 165 § 40.]

**Severability—Effective dates—1995 c 332:** See notes following RCW 46.20.308.

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

**Legislative finding, intent—Effective dates—Severability—1983 c 165:** See notes following RCW 46.20.308.

**35.21.175 Offices to be open certain days and hours.** All city and town offices shall be kept open for the transaction of business during such days and hours as the municipal legislative authority shall by ordinance prescribe. [1965 c 7 § 35.21.175. Prior: 1955 ex.s. c 9 § 4; prior: 1951 c 100 § 2.]

**35.21.180 Ordinances—Adoption of codes by reference.** Ordinances passed by cities or towns must be posted or published in a newspaper as required by their respective charters or the general laws: PROVIDED, That ordinances may by reference adopt Washington state statutes and codes, including fire codes and ordinances relating to the construction of buildings, the installation of plumbing, the installation of electric wiring, health and sanitation, the slaughtering, processing and selling of meats and meat products for human consumption, the production, pasteurizing and sale of milk and milk products, or other subjects, may adopt by reference, any printed code or compilation, or portions thereof, together with amendments thereof or additions thereto, on the subject of the ordinance; and where publications of ordinances in a newspaper is required, such Washington state statutes or codes or other codes or compilations so adopted need not be published therein: PROVIDED, HOWEVER, That not less than one copy of such statute, code or compilation and amendments and additions thereto adopted by reference shall be filed for use and examination by the public, in the office of the city or town clerk of said city, or town prior to adoption thereof. Any city or town ordinance heretofore adopting any state law or any such codes or compilations by reference are hereby ratified and validated. [1982 c 226 § 1; 1965 c 7 §

35.21.180. Prior: 1963 c 184 § 1; 1943 c 213 § 1; 1935 c 32 § 1; Rem. Supp. 1943 § 9199-1.]

**Effective date—1982 c 226:** "This act shall take effect on July 1, 1982." [1982 c 226 § 8.]

**35.21.185 Ordinances—Information pooling.** (1) It is the purpose of this section to provide a means whereby all cities and towns may obtain, through a single source, information regarding ordinances of other cities and towns that may be of assistance to them in enacting appropriate local legislation.

(2) For the purposes of this section, (a) "clerk" means the city or town clerk or other person who is lawfully designated to perform the recordkeeping function of that office, and (b) "municipal research council" means the municipal research council created by chapter 43.110 RCW.

(3) The clerk of every city and town is directed to provide to the municipal research council or its designee, promptly after adoption, a copy of each of its regulatory ordinances and such other ordinances or kinds of ordinances as may be described in a list or lists promulgated by the municipal research council or its designee from time to time, and may provide such copies without charge. The municipal research council may provide that information to the entity with which it contracts for the provision of municipal research and services, in order to provide a pool of information for all cities and towns in the state of Washington.

(4) This section is intended to be directory and not mandatory. [1995 c 21 § 1.]

**35.21.190 Parkways, park drives and boulevards.** Any city or town council upon request of the board of park commissioners, shall have authority to designate such streets as they may see fit as parkways, park drives, and boulevards, and to transfer all care, maintenance and improvement of the surface thereof to the board of park commissioners, or to such authority of such city or town as may have the care and management of the parks, parkways, boulevards and park drives of the city.

Any city or town may acquire, either by gift, purchase or the right of eminent domain, the right to limit the class, character and extent of traffic that may be carried on such parkways, park drives and boulevards, and to prescribe that the improvement of the surface thereof shall be made wholly in accordance with plans of such board of park commissioners, but that the setting over of all such streets for such purposes shall not in any wise limit the right and authority of the city council to construct underneath the surface thereof any and all public utilities nor to deprive the council of the right to levy assessments for special benefits. In the construction of any such utilities, any damages done to the surface of such parkways, park drives or boulevards shall not be borne by any park funds of such city or town. [1965 c 7 § 35.21.190. Prior: 1911 c 98 § 57; RRS § 9410.]

**35.21.200 Residence qualifications of appointive officials and employees.** Any city or town may by ordinance of its legislative authority determine whether there shall be any residential qualifications for any or all of its appointive officials or for preference in employment of its employees, but

residence of an employee outside the limits of such city or town shall not be grounds for discharge of any regularly appointed civil service employee otherwise qualified: PROVIDED, That this section shall not authorize a city or town to change any residential qualifications prescribed in any city charter for any appointive official or employee: PROVIDED, FURTHER, That all employees appointed prior to the enactment of any ordinance establishing such residence qualifications as provided herein or who shall have been appointed or employed by such cities or towns having waived such residential requirements shall not be discharged by reason of such appointive officials or employees having established their residence outside the limits of such city or town: PROVIDED, FURTHER, That this section shall not authorize a city or town to change the residential requirements with respect to employees of private public utilities acquired by public utility districts or by the city or town. [1965 c 7 § 35.21.200. Prior: 1951 c 162 § 1; 1941 c 25 § 1; Rem. Supp. 1941 § 9213-3.]

**35.21.203 Recall sufficiency hearing—Payment of defense expenses.** The necessary expenses of defending an elective city or town official in a judicial hearing to determine the sufficiency of a recall charge as provided in \*RCW 29.82.023 shall be paid by the city or town if the official requests such defense and approval is granted by the city or town council. The expenses paid by the city or town may include costs associated with an appeal of the decision rendered by the superior court concerning the sufficiency of the recall charge. [1989 c 250 § 2.]

**\*Reviser's note:** RCW 29.82.023 was recodified as RCW 29A.56.140 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**35.21.205 Liability insurance for officials and employees.** Each city or town may purchase liability insurance with such limits as it may deem reasonable for the purpose of protecting its officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 2.]

*Dog handler using dog in line of duty—Immunity:* RCW 4.24.410.

**35.21.207 Liability insurance for officers and employees authorized.** See RCW 36.16.138.

**35.21.209 Insurance and workers' compensation for offenders performing community restitution.** The legislative authority of a city or town may purchase liability insurance in an amount it deems reasonable to protect the city or town, its officers, and employees against liability for the wrongful acts of offenders or injury or damage incurred by offenders in the course of court-ordered community restitution, and may elect to treat offenders as employees and/or workers under Title 51 RCW. [2002 c 175 § 30; 1984 c 24 § 1.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

*Workers' compensation coverage of offenders performing community restitution:* RCW 51.12.045.

**35.21.210 Sewerage, drainage, and water supply.**

Any city or town shall have power to provide for the sewerage, drainage, and water supply thereof, and to establish, construct, and maintain a system or systems of sewers and drains and a system or systems of water supply, within or without the corporate limits of such city or town, and to control, regulate, and manage the same. In addition, any city or town may, as part of maintaining a system of sewers and drains or a system of water supply, or independently of such a system or systems, participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 11; 1965 c 7 § 35.21.210. Prior: 1911 c 98 § 3; RRS § 9354.]

**Finding—Intent—2003 c 327:** See note following RCW 39.34.190.

**35.21.215 Powers relative to systems of sewerage.**

The legislative authority of any city or town may exercise all the powers relating to systems of sewerage authorized by RCW 35.67.010 and 35.67.020. [1997 c 447 § 14.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**35.21.217 Utility services—Deposit—Tenants' delinquencies—Lien.** (1) Prior to furnishing utility services, a city or town may require a deposit to guarantee payment for services. However, failure to require a deposit does not affect the validity of any lien authorized by RCW 35.21.290 or 35.67.200. A city or town may determine how to apply partial payments on past due accounts.

(2) A city or town may provide a real property owner or the owner's designee with duplicates of tenant utility service bills, or may notify an owner or the owner's designee that a tenant's utility account is delinquent. However, if an owner or the owner's designee notifies the city or town in writing that a property served by the city or town is a rental property, asks to be notified of a tenant's delinquency, and has provided, in writing, a complete and accurate mailing address, the city or town shall notify the owner or the owner's designee of a tenant's delinquency at the same time and in the same manner the city or town notifies the tenant of the tenant's delinquency or by mail. When a city or town provides a real property owner or the owner's designee with duplicates of tenant utility service bills or notice that a tenant's utility account is delinquent, the city or town shall notify the tenant that it is providing the duplicate bills or delinquency notice to the owner or the owner's designee. After January 1, 1999, if a city or town fails to notify the owner of a tenant's delinquency after receiving a written request to do so and after receiving the other information required by this subsection, the city or town shall have no lien against the premises for the tenant's delinquent and unpaid charges. [1998 c 285 § 1.]

**35.21.220 Sidewalks—Regulation of use of.** Cities of several classes in this state shall be empowered to regulate the use of sidewalks within their limits, and may in their discretion and under such terms and conditions as they may determine permit a use of the same by abutting owners, provided such use does not in their judgment unduly and unrea-

sonably impair passage thereon, to and fro, by the public. Such permission shall not be considered as establishing a prescriptive right, and the right may be revoked at any time by the authorities of such cities. [1965 c 7 § 35.21.220. Prior: 1927 c 261 § 1; RRS § 9213-1.]

**35.21.225 Transportation benefit districts.** The legislative authority of a city may establish one or more transportation benefit districts within a city for the purpose of acquiring, constructing, improving, providing, and funding any city street, county road, or state highway improvement that is (1) consistent with state, regional, and local transportation plans, (2) necessitated by existing or reasonably foreseeable congestion levels attributable to economic growth, and (3) partially funded by local government or private developer contributions, or a combination of such contributions. Such transportation improvements shall be owned by the city of jurisdiction if located in an incorporated area, by the county of jurisdiction if located in an unincorporated area, or by the state in cases where the transportation improvement is or becomes a state highway; and all such transportation improvements shall be administered as other public streets, roads, and highways. The district may include any area within the corporate limits of another city if that city has agreed to the inclusion pursuant to chapter 39.34 RCW. The district may include any unincorporated area if the county legislative authority has agreed to the inclusion pursuant to chapter 39.34 RCW. The agreement shall specify the area and such other powers as may be granted to the benefit district.

The members of the city legislative authority, acting ex officio and independently, shall compose the governing body of the district. The city treasurer shall act as the ex officio treasurer of the district: PROVIDED, That where a transportation benefit district includes any unincorporated area or portion of another city, the district may be governed as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. The electors of the district shall all be registered voters residing within the district. For the purposes of this section, the term "city" means both cities and towns. [1989 c 53 § 2; 1987 c 327 § 3.]

**Severability—1989 c 53:** See note following RCW 36.73.020.

*Transportation benefit districts: Chapter 36.73 RCW.*

**35.21.228 Rail fixed guideway system—Safety and security program plan.** (1) Each city or town that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the city's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the city or town shall revise its plan to incorporate the department's review

comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each city or town shall implement and comply with its system safety and security program plan. The city or town shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The city or town shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each city or town shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The city or town shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.17 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption. [1999 c 202 § 1.]

**Effective date—1999 c 202:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 1999]." [1999 c 202 § 10.]

**35.21.230 Streets over tidelands declared public highways.** All streets in any incorporated city in this state, extending from high tide into the navigable waters of the state, are hereby declared public highways. [1965 c 7 § 35.21.230. Prior: 1890 p 733 § 1; RRS § 9293.]

*Public highways: Title 47 RCW.*

**35.21.240 Streets over tidelands—Control of.** All streets declared public highways under the provisions of RCW 35.21.230 shall be under the control of the corporate authorities of the respective cities. [1965 c 7 § 35.21.240. Prior: 1890 p 733 § 2; RRS § 9294.]

**35.21.250 Streets and alleys over first class tidelands—Control of.** All streets and alleys, which have been heretofore or may hereafter be established upon, or across tide and shore lands of the first class shall be under the supervision and control of the cities within whose corporate limits such tide and shore lands are situated, to the same extent as are all other streets and alleys of such cities. [1965 c 7 § 35.21.250. Prior: 1901 c 149 § 1; RRS § 9295.]

**35.21.260 Streets—Annual report to secretary of transportation.** The governing authority of each city and town on or before May 31st of each year shall submit such records and reports regarding street operations in the city or town to the secretary of transportation on forms furnished by him as are necessary to enable him to compile an annual report thereon. [1999 c 204 § 1; 1984 c 7 § 19; 1977 c 75 § 29; 1965 c 7 § 35.21.260. Prior: 1943 c 82 § 12; 1937 c 187 § 64; Rem. Supp. 1943 § 6450-64.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**35.21.270 Streets—Records of funds received and used for construction, repair, maintenance.** The city engineer or the city clerk of each city or town shall maintain records of the receipt and expenditure of all moneys used for construction, repair, or maintenance of streets and arterial highways.

To assist in maintaining uniformity in such records, the state auditor, with the advice and assistance of the department of transportation, shall prescribe forms and types of records to be so maintained. [1995 c 301 § 35; 1984 c 7 § 20; 1965 c 7 § 35.21.270. Prior: 1949 c 164 § 5; Rem. Supp. 1949 § 9300-5.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**35.21.275 Street improvements—Provision of supplies or materials.** Any city or town may assist a street abutter in improving the street serving the abutter's premises by providing asphalt, concrete, or other supplies or materials. The furnishing of supplies or materials or paying to the abutter the cost thereof and the providing of municipal inspectors and other incidental personnel shall not render the street improvements a public work or improvement subject to competitive bidding. The legislative authority of such city or town shall approve any such assistance at a public meeting and shall maintain a public register of any such assistance setting forth the value, nature, purpose, date and location of the assistance and the name of the beneficiary. [1983 c 103 § 1.]

**35.21.278 Contracts with community service organizations for public improvements—Limitations.** (1) Without regard to competitive bidding laws for public works, a county, city, town, school district, metropolitan park district, park and recreation district, or park and recreation service area may contract with a chamber of commerce, a service organization, a community, youth, or athletic association, or other similar association located and providing service in the immediate neighborhood, for drawing design plans, making improvements to a park, school playground, or public square, installing equipment or artworks, or providing maintenance services for the facility as a community or neighborhood project, and may reimburse the contracting association its expense. The contracting association may use volunteers in the project and provide the volunteers with clothing or tools; meals or refreshments; accident/injury insurance coverage; and reimbursement of their expenses. The consideration to be received by the public entity through the value of the improvements, artworks, equipment, or maintenance shall have a value at least equal to three times that of the payment to the contracting association. All payments made by a public

entity under the authority of this section for all such contracts in any one year shall not exceed twenty-five thousand dollars or two dollars per resident within the boundaries of the public entity, whichever is greater.

(2) A county, city, town, school district, metropolitan park district, park and recreation district, or park and recreation service area may ratify an agreement, which qualifies under subsection (1) of this section and was made before June 9, 1988. [1988 c 233 § 1.]

**35.21.280 Tax on admissions—Exceptions.** (1) Every city and town may levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid by the person who pays an admission charge to any place: **PROVIDED**, No city or town shall impose such tax on persons paying an admission to any activity of any elementary or secondary school or any public facility of a public facility district under chapter 35.57 or 36.100 RCW for which a tax is imposed under RCW 35.57.100 or 36.100.210, except the city or town may impose a tax on persons paying an admission to any activity of such public facility if the city or town uses the admission tax revenue it collects on the admission charges to that public facility for the construction, operation, maintenance, repair, replacement, or enhancement of that public facility or to develop, support, operate, or enhance programs in that public facility.

(2) Tax authorization under this section includes a tax on persons who are admitted free of charge or at reduced rates to any place for which other persons pay a charge or a regular higher charge for the same privileges or accommodations. A city that is located in a county with a population of one million or more may not levy a tax on events in stadia constructed on or after January 1, 1995, that are owned by a public facilities district under chapter 36.100 RCW and that have seating capacities over forty thousand. The city or town may require anyone who receives payment for an admission charge to collect and remit the tax to the city or town.

(3) The term "admission charge" includes:

(a) A charge made for season tickets or subscriptions;

(b) A cover charge, or a charge made for use of seats and tables reserved or otherwise, and other similar accommodations;

(c) A charge made for food and refreshment in any place where free entertainment, recreation or amusement is provided;

(d) A charge made for rental or use of equipment or facilities for purposes of recreation or amusement; if the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge;

(e) Automobile parking charges if the amount of the charge is determined according to the number of passengers in the automobile. [2002 c 363 § 5; 1999 c 165 § 19; 1995 3rd sp.s. c 1 § 202; 1995 1st sp.s. c 14 § 8; 1965 c 7 § 35.21.280. Prior: 1957 c 126 § 1; 1951 c 35 § 1; 1943 c 80 § 1; Rem. Supp. 1943 § 8370-44a.]

**Severability—1999 c 165:** See RCW 35.57.900.

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**Severability—Effective dates—1995 1st sp.s. c 14:** See notes following RCW 36.100.010.

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**35.21.290 Utility services—Lien for.** Cities and towns owning their own waterworks, or electric light or power plants shall have a lien against the premises to which water, electric light, or power services were furnished for four months charges therefor due or to become due, but not for any charges more than four months past due: **PROVIDED**, That the owner of the premises or the owner of a delinquent mortgage thereon may give written notice to the superintendent or other head of such works or plant to cut off service to such premises accompanied by payment or tender of payment of the then delinquent and unpaid charges for such service against the premises together with the cut-off charge, whereupon the city or town shall have no lien against the premises for charges for such service thereafter furnished, nor shall the owner of the premises or the owner of a delinquent mortgage thereon be held for the payment thereof. [1965 c 7 § 35.21.290. Prior: 1933 c 135 § 1; 1909 c 161 § 1; RRS § 9471.]

**35.21.300 Utility services—Enforcement of lien—Limitations on termination of service for residential heating.** (1) The lien for charges for service by a city waterworks, or electric light or power plant may be enforced only by cutting off the service until the delinquent and unpaid charges are paid, except that until June 30, 1991, utility service for residential space heating may be terminated between November 15 and March 15 only as provided in subsections (2) and (4) of this section. In the event of a disputed account and tender by the owner of the premises of the amount the owner claims to be due before the service is cut off, the right to refuse service to any premises shall not accrue until suit has been entered by the city and judgment entered in the case.

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

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

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

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

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

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

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

(3) The utility shall:

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

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

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

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

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

(4) All municipal utilities shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(5) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter. [1995 c 399 § 36; 1991 c 165 § 2; 1990 1st ex.s. c 1 § 1; 1987 c 356 § 1; 1986 c 245 § 1; 1985 c 6 § 3; 1984 c 251 § 1; 1965 c 7 § 35.21.300. Prior: 1909 c 161 § 2; RRS § 9472.]

**Findings—1991 c 165:** "The legislature finds that the health and welfare of the people of the state of Washington require that all citizens receive essential levels of heat and electric service regardless of economic circumstance and that rising energy costs have had a negative effect on the affordability of housing for low-income citizens and have made it difficult for low-income citizens of the state to afford adequate fuel for residential space heat. The legislature further finds that level payment plans, the protection against winter heating shutoff, and house weatherization programs have all been beneficial to low-income persons." [1991 c 165 § 1.]

**35.21.305 Utility connection charges—Waiver for low-income persons.** A city or town, including a code city, that owns or operates an electric or gas utility may waive connection charges for properties purchased by low-income persons from organizations exempt from tax under section 501(c)(3) of the federal internal revenue code as amended prior to July 23, 1995. Waivers of connection charges for the same class of electric or gas utility service must be uniformly applied to all qualified property. Nothing in this section authorizes the impairment of a contract. [1995 c 140 § 1.]

**35.21.310 Removal of overhanging or obstructing vegetation—Removal, destroying debris.** Any city or town may by general ordinance require the owner of any property therein to remove or destroy all trees, plants, shrubs or vegetation, or parts thereof, which overhang any sidewalk or street or which are growing thereon in such manner as to obstruct or impair the free and full use of the sidewalk or street by the public; and may further so require the owner of any property therein to remove or destroy all grass, weeds, shrubs, bushes, trees or vegetation growing or which has grown and died, and to remove or destroy all debris, upon property owned or occupied by them and which are a fire hazard or a menace to public health, safety or welfare. The ordinance shall require the proceedings therefor to be initiated by a resolution of the governing body of the city or town, adopted after not less than five days' notice to the owner, which shall describe the property involved and the hazardous condition, and require the owner to make such removal or destruction after notice given as required by said ordinance. The ordinance may provide that if such removal or destruction is not made by the owner after notice given as required by the ordinance in any of the above cases, that the city or town will cause the removal or destruction thereof and may also provide that the cost to the city or town shall become a charge against the owner of the property and a lien against the property. Notice of the lien herein authorized shall as nearly as practicable be in substantially the same form, filed with the same officer within the same time and manner, and enforced and foreclosed as is provided by law for liens for labor and materials.

The provisions of this section are supplemental and additional to any other powers granted or held by any city or town on the same or a similar subject. [1969 c 20 § 1; 1965 c 7 § 35.21.310. Prior: 1949 c 113 § 1; Rem. Supp. 1949 § 9213-10.]

*Weeds, duty of city or town, extermination areas: RCW 17.04.160.*

**35.21.315 Amateur radio antennas—Local regulation to conform with federal law.** No city or town shall enact or enforce an ordinance or regulation that fails to conform to the limited preemption entitled "Amateur Radio Pre-

emption, 101 FCC 2nd 952 (1985)" issued by the federal communications commission. An ordinance or regulation adopted by a city or town with respect to amateur radio antennas shall conform to the limited federal preemption, that states local regulations that involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and to represent the minimal practicable regulation to accomplish the local authority's legitimate purpose. [1994 c 50 § 1.]

**Effective date—1994 c 50:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994]." [1994 c 50 § 4.]

**35.21.320 Warrants—Interest rate—Payment.** All city and town warrants shall draw interest from and after their presentation to the treasurer, but no compound interest shall be paid on any warrant directly or indirectly. The city or town treasurer shall pay all warrants in the order of their number and date of issue whenever there are sufficient funds in the treasury applicable to the payment. If five hundred dollars (or any sum less than five hundred dollars as may be prescribed by ordinance) is accumulated in any fund having warrants outstanding against it, the city or town treasurer shall publish a call for warrants to that amount in the next issue of the official newspaper of the city or town. The notice shall describe the warrants so called by number and specifying the fund upon which they were drawn: **PROVIDED**, That no call need be made until the amount accumulated is equal to the amount due on the warrant longest outstanding: **PROVIDED FURTHER**, That no more than two calls shall be made in any one month.

Any city or town treasurer who knowingly fails to call for or pay any warrant in accordance with the provisions of this section shall be fined not less than twenty-five dollars nor more than five hundred dollars and conviction thereof shall be sufficient cause for removal from office. [1985 c 469 § 20; 1965 c 7 § 35.21.320. Prior: (i) 1893 c 48 § 1, part; RRS § 4116, part. (ii) 1895 c 152 § 2, part; RRS § 4119, part. (iii) 1895 c 152 § 1, part; RRS § 4118, part.]

**35.21.333 Chief of police or marshal—Eligibility requirements.** (1) A person seeking appointment to the office of chief of police or marshal, of a city or town, including a code city, with a population in excess of one thousand, is ineligible unless that person:

- (a) Is a citizen of the United States of America;
- (b) Has obtained a high school diploma or general equivalency diploma;
- (c) Has not been convicted under the laws of this state, another state, or the United States of a felony;
- (d) Has not been convicted of a gross misdemeanor or any crime involving moral turpitude within five years of the date of application;
- (e) Has received at least a general discharge under honorable conditions from any branch of the armed services for any military service if the person was in the military service;
- (f) Has completed at least two years of regular, uninterrupted, full-time commissioned law enforcement employ-

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ment involving enforcement responsibilities with a government law enforcement agency; and

(g) The person has been certified as a regular and commissioned enforcement officer through compliance with this state's basic training requirement or equivalency.

(2) A person seeking appointment to the office of chief of police or marshal, of a city or town, including a code city, with a population of one thousand or less, is ineligible unless that person conforms with the requirements of subsection (1) (a) through (e) of this section. A person so appointed as chief of police or marshal must successfully complete the state's basic training requirement or equivalency within nine months after such appointment, unless an extension has been granted by the criminal justice training commission.

(3) A person seeking appointment to the office of chief of police or marshal shall provide a sworn statement under penalty of perjury to the appointing authority stating that the person meets the requirements of this section. [1987 c 339 § 4.]

**Intent—1987 c 339:** "The intent of this act is to require certain qualifications for candidates for the office of chief of police or marshal, which position in whole or in part oversees law enforcement personnel or activities for a city or town.

The legislature finds that over the past century the field of law enforcement has become increasingly complex and many new techniques and resources have evolved both socially and technically. In addition the ever-changing requirements of law, both constitutional and statutory provisions protecting the individual and imposing responsibilities and legal liabilities of law enforcement officers and the government of which they represent, require an increased level of training and experience in the field of law enforcement.

The legislature, therefore finds that minimum requirements are reasonable and necessary to seek and hold the offices or office of chief of police or marshal, and that such requirements are in the public interest." [1987 c 339 § 3.]

**Severability—1987 c 339:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 339 § 8.]

**Effective date—1987 c 339:** "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 339 § 9.]

**35.21.334 Chief of police or marshal—Background investigation.** Before making an appointment in the office of chief of police or marshal, the appointing agency shall complete a thorough background investigation of the candidate. The Washington association of sheriffs and police chiefs shall develop advisory procedures which may be used by the appointing authority in completing its background investigation of candidates for the office of chief of police or marshal. [1987 c 339 § 5.]

**Intent—Severability—Effective date—1987 c 339:** See notes following RCW 35.21.333.

**35.21.335 Chief of police or marshal—Vacancy.** In the case of a vacancy in the office of chief of police or marshal, all requirements and procedures of RCW 35.21.333 and 35.21.334 shall be followed in filling the vacancy. [1987 c 339 § 6.]

**Intent—Severability—Effective date—1987 c 339:** See notes following RCW 35.21.333.

**35.21.340 Cemeteries and funeral facilities.** See chapter 68.52 RCW.

**35.21.350 Civil service in police and fire departments.** See Title 41 RCW.

**35.21.360 Eminent domain by cities and towns.** See chapter 8.12 RCW.

**35.21.370 Joint county and city hospitals.** See chapter 36.62 RCW.

**35.21.380 Joint county and city buildings.** See chapter 36.64 RCW.

**35.21.385 Counties with a population of two hundred ten thousand or more may contract with cities concerning buildings and related improvements.** See RCW 36.64.070.

**35.21.390 Public employment, civil service and pensions.** See Title 41 RCW.

**35.21.395 Historic preservation—Authorization to acquire property, borrow money, issue bonds, etc.** Any city or town may acquire title to or any interest in real and personal property for the purpose of historic preservation and may restore, improve, maintain, manage, and lease the property for public or private use and may enter into contracts, borrow money, and issue bonds and other obligations for such purposes. This authorization shall not expand the eminent domain powers of cities or towns. [1984 c 203 § 3.]

**Severability—1984 c 203:** See note following RCW 35.43.140.

**35.21.400 City may acquire property for parks, recreational, viewpoint, greenbelt, conservation, historic, scenic, or view purposes.** See RCW 36.34.340.

**35.21.403 City may establish lake management districts.** Any city or town may establish lake management districts within its boundaries as provided in chapter 36.61 RCW. When a city or town establishes a lake management district pursuant to chapter 36.61 RCW, the term "county legislative authority" shall be deemed to mean the city or town governing body, the term "county" shall be deemed to mean the city or town, and the term "county treasurer" shall be deemed to mean the city or town treasurer or other fiscal officer. [1985 c 398 § 27.]

**35.21.404 Fish enhancement project—City's or town's liability.** A city or town is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of RCW 77.55.290 and has been permitted by the department of fish and wildlife. [2003 c 39 § 14; 1998 c 249 § 9.]

**Findings—Purpose—Report—Effective date—1998 c 249:** See notes following RCW 77.55.290.

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**35.21.405 Moorage facilities—Regulations authorized—Port charges, delinquency—Abandoned vessels, public sale.** See RCW 53.08.310 and 53.08.320.

**35.21.407 Abandoned or derelict vessels.** Any city or town has the authority, subject to the processes and limitation outlined in chapter 79.100 RCW, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above publicly or privately owned aquatic lands within the jurisdiction of the city or town. [2002 c 286 § 15.]

**Severability—Effective date—2002 c 286:** See RCW 79.100.900 and 79.100.901.

**35.21.410 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.** See chapter 80.58 RCW.

**35.21.412 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts.** See RCW 87.03.825 through 87.03.840.

**35.21.415 Electrical utilities—Civil immunity of officials and employees for good faith mistakes and errors of judgment.** Officials and employees of cities and towns shall be immune from civil liability for mistakes and errors of judgment in the good faith performance of acts within the scope of their official duties involving the exercise of judgment and discretion which relate solely to their responsibilities for electrical utilities. This grant of immunity shall not be construed as modifying the liability of the city or town. [1983 1st ex.s. c 48 § 1.]

**Severability—1983 1st ex.s. c 48:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 48 § 4.]

**35.21.417 Hydroelectric reservoir extending across international boundary—Agreement with Province of British Columbia.** To carry out a treaty between the United States of America and Canada, a city that maintains hydroelectric facilities with a reservoir which extends across the international boundary, may enter into an agreement with the Province of British Columbia for enhancing recreational opportunities and protecting environmental resources of the watershed of the river or rivers which forms the reservoir. The agreement may provide for establishment of and payments into an environmental endowment fund and establishment of an administering commission to implement the purpose of the treaty and the agreement. [1984 c 1 § 1.]

**35.21.418 Hydroelectric reservoir extending across international boundary—Commission—Powers.** A commission, established by an agreement between a Washington municipality and the Province of British Columbia to carry out a treaty between the United States of America and Canada as authorized in RCW 35.21.417, shall be public and shall have all powers and capacity necessary and appropriate for the purposes of performing its functions under the agreement, including, but not limited to, the following powers and

capacity: To acquire and dispose of real property other than by condemnation; to enter into contracts; to sue and be sued in either Canada or the United States; to establish an endowment fund in either or both the United States and Canada and to invest the endowment fund in either or both countries; to solicit, accept, and use donations, grants, bequests, or devises intended for furthering the functions of the endowment; to adopt such rules or procedures as it deems desirable for performing its functions; to engage advisors and consultants; to establish committees and subcommittees; to adopt rules for its governance; to enter into agreements with public and private entities; and to engage in activities necessary and appropriate for implementing the agreement and the treaty.

The endowment fund and commission may not be subject to state or local taxation. A commission, so established, may not be subject to statutes and laws governing Washington cities and municipalities in the conduct of its internal affairs: PROVIDED, That all commission members appointed by the municipality shall comply with chapter 42.52 RCW, and: PROVIDED FURTHER, That all commission meetings held within the state of Washington shall be held in compliance with chapter 42.30 RCW. All obligations or liabilities incurred by the commission shall be satisfied exclusively from its own assets and insurance. [1994 c 154 § 309; 1984 c 1 § 2.]

**Parts and captions not law—Effective date—Severability—1994 c 154:** See RCW 42.52.902, 42.52.904, and 42.52.905.

**35.21.420 Utilities—City may support county in which generating plant located.** Any city owning and operating a public utility and having facilities for the generation of electricity located in a county other than that in which the city is located, may provide for the public peace, health, safety and welfare of such county as concerns the facilities and the personnel employed in connection therewith, by contributing to the support of the county government of any such county and enter into contracts with any such county therefor. [1965 c 7 § 35.21.420. Prior: 1951 c 104 § 1.]

**35.21.422 Utilities—Cities in a county with a population of two hundred ten thousand or more west of Cascades may support cities, towns, counties and taxing districts in which facilities located.** Any city, located within a county with a population of two hundred ten thousand or more west of the Cascades, owning and operating a public utility and having facilities for the distribution of electricity located outside its city limits, may provide for the support of cities, towns, counties and taxing districts in which such facilities are located, and enter into contracts with such county therefor. Such contribution shall be based upon the amount of retail sales of electricity, other than to governmental agencies, made by such city in the areas of such cities, towns, counties or taxing districts in which such facilities are located, and shall be divided among them on the same basis as taxes on real and personal property therein are divided. [1991 c 363 § 38; 1967 ex.s. c 52 § 1.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**35.21.425 City constructing generating facility in other county—Reimbursement of county or school dis-**

**trict.** Whenever after March 17, 1955, any city shall construct hydroelectric generating facilities or acquire land for the purpose of constructing the same in a county other than the county in which such city is located, and by reason of such construction or acquisition shall (1) cause loss of revenue and/or place a financial burden in providing for the public peace, health, safety, welfare, and added road maintenance in such county, in addition to road construction or relocation as set forth in RCW 90.28.010 and/or (2) shall cause any loss of revenues and/or increase the financial burden of any school district affected by the construction because of an increase in the number of pupils by reason of the construction or the operation of said generating facilities, the city shall enter into an agreement with said county and/or the particular school district or districts affected for the payment of moneys to recompense such losses or to provide for such increased financial burden, upon such terms and conditions as may be mutually agreeable to the city and the county and/or school district or districts. [1965 c 7 § 35.21.425. Prior: 1955 c 252 § 1.]

**35.21.426 City constructing generating facility in other county—Notice of loss—Negotiations—Arbitration.** Whenever a county or school district affected by the project sustains such financial loss or is affected by an increased financial burden as above set forth or it appears that such a financial loss or burden will occur beginning not later than within the next three months, such county or school district shall immediately notify the city in writing setting forth the particular losses or increased burden and the city shall immediately enter into negotiations to effect a contract. In the event the city and the county or school district are unable to agree upon terms and conditions for such contract, then in that event, within sixty days after such notification, the matter shall be submitted to a board of three arbitrators, one of whom shall be appointed by the city council of the city concerned; one by the board of county commissioners for the county concerned or by the school board for the school district concerned, and one by the two arbitrators so appointed. In the event such arbitrators are unable to agree on a third arbitrator within ten days after their appointment then the third arbitrator shall be selected by the state auditor. The board of arbitrators shall determine the loss of revenue and/or the cost of the increased financial burden placed upon the county or school district and its findings shall be binding upon such city and county or school district and the parties shall enter into a contract for reimbursement by the city in accordance with such findings, with the payment under such findings to be retroactive to the date when the city was first notified in writing. [1965 c 7 § 35.21.426. Prior: 1955 c 252 § 2.]

**35.21.427 City constructing generating facility in other county—Additional findings—Renegotiation.** The findings provided for in RCW 35.21.426 may also provide for varying payments based on formulas to be stated in the findings, and for varying payments for different stated periods. The findings shall also state a future time at which the agreement shall be renegotiated or, in event of failure to agree on such renegotiation, be arbitrated as provided in

RCW 35.21.426. [1965 c 7 § 35.21.427. Prior: 1955 c 252 § 3.]

**35.21.430 Utilities—City may pay taxing districts involved after acquisition of private power facilities.** On and after January 1, 1951, whenever a city or town shall acquire electric generation, transmission and/or distribution properties which at the time of acquisition were in private ownership, the legislative body thereof may each year order payments made to all taxing districts within which any part of the acquired properties are located, in amounts not greater than the taxes, exclusive of excess levies voted by the people and/or levies made for the payment of bonded indebtedness pursuant to the provisions of Article VII, section 2 of the Constitution of this state, as now or hereafter amended, and/or by statutory provision, imposed on such properties in the last tax year in which said properties were in private ownership. [1973 1st ex.s. c 195 § 15; 1965 c 7 § 35.21.430. Prior: 1951 c 217 § 1.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**35.21.440 Utilities—Additional payments to school districts having bonded indebtedness.** In the event any portion of such property shall be situated in any school district which, at the time of acquisition, has an outstanding bonded indebtedness, the city or town may in addition to the payments authorized in RCW 35.21.430, make annual payments to such school district which shall be applied to the retirement of the principal and interest of such bonds. Such payments shall be computed in the proportion which the assessed valuation of utility property so acquired shall bear to the total assessed valuation of the district at the time of the acquisition. [1965 c 7 § 35.21.440. Prior: 1951 c 217 § 2.]

**35.21.450 Utilities—Payment of taxes.** Annual payments shall be ordered by an ordinance or ordinances of the legislative body. The ordinance shall further order a designated officer to notify in writing the county assessor of each county in which any portion of such property is located, of the city's intention to make such payments. The county assessor shall thereupon enter upon the tax rolls of the county the amount to which any taxing district of the county is entitled under the provisions of RCW 35.21.430 to 35.21.450, inclusive; and upon delivery of the tax rolls to the county treasurer as provided by law, the amount of the tax as hereinbefore authorized and determined shall become due and payable by the city or town the same as real property taxes. [1965 c 7 § 35.21.450. Prior: 1951 c 217 § 3.]

**35.21.455 Locally regulated utilities—Attachments to poles.** (1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities

where the installation has been made with the necessary consent.

(b) "Locally regulated utility" means a city owning and operating an electric utility not subject to rate or service regulation by the utilities and transportation commission.

(c) "Nondiscriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of persons approved for attachments.

(2) All rates, terms, and conditions made, demanded or received by a locally regulated utility for attachments to its poles must be just, reasonable, nondiscriminatory and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities. [1996 c 32 § 3.]

**35.21.470 Building construction projects—City or town prohibited from requiring state agencies or local governments to provide bond or other security as a condition for issuance of permit.** A city or town may not require any state agency or unit of local government to secure the performance of a permit requirement with a surety bond or other financial security device, including cash or assigned account, as a condition of issuing a permit to that unit of local government for a building construction project.

As used in this section, "building construction project" includes, in addition to its usual meaning, associated landscaping, street alteration, pedestrian or vehicular access alteration, or other amenities or alterations necessarily associated with the project. [1993 c 439 § 1.]

**35.21.475 Statement of restrictions applicable to real property.** (1) A property owner may make a written request for a statement of restrictions applicable to a single parcel, tract, lot, or block of real property to the city or town in which the real property is located.

(2) Within thirty days of the receipt of the request, the city or town shall provide the owner with a statement of restrictions as described in subsection (3) of this section.

(3) The statement of restrictions shall include the following:

(a) The zoning currently applicable to the real property;

(b) Pending zoning changes currently advertised for public hearing that would be applicable to the real property; and

(c) Any designations made by the city or town pursuant to chapter 36.70A RCW of any portion of the real property as agricultural land, forest land, mineral resource land, wetland, an area with a critical recharging effect on aquifers used for potable water, a fish and wildlife habitat conservation area, a frequently flooded area, and as a geological hazardous area.

(4) If a city or town fails to provide the statement of restrictions within thirty days after receipt of the written request, the owner shall be awarded recovery of all attorneys' fees and costs incurred in any successful application for a writ of mandamus to compel production of a statement.

(5) For purposes of this section:

(a) "Owner" means any vested owner or any person holding the buyer's interest under a recorded real estate contract in which the seller is the vested owner; and

(b) "Real property" means a parcel, tract, lot or block: (i) Containing a single-family residence that is occupied by the owner or a member of his or her family, or rented to another by the owner; or (ii) five acres or less in size.

(6) This section does not affect the vesting of permits or development rights.

Nothing in this section shall be deemed to create any liability on the part of a city or town to pay damages for a violation of this section. [1996 c 206 § 6.]

**Effective date—1996 c 206 §§ 6-8:** "Sections 6 through 8 of this act take effect January 1, 1997." [1996 c 206 § 13.]

**Findings—1996 c 206:** See note following RCW 43.05.030.

**35.21.500 Compilation, codification, revision of city or town ordinances—Scope of codification.** "Codification" means the editing, rearrangement and/or grouping of ordinances under appropriate titles, parts, chapters and sections and includes but is not limited to the following:

(1) Editing ordinances to the extent deemed necessary or desirable, for the purpose of modernizing and clarifying the language of such ordinances, but without changing the meaning of any such ordinance.

(2) Substituting for the term "this ordinance," where necessary the term "section," "part," "code," "chapter," "title," or reference to specific section or chapter numbers, as the case may require.

(3) Correcting manifest errors in reference to other ordinances, laws and statutes, and manifest spelling, clerical or typographical errors, additions, or omissions.

(4) Dividing long sections into two or more sections and rearranging the order of sections to insure a logical arrangement of subject matter.

(5) Changing the wording of section captions, if any, and providing captions to new chapters and sections.

(6) Striking provisions manifestly obsolete and eliminating conflicts and inconsistencies so as to give effect to the legislative intent. [1965 c 7 § 35.21.500. Prior: 1957 c 97 § 1.]

**35.21.510 Compilation, codification, revision of city or town ordinances—Authorized.** Any city or town may prepare or cause to be prepared a codification of its ordinances. [1965 c 7 § 35.21.510. Prior: 1957 c 97 § 2.]

**35.21.520 Compilation, codification, revision of city or town ordinances—Adoption as official code of city.** Any city or town having heretofore prepared or caused to be prepared, or now preparing or causing to be prepared, or that hereafter prepares or causes to be prepared, a codification of its ordinances may adopt such codification by enacting an ordinance adopting such codification as the official code of the city, provided the procedure and requirements of RCW 35.21.500 through 35.21.570 are complied with. [1965 c 7 § 35.21.520. Prior: 1957 c 97 § 3.]

**35.21.530 Compilation, codification, revision of city or town ordinances—Filing—Notice of hearing.** When a

city or town codifies its ordinances, it shall file a typewritten or printed copy of the codification in the office of the city or town clerk. After the first reading of the title of the adopting ordinance and of the title of the code to be adopted thereby, the legislative body of the city or town shall schedule a public hearing thereon. Notice of the hearing shall be published once not more than fifteen nor less than ten days prior to the hearing in the official newspaper of the city, indicating that its ordinances have been compiled, or codified and that a copy of such compilation or codification is on file in the city or town clerk's office for inspection. The notice shall state the time and place of the hearing. [1985 c 469 § 21; 1965 c 7 § 35.21.530. Prior: 1957 c 97 § 4.]

**35.21.540 Compilation, codification, revision of city or town ordinances—Legislative body may amend, adopt, or reject adopting ordinance—When official code.** After the hearing, the legislative body may amend, adopt, or reject the adopting ordinance in the same manner in which it is empowered to act in the case of other ordinances. Upon the enactment of such adopting ordinance, the codification shall be the official code of ordinances of the city or town. [1965 c 7 § 35.21.540. Prior: 1957 c 97 § 5.]

**35.21.550 Compilation, codification, revision of city or town ordinances—Copies as proof of ordinances.** Copies of such codes in published form shall be received without further proof as the ordinances of permanent and general effect of the city or town in all courts and administrative tribunals of this state. [1965 c 7 § 35.21.550. Prior: 1957 c 97 § 6.]

*Ordinances, admissibility as evidence: RCW 5.44.080.*

**35.21.560 Compilation, codification, revision of city or town ordinances—Adoption of new material.** New material shall be adopted by the city or town legislative body as separate ordinances prior to the inclusion thereof in such codification: PROVIDED, That any ordinance amending the codification shall set forth in full the section or sections, or subsection or subsections of the codification being amended, as the case may be, and this shall constitute a sufficient compliance with any statutory or charter requirement that no ordinance or any section thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or amended section in full. [1965 c 7 § 35.21.560. Prior: 1961 c 70 § 1; 1957 c 97 § 7.]

**35.21.570 Compilation, codification, revision of city or town ordinances—Codification satisfies single subject, title, and amendment requirements of statute or charter.** When a city or town shall make a codification of its ordinances in accordance with RCW 35.21.500 through 35.21.570 that shall constitute a sufficient compliance with any statutory or charter requirements that no ordinance shall contain more than one subject which shall be clearly expressed in its title and that no ordinance or any section thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or amended section in full. [1965 c 7 § 35.21.570. Prior: 1957 c 97 § 8.]

**35.21.590 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when.** See RCW 39.30.010.

**35.21.630 Youth agencies—Establishment authorized.** Any city, town, or county may establish a youth agency to investigate, advise and act on, within the powers of that municipality, problems relating to the youth of that community, including employment, educational, economic and recreational opportunities, juvenile delinquency and dependency, and other youth problems and activities as that municipality may determine. Any city, town, or county may contract with any other city, town, or county to jointly establish such a youth agency. [1965 ex.s. c 84 § 5.]

**35.21.635 Juvenile curfews.** (1) Any city or town has the authority to enact an ordinance, for the purpose of preserving the public safety or reducing acts of violence by or against juveniles that are occurring at such rates as to be beyond the capacity of the police to assure public safety, establishing times and conditions under which juveniles may be present on the public streets, in the public parks, or in any other public place during specified hours.

(2) The ordinance shall not contain any criminal sanctions for a violation of the ordinance. [1994 sp.s. c 7 § 502.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**35.21.640 Conferences to study regional and governmental problems, counties and cities may establish.** See RCW 36.64.080.

**35.21.650 Prepayment of taxes or assessments authorized.** All moneys, assessments and taxes belonging to or collected for the use of any city or town, including any amounts representing estimates for future assessments and taxes, may be deposited by any taxpayer prior to the due date thereof with the treasurer or other legal depository for the benefit of the funds to which they belong to be credited against any future tax or assessment that may be levied or become due from the taxpayer: PROVIDED, That the taxpayer may with the concurrence of the treasurer designate a particular fund of such city or town against which such prepayment of tax or assessment is made. [1967 ex.s. c 66 § 1.]

**35.21.660 Demonstration Cities and Metropolitan Development Act—Agreements with federal government—Scope of authority.** Notwithstanding any other provision of law, all cities shall have the power and authority to enter into agreements with the United States or any department or agency thereof, to carry out the purposes of the Demonstration Cities and Metropolitan Development Act of 1966 (PL 89-754; 80 Stat. 1255), and to plan, organize and administer programs provided for in such contracts. This power and authority shall include, but not be limited to, the power and authority to create public corporations, commissions and authorities to perform duties arising under and administer programs provided for in such contracts and to limit the liability of said public corporations, commissions, and authori-

ties, in order to prevent recourse to such cities, their assets, or their credit. [1971 ex.s. c 177 § 5; 1970 ex.s. c 77 § 1.]

*Establishment of public corporations to administer federal grants and programs: RCW 35.21.730 through 35.21.755.*

**35.21.670 Demonstration Cities and Metropolitan Development Act—Powers and limitations of public corporations, commissions or authorities created.** Any public corporation, commission or authority created as provided in RCW 35.21.660, may be empowered to own and sell real and personal property; to contract with individuals, associations and corporations, and the state and the United States; to sue and be sued; to loan and borrow funds; to do anything a natural person may do; and to perform all manner and type of community services and activities in furtherance of an agreement by a city or by the public corporation, commission or authority with the United States to carry out the purposes of the Demonstration Cities and Metropolitan Development Act of 1966: PROVIDED, That

(1) All liabilities incurred by such public corporation, commission or authority shall be satisfied exclusively from the assets and credit of such public corporation, commission or authority; and no creditor or other person shall have any recourse to the assets, credit or services of the municipal corporation creating the same on account of any debts, obligations or liabilities of such public corporation, commission or authority;

(2) Such public corporation, commission or authority shall have no power of eminent domain nor any power to levy taxes or special assessments;

(3) The name, the organization, the purposes and scope of activities, the powers and duties of the officers, and the disposition of property upon dissolution of such public corporation, commission or authority shall be set forth in its charter of incorporation or organization, or in a general ordinance of the city or both. [1971 ex.s. c 177 § 7.]

**35.21.680 Participation in Economic Opportunity Act programs.** The legislative body of any city or town, is hereby authorized and empowered in its discretion by resolution or ordinance passed by a majority of the legislative body, to take whatever action it deems necessary to enable the city or town to participate in the programs set forth in the Economic Opportunity Act of 1964 (Public Law 88-452; 78 Stat. 508), as amended. Such participation may be engaged in as a sole city or town operation or in conjunction or cooperation with the state, any other city or town, county, or municipal corporation, or any private corporation qualified under said Economic Opportunity Act. [1971 ex.s. c 177 § 3.]

**35.21.684 Authority to regulate placement or use of homes—Regulation of manufactured homes—Issuance of permits. (Effective July 1, 2005.)** (1) A city or town may not enact any statute or ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site built homes, factory built homes, or homes built to any other

state construction or local design standard. However, any city or town may require that (a) a manufactured home be a new manufactured home; (b) the manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative; (c) the manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located; (d) the home is thermally equivalent to the state energy code; and (e) the manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160. A city with a population of one hundred thirty-five thousand or more may choose to designate its building official as the person responsible for issuing all permits, including department of labor and industries permits issued under chapter 43.22 RCW in accordance with an inter-local agreement under chapter 39.34 RCW, for alterations, remodeling, or expansion of manufactured housing located within the city limits under this section.

(2) This section does not override any legally recorded covenants or deed restrictions of record.

(3) This section does not affect the authority granted under chapter 43.22 RCW. [2004 c 256 § 2.]

**Findings—Intent—2004 c 256:** "The legislature finds that: Congress has preempted the regulation by the states of manufactured housing construction standards through adoption of construction standards for manufactured housing (42 U.S.C. Sec. 5401-5403); and this federal regulation is equivalent to the state's uniform building code. The legislature also finds that congress has declared that: (1) Manufactured housing plays a vital role in meeting the housing needs of the nation; and (2) manufactured homes provide a significant resource for affordable homeownership and rental housing accessible to all Americans (42 U.S.C. Sec. 5401-5403). The legislature intends to protect the consumers' rights to choose among a number of housing construction alternatives without restraint of trade or discrimination by local governments." [2004 c 256 § 1.]

**Effective date—2004 c 256:** "This act takes effect July 1, 2005." [2004 c 256 § 6.]

### **35.21.685 Low-income housing—Loans and grants.**

A city or town may assist in the development or preservation of publicly or privately owned housing for persons of low income by providing loans or grants of general municipal funds to the owners or developers of the housing. The loans or grants shall be authorized by the legislative authority of the city or town. They may be made to finance all or a portion of the cost of construction, reconstruction, acquisition, or rehabilitation of housing that will be occupied by a person or family of low income. As used in this section, "low income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the city or town is located. Housing constructed with loans or grants made under this section shall not be considered public works or improvements subject to competitive bidding or a purchase of services subject to the prohibition against advance payment for services: PROVIDED, That whenever feasible the borrower or grantee shall make every reasonable and practicable effort to utilize a competitive public bidding process. [1986 c 248 § 1.]

### **35.21.687 Affordable housing—Inventory of suitable housing.**

(1) Every city and town, including every code city

operating under Title 35A RCW, shall identify and catalog real property owned by the city or town that is no longer required for its purposes and is suitable for the development of affordable housing for very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510. The inventory shall include the location, approximate size, and current zoning classification of the property. Every city and town shall provide a copy of the inventory to the department of community, trade, and economic development by November 1, 1993, with inventory revisions each November 1 thereafter.

(2) By November 1 of each year, beginning in 1994, every city and town, including every code city operating under Title 35A RCW, shall purge the inventory of real property of sites that are no longer available for the development of affordable housing. The inventory revision shall also contain a list of real property that has become available since the last update. As used in this section, "real property" means buildings, land, or buildings and land. [1995 c 399 § 37; 1993 c 461 § 4.]

**Finding—1993 c 461:** See note following RCW 43.63A.510.

### **35.21.688 Family day-care provider's home facility—City or town may not prohibit in residential or commercial area—Conditions.**

(1) Except as provided in subsections (2) and (3) of this section, no city or town may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's facility serving twelve or fewer children.

(2) A city or town may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the office of child care policy licensor as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care who work a nonstandard work shift.

(3) A city or town may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

(4) This section may not be construed to prohibit a city or town from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home serving twelve or fewer children in an area zoned for residential or commercial use, if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not pre-

cluded. As used in this section, "family day-care provider" is as defined in RCW 74.15.020. [2003 c 286 § 1.]

**35.21.690 Authority to regulate auctioneers—Limitations.** A city or town shall not license auctioneers that are licensed by the state under chapter 18.11 RCW other than by requiring an auctioneer to obtain a general city or town business license and by subjecting an auctioneer to a city or town business and occupation tax. A city or town shall not require auctioneers that are licensed by the state under chapter 18.11 RCW to obtain bonding in addition to the bonding required by the state. [1984 c 189 § 2.]

**35.21.692 Authority to regulate massage practitioners—Limitations.** (1) A state licensed massage practitioner seeking a city or town license to operate a massage business must provide verification of his or her state massage license as provided for in RCW 18.108.030.

(2) The city or town may charge a licensing or operating fee, but the fee charged a state licensed massage practitioner shall not exceed the licensing or operating fee imposed on similar health care providers, such as physical therapists or occupational therapists, operating within the same city or town.

(3) A state licensed massage practitioner is not subject to additional licensing requirements not currently imposed on similar health care providers, such as physical therapists or occupational therapists. [1991 c 182 § 1.]

**35.21.695 Authority to own and operate professional sports franchise.** (1) Any city, code city, or county, individually or collectively, may own and operate an existing professional sports franchise when the owners of such franchises announce their intention to sell or move a franchise.

(2) If a city, code city, or county purchases a professional sports franchise, a public corporation shall be created to manage and operate the franchise. The public corporation created under this section shall have all of the authorities granted by RCW 35.21.730 through 35.21.757. [1987 c 32 § 2.]

**Legislative declaration—1987 c 32:** "The legislature hereby declares and finds that professional sports franchises are economic, cultural, and entertainment assets to the state and that unilateral actions by the owners of such franchises to move franchises to other locations result in a loss of direct and indirect employment and national visibility for the state. The legislature finds that the retention of professional sports franchises and the enabling authority created by RCW 35.21.695 are public purposes and that RCW 35.21.695 shall not be construed in any manner contrary to the provisions of Article VIII, section 7, of the Washington state Constitution." [1987 c 32 § 1.]

**35.21.696 Newspaper carrier regulation.** A city or town, including a code city, may not license newspaper carriers under eighteen years of age for either regulatory or revenue-generating purposes. [1994 c 112 § 3.]

**35.21.700 Tourist promotion.** Any city or town in this state acting through its council or other legislative body shall have power to expend moneys and conduct promotion of resources and facilities in the city or town, or general area, by advertising, publicizing, or otherwise distributing information for the purpose of attracting visitors and encouraging tourist expansion. [1971 ex.s. c 61 § 2.]

**35.21.703 Economic development programs.** It shall be in the public purpose for all cities to engage in economic development programs. In addition, cities may contract with nonprofit corporations in furtherance of this and other acts relating to economic development. [1985 c 92 § 1.]

**35.21.706 Imposition or increase of business and occupation tax—Referendum procedure required—Exclusive procedure.** Every city and town first imposing a business and occupation tax or increasing the rate of the tax after April 22, 1983, shall provide for a referendum procedure to apply to an ordinance imposing the tax or increasing the rate of the tax. This referendum procedure shall specify that a referendum petition may be filed within seven days of passage of the ordinance with a filing officer, as identified in the ordinance. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from the designated local official. The petitioner shall have thirty days in which to secure the signatures of not less than fifteen percent of the registered voters of the city, as of the last municipal general election, upon petition forms which contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petition and, if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election ballot within the city or at a special election ballot as provided pursuant to RCW 35.17.260(2).

This referendum procedure shall be exclusive in all instances for any city ordinance imposing a business and occupation tax or increasing the rate of the tax and shall supersede the procedures provided under chapters 35.17 and 35A.11 RCW and all other statutory or charter provisions for initiative or referendum which might otherwise apply. [1983 c 99 § 6.]

**Severability—1983 c 99:** See note following RCW 82.14.200.

**35.21.710 License fees or taxes on certain business activities—Uniform rate required—Maximum rate established.** Any city which imposes a license fee or tax upon business activities consisting of the making of retail sales of tangible personal property which are measured by gross receipts or gross income from such sales, shall impose such tax at a single uniform rate upon all such business activities. The taxing authority granted to cities for taxes upon business activities measured by gross receipts or gross income from sales shall not exceed a rate of .0020; except that any city with an adopted ordinance at a higher rate, as of January 1, 1982 shall be limited to a maximum increase of ten percent of the January 1982 rate, not to exceed an annual incremental increase of two percent of current rate: PROVIDED, That any adopted ordinance which classifies according to different types of business or services shall be subject to both the ten percent and the two percent annual incremental increase limitation on each tax rate: PROVIDED FURTHER, That all surtaxes on business and occupation classifications in effect as of January 1, 1982, shall expire no later than December 31, 1982, or by expiration date established by local ordinance. Cities which impose a license fee or tax upon business activities consisting of the making of retail sales of

tangible personal property which are measured by gross receipts or gross income from such sales shall be required to submit an annual report to the state auditor identifying the rate established and the revenues received from each fee or tax. This section shall not apply to any business activities subject to the tax imposed by chapter 82.16 RCW. For purposes of this section, the providing to consumers of competitive telephone service, as defined in RCW 82.04.065, or the providing of payphone service, shall be subject to tax at the same rate as business activities consisting of the making of retail sales of tangible personal property. As used in this section, "payphone service" means making telephone service available to the public on a fee-per-call basis, independent of any other commercial transaction, for the purpose of making telephone calls, when the telephone can only be activated by inserting coins, calling collect, using a calling card or credit card, or dialing a toll-free number, and the provider of the service owns or leases the telephone equipment but does not own the telephone line providing the service to that equipment and has no affiliation with the owner of the telephone line. [2002 c 179 § 1; 1983 2nd ex.s. c 3 § 33; 1983 c 99 § 7; 1982 1st ex.s. c 49 § 7; 1981 c 144 § 6; 1972 ex.s. c 134 § 6.]

**Effective date—2002 c 179:** "This act takes effect July 1, 2002." [2002 c 179 § 5.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Severability—1983 c 99:** See note following RCW 82.14.200.

**Intent—1982 1st ex.s. c 49:** "The legislature hereby recognizes the concern of local governmental entities regarding the financing of vital services to residents of this state. The legislature finds that local governments are an efficient and responsive means of providing these vital services to the citizens of this state. It is the intent of the legislature that vital services such as public safety, public health, and fire protection be recognized by all local governmental entities in this state as top priorities of the citizens of Washington." [1982 1st ex.s. c 49 § 1.]

**Construction—1982 1st ex.s. c 49:** "Nothing in this act precludes the imposition of business and occupation taxes by cities and towns, or of sales and use taxes. However, nothing in this act authorizes the imposition of a business and occupation tax by any county." [1982 1st ex.s. c 49 § 6.]

**Effective date—1982 1st ex.s. c 49:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except section 5 of this act shall take effect July 1, 1982." [1982 1st ex.s. c 49 § 25.]

**Fire district funding—1982 1st ex.s. c 49:** "County legislative authorities who levy optional taxes pursuant to this act shall fully consider funding for fire districts within their respective jurisdictions during the county budget process.

The local government committees of the legislature shall study fire district services and funding and shall report back to the Washington State Legislature by December 31, 1982." [1982 1st ex.s. c 49 § 23.]

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

*License fees and taxes on financial institutions: Chapter 82.14A RCW.*

**35.21.711 License fees or taxes on certain business activities—Excess rates authorized by voters.** The qualified voters of any city or town may by majority vote approve rates in excess of the provisions of RCW 35.21.710. [1982 1st ex.s. c 49 § 8.]

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**35.21.712 License fees or taxes on telephone business to be at uniform rate.** Any city which imposes a license fee

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or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.04.065, which is measured by gross receipts or gross income from the business shall impose the tax at a uniform rate on all persons engaged in the telephone business in the city.

This section does not apply to the providing of competitive telephone service as defined in RCW 82.04.065 or to the providing of payphone service as defined in RCW 35.21.710. [2002 c 179 § 2; 1983 2nd ex.s. c 3 § 35; 1981 c 144 § 8.]

**Effective date—2002 c 179:** See note following RCW 35.21.710.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

**35.21.714 License fees or taxes on telephone business—Imposition on certain gross revenues authorized—Limitations. (Contingent expiration date.)** (1) Any city which imposes a license fee or tax upon the business activity of engaging in the telephone business which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax: PROVIDED, That the city shall not impose the fee or tax on that portion of network telephone service which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale, or charges for mobile telecommunications services provided to customers whose place of primary use is not within the city.

(2) Any city that imposes a license tax or fee under subsection (1) of this section has the authority, rights, and obligations of a taxing jurisdiction as provided in RCW 82.32.490 through 82.32.510.

(3) The definitions in RCW 82.04.065 apply to this section. [2002 c 67 § 9; 1989 c 103 § 1; 1986 c 70 § 1; 1983 2nd ex.s. c 3 § 37; 1981 c 144 § 10.]

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See notes following RCW 82.04.530.

**Severability—1989 c 103:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 103 § 5.]

**Effective date—1986 c 70 §§ 1, 2, 4, and 5:** "Sections 1, 2, 4, and 5 of this act shall take effect on January 1, 1987." [1986 c 70 § 8.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

**35.21.714 License fees or taxes on telephone business—Imposition on certain gross revenues authorized—Limitations. (Contingent effective date.)** Any city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.04.065, which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax: PROVIDED,

That the city shall not impose the fee or tax on that portion of network telephone service, as defined in RCW 82.04.065, which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale. [1989 c 103 § 1; 1986 c 70 § 1; 1983 2nd ex.s. c 3 § 37; 1981 c 144 § 10.]

**Severability—1989 c 103:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 103 § 5.]

**Effective date—1986 c 70 §§ 1, 2, 4, and 5:** "Sections 1, 2, 4, and 5 of this act shall take effect on January 1, 1987." [1986 c 70 § 8.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

**35.21.715 Taxes on network telephone services.** Notwithstanding RCW 35.21.714 or 35A.82.060, any city or town which imposes a tax upon business activities measured by gross receipts or gross income from sales, may impose such tax on that portion of network telephone service, as defined in RCW 82.04.065, which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll services, or charges for network telephone service that is purchased for the purpose of resale. Such tax shall be levied at the same rate as is applicable to other competitive telephone service as defined in RCW 82.04.065. [1989 c 103 § 2; 1986 c 70 § 2.]

**Severability—1989 c 103:** See note following RCW 35.21.714.

**Effective date—1986 c 70 §§ 1, 2, 4, and 5:** See note following RCW 35.21.714.

**35.21.717 Taxation of internet services—Moratorium.** Until July 1, 2006, a city or town may not impose any new taxes or fees specific to internet service providers. A city or town may tax internet service providers under generally applicable business taxes or fees, at a rate not to exceed the rate applied to a general service classification. For the purposes of this section, "internet service" has the same meaning as in RCW 82.04.297. [2004 c 154 § 1; 2002 c 181 § 1; 1999 c 307 § 1; 1997 c 304 § 2.]

**Findings—1997 c 304:** "The legislature finds that the newly emerging business of providing internet service is providing widespread benefits to all levels of society. The legislature further finds that this business is important to our state's continued growth in the high-technology sector of the economy and that, as this industry emerges, it should not be burdened by new taxes that might not be appropriate for the type of service being provided. The legislature further finds that there is no clear statutory guidance as to how internet services should be classified for tax purposes and intends to ratify the state's current treatment of such services." [1997 c 304 § 1.]

**Severability—1997 c 304:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 304 § 6.]

**Effective date—1997 c 304:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 1997]." [1997 c 304 § 7.]

**35.21.718 State route No. 16—Tax on operation prohibited.** A city or town may not impose a tax on amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW. [1998 c 179 § 2.]

**Finding—1998 c 179:** "The legislature finds and declares that the people of the state may not enjoy the full benefits of public-private initiative for state route number 16 corridor improvements due to the many taxes that may apply to this project. Generally these taxes would not apply if the state built these projects through traditional financing and construction methods. These tax exemptions will reduce the cost of the project, allow lower tolls, and reduce the time for which tolls are charged." [1998 c 179 § 1.]

**35.21.720 City contracts to obtain sheriff's office law enforcement services.** See RCW 41.14.250 through 41.14.280.

**35.21.730 Public corporations—Powers of cities, towns, and counties—Administration.** In order to improve the administration of authorized federal grants or programs, to improve governmental efficiency and services, or to improve the general living conditions in the urban areas of the state, any city, town, or county may by lawfully adopted ordinance or resolution:

(1) Transfer to any public corporation, commission, or authority created under this section, with or without consideration, any funds, real or personal property, property interests, or services;

(2) Organize and participate in joint operations or cooperative organizations funded by the federal government when acting solely as coordinators or agents of the federal government;

(3) Continue federally-assisted programs, projects, and activities after expiration of contractual term or after expending allocated federal funds as deemed appropriate to fulfill contracts made in connection with such agreements or as may be proper to permit an orderly readjustment by participating corporations, associations, or individuals;

(4) Enter into contracts with public corporations, commissions, and authorities for the purpose of exercising any powers of a community renewal agency under chapter 35.81 RCW; and

(5) Create public corporations, commissions, and authorities to: Administer and execute federal grants or programs; receive and administer private funds, goods, or services for any lawful public purpose; and perform any lawful public purpose or public function. The ordinance or resolution shall limit the liability of such public corporations, commissions, and authorities to the assets and properties of such public corporation, commission, or authority in order to prevent recourse to such cities, towns, or counties or their assets or credit. [2002 c 218 § 23; 1985 c 332 § 1; 1974 ex.s. c 37 § 2.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.21.735 Public corporations—Declaration of public purpose—Power and authority to enter into agreements, receive and expend funds—Security.** (1) The legislature hereby declares that carrying out the purposes of federal grants or programs is both a public purpose and an appropriate function for a city, town, county, or public corporation. The provisions of RCW 35.21.730 through 35.21.755

and RCW 35.21.660 and 35.21.670 and the enabling authority herein conferred to implement these provisions shall be construed to accomplish the purposes of RCW 35.21.730 through 35.21.755.

(2) All cities, towns, counties, and public corporations shall have the power and authority to enter into agreements with the United States or any agency or department thereof, or any agency of the state government or its political subdivisions, and pursuant to such agreements may receive and expend, or cause to be received and expended by a custodian or trustee, federal or private funds for any lawful public purpose. Pursuant to any such agreement, a city, town, county, or public corporation may issue bonds, notes, or other evidences of indebtedness that are guaranteed or otherwise secured by funds or other instruments provided by or through the federal government or by the federal government or an agency or instrumentality thereof under section 108 of the housing and community development act of 1974 (42 U.S.C. Sec. 5308), as amended, or its successor, and may agree to repay and reimburse for any liability thereon any guarantor of any such bonds, notes, or other evidences of indebtedness issued by such jurisdiction or public corporation, or issued by any other public entity. For purposes of this subsection federal housing mortgage insurance shall not constitute a federal guarantee or security.

(3) A city, town, county, or public corporation may pledge, as security for any such bonds, notes, or other evidences of indebtedness or for its obligations to repay or reimburse any guarantor thereof, its right, title, and interest in and to any or all of the following: (a) Any federal grants or payments received or that may be received in the future; (b) any of the following that may be obtained directly or indirectly from the use of any federal or private funds received as authorized in this section: (i) Property and interests therein, and (ii) revenues; (c) any payments received or owing from any person resulting from the lending of any federal or private funds received as authorized in this section; (d) any proceeds under (a), (b), or (c) of this subsection and any securities or investments in which (a), (b), or (c) of this subsection or proceeds thereof may be invested; (e) any interest or other earnings on (a), (b), (c), or (d) of this subsection.

(4) A city, town, county, or public corporation may establish one or more special funds relating to any or all of the sources listed in subsection (3)(a) through (e) of this section and pay or cause to be paid from such fund the principal, interest, premium if any, and other amounts payable on any bonds, notes, or other evidences of indebtedness authorized under this section, and pay or cause to be paid any amounts owing on any obligations for repayment or reimbursement of guarantors of any such bonds, notes, or other evidences of indebtedness. A city, town, county, or public corporation may contract with a financial institution either to act as trustee or custodian to receive, administer, and expend any federal or private funds, or to collect, administer, and make payments from any special fund as authorized under this section, or both, and to perform other duties and functions in connection with the transactions authorized under this section. If the bonds, notes, or other evidences of indebtedness and related agreements comply with subsection (6) of this section, then any such funds held by any such trustee or custodian, or by a public corporation, shall not constitute public

moneys or funds of any city, town, or county and at all times shall be kept segregated and set apart from other funds.

(5) For purposes of this section, "lawful public purpose" includes, without limitation, any use of funds, including loans thereof to public or private parties, authorized by the agreements with the United States or any department or agency thereof under which federal or private funds are obtained, or authorized under the federal laws and regulations pertinent to such agreements.

(6) If any such federal or private funds are loaned or granted to any private party or used to guarantee any obligations of any private party, then any bonds, notes, other evidences of indebtedness issued or entered into for the purpose of receiving or causing the receipt of such federal or private funds, and any agreements to repay or reimburse guarantors, shall not be obligations of any city, town, or county and shall be payable only from a special fund as authorized in this section or from any of the security pledged pursuant to the authority of this section, or both. Any bonds, notes, or other evidences of indebtedness to which this subsection applies shall contain a recital to the effect that they are not obligations of the city, town, or county or the state of Washington and that neither the faith and credit nor the taxing power of the state or any municipal corporation or subdivision of the state or any agency of any of the foregoing, is pledged to the payment of principal, interest, or premium, if any, thereon. Any bonds, notes, other evidences of indebtedness, or other obligations to which this subsection applies shall not be included in any computation for purposes of limitations on indebtedness. To the extent expressly agreed in writing by a city, town, county, or public corporation, this subsection shall not apply to bonds, notes, or other evidences of indebtedness issued for, or obligations incurred for, the necessary support of the poor and infirm by that city, town, county, or public corporation.

(7) Any bonds, notes, or other evidences of indebtedness issued by, or reimbursement obligations incurred by, a city, town, county, or public corporation consistent with the provisions of this section but prior to May 3, 1995, and any loans or pledges made by a city, town, or county in connection therewith substantially consistent with the provisions of this section but prior to May 3, 1995, are deemed authorized and shall not be held void, voidable, or invalid due to any lack of authority under the laws of this state. [1995 c 212 § 2; 1985 c 332 § 3; 1974 ex.s. c 37 § 3.]

**Purpose—1995 c 212:** "The purpose of this act is to assist community and economic development by clarifying the authority of all cities, towns, counties, and public corporations to engage in federally guaranteed "conduit financings" and to specify procedures that may be used for such conduit financings. Generally, in such a conduit financing a municipality borrows funds from the federal government or from private sources with the help of federal guarantees, without pledging the credit or tax revenues of the municipality, and then lends the proceeds for private projects that both fulfill public purposes, such as community and economic development, and provide the revenues to retire the municipal borrowings. Such conduit financings include issuance by municipalities of federally guaranteed notes under section 108 of the housing and community development act of 1974, as amended, to finance projects eligible under federal community development block grant regulations." [1995 c 212 § 1.]

**Severability—1995 c 212:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 212 § 3.]

**Construction—1995 c 212:** "The authority granted by this act is additional and supplemental to any other authority of any city, town, county, or public corporation. Nothing in this act may be construed to imply that any of the power or authority granted hereby was not available to any city, town, county, or public corporation under prior law. Any previous actions consistent with the provisions of this act are ratified and confirmed." [1995 c 212 § 4.]

**Effective date—1995 c 212:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 3, 1995]." [1995 c 212 § 5.]

**35.21.740 Public corporations—Exercise of powers, authorities, or rights—Territorial jurisdiction.** Powers, authorities, or rights expressly or impliedly granted to any city, town, or county or their agents under any provision of RCW 35.21.730 through 35.21.755 shall not be operable or applicable, or have any effect beyond the limits of the incorporated area of any city or town implementing RCW 35.21.730 through 35.21.755, unless so provided by contract between the city and another city or county. [1985 c 332 § 4; 1974 ex.s. c 37 § 4.]

**35.21.745 Public corporations—Provision for, control over—Powers.** (1) Any city, town, or county which shall create a public corporation, commission, or authority pursuant to RCW 35.21.730 or 35.21.660, shall provide for its organization and operations and shall control and oversee its operation and funds in order to correct any deficiency and to assure that the purposes of each program undertaken are reasonably accomplished.

(2) Any public corporation, commission, or authority created as provided in RCW 35.21.730 may be empowered to own and sell real and personal property; to contract with a city, town, or county to conduct community renewal activities under chapter 35.81 RCW; to contract with individuals, associations, and corporations, and the state and the United States; to sue and be sued; to loan and borrow funds and issue bonds and other instruments evidencing indebtedness; transfer any funds, real or personal property, property interests, or services; to do anything a natural person may do; and to perform all manner and type of community services. However, the public corporation, commission, or authority shall have no power of eminent domain nor any power to levy taxes or special assessments. [2002 c 218 § 24; 1985 c 332 § 2; 1974 ex.s. c 37 § 5.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.21.747 Public corporations—Real property transferred by city, town, or county—Restrictions, notice, public meeting.** (1) In transferring real property to a public corporation, commission, or authority under RCW 35.21.730, the city, town, or county creating such public corporation, commission, or authority shall impose appropriate deed restrictions necessary to ensure the continued use of such property for the public purpose or purposes for which such property is transferred.

(2) The city, town, or county that creates a public corporation, commission, or authority under RCW 35.21.730 shall require of such public corporation, commission, or authority thirty days' advance written notice of any proposed sale or

encumbrance of any real property transferred by such city, town, or county to such public corporation, commission, or authority pursuant to RCW 35.21.730(1). At a minimum, such notice shall be provided by such public corporation, commission, or authority to the chief executive or administrative officer of such city, town, or county, and to all members of its legislative body, and to each local newspaper of general circulation, and to each local radio or television station or other news medium which has on file with such corporation, commission, or authority a written request to be notified.

(3) Any property transferred by the city, town, or county that created such public corporation, commission, or authority may be sold or encumbered by such public corporation, commission, or authority only after approval of such sale or encumbrance by the governing body of the public corporation, commission, or authority at a public meeting of which notice was provided pursuant to RCW 42.30.080. Nothing in this section shall be construed to prevent the governing body of the public corporation, commission, or authority from holding an executive session during a regular or special meeting in accordance with RCW 42.30.110(1)(c). In addition, the public corporation, commission, or authority shall advertise notice of the meeting in a local newspaper of general circulation at least twice no less than seven days and no more than two weeks before the public meeting. [1990 c 189 § 1.]

**35.21.750 Public corporations—Insolvency or dissolution.** In the event of the insolvency or dissolution of a public corporation, commission, or authority, the superior court of the county in which the public corporation, commission, or authority is or was operating shall have jurisdiction and authority to appoint trustees or receivers of corporate property and assets and supervise such trusteeship or receivership: PROVIDED, That all liabilities incurred by such public corporation, commission, or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission, or authority and no creditor or other person shall have any right of action against the city, town, or county creating such corporation, commission or authority on account of any debts, obligations, or liabilities of such public corporation, commission, or authority. [1974 ex.s. c 37 § 6.]

**35.21.755 Public corporations—Exemption or immunity from taxation—In lieu excise tax.** (1) A public corporation, commission, or authority created pursuant to RCW 35.21.730, 35.21.660, or 81.112.320 shall receive the same immunity or exemption from taxation as that of the city, town, or county creating the same: PROVIDED, That, except for (a) any property within a special review district established by ordinance prior to January 1, 1976, or listed on or which is within a district listed on any federal or state register of historical sites or (b) any property owned, operated, or controlled by a public corporation that is used primarily for low-income housing, or that is used as a convention center, performing arts center, public assembly hall, public meeting place, public esplanade, street, public way, public open space, park, public utility corridor, or view corridor for the general public or (c) any blighted property owned, operated, or controlled by a public corporation that was acquired for the purpose of remediation and redevelopment of the property in

accordance with an agreement or plan approved by the city, town, or county in which the property is located, or (d) any property owned, operated, or controlled by a public corporation created under RCW 81.112.320, any such public corporation, commission, or authority shall pay to the county treasurer an annual excise tax equal to the amounts which would be paid upon real property and personal property devoted to the purposes of such public corporation, commission, or authority were it in private ownership, and such real property and personal property is acquired and/or operated under RCW 35.21.730 through 35.21.755, and the proceeds of such excise tax shall be allocated by the county treasurer to the various taxing authorities in which such property is situated, in the same manner as though the property were in private ownership: PROVIDED FURTHER, That the provisions of chapter 82.29A RCW shall not apply to property within a special review district established by ordinance prior to January 1, 1976, or listed on or which is within a district listed on any federal or state register of historical sites and which is controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660, which was in existence prior to January 1, 1987: AND PROVIDED FURTHER, That property within a special review district established by ordinance prior to January 1, 1976, or property which is listed on any federal or state register of historical sites and controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660, which was in existence prior to January 1, 1976, shall receive the same immunity or exemption from taxation as if such property had been within a district listed on any such federal or state register of historical sites as of January 1, 1976, and controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660 which was in existence prior to January 1, 1976.

(2) As used in this section:

(a) "Low-income" means a total annual income, adjusted for family size, not exceeding fifty percent of the area median income.

(b) "Area median income" means:

(i) For an area within a standard metropolitan statistical area, the area median income reported by the United States department of housing and urban development for that standard metropolitan statistical area; or

(ii) For an area not within a standard metropolitan statistical area, the county median income reported by the department of community, trade, and economic development.

(c) "Blighted property" means property that is contaminated with hazardous substances as defined under RCW 70.105D.020(7). [2000 2nd sp.s. c 4 § 29; 1999 c 266 § 1; 1995 c 399 § 38; 1993 c 220 § 1; 1990 c 131 § 1; 1987 c 282 § 1; 1985 c 332 § 5; 1984 c 116 § 1; 1979 ex.s. c 196 § 9; 1977 ex.s. c 35 § 1; 1974 ex.s. c 37 § 7.]

**Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30:** See notes following RCW 81.112.300.

**Effective date—1979 ex.s. c 196:** See note following RCW 82.04.240.

**Effective date—1977 ex.s. c 35:** "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1977." [1977 ex.s. c 35 § 2.]

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**35.21.756 Tax exemption—Sales/leasebacks by regional transit authorities.** A city or town may not impose taxes on amounts received as lease payments paid by a seller/lessee to a lessor under a sale/leaseback agreement under RCW 81.112.300 in respect to tangible personal property used by the seller/lessee, or to the purchase amount paid by the lessee under an option to purchase at the end of the lease term. [2000 2nd sp.s. c 4 § 28.]

**Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30:** See notes following RCW 81.112.300.

**35.21.757 Public corporations—Statutes to be construed consistent with state Constitution.** Nothing in RCW 35.21.730 through 35.21.755 shall be construed in any manner contrary to the provisions of Article VIII, section 7, of the Washington state Constitution. [1985 c 332 § 6.]

**35.21.759 Public corporations, commissions, and authorities—Applicability of general laws.** A public corporation, commission, or authority created under this chapter, and officers and multimember governing body thereof, are subject to general laws regulating local governments, multimember governing bodies, and local governmental officials, including, but not limited to, the requirement to be audited by the state auditor and various accounting requirements provided under chapter 43.09 RCW, the open public record requirements of chapter 42.17 RCW, the prohibition on using its facilities for campaign purposes under RCW 42.17.130, the open public meetings law of chapter 42.30 RCW, the code of ethics for municipal officers under chapter 42.23 RCW, and the local government whistleblower law under chapter 42.41 RCW. [1999 c 246 § 1.]

**35.21.760 Legal interns—Employment authorized.** Notwithstanding any other provision of law, the city attorney, corporation counsel, or other chief legal officer of any city or town may employ legal interns as otherwise authorized by statute or court rule. [1974 ex.s. c 7 § 1.]

**35.21.762 Urban emergency medical service districts—Creation authorized in city or town with territory in two counties.** The council of a city or town that has territory included in two counties may adopt an ordinance creating an urban emergency medical service district in all of the portion of the city or town that is located in one of the two counties if: (1) The county in which the urban emergency medical service district is located does not impose an emergency medical service levy authorized under RCW 84.52.069; and (2) the other county in which the city or town is located does impose an emergency medical service levy authorized under RCW 84.52.069. The ordinance creating the district may only be adopted after a public hearing has been held on the creation of the district and the council makes a finding that it is in the public interest to create the district. The members of the city or town council, acting in an ex officio capacity and independently, shall compose the governing body of the urban emergency medical service district. The voters of an urban emergency medical service district shall be all registered voters residing within the urban emergency medical service district.

An urban emergency medical service district shall be a quasi-municipal corporation and an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution. Urban emergency medical service districts shall also be "taxing districts" within the meaning of Article VII, section 2 of the state Constitution.

An urban emergency medical service district shall have the authority to contract under chapter 39.34 RCW with a county, city, town, fire protection district, public hospital district, or emergency medical service district to have emergency medical services provided within its boundaries.

Territory located in the same county as an urban emergency medical service district that is annexed by the city or town must automatically be annexed to the urban emergency medical service district. [1994 c 79 § 1.]

*Levy for emergency medical care and services: RCW 84.52.069.*

**35.21.765 Fire protection, ambulance or other emergency services provided by municipal corporation within county—Financial and other assistance by county authorized.** See RCW 36.32.470.

**35.21.766 Ambulance services—Establishment authorized.** Whenever a regional fire protection service authority or the legislative authority of any city or town determines that the fire protection jurisdictions that are members of the authority or the city or town or a substantial portion of the city or town is not adequately served by existing private ambulance service, the governing board of the authority may by resolution, or the legislative authority of the city or town may by appropriate legislation, provide for the establishment of a system of ambulance service to be operated by the authority as a public utility of the city or town, or operated by contract after a call for bids. [2004 c 129 § 34; 1975 1st ex.s. c 24 § 1.]

**Captions not law—Severability—2004 c 129:** See RCW 52.26.900 and 52.26.901.

*Ambulance services by counties authorized: RCW 36.01.100.*

**35.21.768 Ambulance services—Excise taxes authorized—Use of proceeds.** The legislative authority of any city or town is authorized to adopt ordinances for the levy and collection of excise taxes and/or for the imposition of an additional tax for the act or privilege of engaging in the ambulance business. Such business and occupation tax shall be imposed in such amounts as fixed and determined by the legislative authority.

The excise taxes other than the business and occupation tax authorized by this section shall be levied and collected from all persons, businesses, and industries who are served and billed for said ambulance service owned and operated or contracted for by the city or town in such amounts as shall be fixed and determined by the legislative authority of the city or town.

All taxes authorized pursuant to this section shall be construed to be taxes other than a retail sales tax defined in chapter 82.08 RCW and a use tax defined in chapter 82.12 RCW, and the city or town shall appropriate and use the proceeds derived from all taxes authorized by this section only for the operation, maintenance and capital needs of its municipally

owned, operated, leased or contracted for ambulance service. [1975 1st ex.s. c 24 § 2.]

**35.21.769 Levy for emergency medical care and services.** See RCW 84.52.069.

**35.21.770 Members of legislative bodies authorized to serve as volunteer fire fighters, volunteer ambulance personnel, or reserve law enforcement officers.** Notwithstanding any other provision of law, the legislative body of any city or town, by resolution adopted by a two-thirds vote of the full legislative body, may authorize any of its members to serve as volunteer fire fighters, volunteer ambulance personnel, or reserve law enforcement officers, or two or more of such positions, and to receive the same compensation, insurance, and other benefits as are applicable to other volunteer fire fighters, volunteer ambulance personnel, or reserve law enforcement officers employed by the city or town. [1997 c 65 § 1; 1993 c 303 § 1; 1974 ex.s. c 60 § 1.]

**35.21.775 Provision of fire protection services to state-owned facilities.** Subject to the provisions of RCW 35.21.779, whenever a city or town has located within its territorial limits facilities, except those leased to a nontax-exempt person or organization, owned by the state or an agency or institution of the state, the state or agency or institution owning such facilities and the city or town may contract for an equitable share of fire protection services for the protection and safety of personnel and property, pursuant to chapter 39.34 RCW, as now or hereafter amended. Nothing in this section shall be construed to require the state, or any state agency or institution, to contract for services which are performed by the staff and equipment of such an entity or by a fire protection district pursuant to RCW 52.30.020. [1992 c 117 § 4; 1985 c 6 § 4; 1984 c 230 § 82; 1983 c 146 § 1; 1979 ex.s. c 102 § 1.]

**Findings—1992 c 117:** "The legislature finds that certain state-owned facilities and institutions impose a financial burden on the cities and towns responsible for providing fire protection services to those state facilities. The legislature endeavors pursuant to chapter 117, Laws of 1992, to establish a process whereby cities and towns that have a significant share of their total assessed valuation taken up by state-owned facilities can enter into fire protection contracts with state agencies or institutions to provide a share of the jurisdiction's fire protection funding." [1992 c 117 § 3.]

**35.21.778 Existing contracts for fire protection services and equipment not abrogated.** Nothing in chapter 117, Laws of 1992, shall be interpreted to abrogate existing contracts for fire protection services and equipment, nor be deemed to authorize cities and towns to negotiate additional contractual provisions to apply prior to the expiration of such existing contracts. Upon expiration of contracts negotiated prior to March 31, 1992, future contracts between such cities and towns and state agencies and institutions shall be governed by the provisions of RCW 35.21.775 and 35.21.779. [1992 c 117 § 5.]

**Findings—1992 c 117:** See note following RCW 35.21.775.

**35.21.779 Fire protection services for state-owned facilities—Contracts with the department of community, trade, and economic development—Consolidation of**

**negotiations with multiple state agencies—Arbitration.**

(1) In cities or towns where the estimated value of state-owned facilities constitutes ten percent or more of the total assessed valuation, the state agency or institution owning the facilities shall contract with the city or town to pay an equitable share for fire protection services. The contract shall be negotiated as provided in subsections (2) through (6) of this section and shall provide for payment by the agency or institution to the city or town.

(2) A city or town seeking to enter into fire protection contract negotiations shall provide written notification to the department of community, trade, and economic development and the state agencies or institutions that own property within the jurisdiction, of its intent to contract for fire protection services. Where there are multiple state agencies located within a single jurisdiction, a city may choose to notify only the department of community, trade, and economic development, which in turn shall notify the agencies or institution that own property within the jurisdiction of the city's intent to contract for fire protection services. Any such notification shall be based on the valuation procedures, based on commonly accepted standards, adopted by the department of community, trade, and economic development in consultation with the department of general administration and the association of Washington cities.

(3) The department of community, trade, and economic development shall review any such notification to ensure that the valuation procedures and results are accurate. The department will notify each affected city or town and state agency or institution of the results of their review within thirty days of receipt of notification.

(4) The parties negotiating fire protection contracts under this section shall conduct those negotiations in good faith. Whenever there are multiple state agencies located within a single jurisdiction, every effort shall be made by the state to consolidate negotiations on behalf of all affected agencies.

(5) In the event of notification by one of the parties that an agreement cannot be reached on the terms and conditions of a fire protection contract, the director of the department of community, trade, and economic development shall mediate a resolution of the disagreement. In the event of a continued impasse, the director of the department of community, trade, and economic development shall recommend a resolution.

(6) If the parties reject the recommendation of the director and an impasse continues, the director shall direct the parties to arbitration. The parties shall agree on a neutral arbitrator, and the fees and expenses of the arbitrator shall be shared equally between the parties. The arbitration shall be a final offer, total arbitration, with the arbitrator empowered only to pick the final offer of one of the parties or the recommended resolution by the director of the department of community, trade, and economic development. The decision of the arbitrator shall be final, binding, and nonappealable on the parties.

(7) The provisions of this section shall not apply if a city or town and a state agency or institution have contracted pursuant to RCW 35.21.775.

(8) The provisions of this section do not apply to cities and towns not meeting the conditions in subsection (1) of this section. Cities and towns not meeting the conditions of sub-

section (1) of this section may enter into contracts pursuant to RCW 35.21.775. [1995 c 399 § 39; 1992 c 117 § 6.]

**Findings—1992 c 117:** See note following RCW 35.21.775.

**35.21.780 Laws, rules and regulations applicable to cities 500,000 or over deemed applicable to cities 400,000 or over.** On and after June 12, 1975, every law and rule or regulation of the state or any agency thereof which immediately prior to June 12, 1975 related to cities of five hundred thousand population or over shall be deemed to be applicable to cities of four hundred thousand population or over. [1975 c 33 § 1.]

**Severability—1975 c 33:** "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 c 33 § 7.]

**35.21.790 Revision of corporate boundary within street, road, or highway right of way by substituting right of way line—Not subject to review.** (1) The governing bodies of a county and any city or town located therein may by agreement revise any part of the corporate boundary of the city or town which coincides with the centerline, edge, or any portion of a public street, road or highway right of way by substituting therefor a right of way line of the same public street, road or highway so as fully to include or fully to exclude that segment of the public street, road or highway from the corporate limits of the city or town.

(2) The revision of a corporate boundary as authorized by this section shall become effective when approved by ordinance of the city or town council or commission and by ordinance or resolution of the county legislative authority. Such a boundary revision is not subject to potential review by a boundary review board. [1989 c 84 § 10; 1975 1st ex.s. c 220 § 17.]

**Legislative finding, intent—1975 1st ex.s. c 220:** See note following RCW 35.02.170.

*Boundary line adjustment: RCW 35.13.300 through 35.13.330.*

*Use of right of way line as corporate boundary in incorporation proceeding—When right of way may be included in territory to be incorporated: RCW 35.02.170.*

*When right of way may be included in territory to be incorporated—Use of right of way line as corporate boundary in annexation: RCW 35.13.290.*

**35.21.800 Foreign trade zones—Legislative finding, intent.** It is the finding of the legislature that foreign trade zones serve an important public purpose by the creation of employment opportunities within the state and that the establishment of zones designed to accomplish this purpose is to be encouraged. It is the further intent of the legislature that the department of trade and economic development provide assistance to entities planning to apply to the United States for permission to establish such zones. [1985 c 466 § 43; 1977 ex.s. c 196 § 3.]

**Effective date—Severability—1985 c 466:** See notes following RCW 43.31.125.

**Effective date—1977 ex.s. c 196:** See note following RCW 24.46.010.

**35.21.805 Foreign trade zones—Authority to apply for permission to establish, operate and maintain.** A city

or town, as zone sponsor, may apply to the United States for permission to establish, operate, and maintain foreign trade zones: PROVIDED, That nothing herein shall be construed to prevent these zones from being operated and financed by a private corporation(s) on behalf of a city or town acting as zone sponsor. [1977 ex.s. c 196 § 4.]

**Effective date—1977 ex.s. c 196:** See note following RCW 24.46.010.

**35.21.810 Hydroplane races—Providing for restrooms and other services in public parks for spectators—Admission fees—Authorized.** Any city or town may provide restrooms and other services in its public parks to be used by spectators of any hydroplane race held on a lake or river which is located adjacent to or within the city or town, and in addition any city or town may charge admission fees for persons to observe a hydroplane race from public park property which is sufficient to defray the costs of the city or town accommodating spectators, cleaning up after the race, and other costs related to the hydroplane race. Any city or town may authorize the organization which sponsors a hydroplane race to provide restroom and other services for the public on park property and may authorize the organization to collect any admission fees charged by the city or town. [1979 c 26 § 1.]

**35.21.815 Hydroplane races—Levying of admission charges declared public park purpose—Reversion prohibited.** It is hereby declared to be a legitimate public park purpose for any city or town to levy an admission charge for spectators to view hydroplane races from park property. Property which has been conveyed to a city or town by the state for exclusive use in the city's or town's public park system or exclusively for public park, parkway, and boulevard purposes shall not revert to the state upon the levying of admission fees authorized in RCW 35.21.810. [1979 c 26 § 2.]

**35.21.820 Acquisition and disposal of vehicles for commuter ride sharing by city employees.** The power of any city, town, county, other municipal corporation, or quasi municipal corporation to acquire, hold, use, possess, and dispose of motor vehicles for official business shall include, but not be limited to, the power to acquire, hold, use, possess, and dispose of motor vehicles for commuter ride sharing by its employees, so long as such use is economical and advantageous to the city, town, county, other municipal corporation. [1979 c 111 § 11.]

**Severability—1979 c 111:** See note following RCW 46.74.010.

*Ride sharing: Chapter 46.74 RCW.*

**35.21.830 Controls on rent for residential structures—Prohibited—Exceptions.** The imposition of controls on rent is of statewide significance and is preempted by the state. No city or town of any class may enact, maintain, or enforce ordinances or other provisions which regulate the amount of rent to be charged for single family or multiple unit residential rental structures or sites other than properties in public ownership, under public management, or properties providing low-income rental housing under joint public-private agreements for the financing or provision of such low-

income rental housing. This section shall not be construed as prohibiting any city or town from entering into agreements with private persons which regulate or control the amount of rent to be charged for rental properties. [1981 c 75 § 1.]

**Applicability to floating home moorage sites—1981 c 75:** "Nothing in this act shall be construed to preempt local ordinances that relate to the control of rents or other relationships at floating home moorage sites." [1981 c 75 § 3.]

**Severability—1981 c 75:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 75 § 4.]

**35.21.840 Taxation of motor carriers of freight for hire—Allocation of gross receipts.** The following principles shall allocate gross receipts of a motor carrier of freight for hire (called the "motor carrier" in this section) to prevent multiple taxation by two or more municipalities. They shall apply when two or more municipalities in this state impose a license fee or tax for the act or privilege of engaging in business activities; each municipality has a basis in local activity for imposing its tax; and the gross receipts measured by all taxing municipalities, added together, exceed the motor carrier's gross receipts.

(1) No municipality shall be entitled to an allocation of the gross receipts of a motor carrier on account of the use of its streets or highways when no pick-up or delivery occurs therein.

(2) Gross receipts of a motor carrier derived within a municipality, where it solicits orders and engages in business activities that are a significant factor in holding the market but where it maintains no office or terminal, shall be allocated equally between the municipality providing the local market and the municipality where the motor carrier's office or terminal is located. Where no such local solicitation and business activity occurs, all the gross receipts shall be allocated to the municipality where the office or terminal is located irrespective of the place of pick-up or delivery. The word "terminal" means a location at which any three of the following four occur: Dispatching takes place, from which trucks operate or are serviced, personnel report and receive assignments, and orders are regularly received from the public.

(3) Gross receipts of a motor carrier that are not attributable to transportation services, such as investment income, truck repair, and rental of equipment, shall be allocated to the office or terminal conducting such activities.

(4) Gross receipts of a motor carrier with an office or terminal in two or more municipalities in this state shall be allocated to the office or terminal at which the transportation services commenced. [1982 c 169 § 1.]

**Applicability—1982 c 169:** "This act applies to motor carriers of freight for hire only. Nothing in this act applies to a person engaged in the business of making sales at retail or wholesale or of providing storage services for tangible personal property." [1982 c 169 § 4.]

*Motor freight carriers: Chapter 81.80 RCW.*

*Municipal business and occupation tax authorized: RCW 35.95.040.*

**35.21.845 Taxation of motor carriers of freight for hire—Tax allocation formula.** A motor carrier of freight for hire whose gross receipts are subject to multiple taxation by two or more municipalities in this state may request and

thereupon shall be given a joint audit of the taxpayer's books and records by all of the taxing authorities seeking to tax all or part of such gross receipts. Such taxing authorities shall agree upon and establish a tax allocation formula which shall be binding upon the taxpayer and the taxing authorities participating in the audit or receiving a copy of such request from the taxpayer. Payment by the taxpayer of the taxes to each taxing authority in accordance with such tax allocation formula shall be a complete defense in any action by any taxing authority to recover additional taxes, interest, and/or penalties. A taxing municipality, whether or not a party to such joint audit, may seek a revision of the formula by giving written notice to each other taxing municipality concerned and the taxpayer. Any such revision as may be agreed upon by the taxing municipalities, or as may be decreed by a court of competent jurisdiction in an action initiated by one or more taxing authorities, shall apply only to gross receipts of the taxpayer received after the date of any such agreed revision or effective date of the judgment or order of any such court. [1982 c 169 § 2.]

**Applicability—1982 c 169:** See note following RCW 35.21.840.

**35.21.850 Taxation of motor carriers of freight for hire—Limitation—Exceptions.** No demand for a fee or tax or penalty shall be made by a city or town against a motor carrier of freight for hire on gross income derived from providing transportation services more than four years after the close of the year in which the same accrued except (1) against a taxpayer who has been guilty of fraud or misrepresentation of a material fact; or (2) where a taxpayer has executed a written waiver of such limitations; or (3) against a taxpayer who has not registered as required by the ordinance of the city or town imposing such tax or fee, provided this subsection shall not apply to a taxpayer who has registered in any city or town where the taxpayer maintains an office or terminal, or in the case of a taxpayer who has paid a license fee or tax based on such gross receipts to any city or town levying same which may reasonably be construed to be the principal market of the taxpayer but in which he maintains no office or terminal. [1982 c 169 § 3.]

**Applicability—1982 c 169:** See note following RCW 35.21.840.

**35.21.855 Taxation of intellectual property creating activities—Gross receipts tax prohibited—Exceptions.** (1) A city may not impose a gross receipts tax on intellectual property creating activities.

(2) A city may impose a gross receipts tax measured by gross receipts from royalties only on taxpayers domiciled in the city. For the purposes of this section, "royalties" does not include gross receipts from casual or isolated sales as defined in RCW 82.04.040, grants, capital contributions, donations, or endowments.

(3) This section does not prohibit a city from imposing a gross receipts tax measured by the value of products manufactured in the city merely because intellectual property creating activities are involved in the design or manufacturing of the products. An intellectual property creating activity shall not constitute an activity defined within the meaning of the term "to manufacture" under chapter 82.04 RCW.

(4) This section does not prohibit a city from imposing a gross receipts tax measured by the gross proceeds of sales made in the city merely because intellectual property creating activities are involved in creation of the articles sold.

(5) This section does not prohibit a city from imposing a gross receipts tax measured by the gross income received for services rendered in the city merely because intellectual property creating activities are some part of services rendered.

(6) A tax in effect on January 1, 2002, is not subject to this section until January 1, 2004.

(7) The definitions in this subsection apply to this section.

(a) "Gross receipts tax" means a tax measured by gross proceeds of sales, gross income of the business, or value proceeding or accruing.

(b) "City" includes cities, code cities, and towns.

(c) "Domicile" means the principal place from which the trade or business of the taxpayer is directed and managed. A taxpayer has only one domicile.

(d) "Intellectual property creating activity" means research, development, authorship, creation, or general or specific inventive activity without regard to whether the intellectual property creating activity actually results in the creation of patents, trademarks, trade secrets, subject matter subject to copyright, or other intellectual property.

(e) "Manufacture," "gross proceeds of sales," "gross income of the business," "value proceeding or accruing," and "royalties" have the same meanings as under chapter 82.04 RCW.

(f) "Value of products" means the value of products as determined under RCW 82.04.450. [2003 c 69 § 1.]

**35.21.860 Electricity, telephone, or natural gas business, service provider—Franchise fees prohibited—Exceptions.** (1) No city or town may impose a franchise fee or any other fee or charge of whatever nature or description upon the light and power, or gas distribution businesses, as defined in RCW 82.16.010, or telephone business, as defined in RCW 82.04.065, or service provider for use of the right of way, except:

(a) A tax authorized by RCW 35.21.865 may be imposed;

(b) A fee may be charged to such businesses or service providers that recovers actual administrative expenses incurred by a city or town that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW;

(c) Taxes permitted by state law on service providers;

(d) Franchise requirements and fees for cable television services as allowed by federal law; and

(e) A site-specific charge pursuant to an agreement between the city or town and a service provider of personal wireless services acceptable to the parties for:

(i) The placement of new structures in the right of way regardless of height, unless the new structure is the result of a mandated relocation in which case no charge will be imposed if the previous location was not charged;

(ii) The placement of replacement structures when the replacement is necessary for the installation or attachment of

wireless facilities, and the overall height of the replacement structure and the wireless facility is more than sixty feet; or

(iii) The placement of personal wireless facilities on structures owned by the city or town located in the right of way. However, a site-specific charge shall not apply to the placement of personal wireless facilities on existing structures, unless the structure is owned by the city or town.

A city or town is not required to approve the use permit for the placement of a facility for personal wireless services that meets one of the criteria in this subsection absent such an agreement. If the parties are unable to agree on the amount of the charge, the service provider may submit the amount of the charge to binding arbitration by serving notice on the city or town. Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving public land and rights of way. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location, and zoning requirements. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(2) Subsection (1) of this section does not prohibit franchise fees imposed on an electrical energy, natural gas, or telephone business, by contract existing on April 20, 1982, with a city or town, for the duration of the contract, but the franchise fees shall be considered taxes for the purposes of the limitations established in RCW 35.21.865 and 35.21.870 to the extent the fees exceed the costs allowable under subsection (1) of this section. [2000 c 83 § 8; 1983 2nd ex.s. c 3 § 39; 1982 1st ex.s. c 49 § 2.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

*"Service provider" defined: RCW 35.99.010.*

**35.21.865 Electricity, telephone, or natural gas business—Limitations on tax rate changes.** No city or town may change the rate of tax it imposes on the privilege of conducting an electrical energy, natural gas, or telephone business which change applies to business activities occurring before the effective date of the change, and no rate change may take effect before the expiration of sixty days following the enactment of the ordinance establishing the change except as provided in RCW 35.21.870. [1983 c 99 § 4; 1982 1st ex.s. c 49 § 3.]

**Severability—1983 c 99:** See note following RCW 82.14.200.

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**35.21.870 Electricity, telephone, natural gas, or steam energy business—Tax limited to six percent—Exception.** (1) No city or town may impose a tax on the privilege of conducting an electrical energy, natural gas, steam

energy, or telephone business at a rate which exceeds six percent unless the rate is first approved by a majority of the voters of the city or town voting on such a proposition.

(2) If a city or town is imposing a rate of tax under subsection (1) of this section in excess of six percent on April 20, 1982, the city or town shall decrease the rate to a rate of six percent or less by reducing the rate each year on or before November 1st by ordinances to be effective on January 1st of the succeeding year, by an amount equal to one-tenth the difference between the tax rate on April 20, 1982, and six percent.

Nothing in this subsection prohibits a city or town from reducing its rates by amounts greater than the amounts required in this subsection.

Voter approved rate increases under subsection (1) of this section shall not be included in the computations under this subsection. [1984 c 225 § 6; 1983 c 99 § 5; 1982 1st ex.s. c 49 § 4.]

**Rules—1984 c 225:** See note following RCW 82.14.210.

**Severability—1983 c 99:** See note following RCW 82.14.200.

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**35.21.871 Tax on telephone business—Deferral of rate reduction.** A city or town required by RCW 35.21.870(2) to reduce its rate of taxation on telephone business may defer for one year the required reduction in rates for the year 1987. If the delay in rate reductions authorized by the preceding sentence is inadequate for a city or town to offset the impact of revenue reductions arising from the removal of revenues from connecting fees, switching charges, or carrier access charges under the provisions of RCW 35.21.714, then the legislative body of such city or town may reimpose for 1987 the rates that such city or town had in effect upon telephone business during 1985. In each succeeding year, the city or town shall reduce the rate by one-tenth of the difference between the tax rate on April 20, 1982, and six percent. [1986 c 70 § 3.]

**35.21.873 Procedure to correct erroneous mobile telecommunications service tax. (Contingent expiration date.)** If a customer believes that an amount of city tax or an assignment of place of primary use or taxing jurisdiction included on a billing for mobile telecommunications services is erroneous, the customer shall notify the home service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, and a description of the error asserted by the customer. Within sixty days of receiving a notice under this section, the home service provider shall review its records and the electronic data base or enhanced zip code used pursuant to RCW 82.32.490 and 82.32.495 to determine the customer's taxing jurisdiction. The home service provider shall notify the customer in writing of the results of its review.

The procedures in this section shall be the first remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes, charges, and fees erroneously

collected by the home service provider, and no cause of action based upon a dispute arising from such taxes, charges, or fees shall accrue to the extent otherwise permitted by law until a customer has reasonably exercised the rights and procedures set forth in this section. [2002 c 67 § 16.]

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See notes following RCW 82.04.530.

**35.21.875 Designation of official newspaper.** Each city and town shall designate an official newspaper by resolution. The newspaper shall be of general circulation in the city or town and have the qualifications prescribed by chapter 65.16 RCW. [1985 c 469 § 99.]

**35.21.880 Right of way donations—Credit against required improvements.** Where the zoning and planning provisions of a city or town require landscaping, parking, or other improvements as a condition to granting permits for commercial or industrial developments, the city or town may credit donations of right of way in excess of that required for traffic improvement against such landscaping, parking, or other requirements. [1987 c 267 § 7.]

**Severability—1987 c 267:** See RCW 47.14.910.

*Right of way donations: Chapter 47.14 RCW.*

**35.21.890 Boundary changes—Providing factual information—Notice to boundary review board.** A city or town may provide factual information on the effects of a proposed boundary change on the city or town and the area potentially affected by the boundary change. A statement that the city or town has such information available, and copies of any printed materials or information available to be provided to the public shall be filed [filed] with the boundary review board for the board's information. [1989 c 84 § 70.]

**35.21.895 Regulation of automatic number or location identification—Prohibited.** No city or town may enact or enforce an ordinance or regulation mandating automatic number identification or automatic location identification for a private telecommunications system or for a provider of private shared telecommunications services. [1995 c 243 § 6.]

**Findings—Severability—1995 c 243:** See notes following RCW 80.36.555.

**35.21.897 Mobile home, manufactured home, or park model moving or installing—Copies of permits—Definitions.** (1) A city or town shall transmit a copy of any permit issued to a tenant or the tenant's agent for a mobile home, manufactured home, or park model installation in a mobile home park to the landlord.

(2) A city or town shall transmit a copy of any permit issued to a person engaged in the business of moving or installing a mobile home, manufactured home, or park model in a mobile home park to the tenant and the landlord.

(3) As used in this section:

(a) "Landlord" has the same meaning as in RCW 59.20.030;

(b) "Mobile home park" has the same meaning as in RCW 59.20.030;

(2004 Ed.)

(c) "Mobile or manufactured home installation" has the same meaning as in RCW 43.63B.010; and

(d) "Tenant" has the same meaning as in RCW 59.20.030. [1999 c 359 § 18.]

**Effective date—1999 c 359:** See RCW 59.20.901.

**Chapter 35.22 RCW  
FIRST CLASS CITIES**

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*Viaducts, authority to construct:* RCW 35.85.010.

*Vital statistics, primary registration district:* RCW 70.58.010.

**35.22.010 Laws governing.** Cities of the first class shall be organized and governed according to the law providing for the government of cities having a population of ten thousand or more inhabitants that have adopted a charter in accordance with Article XI, section 10 of the state Constitution. [1997 c 361 § 12; 1965 c 7 § 35.22.010. Prior: 1890 p 143 § 23; RRS § 8947.]

*First class city, defined:* RCW 35.01.010.

**35.22.020 Mode of exercising powers, functions and duties.** The form of the organization and the manner and mode in which cities of the first class shall exercise the powers, functions and duties conferred upon them by law, with respect to their own government, shall be as provided in the charters thereof. [1965 c 7 § 35.22.020. Prior: 1911 c 17 § 1; RRS § 8948.]

**35.22.030 Cities having ten thousand or more population may frame charter for own government.** Any city with a population of ten thousand or more inhabitants may frame a charter for its own government. [1965 ex.s. c 47 § 5; 1965 c 7 § 35.22.030. Prior: 1890 p 215 § 1; RRS § 8951.]

*Cities of ten thousand or more*

*may frame charters without change in classification:* RCW 35.22.195.  
*permitted to frame charters:* State Constitution Art. 11 § 10 (Amendment 40).

**35.22.050 Election of freeholders to frame charter.** Whenever the population of a city is ten thousand or more, the legislative authority thereof shall provide by ordinance for an election to be held therein for the purpose of electing fifteen freeholders for the purpose of framing a charter for the city. The members of the board of freeholders must be qualified electors and must have been residents of the city for a period of at least two years prior to their election. [1965 ex.s. c 47 § 7; 1965 c 7 § 35.22.050. Prior: 1890 p 216 § 3, part; RRS § 8953, part.]

**35.22.055 Election of freeholders in cities of three hundred thousand or more population—Designation of positions—Rotation of names on ballots.** Notwithstanding

any other provision of law, whenever the population of a city is three hundred thousand persons or more, not less than ten days before the time for filing declarations of candidacy for election of freeholders under Article XI, section 10 (Amendment 40), of the state Constitution, the city clerk shall designate the positions to be filled by consecutive number, commencing with one. The positions to be designated shall be dealt with as separate offices for all election purposes, and each candidate shall file for one, but only one, of the positions so designated.

In the printing of ballots, the positions of the names of candidates for each numbered position shall be changed as many times as there are candidates for the numbered positions, following insofar as applicable the procedure provided for in \*RCW 29.30.040 for the rotation of names on primary ballots, the intention being that ballots at the polls will reflect as closely as practicable the rotation procedure as provided for therein. [1974 ex.s. c 1 § 1.]

**\*Reviser's note:** RCW 29.30.040 was recodified as RCW 29A.36.140 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.36.140 was subsequently repealed by 2004 c 271 § 193.

**Severability—1974 ex.s. c 1:** "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 1 § 3.]

**35.22.060 Submission of charter—Publication.** The board of freeholders shall convene within ten days after their election and frame a charter for the city and within thirty days thereafter, they, or a majority of them, shall submit the charter to the legislative authority of the city, which, within five days thereafter, shall cause it to be published in the newspaper having the largest general circulation within the city at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval. [1985 c 469 § 22; 1965 ex.s. c 47 § 8; 1965 c 7 § 35.22.060. Prior: 1890 p 216 § 3, part; RRS § 8953, part.]

*Submission of proposed charter, publication: State Constitution Art. 11 § 10 (Amendment 40).*

**35.22.070 Election on adoption of charter—Notice.** Within five days after the filing with the city clerk of affidavits of publication, which affidavits shall be filed immediately after the last publication, the legislative authority of the city shall initiate the proceedings for the submission of the proposed charter to the qualified voters of the city for their adoption or rejection at either a general or special election. At this election the first officers to serve under the provisions of the proposed charter shall also be elected. In electing from wards, the division into wards as specified in the proposed charter shall govern; in all other respects the then existing laws relating to such election shall govern. The notice shall specify the objects for which the election is held, and shall be given as required by law. [1965 ex.s. c 47 § 9; 1965 c 7 § 35.22.070. Prior: (i) 1890 p 216 § 3, part; RRS § 8953, part. (ii) 1890 p 223 § 6, part; RRS § 8977, part.]

*Election on adoption of charter, notice: State Constitution Art. 11 § 10 (Amendment 40).*

**35.22.080 Conduct of elections.** The election of the members of the board of freeholders and that upon the prop-

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osition of adopting or rejecting the proposed charter and the officers to be elected thereunder, the returns of both elections, the canvassing thereof and the declaration of the result shall be governed by the laws regulating and controlling elections in the city. [1965 c 7 § 35.22.080. Prior: (i) 1890 p 216 § 3, part; RRS § 8953, part. (ii) 1890 p 223 § 6, part; RRS § 8977, part. (iii) 1890 p 217 § 4, part; RRS § 8954, part.]

*Elections: Title 29A RCW.*

**35.22.090 Form of ballot.** The form of ballot in the election for the adoption or rejection of the proposed charter shall be: "For the proposed charter," "Against the proposed charter." In submitting the proposed charter or amendments thereto, any alternate article or proposition may be presented for the choice of the voters and may be voted on separately without prejudice to others. In submitting such amendment, article or proposition, the form of the ballot shall be: "For article No. . . . of the charter," "Against article No. . . . of the charter." [1965 c 7 § 35.22.090. Prior: 1890 p 216 § 3, part; RRS § 8953, part.]

**35.22.100 Certificates of election to officers.** If a majority of the votes cast at the election upon the adoption of the proposed charter favor it, certificates of election shall be issued to each officer elected at that election. Within ten days after the issuance of the certificates of election, the newly elected officers shall qualify as provided in the charter, and on the tenth day thereafter at twelve o'clock noon of that day, the officers so elected and qualified shall enter upon the duties of the offices to which they were elected and at such time the charter shall be authenticated, recorded, attested and go into effect. When so authenticated, recorded and attested, the charter shall become the organic law of the city and supersede any existing charter and amendments thereto and all special laws inconsistent therewith. [1965 c 7 § 35.22.100. Prior: (i) 1890 p 223 § 6, part; RRS § 8977, part. (ii) 1890 p 217 § 4, part; RRS § 8954, part.]

**35.22.110 Authentication of charter.** The authentication of the charter shall be by certificate of the mayor in substance as follows:

"I . . . . ., mayor of the city of . . . . . do hereby certify that in accordance with the provisions of the Constitution and statutes of the State of Washington, the city of . . . . . caused fifteen freeholders to be elected on the . . . . day of . . . . . 19. . . to prepare a charter for the city; that due notice of that election was given in the manner provided by law and that the following persons were declared elected to prepare and propose a charter for the city, to wit: . . . . ."

That thereafter on the . . . . day of . . . . . 19. . . the board of freeholders returned a proposed charter for the city of . . . . . signed by the following members thereof: . . . . ."

That thereafter the proposed charter was published in (Indicate name of newspaper in which published) for at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval. (Indicate dates of publication)

That thereafter on the . . . . day of . . . . . 19. . ., at an election duly called and held, the proposed charter was submitted to the qualified electors thereof, and the returns can-

vassed resulting as follows: For the proposed charter, . . . . votes; against the proposed charter, . . . . votes; majority for the proposed charter, . . . . votes; whereupon the charter was declared adopted by a majority of the qualified electors voting at the election.

I further certify that the foregoing is a full, true and complete copy of the proposed charter so voted upon and adopted as aforesaid.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the corporate seal of said city at my office this . . . . day of . . . . 19. . .

Attest:

.....  
Mayor of the city of

Clerk of the city of . . . . . (Corporate Seal)."

Immediately after authentication, the authenticated charter shall be recorded by the city clerk in a book provided for that purpose known as the charter book of the city of . . . . . and when so recorded shall be attested by the clerk and mayor under the corporate seal of the city. All amendments shall be in like manner recorded and attested.

All courts shall take judicial notice of a charter and all amendments thereto when recorded and attested as required in this section. [1965 ex.s. c 47 § 10; 1965 c 7 § 35.22.110. Prior: 1890 p 217 § 4, part; RRS § 8954, part.]

**35.22.120 Petition for submission of charter amendment.** On petition of a number (equal to fifteen percent of the total number of votes cast at the last preceding general state election) of qualified voters of any municipality having adopted a charter under the laws of this state, asking the adoption of a specified charter amendment, providing for any matter within the realm of local affairs, or municipal business, the said amendment shall be submitted to the voters at the next regular municipal election, occurring thirty days or more after said petition is filed, and if approved by a majority of the local electors of the municipality voting upon it, such amendment shall become a part of the charter organic law governing such municipality. [1965 c 7 § 35.22.120. Prior: 1949 c 233 § 1; 1903 c 186 § 1; Rem. Supp. 1949 § 8963.]

*Times for holding elections: RCW 29A.04.311 through 29A.04.330.*

**35.22.130 Requisites of petition—Effect of favorable vote.** A petition containing the demand for the submission of the proposed charter amendment or for an election to be held for the purpose of electing a board of freeholders for the purpose of preparing a new charter for the city as provided in RCW 35.22.140 shall be filed with the city clerk and each signer shall write his place of residence after his signature. This and RCW 35.22.120 do not deprive city councils of the right to submit proposed charter amendments but affords a concurrent and additional method of submission. [1967 c 123 § 2; 1965 c 7 § 35.22.130. Prior: (i) 1903 c 186 § 2; RRS § 8964. (ii) 1903 c 186 § 3; RRS § 8965.]

**35.22.140 New or revised charter—Petition—Freeholders.** On the petition of a number of registered voters of a city equal to twenty-five percent of the total votes cast at the

last preceding city election, the city council of a charter city shall, or without such petition may, cause an election to be held for the purpose of electing a board of fifteen freeholders for the purpose of preparing a new charter for the city by altering, revising, adding to or repealing the existing charter including all amendments thereto. The members of the board of freeholders must be qualified electors and must have been residents in the city for a period of at least two years prior to their election. At such election the proposition of whether or not a board of freeholders shall be created at all shall be separately stated on the ballots and unless a majority of the votes cast upon that proposition favor it, no further steps shall be taken in the proceedings. [1965 ex.s. c 47 § 11; 1965 c 7 § 35.22.140. Prior: 1945 c 55 1, part; 1925 ex.s. c 137 § 1, part; 1895 c 27 § 1, part; Rem. Supp. 1945 § 8955, part.]

*Amendment of charter: State Constitution Art. 11 § 10 (Amendment 40).*

**35.22.150 Submission of new charter.** Within ten days after the results of the election have been determined, if a majority of the votes cast favor the proceeding, the members of the board of freeholders elected thereat shall convene and prepare a new charter by altering, revising, adding to, or repealing the existing charter including all amendments thereto and within one year thereafter file it with the city clerk. [1974 ex.s. c 1 § 2; 1965 c 7 § 35.22.150. Prior: 1945 c 55 § 1, part; 1925 ex.s. c 137 § 1, part; 1895 c 27 § 1, part; Rem. Supp. 1945 § 8955, part.]

**Severability—1974 ex.s. c 1:** See note following RCW 35.22.055.

**35.22.160 Election on adoption of new charter.** Upon the filing of the proposed new, altered, changed or revised charter with the city clerk, it shall be submitted to the qualified voters of the city at an election to be called therefor pursuant to the provisions of law applicable to the holding of elections in such city. [1965 c 7 § 35.22.160. Prior: 1925 ex.s. c 137 § 2, part; 1895 c 27 § 2, part; RRS § 8956, part.]

*Times for holding elections: RCW 29A.04.311 through 29A.04.330.*

**35.22.170 Publication of proposed charter.** The proposed new, altered or revised charter shall be published in the newspaper having the largest general circulation within the city at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval. [1985 c 469 § 23; 1965 ex.s. c 47 § 12; 1965 c 7 § 35.22.170. Prior: 1925 ex.s. c 137 § 3; 1895 c 27 § 3; RRS § 8957.]

*Publication of amendments to charter: State Constitution Art. 11 § 10 (Amendment 40).*

**35.22.180 Conduct of elections.** The election of the board of freeholders and that upon the proposition of adopting the proposed new, altered or revised charter, may be general or special elections and except as herein provided, said elections, the returns, the canvassing thereof and the declaration of the result shall be governed by the laws regulating and controlling elections in the city. In both cases the notice specifying the object of the election must be given at least ten days before the day of election. [1965 c 7 § 35.22.180. Prior: (i) 1895 c 27 § 4; RRS § 8958. (ii) 1895 c 27 § 5; RRS § 8959.]

*Election on amendment to charter: State Constitution Art. 11 § 10 (Amendment 40).*

**35.22.190 Effect of favorable vote.** If a majority of the voters voting upon the adoption of the proposed new, altered or revised charter favor it, it shall become the charter of the city and the organic law thereof, superseding any existing charter. All bodies or offices abolished or dispensed with by the new, altered or revised charter, together with the emoluments thereof shall immediately cease to exist, and any new offices created shall be filled by appointment of the mayor until the next general election subject to such approval by the city council as may be required by the new, altered or revised charter. [1965 c 7 § 35.22.190. Prior: (i) 1925 ex.s. c 137 § 2, part; 1895 c 27 § 2, part; RRS § 8956, part. (ii) 1895 c 27 § 6; RRS § 8962.]

*Times for holding elections: RCW 29A.04.311 through 29A.04.330.*

**35.22.195 Powers of cities adopting charters.** Any city adopting a charter under Article XI, section 10 of the Constitution of the state of Washington, as amended by amendment 40, shall have all of the powers which are conferred upon incorporated cities and towns by Title 35 RCW, or other laws of the state, and all such powers as are usually exercised by municipal corporations of like character and degree. [1965 ex.s. c 47 § 2. Formerly RCW 35.21.620.]

*Legislative powers of charter city: RCW 35.22.200.*

**35.22.200 Legislative powers of charter city—Where vested—Direct legislation.** The legislative powers of a charter city shall be vested in a mayor and a city council, to consist of such number of members and to have such powers as may be provided for in its charter. The charter may provide for direct legislation by the people through the initiative and referendum upon any matter within the scope of the powers, functions, or duties of the city. The mayor and council and such other elective officers as may be provided for in such charter shall be elected at such times and in such manner as provided in \*Title 29 RCW, and for such terms and shall perform such duties as may be prescribed in the charter, and shall receive compensation in accordance with the process or standards of a charter provision or ordinance which conforms with RCW 35.21.015. [2001 c 73 § 2; 1965 ex.s. c 47 § 13; 1965 c 7 § 35.22.200. Prior: (i) 1890 p 223 § 6, part; RRS § 8977, part. (ii) 1927 c 52 § 1; 1911 c 17 § 2; RRS § 8949.]

**\*Reviser's note:** Title 29 RCW was repealed and/or recodified in its entirety pursuant to 2003 c 111, effective July 1, 2004. See Title 29A RCW.

**Findings—Intent—Severability—2001 c 73:** See notes following RCW 35.21.015.

*Powers of cities adopting charters: RCW 35.22.195.*

**35.22.205 Compensation and hours of mayor and elected officials.** The compensation and the time to be devoted to the performance of the duties of the mayor and elected officials of all cities of the first class shall be as fixed by ordinance of said city irrespective of any city charter provisions. [1965 c 7 § 35.22.205. Prior: 1957 c 113 § 1; 1955 c 354 § 1.]

**35.22.210 Separate designation of councilmen in certain first class cities.** Any city of the first class having a pop-

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ulation less than one hundred thousand by the last federal census and having a charter providing that each of its councilmen shall be the commissioner of an administrative department of such city, may by ordinance provide for the separate designation of such councilmen as officers, in accordance with such administrative departments, and for their filing for and election to office under such separate designations. [1965 c 7 § 35.22.210. Prior: 1925 ex.s. c 61 § 1; RRS § 8948-1.]

**35.22.220 Repeal of separate designation.** Whenever any such city shall have passed such an ordinance providing for such separate designations and for filing for and election to office in accordance therewith, such city shall have no power to repeal the same except by ordinance passed by the council of such city and submitted to the voters thereof at a general or special election and ratified by a majority of the voters voting thereon. [1965 c 7 § 35.22.220. Prior: 1925 ex.s. c 61 § 2; RRS § 8948-2.]

*Times for holding elections: RCW 29A.04.311 through 29A.04.330.*

**35.22.235 First class mayor-council cities—Twelve councilmembers.** All regular elections in first class cities having a mayor-council form of government whose charters provide for twelve councilmembers elected for a term of two years, two being elected from each of six wards, and for the election of a mayor, treasurer, and comptroller for terms of two years, shall be held biennially as provided in RCW 29A.04.330. The term of each councilmember, mayor, treasurer, and comptroller shall be four years and until his or her successor is elected and qualified and assumes office in accordance with RCW 29A.20.040. The terms of the councilmembers shall be so staggered that six councilmembers shall be elected to office at each regular election. [2003 c 111 § 2301. Prior: 1981 c 213 § 3; 1979 ex.s. c 126 § 11; 1965 c 9 § 29.13.023; prior: 1963 c 200 § 2; 1957 c 168 § 1. Formerly RCW 29.13.023.]

**Effective date—2003 c 111:** See RCW 29A.04.903.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**35.22.245 First class mayor-council cities—Seven councilmembers.** All regular elections in first class cities having a mayor-council form of government whose charters provide for seven councilmembers, one to be elected from each of six wards and one at large, for a term of two years, and for the election of a mayor, comptroller, treasurer and attorney for two year terms, shall be held biennially as provided in RCW 29A.04.330. The terms of the six councilmembers to be elected by wards shall be four years and until their successors are elected and qualified and the term of the councilmember to be elected at large shall be two years and until their successors are elected and qualified. The terms of the councilmembers shall be so staggered that three ward councilmembers and the councilmember at large shall be elected at each regular election. The term of the mayor, attorney, treasurer, and comptroller shall be four years and until their successors are elected and qualified and assume office in accordance with RCW 29A.20.040. [2003 c 111 § 2302. Prior: 1981 c 213 § 4; 1979 ex.s. c 126 § 12; 1965 c 9

§ 29.13.024; prior: 1963 c 200 § 3; 1957 c 168 § 2. Formerly RCW 29.13.024.]

**Effective date—2003 c 111:** See RCW 29A.04.903.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**35.22.280 Specific powers enumerated.** Any city of the first class shall have power:

(1) To provide for general and special elections, for questions to be voted upon, and for the election of officers;

(2) To provide for levying and collecting taxes on real and personal property for its corporate uses and purposes, and to provide for the payment of the debts and expenses of the corporation;

(3) To control the finances and property of the corporation, and to acquire, by purchase or otherwise, such lands and other property as may be necessary for any part of the corporate uses provided for by its charter, and to dispose of any such property as the interests of the corporation may, from time to time, require;

(4) To borrow money for corporate purposes on the credit of the corporation, and to issue negotiable bonds therefor, on such conditions and in such manner as shall be prescribed in its charter; but no city shall, in any manner or for any purpose, become indebted to an amount in the aggregate to exceed the limitation of indebtedness prescribed by chapter 39.36 RCW as now or hereafter amended;

(5) To issue bonds in place of or to supply means to meet maturing bonds or other indebtedness, or for the consolidation or funding of the same;

(6) To purchase or appropriate private property within or without its corporate limits, for its corporate uses, upon making just compensation to the owners thereof, and to institute and maintain such proceedings as may be authorized by the general laws of the state for the appropriation of private property for public use;

(7) To lay out, establish, open, alter, widen, extend, grade, pave, plank, establish grades, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks, and other public grounds, and to regulate and control the use thereof, and to vacate the same, and to authorize or prohibit the use of electricity at, in, or upon any of said streets, or for other purposes, and to prescribe the terms and conditions upon which the same may be so used, and to regulate the use thereof;

(8) To change the grade of any street, highway, or alley within its corporate limits, and to provide for the payment of damages to any abutting owner or owners who shall have built or made other improvements upon such street, highway, or alley at any point opposite to the point where such change shall be made with reference to the grade of such street, highway, or alley as the same existed prior to such change;

(9) To authorize or prohibit the locating and constructing of any railroad or street railroad in any street, alley, or public place in such city, and to prescribe the terms and conditions upon which any such railroad or street railroad shall be located or constructed; to provide for the alteration, change of grade, or removal thereof; to regulate the moving and operation of railroad and street railroad trains, cars, and locomotives within the corporate limits of said city; and to provide by ordinance for the protection of all persons and property against injury in the use of such railroads or street railroads;

(10) To provide for making local improvements, and to levy and collect special assessments on property benefited thereby, and for paying for the same or any portion thereof;

(11) To acquire, by purchase or otherwise, lands for public parks within or without the limits of such city, and to improve the same. When the language of any instrument by which any property is so acquired limits the use of said property to park purposes and contains a reservation of interest in favor of the grantor or any other person, and where it is found that the property so acquired is not needed for park purposes and that an exchange thereof for other property to be dedicated for park purposes is in the public interest, the city may, with the consent of the grantor or such other person, his heirs, successors, or assigns, exchange such property for other property to be dedicated for park purposes, and may make, execute, and deliver proper conveyances to effect the exchange. In any case where, owing to death or lapse of time, there is neither donor, heir, successor, or assignee to give consent, this consent may be executed by the city and filed for record with an affidavit setting forth all efforts made to locate people entitled to give such consent together with the facts which establish that no consent by such persons is attainable. Title to property so conveyed by the city shall vest in the grantee free and clear of any trust in favor of the public arising out of any prior dedication for park purposes, but the right of the public shall be transferred and preserved with like force and effect to the property received by the city in such exchange;

(12) To construct and keep in repair bridges, viaducts, and tunnels, and to regulate the use thereof;

(13) To determine what work shall be done or improvements made at the expense, in whole or in part, of the owners of the adjoining contiguous, or proximate property, or others specially benefited thereby; and to provide for the manner of making and collecting assessments therefor;

(14) To provide for erecting, purchasing, or otherwise acquiring waterworks, within or without the corporate limits of said city, to supply said city and its inhabitants with water, or authorize the construction of same by others when deemed for the best interests of such city and its inhabitants, and to regulate and control the use and price of the water so supplied;

(15) To provide for lighting the streets and all public places, and for furnishing the inhabitants thereof with gas or other lights, and to erect, or otherwise acquire, and to maintain the same, or to authorize the erection and maintenance of such works as may be necessary and convenient therefor, and to regulate and control the use thereof;

(16) To establish and regulate markets, and to provide for the weighing, measuring, and inspection of all articles of food and drink offered for sale thereat, or at any other place within its limits, by proper penalties, and to enforce the keeping of proper legal weights and measures by all vendors in such city, and to provide for the inspection thereof. Whenever the words "public markets" are used in this chapter, and the public market is managed in whole or in part by a public corporation created by a city, the words shall be construed to include all real or personal property located in a district or area designated by a city as a public market and traditionally devoted to providing farmers, crafts vendors and other merchants with retail space to market their wares to the public.

Property located in such a district or area need not be exclusively or primarily used for such traditional public market retail activities and may include property used for other public purposes including, but not limited to, the provision of human services and low-income or moderate-income housing;

(17) To erect and establish hospitals and pesthouses, and to control and regulate the same;

(18) To provide for establishing and maintaining reform schools for juvenile offenders;

(19) To provide for the establishment and maintenance of public libraries, and to appropriate, annually, such percent of all moneys collected for fines, penalties, and licenses as shall be prescribed by its charter, for the support of a city library, which shall, under such regulations as shall be prescribed by ordinance, be open for use by the public;

(20) To regulate the burial of the dead, and to establish and regulate cemeteries within or without the corporate limits, and to acquire land therefor by purchase or otherwise; to cause cemeteries to be removed beyond the limits of the corporation, and to prohibit their establishment within two miles of the boundaries thereof;

(21) To direct the location and construction of all buildings in which any trade or occupation offensive to the senses or deleterious to public health or safety shall be carried on, and to regulate the management thereof; and to prohibit the erection or maintenance of such buildings or structures, or the carrying on of such trade or occupation within the limits of such corporation, or within the distance of two miles beyond the boundaries thereof;

(22) To provide for the prevention and extinguishment of fires and to regulate or prohibit the transportation, keeping, or storage of all combustible or explosive materials within its corporate limits, and to regulate and restrain the use of fireworks;

(23) To establish fire limits and to make all such regulations for the erection and maintenance of buildings or other structures within its corporate limits as the safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in safe condition;

(24) To regulate the manner in which stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained;

(25) To deepen, widen, dock, cover, wall, alter, or change the channels of waterways and courses, and to provide for the construction and maintenance of all such works as may be required for the accommodation of commerce, including canals, slips, public landing places, wharves, docks, and levees, and to control and regulate the use thereof;

(26) To control, regulate, or prohibit the anchorage, moorage, and landing of all watercrafts and their cargoes within the jurisdiction of the corporation;

(27) To fix the rates of wharfage and dockage, and to provide for the collection thereof, and to provide for the imposition and collection of such harbor fees as may be consistent with the laws of the United States;

(28) To license, regulate, control, or restrain wharf boats, tugs, and other boats used about the harbor or within such jurisdiction;

(29) To require the owners of public halls or other buildings to provide suitable means of exit; to provide for the prevention and abatement of nuisances, for the cleaning and purification of watercourses and canals, for the drainage and filling up of ponds on private property within its limits, when the same shall be offensive to the senses or dangerous to health; to regulate and control, and to prevent and punish, the defilement or pollution of all streams running through or into its corporate limits, and for the distance of five miles beyond its corporate limits, and on any stream or lake from which the water supply of said city is taken, for a distance of five miles beyond its source of supply; to provide for the cleaning of areas, vaults, and other places within its corporate limits which may be so kept as to become offensive to the senses or dangerous to health, and to make all such quarantine or other regulations as may be necessary for the preservation of the public health, and to remove all persons afflicted with any infectious or contagious disease to some suitable place to be provided for that purpose;

(30) To declare what shall be a nuisance, and to abate the same, and to impose fines upon parties who may create, continue, or suffer nuisances to exist;

(31) To regulate the selling or giving away of intoxicating, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state: PROVIDED, That no license shall be granted to any person or persons who shall not first comply with the general laws of the state in force at the time the same is granted;

(32) To grant licenses for any lawful purpose, and to fix by ordinance the amount to be paid therefor, and to provide for revoking the same: PROVIDED, That no license shall be granted to continue for longer than one year from the date thereof;

(33) To regulate the carrying on within its corporate limits of all occupations which are of such a nature as to affect the public health or the good order of said city, or to disturb the public peace, and which are not prohibited by law, and to provide for the punishment of all persons violating such regulations, and of all persons who knowingly permit the same to be violated in any building or upon any premises owned or controlled by them;

(34) To restrain and provide for the punishment of vagrants, mendicants, prostitutes, and other disorderly persons;

(35) To provide for the punishment of all disorderly conduct, and of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with violating any of the ordinances of said city. The punishment shall not exceed a fine of five thousand dollars or imprisonment in the city jail for one year, or both such fine and imprisonment. The punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such cities alternatively may provide that violations of ordinances constitute a civil violation subject to monetary penalties, but no act which is a state crime may be made a civil violation;

(36) To project or extend its streets over and across any tidelands within its corporate limits, and along or across the

harbor areas of such city, in such manner as will best promote the interests of commerce;

(37) To provide in their respective charters for a method to propose and adopt amendments thereto. [1993 c 83 § 4; 1990 c 189 § 3; 1986 c 278 § 3; 1984 c 258 § 802; 1977 ex.s. c 316 § 20; 1971 ex.s. c 16 § 1; 1965 ex.s. c 116 § 2; 1965 c 7 § 35.22.280. Prior: 1890 p 218 § 5; RRS § 8966.]

**Effective date—1993 c 83:** See note following RCW 35.21.163.

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Severability—1977 ex.s. c 316:** See note following RCW 70.48.020.

**35.22.282 City and town license fees and taxes on financial institutions.** See chapter 82.14A RCW.

**35.22.283 City license fees or taxes on certain business activities to be at a single uniform rate.** See RCW 35.21.710.

**35.22.284 Association of sheriffs and police chiefs.** See chapter 36.28A RCW.

**35.22.285 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.** See chapter 80.58 RCW.

**35.22.287 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts.** See RCW 87.03.825 through 87.03.840.

**35.22.288 Publication of ordinances or summary—Public notice of hearings and meeting agendas.** Promptly after adoption, the text of each ordinance or a summary of the content of each ordinance shall be published at least once in the official newspaper of the city. For purposes of this section, a summary shall mean a brief description which succinctly describes the main points of the ordinance. Publication of the title of an ordinance authorizing the issuance of bonds, notes, or other evidences of indebtedness shall constitute publication of a summary of that ordinance. When the city publishes a summary, the publication shall include a statement that the full text of the ordinance will be mailed upon request.

An inadvertent mistake or omission in publishing the text or a summary of the content of an ordinance shall not render the ordinance invalid.

In addition to the requirement that a city publish the text or a summary of the content of each adopted ordinance, every city shall establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this requirement. [1994 c 273 § 7; 1988 c 168 § 1; 1985 c 469 § 100.]

**35.22.290 Additional powers—Auditoriums, art museums.** Every city of the first class may lease, purchase, or construct, and maintain public auditoriums and art museums and may use and let them for such public and private purposes for such compensation and rental and upon such conditions as shall be prescribed by ordinance; it may issue negotiable bonds for the purchase and construction thereof on such conditions and in such manner as shall be prescribed by its charter and by general law for the borrowing of money for corporate purposes. [1965 c 7 § 35.22.290. Prior: 1925 ex.s. c 81 § 1; 1923 c 179 § 1; RRS § 8981-2.]

**35.22.300 Leasing of land for auditoriums, etc.** If a city of the first class has acquired title to land for public auditoriums or art museums, it may let it or any part thereof, together with the structures and improvements constructed or to be constructed thereon for such term as may be deemed proper and may raise the needed funds for financing the project, in whole or in part, by transferring or pledging the use and income thereof in such manner as the corporate authorities deem proper.

Any lessee under any such lease may mortgage the leasehold interest and may issue bonds to be secured by the mortgage and may pledge the rent and income of the property to accrue during the term of the lease or any part thereof for the due financing of the project: PROVIDED, That the corporate authorities may specify in any such lease such provisions and restrictions relating thereto as they shall deem proper. [1965 c 7 § 35.22.300. Prior: 1925 c 12 § 1; RRS § 8981-3.]

**35.22.302 Conveyance or lease of space above real property or structures or improvements.** The legislative authority of every city of the first and second class owning real property, not limited by dedication or trust to a particular public use, may convey or lease for public or private use any estate, right or interest in the areas above the surface of the ground of such real property or structures or improvements thereon: PROVIDED, That the estate, right or interest so created and conveyed and the use authorized in connection therewith will not in the judgment of said legislative authority be needed for or be inconsistent with the public purposes for which such property was acquired, is being used, or to which it is to be devoted: PROVIDED FURTHER, That the legislative authority may impose conditions and restrictions on the use to be made of the estate, right or interest conveyed or leased, in the same manner and to the same extent as may be done by any vendor or lessor of real estate.

No conveyance or lease authorized by this section shall permit, authorize or suffer the lessee or grantee to encumber that portion of the real estate devoted to or needed for public purposes. [1967 ex.s. c 99 § 1.]

**35.22.305 Department for administration, etc., of property incident to civic center—Creation authorized—Supervision—Authority.** The legislative authority of any city of the first class of more than four hundred thousand population shall have, notwithstanding any charter or statutory provision to the contrary, authority by ordinance to create a separate department of municipal government for the administration, management and control of any multiple use city property, including improvements thereon, devoted to educa-

tional, cultural, recreational, entertainment, athletic, convention and such other uses as shall be declared by ordinance to be incident to a civic center. The supervision of said department shall be by a manager, board or commission to be appointed in the manner, receive such compensation and perform such duties as may be prescribed by ordinance which may include authority to enter into leases, concessions and other agreements on behalf of the city, appoint and remove employees subject to applicable civil service provisions, advertise events and publicize and otherwise promote the use of such civic center facilities, and operate, manage and control municipal off-street parking and public transportation facilities heretofore or hereafter erected primarily to serve such civic center. All expenditures, purchases and improvements made or performed by or under the direction of said department shall be subject to applicable charter provisions and statutes. [1965 c 132 § 1.]

**35.22.310 Cesspools, filling of—Removal of debris, etc.** Every city of the first class is empowered to provide for the filling and closing of cesspools and for the removing of garbage, debris, grass, weeds, and brush on property in the city. [1965 c 7 § 35.22.310. Prior: 1907 c 89 § 1; RRS § 8972.]

**35.22.320 Collection of cost of filling cesspools, etc.** Every city of the first class by general ordinance may prescribe the mode and manner of assessing, levying and collecting assessments upon property for filling and closing cesspools thereon and removing garbage, debris, grass, weeds, and brush and provide that the charges therefor shall be a lien on the property upon which such work is done and collected in such manner as is prescribed in the ordinance. [1965 c 7 § 35.22.320. Prior: 1907 c 89 § 2; RRS § 8973.]

**35.22.330 Radio communication.** Every city of the first class maintaining a harbor department may install, maintain, and operate in connection therewith wireless telegraph stations for the handling of official and commercial messages and for communicating with wireless land and shore stations under such regulations as the corporate authorities may prescribe and in accordance with the statutes and regulations of the federal government. [1965 c 7 § 35.22.330. Prior: 1923 c 92 § 1; RRS § 8981-1.]

**35.22.340 Streets—Railroad franchises in, along, over and across.** Every city of the first class may by ordinance authorize the location, construction, and operation of railroads in, along, over, and across any highway, street, alley, or public place in the city for such term of years and upon such conditions as the city council may by ordinance prescribe notwithstanding any provisions of the city charter limiting the length of terms of franchises or requiring franchises to contain a provision granting the city the right to appropriate by purchase the property of any corporation receiving a franchise, license, privilege, or authority: PROVIDED, That this does not apply to street railroads nor to railroads operated in connection with street railroads in and along the streets of such city. [1965 c 7 § 35.22.340. Prior: 1907 c 41 § 1; RRS § 8971.]

**35.22.350 Utilities—Collective bargaining with employees.** Every city of the first class which owns and operates a waterworks system, a light and power system, a street railway or other public utility, shall have power, through its proper officers, to deal with and to enter into contracts for periods not exceeding one year with its employees engaged in the construction, maintenance, or operation thereof through the accredited representatives of the employees including any labor organization or organizations authorized to act for them concerning wages, hours and conditions of labor in such employment, and every city having not less than one hundred forty thousand nor more than one hundred and seventy thousand population is empowered and authorized to immediately place in effect any adjustment or change in such wages, hours and conditions of labor of such employees as may be required to conform to the provisions of any such contract, irrespective of the provisions of any annual budget or act relating thereto: PROVIDED, That not more than one such contract not in conformity with any annual budget shall be made during any budget year, nor shall any such adjustment or change be made which would result in an excess of expenditures over revenues of such public utility. [1965 c 7 § 35.22.350. Prior: 1955 c 145 § 1; 1951 c 21 § 1; 1935 c 37 § 1; RRS § 8966-5.]

*Labor regulations: Title 49 RCW.*

**35.22.360 Utilities—Wage adjustments.** Notwithstanding any annual budget or statute relating thereto, any city of the first class owning and operating a public utility, or the city's public utility department, may make an adjustment or change of the rate of daily wages of employees of any such public utility if such adjustment or change is accompanied by or is approximately coincidental with a shortening of the work week of the employees and if the adjustment or change will not result in any increase in pay per week, or excess of expenditures of the public utility over its revenues. [1965 c 7 § 35.22.360. Prior: 1937 c 16 § 1; RRS § 9000-22a.]

**35.22.362 Nuclear thermal power facilities—Joint development with public utility districts and electrical companies.** See chapter 54.44 RCW.

**35.22.365 Public transportation systems in municipalities—Financing.** See chapter 35.95 RCW.

**35.22.370 Wards—Division of city.** Notwithstanding that the charter of a city of the first class may forbid the city council from redividing the city into wards except at stated periods, if the city has failed to redivide the city into wards during any such period, the city council by ordinance may do so at any time thereafter: PROVIDED, That there shall not be more than one redivision into wards during any one period specified in the charter. [1965 c 7 § 35.22.370. Prior: 1903 c 141 § 1; RRS § 8970.]

**35.22.410 Wharves—City may let wharves or privileges thereon.** Every city of the first class may let the whole or any part of a wharf, or the privileges thereon owned by the city, for periods not to exceed one year in such manner, and upon such terms, as may be prescribed by a general ordi-

nance. [1965 c 7 § 35.22.410. Prior: 1911 c 67 § 1; RRS § 8967.]

**35.22.415 Municipal airport located in unincorporated area—Subject to county comprehensive plan and zoning ordinances.** Whenever a first class city owns and operates a municipal airport which is located in an unincorporated area of a county, the airport shall be subject to the county's comprehensive plan and zoning ordinances in the same manner as if the airport were privately owned and operated. [1979 ex.s. c 124 § 10.]

**Severability—1979 ex.s. c 124:** See note following RCW 35A.14.015.

**35.22.425 Criminal code repeals by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration.** A city of the first class operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes or repeal a provision of its municipal code which defines a crime equivalent to an offense listed in RCW 46.63.020 unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 204.]

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**35.22.570 Omnibus grant of powers to first class cities.** Any city adopting a charter under the provisions of this chapter shall have all the powers which are conferred upon incorporated cities and towns by this title or other laws of the state, and all such powers as are usually exercised by municipal corporations of like character and degree. [1965 c 7 § 35.22.570. Prior: 1890 p 224 § 7; RRS § 8981.]

**35.22.580 Diversion of local improvement moneys prohibited—Refund of excess.** Whenever any city of the first class shall levy and collect moneys by sale of bonds or otherwise for any local improvement by special assessment therefor, the same shall be carried in a special fund to be used for said purpose, and no part thereof shall be transferred or diverted to any other fund or use: PROVIDED, That any funds remaining after the payment of the whole cost and expense of such improvement, in excess of the total sum required to defray all the expenditures by the city on account thereof, shall be refunded on demand to the amount of such overpayment: PROVIDED FURTHER, That this section shall not be deemed to require the refunding of any balance in any local improvement fund after the payment of all out-

standing obligations issued against such fund, where such balance accrues from any saving in interest or from penalties collected upon delinquent assessments, but any such balance may be turned into the general fund or otherwise disposed of, as the legislative authority of such city may direct by ordinance. The provisions of this section relating to the refund of excess local improvement district funds shall not apply to any district whose obligations are guaranteed by the local improvement guaranty fund. [1965 c 7 § 35.22.580. Prior: 1917 c 58 § 1; 1915 c 17 § 1; RRS § 8983. Formerly RCW 35.45.100.]

**35.22.590 Bonds voted by people—Transfer of excess to redemption fund.** (1) Whenever the issuance or sale of bonds or other obligations of any city of the first class has been authorized by vote of the people, as provided by any existing charter or laws, for any special improvement or purpose, the proceeds of the sale of such bonds including premiums if any shall be carried in a special fund to be devoted to the purpose for which such bonds were authorized, and no portion of such bonds shall be transferred or diverted to any other fund or purpose: PROVIDED, That nothing herein shall be held to prevent the transfer to the interest and redemption fund of any balance remaining in the treasury after the completion of such improvement or purpose so authorized: PROVIDED FURTHER, That nothing herein shall prevent the city council from disposing of such bonds, or any portion thereof, in such amounts and at such times as it shall direct, but no such bonds shall be sold for less than par. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 35; 1965 c 7 § 35.22.590. Prior: 1915 c 17 § 2; RRS § 8984. Formerly RCW 35.45.110.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

*Elections: Title 29A RCW.*

**35.22.600 Liability for violations of RCW 35.22.580 or 35.22.590.** Any ordinance, resolution, order or other action of any city council, board or officer, and every city warrant or other instrument in writing made in violation of any of the provisions of RCW 35.22.580 or 35.22.590 shall be void, and every officer, agent or employee of any such city, or member of the city council, or other board thereof, and every private person or corporation who knowingly commits any violation thereof or knowingly aids in such violation, shall be liable to the city concerned for all moneys so transferred, diverted or paid out, which liability shall also attach to and be enforceable against the official bond (if any) of any such officer, agent, employee, member of city council or board. [1965 c 7 § 35.22.600. Prior: 1915 c 17 § 3; RRS § 8985. Formerly RCW 35.45.120.]

**35.22.610 Police officers—Appointment without regard to residence authorized.** Notwithstanding the provisions of RCW 35.21.200, as now or hereafter amended, all cities of the first class shall have the right and authority to appoint and employ a person as a regular or special police

officer of said city regardless of his place of residence or domicile at the date of his appointment.

This provision shall supersede any provision of any city charter to the contrary. [1967 ex.s. c 37 § 1.]

*Residence requirements for appointive city officials and employees: RCW 35.21.200.*

**35.22.620 Public works or improvements—Limitations on work by public employees—Small works roster—Purchase of reused or recycled materials or products.** (1) As used in this section, the term "public works" means as defined in RCW 39.04.010.

(2) A first class city may have public works performed by contract pursuant to public notice and call for competitive bids. As limited by subsection (3) of this section, a first class city may have public works performed by city employees in any annual or biennial budget period equal to a dollar value not exceeding ten percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period. The amount of public works that a first class city has a county perform for it under RCW 35.77.020 shall be included within this ten percent limitation.

If a first class city has public works performed by public employees in any budget period that are in excess of this ten percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that city in its next budget period. Twenty percent of the motor vehicle fuel tax distributions to that city shall be withheld if two years after the year in which the excess amount of work occurred, the city has failed to so reduce the amount of public works that it has performed by public employees. The amount so withheld shall be distributed to the city when it has demonstrated in its reports to the state auditor that the amount of public works it has performed by public employees has been so reduced.

Whenever a first class city has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works within that budget period shall be done by contract pursuant to public notice and call for competitive bids.

The state auditor shall report to the state treasurer any first class city that exceeds this amount and the extent to which the city has or has not reduced the amount of public works it has performed by public employees in subsequent years.

(3) In addition to the percentage limitation provided in subsection (2) of this section, a first class city with a population in excess of one hundred fifty thousand shall not have public employees perform a public works project in excess of seventy thousand dollars, or ninety thousand dollars after January 1, 2010, if more than a single craft or trade is involved with the public works project, or a public works project in excess of thirty-five thousand dollars, or forty-five thousand dollars after January 1, 2010, if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. In addition to the percentage limitation provided in subsection (2) of this section, a first class city with a population of one hundred fifty thousand or less shall not have public employ-

ees perform a public works project in excess of fifty thousand dollars, or sixty-five thousand dollars after January 1, 2010, if more than one craft or trade is involved with the public works project, or a public works project in excess of thirty thousand dollars, or forty thousand dollars after January 1, 2010, if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

(4) In addition to the accounting and record-keeping requirements contained in RCW 39.04.070, every first class city annually shall prepare a report for the state auditor indicating the total public works construction budget and supplemental public works construction budget for that year, the total construction costs of public works performed by public employees for that year, and the amount of public works that is performed by public employees above or below ten percent of the total construction budget. However, if a city budgets on a biennial basis, this annual report shall indicate the amount of public works that is performed by public employees within the current biennial period that is above or below ten percent of the total biennial construction budget.

Each first class city with a population of one hundred fifty thousand or less shall use the form required by RCW 43.09.205 to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The value of the public works budget shall be the value of all the separate public works projects within the budget.

(6) The competitive bidding requirements of this section may be waived by the city legislative authority pursuant to RCW 39.04.280 if an exemption contained within that section applies to the work or contract.

(7) In lieu of the procedures of subsections (2) and (6) of this section, a first class city may let contracts using the small works roster process in RCW 39.04.155.

Whenever possible, the city shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(8) The allocation of public works projects to be performed by city employees shall not be subject to a collective bargaining agreement.

(9) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(4), that are negotiated under chapter 39.35A RCW.

(10) Nothing in this section shall prohibit any first class city from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused. [2002 c 94 § 1; 2000 c 138 § 203; 1998 c 278 § 2; 1993 c 198 § 9; 1989 c 431 § 59; 1987 c 120 § 1. Prior: 1985 c 219 § 1; 1985 c 169 § 6; 1979 ex.s. c 89 § 1; 1975 1st ex.s. c 56 § 1.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**Severability—1989 c 431:** See RCW 70.95.901.

*Competitive bidding violations by municipal officer, penalties: RCW 39.30.020.*

*Subcontractors to be identified by bidder, when: RCW 39.30.060.*

**35.22.625 Public works or improvements—Inapplicability of RCW 35.22.620 to certain agreements relating to water pollution control, solid waste handling facilities.** RCW 35.22.620 does not apply to the selection of persons or entities to construct or develop water pollution control facilities or to provide water pollution control services under RCW 70.150.040 or the selection of persons or entities to construct or develop solid waste handling facilities or to provide solid waste handling services under RCW 35.21.156. [1989 c 399 § 4; 1987 c 436 § 8.]

**35.22.630 Public works or improvements—Cost amounts—How determined.** The cost of any public work or improvement for the purposes of RCW 35.22.620 and 35.22.640 shall be the aggregate of all amounts to be paid for labor, material, and equipment on one continuous or interrelated project where work is to be performed simultaneously or in close sequence: PROVIDED, That the cost of water services and metering equipment furnished by any first class city in the course of a water service installation from the utility-owned main to and including the meter box assembly shall not be included as part of the aggregate cost as provided herein. The breaking down of any public work or improvement into units or accomplishing any public work or improvement by phases for the purpose of avoiding the minimum dollar amount prescribed in RCW 35.22.620 is contrary to public policy and is prohibited. [1975 1st ex.s. c 56 § 2.]

**35.22.635 Public works or improvements—Low bidder claiming error—Prohibition on later bid for same project.** A low bidder who claims error and fails to enter into a contract with a city for a public works project is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. [1996 c 18 § 1.]

**35.22.640 Public works or improvements—Electrical distribution and generating systems—Customer may contract with qualified electrical contractor.** Cities of the first class are relieved from complying with the provisions of RCW 35.22.620 with respect to any public work or improvement relating solely to electrical distribution and generating systems on public rights of way or on municipally owned property: PROVIDED, That if a city-owned electrical utility directly assesses its customers a service installation charge for a temporary service, permanent service, or expanded service, the customer may, with the written approval of the city-owned electric utility, contract with a qualified electrical contractor licensed under chapter 19.28 RCW to install any material or equipment in lieu of having city utility personnel perform the installation. In the event the city-owned electric utility denies the customer's request to utilize a private electrical contractor for such installation work, it shall provide the customer with written reasons for such denial: PROVIDED FURTHER, That nothing herein shall prevent any first class city from operating a solid waste department utilizing its own personnel.

If a customer elects to employ a private electrical contractor as provided in this section, the private electrical contractor shall be solely responsible for any damages resulting from the installation of any temporary service, permanent service, or expanded service and the city-owned electrical utility shall be immune from any tortious conduct actions as to that installation. [1983 c 217 § 1; 1975 1st ex.s. c 56 § 3.]

**35.22.650 Public works or improvements—Minority business, employees—Contract, contents.** All contracts by and between a first class city and contractors for any public work or improvement exceeding the sum of ten thousand dollars, or fifteen thousand dollars for construction of water mains, shall contain the following clause:

"Contractor agrees that the contractor shall actively solicit the employment of minority group members. Contractor further agrees that the contractor shall actively solicit bids for the subcontracting of goods or services from qualified minority businesses. Contractor shall furnish evidence of the contractor's compliance with these requirements of minority employment and solicitation. Contractor further agrees to consider the grant of subcontracts to said minority bidders on the basis of substantially equal proposals in the light most favorable to said minority businesses. The contractor shall be required to submit evidence of compliance with this section as part of the bid."

As used in this section, the term "minority business" means a business at least fifty-one percent of which is owned by minority group members. Minority group members include, but are not limited to, blacks, women, native Americans, Asians, Eskimos, Aleuts, and Hispanics. [2002 c 307 § 3; 1975 1st ex.s. c 56 § 4.]

**Effective date—2002 c 307:** See note following RCW 1.20.130.

**35.22.660 Child care facilities—Review of need and demand—Adoption of ordinances.** If a first class city zones pursuant to its inherent charter authority and not pursuant to chapter 35.63 RCW, and does not provide for the siting of family day care homes in zones or areas that are designated for single family or other residential uses, and for the siting of mini-day care centers and day care centers in zones or areas that are designated for any residential or commercial uses, the city shall conduct a review of the need and demand for child care facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 30, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the \*department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the \*department of community development as to why such implementing ordinances were not adopted. [1989 c 335 § 7.]

**\*Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994.

**Findings—Purpose—Severability—1989 c 335:** See notes following RCW 35.63.170.

**Definitions for RCW 35.22.660:** See RCW 35.63.170.

**35.22.680 Residential care facilities—Review of need and demand—Adoption of ordinances.** If a first class city zones pursuant to its inherent charter authority and not pursuant to chapter 35.63 RCW, and does not provide for the siting of residential care facilities in zones or areas that are designated for single family or other residential uses, the city shall conduct a review of the need and demand for the facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 30, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the \*department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the \*department of community development as to why such implementing ordinances were not adopted. [1989 c 427 § 39.]

**\*Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994.

**Severability—1989 c 427:** See RCW 74.39.900.

**35.22.685 Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections—Mediation prior to appeal required.** A final decision by a hearing examiner involving a conditional or special use permit application under a home-rule charter that is requested by a party that is licensed or certified by the department of social and health services or the department of corrections is subject to mediation under RCW 35.63.260 before an appeal may be filed. [1998 c 119 § 4.]

**35.22.690 First class cities subject to limitations on moratoria, interim zoning controls.** A first class city that plans under the authority of its charter is subject to the provisions of RCW 35.63.200. [1992 c 207 § 2.]

**35.22.695 Planning regulations—Copies provided to county assessor.** By July 31, 1997, a first class city planning under RCW 36.70A.040 shall provide to the county assessor a copy of the first class city's comprehensive plan and development regulations in effect on July 1st of that year and shall thereafter provide any amendments to the plan and regulations that were adopted before July 31st of each following year. [1996 c 254 § 2.]

**35.22.700 Conformance with chapter 43.97 RCW required.** With respect to the National Scenic Area, as defined in the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a city pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including

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the Interstate Compact adopted by RCW 43.97.015, and with the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact. [1987 c 499 § 5.]

**35.22.705 Purchase of electric power and energy from joint operating agency.** A city of the first class may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the city must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or public utility district under the contract or other instrument. [2003 c 138 § 4.]

**35.22.900 Liberal construction.** The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter, but the same shall be liberally construed for the purpose of carrying out the objects for which this chapter is intended. [1965 c 7 § 35.22.900. Prior: 1890 p 224 § 8.]

## Chapter 35.23 RCW SECOND CLASS CITIES

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*Classification as:* RCW 35.01.020.

*Code of ethics for public officers and employees:* Chapters 42.23 and 42.52 RCW.

*Eminent domain by cities, construction of chapter as to second class cities:* RCW 8.12.560.

*Inhabitants at time of organization:* RCW 35.01.020.

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*Limitations on indebtedness:* State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.

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**35.23.010 Rights, powers and privileges—Exchange of park purpose property.** Every city of the second class shall be entitled "City of . . . ." (naming it), and by such name shall have perpetual succession; may sue and be sued in all courts and in all proceedings; shall have and use a common seal which it may alter at pleasure; may acquire, hold, lease, use and enjoy property of every kind and control and dispose of it for the common benefit; and, upon making a finding that any property acquired for park purposes is not useful for such purposes and that an exchange thereof for other property to be dedicated for park purposes is in the public interest, may, with the consent of the dedicator or donor, his heirs, successors or assigns, exchange such property for other property to be dedicated for park purposes and make, execute and deliver proper conveyances to effect the exchange. In any case where owing to death or lapse of time there is neither donor, heir, successor, nor assigns to give consent to the exchange, then this consent may be executed by the grantee. Title to property so conveyed by the city shall vest in the grantee free and clear of any trust in favor of the public arising out of any prior dedication for park purposes. [1965 c 7 § 35.23.010. Prior: 1953 c 190 § 1; 1907 c 241 § 1; RRS § 9006.]

**35.23.021 City officers enumerated—Compensation—Appointment and removal.** The government of a second class city shall be vested in a mayor, a city council of seven members, a city attorney, a clerk, a treasurer, all elective; and a chief of police, municipal judge, city engineer, street superintendent, health officer and such other appointive officers as may be provided for by ordinance: PROVIDED, That the council may enact an ordinance providing for the appointment of the city clerk, city attorney, and trea-

surer by the mayor, which appointment shall be subject to confirmation by a majority vote of the city council. Such ordinance shall be enacted and become effective not later than thirty days prior to the first day allowed for filing declarations of candidacy for such offices when such offices are subject to an approaching city primary election. Elective incumbent city clerks, city attorneys, and city treasurers shall serve for the remainder of their unexpired term notwithstanding any appointment made pursuant to this section and RCW 35.23.051. If a free public library and reading room is established, five library trustees shall be appointed. The city council by ordinance shall prescribe the duties and fix the compensation of all officers and employees: PROVIDED, That the provisions of any such ordinance shall not be inconsistent with any statute: PROVIDED FURTHER, That where the city council finds that the appointment of a full time city engineer is unnecessary, it may in lieu of such appointment, by resolution provide for the performance of necessary engineering services on either a part time, temporary or periodic basis by a qualified engineering firm, pursuant to any reasonable contract.

The mayor shall appoint and at his or her pleasure may remove all appointive officers except as otherwise provided herein: PROVIDED, That municipal judges shall be removed only upon conviction of misconduct or malfeasance in office, or because of physical or mental disability rendering the judge incapable of performing the duties of his or her office. Every appointment or removal must be in writing signed by the mayor and filed with the city clerk. [1994 c 81 § 35; 1993 c 47 § 1; 1987 c 3 § 9; 1969 c 116 § 1; 1965 ex.s. c 116 § 9; 1965 c 7 § 35.24.020. Prior: 1961 c 81 § 1; 1955 c 365 § 2; 1955 c 55 § 5; prior: (i) 1915 c 184 § 2; 1891 c 156 § 4; 1890 p 179 § 105; RRS § 9115. (ii) 1929 c 182 § 1, part; 1927 c 159 § 1; 1915 c 184 § 3, part; 1893 c 57 § 1; 1891 c 156 § 1; 1890 p 179 § 106; RRS § 9116, part. (iii) 1915 c 184 § 28; 1890 p 196 § 137; RRS § 9142. Formerly RCW 35.24.020.]

**Severability—1987 c 3:** See note following RCW 3.46.020.

**35.23.031 Eligibility to hold elective office.** No person is eligible to hold an elective office in a second class city unless the person is a resident and registered voter in the city. [1997 c 361 § 7.]

**35.23.051 Elections—Terms of office—Positions and wards.** General municipal elections in second class cities shall be held biennially in the odd-numbered years and shall be subject to general election law.

The terms of office of the mayor, city attorney, clerk, and treasurer shall be four years and until their successors are elected and qualified and assume office in accordance with \*RCW 29.04.170: PROVIDED, That if the offices of city attorney, clerk, and treasurer are made appointive, the city attorney, clerk, and treasurer shall not be appointed for a definite term: PROVIDED FURTHER, That the term of the elected treasurer shall not commence in the same biennium in which the term of the mayor commences, nor in which the terms of the city attorney and clerk commence if they are elected.

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Council positions shall be numbered in each second class city so that council position seven has a two-year term of office and council positions one through six shall each have four-year terms of office. Each councilmember shall remain in office until a successor is elected and qualified and assumes office in accordance with \*RCW 29.04.170.

In its discretion the council of a second class city may divide the city by ordinance, into a convenient number of wards, not exceeding six, fix the boundaries of the wards, and change the ward boundaries from time to time and as provided in \*RCW 29.70.100. No change in the boundaries of any ward shall be made within one hundred twenty days next before the date of a general municipal election, nor within twenty months after the wards have been established or altered. However, if a boundary change results in one ward being represented by more councilmembers than the number to which it is entitled, those having the shortest unexpired terms shall be assigned by the council to wards where there is a vacancy, and the councilmembers so assigned shall be deemed to be residents of the wards to which they are assigned for purposes of determining whether those positions are vacant.

Whenever such city is so divided into wards, the city council shall designate by ordinance the number of councilmembers to be elected from each ward, apportioning the same in proportion to the population of the wards. Thereafter the councilmembers so designated shall be elected by the voters resident in such ward, or by general vote of the whole city as may be designated in such ordinance. Council position seven shall not be associated with a ward and the person elected to that position may reside anywhere in the city and voters throughout the city may vote at a primary to nominate candidates for position seven, when a primary is necessary, and at a general election to elect the person to council position seven. Additional territory that is added to the city shall, by act of the council, be annexed to contiguous wards without affecting the right to redistrict at the expiration of twenty months after last previous division. The removal of a councilmember from the ward for which he or she was elected shall create a vacancy in such office.

Wards shall be redrawn as provided in \*\*chapter 29.70 RCW. Wards shall be used as follows: (1) Only a resident of the ward may be a candidate for, or hold office as, a councilmember of the ward; and (2) only voters of the ward may vote at a primary to nominate candidates for a councilmember of the ward. Voters of the entire city may vote at the general election to elect a councilmember of a ward, unless the city had prior to January 1, 1994, limited the voting in the general election for any or all council positions to only voters residing within the ward associated with the council positions. If a city had so limited the voting in the general election to only voters residing within the ward, then the city shall be authorized to continue to do so. The elections for the remaining council position or council positions that are not associated with a ward shall be conducted as if the wards did not exist. [1997 c 361 § 13; 1995 c 134 § 8. Prior: 1994 c 223 § 17; 1994 c 81 § 36; 1979 ex.s. c 126 § 22; 1969 c 116 § 2; 1965 c 7 § 35.24.050; prior: 1963 c 200 § 15; 1959 c 86 § 4; 1955 c 365 § 3; 1955 c 55 § 6; prior: (i) 1929 c 182 § 1, part; 1927 c 159 § 1; 1915 c 184 § 3, part; 1893 c 57 § 1; 1891 c 156 § 1; 1890 p 179 § 106; RRS § 9116, part. (ii) 1941 c 108

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§ 1; 1939 c 87 § 1; Rem. Supp. 1941 § 9116-1. Formerly RCW 35.24.050.]

**Reviser's note:** \*(1) RCW 29.04.170 and 29.70.100 were recodified as RCW 29A.20.040 and 29A.76.010 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

\*\*\*(2) Chapter 29.70 RCW was recodified as chapter 29A.76 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**35.23.081 Oath and bond of officers.** In a city of the second class, the treasurer, city attorney, clerk, chief of police, and such other officers as the council may require shall each, before entering upon the duties of office, take an oath of office and execute and file with the clerk an official bond in such penal sum as the council shall determine, conditioned for the faithful performance of his or her duties and otherwise conditioned as may be provided by ordinance. The oath of office shall be filed with the county auditor. [1994 c 81 § 37; 1987 c 3 § 10; 1986 c 167 § 18; 1965 c 7 § 35.24.080. Prior: 1915 c 184 § 5; 1893 c 70 § 1; 1890 p 179 § 107; RRS § 9118. Formerly RCW 35.24.080.]

**Severability—1987 c 3:** See note following RCW 3.46.020.

**Severability—1986 c 167:** See note following RCW 29A.04.049.

**35.23.091 Compensation of officers—Expenses—Nonstate pensions.** The mayor and the members of the city council may be reimbursed for actual expenses incurred in the discharge of their official duties, upon presentation of a claim therefor, after allowance and approval thereof, by resolution of the city council; and each city councilmember may be paid for attending council meetings an amount which shall be fixed by ordinance and may be revised from time to time by ordinance, but any increase or reduction in the compensation attaching to an office shall not be applicable to the term then being served by the incumbent.

The city attorney, clerk and treasurer, if elective, shall severally receive at stated times a compensation to be fixed by ordinance by the city council.

The mayor and other officers shall receive such compensation as may be fixed by the city council at the time the estimates are made as provided by law.

Any city that provides a pension for any of its employees under a plan not administered by the state must notify the state auditor of the existence of the plan at the time of an audit of the city by the auditor. No city may establish a pension plan for its employees that is not administered by the state, except that any defined contribution plan in existence as of January 1, 1990, is deemed to have been authorized. No city that provides a defined contribution plan for its employees as authorized by this section may make any material changes in the terms or conditions of the plan after June 7, 1990. [1990 c 212 § 1; 1973 1st ex.s. c 87 § 1; 1969 ex.s. c 270 § 8; 1965 c 105 § 1; 1965 c 7 § 35.24.090. Prior: 1961 c 89 § 7; 1941 c 115 § 1; 1915 c 184 § 7; 1893 c 70 § 2; 1890 p 180 § 109; Rem. Supp. 1941 § 9120. Formerly RCW 35.24.090.]

**35.23.101 Vacancies.** The council of a second class city may declare a council position vacant if the councilmember is absent for three consecutive regular meetings without permission of the council. In addition, a vacancy in an elective

office shall occur and shall be filled as provided in chapter 42.12 RCW.

Vacancies in offices other than that of mayor or city councilmember shall be filled by appointment of the mayor.

If there is a temporary vacancy in an appointive office due to illness, absence from the city or other temporary inability to act, the mayor may appoint a temporary appointee to exercise the duties of the office until the temporary disability of the incumbent is removed. [1995 c 134 § 9. Prior: 1994 c 223 § 19; 1994 c 81 § 38; 1965 c 7 § 35.24.100; prior: (i) 1919 c 113 § 1; 1915 c 184 § 6; 1890 p 180 § 108; RRS § 9119. (ii) 1907 c 228 § 5, part; RRS § 9203, part. Formerly RCW 35.24.100.]

*Vacancies in office of mayor filled from among city council members:* RCW 35.23.191.

**35.23.111 City attorney—Duties.** The city attorney shall advise the city authorities and officers in all legal matters pertaining to the business of the city and shall approve all ordinances as to form. He shall represent the city in all actions brought by or against the city or against city officials in their official capacity. He shall perform such other duties as the city council by ordinance may direct. [1965 c 7 § 35.24.110. Prior: 1915 c 184 § 26; 1893 c 70 § 11; 1890 p 192 § 132; RRS § 9140. Formerly RCW 35.24.110.]

*Employment of legal interns:* RCW 35.21.760.

**35.23.121 City clerk—Duties—Deputies.** The city clerk shall keep a full and true record of every act and proceeding of the city council and keep such books, accounts and make such reports as may be required by the state auditor. The city clerk shall record all ordinances, annexing thereto his or her certificate giving the number and title of the ordinance, stating that the ordinance was published and posted according to law and that the record is a true and correct copy thereof. The record copy with the clerk's certificate shall be prima facie evidence of the contents of the ordinance and of its passage and publication and shall be admissible as such evidence in any court or proceeding.

The city clerk shall be custodian of the seal of the city and shall have authority to acknowledge the execution of all instruments by the city which require acknowledgment.

The city clerk may appoint a deputy for whose acts he or she and his or her bondsmen shall be responsible, and he or she and his or her deputy shall have authority to take all necessary affidavits to claims against the city and certify them without charge.

The city clerk shall perform such other duties as may be required by statute or ordinance. [1995 c 301 § 36; 1965 c 7 § 35.24.120. Prior: 1915 c 184 § 25; RRS § 9139. Formerly RCW 35.24.120.]

**35.23.131 City treasurer—Duties.** The city treasurer shall receive and safely keep all money which comes into his hands as treasurer, for all of which he shall execute triplicate receipts, one to be filed with the city clerk. He shall receive all money due the city and disburse it on warrants issued by the clerk countersigned by the mayor, and not otherwise. He shall make monthly settlements with the city clerk at which time he shall deliver to the clerk the duplicate receipts for all

money received and all canceled warrants as evidence of money paid. [1965 c 7 § 35.24.130. Prior: 1915 c 184 § 24; 1893 c 70 § 8; 1890 p 192 § 132; RRS § 9138. Formerly RCW 35.24.130.]

**35.23.134 Association of sheriffs and police chiefs.** See chapter 36.28A RCW.

**35.23.141 Duty of officers collecting moneys.** Every officer collecting or receiving any money belonging to or for the use of the city shall settle with the clerk and immediately pay it into the treasury on the order of the clerk to be credited to the fund to which it belongs. [1965 c 7 § 35.24.140. Prior: 1915 c 184 § 30; 1890 p 197 § 139; RRS § 9144. Formerly RCW 35.24.140.]

**35.23.142 Combination of offices of treasurer with clerk—Authorized.** The city council of any city of the second class is authorized to provide by ordinance that the office of treasurer shall be combined with that of clerk, or that the office of clerk shall be combined with that of treasurer: PROVIDED, That such ordinance shall not be voted upon until the next regular meeting after its introduction. [1994 c 81 § 39; 1969 c 116 § 3. Formerly RCW 35.24.142.]

**35.23.144 Combination of offices of treasurer with clerk—Powers of clerk.** In the event that the office of treasurer is combined with the office of clerk so as to become the office of clerk-treasurer, the clerk shall exercise all the powers vested in and perform all the duties required to be performed by the treasurer, and in cases where the law requires the treasurer to sign or execute any papers or documents, it shall not be necessary for the clerk to sign as treasurer, but shall be sufficient if he signs as clerk. [1969 c 116 § 4. Formerly RCW 35.24.144.]

**35.23.146 Combination of offices of treasurer with clerk—Powers of treasurer.** In the event that the office of clerk is combined with the office of treasurer so as to become the office of treasurer-clerk, the treasurer shall exercise all the powers vested in and perform all the duties required to be performed by the clerk. [1969 c 116 § 5. Formerly RCW 35.24.146.]

**35.23.148 Combination of offices of treasurer with clerk—Ordinance—Termination of combined offices.** The ordinance provided for combining said offices shall provide the date when the combination shall become effective, which date shall not be less than three months from the date when the ordinance becomes effective; and on and after said date the office of treasurer or clerk, as the case may be, shall be abolished. Any city which as herein provided, combined the office of treasurer with that of clerk or the office of clerk with that of treasurer may terminate such combination by ordinance, fixing the time when the combination shall cease and thereafter the duties of the offices shall be performed by separate officials: PROVIDED, That if the office of treasurer was combined with that of clerk, or an elective office of clerk was combined with the office of treasurer, the mayor shall appoint a treasurer and clerk who shall serve until the next

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regular municipal general election when a treasurer and clerk shall be elected for the term as provided by law unless such city has enacted an ordinance in accordance with \*RCW 35.24.020. [1969 c 116 § 6. Formerly RCW 35.24.148.]

**\*Reviser's note:** RCW 35.24.020 was recodified as RCW 35.23.021 pursuant to 1994 c 81 § 90.

**35.23.161 Chief of police and police department.** The department of police in a city of the second class shall be under the direction and control of the chief of police subject to the direction of the mayor. Any police officer may pursue and arrest violators of city ordinances beyond the city limits.

Every citizen shall lend the police chief aid, when required, for the arrest of offenders and maintenance of public order. With the concurrence of the mayor, the police chief may appoint additional police officers to serve for one day only under orders of the chief in the preservation of public order.

The police chief shall have the same authority as that conferred upon sheriffs for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or the public authorities in the lawful exercise of their functions and shall be entitled to the same protection.

The police chief shall perform such other services as may be required by statute or ordinances of the city. [1994 c 81 § 40; 1987 c 3 § 11; 1977 ex.s. c 316 § 22; 1965 c 7 § 35.24.160. Prior: 1915 c 184 § 27; 1893 c 70 § 12; 1890 p 195 § 136; RRS § 9141. Formerly RCW 35.24.160.]

**Severability—1987 c 3:** See note following RCW 3.46.020.

**Severability—1977 ex.s. c 316:** See note following RCW 70.48.020.

*Commencement of actions:* Chapter 4.28 RCW.

*Duties of chief law enforcement officer receiving found property:* RCW 63.21.050.

*Law enforcement chaplains authorized:* Chapter 41.22 RCW.

*Unclaimed property in hands of city police:* Chapter 63.32 RCW.

**35.23.170 Park commissioners.** Councils of second class cities and towns may provide by ordinance, for a board of park commissioners, not to exceed seven in number, to be appointed by the mayor, with the consent of the city council, from citizens of recognized fitness for such position. No commissioner shall receive any compensation. The first commissioners shall determine by lot whose term of office shall expire each year, and a new commissioner shall be appointed annually to serve for a term of years corresponding in number to the number of commissioners in order that one term shall expire each year. Such board of park commissioners shall have only such powers and authority with respect to the management, supervision, and control of parks and recreational facilities and programs as are granted to it by the council. [1994 c 81 § 16; 1973 c 76 § 1; 1965 c 7 § 35.23.170. Prior: 1953 c 86 § 1; 1925 ex.s. c 121 § 1; 1907 c 228 § 2; RRS § 9200.]

**35.23.181 City council—Oath—Meetings.** The city council and mayor shall meet in January next succeeding the date of each general municipal election, and shall take the oath of office, and shall hold regular meetings at least once during each month but not to exceed one regular meeting in each week, at such times as may be fixed by ordinance.

Special meetings may be called by the mayor by written notice as provided in RCW 42.30.080. No ordinances shall be passed or contract let or entered into, or bill for the payment of money allowed at any special meeting.

All meetings of the city council shall be held at such place as may be designated by the city council. All final actions on resolutions and ordinances must take place within the corporate limits of the city. All meetings of the city council must be public. [1993 c 199 § 2; 1965 c 7 § 35.24.180. Prior: 1915 c 184 § 10, part; 1893 c 70 § 3; 1890 p 181 § 113; RRS § 9123, part. Formerly RCW 35.24.180.]

**35.23.191 City council—Mayor pro tempore.** The members of the city council, at their first meeting each calendar year and thereafter whenever a vacancy occurs in the office of mayor pro tempore, shall elect from among their number a mayor pro tempore, who shall hold office at the pleasure of the council and in case of the absence of the mayor, perform the duties of mayor except that he or she shall not have the power to appoint or remove any officer or to veto any ordinance. If a vacancy occurs in the office of mayor, the city council at their next regular meeting shall elect from among their number a mayor, who shall serve until a mayor is elected and certified at the next municipal election.

The mayor and the mayor pro tempore shall have power to administer oaths and affirmations, take affidavits and certify them. The mayor or the mayor pro tempore when acting as mayor, shall sign all conveyances made by the city and all instruments which require the seal of the city. [1994 c 81 § 41; 1969 c 101 § 3; 1965 c 7 § 35.24.190. Prior: (i) 1915 c 184 § 10, part; 1893 c 70 § 3; 1890 p 181 § 113; RRS § 9123, part. (ii) 1915 c 184 § 23; RRS § 9137. Formerly RCW 35.24.190.]

**35.23.201 City council—Meetings—Journal.** All meetings of the council shall be presided over by the mayor, or, in the mayor's absence, by the mayor pro tempore. The mayor shall have a vote only in the case of a tie in the votes of the councilmembers. If the clerk is absent from a council meeting, the mayor or mayor pro tempore shall appoint one of the members of the council as clerk pro tempore. The appointment of a councilmember as mayor pro tempore or clerk pro tempore shall not in any way abridge the councilmember's right to vote upon all questions coming before the council.

The clerk shall keep a correct journal of all proceedings and at the desire of any member the ayes and noes shall be taken on any question and entered in the journal. [1994 c 81 § 42; 1965 c 107 § 1; 1965 c 7 § 35.24.200. Prior: (i) 1915 c 184 § 13, part; 1890 p 182 § 115; RRS § 9126, part. (ii) 1915 c 184 § 11, part; 1891 c 156 § 2; 1890 p 182 § 114; RRS § 9124, part. Formerly RCW 35.24.200.]

**35.23.211 Ordinances—Style—Requisites—Veto.** The enacting clause of all ordinances in a second class city shall be as follows: "The city council of the city of . . . . do ordain as follows:"

No ordinance shall contain more than one subject and that must be clearly expressed in its title.

No ordinance or any section thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or the amended section at full length.

No ordinance and no resolution or order shall have any validity or effect unless passed by the votes of at least four councilmembers.

No ordinance shall take effect until five days after the date of its publication unless otherwise provided in this title.

Every ordinance which passes the council in order to become valid must be presented to the mayor; if the mayor approves it, the mayor shall sign it, but if not, the mayor shall return it with written objections to the council and the council shall cause the mayor's objections to be entered at large upon the journal and proceed to a reconsideration thereof. If upon reconsideration five members of the council voting upon a call of yeas and nays favor its passage, the ordinance shall become valid notwithstanding the mayor's veto. If the mayor fails for ten days to either approve or veto an ordinance, it shall become valid without the approval of the mayor.

Every ordinance shall be signed by the mayor and attested by the clerk. [1994 c 81 § 43; 1965 c 7 § 35.24.210. Prior: (i) 1915 c 184 § 11, part; 1891 c 156 § 2; 1890 p 182 § 114; RRS § 9124, part. (ii) 1915 c 184 § 12, part; 1893 c 70 § 4; 1890 p 182 § 116; RRS § 9125, part. (iii) 1915 c 184 § 18, part; 1890 p 186 § 118; RRS § 9132, part. Formerly RCW 35.24.210.]

*Codification of city or town ordinances: RCW 35.21.500 through 35.21.570.*

**35.23.221 Ordinances—Publication—Summary—Public notice of hearings and meeting agendas.** Promptly after adoption, the text of each ordinance or a summary of the content of each ordinance shall be published at least once in the city's official newspaper.

For purposes of this section, a summary shall mean a brief description which succinctly describes the main points of the ordinance. Publication of the title of an ordinance authorizing the issuance of bonds, notes, or other evidences of indebtedness shall constitute publication of a summary of that ordinance. When the city publishes a summary, the publication shall include a statement that the full text of the ordinance will be mailed upon request.

An inadvertent mistake or omission in publishing the text or a summary of the content of an ordinance shall not render the ordinance invalid.

In addition to the requirement that a city publish the text or a summary of the content of each adopted ordinance, every city shall establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this requirement. [1994 c 273 § 10; 1988 c 168 § 4; 1987 c 400 § 1; 1985 c 469 § 25; 1965 c 7 § 35.24.220. Prior: (i) 1915 c 184 § 18, part; 1890 p 186 § 118; RRS § 9132, part. (ii) 1915 c 184 § 12, part; 1893 c 70 § 4; 1890 p 182 § 116; RRS § 9125, part. Formerly RCW 35.24.220.]

**35.23.251 Ordinances granting franchises—Requirements.** No ordinance or resolution granting any franchise for any purpose shall be passed by the city council on the day of its introduction, nor for five days thereafter, nor at any other than a regular meeting nor without first being submitted to the city attorney.

No franchise or valuable privilege shall be granted unless by the vote of at least five members of the city council.

The city council may require a bond in a reasonable amount for any person or corporation obtaining a franchise from the city conditioned for the faithful performance of the conditions and terms of the franchise and providing a recovery on the bond in case of failure to perform the terms and conditions of franchise. [1965 c 7 § 35.24.250. Prior: (i) 1915 c 184 § 12, part; 1893 c 70 § 4; 1890 p 182 § 116; RRS § 9125, part. (ii) 1907 c 228 § 1, part; RRS § 9199, part. Formerly RCW 35.24.250.]

**35.23.261 Audit and allowance of demands against city.** All demands against the city shall be presented to and audited by the city council in accordance with such regulations as it may by ordinance prescribe; and upon the allowance of a demand, the clerk shall draw a warrant upon the treasurer for it, which warrant shall be countersigned by the mayor and shall specify for what purpose it is drawn and out of which fund it is to be paid. [1965 c 7 § 35.24.260. Prior: 1915 c 184 § 19; 1890 p 186 § 119; RRS § 9133. Formerly RCW 35.24.260.]

**35.23.270 City council—Quorum—Rules—Journal, etc.** A majority of the councilmembers shall constitute a quorum for the transaction of business. A less number may compel the attendance of absent members and may adjourn from time to time. The council shall determine its rules of proceedings. The council may punish their members for disorderly conduct and upon written charges entered upon the journal therefor, may, after trial, expel a member by two-thirds vote of all the members elected. All orders of the city council shall be entered upon the journal of its proceedings, which journal shall be signed by the officer who presided at the meeting. The journal shall be kept by the clerk under the council's direction. [1994 c 81 § 17; 1965 c 7 § 35.23.270. Prior: (i) 1907 c 241 § 28, part; 1890 p 148 § 37; RRS § 9033, part. (ii) 1907 c 241 § 59; 1890 p 159 § 49; RRS § 9062.]

**35.23.290 City council—Entry of ayes and noes on journal.** At any time, at the request of any two members the ayes and noes on any question may be taken and entered upon the journal and they must be so taken and entered upon the passage of all ordinances appropriating money, imposing taxes, abolishing licenses, increasing or lessening the amount to be paid for licenses. [1965 c 7 § 35.23.290. Prior: (i) 1907 c 241 § 28, part; 1890 p 148 § 37; RRS § 9033, part. (ii) 1907 c 241 § 60; 1890 p 159 § 50; RRS § 9063.]

**35.23.311 Eminent domain.** Whenever it shall become necessary for the city to take or damage private property for the purpose of establishing, laying out, extending and widening streets and other public highways and places within the city, or for the purpose of securing rights-of-way for drains,

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sewers and aqueducts, and for the purpose of widening, straightening or diverting the channels of streams and the improvement of waterfronts, or any other public purpose, and the city council cannot agree with the owner thereof as to the price to be paid, the city council may proceed to acquire, take or damage the same in the manner provided by chapter 8.12 RCW or by chapter 8.20 RCW. [1965 c 7 § 35.24.310. Prior: 1915 c 184 § 22; RRS § 9136. Formerly RCW 35.24.310.]

**35.23.330 Limitation on allowance of claims, warrants, etc.** No claim shall be allowed against the city by the city council, nor shall the city council order any warrants to be drawn except at a general meeting of the council. The council shall never allow, make valid, or recognize any demand against the city which was not a valid claim against it when the obligation was created, nor authorize to be paid any demand which without such action would be invalid or which is then barred by the statute of limitations, or for which the city was never liable, and any such action shall be void. [1965 c 7 § 35.23.330. Prior: (i) 1907 c 241 § 35; RRS § 9042. (ii) 1907 c 241 § 72, part; RRS § 9075, part.]

**35.23.331 Nuisances.** Every act or thing done or being within the limits of a second class city which is declared by law or by ordinance to be a nuisance shall be a nuisance and shall be so considered in all actions and proceedings. All remedies given by law for the prevention and abatement of nuisances shall apply thereto. [1994 c 81 § 46; 1965 c 7 § 35.24.330. Prior: 1915 c 184 § 21; 1890 p 187 § 123; RRS § 9135. Formerly RCW 35.24.330.]

*Public nuisances: Chapter 9.66 RCW.*

**35.23.351 Application of RCW 35.23.352 to certain agreements relating to water pollution control, solid waste handling facilities.** RCW 35.23.352 does not apply to the selection of persons or entities to construct or develop water pollution control facilities or to provide water pollution control services under RCW 70.150.040 or the selection of persons or entities to construct or develop solid waste handling facilities or to provide solid waste handling services under RCW 35.21.156. [1989 c 399 § 5; 1986 c 244 § 10.]

**Severability—1986 c 244:** See RCW 70.150.905.

**35.23.352 Public works—Contracts—Bids—Small works roster—Purchasing requirements, recycled or reused materials or products.** (1) Any second class city or any town may construct any public works, as defined in RCW 39.04.010, by contract or day labor without calling for bids therefor whenever the estimated cost of the work or improvement, including cost of materials, supplies and equipment will not exceed the sum of forty-five thousand dollars, or sixty thousand dollars after January 1, 2010, if more than one craft or trade is involved with the public works, or thirty thousand dollars, or forty thousand dollars after January 1, 2010, if a single craft or trade is involved with the public works or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes

of work to avoid the restriction on work that may be performed by day labor on a single project.

Whenever the cost of the public work or improvement, including materials, supplies and equipment, will exceed these figures, the same shall be done by contract. All such contracts shall be let at public bidding upon publication of notice calling for sealed bids upon the work. The notice shall be published in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least thirteen days prior to the last date upon which bids will be received. The notice shall generally state the nature of the work to be done that plans and specifications therefor shall then be on file in the city or town hall for public inspections, and require that bids be sealed and filed with the council or commission within the time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to the council or commission for a sum of not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. The council or commission of the city or town shall let the contract to the lowest responsible bidder or shall have power by resolution to reject any or all bids and to make further calls for bids in the same manner as the original call.

When the contract is let then all bid proposal deposits shall be returned to the bidders except that of the successful bidder which shall be retained until a contract is entered into and a bond to perform the work furnished, with surety satisfactory to the council or commission, in accordance with RCW 39.08.030. If the bidder fails to enter into the contract in accordance with his or her bid and furnish a bond within ten days from the date at which he or she is notified that he or she is the successful bidder, the check or postal money order and the amount thereof shall be forfeited to the council or commission or the council or commission shall recover the amount of the surety bond. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

If no bid is received on the first call the council or commission may readvertise and make a second call, or may enter into a contract without any further call or may purchase the supplies, material or equipment and perform the work or improvement by day labor.

(2) The allocation of public works projects to be performed by city or town employees shall not be subject to a collective bargaining agreement.

(3) In lieu of the procedures of subsection (1) of this section, a second class city or a town may let contracts using the small works roster process provided in RCW 39.04.155.

Whenever possible, the city or town shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(4) The form required by RCW 43.09.205 shall be to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of the materials, equipment, supplies, and labor on that construction project.

(6) Any purchase of supplies, material, or equipment, except for public work or improvement, where the cost

thereof exceeds seven thousand five hundred dollars shall be made upon call for bids.

(7) Bids shall be called annually and at a time and in the manner prescribed by ordinance for the publication in a newspaper of general circulation in the city or town of all notices or newspaper publications required by law. The contract shall be awarded to the lowest responsible bidder.

(8) For advertisement and formal sealed bidding to be dispensed with as to purchases with an estimated value of fifteen thousand dollars or less, the council or commission must authorize by resolution, use of the uniform procedure provided in RCW 39.04.190.

(9) The city or town legislative authority may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

(10) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(4), that are negotiated under chapter 39.35A RCW.

(11) Nothing in this section shall prohibit any second class city or any town from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused. [2002 c 94 § 2; 2000 c 138 § 204; 1998 c 278 § 3; 1996 c 18 § 2. Prior: 1994 c 273 § 9; 1994 c 81 § 18; 1993 c 198 § 10; 1989 c 431 § 56; 1988 c 168 § 3; 1987 c 120 § 2; prior: 1985 c 469 § 24; 1985 c 219 § 2; 1985 c 169 § 7; 1979 ex.s. c 89 § 2; 1977 ex.s. c 41 § 1; 1974 ex.s. c 74 § 2; 1965 c 114 § 1; 1965 c 7 § 35.23.352; prior: 1957 c 121 § 1; 1951 c 211 § 1; prior: (i) 1907 c 241 § 52; RRS § 9055. (ii) 1915 c 184 § 31; RRS § 9145. (iii) 1947 c 151 § 1; 1890 p 209 § 166; Rem. Supp. 1947 § 9185.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**Severability—1989 c 431:** See RCW 70.95.901.

*Competitive bidding violations by municipal officer, penalties:* RCW 39.30.020.

*Subcontractors to be identified by bidder, when:* RCW 39.30.060.

**35.23.371 Taxation—Street poll tax.** A second class city may impose upon and collect from every inhabitant of the city over the age of eighteen years an annual street poll tax not exceeding two dollars and no other road poll tax shall be collected within the limits of the city. [1994 c 81 § 47; 1973 1st ex.s. c 154 § 51; 1971 ex.s. c 292 § 61; 1965 c 7 § 35.24.370. Prior: 1905 c 75 § 1, part; 1890 p 201 § 154; RRS § 9210, part. Formerly RCW 35.24.370.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**35.23.380 Exclusive franchises prohibited.** No exclusive franchise or privilege shall be granted for the use of any street, alley, highway, or public place or any part thereof. [1965 c 7 § 35.23.380. Prior: 1907 c 241 § 32; RRS § 9039.]

**35.23.410 Leasing of street ends on waterfront.** The city council may lease for business purposes portions of the ends of streets terminating in the waterfront or navigable waters of the city with the written consent of all the property owners whose properties abut upon the portion proposed to be leased. The lease may be made for any period not exceed-

ing fifteen years but must provide that at intervals of every five years during the term, the rental to be paid by the lessee shall be readjusted between him and the city by mutual agreement, or if they cannot agree by a board of arbitration, one to be chosen by the city, one by the lessee and the third by the other two, their decision to be final. The vote of two-thirds of all the councilmen elected is necessary to authorize such a lease. [1965 c 7 § 35.23.410. Prior: 1907 c 241 § 67, part; RRS § 9070, part.]

**35.23.420 Notice of lease to be published before execution.** No lease of a portion of the end of a street terminating in the waterfront or navigable waters of the city shall be made until a notice describing the portion of the street proposed to be leased, to whom and for what purpose leased and the proposed rental to be paid has been published by the city clerk in the official newspaper at least fifteen days prior to the execution of the lease. [1965 c 7 § 35.23.420. Prior: 1907 c 241 § 67, part; RRS § 9070, part.]

**35.23.430 Railroads in streets to be assessed for street improvement.** If an improvement is made upon a street occupied by a street railway or any railroad enjoying a franchise on the street, the city council shall assess against the railroad its just proportion of making the improvement which shall be not less than the expense of improving the space between the rails of the railroad and for a distance of one foot on each side. The assessment against the railroad shall be made on the rolls of the improvement district the same as against other property in the district and shall be a lien on that portion of the railroad within the district from the time of the equalization of the roll. The lien may be foreclosed by a civil action in superior court and the same period of redemption from any sale on foreclosure shall be allowed as is allowed in cases of sale of real estate upon execution. [1965 c 7 § 35.23.430. Prior: 1907 c 241 § 65; RRS § 9068.]

**35.23.440 Specific powers enumerated.** The city council of each second class city shall have power and authority:

(1) Ordinances: To make and pass all ordinances, orders, and resolutions not repugnant to the Constitution of the United States or the state of Washington, or the provisions of this title, necessary for the municipal government and management of the affairs of the city, for the execution of the powers vested in said body corporate, and for the carrying into effect of the provisions of this title.

(2) License of shows: To fix and collect a license tax, for the purposes of revenue and regulation, on theatres, melodeons, balls, concerts, dances, theatrical, circus, or other performances, and all performances where an admission fee is charged, or which may be held in any house or place where wines or liquors are sold to the participants; also all shows, billiard tables, pool tables, bowling alleys, exhibitions, or amusements.

(3) Hotels, etc., licenses: To fix and collect a license tax for the purposes of revenue and regulation on and to regulate all taverns, hotels, restaurants, banks, brokers, manufactories, livery stables, express companies and persons engaged in transmitting letters or packages, railroad, stage, and steam-

boat companies or owners, whose principal place of business is in such city, or who have an agency therein.

(4) Peddlers', etc., licenses: To license, for the purposes of revenue and regulation, tax, prohibit, suppress, and regulate all raffles, hawkers, peddlers, pawnbrokers, refreshment or coffee stands, booths, or sheds; and to regulate as authorized by state law all tipping houses, dram shops, saloons, bars, and barrooms.

(5) Dance houses: To prohibit or suppress, or to license and regulate all dance houses, fandango houses, or any exhibition or show of any animal or animals.

(6) License vehicles: To license for the purposes of revenue and regulation, and to tax hackney coaches, cabs, omnibuses, drays, market wagons, and all other vehicles used for hire, and to regulate their stands, and to fix the rates to be charged for the transportation of persons, baggage, and property.

(7) Hotel runners: To license or suppress runners for steamboats, taverns, or hotels.

(8) License generally: To fix and collect a license tax for the purposes of revenue and regulation, upon all occupations and trades, and all and every kind of business authorized by law not heretofore specified: PROVIDED, That on any business, trade, or calling not provided by law to be licensed for state and county purposes, the amount of license shall be fixed at the discretion of the city council, as they may deem the interests and good order of the city may require.

(9) Riots: To prevent and restrain any riot or riotous assemblages, disturbance of the peace, or disorderly conduct in any place, house, or street in the city.

(10) Nuisances: To declare what shall be deemed nuisances; to prevent, remove, and abate nuisances at the expense of the parties creating, causing, or committing or maintaining the same, and to levy a special assessment on the land or premises whereon the nuisance is situated to defray the cost or to reimburse the city for the cost of abating the same.

(11) Stock pound: To establish, maintain, and regulate a common pound for estrays, and to appoint a poundkeeper, who shall be paid out of the fines and fees imposed and collected of the owners of any animals impounded, and from no other source; to prevent and regulate the running at large of any and all domestic animals within the city limits or any parts thereof, and to regulate or prevent the keeping of such animals within any part of the city.

(12) Control of certain trades: To control and regulate slaughterhouses, washhouses, laundries, tanneries, forges, and offensive trades, and to provide for their exclusion or removal from the city limits, or from any part thereof.

(13) Street cleaning: To provide, by regulation, for the prevention and summary removal of all filth and garbage in streets, sloughs, alleys, back yards, or public grounds of such city, or elsewhere therein.

(14) Gambling, etc.: To prohibit and suppress all gambling and all gambling or disorderly houses, and houses of ill fame, and all immoral and indecent amusements, exhibitions, and shows.

(15) Markets: To establish and regulate markets and market places.

(16) Speed of railroad cars: To fix and regulate the speed at which any railroad cars, streetcars, automobiles, or other

vehicles may run within the city limits, or any portion thereof.

(17) City commons: To provide for and regulate the commons of the city.

(18) Fast driving: To regulate or prohibit fast driving or riding in any portion of the city.

(19) Combustibles: To regulate or prohibit the loading or storage of gunpowder and combustible or explosive materials in the city, or transporting the same through its streets or over its waters.

(20) Property: To have, purchase, hold, use, and enjoy property of every name or kind whatsoever, and to sell, lease, transfer, mortgage, convey, control, or improve the same; to build, erect, or construct houses, buildings, or structures of any kind needful for the use or purposes of such city.

(21) Fire department: To establish, continue, regulate, and maintain a fire department for such city, to change or reorganize the same, and to disband any company or companies of the said department; also, to discontinue and disband said fire department, and to create, organize, establish, and maintain a paid fire department for such city.

(22) Water supply: To adopt, enter into, and carry out means for securing a supply of water for the use of such city or its inhabitants, or for irrigation purposes therein.

(23) Overflow of water: To prevent the overflow of the city or to secure its drainage, and to assess the cost thereof to the property benefited.

(24) House numbers: To provide for the numbering of houses.

(25) Health board: To establish a board of health; to prevent the introduction and spread of disease; to establish a city infirmary and to provide for the indigent sick; and to provide and enforce regulations for the protection of health, cleanliness, peace, and good order of the city; to establish and maintain hospitals within or without the city limits; to control and regulate interments and to prohibit them within the city limits.

(26) Harbors and wharves: To build, alter, improve, keep in repair, and control the waterfront; to erect, regulate, and repair wharves, and to fix the rate of wharfage and transit of wharf, and levy dues upon vessels and commodities; and to provide for the regulation of berths, landing, stationing, and removing steamboats, sail vessels, rafts, barges, and all other watercraft; to fix the rate of speed at which steamboats and other steam watercraft may run along the waterfront of the city; to build bridges so as not to interfere with navigation; to provide for the removal of obstructions to the navigation of any channel or watercourses or channels.

(27) License of steamers: To license steamers, boats, and vessels used in any watercourse in the city, and to fix and collect a license tax thereon.

(28) Ferry licenses: To license ferries and toll bridges under the law regulating the granting of such license.

(29) Penalty for violation of ordinances: To provide that violations of ordinances with the punishment for any offense not exceeding a fine of five thousand dollars or imprisonment for more than one year, or both fine and imprisonment, but the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Alternatively, such a city may provide that a violation of an ordinance constitutes a civil violation subject to monetary

penalties or to determine and impose fines for forfeitures and penalties, but no act which is a state crime may be made a civil violation. A violation of an order, regulation, or ordinance relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of an order, regulation, or ordinance equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

(30) Police department: To create and establish a city police; to prescribe their duties and their compensation; and to provide for the regulation and government of the same.

(31) Examine official accounts: To examine, either in open session or by committee, the accounts or doings of all officers or other persons having the care, management, or disposition of moneys, property, or business of the city.

(32) Contracts: To make all appropriations, contracts, or agreements for the use or benefit of the city and in the city's name.

(33) Streets and sidewalks: To provide by ordinance for the opening, laying out, altering, extending, repairing, grading, paving, planking, graveling, macadamizing, or otherwise improving of public streets, avenues, and other public ways, or any portion of any thereof; and for the construction, regulation, and repair of sidewalks and other street improvements, all at the expense of the property to be benefited thereby, without any recourse, in any event, upon the city for any portion of the expense of such work, or any delinquency of the property holders or owners, and to provide for the forced sale thereof for such purposes; to establish a uniform grade for streets, avenues, sidewalks, and squares, and to enforce the observance thereof.

(34) Waterways: To clear, cleanse, alter, straighten, widen, fill up, or close any waterway, drain, or sewer, or any watercourse in such city when not declared by law to be navigable, and to assess the expense thereof, in whole or in part, to the property specially benefited.

(35) Sewerage: To adopt, provide for, establish, and maintain a general system of sewerage, draining, or both, and the regulation thereof; to provide funds by local assessments on the property benefited for the purpose aforesaid and to determine the manner, terms, and place of connection with main or central lines of pipes, sewers, or drains established, and compel compliance with and conformity to such general system of sewerage or drainage, or both, and the regulations of said council thereto relating, by the infliction of suitable penalties and forfeitures against persons and property, or either, for nonconformity to, or failure to comply with the provisions of such system and regulations or either.

(36) Buildings and parks: To provide for all public buildings, public parks, or squares, necessary or proper for the use of the city.

(37) Franchises: To permit the use of the streets for railroad or other public service purposes.

(38) Payment of judgments: To order paid any final judgment against such city, but none of its lands or property of any kind or nature, taxes, revenue, franchise, or rights, or interest, shall be attached, levied upon, or sold in or under any process whatsoever.

(39) Weighing of fuel: To regulate the sale of coal and wood in such city, and may appoint a measurer of wood and weigher of coal for the city, and define his duties, and may

prescribe his term of office, and the fees he shall receive for his services: PROVIDED, That such fees shall in all cases be paid by the parties requiring such service.

(40) Hospitals, etc.: To erect and establish hospitals and pesthouses and to control and regulate the same.

(41) Waterworks: To provide for the erection, purchase, or otherwise acquiring of waterworks within or without the corporate limits of the city to supply such city and its inhabitants with water, and to regulate and control the use and price of the water so supplied.

(42) City lights: To provide for lighting the streets and all public places of the city and for furnishing the inhabitants of the city with gas, electric, or other light, and for the ownership, purchase or acquisition, construction, or maintenance of such works as may be necessary or convenient therefor: PROVIDED, That no purchase of any such water plant or light plant shall be made without first submitting the question of such purchase to the electors of the city.

(43) Parks: To acquire by purchase or otherwise land for public parks, within or without the limits of the city, and to improve the same.

(44) Bridges: To construct and keep in repair bridges, and to regulate the use thereof.

(45) Power of eminent domain: In the name of and for the use and benefit of the city, to exercise the right of eminent domain, and to condemn lands and property for the purposes of streets, alleys, parks, public grounds, waterworks, or for any other municipal purpose and to acquire by purchase or otherwise such lands and property as may be deemed necessary for any of the corporate uses provided for by this title, as the interests of the city may from time to time require.

(46) To provide for the assessment of taxes: To provide for the assessment, levying, and collecting of taxes on real and personal property for the corporate uses and purposes of the city and to provide for the payment of the debts and expenses of the corporation.

(47) Local improvements: To provide for making local improvements, and to levy and collect special assessments on the property benefited thereby and for paying the same or any portion thereof; to determine what work shall be done or improvements made, at the expense, in whole or in part, of the adjoining, contiguous, or proximate property, and to provide for the manner of making and collecting assessments therefor.

(48) Cemeteries: To regulate the burial of the dead and to establish and regulate cemeteries, within or without the corporate limits, and to acquire lands therefor by purchase or otherwise.

(49) Fire limits: To establish fire limits with proper regulations and to make all needful regulations for the erection and maintenance of buildings or other structures within the corporate limits as safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in a safe condition; to regulate the manner in which stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained.

(50) Safety and sanitary measures: To require the owners of public halls, theaters, hotels, and other buildings to provide suitable means of exit and proper fire escapes; to provide for the cleaning and purification of watercourses and canals

and for the draining and filling up of ponds on private property within its limits when the same shall be offensive to the senses or dangerous to the health, and to charge the expense thereof to the property specially benefited, and to regulate and control and provide for the prevention and punishment of the defilement or pollution of all streams running in or through its corporate limits and a distance of five miles beyond its corporate limits, and of any stream or lake from which the water supply of the city is or may be taken and for a distance of five miles beyond its source of supply, and to make all quarantine and other regulations as may be necessary for the preservation of the public health and to remove all persons afflicted with any contagious disease to some suitable place to be provided for that purpose.

(51) To regulate liquor traffic: To regulate the selling or giving away of intoxicating, spirituous, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state.

(52) To establish streets on tidelands: To project or extend or establish streets over and across any tidelands within the limits of such city.

(53) To provide for the general welfare. [1994 c 81 § 19; 1993 c 83 § 5; 1986 c 278 § 4. Prior: 1984 c 258 § 803; 1984 c 189 § 5; 1979 ex.s. c 136 § 28; 1977 ex.s. c 316 § 21; 1965 ex.s. c 116 § 7; 1965 c 7 § 35.23.440; prior: 1907 c 241 § 29; 1890 p 148 § 38; RRS § 9034.]

**Effective date—1994 c 81 § 19:** "Section 19 of this act shall take effect July 1, 1994." [1994 c 81 § 91.]

**Effective date—1993 c 83:** See note following RCW 35.21.163.

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**Severability—1977 ex.s. c 316:** See note following RCW 70.48.020.

**35.23.442 City and town license fees and taxes on financial institutions.** See chapter 82.14A RCW.

**35.23.443 City license fees or taxes on certain business activities to be at a single uniform rate.** See RCW 35.21.710.

**35.23.444 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.** See chapter 80.58 RCW.

**35.23.445 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts.** See RCW 87.03.825 through 87.03.840.

**35.23.452 Additional powers—Acquisition, control, and disposition of property.** The city council of such city shall have power to purchase, lease, or otherwise acquire real estate and personal property necessary or proper for municipal purposes and to control, lease, sublease, convey or otherwise dispose of the same; to acquire and plat land for cemeteries and parks and provide for the regulation thereof, including but not limited to the right to lease any waterfront

and other lands adjacent thereto owned by it for manufacturing, commercial or other business purposes; including but not limited to the right to lease for wharf, dock and other purposes of navigation and commerce such portions of its streets which bound upon or terminate in its waterfront or the navigable waters of such city, subject, however, to the written consent of the lessees of a majority of the square feet frontage of the harbor area abutting on any street proposed to be so leased. No lease of streets or waterfront shall be for longer than ten years and the rental therefor shall be fixed by the city council. Every such lease shall contain a clause that at intervals of every five years during the term thereof the rental to be paid by the lessee shall be readjusted between the lessee and the city by mutual agreement, or in default of such mutual agreement that the rental shall be fixed by arbitrators to be appointed one by the city council, one by the lessee and the third by the two thus appointed. No such lease shall be made until the city council has first caused notice thereof to be published in the official newspaper of such city at least fifteen days and in one issue thereof each week prior to the making of such lease, which notice shall describe the portion of the street proposed to be leased, to whom, for what purpose, and the rental to be charged therefor. The city may improve part of such waterfront or street extensions by building inclines, wharves, gridirons and other accommodations for shipping, commerce and navigation and may charge and collect for service and use thereof reasonable rates and tolls. [1965 c 7 § 35.24.300. Prior: 1963 c 155 § 1; 1915 c 184 § 15; RRS § 9128. Formerly RCW 35.24.300.]

**35.23.454 Additional powers—Parking meter revenue for revenue bonds.** All second class cities and towns are authorized to use parking meter revenue as a base for obtaining revenue bonds for use in improvement of streets, roads, alleys, and such other related public works. [1994 c 81 § 44; 1965 c 7 § 35.24.305. Prior: 1957 c 166 § 1. Formerly RCW 35.24.305.]

**35.23.455 Additional powers—Construction and operation of boat harbors, marinas, docks, etc.** The legislative body of any second class city or town which contains, or abuts upon, any bay, lake, sound, river or other navigable waters, may construct, operate and maintain any boat harbor, marina, dock or other public improvement, for the purposes of commerce, recreation or navigation. [1994 c 81 § 20; 1965 c 154 § 1.]

**35.23.456 Additional powers—Ambulances and first aid equipment.** A second class city, where commercial ambulance service is not readily available, shall have the power:

(1) To authorize the operation of municipally-owned ambulances which may serve the city and may serve for emergencies surrounding rural areas;

(2) To authorize the operation of other municipally-owned first aid equipment which may serve the city and surrounding rural areas;

(3) To contract with the county or with another municipality for emergency use of city-owned ambulances or other first aid equipment: PROVIDED, That the county or other

municipality shall contribute at least the cost of maintenance and operation of the equipment attributable to its use thereof; and

(4) To provide that such ambulance service may be used to transport persons in need of emergency hospital care to hospitals beyond the city limits.

The council may, in its discretion, make a charge for the service authorized by this section: PROVIDED, That such ambulance service shall not enter into competition or competitive bidding where private ambulance service is available. [1994 c 81 § 45; 1965 c 7 § 35.24.306. Prior: 1963 c 131 § 1. Formerly RCW 35.24.306.]

**35.23.457 Conveyance or lease of space above real property or structures or improvements.** See RCW 35.22.302.

**35.23.460 Employees' group insurance—False arrest insurance.** Subject to chapter 48.62 RCW, any second class city or town may contract with an insurance company authorized to do business in this state to provide group insurance for its employees including group false arrest insurance for its law enforcement personnel, and pursuant thereto may use a portion of its revenues to pay an employer's portion of the premium for such insurance, and may make deductions from the payrolls of employees for the amount of the employees' contribution and may apply the amount deducted in payment of the employees' portion of the premium. [1994 c 81 § 21; 1991 sp.s. c 30 § 19; 1965 c 7 § 35.23.460. Prior: 1963 c 127 § 1; 1947 c 162 § 1; RRS § 9592-160.]

**Effective date, implementation, application—Severability—1991 sp.s. c 30:** See RCW 48.62.900 and 48.62.901.

**35.23.470 Publicity fund.** Every city of the second class may create a publicity fund to be used exclusively for exploiting and advertising the general advantages and opportunities of the city and its vicinity. After providing by ordinance for a publicity fund the city council may use therefor an annual amount not exceeding sixty-two and one-half cents per thousand dollars of assessed valuation of the taxable property in the city. [1994 c 81 § 22; 1973 1st ex.s. c 195 § 16; 1965 c 7 § 35.23.470. Prior: 1913 c 57 § 1; RRS § 9035.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**35.23.480 Publicity board.** The publicity board administering the publicity fund shall consist of three members nominated by a recognized commercial organization in the city, then appointed by the mayor and confirmed by at least a two-thirds vote of the city council. The commercial organization must be incorporated, must be representative and public, devoted exclusively to the work usually devolving upon such organizations and have not less than two hundred bona fide dues-paying members; if more than one organization in the city meets the qualifications, the oldest one shall be designated to make the nominations.

Members of the publicity board must be resident property owners and voters in the city and after their appointment and confirmation must qualify by taking the oath of office and filing a bond with the city in the sum of one thousand dollars conditioned upon the faithful performance of their duties.

They shall be appointed in December and their terms shall be for one year commencing on the second Monday in January after their appointment and until their successors are appointed and qualified. Any member of the board may be removed by the mayor at the request of the organization which nominated the members after a majority vote of the entire membership of the organization favoring the removal, taken at a regular meeting.

Members of the publicity board shall serve without remuneration. [1965 c 7 § 35.23.480. Prior: 1913 c 57 § 2, part; RRS § 9036, part.]

**35.23.490 Limitations on use of publicity fund.** All expenditures shall be made under direction of the board of publicity. No part of the publicity fund shall ever be paid to any newspaper, magazine, or periodical published within the city or county in which the city is situated, for advertising, or write-ups or for any other service or purpose and no part of the fund shall be expended for the purpose of making exhibits at any fair, exposition or the like. [1965 c 7 § 35.23.490. Prior: 1913 c 57 § 2, part; RRS § 9036, part.]

**35.23.505 Local improvement guaranty fund—Investment in city's own guaranteed bonds.** The city treasurer of any second class city, by and with the consent of the city council or finance committee of the city council, may invest any portion of its local improvement guaranty fund in the city's own guaranteed local improvement bonds in an amount not to exceed ten percent of the total issue of bonds in any one local improvement district: PROVIDED, That no such investment shall be made in an amount which will affect the ability of the local improvement guaranty fund to meet its obligations as they accrue, and that if all the bonds have the same maturity, the bonds having the highest numbers shall be purchased.

The interest received shall be credited to the local improvement guaranty fund. [1994 c 81 § 48; 1965 c 7 § 35.24.400. Prior: 1941 c 145 § 2; RRS § 9138-2. Formerly RCW 35.24.400.]

*Local improvements*

*bonds and warrants: Chapter 35.45 RCW.*

*nonguaranteed bonds: Chapter 35.48 RCW.*

**35.23.515 Utilities—City may contract for service or construct own facilities.** The city council of every city of the second class may contract for supplying the city with water, light, power, and heat for municipal purposes; and within or without the city may acquire, construct, repair, and manage pumps, aqueducts, reservoirs, plants, or other works necessary or proper for irrigation purposes or for supplying water, light, power, or heat or any byproduct thereof for the use of the city and any person within the city and dispose of any excess of its supply to any person without the city. [1994 c 81 § 49; 1965 c 7 § 35.24.410. Prior: 1917 c 124 § 1, part; 1915 c 184 § 16, part; RRS § 9129, part. Formerly RCW 35.24.410.]

**35.23.525 Utilities—Method of acquisition—Bonds.** To pay the original cost of water, light, power, or heat systems, every city of the second class may issue:

(1) General bonds to be retired by general tax levies against all the property within the city limits then existing or as they may thereafter be extended; or

(2) Utility bonds under the general authority given to all cities for the acquisition or construction of public utilities.

Extensions to plants may be made either

(1) By general bond issue,

(2) By general tax levies, or

(3) By creating local improvement districts in accordance with statutes governing their establishment. [1994 c 81 § 50; 1965 c 7 § 35.24.420. Prior: 1917 c 124 § 1, part; 1915 c 184 § 16, part; RRS § 9129, part. Formerly RCW 35.24.420.]

**35.23.535 Utilities—Maintenance and operation—Rates.** No taxes shall be imposed for maintenance and operating charges of city owned water, light, power, or heating works or systems.

Rates shall be fixed by ordinance for supplying water, light, power, or heat for commercial, domestic, or irrigation purposes sufficient to pay for all operating and maintenance charges. If the rates in force produce a greater amount than is necessary to meet operating and maintenance charges, the rates may be reduced or the excess income may be transferred to the city's current expense fund.

Complete separate accounts for municipal utilities must be kept under the system and on forms prescribed by the state auditor.

The term "maintenance and operating charges," as used in this section includes all necessary repairs, replacement, interest on any debts incurred in acquiring, constructing, repairing and operating plants and departments and all depreciation charges. This term shall also include an annual charge equal to four percent on the cost of the plant or system, as determined by the state auditor to be paid into the current expense fund, except that where utility bonds have been or may hereafter be issued and are unpaid no payment shall be required into the current expense fund until such bonds are paid. [1995 c 301 § 37; 1965 c 7 § 35.24.430. Prior: 1917 c 124 § 1, part; 1915 c 184 § 16, part; RRS § 9129, part. Formerly RCW 35.24.430.]

**35.23.545 Procedure to attack consolidation or annexation of territory.** Proceedings attacking the validity of the consolidation of a city of the second class or the annexation of territory to a city of the second class shall be by quo warranto only, instituted by the prosecuting attorney of the county in which the city is located or by a person interested in the proceedings whose interest must clearly be shown. The quo warranto proceedings must be commenced within one year after the consolidation or annexation proceedings complained of and no error, irregularity, or defect of any kind shall be the basis for invalidating a consolidation or annexation after one year. [1994 c 81 § 51; 1965 c 7 § 35.24.440. Prior: 1923 c 153 § 1; RRS § 8913-1. Formerly RCW 35.24.440.]

**Validating—1923 c 153:** "All proceedings for the consolidation of cities of the third class and for the annexation of any unincorporated territory described in any abstract filed with the secretary of state in any such annexation proceeding to a city of the third class heretofore had, or attempted to be had, and over which such consolidated cities or annexed territory such city

has exercised jurisdiction for a period of one year after the filing of such abstract with the secretary of state, are hereby ratified and validated as of the date of filing such abstract, irrespective of the fact that such consolidated cities, or any part thereof, are separated by a body of navigable water or that such annexed territory, or any part thereof, is separated from such city by a body of navigable water, and irrespective of any failure to file a petition for such consolidation or annexation, or to give proper notice of election or of any other defect occurring in such consolidation or annexation proceedings, and all territory so sought to be annexed is hereby declared to be a part of such annexing city as of the date of filing such abstract, and such cities so consolidated are hereby declared to be one municipal corporation as of the date of filing such abstract. All proceedings since the date of the filing of such abstract heretofore had or attempted to be had by any such city within or including such annexed territory, or any part thereof, in the creation of local improvement districts and the making of local improvements, the levying of special assessments and the issuance of bonds therein and also in the levy of taxes, making of contracts, incurring of indebtedness and the issuance of bonds therefor are hereby ratified, validated and confirmed. PROVIDED, That nothing in this act contained shall affect the rights of any parties in any proceedings now pending in any court of record in this state and the rights of such parties therein shall be determined and adjudicated as the same existed prior to the passage of this act." [1923 c 153 § 2.] This applies to RCW 35.23.545.

**35.23.555 Criminal code repeals by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration.** A city of the second class operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes or repeal a provision of its municipal code which defines a crime equivalent to an offense listed in RCW 46.63.020 unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1994 c 81 § 52; 1984 c 258 § 206. Formerly RCW 35.24.455.]

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**35.23.560 Waterworks—Construction by city or by district assessments.** All cities and towns within the state, other than cities of the first class, which are empowered to construct waterworks for irrigation and domestic purposes, may do so either by the entire city or by assessment districts as the mayor and council may determine. [1965 c 7 § 35.23.560. Prior: 1901 c 117 § 1; RRS § 9526.]

**35.23.570 Waterworks—Plans—Special assessments.** Before letting any contract for the construction of any waterworks for irrigation and domestic purposes, the mayor and council shall by ordinance or resolution adopt the plans therefor and shall fix and establish the assessment district, if the same is to be constructed at the expense of the district, and such cities and towns are authorized to charge the

expense of such waterworks for irrigation and domestic purposes to all the property included within such district which is contiguous or proximate to any streets in which any main pipe or lateral pipe of such waterworks for irrigation and domestic purposes, is to be placed, and to levy special assessments upon such property to pay therefor, which assessment shall be levied in accordance with the last general assessment of the property within said district for city purposes. [1994 c 81 § 23; 1965 c 7 § 35.23.570. Prior: 1901 c 117 § 2; RRS § 9527.]

**35.23.580 Waterworks—Procedure—Bonds.** For the purpose of providing for, constructing and maintaining such waterworks for irrigation and domestic purposes and issuing bonds to pay therefor, such cities and towns may proceed in all ways in accordance with, and apply all the provisions of, law relating to local improvement assessments. [1965 c 7 § 35.23.580. Prior: 1901 c 117 § 3; RRS § 9528.]

**35.23.680 Cities of ten thousand or more may frame charter without changing classification.** See chapter 35.22 RCW.

**35.23.705 Purchase of electric power and energy from joint operating agency.** A city of the second class may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the city must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or public utility district under the contract or other instrument. [2003 c 138 § 5.]

**35.23.800 Code city retaining former second class city plan—Elective officers.** In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the elective officers shall consist of a mayor, twelve councilmembers, a city clerk, and a city treasurer. [1994 c 81 § 24; 1987 c 3 § 6; 1965 c 7 § 35.23.020. Prior: 1949 c 83 § 1; 1907 c 241 § 2; RRS § 9007. Formerly RCW 35.23.020.]

**Severability—1987 c 3:** See note following RCW 3.46.020.

**35.23.805 Code city retaining former second class city plan—Elections—Terms of office.** In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the terms of office of mayor, city clerk, city treasurer and councilmembers shall

be four years, and until their successors are elected and qualified and assume office in accordance with \*RCW 29.04.170, but not more than six councilmembers normally shall be elected in any one year to fill a full term. [1994 c 81 § 25; 1987 c 3 § 7; 1979 ex.s. c 126 § 21; 1965 c 7 § 35.23.040. Prior: 1963 c 200 § 14; 1959 c 86 § 3; prior: (i) 1951 c 71 § 1; 1909 c 120 § 4; 1907 c 241 § 3; RRS § 9008. (ii) 1951 c 71 § 1; 1907 c 241 § 4; RRS § 9009. Formerly RCW 35.23.040.]

\*Reviser's note: RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Severability—1987 c 3:** See note following RCW 3.46.020.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**35.23.810 Code city retaining former second class city plan—Mayor—General duties.** In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the mayor shall be the chief executive officer of the city and shall:

(1) Have general supervision over the several departments of the city government and over all its interests;

(2) Preside over the city council when present;

(3) Once in three months, submit a general statement of the condition of the various departments and recommend to the city council such measures as the mayor deems expedient for the public health or improvement of the city, its finances or government; and

(4) Countersign all warrants and licenses, deeds, leases and contracts requiring signature issued under and by authority of the city.

If there is a vacancy in the office of mayor or the mayor is absent from the city, or is unable from any cause to discharge the duties of the office, the president of the council shall act as mayor, exercise all the powers and be subject to all the duties of the mayor. [1994 c 81 § 26; 1965 c 7 § 35.23.080. Prior: (i) 1907 c 241 § 16, part; RRS § 9021, part. (ii) 1907 c 241 § 17, part; RRS § 9022, part. Formerly RCW 35.23.080.]

**35.23.815 Code city retaining former second class city plan—Appointive officers.** In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the appointive officers shall be a chief of police, city attorney, health officer, and street commissioner; the council may also create by ordinance the offices of superintendent of irrigation, city engineer, harbor master, pound keeper, city jailer, chief of the fire department, and any other offices necessary to discharge the functions of the city and for whose election or appointment no other provision is made. If a paid fire department is established therein a chief engineer and one or more assistant engineers may be appointed. If a free library and reading room is established therein five library trustees shall be appointed. The council by ordinance shall prescribe the duties of the officers and fix their compensation subject to the provisions of any statutes pertaining thereto. [1994 c 81 § 27; 1965 c 7 § 35.23.120. Prior: 1949 c 83 § 2; Rem. Supp. 1949 § 9007A. Formerly RCW 35.23.120.]

(2004 Ed.)

**35.23.820 Code city retaining former second class city plan—Health officer.** In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the council shall create the office of city health officer, prescribe the duties and qualifications of this office and fix the compensation for the office. [1994 c 81 § 28; 1965 c 7 § 35.23.150. Prior: 1907 c 241 § 64; RRS § 9067. Formerly RCW 35.23.150.]

**35.23.825 Code city retaining former second class city plan—Street commissioner.** In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the street commissioner shall be under the direction of the mayor and city council shall have control of the streets and public places of the city and shall perform such duties as the city council may prescribe. [1994 c 81 § 29; 1965 c 7 § 35.23.160. Prior: 1907 c 241 § 23; RRS § 9028. Formerly RCW 35.23.160.]

**35.23.830 Code city retaining former second class city plan—Appointment of officers—Confirmation.** In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the mayor shall appoint all the appointive officers of the city subject to confirmation by the city council. If the council refuses to confirm any nomination of the mayor, the mayor shall nominate another person for that office within ten days thereafter, and may continue to so nominate until a nominee is confirmed. If the mayor fails to make another nomination for the same office within ten days after the rejection of a nominee, the city council shall elect a suitable person to fill the office during the term. The affirmative vote of not less than seven councilmembers is necessary to confirm any nomination made by the mayor. [1994 c 81 § 30; 1965 c 7 § 35.23.180. Prior: 1907 c 241 § 8, part; 1890 p 145 § 25; RRS § 9013, part. Formerly RCW 35.23.180.]

**35.23.835 Code city retaining former second class city plan—Oath and bond of officers.** Before entering upon official duties and within ten days after receiving notice of being elected or appointed to city office, every officer of a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city shall qualify by taking the oath of office and by filing such bond duly approved as may be required. The oath of office shall be filed with the county auditor. If no notice of election or appointment was received, the officer must qualify on or before the date fixed for the assumption of the duties of the office. The city council shall fix the amount of all official bonds and may designate what officers shall be required to give bonds in addition to those required to do so by statute.

All official bonds shall be approved by the city council and when so approved shall be filed with the city clerk except the city clerk's which shall be filed with the mayor. No city officer shall be eligible as a surety upon any bond running to the city as obligee.

The city council may require a new or additional bond of any officer whenever it deems it expedient. [1994 c 81 § 31; 1987 c 3 § 8; 1986 c 167 § 17; 1965 c 7 § 35.23.190. Prior: (i) 1907 c 241 § 10, part; 1890 p 145 § 29; RRS § 9015, part. (ii) 1907 c 241 § 11; 1890 p 145 § 29; RRS § 9016. Formerly RCW 35.23.190.]

**Severability—1987 c 3:** See note following RCW 3.46.020.

**Severability—1986 c 167:** See note following RCW 29A.04.049.

**35.23.840 Code city retaining former second class city plan—City council—How constituted.** In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the mayor and twelve councilmembers shall constitute the city council. At the first council meeting in each calendar year, the city council shall elect one of their own body to serve as president of the council.

The mayor shall preside at all meetings at which the mayor is present. In the absence of the mayor, the president of the council shall preside. In the absence of both the mayor and the president of the council, the council may elect a president pro tempore from its own body. The president pro tempore shall have all the powers of the president of the council during the session of the council at which the president pro tempore is presiding. [1994 c 81 § 32; 1965 c 7 § 35.23.250. Prior: (i) 1907 c 241 § 17, part; RRS § 9022, part. (ii) 1907 c 247 § 27; RRS § 9032. (iii) 1907 c 241 § 28, part; 1890 p 148 § 37; RRS § 9033, part. Formerly RCW 35.23.250.]

**35.23.845 Code city retaining former second class city plan—City council—Presiding officer—Voting rights.** In a city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the mayor shall have a vote only in the case of a tie in the votes of the councilmembers. The president of the council while presiding or the president pro tempore shall have the right to vote upon all questions coming before the council.

A majority of all the members elected shall be necessary to pass any ordinance appropriating for any purpose the sum of five hundred dollars or upwards or any ordinance imposing any assessment, tax, or license or in any wise increasing or diminishing the city revenue. [1994 c 81 § 33; 1965 c 7 § 35.23.280. Prior: (i) 1907 c 241 § 28, part; 1890 p 148 § 37; RRS § 9033, part. (ii) 1907 c 241 § 61; 1890 p 159 § 51; RRS § 9064. Formerly RCW 35.23.280.]

**35.23.850 Code city retaining former second class city plan—Wards—Division of city into.** In any city initially classified as a second class city prior to January 1, 1993, that retained its second class city plan of government when the city reorganized as a noncharter code city, the city council may divide the city into wards, not exceeding six in all, or change the boundaries of existing wards at any time less than one hundred twenty days before a municipal general election. No change in the boundaries of wards shall affect the term of any councilmember, and councilmembers shall serve out their terms in the wards of their residences at the time of their elections. However, if these boundary changes

result in one ward being represented by more councilmembers than the number to which it is entitled, those having the shortest unexpired terms shall be assigned by the council to wards where there is a vacancy, and the councilmembers so assigned shall be deemed to be residents of the wards to which they are assigned for purposes of determining whether those positions are vacant.

The representation of each ward in the city council shall be in proportion to the population as nearly as is practicable.

Wards shall be redrawn as provided in \*chapter 29.70 RCW. Wards shall be used as follows: (1) Only a resident of the ward may be a candidate for, or hold office as, a councilmember of the ward; and (2) only voters of the ward may vote at a primary to nominate candidates for a councilmember of the ward. Voters of the entire city may vote at the general election to elect a councilmember of a ward, unless the city had prior to January 1, 1994, limited the voting in the general election for any or all council positions to only voters residing within the ward associated with the council positions. If a city had so limited the voting in the general election to only voters residing within the ward, then the city shall be authorized to continue to do so. The elections for the remaining council position or council positions that are not associated with a ward shall be conducted as if the wards did not exist. [1995 c 134 § 10. Prior: 1994 c 223 § 16; 1994 c 81 § 34; 1965 c 7 § 35.23.530; prior: 1907 c 241 § 14; 1890 p 147 § 35; RRS § 9019. Formerly RCW 35.23.530.]

**\*Reviser's note:** Chapter 29.70 RCW was recodified as chapter 29A.76 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

## Chapter 35.27 RCW TOWNS

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*Accident claims against:* RCW 35.31.040, 35.31.050.

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*public corporations:* RCW 4.08.120.  
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*Actions by in corporate name:* RCW 4.08.110.

*Advancement in classification:* RCW 35.06.010.

*Classification as:* RCW 35.01.040.

*Code of ethics for public officers and employees:* Chapters 42.23 and 42.52 RCW.

*Corporate stock or bonds not to be owned by:* State Constitution Art. 8 § 7.

*Credit not to be loaned, exception:* State Constitution Art. 8 § 7.

*Group false arrest insurance:* RCW 35.23.460.

*Incorporation and annexation restrictions as to area:* RCW 35.21.010.

*Inhabitants at time of organization:* RCW 35.01.040.

*Insurance, group for employees:* RCW 35.23.460.

*Judgment against public corporations, enforcement:* RCW 6.17.080.

*Limitation upon actions by public corporations:* RCW 4.16.160.

*Limitations on indebtedness:* State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.

*Lost and found property:* Chapter 63.21 RCW.

*Metropolitan park districts, withdrawal from:* RCW 35.61.010.

*Municipal utilities:* Chapter 35.92 RCW.

*Municipal water and sewer facilities act:* Chapter 35.91 RCW.

*Organization under general laws required:* State Constitution Art. 11 § 10 (Amendment 40).

*Park commissioners:* RCW 35.23.170.

*Parking meter revenue, basis for revenue bonds:* RCW 35.23.454.

*Plats*

*regulation of surveys and plats:* RCW 58.10.040.  
*resurvey and correction of:* RCW 58.10.030.

*Revenue bonds, parking meter revenue as basis for:* RCW 35.23.454.

*School districts, educational service districts, agreements with other governmental entities for transportation of students or the public, or for other noncommon school purposes—Limitations:* RCW 28A.160.120.

*Service of summons on, personal service:* RCW 4.28.080.

*Sidewalks, construction, initial:* Chapter 35.70 RCW.

(2004 Ed.)

*Taxes, power of municipalities:* State Constitution Art. 11 § 12.

*Unclaimed property in hands of city police:* Chapter 63.32 RCW.

**35.27.010 Rights, powers, and privileges.** Every town shall be entitled the "Town of . . . . . ." (naming it), and by such name shall have perpetual succession, may sue, and be sued in all courts and places, and in all proceedings whatever; shall have and use a common seal, alterable at the pleasure of the town authorities, and may purchase, lease, receive, hold, and enjoy real and personal property and control, lease, sublease, convey, or otherwise dispose of the same for the common benefit. [1994 c 273 § 11; 1994 c 81 § 53; 1965 c 7 § 35.27.010. Prior: 1890 p 198 § 142; RRS § 9163.]

**Reviser's note:** This section was amended by 1994 c 81 § 53 and by 1994 c 273 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**35.27.030 Uncertain boundaries—Petition—Request for examination.** Whenever a petition is presented to the council of any incorporated town in this state, signed by not less than five electors of such town, setting forth that in the belief of the petitioners, the boundaries of said town are indefinite and uncertain and that on account of such indefiniteness and uncertainty the legality of the taxes levied within such town are in danger of being affected, and setting forth the particular causes or reasons of such alleged indefiniteness or uncertainty, it shall be the duty of the town council to cause the petition to be filed and recorded by the clerk, and to cause a copy of the same to be made and certified by the clerk and the corporate seal of such town to be attached to said certificate, and the mayor of such town shall forthwith present said certified copy of the petition to the board of county commissioners of the county wherein said town is situated, with a written request to be signed by him as such mayor that the said board of county commissioners proceed to examine the boundaries of such town or city, and make the same definite and certain. [1965 c 7 § 35.27.030. Prior: 1899 c 79 § 1; RRS § 9195.]

**35.27.040 Duty of county commissioners.** The board of county commissioners upon receipt of the certified copy of said petition, and the request aforesaid, shall cause the same to be filed in the office of the county auditor and forthwith proceed to examine the boundaries of the town and make the same definite and certain. For this purpose they may employ a competent surveyor, and shall commence at some recognized and undisputed point on the boundary line of the town, if such there be, and if there is no such recognized and undisputed point, they shall establish a starting point from the best data at their command and from such starting point they shall run a boundary line by courses and distances around such town, in one tract or body. [1965 c 7 § 35.27.040. Prior: 1899 c 79 § 2; RRS § 9196.]

**35.27.050 Report of survey.** The board of county commissioners, without unnecessary delay, shall make and file a report of their doings in the premises in the office of the county auditor, who shall transmit a certified copy thereof under the seal of the county, to the clerk of the town, and the clerk shall record the same in the records of the town, and

keep the copy on file in his office. The report shall contain the description of the boundary of the town, as fixed by the board, written in plain words and figures and the boundaries so made and fixed shall be the boundaries of the town, and all the territory included within the boundary lines so established shall be included in the town, and be a part thereof. [1965 c 7 § 35.27.050. Prior: 1899 c 79 § 3; RRS § 9197.]

**35.27.060 Expense of proceedings.** The expense of such proceedings shall be paid by the town at whose request the same is incurred. The county commissioners shall each receive as compensation, an amount not exceeding the amount allowed by law for their usual services as commissioners, and, any surveyor or other assistants employed by them, a reasonable compensation to be fixed and certified by said commissioners. [1965 c 7 § 35.27.060. Prior: 1899 c 79 § 4; RRS § 9198.]

**35.27.070 Town officers enumerated.** The government of a town shall be vested in a mayor and a council consisting of five members and a treasurer, all elective; the mayor shall appoint a clerk and a marshal; and may appoint a town attorney, pound master, street superintendent, a civil engineer, and such police and other subordinate officers and employees as may be provided for by ordinance. All appointive officers and employees shall hold office at the pleasure of the mayor, subject to any applicable law, rule, or regulation relating to civil service, and shall not be subject to confirmation by the town council. [1997 c 361 § 3; 1993 c 47 § 2; 1987 c 3 § 12; 1965 ex.s. c 116 § 14; 1965 c 7 § 35.27.070. Prior: 1961 c 89 § 3; prior: (i) 1903 c 113 § 4; 1890 p 198 § 143; RRS § 9164. (ii) 1941 c 108 § 2; 1939 c 87 § 2; Rem. Supp. 1941 § 9165-1a. (iii) 1943 c 183 § 1, part; 1941 c 91 § 1, part; 1911 c 33 § 1, part; 1903 c 113 § 5, part; 1890 p 198 § 144, part; Rem. Supp. 1943 § 9165.]

**Severability—1987 c 3:** See note following RCW 3.46.020.

**35.27.080 Eligibility to hold elective office.** No person shall be eligible to or hold an elective office in a town unless he or she is a resident and registered voter in the town. [1997 c 361 § 8; 1965 c 7 § 35.27.080. Prior: 1890 p 200 § 149; RRS § 9170.]

**35.27.090 Elections—Terms of office.** All general municipal elections in towns shall be held biennially in the odd-numbered years as provided in \*RCW 29.13.020. The term of office of the mayor and treasurer shall be four years and until their successors are elected and qualified and assume office in accordance with \*RCW 29.04.170: PROVIDED, That the term of the treasurer shall not commence in the same biennium in which the term of the mayor commences. Councilmen shall be elected for four year terms and until their successors are elected and qualified and assume office in accordance with \*RCW 29.04.170; three at one election and two at the next succeeding biennial election. [1979 ex.s. c 126 § 23; 1965 c 7 § 35.27.090. Prior: 1963 c 200 § 16; 1961 c 89 § 4; prior: 1955 c 55 § 7; 1943 c 183 § 1, part; 1941 c 91 § 1, part; 1911 c 33 § 1, part; 1903 c 113 § 5, part; 1890 p 198 § 144, part; Rem. Supp. 1943 § 9165, part.]

**\*Reviser's note:** RCW 29.13.020 and 29.04.170 were recodified as RCW 29A.04.330 and 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**35.27.100 Conduct of elections.** All elections in towns shall be held in accordance with the general election laws of the state. [1994 c 223 § 21; 1965 c 7 § 35.27.100. Prior: 1890 p 200 § 148; RRS § 9169.]

*Elections: Title 29A RCW.*

**35.27.120 Oath and bond of officers.** Every officer of a town before entering upon the duties of his office shall take and file with the county auditor his oath of office. The clerk, treasurer, and marshal before entering upon their respective duties shall also each execute a bond approved by the council in such penal sum as the council by ordinance may determine, conditioned for the faithful performance of his duties including in the same bond the duties of all offices of which he is made ex officio incumbent.

All bonds, when approved, shall be filed with the town clerk, except the bonds of the clerk which shall be filed with the mayor. [1986 c 167 § 19; 1965 c 7 § 35.27.120. Prior: 1890 p 199 § 145; RRS § 9166.]

**Severability—1986 c 167:** See note following RCW 29A.04.049.

**35.27.130 Compensation of officers and employees—Expenses—Nonstate pensions.** The mayor and members of the town council may be reimbursed for actual expenses incurred in the discharge of their official duties upon presentation of a claim therefor and its allowance and approval by resolution of the town council. The mayor and members of the council may also receive such salary as the council may fix by ordinance.

The treasurer and treasurer-clerk shall severally receive at stated times a compensation to be fixed by ordinance.

The compensation of all other officers and employees shall be fixed from time to time by the council.

Any town that provides a pension for any of its employees under a plan not administered by the state must notify the state auditor of the existence of the plan at the time of an audit of the town by the auditor. No town may establish a pension plan for its employees that is not administered by the state, except that any defined contribution plan in existence as of January 1, 1990, is deemed to have been authorized. No town that provides a defined contribution plan for its employees as authorized by this section may make any material changes in the terms or conditions of the plan after June 7, 1990. [1993 c 47 § 3; 1990 c 212 § 2; 1973 1st ex.s. c 87 § 2; 1969 ex.s. c 270 § 9; 1965 c 105 § 2; 1965 c 7 § 35.27.130. Prior: 1961 c 89 § 5; prior: (i) 1941 c 115 § 2; 1890 p 200 § 147; Rem. Supp. 1941 § 9168. (ii) 1921 c 24 § 1, part; 1890 p 209 § 168, part; RRS § 9187, part. (iii) 1890 p 214 § 173; RRS § 9191. (iv) 1943 c 183 § 1, part; 1941 c 91 § 1, part; 1911 c 33 § 1, part; 1903 c 113 § 5, part; 1890 p 198 § 144, part; RRS § 9165, part.]

**35.27.140 Vacancies.** The council of a town may declare a council position vacant if that councilmember is absent from the town for three consecutive council meetings without the permission of the council. In addition, a vacancy

in an elective office shall occur and shall be filled as provided in chapter 42.12 RCW.

A vacancy in any other office shall be filled by appointment by the mayor. [1994 c 223 § 22; 1965 c 7 § 35.27.140. Prior: (i) 1903 c 113 § 6; 1890 p 199 § 146; RRS § 9167. (ii) 1907 c 228 § 5, part; RRS § 9203, part.]

**35.27.160 Mayor—Duties—Powers—Mayor pro tempore.** The mayor shall preside over all meetings of the council at which he or she is present. A mayor pro tempore may be chosen by the council for a specified period of time, not to exceed six months, to act as the mayor in the absence of the mayor. The mayor shall sign all warrants drawn on the treasurer and shall sign all written contracts entered into by the town. The mayor may administer oaths and affirmations, and take affidavits and certify them. The mayor shall sign all conveyances made by the town and all instruments which require the seal of the town.

The mayor is authorized to acknowledge the execution of all instruments executed by the town which require acknowledgment. [1988 c 196 § 1; 1965 c 7 § 35.27.160. Prior: 1890 p 209 § 167; RRS § 9186.]

**35.27.170 Town treasurer—Duties.** The town treasurer shall receive and safely keep all money which comes into his hands as treasurer, for all of which he shall give duplicate receipts, one of which shall be filed with the clerk. He shall pay out the money on warrants signed by the mayor and countersigned by the clerk and not otherwise. He shall make monthly settlements with the clerk. [1965 c 7 § 35.27.170. Prior: 1961 c 89 § 6; prior: 1921 c 24 § 1, part; 1890 p 209 § 168, part; RRS § 9187, part.]

**35.27.180 Treasurer and clerk may be combined.** The council of every town may provide by ordinance that the office of treasurer be combined with that of clerk or that the office of clerk be combined with that of treasurer. This ordinance shall not be voted upon until the next regular meeting after its introduction and shall require the vote of at least two-thirds of the council. The ordinance shall provide the date when the consolidation shall take place which date shall be not less than three months from the date the ordinance goes into effect. [1965 c 7 § 35.27.180. Prior: (i) 1945 c 58 § 1; Rem. Supp. 1945 § 9177-1. (ii) 1945 c 58 § 4, part; Rem. Supp. 1945 § 9177-4, part.]

**35.27.190 Effect of consolidation of offices.** Upon the consolidation of the office of treasurer with that of clerk, the office of treasurer shall be abolished and the clerk shall exercise all the powers and perform all the duties required by statute or ordinance to be performed by the treasurer; in the execution of any papers his designation as clerk shall be sufficient.

Upon the consolidation of the office of clerk with that of treasurer, the treasurer shall exercise all the powers vested in and perform all the duties required to be performed by the clerk. [1965 c 7 § 35.27.190. Prior: (i) 1945 c 58 § 2; Rem. Supp. 1945 § 9177-2. (ii) 1945 c 58 § 3; Rem. Supp. 1945 § 9177-3.]

(2004 Ed.)

**35.27.200 Abandonment of consolidation.** Every town which has combined the office of treasurer with that of clerk or the office of clerk with that of treasurer may terminate the combination by ordinance, fixing the time when the combination shall cease and providing that the duties thereafter be performed by separate officials. If the office of treasurer was combined with that of clerk, the mayor shall appoint a treasurer who shall serve until the next town election when a treasurer shall be elected for the term as provided by law. [1965 c 7 § 35.27.200. Prior: 1945 c 58 § 4, part; Rem. Supp. 1945 § 9177-4, part.]

**35.27.210 Duty of officers collecting moneys.** Every officer collecting or receiving any money belonging to a town shall settle for it with the clerk on the first Monday of each month and immediately pay it into the treasury on the order of the clerk to be credited to the fund to which it belongs. [1965 c 7 § 35.27.210. Prior: 1890 p 214 § 175; RRS § 9193.]

**35.27.220 Town clerk—Duties.** The town clerk shall be custodian of the seal of the town. He may appoint a deputy for whose acts he and his bondsmen shall be responsible; he and his deputy may administer oaths or affirmations and certify to them, and may take affidavits and depositions to be used in any court or proceeding in the state.

He shall make a quarterly statement in writing showing the receipts and expenditures of the town for the preceding quarter and the amount remaining in the treasury.

At the end of every fiscal year he shall make a full and detailed statement of receipts and expenditures of the preceding year and a full statement of the financial condition of the town which shall be published.

He shall perform such other services as may be required by statute or by ordinances of the town council.

He shall keep a full and true account of all the proceedings of the council. [1965 c 7 § 35.27.220. Prior: 1890 p 210 § 170, part; RRS § 9188, part.]

**35.27.230 Records to be kept by clerk.** The proceedings of the town council shall be kept in a book marked "records of council."

The town clerk shall keep a book marked "town accounts," in which shall be entered on the debit side all moneys received by the town including but not limited to proceeds from licenses and general taxes and in which shall be entered on the credit side all warrants drawn on the treasury.

He shall also keep a book marked "marshal's account" in which he shall charge the marshal with all licenses delivered to him and credit him with all money collected and paid in.

He shall also keep a book marked "treasurer's account" in which he shall keep a full account of the transactions of the town with the treasurer.

He shall also keep a book marked "licenses" in which he shall enter all licenses issued by him—the date thereof, to whom issued, for what, the time they expire, and the amount paid.

Each of the foregoing books, except the records of the council, shall have a general index sufficiently comprehensive to enable a person readily to ascertain matters contained therein.

He shall also keep a book marked "demands and warrants" in which he shall enter every demand against the town at the time of filing it. He shall state therein the final disposition of each demand and if it is allowed and a warrant drawn, he shall state the number of the warrant and its date. This book shall contain an index in which reference shall be made to each demand. [1965 c 7 § 35.27.230. Prior: 1890 p 210 § 170, part; RRS § 9188, part.]

**35.27.240 Town marshal—Police department.** The department of police in a town shall be under the direction and control of the marshal subject to the direction of the mayor. He may pursue and arrest violators of town ordinances beyond the town limits.

His lawful orders shall be promptly executed by deputies, police officers and watchmen. Every citizen shall lend him aid, when required, for the arrest of offenders and maintenance of public order. He may appoint, subject to the approval of the mayor, one or more deputies, for whose acts he and his bondsmen shall be responsible, whose compensation shall be fixed by the council. With the concurrence of the mayor, he may appoint additional policemen for one day only when necessary for the preservation of public order.

He shall have the same authority as that conferred upon sheriffs for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or public authorities in the lawful exercise of their functions and shall be entitled to the same protection.

He shall execute and return all process issued and directed to him by any legal authority and for his services shall receive the same fees as are paid to constables. He shall perform such other services as the council by ordinance may require. [1987 c 3 § 13; 1977 ex.s. c 316 § 24; 1965 c 125 § 1; 1965 c 7 § 35.27.240. Prior: 1963 c 191 § 1; 1890 p 213 § 172; RRS § 9190.]

**Severability—1987 c 3:** See note following RCW 3.46.020.

**Severability—1977 ex.s. c 316:** See note following RCW 70.48.020.

**35.27.250 Town attorney—Duties.** The town attorney shall advise the town authorities and officers in all legal matters pertaining to the business of the town. [1965 c 7 § 35.27.250. Prior: 1890 p 212 § 171; RRS § 9189.]

*Employment of legal interns: RCW 35.21.760.*

**35.27.260 Park commissioners.** See RCW 35.23.170.

**35.27.270 Town council—Oath—Meetings.** The town council shall meet in January succeeding the date of the general municipal election, shall take the oath of office, and shall hold regular meetings at least once each month at such times as may be fixed by ordinance. Special meetings may be called at any time by the mayor or by three councilmembers, by written notice as provided in RCW 42.30.080. No resolution or order for the payment of money shall be passed at any other than a regular meeting. No such resolution or order shall be valid unless passed by the votes of at least three councilmembers.

All meetings of the council shall be held at such places as may be designated by the town council. All final actions on resolutions and ordinances must take place within the corpo-

rate limits of the town. All meetings of the town council must be public. [1993 c 199 § 1; 1965 c 7 § 35.27.270. Prior: (i) 1890 p 200 § 150; RRS § 9171. (ii) 1890 p 201 § 153, part; RRS § 9174, part.]

*Times for holding elections: RCW 29A.04.311 through 29A.04.330.*

**35.27.280 Town council—Quorum—Rules—Journal.** A majority of the councilmembers shall constitute a quorum for the transaction of business, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.

The mayor shall preside at all meetings of the council. The mayor shall have a vote only in case of a tie in the votes of the councilmembers. In the absence of the mayor the council may appoint a president pro tempore; in the absence of the clerk, the mayor or president pro tempore, shall appoint one of the council members as clerk pro tempore. The council may establish rules for the conduct of its proceedings and punish any members or other person for disorderly behavior at any meeting. At the desire of any member, the ayes and noes shall be taken on any question and entered in the journal. [1965 c 107 § 2; 1965 c 7 § 35.27.280. Prior: (i) 1890 p 201 § 151; RRS § 9172. (ii) 1890 p 201 § 152, part; RRS § 9173, part.]

**35.27.290 Ordinances—Style—Signatures.** The enacting clause of all ordinances shall be as follows: "Be it ordained by the council of the town of . . . ."

Every ordinance shall be signed by the mayor and attested by the clerk. [1965 c 7 § 35.27.290. Prior: 1917 c 99 § 1, part; 1890 p 204 § 155, part; RRS § 9178, part.]

**35.27.300 Ordinances—Publication—Summary—Public notice of hearings and meeting agendas.** Promptly after adoption, the text of each ordinance or a summary of the content of each ordinance shall be published at least once in the official newspaper of the town.

For purposes of this section, a summary shall mean a brief description which succinctly describes the main points of the ordinance. Publication of the title of an ordinance authorizing the issuance of bonds, notes, or other evidences of indebtedness shall constitute publication of a summary of that ordinance. When the town publishes a summary, the publication shall include a statement that the full text of the ordinance will be mailed upon request.

An inadvertent mistake or omission in publishing the text or a summary of the content of an ordinance shall not render the ordinance invalid.

In addition to the requirement that a town publish the text or a summary of the content of each adopted ordinance, every town shall establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the town's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the town determines will satisfy the intent of this requirement. [1994 c 273 § 12; 1988 c 168 § 5; 1987 c 400 §

2; 1985 c 469 § 26; 1965 c 7 § 35.27.300. Prior: 1917 c 99 § 1, part; 1890 p 204 § 155, part; RRS § 9178, part.]

**35.27.310 Ordinances—Clerk to keep book of ordinances.** The town clerk shall keep a book marked "ordinances" into which he shall copy all town ordinances, with his certificate annexed to said copy stating that the foregoing ordinance is a true and correct copy of an ordinance of the town, and giving the number and title of the ordinance, and stating that it has been published or posted according to law. Such record copy, with the clerk's certificate, shall be prima facie evidence of the contents of the ordinance and of its passage and publication, and shall be admissible as such in any court or proceeding. Such record shall not be filed in any case but shall be returned to the custody of the clerk. Nothing herein shall be construed to prevent the proof of the passage and publication of ordinances in the usual way. The book of ordinances shall have a general index sufficiently comprehensive to enable a person readily to ascertain matters contained therein. [1965 c 7 § 35.27.310. Prior: 1890 p 210 § 170, part; RRS § 9188, part.]

**35.27.330 Ordinances granting franchises—Requisites.** No ordinance or resolution granting any franchise for any purpose shall be passed by the council on the day of its introduction, nor within five days thereafter, nor at any other than a regular meeting, and no such ordinance or resolution shall have any validity or effect unless passed by the vote of at least three councilmen. The town council may require a bond in a reasonable amount from any persons and corporations obtaining a franchise from the town conditioned for the faithful performance of the conditions and terms of the franchise and providing a recovery on the bond in case of failure to perform the terms and conditions of the franchise. [1965 c 7 § 35.27.330. Prior: (i) 1890 p 201 § 153, part; RRS § 9174, part. (ii) 1907 c 228 § 1, part; RRS § 9199, part.]

**35.27.340 Audit and allowance of demands against town.** All demands against a town shall be presented to and audited by the council in accordance with such regulations as they may by ordinance prescribe. Upon allowance of a demand the mayor shall draw a warrant therefor upon the treasurer; the warrant shall be countersigned by the clerk and shall specify the purpose for which it is drawn.

The town clerk and his deputy shall take all necessary affidavits to claims against the town and certify them. [1965 c 7 § 35.27.340. Prior: (i) 1890 p 210 § 170, part; RRS § 9188, part. (ii) 1890 p 204 § 156; RRS § 9179.]

**35.27.350 Contract for town printing.** Every town may designate any daily or weekly newspaper published or of general circulation therein as its official newspaper and all notices published in that newspaper for the period and in the manner provided by law or the ordinances of the town shall be due and legal notice. [1965 c 7 § 35.27.350. Prior: 1903 c 120 § 1; RRS § 9177.]

**35.27.362 Contracts, purchases, advertising—Call for bids—Exceptions.** See RCW 35.23.352.

**35.27.370 Specific powers enumerated.** The council of said town shall have power:

(1) To pass ordinances not in conflict with the Constitution and laws of this state, or of the United States;

(2) To purchase, lease or receive such real estate and personal property as may be necessary or proper for municipal purposes, and to control, dispose of and convey the same for the benefit of the town; to acquire, own, and hold real estate for cemetery purposes either within or without the corporate limits, to sell and dispose of such real estate, to plat or replat such real estate into cemetery lots and to sell and dispose of any and all lots therein, and to operate, improve and maintain the same as a cemetery;

(3) To contract for supplying the town with water for municipal purposes, or to acquire, construct, repair and manage pumps, aqueducts, reservoirs, or other works necessary or proper for supplying water for use of such town or its inhabitants, or for irrigating purposes therein;

(4) To establish, build and repair bridges, to establish, lay out, alter, widen, extend, keep open, improve, and repair streets, sidewalks, alleys, squares and other public highways and places within the town, and to drain, sprinkle and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, pave, plank, macadamize, gravel and curb the same, in whole or in part, and to construct gutters, culverts, sidewalks and crosswalks therein, or on any part thereof; to cause to be planted, set out and cultivated trees therein, and generally to manage and control all such highways and places;

(5) To establish, construct and maintain drains and sewers, and shall have power to compel all property owners on streets along which sewers are constructed to make proper connections therewith, and to use the same for proper purposes when such property is improved by the erection thereon of a building or buildings; and in case the owners of such improved property on such streets shall fail to make such connections within the time fixed by such council, they may cause such connections to be made, and to assess against the property in front of which such connections are made the costs and expenses thereof;

(6) To provide fire engines and all other necessary or proper apparatus for the prevention and extinguishment of fires;

(7) To impose and collect an annual license on every dog within the limits of the town, to prohibit dogs running at large, and to provide for the killing of all dogs found at large and not duly licensed;

(8) To levy and collect annually a property tax, for the payment of current expenses and for the payment of indebtedness (if any indebtedness exists) within the limits authorized by law;

(9) To license, for purposes of regulation and revenue, all and every kind of business, authorized by law and transacted and carried on in such town; and all shows, exhibitions and lawful games carried on therein and within one mile of the corporate limits thereof; to fix the rate of license tax upon the same, and to provide for the collection of the same, by suit or otherwise; to regulate, restrain, or prohibit the running at large of any and all domestic animals within the city limits, or any part or parts thereof, and to regulate the keeping of such animals within any part of the city; to establish, maintain and

regulate a common pound for estrays, and to appoint a poundkeeper, who shall be paid out of the fines and fees imposed on, and collected from, the owners of any impounded stock;

(10) To improve the rivers and streams flowing through such town or adjoining the same; to widen, straighten and deepen the channels thereof, and to remove obstructions therefrom; to prevent the pollution of streams or water running through such town, and for this purpose shall have jurisdiction for two miles in either direction; to improve the waterfront of the town, and to construct and maintain embankments and other works to protect such town from overflow;

(11) To erect and maintain buildings for municipal purposes;

(12) To grant franchises or permits to use and occupy the surface, the overhead and the underground of streets, alleys and other public ways, under such terms and conditions as it shall deem fit, for any and all purposes, including but not being limited to the construction, maintenance and operation of railroads, street railways, transportation systems, water, gas and steam systems, telephone and telegraph systems, electric lines, signal systems, surface, aerial and underground tramways;

(13) To punish the keepers and inmates and lessors of houses of ill fame, and keepers and lessors of gambling houses and rooms and other places where gambling is carried on or permitted, gamblers and keepers of gambling tables;

(14) To impose fines, penalties and forfeitures for any and all violations of ordinances, and for any breach or violation of any ordinance, to fix the penalty by fine or imprisonment, or both; but no such fine shall exceed five thousand dollars, nor the term of imprisonment exceed one year, except that the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime; or to provide that violations of ordinances constitute a civil violation subject to a monetary penalty, but no act which is a state crime may be made a civil violation;

(15) To operate ambulance service which may serve the town and surrounding rural areas and, in the discretion of the council, to make a charge for such service;

(16) To make all such ordinances, bylaws, rules, regulations and resolutions not inconsistent with the Constitution and laws of the state of Washington, as may be deemed expedient to maintain the peace, good government and welfare of the town and its trade, commerce and manufacturers, and to do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter. [1993 c 83 § 7; 1986 c 278 § 6; 1984 c 258 § 805; 1977 ex.s. c 316 § 25; 1965 ex.s. c 116 § 15; 1965 c 127 § 1; 1965 c 7 § 35.27.370. Prior: 1955 c 378 § 4; 1949 c 151 § 1; 1945 c 214 § 1; 1941 c 74 § 1; 1927 c 207 § 1; 1925 ex.s. c 159 § 1; 1895 c 32 § 1; 1890 p 201 § 154; Rem. Supp. 1949 § 9175.]

**Effective date—1993 c 83:** See note following RCW 35.21.163.

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Severability—1977 ex.s. c 316:** See note following RCW 70.48.020.

**Validating—1925 ex.s. c 159:** "All franchises, permits and rights of way heretofore granted by any municipality of the fourth class to any person, firm or corporation, to construct, maintain or operate surface, underground

and aerial tramways and other means of conveyance over, above, across, upon and along its streets, highways and alleys are hereby validated, ratified and confirmed." [1925 ex.s. c 159 § 2.]

**35.27.372 City and town license fees and taxes on financial institutions.** See chapter 82.14A RCW.

**35.27.373 City license fees or taxes on certain business activities to be at a single uniform rate.** See RCW 35.21.710.

**35.27.375 Additional powers—Parking meter revenue for revenue bonds.** See RCW 35.23.454.

**35.27.376 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.** See chapter 80.58 RCW.

**35.27.377 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts.** See RCW 87.03.825 through 87.03.840.

**35.27.380 Additional powers—Eminent domain.** Whenever it becomes necessary for a town to take or damage private property for the purpose of establishing, laying out, extending, and widening streets and other public highways and places within the town, or for the purpose of rights-of-way for drains, sewers, and aqueducts, and for the purpose of widening, straightening, or diverting the channels of streams and the improvement of waterfronts, and the council cannot agree with the owner thereof as to the price to be paid, the council may direct proceedings to be taken under the general laws of the state to procure the same. [1965 c 7 § 35.27.380. Prior: 1890 p 207 § 162; RRS § 9182.]

*Eminent domain: Chapter 8.12 RCW.*

**35.27.385 Additional powers—Construction and operation of boat harbors, marinas, docks, etc.** See RCW 35.23.455.

**35.27.390 Employees' group insurance.** See RCW 35.23.460.

**35.27.400 Fire limits—Parks.** Towns are hereby given the power to establish fire limits with proper regulations; to acquire by purchase or otherwise, lands for public parks within or without the limits of the town, and to improve the same. [1965 c 7 § 35.27.400. Prior: 1961 c 58 § 1; 1899 c 103 § 1; RRS § 9176.]

**35.27.410 Nuisances.** Every act or thing done or being within the limits of a town, which is declared by law or by ordinance to be a nuisance shall be a nuisance and shall be so considered in all actions and proceedings. All remedies given by law for the prevention and abatement of nuisances shall apply thereto. [1965 c 7 § 35.27.410. Prior: 1890 p 205 § 160; RRS § 9181.]

*Nuisances: Chapter 9.66 RCW.*

**35.27.500 Taxation—Street poll tax.** A town may impose upon and collect from every inhabitant of the town over eighteen years of age an annual street poll tax not exceeding two dollars and no other road poll tax shall be collected within the limits of the town. [1973 1st ex.s. c 154 § 52; 1971 ex.s. c 292 § 62; 1965 c 7 § 35.27.500. Prior: 1905 c 75 § 1, part; RRS § 9210, part.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**35.27.510 Utilities—Transfer of part of net earnings to current expense fund.** When any special fund of a public utility department of a town has retired all bond and warrant indebtedness and is on a cash basis, if a reserve or depreciation fund has been created in an amount satisfactory to the state auditor and if the fixing of the rates of the utility is governed by contract with the supplier of water, electrical energy, or other commodity sold by the town to its inhabitants, and the rates are at the lowest possible figure, the town council may set aside such portion of the net earnings of the utility as it may deem advisable and transfer it to the town's current expense fund: PROVIDED, That no amount in excess of fifty percent of the net earnings shall be so set aside and transferred except with the unanimous approval of the council and mayor. [1995 c 301 § 38; 1965 c 7 § 35.27.510. Prior: 1939 c 96 § 1; 1929 c 98 § 1; RRS § 9185-1.]

**35.27.515 Criminal code repeals by town operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration.** A town operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes or repeal a provision of its municipal code which defines a crime equivalent to an offense listed in RCW 46.63.020 unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 207.]

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**35.27.550 Off-street parking space and facilities—Authorized—Declared public use.** Towns are authorized to provide off-street parking space and facilities for motor vehicles, and the use of real property for such purpose is declared to be a public use. [1994 c 81 § 54; 1965 c 7 § 35.27.550. Prior: 1961 c 33 § 1.]

*Off-street parking facilities, cities of the first, second, and third classes: Chapter 35.86 RCW.*

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**35.27.560 Off-street parking space and facilities—Financing.** In order to provide for off-street parking space and/or facilities, such towns are authorized, in addition to their powers for financing public improvements, to finance their acquisition through the issuance and sale of revenue bonds and general obligation bonds. Any bonds issued by such towns pursuant to this section shall be issued in the manner and within the limitations prescribed by the Constitution and the laws of this state. In addition local improvement districts may be created and their financing procedures used for this purpose in accordance with the provisions of Title 35 RCW, as now or hereafter amended. Such towns may finance from their general budget, costs of land acquisition, planning, engineering, location, design and construction to the off-street parking. [1965 c 7 § 35.27.560. Prior: 1961 c 33 § 2.]

**35.27.570 Off-street parking space and facilities—Acquisition and disposition of real property.** Such towns are authorized to obtain by lease, purchase, donation and/or gift, or by eminent domain in the manner provided by law for the exercise of this power by cities, such real property for off-street parking as the legislative bodies thereof determine to be necessary by ordinance. Such property may be sold, transferred, exchanged, leased, or otherwise disposed of by the town when its legislative body has determined by ordinance such property is no longer necessary for off-street parking purposes. [1965 c 7 § 35.27.570. Prior: 1961 c 33 § 3.]

*Eminent domain: Chapter 8.12 RCW.*

**35.27.580 Off-street parking space and facilities—Operation—Lease.** Such towns are authorized to establish the methods of operation of off-street parking space and/or facilities by ordinance, which may include leasing or municipal operation. [1965 c 7 § 35.27.580. Prior: 1961 c 33 § 4.]

**35.27.590 Off-street parking space and facilities—Hearing prior to establishment.** Before the establishment of any off-street parking space and/or facilities, the town shall hold a public hearing thereon, prior to the adoption of any ordinance relating to the leasing or acquisition of property, and for the financing thereof for this purpose. [1965 c 7 § 35.27.590. Prior: 1961 c 33 § 5.]

**35.27.600 Off-street parking space and facilities—Construction.** Insofar as the provisions of RCW 35.27.550 through 35.27.600 are inconsistent with the provisions of any other law, the provisions of RCW 35.27.550 through 35.27.600 shall be controlling. [1965 c 7 § 35.27.600. Prior: 1961 c 33 § 7.]

**35.27.610 Purchase of electric power and energy from joint operating agency.** A town may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the town must make the payments required by the contract whether or not a

project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or public utility district under the contract or other instrument. [2003 c 138 § 6.]

### Chapter 35.30 RCW UNCLASSIFIED CITIES

#### Sections

35.30.010	Additional powers.
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35.30.018	Publication of ordinances or summary—Public notice of hearings and meeting agendas.
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35.30.080	Alternative election procedures—Resolution required.
35.30.100	Criminal code repeal by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration.

**35.30.010 Additional powers.** The council, or other legislative body, of all cities within the state of Washington which were created by special charter prior to the adoption of the state Constitution, and which have not since reincorporated under any general statute, shall have, in addition to the powers specially granted by the charter of such cities, the following powers:

- (1) To construct, establish and maintain drains and sewers.
- (2) To impose and collect an annual license not exceeding two dollars on every dog owned or harbored within the limits of the city.
- (3) To levy and collect annually a property tax on all property within such city.
- (4) To license all shows, exhibitions and lawful games carried on therein; and to fix the rates of license tax upon the same, and to provide for the collection of the same by suit or otherwise.
- (5) To permit, under such restrictions as they may deem proper, the construction and maintenance of telephone, telegraph and electric light lines therein.
- (6) To impose fines, penalties and forfeitures for any and all violations of ordinances; and for any breach or violation of any ordinance, to fix the penalty by fine or imprisonment or both, but no such fine shall exceed five thousand dollars nor the term of imprisonment exceed one year.
- (7) To cause all persons imprisoned for violation of any ordinance to labor on the streets or other public property or works within the city.
- (8) To make all such ordinances, bylaws and regulations, not inconsistent with the Constitution and laws of the state of

Washington, as may be deemed expedient to maintain the peace, good government and welfare of the city, and to do and perform any and all other acts and things necessary and proper to carry out the purposes of the municipal corporation. [1984 c 258 § 806; 1965 c 7 § 35.30.010. Prior: 1899 c 69 § 1; RRS § 8944.]

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**35.30.011 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.** See chapter 80.58 RCW.

**35.30.014 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts.** See RCW 87.03.825 through 87.03.840.

**35.30.018 Publication of ordinances or summary—Public notice of hearings and meeting agendas.** Promptly after adoption, the text of each ordinance or a summary of the content of each ordinance shall be published at least once in the official newspaper of the city.

For purposes of this section, a summary shall mean a brief description which succinctly describes the main points of the ordinance. Publication of the title of an ordinance authorizing the issuance of bonds, notes, or other evidences of indebtedness shall constitute publication of a summary of that ordinance. When the city publishes a summary, the publication shall include a statement that the full text of the ordinance will be mailed upon request.

An inadvertent mistake or omission in publishing the text or a summary of the content of an ordinance shall not render the ordinance invalid.

In addition to the requirement that a city publish the text or a summary of the content of each adopted ordinance, every city shall establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this requirement. [1994 c 273 § 13; 1988 c 168 § 6; 1985 c 469 § 101.]

**35.30.020 Sewer systems—Sewer fund.** The city council of all unclassified cities in this state are authorized to construct a sewer or system of sewers and to keep the same in repair; the cost of such sewer or sewers shall be paid from a special fund to be known as the "sewer fund" to be provided by the city council, which fund shall be created by a tax on all the property within the limits of such city: PROVIDED, That such tax shall not exceed one dollar and twenty-five cents per thousand dollars of the assessed value of all real and personal property within such city for any one year. Whenever it shall become necessary for the city to take or damage private property for the purpose of making or repairing sewers, and the city council cannot agree with the owner as to the price to be paid, the city council may direct proceedings to be taken by

law for the condemnation of such property for such purpose. [1973 1st ex.s. c 195 § 18; 1965 c 7 § 35.30.020. Prior: 1899 c 69 § 2; RRS § 8945.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

### 35.30.030 Assessment, levy and collection of taxes.

The city council shall have power to provide by ordinance a complete system for the assessment, levy, and collection of all city taxes. All taxes assessed together with any percentage imposed for delinquency and the cost of collection, shall constitute liens on the property assessed from and after the first day of November each year; which liens may be enforced by a summary sale of such property, and the execution and delivery of all necessary certificates and deeds therefor, under such regulations as may be prescribed by ordinance or by action in any court of competent jurisdiction to foreclose such liens: PROVIDED, That any property sold for taxes shall be subject to redemption within the time and within the manner provided or that may hereafter be provided by law for the redemption of property sold for state and county taxes. [1965 c 7 § 35.30.030. Prior: 1899 c 69 § 3; RRS § 8946.]

**35.30.040 Limitation of indebtedness.** Whenever it is deemed advisable to do so by the city council thereof, any city having a corporate existence in this state at the time of the adoption of the Constitution thereof is hereby authorized and empowered to borrow money and to contract indebtedness in any other manner for general municipal purposes, not exceeding in amount, together with the existing general indebtedness of the city, the amount of indebtedness authorized by chapter 39.36 RCW, as now or hereafter amended, to be incurred without the assent of the voters. [1965 c 7 § 35.30.040. Prior: 1890 p 225 § 1; RRS § 9532.]

**Construction—1890 p 227:** "That when this act comes in conflict with any provision, limitation or restriction in any local or special law or charter existing at the time that the Constitution of the State of Washington was adopted, this statute shall govern and control." [1890 p 227 § 6.] This applies to RCW 35.30.040 through 35.30.060.

*Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.*

**35.30.050 Additional indebtedness with popular vote.** Any such city may borrow money or contract indebtedness for strictly municipal purposes over the amount specified in RCW 35.30.040, but not exceeding in amount, together with existing general indebtedness, the amount of indebtedness authorized by chapter 39.36 RCW as now or hereafter amended, to be incurred with the assent of the voters, through the council of the city, whenever three-fifths of the voters assent thereto, at an election to be held for that purpose, at such time, upon such reasonable notice, and in the manner presented by the city council, not inconsistent with the general election laws. [1965 c 7 § 35.30.050. Prior: 1890 p 225 § 2; RRS § 9533.]

*Elections: Title 29A RCW.*

**35.30.060 Additional indebtedness for municipal utilities.** In addition to the powers granted in RCW 35.30.040 and 35.30.050, any such city, through its council

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may borrow money or contract indebtedness not exceeding in amount the amount of indebtedness authorized by chapter 39.36 RCW, as now or hereafter amended, for the purpose of supplying the city with water, artificial light, or sewers, when the plants used therefor are owned and controlled by the city, whenever three-fifths of the voters assent thereto at an election to be held for that purpose, according to the provisions of RCW 35.30.050. [1965 c 7 § 35.30.060. Prior: 1890 p 225 § 3; RRS § 9534.]

**35.30.070 Adoption of powers granted to code cities—Resolution required.** If the legislative body of an unclassified city determines that it would serve the best interests and general welfare of such municipality, the body may by resolution adopt any powers granted to cities classified under Title 35A RCW including, but not limited to, the power to define the functions, powers, and duties of its officers and employees. [2003 c 42 § 1.]

**35.30.080 Alternative election procedures—Resolution required.** (1) When a majority of the legislative body of an unclassified city determines that it would serve the best interests and general welfare of such municipality to change the election procedures of such city to the procedures specified in this section, such legislative body may, by resolution, declare its intention to adopt such procedures for the city. Such resolution must be adopted at least one hundred eighty days before the general municipal election at which the new election procedures are implemented. Within ten days after the passage of the resolution, the legislative body shall cause it to be published at least once in a newspaper of general circulation within the city.

(2) All general municipal elections in an unclassified city adopting a resolution under subsection (1) of this section shall be held biennially in the odd-numbered years as provided in \*RCW 29.13.020 and shall be held in accordance with the general election laws of the state.

The term of the treasurer shall not commence in the same biennium in which the term of the mayor commences. Candidates for the city council shall run for specific council positions. The staggering of terms of city officers shall be established at the first election, where the simple majority of the persons elected as councilmembers receiving the greatest numbers of votes shall be elected to four-year terms of office and the remainder of the persons elected as councilmembers and the treasurer shall be elected to two-year terms of office. Thereafter, all elected city officers shall be elected for four-year terms and until their successors are elected and qualified and assume office in accordance with \*\*RCW 29.04.170. [2003 c 42 § 2.]

**Reviser's note:** \*(1) RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

\*\*\*(2) RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**35.30.100 Criminal code repeal by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration.** A city operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes unless the municipality has reached an agreement with the appropriate county under

chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 208.]

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

### Chapter 35.31 RCW

#### ACCIDENT CLAIMS AND FUNDS

##### Sections

- 35.31.020 Charter cities—Manner of filing.
- 35.31.040 Noncharter cities and towns—Manner of filing—Report.
- 35.31.050 Accident fund—Warrants for judgments.
- 35.31.060 Tax levy for fund.
- 35.31.070 Surplus to current expense fund.

##### Actions against

*public corporations:* RCW 4.08.120.  
*state:* Chapter 4.92 RCW.

*Claims, reports, etc., filing:* RCW 1.12.070.

*Tortious conduct of political subdivision, municipal corporations and quasi municipal corporations, liability for damages:* Chapter 4.96 RCW.

**35.31.020 Charter cities—Manner of filing.** The provisions of chapter 35.31 RCW shall be applied notwithstanding any provisions to the contrary in any charter of any city permitted by law to have a charter; however, charter provisions not inconsistent herewith shall continue to apply. All claims for damages against a charter city shall be filed in the manner set forth in chapter 4.96 RCW. [1993 c 449 § 7; 1967 c 164 § 12; 1965 c 7 § 35.31.020. Prior: 1957 c 224 § 3; 1917 c 96 § 1; 1915 c 148 § 1; 1909 c 83 § 2; RRS § 9479.]

**Purpose—Severability—1993 c 449:** See notes following RCW 4.96.010.

**Purpose—Severability—1967 c 164:** See notes following RCW 4.96.010.

*Tortious conduct of political subdivisions and municipal corporations, liability for damages:* Chapter 4.96 RCW.

**35.31.040 Noncharter cities and towns—Manner of filing—Report.** All claims for damages against noncharter cities and towns shall be filed in the manner set forth in chapter 4.96 RCW.

No ordinance or resolution shall be passed allowing such claim or any part thereof, or appropriating any money or other property to pay or satisfy the same or any part thereof, until the claim has first been referred to the proper department or committee, nor until such department or committee has made its report to the council thereon pursuant to such reference. [1993 c 449 § 8; 1989 c 74 § 1; 1967 c 164 § 13; 1965 c 7 § 35.31.040. Prior: 1957 c 224 § 4; 1915 c 148 § 2; 1909 c 167 § 1; RRS § 9481.]

[Title 35 RCW—page 132]

**Purpose—Severability—1993 c 449:** See notes following RCW 4.96.010.

**Purpose—Severability—1967 c 164:** See notes following RCW 4.96.010.

*Actions against political subdivisions, municipal corporations, and quasi municipal corporations:* Chapter 4.96 RCW.

*Limitation of actions:* Chapter 4.16 RCW.

#### 35.31.050 Accident fund—Warrants for judgments.

Every city of the second class and town may create an accident fund upon which the clerk shall draw warrants for the full amount of any judgment including interest and costs against the city or town on account of personal injuries suffered by any person as shown by a transcript of the judgment duly certified to the clerk. The warrants shall be issued in denominations not less than one hundred dollars nor more than five hundred dollars; they shall draw interest at the rate of six percent per annum, shall be numbered consecutively and be paid in the order of their issue. [1994 c 81 § 55; 1965 c 7 § 35.31.050. Prior: (i) 1909 c 128 § 1; RRS § 9482. (ii) 1909 c 128 § 2; RRS § 9483. (iii) 1909 c 128 § 5; RRS § 9486.]

**35.31.060 Tax levy for fund.** The city or town council after the drawing of warrants against the accident fund shall estimate the amount necessary to pay the warrants with accrued interest thereon, and shall levy a tax sufficient to pay that amount not exceeding seventy-five cents per thousand dollars of assessed value. If a single levy of seventy-five cents per thousand dollars of assessed value is not sufficient, an annual levy of seventy-five cents per thousand dollars of assessed value shall be made until the warrants and interest are fully paid. [1973 1st ex.s. c 195 § 19; 1965 c 7 § 35.31.060. Prior: 1909 c 128 § 3; RRS § 9484.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**35.31.070 Surplus to current expense fund.** If there is no judgment outstanding against the city or town for personal injuries the money remaining in the accident fund after the payment of the warrants drawn on that fund and interest in full shall be transferred to the current expense fund. [1965 c 7 § 35.31.070. Prior: 1909 c 128 § 4; RRS § 9485.]

### Chapter 35.32A RCW

#### BUDGETS IN CITIES OVER 300,000

##### Sections

- 35.32A.010 Budget to be enacted—Exempted functions or programs.
- 35.32A.020 Budget director.
- 35.32A.030 Estimates of revenues and expenditures—Preparation of proposed budget—Submission to city council—Copies—Publication.
- 35.32A.040 Consideration by city council—Hearings—Revision by council.
- 35.32A.050 Adoption of budget—Expenditure allowances constitute appropriations—Reappropriations—Transfers of allowances.
- 35.32A.060 Emergency fund.
- 35.32A.070 Utilities—Exemption from budgetary control.
- 35.32A.080 Unexpended appropriations—Annual—Operating and maintenance—Capital and betterment outlays.
- 35.32A.090 Budget mandatory—Other expenditures void—Liability of public officials—Penalty.
- 35.32A.900 Short title.

(2004 Ed.)

35.32A.910 Severability—1967 c 7.

*Budgets*

*expenditures for streets: RCW 35.76.060.*

*leases with or without option to purchase, budget to provide for payment of rentals: RCW 35.42.220.*

*Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.*

**35.32A.010 Budget to be enacted—Exempted functions or programs.** In each city of over three hundred thousand population, there shall be enacted annually by the legislative authority a budget covering all functions or programs of such city except in those cities in which an ordinance has been adopted under RCW 35.34.040 providing for a biennial budget, in which case this chapter does not apply. In addition, this chapter shall not apply to any municipal transportation system managed by a separate commission, the making of expenditures from proceeds of general obligation and revenue bond sales, or the expenditure of moneys derived from grants, gifts, bequests or devises for specified purposes. [1985 c 175 § 3; 1967 c 7 § 3.]

**35.32A.020 Budget director.** There shall be a budget director, appointed by the mayor without regard to civil service rules and regulations and subject to confirmation by a majority of the members of the city council, who shall be in charge of the city budget office and, under the direction of the mayor, shall be responsible for preparing the budget and supervising its execution. The budget director may be removed by the mayor upon filing with the city council a statement of his reasons therefor. [1967 c 7 § 4.]

**35.32A.030 Estimates of revenues and expenditures—Preparation of proposed budget—Submission to city council—Copies—Publication.** The heads of all departments, divisions or agencies of the city government, including the library department, and departments headed by commissions or elected officials shall submit to the mayor estimates of revenues and necessary expenditures for the ensuing fiscal year in such detail, in such form and at such time as the mayor shall prescribe.

The budget director shall assemble all estimates of revenues; necessary departmental expenditures; interest and redemption requirements for any city debt; and other pertinent budgetary information as may be required by uniform regulations of the state auditor; and, under the direction of the mayor, prepare a proposed budget for presentation to the city council.

The revenue estimates shall be based primarily on the collection experience of the first six months of the current fiscal year and the last six months of the preceding fiscal year and shall not include revenue from any source in excess of the amount so collected unless it shall be reasonably anticipated that such excess amounts will in fact be realized. The estimated revenues shall include sources previously established by law and unencumbered fund balances estimated to be available at the close of the current fiscal year. The estimated expenditures in the proposed budget shall, in no event, exceed such estimated revenues: PROVIDED, That the mayor may recommend expenditures exceeding the esti-

mated revenues when accompanied by proposed legislation to raise at least an equivalent amount of additional revenue.

The mayor shall submit the proposed budget to the city council not later than ninety days prior to the beginning of the ensuing fiscal year.

The budget director shall cause sufficient copies of the proposed budget to be prepared and made available to all interested persons and shall cause a summary of the proposed budget to be published at least once in the city official newspaper. [1985 c 175 § 62; 1967 c 7 § 5.]

**35.32A.040 Consideration by city council—Hearings—Revision by council.** The city council shall forthwith consider the proposed budget submitted by the mayor and shall cause such public hearings to be scheduled on two or more days to allow all interested persons to be heard. Such hearings shall be announced by public notice published in the city official newspaper as well as provided to general news media.

The city council may insert new expenditure allowances, increase or decrease expenditure allowances recommended by the mayor, or revise estimates of revenues subject to the same restrictions as are herein imposed on the mayor; but may not adopt a budget in which the total expenditure allowances exceed the total estimated revenues as defined in RCW 35.32A.030 for the ensuing fiscal year. [1985 c 175 § 63; 1967 c 7 § 6.]

**35.32A.050 Adoption of budget—Expenditure allowances constitute appropriations—Reappropriations—Transfers of allowances.** Not later than thirty days prior to the beginning of the ensuing fiscal year the city council shall, by ordinance adopt the budget submitted by the mayor as modified by the city council.

The expenditure allowances as set forth in the enacted budget shall constitute the budget appropriations for the ensuing fiscal year. The city council by ordinance may, during the fiscal year covered by the enacted budget, abrogate or decrease any unexpended allowance contained within the budget and reappropriate such unexpended allowances for other functions or programs. Transfers between allowances in the budget of any department, division or agency may be made upon approval by the budget director pursuant to such regulations as may be prescribed by ordinance. [1967 c 7 § 7.]

**35.32A.060 Emergency fund.** Every city having a population of over three hundred thousand may maintain an emergency fund, which fund balance shall not exceed thirty-seven and one-half cents per thousand dollars of assessed value. Such fund shall be maintained by an annual budget allowance. When the necessity therefor arises transfers may be made to the emergency fund from any tax-supported fund except bond interest and redemption funds.

The city council by an ordinance approved by two-thirds of all of its members may authorize the expenditure of sufficient money from the emergency fund, or other designated funds, to meet the expenses or obligations:

(1) Caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection, act of God, act of the public

enemy or any other such happening that could not have been anticipated; or

(2) For the immediate preservation of order or public health or for the restoration to a condition of usefulness of public property the usefulness of which has been destroyed by accident; or

(3) In settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of a public utility owned by the city; or

(4) To meet mandatory expenditures required by laws enacted since the last budget was adopted.

The city council by an ordinance approved by three-fourths of all its members may appropriate from the emergency fund, or other designated funds, an amount sufficient to meet the actual necessary expenditures of the city for which insufficient or no appropriations have been made due to causes which could not reasonably have been foreseen at the time of the making of the budget.

An ordinance authorizing an emergency expenditure shall become effective immediately upon being approved by the mayor or upon being passed over his veto as provided by the city charter. [1985 c 175 § 64; 1973 1st ex.s. c 195 § 20; 1967 c 7 § 8.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**35.32A.070 Utilities—Exemption from budgetary control.** Notwithstanding the provisions of this chapter, the public utilities owned by a city having a population of over three hundred thousand supported wholly by revenues derived from sources other than taxation, may make expenditures for utility purposes not contemplated in the annual budget, as the legislative authority by ordinance shall allow. [1967 c 7 § 9.]

**35.32A.080 Unexpended appropriations—Annual—Operating and maintenance—Capital and betterment outlays.** The whole or any part of any appropriation provided in the budget for operating and maintenance expenses of any department or activity remaining unexpended or unencumbered at the close of the fiscal year shall automatically lapse, except any such appropriation as the city council shall continue by ordinance. The whole or any part of any appropriation provided in the budget for capital or betterment outlays of any department or activity remaining unexpended or unencumbered at the close of the fiscal year shall remain in full force and effect and shall be held available for the following year, except any such appropriation as the city council by ordinance may have abandoned. [1967 c 7 § 10.]

**35.32A.090 Budget mandatory—Other expenditures void—Liability of public officials—Penalty.** (1) There shall be no orders, authorizations, allowances, contracts or payments made or attempted to be made in excess of the expenditure allowances authorized in the final budget as adopted or modified as provided in this chapter, and any such attempted excess expenditure shall be void and shall never be the foundation of a claim against the city.

(2) Any public official authorizing, auditing, allowing, or paying any claims or demands against the city in violation

of the provisions of this chapter shall be jointly and severally liable to the city in person and upon their official bonds to the extent of any payments upon such claims or demands.

(3) Any person violating any of the provisions of this chapter, in addition to any other liability or penalty provided therefor, is guilty of a misdemeanor. [2003 c 53 § 198; 1967 c 7 § 11.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**35.32A.900 Short title.** This chapter shall be known and may be cited as the budget act for cities over three hundred thousand population. [1967 c 7 § 2.]

**35.32A.910 Severability—1967 c 7.** If any provision of this act, or its application to any person or circumstance, is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1967 c 7 § 12.]

## Chapter 35.33 RCW

### BUDGETS IN SECOND AND THIRD CLASS CITIES, TOWNS, AND FIRST CLASS CITIES UNDER 300,000

#### Sections

35.33.011	Definitions.
35.33.020	Applicability of chapter.
35.33.031	Budget estimates.
35.33.041	Budget estimates—Classification and segregation.
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35.33.081	Emergency expenditures—Nondebatable emergencies.
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35.33.106	Registered warrants—Payment.
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35.33.121	Funds—Limitations on expenditures—Transfers.
35.33.123	Administration, oversight, or supervision of utility—Reimbursement from utility budget authorized.
35.33.125	Liabilities incurred in excess of budget.
35.33.131	Funds received from sale of bonds and warrants—Expenditure program.
35.33.135	Revenue estimates—Amount to be raised by ad valorem taxes.
35.33.141	Report of expenditures and liabilities against budget appropriations.
35.33.145	Contingency fund—Creation—Purpose—Support—Lapse.
35.33.147	Contingency fund—Withdrawals.
35.33.151	Unexpended appropriations.
35.33.170	Violations and penalties.

#### Budgets

*expenditures for streets:* RCW 35.76.060.

*leases with or without option to purchase, budget to provide for payment of rentals:* RCW 35.42.220.

*Limitations upon indebtedness:* State Constitution Art. 8 § 6 (Amendment 27), Art. 7 § 2 (Amendments 55, 59), chapter 39.36 RCW, RCW 84.52.050.

**35.33.011 Definitions.** Unless the context clearly indicates otherwise, the following words as used in this chapter shall have the meaning herein prescribed:

(1) "Clerk" as used in this chapter includes the officer performing the functions of a finance or budget director, comptroller, auditor, or by whatever title he may be known in any city or town.

(2) "Department" as used in this chapter includes each office, division, service, system or institution of the city or town for which no other statutory or charter provision is made for budgeting and accounting procedures or controls.

(3) "Legislative body" as used in this chapter includes council, commission or any other group of officials serving as the legislative body of a city or town.

(4) "Chief administrative officer" as used in this chapter includes the mayor of cities or towns having a mayor-council form of government, the commissioners in cities or towns having a commission form of government, the city manager, or any other city or town official designated by the charter or ordinances of such city or town under the plan of government governing the same, or the budget or finance officer designated by the mayor, manager or commissioners, to perform the functions, or portions thereof, contemplated by this chapter.

(5) "Fiscal year" as used in this chapter means that fiscal period set by the city or town pursuant to authority given under RCW 1.16.030.

(6) "Fund", as used in this chapter and "funds" where clearly used to indicate the plural of "fund", shall mean the budgeting or accounting entity authorized to provide a sum of money for specified activities or purposes.

(7) "Funds" as used in this chapter where not used to indicate the plural of "fund" shall mean money in hand or available for expenditure or payment of a debt or obligation.

(8) Except as otherwise defined herein, municipal accounting terms used in this chapter shall have the meaning prescribed by the state auditor pursuant to RCW 43.09.200. [1981 c 40 § 1; 1969 ex.s. c 95 § 1.]

**35.33.020 Applicability of chapter.** The provisions of this chapter apply to all cities of the first class that have a population of less than three hundred thousand, to all cities of the second class, and to all towns, except those cities and towns that have adopted an ordinance under RCW 35.34.040 providing for a biennial budget. [1997 c 361 § 14; 1985 c 175 § 4; 1969 ex.s. c 95 § 2; 1965 c 7 § 35.33.020. Prior: 1923 c 158 § 8; RRS § 9000-8.]

**35.33.031 Budget estimates.** On or before the second Monday of the fourth month prior to the beginning of the city's or town's next fiscal year, or at such other time as the city or town may provide by ordinance or charter, the clerk shall notify in writing the head of each department of a city or town to file with the clerk within fourteen days of the receipt of such notification, detailed estimates of the probable revenue from sources other than ad valorem taxation and of all expenditures required by his or her department for the ensuing fiscal year. The notice shall be accompanied by the proper forms provided by the clerk, prepared in accordance with the requirements and classification established by the state auditor. The clerk shall prepare the estimates for interest and debt redemption requirements and all other estimates, the preparation of which falls properly within the duties of his or her office. The chief administrative officers of the city or town shall submit to the clerk detailed estimates of all expenditures proposed to be financed from the proceeds of bonds or warrants not yet authorized, together with a statement of the

proposed method of financing them. In the absence or disability of the official or person regularly in charge of a department, the duties herein required shall devolve upon the person next in charge of such department. [1995 c 301 § 39; 1969 ex.s. c 95 § 3.]

**35.33.041 Budget estimates—Classification and segregation.** All estimates of receipts and expenditures for the ensuing year shall be fully detailed in the annual budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor after consultation with the Washington finance officers association, the association of Washington cities and the association of Washington city managers. [1995 c 301 § 40; 1969 ex.s. c 95 § 4.]

**35.33.051 Budget—Preliminary.** On or before the first business day in the third month prior to the beginning of the fiscal year of a city or town or at such other time as the city or town may provide by ordinance or charter, the clerk or other person designated by the charter, by ordinances, or by the chief administrative officer of the city or town shall submit to the chief administrative officer a proposed preliminary budget which shall set forth the complete financial program of the city or town for the ensuing fiscal year, showing the expenditure program requested by each department and the sources of revenue by which each such program is proposed to be financed.

The revenue section shall set forth in comparative and tabular form for each fund the actual receipts for the last completed fiscal year, the estimated receipts for the current fiscal year and the estimated receipts for the ensuing fiscal year, which shall include the amount to be raised from ad valorem taxes and unencumbered fund balances estimated to be available at the close of the current fiscal year.

The expenditure section shall set forth in comparative and tabular form for each fund and every department operating within each fund the actual expenditures for the last completed fiscal year, the appropriations for the current fiscal year and the estimated expenditures for the ensuing fiscal year. The salary or salary range for each office, position or job classification shall be set forth separately together with the title or position designation thereof: PROVIDED, That salaries may be set out in total amounts under each department if a detailed schedule of such salaries and positions be attached to and made a part of the budget document. [1969 ex.s. c 95 § 5.]

**35.33.055 Budget—Preliminary—Filing—Copies.** The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or additions to the reports of the department heads deemed advisable by such chief administrative officer and at least sixty days before the beginning of the city's or town's next fiscal year he shall file it with the clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later

than six weeks before the beginning of the city's or town's next fiscal year. [1969 ex.s. c 95 § 6.]

**35.33.057 Budget message—Hearings.** In every city or town a budget message prepared by or under the direction of the city's or town's chief administrative officer shall be submitted as a part of the preliminary budget to the city's or town's legislative body at least sixty days before the beginning of the city's or town's next fiscal year and shall contain the following:

- (1) An explanation of the budget document;
- (2) An outline of the recommended financial policies and programs of the city for the ensuing fiscal year;
- (3) A statement of the relation of the recommended appropriation to such policies and programs;
- (4) A statement of the reason for salient changes from the previous year in appropriation and revenue items;
- (5) An explanation for any recommended major changes in financial policy.

Prior to the final hearing on the budget, the legislative body or a committee thereof, shall schedule hearings on the budget or parts thereof, and may require the presence of department heads to give information regarding estimates and programs. [1969 ex.s. c 95 § 7.]

**35.33.061 Budget—Notice of hearing on final.** Immediately following the filing of the preliminary budget with the clerk, the clerk shall publish a notice once each week for two consecutive weeks stating that the preliminary budget for the ensuing fiscal year has been filed with the clerk; that a copy thereof will be furnished to any taxpayer who will call at the clerk's office therefor and that the legislative body of the city or town will meet on or before the first Monday of the month next preceding the beginning of the ensuing fiscal year for the purpose of fixing the final budget, designating the date, time and place of the legislative budget meeting and that any taxpayer may appear thereat and be heard for or against any part of the budget. The publication of the notice shall be made in the official newspaper of the city or town. [1985 c 469 § 27; 1973 c 67 § 2; 1969 ex.s. c 95 § 8.]

**35.33.071 Budget—Final—Hearing.** The council shall meet on the day fixed by RCW 35.33.061 for the purpose of fixing the final budget of the city or town at the time and place designated in the notice thereof. Any taxpayer may appear and be heard for or against any part of the budget. The hearing may be continued from day to day but not later than the twenty-fifth day prior to commencement of the city's or town's fiscal year. [1969 ex.s. c 95 § 9.]

**35.33.075 Budget—Final—Adoption—Appropriations.** Following conclusion of the hearing, and prior to the beginning of the fiscal year, the legislative body shall make such adjustments and changes as it deems necessary or proper and after determining the allowance in each item, department, classification and fund, and shall by ordinance, adopt the budget in its final form and content. Appropriations shall be limited to the total estimated revenues contained therein including the amount to be raised by ad valorem taxes and the unencumbered fund balances estimated to be avail-

able at the close of the current fiscal year. Such ordinances may adopt the final budget by reference: PROVIDED, That the ordinance adopting such budget shall set forth in summary form the totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined.

A complete copy of the final budget as adopted shall be transmitted to the association of Washington cities. [1995 c 301 § 41; 1969 ex.s. c 95 § 10.]

**35.33.081 Emergency expenditures—Nondebatable emergencies.** Upon the happening of any emergency caused by violence of nature, casualty, riot, insurrection, war, or other unanticipated occurrence requiring the immediate preservation of order or public health, or for the restoration to a condition of usefulness of any public property which has been damaged or destroyed by accident, or for public relief from calamity, or in settlement of approved claims for personal injuries or property damages, or to meet mandatory expenditures required by laws enacted since the last annual budget was adopted, or to cover expenses incident to preparing for or establishing a new form of government authorized or assumed after adoption of the current budget, including any expenses incident to selection of additional or new officials required thereby, or incident to employee recruitment at any time, the city or town legislative body, upon the adoption of an ordinance, by the vote of one more than the majority of all members of the legislative body, stating the facts constituting the emergency and the estimated amount required to meet it, may make the expenditures therefor without notice or hearing. [1969 ex.s. c 95 § 11.]

**35.33.091 Emergency expenditures—Other emergencies—Hearing.** If a public emergency which could not reasonably have been foreseen at the time of filing the preliminary budget requires the expenditure of money not provided for in the annual budget, and if it is not one of the emergencies specifically enumerated in RCW 35.33.081, the city or town legislative body before allowing any expenditure therefor shall adopt an ordinance stating the facts constituting the emergency and the estimated amount required to meet it and declaring that an emergency exists.

Such ordinance shall not be voted on until five days have elapsed after its introduction, and for passage shall require the vote of one more than the majority of all members of the legislative body of the city or town.

Any taxpayer may appear at the meeting at which the emergency ordinance is to be voted on and be heard for or against the adoption thereof. [1969 ex.s. c 95 § 12.]

**35.33.101 Emergency warrants.** All expenditures for emergency purposes as provided in this chapter shall be paid by warrants from any available money in the fund properly chargeable with such expenditures. If, at any time, there is insufficient money on hand in a fund with which to pay such warrants as presented, the warrants shall be registered, bear interest and be called in the same manner as other registered warrants as prescribed in RCW 35.33.111. [1969 ex.s. c 95 § 13.]

*Warrants—Interest rate—Payment: RCW 35.21.320.*

**35.33.106 Registered warrants—Payment.** In adopting the final budget for any fiscal year, the legislative body shall appropriate from estimated revenue sources available, a sufficient amount to pay the principal and interest on all outstanding registered warrants issued since the adoption of the last preceding budget except those issued and identified as revenue warrants and except those for which an appropriation previously has been made: PROVIDED, That no portion of the revenues which are restricted in use by law may be appropriated for the redemption of warrants issued against a utility or other special purpose fund of a self-supporting nature: PROVIDED FURTHER, That all or any portion of the city's or town's outstanding registered warrants may be funded into bonds in any manner authorized by law. [1969 ex.s. c 95 § 14.]

**35.33.107 Adjustment of wages, hours and conditions of employment.** Notwithstanding the appropriations for any salary, or salary range of any employee or employees adopted in a final budget, the legislative body of any city or town may, by ordinance, change the wages, hours, and conditions of employment of any or all of its appointive employees if sufficient funds are available for appropriation to such purposes. [1969 ex.s. c 95 § 15.]

**35.33.111 Forms—Accounting—Supervision by state.** The state auditor is empowered to make and install the forms and classifications required by this chapter to define what expenditures are chargeable to each budget class and to establish the accounting and cost systems necessary to secure accurate budget information. [1995 c 301 § 42; 1969 ex.s. c 95 § 16.]

**35.33.121 Funds—Limitations on expenditures—Transfers.** The expenditures as classified and itemized in the final budget shall constitute the city's or town's appropriations for the ensuing fiscal year. Unless otherwise ordered by a court of competent jurisdiction, and subject to further limitations imposed by ordinance of the city or town, the expenditure of city or town funds or the incurring of current liabilities on behalf of the city or town shall be limited to the following:

(1) The total amount appropriated for each fund in the budget for the current fiscal year, without regard to the individual items contained therein, except that this limitation shall not apply to wage adjustments authorized by RCW 35.33.107; and

(2) The unexpended appropriation balances of a preceding budget which may be carried forward from prior fiscal years pursuant to RCW 35.33.151; and

(3) Funds received from the sale of bonds or warrants which have been duly authorized according to law; and

(4) Funds received in excess of estimated revenues during the current fiscal year, when authorized by an ordinance amending the original budget; and

(5) Expenditures required for emergencies, as authorized in RCW 35.33.081 and 35.33.091.

Transfers between individual appropriations within any one fund may be made during the current fiscal year by order of the city's or town's chief administrative officer subject to such regulations, if any, as may be imposed by the city or

town legislative body. Notwithstanding the provisions of RCW 43.09.210 or of any statute to the contrary, transfers, as herein authorized, may be made within the same fund regardless of the various offices, departments or divisions of the city or town which may be affected.

The city or town legislative body, upon a finding that it is to the best interests of the city or town to decrease, revoke or recall all or any portion of the total appropriations provided for any one fund, may, by ordinance, approved by the vote of one more than the majority of all members thereof, stating the facts and findings for doing so, decrease, revoke or recall all or any portion of an unexpended fund balance, and by said ordinance, or a subsequent ordinance adopted by a like majority, the moneys thus released may be reappropriated for another purpose or purposes, without limitation to department, division or fund, unless the use of such moneys is otherwise restricted by law, charter, or ordinance. [1969 ex.s. c 95 § 17.]

**35.33.123 Administration, oversight, or supervision of utility—Reimbursement from utility budget authorized.** Whenever any city or town apportions a percentage of the city manager's, administrator's, or supervisor's time, or the time of other management or general government staff, for administration, oversight, or supervision of a utility operated by the city or town, or to provide services to the utility, the utility budget may identify such services and budget for reimbursement of the city's or town's current expense fund for the value of such services. [1991 c 152 § 1.]

**35.33.125 Liabilities incurred in excess of budget.** Liabilities incurred by any officer or employee of the city or town in excess of any budget appropriations shall not be a liability of the city or town. The clerk shall issue no warrant and the city or town legislative body or other authorized person shall approve no claim for an expenditure in excess of the total amount appropriated for any individual fund, except upon an order of a court of competent jurisdiction or for emergencies as provided in this chapter. [1969 ex.s. c 95 § 18.]

**35.33.131 Funds received from sale of bonds and warrants—Expenditure program.** Moneys received from the sale of bonds or warrants shall be used for no other purpose than that for which they were issued and no expenditure shall be made for that purpose until the bonds have been duly authorized. If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued it shall be used for the redemption of such bond or warrant indebtedness. Where a budget contains an expenditure program to be financed from a bond issue to be authorized thereafter, no such expenditure shall be made or incurred until after the bonds have been duly authorized. [1969 ex.s. c 95 § 19.]

**35.33.135 Revenue estimates—Amount to be raised by ad valorem taxes.** At a time fixed by the city's or town's ordinance or city charter, not later than the first Monday in October of each year, the chief administrative officer shall provide the city's or town's legislative body with current

information on estimates of revenues from all sources as adopted in the budget for the current year, together with estimates submitted by the clerk under RCW 35.33.051. The city's or town's legislative body and the city's or town's administrative officer or his designated representative shall consider the city's or town's total anticipated financial requirements for the ensuing fiscal year, and the legislative body shall determine and fix by ordinance the amount to be raised by ad valorem taxes. Upon adoption of the ordinance fixing the amount of ad valorem taxes to be levied, the clerk shall certify the same to the board of county commissioners as required by RCW 84.52.020. [1969 ex.s. c 95 § 20.]

**35.33.141 Report of expenditures and liabilities against budget appropriations.** At such intervals as may be required by city charter or city or town ordinance, however, being not less than quarterly, the clerk shall submit to the city's or town's legislative body and chief administrative officer a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding reporting period and like information for the whole of the current fiscal year to the first day of the current reporting period together with the unexpended balance of each appropriation. The report shall also show the receipts from all sources. [1969 ex.s. c 95 § 21.]

**35.33.145 Contingency fund—Creation—Purpose—Support—Lapse.** Every city or town may create and maintain a contingency fund to provide moneys with which to meet any municipal expense, the necessity or extent of which could not have been foreseen or reasonably evaluated at the time of adopting the annual budget, or from which to provide moneys for those emergencies described in RCW 35.33.081 and 35.33.091. Such fund may be supported by a budget appropriation from any tax or other revenue source not restricted in use by law, or also may be supported by a transfer from other unexpended or decreased funds made available by ordinance as set forth in RCW 35.33.121: PROVIDED, That the total amount accumulated in such fund at any time shall not exceed the equivalent of thirty-seven and one-half cents per thousand dollars of assessed valuation of property within the city or town at such time. Any moneys in the contingency fund at the end of the fiscal year shall not lapse except upon reappropriation by the council to another fund in the adoption of a subsequent budget. [1973 1st ex.s. c 195 § 21; 1969 ex.s. c 95 § 22.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**35.33.147 Contingency fund—Withdrawals.** No money shall be withdrawn from the contingency fund except by transfer to the appropriate operating fund authorized by a resolution or ordinance of the legislative body of the city or town, adopted by a majority vote of the entire legislative body, clearly stating the facts constituting the reason for the withdrawal or the emergency as the case may be, specifying the fund to which the withdrawn money shall be transferred. [1969 ex.s. c 95 § 23.]

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**35.33.151 Unexpended appropriations.** All appropriations in any current operating fund shall lapse at the end of each fiscal year: PROVIDED, That this shall not prevent payments in the following year upon uncompleted programs or improvements in progress or on orders subsequently filled or claims subsequently billed for the purchase of material, equipment and supplies or for personal or contractual services not completed or furnished by the end of the fiscal year, all of which have been properly budgeted and contracted for prior to the close of such fiscal year but furnished or completed in due course thereafter.

All appropriations in a special fund authorized by ordinance or by state law to be used only for the purpose or purposes therein specified, including any cumulative reserve funds lawfully established in specific or general terms for any municipal purpose or purposes, or a contingency fund as authorized by RCW 35.33.145, shall not lapse, but shall be carried forward from year to year until fully expended or the purpose has been accomplished or abandoned, without necessity of reappropriation.

The accounts for budgetary control for each fiscal year shall be kept open for twenty days after the close of such fiscal year for the purpose of paying and recording claims for indebtedness incurred during such fiscal year; any claim presented after the twentieth day following the close of the fiscal year shall be paid from appropriations lawfully provided for the ensuing period, including those made available by provisions of this section, and shall be recorded in the accounts for the ensuing fiscal year. [1969 ex.s. c 95 § 24.]

**35.33.170 Violations and penalties.** Upon the conviction of any city or town official, department head or other city or town employee of knowingly failing, or refusing, without just cause, to perform any duty imposed upon such officer or employee by this chapter, or city charter or city or town ordinance, in connection with the giving of notice, the preparing and filing of estimates of revenues or expenditures or other information required for preparing a budget report in the time and manner required, or of knowingly making expenditures in excess of budget appropriations, he shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars for each separate violation. [1969 ex.s. c 95 § 25.]

## Chapter 35.34 RCW BIENNIAL BUDGETS

### Sections

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**35.34.010 Legislative intent.** The legislature hereby recognizes that the development and adoption of a budget by a city or town is a lengthy and intense process designed to provide adequate opportunities for public input and sufficient time for deliberation and enactment by the legislative authority. The legislature also recognizes that there are limited amounts of time available and that time committed for budgetary action reduces opportunities for deliberating other issues. It is, therefore, the intent of the legislature to authorize cities and towns to establish by ordinance a biennial budget and to provide the means for modification of such budget. This chapter and chapter 35A.34 RCW shall be known as the municipal biennial budget act. [1985 c 175 § 1.]

**35.34.020 Application of chapter.** This chapter applies to all cities of the first and second classes and to all towns, that have by ordinance adopted this chapter authorizing the adoption of a fiscal biennium budget. [1997 c 361 § 15; 1985 c 175 § 5.]

**35.34.030 Definitions.** Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Clerk" includes the officer performing the functions of a finance or budget director, comptroller, auditor, or by whatever title the officer may be known in any city or town. However, for cities over three hundred thousand, "clerk" means the budget director as authorized under RCW 35.32A.020.

(2) "Department" includes each office, division, service, system, or institution of the city or town for which no other statutory or charter provision is made for budgeting and accounting procedures or controls.

(3) "Legislative body" includes the council, commission, or any other group of officials serving as the legislative body of a city or town.

(4) "Chief administrative officer" includes the mayor of cities or towns having a mayor-council form of government, the commissioners in cities or towns having a commission form of government, the manager, or any other city or town official designated by the charter or ordinances of such city or town under the plan of government governing the same, or the budget or finance officer designated by the mayor, manager, or commissioners, to perform the functions, or portions thereof, contemplated by this chapter.

(5) "Fiscal biennium" means the period from January 1 of each odd-numbered year through December 31 of the next succeeding even-numbered year.

(2004 Ed.)

(6) "Fund" and "funds" where clearly used to indicate the plural of "fund" means the budgeting or accounting entity authorized to provide a sum of money for specified activities or purposes.

(7) "Funds" where not used to indicate the plural of "fund" means money in hand or available for expenditure or payment of a debt or obligation.

(8) Except as otherwise defined in this chapter, municipal accounting terms used in this chapter have the meaning prescribed by the state auditor pursuant to RCW 43.09.200. [1985 c 175 § 6.]

*"Fiscal biennium" defined: RCW 1.16.020.*

**35.34.040 Biennial budget authorized—Limitations.** All first and second class cities and towns are authorized to establish by ordinance a two-year fiscal biennium budget. The ordinance shall be enacted at least six months prior to commencement of the fiscal biennium and this chapter applies to all cities and towns which utilize a fiscal biennium budget. Cities and towns which establish a fiscal biennium budget are authorized to repeal such ordinance and provide for reversion to a fiscal year budget. The ordinance may only be repealed effective as of the conclusion of a fiscal biennium. However, the city or town shall comply with chapter 35.32A or 35.33 RCW, whichever the case may be, in developing and adopting the budget for the first fiscal year following repeal of the ordinance. [1994 c 81 § 56; 1985 c 175 § 7.]

**35.34.050 Budget estimates—Submittal.** On or before the second Monday of the fourth month prior to the beginning of the city's or town's next fiscal biennium, or at such other time as the city or town may provide by ordinance or charter, the clerk shall notify in writing the head of each department of a city or town to file with the clerk within fourteen days of the receipt of such notification, detailed estimates of the probable revenue from sources other than ad valorem taxation and of all expenditures required by the department for the ensuing fiscal biennium. The notice shall be accompanied by the proper forms provided by the clerk, prepared in accordance with the requirements and classification established by the state auditor. The clerk shall prepare the estimates for interest and debt redemption requirements and all other estimates, the preparation of which falls properly within the duties of the clerk's office. The chief administrative officers of the city or town shall submit to the clerk detailed estimates of all expenditures proposed to be financed from the proceeds of bonds or warrants not yet authorized, together with a statement of the proposed method of financing them. In the absence or disability of the official or person regularly in charge of a department, the duties required by this section shall devolve upon the person next in charge of such department. [1995 c 301 § 43; 1985 c 175 § 8.]

**35.34.060 Budget estimates—Classification and segregation.** All estimates of receipts and expenditures for the ensuing fiscal biennium shall be fully detailed in the biennial budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor after consultation with the Washington finance officers association, the association of Wash-

ington cities, and the association of Washington city managers. [1995 c 301 § 44; 1985 c 175 § 9.]

**35.34.070 Proposed preliminary budget.** On or before the first business day in the third month prior to the beginning of the biennium of a city or town or at such other time as the city or town may provide by ordinance or charter, the clerk or other person designated by the charter, by ordinances, or by the chief administrative officer of the city or town shall submit to the chief administrative officer a proposed preliminary budget which shall set forth the complete financial program of the city or town for the ensuing fiscal biennium, showing the expenditure program requested by each department and the sources of revenue by which each such program is proposed to be financed.

The revenue section shall set forth in comparative and tabular form for each fund the actual receipts for the last completed fiscal biennium, the estimated receipts for the current fiscal biennium, and the estimated receipts for the ensuing fiscal biennium, which shall include the amount to be raised from ad valorem taxes and unencumbered fund balances estimated to be available at the close of the current fiscal biennium. However, if the city or town was not utilizing a fiscal biennium budget for the previous three years, it shall set forth its fiscal years' revenues to reflect actual and estimated receipts as if it had previously utilized a biennial budgetary process.

The expenditure section shall set forth in comparative and tabular form for each fund and every department operating within each fund the actual expenditures for the last completed fiscal biennium, the appropriations for the current fiscal biennium, and the estimated expenditures for the ensuing fiscal biennium. However, if the city or town was not utilizing a fiscal biennium budget for the previous three years, it shall set forth its fiscal years' expenditures to reflect actual and estimated levels as if it had previously utilized a biennial budgetary process. The expenditure section shall further set forth separately the salary or salary range for each office, position, or job classification together with the title or position designation thereof. However, salaries may be set out in total amounts under each department if a detailed schedule of such salaries and positions be attached and made a part of the budget document. [1985 c 175 § 10.]

**35.34.080 Preliminary budget.** The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or additions to the reports of the department heads deemed advisable by such chief administrative officer. At least sixty days before the beginning of the city's or town's next fiscal biennium the chief administrative officer shall file it with the clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later than six weeks before the beginning of the city's or town's next fiscal biennium. [1985 c 175 § 11.]

**35.34.090 Budget message—Hearings.** (1) In every city or town, a budget message prepared by or under the

direction of the city's or town's chief administrative officer shall be submitted as a part of the preliminary budget to the city's or town's legislative body at least sixty days before the beginning of the city's or town's next fiscal biennium and shall contain the following:

- (a) An explanation of the budget document;
- (b) An outline of the recommended financial policies and programs of the city or town for the ensuing fiscal biennium;
- (c) A statement of the relation of the recommended appropriation to such policies and programs;
- (d) A statement of the reason for salient changes from the previous biennium in appropriation and revenue items; and
- (e) An explanation for any recommended major changes in financial policy.

(2) Prior to the final hearing on the budget, the legislative body or a committee thereof shall schedule hearings on the budget or parts thereof, and may require the presence of department heads to give information regarding estimates and programs. [1985 c 175 § 12.]

**35.34.100 Budget—Notice of hearing.** Immediately following the filing of the preliminary budget with the clerk, the clerk shall publish a notice once a week for two consecutive weeks stating that the preliminary budget for the ensuing fiscal biennium has been filed with the clerk, that a copy thereof will be made available to any taxpayer who will call at the clerk's office therefor, that the legislative body of the city or town will meet on or before the first Monday of the month next preceding the beginning of the ensuing fiscal biennium for the purpose of fixing the final budget, designating the date, time, and place of the legislative budget meeting, and that any taxpayer may appear thereat and be heard for or against any part of the budget. The publication of the notice shall be made in the official newspaper of the city or town if there is one, otherwise in a newspaper of general circulation in the city or town. If there is no newspaper of general circulation in the city or town, then notice may be made by posting in three public places fixed by ordinance as the official places for posting the city's or town's official notices. [1985 c 175 § 13.]

**35.34.110 Budget—Hearing.** The legislative body shall meet on the day fixed by RCW 35.34.100 for the purpose of fixing the final budget of the city or town at the time and place designated in the notice thereof. Any taxpayer may appear and be heard for or against any part of the budget. The hearing may be continued from day to day but not later than the twenty-fifth day prior to commencement of the city's or town's fiscal biennium. [1985 c 175 § 14.]

**35.34.120 Budget—Adoption.** Following conclusion of the hearing, and prior to the beginning of the fiscal biennium, the legislative body shall make such adjustments and changes as it deems necessary or proper and, after determining the allowance in each item, department, classification, and fund, shall by ordinance adopt the budget in its final form and content. Appropriations shall be limited to the total estimated revenues contained therein including the amount to be raised by ad valorem taxes and the unencumbered fund bal-

ances estimated to be available at the close of the current fiscal biennium. Such ordinances may adopt the final budget by reference. However, the ordinance adopting the budget shall set forth in summary form the totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined.

A complete copy of the final budget as adopted shall be transmitted to the state auditor and to the association of Washington cities. [1995 c 301 § 45; 1985 c 175 § 15.]

**35.34.130 Budget—Mid-biennial review and modification.** The legislative authority of a city or town having adopted the provisions of this chapter shall provide by ordinance for a mid-biennial review and modification of the biennial budget. The ordinance shall provide that such review and modification shall occur no sooner than eight months after the start nor later than conclusion of the first year of the fiscal biennium. The chief administrative officer shall prepare the proposed budget modification and shall provide for publication of notice of hearings consistent with publication of notices for adoption of other city or town ordinances. City or town ordinances providing for a mid-biennium review and modification shall establish procedures for distribution of the proposed modification to members of the city or town legislative authority, procedures for making copies available to the public, and shall provide for public hearings on the proposed budget modification. The budget modification shall be by ordinance approved in the same manner as are other ordinances of the city or town.

A complete copy of the budget modification as adopted shall be transmitted to the state auditor and to the association of Washington cities. [1995 c 301 § 46; 1985 c 175 § 16.]

**35.34.140 Emergency expenditures—Nondebatable emergencies.** Upon the happening of any emergency caused by violence of nature, casualty, riot, insurrection, war, or other unanticipated occurrence requiring the immediate preservation of order or public health, or for the property which has been damaged or destroyed by accident, or for public relief from calamity, or in settlement of approved claims for personal injuries or property damages, or to meet mandatory expenditures required by law enacted since the last budget was adopted, or to cover expenses incident to preparing for or establishing a new form of government authorized or assumed after adoption of the current budget, including any expenses incident to selection of additional or new officials required thereby, or incident to employee recruitment at any time, the city or town legislative body, upon the adoption of an ordinance, by the vote of one more than the majority of all members of the legislative body, stating the facts constituting the emergency and the estimated amount required to meet it, may make the expenditures therefor without notice or hearing. [1985 c 175 § 17.]

**35.34.150 Emergency expenditures—Other emergencies—Hearing.** If a public emergency which could not reasonably have been foreseen at the time of filing the preliminary budget requires the expenditure of money not provided for in the budget, and if it is not one of the emergencies specifically enumerated in RCW 35.34.140, the city or town

legislative body before allowing any expenditure therefor shall adopt an ordinance stating the facts constituting the emergency and the estimated amount required to meet it and declaring that an emergency exists.

The ordinance shall not be voted on until five days have elapsed after its introduction, and for passage shall require the vote of one more than the majority of all members of the legislative body of the city or town.

Any taxpayer may appear at the meeting at which the emergency ordinance is to be voted on and be heard for or against the adoption thereof. [1985 c 175 § 18.]

**35.34.160 Emergency expenditures—Warrants—Payment.** All expenditures for emergency purposes as provided in this chapter shall be paid by warrants from any available money in the fund properly chargeable with such expenditures. If, at any time, there is insufficient money on hand in a fund with which to pay such warrants as presented, the warrants shall be registered, bear interest, and be called in the same manner as other registered warrants as prescribed in RCW 35.21.320. [1985 c 175 § 19.]

**35.34.170 Registered warrants—Payment.** In adopting the final budget for any fiscal biennium, the legislative body shall appropriate from estimated revenue sources available, a sufficient amount to pay the principal and interest on all outstanding registered warrants issued since the adoption of the last preceding budget except those issued and identified as revenue warrants and except those for which an appropriation previously has been made. However, no portion of the revenues which are restricted in use by law may be appropriated for the redemption of warrants issued against a utility or other special purpose fund of a self-supporting nature. In addition, all or any portion of the city's or town's outstanding registered warrants may be funded into bonds in any manner authorized by law. [1985 c 175 § 20.]

**35.34.180 Adjustment of wages, hours, and conditions of employment.** Notwithstanding the appropriations for any salary or salary range of any employee or employees adopted in a final budget, the legislative body of any city or town may, by ordinance, change the wages, hours, and conditions of employment of any or all of its appointive employees if sufficient funds are available for appropriation to such purposes. [1985 c 175 § 21.]

**35.34.190 Forms—Accounting—Supervision by state.** The state auditor is empowered to make and install the forms and classifications required by this chapter to define what expenditures are chargeable to each budget class and to establish the accounting and cost systems necessary to secure accurate budget information. [1995 c 301 § 47; 1985 c 175 § 22.]

**35.34.200 Funds—Limitations on expenditures—Transfers and adjustments.** (1) The expenditures as classified and itemized in the final budget shall constitute the city's or town's appropriations for the ensuing fiscal biennium. Unless otherwise ordered by a court of competent jurisdiction, and subject to further limitations imposed by ordinance

of the city or town, the expenditure of city or town funds or the incurring of current liabilities on behalf of the city or town shall be limited to the following:

(a) The total amount appropriated for each fund in the budget for the current fiscal biennium, without regard to the individual items contained therein, except that this limitation does not apply to wage adjustments authorized by RCW 35.34.180;

(b) The unexpended appropriation balances of a preceding budget which may be carried forward from prior fiscal periods pursuant to RCW 35.34.270;

(c) Funds received from the sale of bonds or warrants which have been duly authorized according to law;

(d) Funds received in excess of estimated revenues during the current fiscal biennium, when authorized by an ordinance amending the original budget; and

(e) Expenditures authorized by budget modification as provided by RCW 35.34.130 and those required for emergencies, as authorized by RCW 35.34.140 and 35.34.150.

(2) Transfers between individual appropriations within any one fund may be made during the current fiscal biennium by order of the city's or town's chief administrative officer subject to such regulations, if any, as may be imposed by the city or town legislative body. Notwithstanding the provisions of RCW 43.09.210 or of any statute to the contrary, transfers, as authorized in this section, may be made within the same fund regardless of the various offices, departments, or divisions of the city or town which may be affected.

(3) The city or town legislative body, upon a finding that it is to the best interests of the city or town to decrease, revoke, or recall all or any portion of the total appropriations provided for any one fund, may, by ordinance, approved by the vote of one more than the majority of all members thereof, stating the facts and findings for doing so, decrease, revoke, or recall all or any portion of an unexpended fund balance, and by said ordinance, or a subsequent ordinance adopted by a like majority, the moneys thus released may be reappropriated for another purpose or purposes, without limitation to department, division, or fund, unless the use of such moneys is otherwise restricted by law, charter, or ordinance. [1985 c 175 § 23.]

**35.34.205 Administration, oversight, or supervision of utility—Reimbursement from utility budget authorized.** Whenever any city or town apportions a percentage of the city manager's, administrator's, or supervisor's time, or the time of other management or general government staff, for administration, oversight, or supervision of a utility operated by the city or town, or to provide services to the utility, the utility budget may identify such services and budget for reimbursement of the city's or town's current expense fund for the value of such services. [1991 c 152 § 2.]

**35.34.210 Liabilities incurred in excess of budget.** Liabilities incurred by any officer or employee of the city or town in excess of any budget appropriations shall not be a liability of the city or town. The clerk shall issue no warrant and the city or town legislative body or other authorized person shall approve no claim for an expenditure in excess of the total amount appropriated for any individual fund, except

upon an order of a court of competent jurisdiction or for emergencies as provided in this chapter. [1985 c 175 § 24.]

**35.34.220 Funds received from sales of bonds and warrants—Expenditures.** Moneys received from the sale of bonds or warrants shall be used for no other purpose than that for which they were issued and no expenditure shall be made for that purpose until the bonds have been duly authorized. If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued, it shall be used for the redemption of such bond or warrant indebtedness. Where a budget contains an expenditure program to be financed from a bond issue to be authorized thereafter, no such expenditure shall be made or incurred until after the bonds have been duly authorized. [1985 c 175 § 25.]

**35.34.230 Revenue estimates—Amount to be raised by ad valorem taxes.** At a time fixed by the city's or town's ordinance or city charter, not later than the first Monday in October of the second year of each fiscal biennium, the chief administrative officer shall provide the city's or town's legislative body with current information on estimates of revenues from all sources as adopted in the budget for the current biennium, together with estimates submitted by the clerk under RCW 35.34.070. The city's or town's legislative body and the city's or town's administrative officer or the officer's designated representative shall consider the city's or town's total anticipated financial requirements for the ensuing fiscal biennium, and the legislative body shall determine and fix by ordinance the amount to be raised the first year of the biennium by ad valorem taxes. The legislative body shall review such information as is provided by the chief administrative officer and shall adopt an ordinance establishing the amount to be raised by ad valorem taxes during the second year of the biennium. Upon adoption of the ordinance fixing the amount of ad valorem taxes to be levied, the clerk shall certify the same to the county legislative authority as required by RCW 84.52.020. [1985 c 175 § 26.]

**35.34.240 Funds—Quarterly report of status.** At such intervals as may be required by city charter or city or town ordinance, however, being not less than quarterly, the clerk shall submit to the city's or town's legislative body and chief administrative officer a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding reporting period and like information for the whole of the current fiscal biennium to the first day of the current reporting period together with the unexpended balance of each appropriation. The report shall also show the receipts from all sources. [1985 c 175 § 27.]

**35.34.250 Contingency fund—Creation.** Every city or town may create and maintain a contingency fund to provide moneys with which to meet any municipal expense, the necessity or extent of which could not have been foreseen or reasonably evaluated at the time of adopting the annual budget, or from which to provide moneys for those emergencies described in RCW 35.34.140 and 35.34.150. Such fund may be supported by a budget appropriation from any tax or other

revenue source not restricted in use by law, or also may be supported by a transfer from other unexpended or decreased funds made available by ordinance as set forth in RCW 35.34.200. However, the total amount accumulated in such fund at any time shall not exceed the equivalent of thirty-seven and one-half cents per thousand dollars of assessed valuation of property within the city or town at such time. Any moneys in the emergency fund at the end of the fiscal biennium shall not lapse except upon reappropriation by the council to another fund in the adoption of a subsequent budget. [1985 c 175 § 28.]

**35.34.260 Contingency fund—Withdrawals.** No money shall be withdrawn from the contingency fund except by transfer to the appropriate operating fund authorized by a resolution or ordinance of the legislative body of the city or town, adopted by a majority vote of the entire legislative body, clearly stating the facts constituting the reason for the withdrawal or the emergency as the case may be, specifying the fund to which the withdrawn money shall be transferred. [1985 c 175 § 29.]

**35.34.270 Unexpended appropriations.** All appropriations in any current operating fund shall lapse at the end of each fiscal biennium. However, this shall not prevent payments in the following biennium upon uncompleted programs or improvements in progress or on orders subsequently filled or claims subsequently billed for the purchase of material, equipment, and supplies or for personal or contractual services not completed or furnished by the end of the fiscal biennium, all of which have been properly budgeted and contracted for prior to the close of such fiscal biennium, but furnished or completed in due course thereafter.

All appropriations in a special fund authorized by ordinance or by state law to be used only for the purpose or purposes therein specified, including any cumulative reserve funds lawfully established in specific or general terms for any municipal purpose or purposes, or a contingency fund as authorized by RCW 35.34.250, shall not lapse, but shall be carried forward from biennium to biennium until fully expended or the purpose has been accomplished or abandoned, without necessity of reappropriation.

The accounts for budgetary control for each fiscal biennium shall be kept open for twenty days after the close of such fiscal biennium for the purpose of paying and recording claims for indebtedness incurred during such fiscal biennium; any claim presented after the twentieth day following the close of the fiscal biennium shall be paid from appropriations lawfully provided for the ensuing period, including those made available by provisions of this section, and shall be recorded in the accounts for the ensuing fiscal biennium. [1985 c 175 § 30.]

**35.34.280 Violations and penalties.** Upon the conviction of any city or town official, department head, or other city or town employee of knowingly failing, or refusing, without just cause, to perform any duty imposed upon such officer or employee by this chapter, or city charter or city or town ordinance, in connection with the giving of notice, the preparing and filing of estimates of revenues or expenditures

or other information required for preparing a budget report in the time and manner required, or of knowingly making expenditures in excess of budget appropriations, the official or employee shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars for each separate violation. [1985 c 175 § 31.]

### Chapter 35.36 RCW EXECUTION OF BONDS BY PROXY— FIRST CLASS CITIES

#### Sections

35.36.010	Appointment of proxies.
35.36.020	Coupons—Printing facsimile signatures.
35.36.030	Deputies—Exemptions.
35.36.040	Designation of bonds to be signed.
35.36.050	Liability of officer.
35.36.060	Notice to council.
35.36.070	Revocation of proxy.

**35.36.010 Appointment of proxies.** The mayor, city comptroller and city clerk of every city of the first class may each severally designate one or more bonded persons to affix his signature to any bond or bonds requiring his signature.

If the signature of one of these officers is affixed to a bond during his continuance in office by a proxy designated by him whose authority has not been revoked, the bond shall be as binding upon the city and all concerned as though the officer had signed the bond in person.

This chapter shall apply to all bonds, whether they constitute obligations of the city as a whole or of any local improvement or other district or subdivision thereof, whether they call for payment from the general funds of the city or from a local, special or other fund, and whether negotiable or otherwise. [1965 c 7 § 35.36.010. Prior: 1929 c 212 § 1; RRS § 9005-5.]

**35.36.020 Coupons—Printing facsimile signatures.** A facsimile reproduction of the signature of the mayor, city comptroller, or city clerk in every city of the first class may be printed, engraved, or lithographed upon bond coupons with the same effect as though the particular officer had signed the coupon in person. [1965 c 7 § 35.36.020. Prior: 1929 c 212 § 4; RRS § 9005-8.]

**35.36.030 Deputies—Exemptions.** Nothing in this chapter shall be construed as requiring the appointment of deputy comptrollers or deputy city clerks in first class cities to be made in accordance herewith so far as concerns signatures or other doings which may be lawfully made or done by such deputy under the provisions of any other law. [1965 c 7 § 35.36.030. Prior: 1929 c 212 § 5; RRS § 9005-9.]

**35.36.040 Designation of bonds to be signed.** (1) The officer whose duty it is to cause any bonds to be printed, engraved, or lithographed, shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds to be printed, engraved, or lithographed and the manner of numbering them.

(2) Every printer, engraver, or lithographer who prints, engraves, or lithographs a greater number of bonds than that specified or who prints, engraves, or lithographs more than

one bond bearing the same number is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 199; 1965 c 7 § 35.36.040. Prior: 1929 c 212 § 6; RRS § 9005-10.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**35.36.050 Liability of officer.** A mayor, comptroller, or clerk authorizing the affixing of his signature to a bond by a proxy shall be subject to the same liability personally and on his bond for any signature so affixed and to the same extent as if he had affixed his signature in person. [1965 c 7 § 35.36.050. Prior: 1929 c 212 § 3; RRS § 9005-7.]

**35.36.060 Notice to council.** In order to designate a proxy to affix his signature to bonds, a mayor, comptroller, or clerk shall address a written notice to the governing body of the city giving the name of the person whom he has selected therefor and stating generally or specifically what bonds are to be so signed.

Attached to or included in the notice shall be a written signature of the officer making the designation executed by the proposed proxy followed by the word "by" and his own signature; or, if the notice so states, the specimen signatures may consist of a facsimile reproduction of the officer's signature impressed by some mechanical process followed by the word "by" and the proxy's own signature.

If the authority is intended to include the signature upon bonds bearing an earlier date than the effective date of the notice, the prior dated bonds must be specifically described by reasonable reference thereto.

The notice designating a proxy shall be filed with the city comptroller or city clerk, together with the specimen signatures attached thereto and a record of the filing shall be made in the journal of the governing body. This record shall note the date and hour of filing and may be made by the official who keeps the journal at any time after filing of the notice, even during a period of recess or adjournment of the governing body. The notice shall be effective from the time of its recording. [1965 c 7 § 35.36.060. Prior: 1929 c 212 § 2, part; RRS § 9005-6, part.]

**35.36.070 Revocation of proxy.** Any designation of a proxy may be revoked by written notice addressed to the governing body of the city signed by the officer who made the designation and filed and recorded in the same manner as the notice of designation. It shall be effective from the time of its recording but shall not affect the validity of any signature theretofore made. [1965 c 7 § 35.36.070. Prior: 1929 c 212 § 2, part; RRS § 9005-6, part.]

### Chapter 35.37 RCW

#### FISCAL—CITIES UNDER 20,000 AND CITIES OTHER THAN FIRST CLASS—BONDS

##### Sections

35.37.010	Accounting—Funds.
35.37.020	Accounting—Surplus and deficit in utility accounts.
35.37.027	Validation of preexisting obligations by former city.
35.37.030	Applicability of chapter.
35.37.040	Authority to contract debts—Limits.
35.37.050	Excess indebtedness—Authority to contract.

35.37.090	General indebtedness bonds—Issuance and sale.
35.37.110	General indebtedness bonds—Taxation to pay.
35.37.120	General indebtedness bonds—Taxation—Failure to levy—Remedy.

*Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.*

**35.37.010 Accounting—Funds.** Every city and town having less than twenty thousand inhabitants shall maintain a current expense fund out of which it must pay current expenses. It shall also maintain an "indebtedness fund," and if it has outstanding general indebtedness bonds, it must maintain a sinking fund therefor. If it maintains waterworks, lighting plant, cemetery, or other public works or institutions from which rent or other revenue is derived it must maintain a separate fund for each utility or institution. All moneys collected by such cities and towns from licenses shall be credited to the current expense fund. [1965 c 7 § 35.37.010. Prior: (i) 1897 c 84 § 1; RRS § 5635. (ii) 1897 c 84 § 2; RRS § 5636. (iii) 1897 c 84 § 9; RRS § 5643. (iv) 1897 c 84 § 10, part; RRS § 5644, part.]

**35.37.020 Accounting—Surplus and deficit in utility accounts.** Any deficit for operation and maintenance of utilities and institutions owned and controlled by cities and towns having less than twenty thousand inhabitants, over and above the revenue therefrom, shall be paid out of the current expense fund. Any surplus in the waterworks fund, lighting fund, cemetery fund, or other like funds at the end of the fiscal year shall be paid into the current expense fund except such part as the council by a finding entered into the record of the proceedings may conclude to be necessary for the purpose of:

- (1) Extending or repairing the particular utility or institution; or
- (2) Paying interest or principal of any indebtedness incurred in the construction or purchase of the particular utility or institution; or
- (3) Creating or adding to a sinking fund for the payment of any indebtedness incurred in the construction or purchase of the particular utility or institution. [1965 c 7 § 35.37.020. Prior: 1897 c 84 § 10, part; RRS § 5644, part.]

**35.37.027 Validation of preexisting obligations by former city.** All elections for the validation of any debt created by any city or town which has since become consolidated with any other city or town shall be by ballot, and the vote shall be taken in the new consolidated city as constituted at the time of the election. [1965 c 7 § 35.37.027. Prior: 1897 c 84 § 12; RRS § 5646.]

*Elections: Title 29A RCW.*

**35.37.030 Applicability of chapter.** The provisions of the remainder of this chapter shall not be applied to cities of the first class nor to borrowing money and issuing bonds by any city or town for the purpose of supplying it with water, artificial light, or sewers if the works for supplying the water, artificial light, or sewers are to be owned and controlled by the city or town. [1965 c 7 § 35.37.030. Prior: (i) 1891 c 128 § 10; RRS § 9548. (ii) 1891 c 128 § 11; RRS § 9549.]

**35.37.040 Authority to contract debts—Limits.**

Every city and town, may, without a vote of the people, contract indebtedness or borrow money for strictly municipal purposes on the credit of the city or town and issue negotiable bonds therefor in an amount which when added to its existing nonvoter approved indebtedness will not exceed the amount of indebtedness authorized by chapter 39.36 RCW, as now or hereafter amended, to be incurred without the assent of the voters.

When bonds are issued under this section the ordinance providing therefor shall contain a statement showing the value of the taxable property in the city or town, as the term "value of the taxable property" is defined in RCW 39.36.015, together with the amount of the existing nonvoter approved and total indebtedness of the city or town, which indebtedness shall include the amount for which such bonds are issued. [1984 c 186 § 15; 1970 ex.s. c 42 § 12; 1965 c 7 § 35.37.040. Prior: (i) 1891 c 128 § 1; RRS § 9538. (ii) 1891 c 128 § 6, part; RRS § 9544, part.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

*Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.*

**35.37.050 Excess indebtedness—Authority to contract.** Every city and town may, when authorized by the voters of the city or town pursuant to Article VIII, section 6 of the state Constitution at an election held pursuant to RCW 39.36.050, contract indebtedness or borrow money for strictly municipal purposes on the credit of the city or town and issue negotiable bonds therefor in an amount which when added to its existing indebtedness will exceed the amount of indebtedness authorized by chapter 39.36 RCW, as now or hereafter amended, to be incurred without the assent of the voters but will not exceed the amounts of indebtedness authorized by chapter 39.36 RCW, as now or hereafter amended, to be incurred with the assent of the voters. [1984 c 186 § 16; 1965 c 7 § 35.37.050. Prior: (i) 1891 c 128 § 2; RRS § 9539. (ii) 1891 c 128 § 4, part; RRS § 9542, part.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Validation—1969 ex.s. c 191:** "Any city or town, which has prior to the effective date of this act [April 25, 1969], submitted to the voters thereof for their ratification or rejection the proposition of incurring indebtedness by the issuance of negotiable bonds in an amount when added to its existing indebtedness will exceed the amount of indebtedness authorized to be incurred without the assent of the voters, but will not exceed the amount of indebtedness authorized by chapter 39.36 RCW, as now or hereafter amended, to be incurred with the assent of the voters, may incur such indebtedness and issue such bonds even though the amount of money desired to be borrowed and the amount of negotiable bonds to be issued therefor were stated in a resolution adopted by the city or town council submitting such proposition to the voters, instead of in an ordinance passed by such council, if all other requirements of law, including, but not limited to the other provisions of RCW 35.37.050 are complied with." [1969 ex.s. c 191 § 1.]

**35.37.090 General indebtedness bonds—Issuance and sale.** All general indebtedness bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 17; 1983 c 167 § 36; 1965 c 7 § 35.37.090. Prior: (i) 1891 c 128 § 5, part; RRS § 9543, part. (ii) 1891 c 128 § 6, part; RRS § 9544, part.]

(2004 Ed.)

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.37.110 General indebtedness bonds—Taxation to pay.** So long as any general indebtedness bonds are outstanding an amount sufficient to pay the interest upon them as it accrues shall be included in each annual levy for municipal purposes and a sufficient amount shall be included in each annual levy for payment of principal so that all bonds may be paid serially as they mature. [1965 c 7 § 35.37.110. Prior: 1891 c 128 § 8; RRS § 9546.]

**35.37.120 General indebtedness bonds—Taxation—Failure to levy—Remedy.** If the council of any city or town which has issued general indebtedness bonds fails to make any levy necessary to make principal or interest payments due on the bonds, the owner of any bond or interest payment which has been presented to the treasurer and payment thereof refused because of the failure to make a levy may file the bond together with any unpaid coupons with the county auditor, taking his receipt therefor.

The county auditor shall register bonds so filed, and the county legislative authority at its next session at which it levies the annual county tax shall add to the city's or town's levy a sum sufficient to realize the amount of principal and interest past due and to become due prior to the next annual levy to be collected and held by the county treasurer and paid out only upon warrants drawn by the county auditor as the payments mature in favor of the owner of the bond as shown by the auditor's register. Similar levies shall be made in each succeeding year until the bonds and any coupons or interest payments are fully satisfied.

This remedy is alternative and in addition to any other remedy which the owner of such a bond or coupon may have. [1983 c 167 § 38; 1965 c 7 § 35.37.120. Prior: 1891 c 128 § 9; RRS § 9547.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

## Chapter 35.38 RCW FISCAL—DEPOSITARIES

### Sections

35.38.010	Designation of depositories.
35.38.040	Segregation of collateral.
35.38.050	Treasurer's official bond not affected.
35.38.055	City official as officer, employee or stockholder of depository.
35.38.060	Definition—"Financial institution."

*Deposit of public funds: State Constitution Art. 11 § 15.*

*State fiscal agencies: Chapter 43.80 RCW.*

**35.38.010 Designation of depositories.** The treasurer in all cities and towns shall annually at the end of each fiscal year, or at such other times as may be deemed necessary, designate one or more financial institutions which are qualified public depositories as set forth by the public deposit protection commission as depository or depositories for the moneys required to be kept by the treasurer. [1984 c 177 § 1; 1973 c 126 § 1; 1969 ex.s. c 193 § 22; 1965 c 7 § 35.38.010. Prior: 1905 c 103 § 1; RRS § 5568.]

**Construction—Severability—1969 ex.s. c 193:** See notes following RCW 39.58.010.

*Liability of treasurers, public deposits:* RCW 39.58.140.

*Public depositaries, deposit and investment of public funds:* Chapter 39.58 RCW.

**35.38.040 Segregation of collateral.** Before any such designation shall entitle the treasurer to make deposits in any financial institution, each financial institution so designated shall segregate eligible securities as collateral as provided by RCW 39.58.050 as now or hereafter amended. [1984 c 177 § 2; 1973 c 126 § 3; 1969 ex.s. c 193 § 25; 1967 c 132 § 6; 1965 c 7 § 35.38.040. Prior: 1945 c 240 § 2; 1935 c 45 § 3; 1931 c 87 § 5; 1909 c 40 § 1; 1907 c 22 § 2; Rem. Supp. 1945 § 5572.]

**Construction—Severability—1969 ex.s. c 193:** See notes following RCW 39.58.010.

**35.38.050 Treasurer's official bond not affected.** The foregoing provisions of this chapter shall in no way affect the duty of a city or town treasurer to give bond to the city or town for the faithful performance of his duties in such amount as may be fixed by the city or town council or other governing body by ordinance. [1965 c 7 § 35.38.050. Prior: (i) 1905 c 103 § 3; RRS § 5570. (ii) 1907 c 22 § 3; RRS § 5573.]

**35.38.055 City official as officer, employee or stockholder of depositary.** Whenever a financial institution is designated by the treasurer in accordance with the provisions of this chapter, as a depositary for funds to be kept by the treasurer of such city or town and such financial institution has filed and had approved a contract with such city or town and complied with chapter 39.58 RCW, such contract shall not be invalid by reason of any official of the city being also an officer, employee, or stockholder of such financial institution. [1984 c 177 § 3; 1965 c 7 § 35.38.055. Prior: 1955 c 81 § 1.]

**35.38.060 Definition—"Financial institution."** "Financial institution," as used in the foregoing provisions of this chapter, means a branch of a bank engaged in banking in this state in accordance with RCW 30.04.300, and any state bank or trust company, national banking association, stock savings bank, mutual savings bank, or savings and loan association, which institution is located in this state and lawfully engaged in business. [1984 c 177 § 4; 1965 c 7 § 35.38.060. Prior: 1907 c 22 § 4; RRS § 5574.]

## Chapter 35.39 RCW

### FISCAL—INVESTMENT OF FUNDS

#### Sections

35.39.030	Excess or inactive funds—Investment.
35.39.032	Approval of legislative authority—Delegation of authority—Reports.
35.39.034	Investment by individual fund or commingling of funds—Investment in United States securities—Validation.
35.39.050	Construction—1965 c 7.
35.39.060	Investment of pension funds.
35.39.070	City retirement system—Registration and custody of securities.
35.39.080	City retirement system—Investment advisory committee.

35.39.090	City retirement system—Investment advisory committee—Powers and duties.
35.39.100	City retirement system—Investment advisory committee—Employment of members.
35.39.110	City retirement system—Investment advisory committee—Liability of members.

*Investment of municipal funds in savings and loan associations by county or other municipal corporation treasurer:* RCW 36.29.020.

*public and trust funds in federal agency bonds:* Chapter 39.60 RCW.

*Municipal revenue bond act:* Chapter 35.41 RCW.

### 35.39.030 Excess or inactive funds—Investment.

Every city and town may invest any portion of the moneys in its inactive funds or in other funds in excess of current needs in:

- (1) United States bonds;
- (2) United States certificates of indebtedness;
- (3) Bonds or warrants of this state;
- (4) General obligation or utility revenue bonds or warrants of its own or of any other city or town in the state;
- (5) Its own bonds or warrants of a local improvement district which are within the protection of the local improvement guaranty fund law; and
- (6) In any other investments authorized by law for any other taxing districts. [1975 1st ex.s. c 11 § 1; 1969 ex.s. c 33 § 1; 1965 ex.s. c 46 § 1; 1965 c 7 § 35.39.030. Prior: 1943 c 92 § 1; Rem. Supp. 1943 § 5646-13.]

**Effective date—1969 ex.s. c 33:** "This 1969 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing political subdivisions; and shall take effect July 1, 1969." [1969 ex.s. c 33 § 4.] This applies to RCW 35.39.030 through 35.39.034.

**Construction—1965 c 7:** See RCW 35.39.050.

### 35.39.032 Approval of legislative authority—Delegation of authority—Reports.

No investment shall be made without the approval of the legislative authority of the city or town expressed by ordinance: PROVIDED, That except as otherwise provided by law, the legislative authority may by ordinance authorize a city official or a committee composed of several city officials to determine the amount of money available in each fund for investment purposes and make the investments authorized as indicated in RCW 35.39.030 as now or hereafter amended and the provisions of RCW 35.39.034, without the consent of the legislative authority for each investment. The responsible official or committee shall make a monthly report of all investment transactions to the city legislative authority. The legislative authority of a city or town or city official or committee authorized to invest city or town funds may at any time convert any of its investment securities, or any part thereof, into cash. [1969 ex.s. c 33 § 2.]

### 35.39.034 Investment by individual fund or commingling of funds—Investment in United States securities—Validation.

Moneys thus determined available for this purpose may be invested on an individual fund basis or may, unless otherwise restricted by law be commingled within one common investment portfolio for investment. All income derived from such investment shall be apportioned and used for the benefit of the various participating funds or for the benefit of the general or current expense fund as the governing body of the city of [or] town shall determine by ordinance

or resolution: PROVIDED, That funds derived from the sale of general obligation bonds or revenue bonds or similar instruments of indebtedness shall be invested, or used in such manner as the initiating ordinances, resolutions, or bond covenants may lawfully prescribe.

Any excess or inactive funds on hand in the city treasury not otherwise invested, or required to be invested by this section, as now or hereafter amended, may be invested by the city treasurer in United States government bonds, notes, bills, certificates of indebtedness, or interim financing warrants of a local improvement district which is within the protection of the local improvement guaranty fund law for the benefit of the general or current expense fund.

All previous or outstanding investments of city or town funds for the benefit of the city's or town's general or current expense fund which have been or could be made in accordance with the provisions of this section, as now or hereafter amended, are declared valid. [1981 c 218 § 1; 1975 1st ex.s. c 11 § 2; 1969 ex.s. c 33 § 3.]

**35.39.050 Construction—1965 c 7.** RCW 35.39.030 shall be deemed cumulative and not exclusive and shall be additional to any other power or authority granted any city or town. [1983 c 3 § 56; 1965 c 7 § 35.39.050. Prior: 1943 c 92 § 3; Rem. Supp. 1943 § 5646-15.]

**35.39.060 Investment of pension funds.** Any city or town now or hereafter operating an employees' pension system with the approval of the board otherwise responsible for management of its respective funds may invest, reinvest, manage, contract, sell, or exchange investments acquired. Investments shall be made in accordance with investment policy duly established and published by the board. In discharging its duties under this section, the board shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; shall diversify the investments of the employees' pension system so as to minimize the risk of large losses; and shall act in accordance with the documents and instruments governing the employees' pension system, insofar as such documents and instruments are consistent with the provisions of this title. [1982 c 166 § 1.]

**Effective date—1982 c 166:** "This act shall take effect July 1, 1982." [1982 c 166 § 9.]

**35.39.070 City retirement system—Registration and custody of securities.** The city treasurer may cause any securities in which the city retirement system deals to be registered in the name of a nominee without mention of any fiduciary relationship, except that adequate records shall be maintained to identify the actual owner of the security so registered. The securities so registered shall be held in the physical custody of the city treasurer, the federal reserve system, the designee of the city treasurer, or at the election of the designee and upon approval of the city treasurer, the Pacific Securities Depository Trust Company Inc. or the Depository Trust Company of New York City or its designees.

(2004 Ed.)

With respect to the securities, the nominee shall act only on the direction of the retirement board. All rights to the dividends, interest, and sale proceeds from the securities and all voting rights of the securities shall be vested in the actual owners of the securities, and not in the nominee. [1982 c 166 § 2.]

**Effective date—1982 c 166:** See note following RCW 35.39.060.

**35.39.080 City retirement system—Investment advisory committee.** The retirement board of any city which is responsible for the management of an employees' retirement system established to provide retirement benefits for nonpublic safety employees shall appoint an investment advisory committee consisting of at least three members who are considered experienced and qualified in the field of investments. [1982 c 166 § 3.]

**Effective date—1982 c 166:** See note following RCW 35.39.060.

**35.39.090 City retirement system—Investment advisory committee—Powers and duties.** In addition to its other powers and duties, the investment advisory committee shall:

- (1) Make recommendations as to general investment policies, practices, and procedures to the retirement board;
- (2) Review the investment transactions of the retirement board annually;
- (3) Prepare a written report of its activities during each fiscal year. Each report shall be submitted not more than thirty days after the end of each fiscal year to the retirement board and to any other person who has submitted a request therefor. [1982 c 166 § 4.]

**Effective date—1982 c 166:** See note following RCW 35.39.060.

**35.39.100 City retirement system—Investment advisory committee—Employment of members.** No advisory committee member during the term of appointment may be employed by any investment brokerage or mortgage servicing firm doing business with the retirement board. [1982 c 166 § 5.]

**Effective date—1982 c 166:** See note following RCW 35.39.060.

**35.39.110 City retirement system—Investment advisory committee—Liability of members.** No member of the investment advisory committee is liable for the negligence, default, or failure of any other person or other member of the committee to perform the duties of his or her office, and no member of the committee may be considered or held to be an insurer of the funds or assets of the retirement system nor shall any member be liable for actions performed with the exercise of reasonable diligence within the scope of his or her duly authorized activities as a member of the committee. [1982 c 166 § 6.]

**Effective date—1982 c 166:** See note following RCW 35.39.060.

## Chapter 35.40 RCW

### FISCAL—VALIDATION AND FUNDING OF DEBTS

#### Sections

35.40.030 Ratification and funding after consolidation or annexation.

*Funding indebtedness in counties, cities and towns: Chapter 39.52 RCW.*  
*Metropolitan municipal corporations, funding and refunding bonds: RCW 35.58.470.*

**35.40.030 Ratification and funding after consolidation or annexation.** If, in any case where any city or town in this state has been or may hereafter be formed by the consolidation of two or more cities or towns, or has annexed or may hereafter annex any new territory, an election shall be held, in accordance with the Constitution and laws of this state, for the purpose of submitting to the voters residing within the former corporate limits of either such former city or town, or of such city or town prior to such annexation, for ratification or disapproval, the attempted incurring on the part of such former city or town or of such city or town prior to such annexation by the corporate authorities thereof, of any indebtedness thereof, such consolidated or existing city or town may submit to all of the voters therein, at the same or a separate election, any proposition to fund such indebtedness so sought to be ratified or any part thereof or any existing indebtedness of such consolidated or existing city or town, or both. The proposition to ratify any such indebtedness so previously attempted to be incurred on the part of either such former city or town, or on the part of such city or town prior to such annexation, and the proposition to fund the same may be submitted, respectively, to the voters residing within the corporate limits of such former city or town or in such city or town prior to such annexation, and to all the voters in such consolidated city or town, respectively, in the same or in separate ordinances, as may be required or permitted by law; but the proposition to fund shall be the subject of a distinct vote in favor of or against the same, separate from the vote upon the proposition to ratify, and separate from the vote upon a proposition to fund any part of such indebtedness as to which a proposition to ratify is not submitted. [1965 c 7 § 35.40.030. Prior: 1893 c 58 § 1; RRS § 9556.]

*Annexation of unincorporated areas: Chapter 35.13 RCW.*

*Consolidation including annexation of third class city or town to first class city: Chapter 35.10 RCW.*

## Chapter 35.41 RCW

### FISCAL—MUNICIPAL REVENUE BOND ACT

#### Sections

35.41.010	Special funds—Authorized—Composition.
35.41.030	Revenue bonds authorized—Form, term, etc.
35.41.050	Revenue warrants.
35.41.060	Sale of revenue bonds and warrants—Contract provisions.
35.41.070	Suit to compel city to pay amount into special fund.
35.41.080	Rates and charges for services, use, or benefits—Waiver of connection charges for low-income persons.
35.41.090	Rates and charges for services, use or benefits—Costs, expenses, interest may be included.
35.41.095	Revenue bonds for water or sewerage system—Pledge of utility local improvement district assessments.
35.41.100	Chapter is alternative and additional method.
35.41.900	Short title.

*Industrial development revenue bonds: Chapter 39.84 RCW.*

*Municipal utilities: Chapter 35.92 RCW.*

**35.41.010 Special funds—Authorized—Composition.** For the purpose of providing funds for defraying all or a portion of the costs of planning, purchase, leasing, condemnation, or other acquisition, construction, reconstruction,

development, improvement, extension, repair, maintenance, or operation of any municipally owned public land, building, facility, or utility, for which the municipality now has or hereafter is granted authority to acquire, condemn, develop, repair, maintain, or operate, the legislative body of any city or town may authorize, by ordinance, the creation of a special fund or funds into which the city or town shall be obligated to set aside and pay: Any or all municipal license fees specified in such ordinance creating such special fund, and/or any and all revenues derived from any utility or facility specified in said ordinance creating such special fund. The ordinance may provide that the city or town shall be obligated to set aside and pay into a special fund or funds so created:

- (1) A fixed proportion of any revenues or fees, or
- (2) A fixed amount of, and not to exceed, a fixed proportion of any revenues or fees, or
- (3) A fixed amount without regard to any fixed proportion of any revenues or fees, or
- (4) An amount of such revenues sufficient, together with any other moneys lawfully pledged to be paid into such fund or funds, to meet principal and interest requirements and to accumulate any reserves and additional funds that may be required.

The legislative body may also authorize the creation of a special fund or funds to defray all or part of the costs of planning, purchase, condemnation, or other acquisition, construction, improvement, maintenance or operation of any public park in, upon or above property used or to be used as municipally owned off-street parking space and facilities, whether or not revenues are received or fees charged in the course of public use of such park. Part or all of the otherwise unpledged revenues, fees or charges arising from municipal ownership, operation, lease or license of any off-street parking space and facilities, or arising from municipal license of any off-street parking space, shall be set aside and paid into such special fund or funds in accordance with this section. [1971 ex.s. c 223 § 1; 1967 ex.s. c 144 § 12; 1965 c 7 § 35.41.010. Prior: 1957 c 117 § 1.]

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

*Bids for operation of parking space or facilities in or beneath public parks: RCW 35.86.010.*

*"Facilities" defined: RCW 35.86.010.*

*General obligation bonds, use in financing off-street parking space and facilities: RCW 35.86.020.*

**35.41.030 Revenue bonds authorized—Form, term, etc.** If the legislative body of a city or town deems it advisable to purchase, lease, condemn, or otherwise acquire, construct, develop, improve, extend, or operate any land, building, facility, or utility, and adopts an ordinance authorizing such purchase, lease, condemnation, acquisition, construction, development, improvement and to provide funds for defraying all or a portion of the cost thereof from the proceeds of the sale of revenue bonds, and such ordinance has been ratified by the voters of the city or town in those instances where the original acquisition, construction, or development of such facility or utility is required to be ratified by the voters under the provisions of RCW 35.67.030 and 35.92.070, such city or town may issue revenue bonds against the special fund or funds created solely from revenues. The revenue bonds so issued shall:

(1) Be registered bonds, as provided in RCW 39.46.030, or bearer bonds;

(2) Be issued in such denominations as determined by the legislative body of the city or town;

(3) Be numbered from one upwards consecutively;

(4) Bear the date of their issue;

(5) Be serial or term bonds and the final maturity thereof shall not extend beyond the reasonable life expectancy of the facility or utility;

(6) Bear interest at such rate or rates as authorized by the legislative body of the city or town, with interest coupons attached unless such bonds are registered as to interest, in which no case no interest coupons need be attached;

(7) Be payable as to principal and interest at such place or time as may be designated therein;

(8) State upon their face that they are payable from a special fund, naming it, and the ordinance creating it, and that they do not constitute a general indebtedness of the city or town;

(9) Be signed by the mayor and bear the seal of the city or town and be attested by the clerk: PROVIDED, That the facsimile signatures of the mayor and clerk may be used when the ordinance authorizing the issuance of such bonds provides for the signatures thereof by an authenticating officer; and

(10) Be printed upon good bond paper: PROVIDED, That notwithstanding the provisions of this section, such revenue bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 39; 1971 ex.s. c 223 § 2; 1970 ex.s. c 56 § 34; 1969 ex.s. c 232 § 15; 1965 c 7 § 35.41.030. Prior: 1957 c 117 § 3.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**35.41.050 Revenue warrants.** (1) Revenue warrants may be issued and such warrants and interest thereon may be payable out of the special fund or refunded through the proceeds of the sale of revenue bonds. Every revenue warrant and the interest thereon issued against the special fund shall be a valid claim of the owner thereof only as against that fund and the amount of revenue pledged to the fund, and shall not constitute an indebtedness of the city or town. Every revenue warrant shall state on its face that it is payable from a special fund, naming it and the ordinance creating it. Such warrants may be in any form, including bearer warrants or registered warrants as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 40; 1965 c 7 § 35.41.050. Prior: 1957 c 117 § 5.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.41.060 Sale of revenue bonds and warrants—Contract provisions.** Revenue bonds and warrants may be sold by negotiation or by public or private sale in any manner and for any price the legislative body of any city or town deems to be for the best interest of the city or town. Such leg-

islative body may provide in any contract, for the construction or acquisition of the proposed facility or utility or the maintenance and operation thereof, and that payment therefor shall be made only in revenue bonds and/or warrants at their par value. [1965 c 7 § 35.41.060. Prior: 1957 c 117 § 6.]

**35.41.070 Suit to compel city to pay amount into special fund.** If a city or town fails to set aside and pay into the special fund created for the payment of revenue bonds and warrants the amount which it has obligated itself in the ordinance creating the fund to set aside and pay therein, the holder of any bond or warrant issued against the bond may bring suit against the city or town to compel it to do so. [1965 c 7 § 35.41.070. Prior: 1957 c 117 § 7.]

**35.41.080 Rates and charges for services, use, or benefits—Waiver of connection charges for low-income persons.** (1) The legislative body of any city or town may provide by ordinance for revenues by fixing rates and charges for the furnishing of service, use, or benefits to those to whom service, use, or benefits from such facility or utility is available, which rates and charges shall be uniform for the same class of service. The legislative body may waive connection charges for properties purchased by low-income persons from organizations exempt from tax under section 501(c)(3) of the federal internal revenue code as amended prior to July 23, 1995. Waivers of connection charges for the same class of electric or gas utility service must be uniformly applied to all qualified property. Nothing in this subsection (1) authorizes the impairment of a contract.

(2) If revenue bonds or warrants are issued against the revenues collected under subsection (1) of this section, the legislative body of the city or town shall fix charges at rates which will be sufficient, together with any other moneys lawfully pledged therefor, to provide for the payment of bonds and warrants, principal and interest, sinking fund requirements and expenses incidental to the issuance of such revenue bonds or warrants; in fixing such charges the legislative body of the city or town may establish rates sufficient to pay, in addition, the costs of operating and maintaining such facility or utility. [1995 c 140 § 2; 1971 ex.s. c 223 § 3; 1965 c 7 § 35.41.080. Prior: 1959 c 203 § 1; 1957 c 117 § 8.]

**35.41.090 Rates and charges for services, use or benefits—Costs, expenses, interest may be included.** In setting the rates to be charged for the service, use, or benefits derived from such facility or utility, or in determining the cost of the planning, acquisition, construction, reconstruction, development, improvement, extension, repair, maintenance, or operation thereof the legislative body of the city or town may include all costs and estimated costs of the issuance of said bonds, all engineering, inspection, fiscal and legal expense and interest which it is estimated will accrue during the construction period and for such period of time thereafter deemed by the legislative body to be necessary or desirable on money borrowed, or which it is estimated will be borrowed in connection therewith. [1971 ex.s. c 223 § 4; 1965 c 7 § 35.41.090. Prior: 1957 c 117 § 9.]

**35.41.095 Revenue bonds for water or sewerage system—Pledge of utility local improvement district assessments.** The legislative body of any city or town may provide as an additional method for securing the payment of any such bonds issued to pay the whole or a portion of the cost of providing the city or town with a system of water or sewerage as set forth in RCW 35.43.042, that utility local improvement district assessments authorized to be made for the purposes and subject to the limitations contained in RCW 35.43.042 may be pledged to secure the payment of such bonds. [1967 c 52 § 26.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.41.100 Chapter is alternative and additional method.** The authority granted by this chapter shall be considered an alternative and additional method of issuing revenue bonds or warrants by cities and towns and no restriction, limitation, or regulation relative to the issuance of such bonds contained in any other law shall apply to the bonds issued hereunder. [1965 c 7 § 35.41.100. Prior: 1957 c 117 § 10.]

**35.41.900 Short title.** This chapter shall be known as "the municipal revenue bond act." [1965 c 7 § 35.41.900. Prior: 1957 c 117 § 11.]

**Chapter 35.42 RCW**

**LEASES**

Sections

**LEASING OF SPACE WITH OPTION TO PURCHASE—1959 ACT**

- 35.42.010 Purpose.
- 35.42.020 Building defined.
- 35.42.030 Authority to lease.
- 35.42.040 Renewals—Option to purchase.
- 35.42.050 Provisions to pay taxes, insurance, make repairs, improvements, etc.
- 35.42.060 Execution of lease prior to construction—Lessor's bond—City not obligated for construction costs.
- 35.42.070 Lease of city land for building purposes and lease back of building by city.
- 35.42.080 Lease of city land for building purposes and lease back of building by city—Bids.
- 35.42.090 Leases exempted from certain taxes.

**LEASES OF REAL OR PERSONAL PROPERTY OR PROPERTY RIGHTS WITH OR WITHOUT OPTION TO PURCHASE—1963 ACT**

- 35.42.200 Leases authorized—Ballot proposition.
- 35.42.210 Exercise of option to purchase.
- 35.42.220 Budgeting rental payments—Bids—Construction of agreement where rental equals purchase price.

**LEASING OF SPACE WITH OPTION TO PURCHASE—1959 ACT**

**35.42.010 Purpose.** It is the purpose of RCW 35.42.010 through 35.42.090 to supplement existing law for the leasing of space by cities and towns to provide for the leasing of such space through leases with an option to purchase and the acquisition of buildings erected upon land owned by a city or town upon the expiration of a lease of such land. [1965 c 7 § 35.42.010. Prior: 1959 c 80 § 1.]

**35.42.020 Building defined.** The term "building" as used in RCW 35.42.010 through 35.42.090 shall be construed to mean any building or buildings used as a part of, or in connection with, the operation of a city or town, and shall include the site and appurtenances, including but not limited to, heating facilities, water supply, sewage disposal, landscaping, walks, and drives. [1965 c 7 § 35.42.020. Prior: 1959 c 80 § 2.]

**35.42.030 Authority to lease.** Any city or town may, as lessee, lease a building for its use for a term of not to exceed fifty years. [1965 c 7 § 35.42.030. Prior: 1959 c 80 § 3.]

**35.42.040 Renewals—Option to purchase.** A lease of a building executed pursuant to RCW 35.42.010 through 35.42.090 may grant the lessee city or town an option to renew for a further term on like conditions, or an option to purchase the building covered by the lease at any time prior to the expiration of the term. A lease with an option to purchase shall provide that all sums paid as rent up to the time of exercising the option shall be credited toward the payment of the purchase price as of the date of payment. No lease shall provide, nor be construed to provide, that any city or town shall be under any obligation to purchase the leased building. [1965 c 7 § 35.42.040. Prior: 1959 c 80 § 4.]

**35.42.050 Provisions to pay taxes, insurance, make repairs, improvements, etc.** A lease of a building may provide that as a part of the rental, the lessee city or town may pay taxes and assessments on the leased building, maintain insurance thereon for the benefit of the lessor, and assume responsibilities for repair, replacement, alterations, and improvements during the term of the lease. [1965 c 7 § 35.42.050. Prior: 1959 c 80 § 5.]

**35.42.060 Execution of lease prior to construction—Lessor's bond—City not obligated for construction costs.** A city or town may, in anticipation of the acquisition of a site and the construction of a building, execute a lease, as lessee, prior to the actual acquisition of a site and the construction of a building, but the lease shall not require payment of rental by the lessee until the building is ready for occupancy. The lessor shall furnish a bond satisfactory to the lessee conditioned on the delivery of possession of the completed building to the lessee city or town at the time prescribed in the lease, unavoidable delay excepted. The lease shall provide that no part of the cost of construction of the building shall ever become an obligation of the lessee city or town. [1965 c 7 § 35.42.060. Prior: 1959 c 80 § 6.]

**35.42.070 Lease of city land for building purposes and lease back of building by city.** Any city or town desiring to have a building for its use erected on land owned, or to be acquired, by it, may, as lessor, lease the land for a reasonable rental for a term of not to exceed fifty years: PROVIDED, That the city or town shall lease back the building or a portion thereof for the same term. The leases shall contain terms as agreed upon between the parties, and shall include the following provisions:

(1) No part of the cost of construction of the building shall ever be or become an obligation of the city or town.

(2) The city or town shall have a prior right to occupy any or all of the building upon payment of rental as agreed upon by the parties, which rental shall not exceed prevailing rates for comparable space.

(3) During any time that all or any portion of the building is not required for occupancy by the city or town, the lessee of the land may rent the unneeded portion to suitable tenants approved by the city or town.

(4) Upon the expiration of the lease, all buildings and improvements on the land shall become the property of the city or town. [1965 c 7 § 35.42.070. Prior: 1959 c 80 § 7.]

**35.42.080 Lease of city land for building purposes and lease back of building by city—Bids.** A lease and lease back agreement requiring a lessee to build on city or town property shall be made pursuant to a call for bids upon terms most advantageous to the city or town. The call for bids shall be given by posting notice thereof in a public place in the city or town and by publication in the official newspaper of the city or town once each week for two consecutive weeks before the date fixed for opening the bids. The city council or commission of the city or town may by resolution reject all bids and make further calls for bids in the same manner as the original call. If no bid is received on the first call, the city council or commission may readvertise and make a second call, or may execute a lease without any further call for bids. [1985 c 469 § 28; 1965 c 7 § 35.42.080. Prior: 1959 c 80 § 8.]

**35.42.090 Leases exempted from certain taxes.** All leases executed pursuant to RCW 35.42.010 through 35.42.090 shall be exempt from the tax imposed by chapter 19, Laws of 1951 second extraordinary session, as amended, and \*chapter 82.45 RCW; section 5, chapter 389, Laws of 1955, and RCW 82.04.040; and section 9, chapter 178, Laws of 1941, and RCW 82.08.090, and by rules and regulations of the department of revenue issued pursuant thereto. [1975 1st ex.s. c 278 § 22; 1965 c 7 § 35.42.090. Prior: 1959 c 80 § 9.]

**\*Reviser's note:** This internal reference has been changed from chapter 28A.45 RCW to chapter 82.45 RCW in accordance with 1981 c 148 § 13 and 1981 c 93 § 2. See note following RCW 82.45.010.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

LEASES OF REAL OR PERSONAL PROPERTY OR  
PROPERTY RIGHTS WITH OR WITHOUT  
OPTION TO PURCHASE—1963 ACT

**35.42.200 Leases authorized—Ballot proposition.** Any city or town may execute leases for a period of years with or without an option to purchase with the state or any of its political subdivisions, with the government of the United States, or with any private party for the lease of any real or personal property, or property rights: PROVIDED, That with respect only to leases that finance the acquisition of property by the lessee, the aggregated portions of lease payments over the term of the lease which are allocable to principal shall constitute debt, which shall not result in a total indebtedness in excess of one and one-half percent of the taxable property of such city or town computed in accordance with RCW

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39.36.030, unless a proposition in regard to whether or not such a lease may be executed is submitted to the voters for their approval or rejection in the same manner that bond issues for capital purposes are submitted, and the voters approve the same. [1990 c 205 § 1; 1965 c 7 § 35.42.200. Prior: 1963 c 170 § 1.]

**35.42.210 Exercise of option to purchase.** If at the time an option to purchase is exercised the remaining amount to be paid in order to purchase the real or personal property leased after crediting the rental payments toward the total purchase price therefor does not result in a total indebtedness in excess of one and one-half percent of the taxable property of such city or town computed in accordance with RCW 39.36.030, such a city or town may exercise its option to purchase such property. If such remaining amount to be paid to purchase such leased property will result in a total indebtedness in excess of one and one-half percent of the taxable property of such city or town, a proposition in regard to whether or not to purchase the property shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters. [1965 c 7 § 35.42.210. Prior: 1963 c 170 § 2.]

**35.42.220 Budgeting rental payments—Bids—Construction of agreement where rental equals purchase price.** The annual budget of a city shall provide for the payment of rental that falls due in the year for which the budget is applicable: PROVIDED, That if the cost of the real or personal property to be leased exceeds the amounts specified in RCW 35.23.352 prior to the execution of a lease with option to purchase therefor, the city or town shall call for bids in accordance with RCW 35.23.352: PROVIDED, That if at the expiration of a lease with option to purchase a city or town exercises such an option, the fact that the rental payments theretofore made equal the amount of the purchase price of the real or personal property involved in such lease shall not preclude the agreement from being a lease with option to purchase up to the date of the exercising of the option. [1965 c 7 § 35.42.220. Prior: 1963 c 170 § 3.]

Chapter 35.43 RCW

LOCAL IMPROVEMENTS—AUTHORITY—  
INITIATION OF PROCEEDINGS

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- 35.43.020 Construction.
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- first class cities, special:* RCW 35.22.280(10).
- local improvements, may be made by:* State Constitution Art. 7 § 9.
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*Authority of cities to levy special taxes for:* State Constitution Art. 7 § 9.

*Bonds, savings and loan associations may invest in:* RCW 33.24.080.

*Bridges, elevated, ordinance ordering improvement:* RCW 35.85.020.

*Curbs along streets, construction, reconstruction and repair:* Chapter 35.68 RCW.

*Eminent domain:* Chapter 8.12 RCW.

*First class cities, authority for special assessments:* RCW 35.22.280 (10), (13).

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*Prepayment of taxes and assessments:* RCW 35.21.650.

*Roadways, elevated, ordinance ordering improvement:* RCW 35.85.020.

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*Viaducts, ordinance ordering improvement:* RCW 35.85.020.

*Water rights, acquisition of:* RCW 35.92.220.

**35.43.005 Municipal local improvement statutes applicable to public corporations.** The provisions of this and the following chapters relating to municipal local improvements apply to local improvements owned or operated by a public corporation or by a public corporation and a city, town, or another public corporation as if they were owned or operated by a city or town. Whenever a section in such chapters refers to improvements made by, ordered by, owned by, operated by, constructed by, acquired by, or otherwise provided for or undertaken by a city or town or other municipality, it shall be construed to refer also to improvements made by, ordered by, owned by, operated by, constructed by, acquired by, or otherwise provided for or undertaken by a public corporation. [1987 c 242 § 6.]

**Policy—1987 c 242:** "It is declared to be the public policy of the state that public improvements owned and operated by public corporations that confer special benefits on property, including without limitation museum, cultural, or arts facilities or structures, should be able to use the local improvement district financing of municipalities." [1987 c 242 § 1.]

**35.43.010 Terms defined.** Whenever the words "city council" or "town council" are used in this and the following chapters relating to municipal local improvements, they shall be construed to mean the council or other legislative body of such city or town. Whenever the word "mayor" is used therein, it shall be construed to mean the presiding officer of said city or town. Whenever the words "installment" or "installments" are used therein, they shall be construed to include installment or installments of interest. Whenever the words "local improvement," "local improvements," or "municipal local improvements" are used therein, they shall be construed to include improvements owned or operated by a public corporation or by a public corporation and a city, town, or another public corporation. Whenever the words "public corporation" are used therein, they shall mean a public corporation, commission, or authority created pursuant to RCW 35.21.730 through 35.21.755. [1987 c 242 § 2; 1965 c 7 § 35.43.010. Prior: 1925 ex.s. c 117 § 2; 1911 c 98 § 68; RRS § 9421.]

**Policy—1987 c 242:** See note following RCW 35.43.005.

**35.43.020 Construction.** The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this and the following chapters relating to municipal local improvements but the same shall be liberally construed for the purpose of carrying out the objects for which intended. [1965 c 7 § 35.43.020. Prior: 1911 c 98 § 69; RRS § 9422.]

**35.43.030 Charters superseded—Application—Ordinances—Districts outside city authorized.** This and the following chapters relating to municipal local improvements shall supersede the provisions of the charter of any city of the first class.

They shall apply to all incorporated cities and towns, including unclassified cities and towns operating under special charters.

The council of each city and town shall pass such general ordinance or ordinances as may be necessary to carry out their provisions and thereafter all proceedings relating to local improvements shall be conducted in accordance with this and the following chapters relating to municipal local improvements and the ordinance or ordinances of such city or town.

Cities or towns may form local improvement districts or utility local improvement districts composed entirely or in part of unincorporated territory outside of such city or town's corporate limits in the manner provided in this chapter. [1971 ex.s. c 116 § 4; 1967 c 52 § 2; 1965 c 7 § 35.43.030. Prior: 1963 c 56 § 1; prior: (i) 1911 c 98 § 60; 1899 c 146 § 1; RRS § 9413. (ii) 1911 c 98 § 67; RRS § 9420. (iii) 1911 c 98 § 71; RRS § 9424.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.43.035 Creation of district outside city subject to review by boundary review board.** The creation of a local improvement district outside of the boundaries of a city or town to provide water or sewer facilities may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 30.]

**35.43.040 Authority generally.** Whenever the public interest or convenience may require, the legislative authority of any city or town may order the whole or any part of any local improvement including but not restricted to those, or any combination thereof, listed below to be constructed, reconstructed, repaired, or renewed and landscaping including but not restricted to the planting, setting out, cultivating, maintaining, and renewing of shade or ornamental trees and shrubbery thereon; may order any and all work to be done necessary for completion thereof; and may levy and collect special assessments on property specially benefited thereby to pay the whole or any part of the expense thereof, viz:

(1) Alleys, avenues, boulevards, lanes, park drives, parkways, parking facilities, public places, public squares, public streets, their grading, regrading, planking, replanking, paving, repaving, macadamizing, remacadamizing, graveling, regraveling, piling, repiling, capping, recapping, or other improvement; if the management and control of park drives, parkways, and boulevards is vested in a board of park commissioners, the plans and specifications for their improvement must be approved by the board of park commissioners before their adoption;

(2) Auxiliary water systems;

(3) Auditoriums, field houses, gymnasiums, swimming pools, or other recreational, playground, museum, cultural, or arts facilities or structures;

(4) Bridges, culverts, and trestles and approaches thereto;

(5) Bulkheads and retaining walls;

(6) Dikes and embankments;

(7) Drains, sewers, and sewer appurtenances which as to trunk sewers shall include as nearly as possible all the territory which can be drained through the trunk sewer and sub-sewers connected thereto;

(8) Escalators or moving sidewalks together with the expense of operation and maintenance;

(9) Parks and playgrounds;

(10) Sidewalks, curbing, and crosswalks;

(11) Street lighting systems together with the expense of furnishing electrical energy, maintenance, and operation;

(12) Underground utilities transmission lines;

(13) Water mains, hydrants, and appurtenances which as to trunk water mains shall include as nearly as possible all the territory in the zone or district to which water may be distributed from the trunk water mains through lateral service and distribution mains and services;

(14) Fences, culverts, syphons, or coverings or any other feasible safeguards along, in place of, or over open canals or ditches to protect the public from the hazards thereof;

(15) Roadbeds, trackage, signalization, storage facilities for rolling stock, overhead and underground wiring, and any other stationary equipment reasonably necessary for the operation of an electrified public streetcar line;

(16) Systems of surface, underground, or overhead railways, tramways, buses, or any other means of local transportation except taxis, and including passenger, terminal, station parking, and related facilities and properties, and such other facilities as may be necessary for passenger and vehicular access to and from such terminal, station, parking, and related facilities and properties, together with all lands, rights of way, property, equipment, and accessories necessary for such systems and facilities;

(17) Convention center facilities or structures in cities incorporated before January 1, 1982, with a population over sixty thousand located in a county with a population over one million, other than the city of Seattle. Assessments for purposes of convention center facilities or structures may be levied only to the extent necessary to cover a funding shortfall that occurs when funds received from special excise taxes imposed pursuant to chapter 67.28 RCW are insufficient to fund the annual debt service for such facilities or structures, and may not be levied on property exclusively maintained as single-family or multifamily permanent residences whether they are rented, leased, or owner occupied; and

(18) Programs of aquatic plant control, lake or river restoration, or water quality enhancement. Such programs shall identify all the area of any lake or river which will be improved and shall include the adjacent waterfront property specially benefited by such programs of improvements. Assessments may be levied only on waterfront property including any waterfront property owned by the department of natural resources or any other state agency. Notice of an assessment on a private leasehold in public property shall comply with provisions of chapter 79.44 RCW. Programs under this subsection shall extend for a term of not more than five years. [1997 c 452 § 16; 1989 c 277 § 1; 1985 c 397 § 1; 1983 c 291 § 1; 1981 c 17 § 1; 1969 ex.s. c 258 § 1; 1965 c 7 § 35.43.040. Prior: 1959 c 75 § 1; 1957 c 144 § 2; prior: (i) 1911 c 98 § 1; RRS § 9352. (ii) 1945 c 190 § 1, part; 1915 c 168 § 6, part; 1913 c 131 § 1, part; 1911 c 98 § 6, part; Rem. Supp. 1945 § 9357, part. (iii) 1911 c 98 § 15; RRS § 9367. (iv) 1911 c 98 § 58, part; RRS § 9411, part.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**Authority supplemental—Severability—1985 c 397:** See RCW 35.51.900 and 35.51.901.

**35.43.042 Authority to establish utility local improvement districts—Procedure.** Whenever the legislative authority of any city or town has provided pursuant to law for the acquisition, construction, reconstruction, purchase, condemnation and purchase, addition to, repair, or renewal of the whole or any portion of a:

(1) System for providing the city or town and the inhabitants thereof with water, which system includes as a whole or as a part thereof water mains, hydrants or appurtenances which are authorized subjects for local improvements under RCW 35.43.040(13) or other law; or a

(2) System for providing the city or town with sewerage and storm or surface water disposal, which system includes as a whole or as a part thereof drains, sewers or sewer appurtenances which are authorized subjects for local improvements under RCW 35.43.040(7) or other law; or

(3) Off-street parking facilities; and

Has further provided in accordance with any applicable provisions of the Constitution or statutory authority for the issuance and sale of revenue bonds to pay the cost of all or a portion of any such system, such legislative authority shall have the authority to establish utility local improvement districts, and to levy special assessments on all property specially benefited by any such local improvement to pay in whole or in part the damages or costs of any local improvements so provided for.

The initiation and formation of such utility local improvement districts and the levying, collection and enforcement of assessments shall be in the manner and subject to the same procedures and limitations as are now or hereafter provided by law for the initiation and formation of local improvement districts in cities and towns and the levying, collection and enforcement of assessments pursuant thereto.

It must be specified in any petition or resolution initiating the formation of such a utility local improvement district in a city or town and in the ordinance ordered pursuant thereto, that the assessments shall be for the sole purpose of payment into such revenue bond fund as may be specified by the legislative authority for the payment of revenue bonds issued to defray the cost of such system or facilities or any portion thereof as provided for in this section.

Assessments in any such utility local improvement district may be made on the basis of special benefits up to but not in excess of the total cost of the local improvements portion of any system or facilities payable by issuance of revenue bonds. No warrants or bonds shall be issued in any such utility local improvement district, but the collection of interest and principal on all assessments in such utility local improvement district, when collected, shall be paid into any such revenue bond fund.

When in the petition or resolution for establishment of a local improvement district and in the ordinance ordered pursuant thereto, it is specified or provided that the assessments shall be for the sole purpose of payment into a revenue bond fund for the payment of revenue bonds, then the local improvement district shall be designated a "utility local improvement district".

The provisions of chapters 35.45, 35.47 and 35.48 RCW shall have no application to utility local improvement dis-

tricts created under authority of this section. [1969 ex.s. c 258 § 2; 1967 c 52 § 1.]

**Construction—1967 c 52:** "The authority granted by this 1967 amendatory act shall be considered an alternative and additional method of securing payment of revenue bonds issued for the purposes specified in RCW 35.43.042 and shall not be construed as a restriction or limitation upon any other method for providing for the payment of any such revenue bonds." [1967 c 52 § 27.]

**Severability—1967 c 52:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 52 § 29.]

**35.43.043 Conversion of local improvement district into utility local improvement district.** The legislative authority of any city or town may by ordinance convert any then existing local improvement district into a utility local improvement district at any time prior to the adoption of an ordinance approving and confirming the final assessment roll of such local improvement district. The ordinance so converting the local improvement district shall provide for the payment of the special assessments levied in that district into the special fund established or to be established for the payment of revenue bonds issued to defray the cost of the local improvement in that district. [1967 c 52 § 28.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.43.045 Open canals or ditches—Safeguards.** Every city or town shall have the right of entry upon all irrigation, drainage, or flood control canal or ditch rights of way within its limits for all purposes necessary to safeguard the public from the hazards of such open canals or ditches, and the right to cause to be constructed, installed, and maintained upon or adjacent to such rights of way safeguards as provided in RCW 35.43.040: PROVIDED, That such safeguards must not unreasonably interfere with maintenance of the canal or ditch or with the operation thereof. The city or town, at its option, notwithstanding any laws to the contrary, may require the irrigation, drainage, flood control, or other district, agency, person, corporation, or association maintaining the canal or ditch to supervise the installation and construction of such safeguards, or to maintain the same. If such option is exercised reimbursement must be made by the city or town for all actual costs thereof. [1965 c 7 § 35.43.045. Prior: 1959 c 75 § 2.]

*Safeguarding open canals or ditches, assessments: RCW 35.43.040, 35.43.045, 36.88.015, 36.88.350, 36.88.380 through 36.88.400, 87.03.480, 87.03.526.*

**35.43.050 Authority—Noncontinuous improvements.** When the legislative body of any city or town finds that all of the property within a local improvement district or utility local improvement district will be benefited by the improvements as a whole, a local improvement district or utility local improvement district may include adjoining, vicinal, or neighboring streets, avenues, and alleys or other improvements even though the improvements thus made are not connected or continuous. The assessment rates may be ascertained on the basis of the special benefit of the improvements as a whole to the properties within the entire local improvement district or utility local improvement district, or

on the basis of the benefit of each unit of the improvements to the properties specially benefited by that unit, or the assessment rates may be ascertained by a combination of the two bases. Where no finding is made by the legislative body as to the benefit of the improvements as a whole to all of the property within a local improvement district or utility local improvement district, the cost and expense of each continuous unit of the improvements shall be ascertained separately, as near as may be, and the assessment rates shall be computed on the basis of the cost and expense of each unit. In the event of the initiation of a local improvement district authorized by this section or a utility local improvement district authorized by this section, the legislative body may, in its discretion, eliminate from the district any unit of the improvement which is not connected or continuous and may proceed with the balance of the improvement within the local improvement district or utility local improvement district, as fully and completely as though the eliminated unit had not been included within the improvement district, without the giving of any notices to the property owners remaining within the district, other than such notices as are required by the provisions of this chapter to be given subsequent to such elimination. [1985 c 397 § 2; 1967 c 52 § 3; 1965 c 7 § 35.43.050. Prior: 1957 c 144 § 14; prior: 1947 c 155 § 1, part; 1941 c 90 § 1, part; 1915 c 168 § 2, part; 1911 c 98 § 13, part; Rem. Supp. 1947 § 9365, part.]

**Authority supplemental—Severability—1985 c 397:** See RCW 35.51.900 and 35.51.901.

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.43.060 Consolidated cities—Procedure.** The city council of any city which is composed of two or more cities or towns which have been or may hereafter be consolidated may make and pass all resolutions, orders and ordinances necessary for any assessment where the improvement was made or was being made by a component city or town prior to consolidation. [1965 c 7 § 35.43.060. Prior: 1911 c 98 § 64; RRS § 9417.]

**35.43.070 Ordinance—Action on petition or resolution.** A local improvement may be ordered only by an ordinance of the city or town council, pursuant to either a resolution or petition therefor. The ordinance must receive the affirmative vote of at least a majority of the members of the council.

Charters of cities of the first class may prescribe further limitations. In cities and towns other than cities of the first class, the ordinance must receive the affirmative vote of at least two-thirds of the members of the council if, prior to its passage, written objections to its enactment are filed with the city clerk by or on behalf of the owners of a majority of the lineal frontage of the improvement and of the area within the limits of the proposed improvement district. [1965 c 7 § 35.43.070. Prior: (i) 1911 c 98 § 8; RRS § 9359. (ii) 1911 c 98 § 66; RRS § 9419.]

**35.43.075 Petition for district outside city may be denied.** Whenever the formation of a local improvement district or utility local improvement district which lies entirely or in part outside of a city or town's corporate limits is initi-

ated by petition the legislative authority of the city or town may by a majority vote deny the petition and refuse to form the local improvement district or utility local improvement district. [1967 c 52 § 4; 1965 c 7 § 35.43.075. Prior: 1963 c 56 § 3.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.43.080 Ordinance—Creation of district.** Every ordinance ordering a local improvement to be paid in whole or in part by assessments against the property specially benefited shall describe the improvement and establish a local improvement district to be known as "local improvement district No. . . .," or a utility local improvement district to be known as "utility local improvement district No. . . ." which shall embrace as nearly as practicable all the property specially benefited by the improvement. [1969 ex.s. c 258 § 3; 1967 c 52 § 5; 1965 c 7 § 35.43.080. Prior: 1957 c 144 § 15; prior: (i) 1947 c 155 § 1, part; 1941 c 90 § 1, part; 1915 c 168 § 2, part; 1911 c 98 § 13, part; Rem. Supp. 1947 § 9365, part. (ii) 1929 c 97 § 2; 1911 c 98 § 14; RRS § 9366.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.43.100 Ordinance—Finality—Limitation upon challenging jurisdiction or authority to proceed.** The council may continue the hearing upon any petition or resolution provided for in this chapter and shall retain jurisdiction thereof until it is finally disposed of. The action and decision of the council as to all matters passed upon by it in relation to any petition or resolution shall be final and conclusive. No lawsuit whatsoever may be maintained challenging the jurisdiction or authority of the council to proceed with the improvement and creating the local improvement district or in any way challenging the validity thereof or any proceedings relating thereto unless that lawsuit is served and filed no later than thirty days after the date of passage of the ordinance ordering the improvement and creating the district or, when applicable, no later than thirty days after the expiration of the thirty-day protest period provided in RCW 35.43.180. [1969 ex.s. c 258 § 4; 1965 c 7 § 35.43.100. Prior: 1911 c 98 § 19; RRS § 9371.]

**35.43.110 Petition—Mandatory, when.** Proceedings to establish local improvement districts must be initiated by petition in the following cases:

(1) Any local improvement payable in whole or in part by special assessments which includes a charge for the cost and expense of operation and maintenance of escalators or moving sidewalks shall be initiated only upon a petition signed by the owners of two-thirds of the lineal frontage upon the improvement to be made and two-thirds of the area within the limits of the proposed improvement district;

(2) If the management of park drives, parkways, and boulevards of a city has been vested in a board of park commissioners or similar authority: PROVIDED, That the proceedings may be initiated by a resolution, if the ordinance is passed at the request of the park board or similar authority therefor specifying the particular drives, parkways, or boulevards, or portions thereof to be improved and the nature of the improvement. [1981 c 313 § 10; 1965 c 7 § 35.43.110. Prior:

1957 c 144 § 3; prior: (i) 1911 c 98 § 58, part; RRS § 9411, part. (ii) 1945 c 190 § 1, part; 1915 c 168 § 6, part; 1913 c 131 § 1, part; 1911 c 98 § 6, part; Rem. Supp. 1945 § 9357, part.]

**Severability—1981 c 313:** See note following RCW 36.94.020.

**35.43.120 Petition—Requirements.** Any local improvement may be initiated upon a petition signed by the owners of property aggregating a majority of the area within the proposed district. The petition must briefly describe: (1) The nature of the proposed improvement, (2) the territorial extent of the proposed improvement, (3) what proportion of the area within the proposed district is owned by the petitioners as shown by the records in the office of the county auditor, and (4) the fact that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement, or street lighting, adds to the property.

If any of the property within the area of the proposed district stands in the name of a deceased person, or of any person for whom a guardian has been appointed and not discharged, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property on the petition. The petition must be filed with the clerk or with such other officer as the city or town by charter or ordinance may require. [1989 c 243 § 1; 1981 c 323 § 1; 1969 ex.s. c 258 § 5; 1965 c 7 § 35.43.120. Prior: 1957 c 144 § 6; prior: 1911 c 98 § 9, part; RRS § 9360, part.]

**35.43.125 Petition—Notice and public hearing required.** A public hearing shall be held on the creation of a proposed local improvement district or utility local improvement district that is initiated by petition. Notice requirements for this public hearing shall be the same as for the public hearing on the creation of a proposed local improvement district or utility local improvement district that is initiated by resolution. [1987 c 315 § 2.]

**35.43.130 Preliminary estimates and assessment roll.** Upon the filing of a petition or upon the adoption of a resolution, as the case may be, initiating a proceeding for the formation of a local improvement district or utility local improvement district, the proper board, officer, or authority designated by charter or ordinance to make the preliminary estimates and assessment roll shall cause an estimate to be made of the cost and expense of the proposed improvement and certify it to the legislative authority of the city or town together with all papers and information in its possession touching the proposed improvement, a description of the boundaries of the district, and a statement of what portion of the cost and expense of the improvement should be borne by the property within the proposed district.

If the proceedings were initiated by petition the designated board, officer or authority shall also determine the sufficiency of the petition and whether the facts set forth therein are true. If the petition is found to be sufficient and in all proceedings initiated by resolution of the legislative authority of the city or town, the estimates must be accompanied by a diagram showing thereon the lots, tracts, and parcels of land and other property which will be specially benefited by the pro-

posed improvement and the estimated amount of the cost and expense thereof to be borne by each lot, tract, or parcel of land or other property: PROVIDED, That no such diagram shall be required where such estimates are on file in the office of the city engineer, or other designated city office, together with a detailed copy of the preliminary assessment roll and the plans and assessment maps of the proposed improvement.

For the purpose of estimating and levying local improvement assessments, the value of property of the United States, of the state, or of any county, city, town, school district, or other public corporation whose property is not assessed for general taxes shall be computed according to the standards afforded by similarly situated property which is assessed for general taxes. [1983 c 303 § 1; 1967 c 52 § 6; 1965 c 7 § 35.43.130. Prior: 1957 c 144 § 7; prior: 1953 c 26 § 1. (i) 1911 c 98 § 9, part; RRS § 9360, part. (ii) 1929 c 97 § 1, part; 1911 c 98 § 10, part; RRS § 9361, part. (iii) 1949 c 28 § 1, part; 1931 c 85 § 1, part; 1927 c 109 § 1, part; 1923 c 135 § 1, part; 1921 c 128 § 1, part; 1915 c 168 § 1, part; 1911 c 98 § 12, part; Rem. Supp. 1949 § 9363, part. (iv) 1927 c 209 § 4, part; 1923 c 141 § 4, part; RRS § 9351-4, part.]

**Severability—1983 c 303:** See RCW 36.60.905.

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.43.140 Resolutions—Contents, publication—Hearing, by whom held.** Any local improvement to be paid for in whole or in part by the levy and collection of assessments upon the property within the proposed improvement district may be initiated by a resolution of the city or town council or other legislative authority of the city or town, declaring its intention to order the improvement, setting forth the nature and territorial extent of the improvement, containing a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement, or street lighting, adds to the property, and notifying all persons who may desire to object thereto to appear and present their objections at a time to be fixed therein.

In the case of trunk sewers and trunk water mains the resolution must describe the routes along which the trunk sewer, subsewer and branches of trunk water main and laterals are to be constructed.

In case of dikes or other structures to protect the city or town or any part thereof from overflow or to open, deepen, straighten, or enlarge watercourses, waterways and other channels the resolution must set forth the place of commencement and ending thereof and the route to be used.

In the case of auxiliary water systems, or extensions thereof or additions thereto for protection of the city or town or any part thereof from fire, the resolution must set forth the routes along which the auxiliary water system or extensions thereof or additions thereto are to be constructed and specifications of the structures or works necessary thereto or forming a part thereof.

The resolution shall be published in at least two consecutive issues of the official newspaper of the city or town, the first publication to be at least fifteen days before the day fixed for the hearing.

The hearing herein required may be held before the city or town council, or other legislative authority, or before a

committee thereof. The legislative authority of a city or town may designate an officer to conduct the hearings. The committee or hearing officer shall report recommendations on the resolution to the legislative authority for final action. [1994 c 71 § 2; 1989 c 243 § 2; 1985 c 469 § 29; 1984 c 203 § 1; 1965 c 7 § 35.43.140. Prior: 1957 c 144 § 8; prior: 1953 c 177 § 1. (i) 1929 c 97 § 1, part; 1911 c 98 § 10, part; RRS § 9361, part. (ii) 1911 c 98 § 16, part; RRS § 9368, part. (iii) 1911 c 98 § 17, part; RRS § 9369, part. (iv) 1911 c 98 § 18, part; RRS § 9370, part.]

**Severability—1984 c 203:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 203 § 10.]

### 35.43.150 Resolutions—Hearing upon—Notice.

Notice of the hearing upon a resolution declaring the intention of the legislative authority of a city or town to order an improvement shall be given by mail at least fifteen days before the day fixed for hearing to the owners or reputed owners of all lots, tracts, and parcels of land or other property to be specially benefited by the proposed improvement, as shown on the rolls of the county assessor, directed to the address thereon shown.

The notice shall set forth the nature of the proposed improvement, the estimated cost, a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement, or street lighting, adds to the property, and the estimated benefits of the particular lot, tract, or parcel. [1989 c 243 § 3; 1983 c 303 § 2; 1965 c 7 § 35.43.150. Prior: 1957 c 144 § 9; prior: 1929 c 97 § 1, part; 1911 c 98 § 10, part; RRS § 9361, part.]

**Severability—1983 c 303:** See RCW 36.60.905.

**35.43.180 Restraint by protest.** The jurisdiction of the legislative authority of a city or town to proceed with any local improvement initiated by resolution shall be divested by a protest filed with the city or town council within thirty days from the date of passage of the ordinance ordering the improvement, signed by the owners of the property within the proposed local improvement district or utility local improvement district subject to sixty percent or more of the total cost of the improvement including federally-owned or other non-assessable property as shown and determined by the preliminary estimates and assessment roll of the proposed improvement district or, if all or part of the local improvement district or utility local improvement district lies outside of the city or town, such jurisdiction shall be divested by a protest filed in the same manner and signed by the owners of property which is within the proposed local improvement district or utility local improvement district but outside the boundaries of the city or town, and which is subject to sixty percent or more of that part of the total cost of the improvement allocable to property within the proposed local improvement district or utility local improvement district but outside the boundaries of the city or town, including federally-owned or other non-assessable property: PROVIDED, That such restraint by protest shall not apply to any of the following local improvements, if the legislative body finds and recites in the ordinance or resolution authorizing the improvement that such

improvement is necessary for the protection of the public health and safety and such ordinance or resolution is passed by unanimous vote of all members present: (1) Sanitary sewers or watermains where the health officer of the city or town, or department of ecology, files with the legislative authority a report showing the necessity for such improvement; and (2) fire hydrants where the chief of the fire department files a report showing the necessity for such improvement. [1983 c 303 § 3; 1967 c 52 § 8; 1965 c 58 § 2; 1965 c 7 § 35.43.180. Prior: 1963 c 56 § 2; 1957 c 144 § 12; prior: 1949 c 28 § 1, part; 1931 c 85 § 1, part; 1927 c 109 § 1, part; 1923 c 135 § 1, part; 1921 c 128 § 1, part; 1915 c 168 § 1, part; 1911 c 98 § 12, part; Rem. Supp. 1949 § 9363, part.]

**Severability—1983 c 303:** See RCW 36.60.905.

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

### 35.43.182 Waivers of protest—Recording—Limits on enforceability.

If an owner of property enters into an agreement with a city or town waiving the property owner's right under RCW 35.43.180 to protest formation of a local improvement district, the agreement must specify the improvements to be financed by the district and shall set forth the effective term of the agreement, which shall not exceed ten years. The agreement must be recorded with the auditor of the county in which the property is located. It is against public policy and void for an owner, by agreement, as a condition imposed in connection with proposed property development, or otherwise, to waive rights to object to the property owner's individual assessment (including the determination of special benefits allocable to the property), or to appeal to the superior court the decision of the city or town council affirming the final assessment roll. [1988 c 179 § 8.]

**Severability—Prospective application—Section captions—1988 c 179:** See RCW 39.92.900 and 39.92.901.

**35.43.184 Preformation expenditures.** The city or town engineer or other designated official may contract with owners of real property to provide for payment by the owners of the cost of the preparation of engineering plans, surveys, studies, appraisals, legal services, and other expenses associated with improvements to be financed in whole or in part by a local improvement district (not including the cost of actual construction of such improvements), that the owners elect to undertake. The contract may provide for reimbursement to the owner of such costs from the proceeds of bonds issued by the district after formation of a district under this chapter, from assessments paid to the district as appropriate, or by a credit in the amount of such costs against future assessments assessed against such property under the district. Such reimbursement shall be made to the owner of the property at the time of reimbursement. The contract shall also provide that such costs shall not be reimbursed to the owner if a district to construct the specified improvements (as the project may be amended) is not formed within six years of the date of the contract. The contract shall provide that any preformation work shall be conducted only under the direction of the city or town engineer or other appropriate city or town authority. [1988 c 179 § 9.]

**Severability—Prospective application—Section captions—1988 c 179:** See RCW 39.92.900 and 39.92.901.

**35.43.186 Credits for other assessments.** A city or town ordering a local improvement upon which special assessments on property specifically benefited by the improvement are levied and collected, may provide as part of the ordinance creating the local improvement district that moneys paid or the cost of facilities constructed by a property owner in the district in satisfaction of obligations under chapter 39.92 RCW, shall be credited against assessments due from the owner of such property at the time the credit is made, if those moneys paid or facilities constructed directly defray the cost of the specified improvements under the district and if credit for such amounts is reflected in the final assessment roll confirmed for the district. [1988 c 179 § 10.]

**Severability—Prospective application—Section captions—1988 c 179:** See RCW 39.92.900 and 39.92.901.

**35.43.188 Assessment reimbursement accounts.** A city or town ordering a local improvement upon which special assessments on property specifically benefited by the improvement are levied and collected, may provide as part of the ordinance creating the local improvement district that the payment of an assessment levied for the district on underdeveloped properties may be made by owners of other properties within the district, if they so elect, subject to terms of reimbursement set forth in the ordinance. The terms for reimbursement shall require the owners of underdeveloped properties on whose behalf payments of assessments have been made to reimburse all such assessment payments to the party who made them when those properties are developed or redeveloped, together with interest at a rate specified in the ordinance. The ordinance may provide that reimbursement shall be made on a one-time, lump sum basis, or may provide that reimbursement shall be made over a period not to exceed five years. The ordinance may provide that reimbursement shall be made no later than the time of dissolution of the district, or may provide that no reimbursement is due if the underdeveloped properties are not developed or redeveloped before the dissolution of the district. Reimbursement amounts due from underdeveloped properties under this section are liens upon the underdeveloped properties in the same manner and with like effect as assessments made under this chapter. For the purposes of this section, "underdeveloped properties" may include those properties that, in the discretion of the legislative body of the city or town, (1) are undeveloped or are not developed to their highest and best use, and (2) are likely to be developed or redeveloped before the dissolution of the district. [1988 c 179 § 11.]

**Severability—Prospective application—Section captions—1988 c 179:** See RCW 39.92.900 and 39.92.901.

**35.43.190 Work—By contract or by city or public corporation.** All local improvements, the funds for the making of which are derived in whole or in part from assessments upon property specially benefited shall be made by contract on competitive bids whenever the estimated cost of such improvement including the cost of materials, supplies, labor, and equipment will exceed the sum of five thousand dollars. The city, town, or public corporation may reject any and all bids. The city, town, or public corporation itself may make the local improvements if all the bids received exceed by ten percent preliminary cost estimates prepared by an indepen-

dent consulting engineer or registered professional engineer retained for that purpose by the city, town, or public corporation. [1987 c 242 § 3; 1971 ex.s. c 116 § 6; 1965 c 7 § 35.43.190. Prior: 1911 c 98 § 59; RRS § 9412.]

**Policy—1987 c 242:** See note following RCW 35.43.005.

**35.43.200 Street railways at expense of property benefited.** Any city or town in this state owning and operating a municipal street railway over one hundred miles of track shall have power to provide for purchasing, or otherwise acquiring, or constructing and equipping surface, subway and elevated street railways and extensions thereof, and to levy and collect special assessments on property specially benefited thereby, for paying the cost and expense of the same or any portion thereof, as hereinafter provided. [1965 c 7 § 35.43.200. Prior: 1923 c 176 § 1; RRS § 9425-1.]

**35.43.210 Street railways at expense of property benefited—Petition—Assessment district.** Any improvement district created under RCW 35.43.200-35.43.230 shall be created only by ordinance defining its boundaries as specified and described in the petition therefor and specifying the plan or system therein provided for; and shall be initiated only upon a petition therefor, specifying and describing the boundaries of such district and specifying the plan or system of proposed improvement, signed by the owners of at least sixty percent of the lineal frontage upon the proposed improvement and of at least fifty percent of the area within the limits of the proposed improvement district: PROVIDED, That the city council may in its discretion reject any such petition. [1965 c 7 § 35.43.210. Prior: 1923 c 176 § 2; RRS § 9425-2.]

**35.43.220 Street railways at expense of property benefited—Assessment of cost.** The cost and expense of any such improvement shall be distributed and assessed against all the property included in such local improvement district, in accordance with the special benefits conferred thereon. [1965 c 7 § 35.43.220. Prior: 1923 c 176 § 3; RRS § 9425-3.]

**35.43.230 Street railways at expense of property benefited—Procedure.** Except as herein otherwise provided all matters and proceedings relating to such local improvement district, the levying and collecting of assessments, the issuance and redemption of local improvement warrants and bonds, and the enforcement of local assessment liens hereunder shall be governed by the laws relating to local improvements; and all matters and proceedings relating to the purchase, acquisition, or construction and equipment of the improvement and the operation of the same hereunder and the issuance and redemption of utility bonds and warrants, if any, and the use of general or utility funds, if any, in connection with the purchase, acquisition, construction, equipping, or operation of the improvement shall be governed by the laws relating to municipal public utilities. [1965 c 7 § 35.43.230. Prior: 1923 c 176 § 4; RRS § 9425-4.]

**35.43.250 Deferral of collection of assessments for economically disadvantaged persons—Authorized.** Any city of the first class in this state ordering any local improvement upon which shall be levied and collected special assess-

ments on property specifically benefited thereby may provide as part of the ordinance creating any local improvement district that the collection of any assessment levied therefor may be deferred until a time previous to the dissolution of the district for those economically disadvantaged property owners or other persons who, under the terms of a recorded contract of purchase, recorded mortgage, recorded deed of trust transaction or recorded lease are responsible under penalty of forfeiture, foreclosure or default as between vendor/vendee, mortgagor/mortgagee, grantor and trustor/trustee and grantee, and beneficiary and lender, or lessor and lessee for the payment of local improvement district assessments, and in the manner specified in the ordinance qualify for such deferment, upon assurance of property security for the payment thereof. [1972 ex.s. c 137 § 2.]

**Severability—1972 ex.s. c 137:** See note following RCW 35.49.010.

**35.43.260 Service fees for sewers not constructed within ten years after voter approval—Credit against future assessments, service charges.** Any municipal corporation, quasi municipal corporation, or political subdivision which has the authority to install sewers by establishing local improvement districts, which has charged and collected monthly service fees for sewers, that have been authorized and approved by the voters and have not been constructed for a period of ten or more years since the voter approval, is hereby authorized and directed to grant a credit against the future assessment to be assessed at the time of actual completion of construction of the sewers for each parcel of real property in an amount equal in dollars to the total amount of service fees charged and collected since voter approval for each such parcel, plus interest at six percent compounded annually: PROVIDED, That if such service fees and interest exceed the future assessment for construction of the sewers, such excess funds shall be used to defray future sewer service charge fees.

It is the intent of the legislature that the provisions of this section are procedural and remedial and shall have retroactive effect. [1977 c 72 § 3.]

**35.43.270 Sanitary sewer or potable water facilities—Notice to certain property owners.** Whenever it is proposed that a local improvement district or utility local improvement district finance sanitary sewers or potable water facilities, additional notice of the public hearing on the proposed improvement district shall be mailed to the owners of any property located outside of the proposed improvement district that would be required as a condition of federal housing administration loan qualification, at the time of notice, to be connected to the specific sewer or water facilities installed by the local improvement district. The notice shall include information about this restriction. [1987 c 315 § 1.]

**35.43.280 Settlement of Indian claims.** (1) The settlement of Indian land and other claims against public and private property owners is declared to be in the interest of public health and safety, orderly government, environmental protection, economic development, and the social well-being of the citizens of this state, and to specifically benefit the properties released from those claims.

It is the purpose of chapter 4, Laws of 1989 1st ex. sess. to encourage the settlement of such Indian land and other claims lawsuits by permitting the establishment and use of local improvement districts to finance all or a portion of the settlement costs of such lawsuits.

(2) A local improvement district may be established by a local government legislative authority to finance all or part of the settlement costs in an Indian land and other claims settlement related to public and private property located within the local government. The settlement of an Indian land claim lawsuit shall be deemed to be an improvement that may be financed in whole or in part through use of a local improvement district.

Except as expressly provided in this section, all matters relating to the establishment and operation of such a local improvement district, the levying and collection of special assessments, the issuance of local improvement district bonds and other obligations, and all related matters, shall be subject to the provisions of chapters 35.43 through 35.54 RCW. The resolution or petition initiating the creation of a local improvement district used to finance all or a portion of an Indian land and other claims settlement shall describe the general nature of the Indian land and other claims and the proposed settlement. The value of a contribution by any person, municipal corporation, political subdivision, or the state of money, real property, or personal property to the settlement of Indian land and other claims shall be credited to any assessment for a local improvement district under this section. [1989 1st ex.s. c 4 § 2.]

**Severability—1989 1st ex.s. c 4:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 1st ex.s. c 4 § 4.]

## Chapter 35.44 RCW

### LOCAL IMPROVEMENTS—ASSESSMENTS AND REASSESSMENTS

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*Deferral of special assessments:* Chapter 84.38 RCW.

**35.44.010 Assessment district—All property to be assessed—Basis.** All property included within the limits of a local improvement district or utility local improvement district shall be considered to be the property specially benefited by the local improvement and shall be the property to be assessed to pay the cost and expense thereof or such part thereof as may be chargeable against the property specially benefited. The cost and expense shall be assessed upon all the property in accordance with the special benefits conferred thereon. [1985 c 397 § 3; 1967 c 52 § 9; 1965 c 7 § 35.44.010. Prior: 1957 c 144 § 16; prior: 1947 c 155 § 1, part; 1941 c 90 § 1, part; 1915 c 168 § 2, part; 1911 c 98 § 13, part; Rem. Supp. 1947 § 9365, part.]

**Authority supplemental—Severability—1985 c 397:** See RCW 35.51.900 and 35.51.901.

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.44.015 Special benefit assessments for farm and agricultural land—Exemption from assessments, etc.** See RCW 84.34.300 through 84.34.380 and 84.34.922.

**35.44.020 Assessment district—Cost items to be included.** There shall be included in the cost and expense of every local improvement for assessment against the property in the district created to pay the same, or any part thereof:

(1) The cost of all of the construction or improvement authorized for the district including, but not limited to, that portion of the improvement within the street intersections;

(2) The estimated cost and expense of all engineering and surveying necessary for the improvement done under the supervision of the city or town engineer;

(3) The estimated cost and expense of ascertaining the ownership of the lots or parcels of land included in the assessment district;

(4) The estimated cost and expense of advertising, mailing, and publishing all necessary notices;

(5) The estimated cost and expense of accounting, clerical labor, and of books and blanks extended or used on the

part of the city or town clerk and city or town treasurer in connection with the improvement;

(6) All cost of the acquisition of rights of way, property, easements, or other facilities or rights, including without limitation rights to use property, facilities, or other improvements appurtenant, related to, and/or useful in connection with the local improvement, whether by eminent domain, purchase, gift, payment of connection charges, capacity charges, or other similar charges or in any other manner;

(7) The cost for legal, financial, and appraisal services and any other expenses incurred by the city, town, or public corporation for the district or in the formation thereof, or by the city, town, or public corporation in connection with such construction or improvement and in the financing thereof, including the issuance of any bonds and the cost of providing for increases in the local improvement guaranty fund, or providing for a separate reserve fund or other security for the payment of principal of and interest on such bonds.

Any of the costs set forth in this section may be excluded from the cost and expense to be assessed against the property in such local improvement district and may be paid from any other moneys available therefor if the legislative body of the city or town so designates by ordinance at any time. [1995 c 382 § 1; 1987 c 242 § 4; 1985 c 397 § 4; 1971 ex.s. c 116 § 8; 1969 ex.s. c 258 § 6; 1965 c 7 § 35.44.020. Prior: 1955 c 364 § 1; 1911 c 98 § 55; RRS § 9408.]

**Policy—1987 c 242:** See note following RCW 35.43.005.

**Authority supplemental—Severability—1985 c 397:** See RCW 35.51.900 and 35.51.901.

**35.44.030 Assessment district—Zones.** For the purpose of ascertaining the amount to be assessed against each separate lot, tract, parcel of land or other property therein, the local improvement district or utility local improvement district shall be divided into subdivisions or zones paralleling the margin of the street, avenue, lane, alley, boulevard, park drive, parkway, public place or public square to be improved, numbered respectively first, second, third, fourth, and fifth.

The first subdivision shall include all lands within the district lying between the street margins and lines drawn parallel therewith and thirty feet therefrom.

The second subdivision shall include all lands within the district lying between lines drawn parallel with and thirty and sixty feet respectively from the street margins.

The third subdivision shall include all lands within the district lying between lines drawn parallel with and sixty and ninety feet respectively from the street margins.

The fourth subdivision shall include all lands, if any, within the district lying between lines drawn parallel with and ninety and one hundred twenty feet respectively from the street margins.

The fifth subdivision shall include all lands, if any, within the district lying between a line drawn parallel with and one hundred twenty feet from the street margin and the outer limit of the improvement district. [1967 c 52 § 10; 1965 c 7 § 35.44.030. Prior: 1957 c 144 § 17; prior: 1947 c 155 § 1, part; 1941 c 90 § 1, part; 1915 c 168 § 2, part; 1911 c 98 § 13, part; Rem. Supp. 1947 § 9365, part.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.44.040 Assessment rate per square foot.** The rate of assessment per square foot in each subdivision of an improvement district shall be fixed on the basis that the special benefits conferred on a square foot of land in subdivisions first, second, third, fourth and fifth, respectively, are related to each other as are the numbers, forty-five, twenty-five, twenty, ten, and five, respectively, and shall be ascertained in the following manner:

(1) The products of the number of square feet in subdivisions first, second, third, fourth, and fifth, respectively, and the numbers forty-five, twenty-five, twenty, ten, and five, respectively, shall be ascertained;

(2) The aggregate sum thereof shall be divided into the total cost and expense of the improvement;

(3) The resultant quotient multiplied by forty-five, twenty-five, twenty, ten, and five, respectively, shall be the respective rate of assessment per square foot for subdivisions first, second, third, fourth and fifth: PROVIDED, That in lieu of the above formula the rate of assessment per square foot in each subdivision of an improvement district may be fixed on the basis that the special benefits conferred on a square foot of land in subdivisions first, second, third, fourth and fifth, respectively, are related to each other as are the numbers 0.015000, 0.008333, 0.006666, 0.003333, and 0.001666, respectively; and the method of determining the assessment on each lot, tract, or parcel of land in the improvement district may be ascertained in the following manner:

(1) The products of the number of square feet in subdivisions first, second, third, fourth and fifth, respectively, for each lot, tract or parcel of land in the improvement district and the numbers 0.015000, 0.008333, 0.006666, 0.003333 and 0.001666, respectively, shall be ascertained. The sum of all such products for each such lot, tract or parcel of land shall be the number of "assessable units of frontage" therein;

(2) The rate for each assessable unit of frontage shall be determined by dividing that portion of the total cost of the improvement representing special benefits by the aggregate sum of all assessable units of frontage;

(3) The assessment for each lot, tract or parcel of land in the improvement district shall be the product of the assessable units of frontage therefor, multiplied by the rate per assessable unit of frontage. [1965 c 7 § 35.44.040. Prior: 1957 c 144 § 18; prior: 1947 c 155 § 1, part; 1941 c 90 § 1, part; 1915 c 168 § 2, part; 1911 c 98 § 13, part; Rem. Supp. 1947 § 9365, part.]

**35.44.045 Open canals or ditches—Safeguards—Ascertaining assessments.** As an alternative to other methods of ascertaining assessments for local improvements, in a local improvement district established for safeguarding open canals or ditches, the district may be sectioned into subdivisions or zones paralleling the canal or ditch, numbered respectively, first, second, third and fourth. Each subdivision shall be equal to one-quarter of the width of the district as measured back from the margin of the canal right of way. The rate of assessment per square foot in each subdivision so formed shall be fixed on the basis that the special benefits conferred on a square foot of land in subdivisions first, second, third, and fourth, respectively, are related to each other as are the numbers, forty, thirty, twenty, and ten, respectively, and shall be ascertained in the following manner:

(1) The products of the number of square feet in subdivisions first, second, third, and fourth, respectively, and the numbers forty, thirty, twenty, and ten, respectively, shall be ascertained;

(2) The aggregate sum thereof shall be divided into the total cost and expense of the local improvement;

(3) The resultant quotient multiplied by forty, thirty, twenty, and ten, respectively, shall be the respective rate of assessment per square foot for each subdivision. [1965 c 7 § 35.44.045. Prior: 1959 c 75 § 3.]

*Safeguarding open canals or ditches, assessments: RCW 35.43.040, 35.43.045, 36.88.015, 36.88.350, 36.88.380 through 36.88.400, 87.03.480, 87.03.526.*

**35.44.047 Other methods of computing assessments may be used.** Notwithstanding the methods of assessment provided in RCW 35.44.030, 35.44.040 and 35.44.045, the city or town may use any other method or combination of methods to compute assessments which may be deemed to more fairly reflect the special benefits to the properties being assessed. The failure of the council to specifically recite in its ordinance ordering the improvement and creating the local improvement district that it will not use the zone and termini method of assessment shall not invalidate the use of any other method or methods of assessment. [1969 ex.s. c 258 § 7.]

**35.44.050 Assessment roll—Entry of assessments against property.** The total assessment thus ascertained against each separate lot, tract, parcel of land, or other property in the district shall be entered upon the assessment roll as the amount to be levied and assessed against each separate lot, tract, parcel of land, or other property. [1965 c 7 § 35.44.050. Prior: 1957 c 144 § 19; prior: 1947 c 155 § 1, part; 1941 c 90 § 1, part; 1915 c 168 § 2, part; 1911 c 98 § 13, part; Rem. Supp. 1947 § 9365, part.]

**35.44.060 Assessment roll—Diagram on preliminary survey not conclusive.** The diagram or print directed to be submitted to the council shall be in the nature of a preliminary determination by the designated administrative board, officer, or authority upon the method and relative estimated amounts of assessments to be levied upon the property specially benefited by the improvement and shall not be binding or conclusive in any way upon the board, officer, or authority in the preparation of the assessment roll for the improvement or upon the council in any hearing affecting the assessment roll. [1965 c 7 § 35.44.060. Prior: 1911 c 98 § 11; RRS § 9362.]

**35.44.070 Assessment roll—Filing—Hearing, date, by whom held.** The assessment roll for local improvements when prepared as provided by law shall be filed with the city or town clerk. The council or other legislative authority shall thereupon fix a date for a hearing thereon before such legislative authority or may direct that the hearing shall be held before a committee thereof or the legislative authority of any city or town may designate an officer to conduct such hearings. The committee or officer designated shall hold a hearing on the assessment roll and consider all objections filed following which the committee or officer shall make recommendations to such legislative authority which shall either

adopt or reject the recommendations of the committee or officer. If a hearing is held before such a committee or officer it shall not be necessary to hold a hearing on the assessment roll before such legislative authority. A local ordinance shall provide for an appeal by any person protesting his or her assessment to the legislative authority of a decision made by such officer. The same procedure may if so directed by such legislative authority be followed with respect to any assessment upon the roll which is raised or changed to include omitted property. Such legislative authority shall direct the clerk to give notice of the hearing and of the time and place thereof. [1994 c 71 § 1; 1979 ex.s. c 100 § 1; 1965 c 7 § 35.44.070. Prior: 1953 c 177 § 2; 1929 c 97 § 3, part; 1911 c 98 § 21, part; RRS § 9373, part.]

**35.44.080 Assessment roll—Notice of hearing.** The notice of hearing upon the assessment roll shall specify the time and place of hearing and shall notify all persons who may desire to object thereto:

(1) To make their objections in writing and to file them with the city or town clerk at or prior to the date fixed for the hearing;

(2) That at the time and place fixed and at times to which the hearing may be adjourned, the council will sit as a board of equalization for the purpose of considering the roll; and

(3) That at the hearing the council or committee or officer will consider the objections made and will correct, revise, raise, lower, change, or modify the roll or any part thereof or set aside the roll and order the assessment to be made de novo.

Following the hearing the council shall confirm the roll by ordinance. [1979 ex.s. c 100 § 2; 1965 c 7 § 35.44.080. Prior: 1929 c 97 § 3, part; 1911 c 98 § 21, part; RRS § 9373, part.]

**35.44.090 Assessment roll—Notice—Mailing—Publication.** At least fifteen days before the date fixed for hearing, notice thereof shall be mailed to the owner or reputed owner of the property whose name appears on the assessment roll, at the address shown on the tax rolls of the county treasurer for each item of property described on the list. In addition thereto the notice shall be published at least once a week for two consecutive weeks in the official newspaper of the city or town, the last publication to be at least fifteen days before the date fixed for hearing. [1986 c 278 § 48; 1985 c 469 § 30; 1965 c 7 § 35.44.090. Prior: 1929 c 97 § 3, part; 1911 c 98 § 21, part; RRS § 9373, part.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**35.44.100 Assessment roll—Hearing—Objections—Authority of council.** At the time fixed for hearing objections to the confirmation of the assessment roll, and at the times to which the hearing may be adjourned, the council may correct, revise, raise, lower, change, or modify the roll or any part thereof, or set aside the roll and order the assessment to be made de novo and at the conclusion thereof confirm the roll by ordinance. [1965 c 7 § 35.44.100. Prior: 1929 c 97 § 3, part; 1911 c 98 § 21, part; RRS § 9373, part.]

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**35.44.110 Assessment roll—Objections—Timeliness.**

All objections to the confirmation of the assessment roll shall state clearly the grounds of objections. Objections not made within the time and in the manner prescribed in this chapter shall be conclusively presumed to have been waived. [1965 c 7 § 35.44.110. Prior: 1929 c 97 § 3, part; 1911 c 98 § 21, part; RRS § 9373, part.]

**35.44.120 Assessment roll—Amendment—Procedure.**

If an assessment roll is amended so as to raise any assessment appearing thereon or to include omitted property, a new time and place for hearing shall be fixed and a new notice of hearing on the roll given as in the case of an original hearing: PROVIDED, That as to any property originally entered upon the roll the assessment upon which has not been raised, no objections to confirmation of the assessment roll shall be considered by the council or by any court on appeal unless the objections were made in writing at or prior to the date fixed for the original hearing upon the assessment roll. [1965 c 7 § 35.44.120. Prior: 1929 c 97 § 3, part; 1911 c 98 § 21, part; RRS § 9373, part.]

**35.44.130 City property—Assessment.**

Every city and town shall include in its annual tax levy an amount sufficient to pay all unpaid assessments with all interest, penalties, and charges thereon levied against all lands belonging to the city or town. The proceeds of such a portion of the tax levy shall be placed in a separate fund to be known as the "city (or town) property assessments redemption fund" and by the city or town treasurer inviolably applied in payment of any unpaid assessment liens on any lands belonging to the city or town. [1965 c 7 § 35.44.130. Prior: (i) 1929 c 183 § 1; 1909 c 130 § 1; RRS § 9344. (ii) 1929 c 183 § 2, part; 1909 c 130 § 2, part; RRS § 9345, part.]

**35.44.140 County property assessment.**

All lands held or owned by any county in fee simple, in trust, or otherwise within the limits of a local improvement district or utility local improvement district of a city or town shall be assessed and charged for their proportion of the cost of the local improvement in the same manner as other property in the district and the county commissioners are authorized to cause the assessments to be paid at the times and in the manner provided by law and the ordinances of the city or town. This section shall apply to all cities and towns, any charter or ordinance provision to the contrary notwithstanding. [1971 ex.s. c 116 § 9; 1967 c 52 § 11; 1965 c 7 § 35.44.140. Prior: (i) 1905 c 29 § 1; RRS § 9340. (ii) 1907 c 61 § 1; 1905 c 29 § 2; RRS § 9341. (iii) 1929 c 139 § 2; 1905 c 29 § 4; RRS § 9343.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.44.150 Harbor area leaseholds—Assessment.**

All leasehold rights and interests of private individuals, firms or corporations in or to harbor areas located within the limits of a city or town are declared to be real property for the purpose of assessment for the payment of the cost of local improvements. They may be assessed and reassessed in accordance with the special benefits received, which shall be limited to benefits accruing during the term of the lease, to the property

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subject to lease immediately abutting upon the improvement and extending one-half block therefrom not exceeding, however, three hundred fifty feet. [1965 c 7 § 35.44.150. Prior: 1915 c 134 § 1; RRS § 9364.]

**35.44.160 Leases on tidelands—Assessment.** All leases of tidelands owned in fee by the state are declared to be real property for the purpose of assessment for the payment of the cost of local improvements. [1965 c 7 § 35.44.160. Prior: 1911 c 98 § 56; RRS § 9409.]

**35.44.170 Metropolitan park district property—Assessment.** All lands held by a metropolitan park district in fee simple, in trust, or otherwise within the limits of a local improvement district in a city or town shall be assessed and charged for their proportion of the cost of all local improvements in the same manner as other property in the district. [1965 c 7 § 35.44.170. Prior: (i) 1929 c 204 § 1; RRS § 9343-1. (ii) 1929 c 204 § 2; RRS § 9343-2.]

**35.44.180 Notices—Mailing—Proof.** The mailing of any notice required in connection with municipal local improvements shall be conclusively proved by the written certificate of the officer, board, or authority directed by the provisions of the charter or ordinance of a city or town to give the notice. [1965 c 7 § 35.44.180. Prior: 1929 c 97 § 4; RRS § 9373-1.]

**35.44.190 Proceedings conclusive—Exceptions—Adjustments to assessments if other funds become available.** Whenever any assessment roll for local improvements has been confirmed by the council, the regularity, validity, and correctness of the proceedings relating to the improvement and to the assessment therefor, including the action of the council upon the assessment roll and the confirmation thereof shall be conclusive in all things upon all parties. They cannot in any manner be contested or questioned in any proceeding by any person unless he filed written objections to the assessment roll in the manner and within the time required by the provisions of this chapter and unless he prosecutes his appeal in the manner and within the time required by the provisions of this chapter.

No proceeding of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any assessment or the sale of any property to pay an assessment or any certificate of delinquency issued therefor, or the foreclosure of any lien therefor, except that injunction proceedings may be brought to prevent the sale of any real estate upon the ground (1) that the property about to be sold does not appear upon the assessment roll or, (2) that the assessment has been paid.

If federal, local, or state funds become available for a local improvement after the assessment roll has been confirmed by the city legislative authority, the funds may be used to lower the assessments on a uniform basis. Any adjustments to the assessments because of the availability of federal or state funds may be made on the next annual payment. [1985 c 397 § 9; 1965 c 7 § 35.44.190. Prior: 1911 c 98 § 23; RRS § 9375.]

**Severability—1985 c 397:** See RCW 35.51.901.

### 35.44.200 Procedure on appeal—Perfecting appeal.

The decision of the council or other legislative body, upon any objections made in the manner and within the time herein prescribed, shall be final and conclusive, subject however to review by the superior court upon appeal. The appeal shall be made by filing written notice of appeal with the city or town clerk and with the clerk of the superior court of the county in which the city or town is situated. [1965 c 7 § 35.44.200. Prior: 1957 c 143 § 2; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

### 35.44.210 Procedure on appeal—Notice of appeal.

The notice of appeal must be filed within ten days after the ordinance confirming the assessment roll becomes effective and shall describe the property and set forth the objections of the appellant to the assessment. [1965 c 7 § 35.44.210. Prior: 1957 c 143 § 3; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

### 35.44.220 Procedure on appeal—Bond.

At the time of filing the notice of appeal with the clerk of the superior court, the appellant shall execute and file with him a sufficient bond in the penal sum of two hundred dollars, with at least two sureties to be approved by the judge of the court, conditioned to prosecute the appeal without delay and, if unsuccessful, to pay all reasonable costs and expenses which the city or town incurs by reason of the appeal. Upon application therefor, the court may order the appellant to execute and file such additional bonds as the necessity of the case may require. [1971 ex.s. c 116 § 3; 1969 ex.s. c 258 § 8; 1965 c 7 § 35.44.220. Prior: 1957 c 143 § 4; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

### 35.44.230 Procedure on appeal—Transcript.

Within ten days from the filing of the notice of appeal, the appellant shall file with the clerk of the superior court a transcript consisting of the assessment roll and his objections thereto, together with the ordinance confirming the assessment roll and the record of the council with reference to the assessment. This transcript, upon payment of the necessary fees therefor, shall be furnished by the city or town clerk and shall be certified by him to contain full, true and correct copies of all matters and proceedings required to be included in the transcript. The fees payable therefor shall be the same as those payable to the clerk of the superior court for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. [1971 c 81 § 90; 1965 c 7 § 35.44.230. Prior: 1957 c 143 § 5; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

### 35.44.240 Procedure on appeal—Notice of hearing.

Within three days after the filing of the transcript with the clerk of the superior court, the appellant shall give notice to the head of the legal department of the city or town and to its clerk that the transcript has been filed. The notice shall also state a time (not less than three days from the date of service thereof) when the appellant will call up the cause for hearing. [1965 c 7 § 35.44.240. Prior: 1957 c 143 § 6; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

**35.44.250 Procedure on appeal—Hearing by superior court.** At the time fixed for hearing in the notice thereof or at such further time as may be fixed by the court, the superior court shall hear and determine the appeal without a jury and the cause shall have preference over all other civil causes except proceedings relating to eminent domain in cities and towns and actions of forcible entry and detainer. The judgment of the court shall confirm, unless the court shall find from the evidence that such assessment is founded upon a fundamentally wrong basis and/or the decision of the council or other legislative body thereon was arbitrary or capricious; in which event the judgment of the court shall correct, change, modify, or annul the assessment insofar as it affects the property of the appellant. [1969 ex.s. c 258 § 9; 1965 c 7 § 35.44.250. Prior: 1957 c 143 § 7; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

**35.44.260 Procedure on appeal—Appellate review.** Appellate review of the judgment of the superior court may be obtained as in other cases if sought within fifteen days after the date of the entry of the judgment in the superior court. [1988 c 202 § 36; 1971 c 81 § 91; 1965 c 7 § 35.44.260. Prior: 1957 c 143 § 8; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

**Rules of court:** *Appeal procedures superseded by RAP 2.1, 2.2, 18.22.*

**Severability—1988 c 202:** See note following RCW 2.24.050.

**35.44.270 Procedure on appeal—Certified copy of decision or order.** A certified copy of the decision of the superior court pertaining to assessments for local improvements shall be filed with the officer having custody of the assessment roll and he shall modify and correct the assessment roll in accordance with the decision. In the event appellate review of the decision is sought, a certified copy of the court's order shall be filed with the officer having custody of the assessment roll and the officer shall thereupon modify and correct the assessment roll in accordance with the order. [1988 c 202 § 37; 1971 c 81 § 92; 1965 c 7 § 35.44.270. Prior: 1957 c 143 § 9; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**35.44.280 Reassessments—When authorized.** In all cases of special assessments for local improvements wherein the assessments are not valid in whole or in part for want of form, or insufficiency, informality, irregularity, or nonconformance with the provisions of law, charter, or ordinance, the city or town council may reassess the assessments and enforce their collection in accordance with the provisions of law and ordinance existing at the time the reassessment is made. This shall apply not only to an original assessment but also to any reassessment, to any assessment upon omitted property and to any supplemental assessment which is declared void and its enforcement refused by any court or which for any cause has been set aside, annulled or declared void by any court either directly or by virtue of any decision thereof. [1965 c 7 § 35.44.280. Prior: 1911 c 98 § 42, part; 1893 c 96 § 3; RRS § 9395, part.]

**35.44.290 Reassessments—Basis—Property included.** Every reassessment shall be made upon the property which has been or will be specially benefited by the local improvement and may be made upon property whether or not it abuts upon, is adjacent to, or proximate to the improvement or was included in the original assessment district.

Property not included in the original improvement district when so assessed shall become a part of the improvement district and all payments of assessments shall be paid into and become part of the local improvement fund to pay for the improvement.

Property in the original local improvement district which is excluded in reassessment need not be entered upon the assessment roll.

Every reassessment must be based upon the actual cost of the improvement at the time of its completion. [1965 c 7 § 35.44.290. Prior: (i) 1911 c 98 § 42, part; 1893 c 96 § 3, part; RRS § 9395, part. (ii) 1911 c 98 § 43, part; 1909 c 71 § 1, part; 1893 c 95 § 2, part; RRS § 9396, part.]

**35.44.300 Reassessments—Irregularities not fatal.** The fact that the contract has been let or that the improvement has been made and completed in whole or in part shall not prevent the reassessment from being made, nor shall the omission or neglect of any office or officers to comply with the law, the charter, or ordinances governing the city or town as to petition, notice, resolution to improve, estimate, survey, diagram, manner of letting contract, or execution of work or any other matter connected with the improvement and the first assessment thereof operate to invalidate or in any way affect the making of a reassessment. [1965 c 7 § 35.44.300. Prior: 1911 c 98 § 43, part; 1909 c 71 § 1, part; 1893 c 95 § 2, part; RRS § 9396, part.]

**35.44.310 Reassessments—Amount thereof.** The reassessment shall be for an amount which shall not exceed the actual cost and expense of the improvement, together with the accrued interest thereon, it being the true intent and meaning of the statutes relating to local improvements to make the cost and expense of local improvements payable by the property specially benefited thereby, notwithstanding the proceedings of the council, board of public works or other board, officer, or authority may be found to be irregular or defective, whether jurisdictional or otherwise. [1965 c 7 § 35.44.310. Prior: 1911 c 98 § 43, part; 1909 c 71 § 1, part; 1893 c 95 § 2, part; RRS § 9396, part.]

**35.44.320 Reassessments—Credit for prior payments.** In case of reassessment, all sums paid on the former attempted assessments shall be credited to the property on account of which they were paid. [1965 c 7 § 35.44.320. Prior: 1911 c 98 § 43, part; 1909 c 71 § 1, part; 1893 c 95 § 2, part; RRS § 9396, part.]

**35.44.330 Reassessments—Payment.** In case of reassessment after the certification of the assessment roll to the city or town treasurer for collection, the same length of time for payment of the assessment thereon without the imposition of any penalties or interest and the notice that the assessments are in the hands of the treasurer for collection shall be given

as in case of an original assessment. After delinquency, penalties and interest may be charged as in cases of original assessment and if the original assessment was payable in installments, the new assessment may be divided into equal installments and made payable at such times as the city or town council may prescribe in the ordinance ordering the new assessment. [1965 c 7 § 35.44.330. Prior: 1911 c 98 § 43, part; 1909 c 71 § 1, part; 1893 c 95 § 2, part; RRS § 9396, part.]

**35.44.340 Reassessments—Limitation of time for.** No city or town shall have jurisdiction to proceed with any reassessment unless the ordinance ordering it is passed by the city or town council within ten years from and after the time the original assessment for the same improvement was finally held to be invalid, insufficient or for any cause set aside, in whole or in part or its enforcement denied directly or indirectly by the courts. [1965 c 7 § 35.44.340. Prior: 1911 c 98 § 45, part; RRS § 9398, part.]

**35.44.350 Reassessments, assessments on omitted property, supplemental assessments—Provisions governing.** All of the provisions of law relating to the filing of assessment rolls, time and place for hearing thereon, notice of hearing, the hearing upon the roll, the confirmation of the assessment roll, the time when the assessments become a lien upon the property assessed, the proceedings on appeal from any such assessment, the method of collecting the assessment and all proceedings for enforcing the lien thereof shall be had and conducted the same in the case of reassessments, assessments on omitted property, or supplemental assessments as in the case of an original assessment. [1965 c 7 § 35.44.350. Prior: 1911 c 98 § 44; 1893 c 95 § 1; RRS § 9397.]

**35.44.360 Assessments on omitted property—Authority.** If by reason of mistake, inadvertence, or for any cause, property in a local improvement district or utility local improvement district which except for its omission would have been subject to assessment has been omitted from the assessment roll, the city or town council, upon its own motion, or upon the application of the owner of any property in the district which has been assessed for the improvement, may proceed to assess the property so omitted in accordance with the benefits accruing to it by reason of the improvement in proportion to the assessments levied upon other property in the district. [1967 c 52 § 12; 1965 c 7 § 35.44.360. Prior: 1911 c 98 § 37, part; RRS § 9390, part.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.44.370 Assessments on omitted property—Resolution—Notice.** In case of assessments on omitted property the city or town council shall pass a resolution:

- (1) Setting forth that the property therein described was omitted from the assessment;
- (2) Notifying all persons who may desire to object thereto to appear at a meeting of the city or town council at a time specified in the resolution and present their objections thereto, and

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- (3) Directing the proper board, officer, or authority to report to the council at or prior to the date fixed for the hearing the amount which should be borne by each lot, tract, or parcel of land or other property so omitted. The resolution shall be published in all respects as provided for publishing the resolutions for an original assessment. [1965 c 7 § 35.44.370. Prior: 1911 c 98 § 37, part; RRS § 9390, part.]

**35.44.380 Assessments on omitted property—Confirmation ordinance—Collection.** At the conclusion of the hearing or any adjournment thereof upon proposed assessments on omitted property the council shall consider the matter as though the property were included in the original roll and may confirm the roll or any portion thereof by ordinance. Thereupon the roll of omitted property shall be certified to the treasurer for collection as other assessments. [1965 c 7 § 35.44.380. Prior: 1911 c 98 § 37, part; RRS § 9390, part.]

**35.44.390 Supplemental assessments—When authorized.** If by reason of any mistake, inadvertence, or other cause, the amount assessed was not equal to the cost and expense of a local improvement or that portion thereof to be paid by assessment of the property benefited the city or town council shall make supplemental assessments on all the property in the district. The property found to be specially benefited shall not be limited to the property included in the original assessment district.

These assessments shall be made in accordance with the provisions of law, charter, and ordinances existing at the time of the levy. [1965 c 7 § 35.44.390. Prior: 1911 c 98 § 42, part; 1893 c 96 § 3, part; RRS § 9395, part.]

**35.44.400 Supplemental assessments—Limitation of time for.** No city or town shall have jurisdiction to proceed with any supplemental assessment unless the ordinance ordering it is passed by the city or town council within ten years from and after the time that it was finally determined that the total amount of valid assessments levied and assessed on account of a local improvement was insufficient to pay the whole or that portion of the cost and expense thereof to be paid by special assessment. [1965 c 7 § 35.44.400. Prior: 1911 c 98 § 45, part; RRS § 9398, part.]

**35.44.410 Segregation of assessments.** Whenever any land against which there has been levied any special assessment by any city or town shall have been sold in part or subdivided, the legislative authority of that city or town shall have the power to order a segregation of the assessment.

Any person desiring to have such a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the city or town which levied the assessment. If the legislative authority thereof determines that a segregation should be made, it shall by resolution order the city or town treasurer to make segregation on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract, the amount and date of the original assessment, and

shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the resolution shall be delivered to the city or town treasurer who shall proceed to make the segregation ordered upon being tendered a fee of ten dollars for each tract of land for which a segregation is to be made. In addition to such charge the legislative authority of the city or town may require as a condition to the order of segregation that the person seeking it pay the city or town the reasonable engineering and clerical costs incident to making the segregation. No segregation need be made if the legislative authority of the city or town shall find that by such segregation the security of the lien for such assessment will be so jeopardized as to reduce the security for any outstanding local improvement district obligations payable from such assessment. [1969 ex.s. c 258 § 10.]

**35.44.420 Property donations—Credit against assessments.** A city legislative authority may give credit for all or any portion of any property donation against an assessment, charge, or other required financial contribution for transportation improvements within a local improvement district. The credit granted is available against any assessment, charge, or other required financial contribution for any transportation purpose that uses the donated property. [1987 c 267 § 9.]

**Severability—1987 c 267:** See RCW 47.14.910.

*Right of way donations: Chapter 47.14 RCW.*

## Chapter 35.45 RCW

### LOCAL IMPROVEMENTS—BONDS AND WARRANTS

#### Sections

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**35.45.010 Authority to issue bonds.** The city or town council may provide by ordinance for the payment of the whole or any portion of the cost and expense of any local improvement by bonds of the improvement district, but no bonds shall be issued in excess of the cost and expense of the improvement, nor shall they be issued prior to twenty days after the thirty days allowed for the payment of assessments without penalty or interest. [1965 c 7 § 35.45.010. Prior: (i) 1911 c 98 § 46, part; 1899 c 124 § 1; RRS § 9399, part. (ii) 1917 c 139 § 1, part; 1915 c 168 § 4, part; 1911 c 98 § 47,

part; 1899 c 124 § 2, part; RRS § 9400, part. (iii) 1911 c 98 § 50, part; RRS § 9403, part.]

**35.45.020 Bond issue—Due date—Interest.** Local improvement bonds shall be issued pursuant to ordinance and shall be made payable on or before a date not to exceed thirty years from and after the date of issue, which latter date may be fixed by ordinance or resolution of the council, and bear interest at such rate or rates as authorized by the council. The council may, in addition to issuing bonds callable under the provisions of RCW 35.45.050 whenever sufficient moneys are available, issue bonds with a fixed maturity schedule or with a fixed maximum annual retirement schedule. [1971 ex.s. c 116 § 10; 1970 ex.s. c 56 § 35; 1969 ex.s. c 258 § 11; 1969 c 81 § 1; 1965 c 7 § 35.45.020. Prior: 1917 c 139 § 1, part; 1915 c 168 § 4, part; 1911 c 98 § 47, part; 1899 c 124 § 2, part; RRS § 9400, part.]

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Rights not impaired—1969 c 81:** "No phrase, clause, subdivision or section of this 1969 amendatory act shall be construed to impair the rights of bondholders as to any bonds issued prior to the effective date of this 1969 amendatory act." [1969 c 81 § 2.]

**35.45.030 Bonds—Form—Content.** (1) Local improvement bonds shall be in such denominations as may be provided in the ordinance authorizing their issue and shall be numbered from one upwards consecutively. Each bond shall (a) be signed by the mayor and attested by the clerk, (b) have the seal of the city or town affixed thereto, (c) refer to the improvement to pay for which it is issued and the ordinance ordering it, (d) provide that the principal sum therein named and the interest thereon shall be payable out of the local improvement fund created for the cost and expense of the improvement and out of the local improvement guaranty fund, unless the ordinance under which it was issued provides that the bonds shall not be secured by the local improvement guaranty fund; and out of a reserve fund, if one is established for such bonds pursuant to RCW 35.51.040; or, with respect to interest only, shall be payable out of the general revenues of the city or town, but only if pledged to the payment of such interest pursuant to RCW 35.45.065, and not otherwise, (e) provide that the bond owners' remedy in case of nonpayment shall be confined to the enforcement of the special assessments made for the improvement and to the guaranty fund and reserve fund, as applicable, and (f) be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

Any interest coupons may be signed by the mayor and attested by the clerk, or in lieu thereof, may have printed thereon a facsimile of their signatures.

(2) Notwithstanding subsection (1) of this section, but subject to RCW 35.45.010, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2002 c 41 § 1; 1983 c 167 § 41; 1967 ex.s. c 44 § 1; 1965 c 7 § 35.45.030. Prior: (i) 1917 c 139 § 1, part; 1915 c 168 § 4, part; 1911 c 98 § 47, part; 1899 c 124 § 2; RRS § 9400, part. (ii) 1927 c 209 § 5, part; 1925 ex.s. c 183 § 5, part; 1923 c 141 § 5, part; RRS § 9351-5, part. (iii) 1911 c 98 § 52, part; RRS § 9405, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.45.040 Bonds—Sale of.** (1) Local improvement bonds may be issued to the contractor or sold by the officers authorized by the ordinance directing their issue to do so, in the manner prescribed therein at the price established by the legislative authority of the city or town. Any portion of the bonds of any issue remaining unsold may be issued to the contractor constructing the improvement in payment thereof.

The proceeds of all sales of bonds shall be applied in payment of the cost and expense of the improvement.

(2) Notwithstanding subsection (1) of this section, such bonds may be sold in accordance with chapter 39.46 RCW. [1983 c 167 § 42; 1981 c 323 § 2; 1965 c 7 § 35.45.040. Prior: (i) 1911 c 98 § 46, part; 1899 c 124 § 1; RRS § 9399, part. (ii) 1911 c 98 § 48; 1899 c 124 § 3; RRS § 9401.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.45.050 Call of bonds.** Except when bonds have been issued with a fixed maturity schedule or with a fixed maximum annual retirement schedule as authorized in RCW 35.45.020, the city or town treasurer shall call in and pay the principal of one or more bonds of any issue (1) in their numerical order; or (2) where bonds are issued with an estimated redemption schedule, in either numerical order or chronological order by maturity and within each maturity by date of estimated redemption as determined in the bond authorizing ordinance, whenever there is sufficient money in any local improvement fund, against which the bonds have been issued, over and above that which is sufficient for the payment of interest on all unpaid bonds of that issue. The call shall be made for publication in the city or town official newspaper in its first publication following the date of delinquency of any installment of the assessment or as soon thereafter as practicable. The call shall state that bonds No. . . . (giving the serial number or numbers of the bonds called) will be paid on the day the next interest payments are due and that interest on those bonds will cease upon that date. [2003 c 139 § 2; 1983 c 167 § 43; 1971 ex.s. c 116 § 11; 1965 c 7 § 35.45.050. Prior: 1911 c 98 § 54, part; RRS § 9407, part.]

**Effective date—2003 c 139:** See note following RCW 35.45.180.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.45.060 Interest on bonds—How payable.** The city or town treasurer shall pay interest on the bonds issued against local improvement funds out of the local improvement fund from which the bonds are payable. [1965 c 7 § 35.45.060. Prior: 1911 c 98 § 54, part; RRS § 9407, part.]

**35.45.065 Interest on bonds—Payment from general revenues—Authority—Procedure.** The city or town council may provide by ordinance that all or part of the interest upon said bonds shall be paid from the general revenues of the city or town and may create a local improvement district bond interest fund for this purpose. If the city or town council determine that the city or town shall pay all interest on such bonds from its general revenues, the interest coupons attached to the bond shall recite that the interest thereby evidenced is payable from general revenues. If the city or town council determines that the city or town council shall pay a part of the interest on such bonds from its general revenues,

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the interest coupons representing interest payable from the general revenues of the city or town shall be denominated as "B" coupons and shall recite that the interest payable thereunder is payable from the general revenues of the city or town. [1967 ex.s. c 44 § 2.]

**35.45.070 Nonliability of city or town.** (1)(a) Neither the holder nor owner of any bond, interest coupon, warrant, or other short-term obligation issued against a local improvement fund shall have any claim therefor against the city or town by which it is issued, except for payment from the special assessments made for the improvement for which the bond or warrant was issued and except also for payment from the local improvement guaranty fund of the city or town as to bonds issued after the creation of a local improvement guaranty fund of that city or town. The city or town shall not be liable to the holder or owner of any bond, interest coupon, warrant, or other short-term obligation for any loss to the local improvement guaranty fund occurring in the lawful operation thereof.

(b) A copy of the foregoing in (a) of this subsection shall be plainly written, printed, or engraved on each bond, interest coupon, warrant, or other short-term obligation.

(2) Notwithstanding the provisions of subsection (1) of this section, with respect to bonds, interest coupons, warrants, or other short-term obligations issued under an ordinance providing that the obligations are not secured by the local improvement guaranty fund:

(a) Neither the holder nor owner of any obligation issued against a local improvement fund shall have any claim against the city or town by which it is issued, except for payment from the special assessments made for the improvement for which the obligation was issued.

(b) A copy of the foregoing in (a) of this subsection shall be plainly written, printed, or engraved on each bond, interest coupon, warrant, or other short-term obligation. [2002 c 41 § 2; 1965 c 7 § 35.45.070. Prior: (i) 1911 c 98 § 52, part; RRS § 9405, part. (ii) 1927 c 209 § 5; 1925 ex.s. c 183 § 5; 1923 c 141 § 5, part; RRS § 9351-5, part.]

**35.45.080 Remedy of bondholders.** If a city or town fails to pay any bonds or to promptly collect any local improvement assessments when due, the owner of the bonds may proceed in his own name to collect the assessment and foreclose the lien thereof in any court of competent jurisdiction and shall recover in addition to the amount of the bond and interest thereon, five percent, together with the cost of suit. Any number of holders of bonds for any single improvement may join as plaintiffs and any number of owners of property upon which the assessments are liens may be joined as defendants in the same suit.

The owners of local improvement bonds issued by a city or town after the creation of a local improvement guaranty fund therein, shall also have recourse against the local improvement guaranty fund of such city or town unless the ordinance under which the bonds were issued provides that the bonds are not secured by the local improvement guaranty fund. [2002 c 41 § 3; 1965 c 7 § 35.45.080. Prior: (i) 1927 c 209 § 5, part; 1925 ex.s. c 183 § 5, part; 1923 c 141 § 5, part;

RRS § 9351-5, part. (ii) 1911 c 98 § 51; 1899 c 124 § 6; RRS § 9404.]

**35.45.090 Excess to be refunded—Demand—Right of action.** Any funds in the treasury of any municipal corporation belonging to the fund of any local improvement district after the payment of the whole cost and expense of such improvement, in excess of the total sum required to defray all the expenditures by such municipal corporation on account thereof, shall be refunded, on demand, to the payers into such fund. Each such payer shall be entitled to such proportion of such excess as his original assessment bears to the entire original assessment levied for such improvement. Such municipal corporation may, after one year from the date on which the last installment becomes due, transfer any balance remaining on hand to the general fund of such municipal corporation, but shall, notwithstanding such transfer remain liable for the refund herein provided for until such refund shall have been made, unless the actual cost involved in making such refund shall exceed the excess in such fund.

Such demand shall be made in writing to the treasurer of such municipal corporation. No action shall be commenced in any court to obtain any such refund, except upon such demand, and until ninety days after making such demand. No excess shall be recovered in any action where the excess in the fund does not average the sum of one dollar in favor of all payers into such fund.

This section shall not be deemed to require the refunding of any balance left in any local improvement fund after the payment of all outstanding obligations issued against such fund, where such balance accrues from any saving in interest or from penalties collected upon delinquent assessments, but any such balance, whether accruing heretofore or hereafter, may be turned into the general fund or otherwise disposed of, as the legislative authority of the city may direct.

The provisions of this chapter relating to the refund of excess local improvement district funds shall not apply to any district whose obligations are guaranteed by the local improvement guaranty fund. [1965 c 7 § 35.45.090. Prior: 1917 c 140 § 1; 1909 c 108 § 1; RRS § 9351.]

**35.45.130 Warrants against local improvement fund authorized.** Every city and town may provide by ordinance for the issuance of warrants in payment of the cost and expense of any local improvement, payable out of the local improvement district fund. The warrants shall bear interest at a rate or rates established by the issuing officer under the direction of the legislative authority of the city or town and shall be redeemed either in cash or by local improvement bonds for the same improvement authorized by ordinance.

All warrants against any local improvement fund sold by the city or town or issued to a contractor and by him sold or hypothecated for a valuable consideration shall be claims and liens against the improvement fund against which they are drawn prior and superior to any right, lien, or claim of any surety upon the bond or bonds given to the city or town by or for the contractor to secure the performance of his contract or to secure the payment of persons who have performed work thereon, furnished materials therefor, or provisions and supplies for the carrying on of the work. [1981 c 323 § 3; 1970

ex.s. c 56 § 36; 1965 c 7 § 35.45.130. Prior: 1953 c 117 § 1; prior: 1915 c 168 § 3; 1911 c 98 § 72; 1899 c 146 § 7; RRS 9425.]

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**35.45.140 Warrants acceptable in payment of assessments.** Cities and towns may accept warrants drawn against any local improvement fund upon such conditions as they may by ordinance or resolution prescribe, in satisfaction of:

(1) Assessments levied to supply such fund, in due order of priority of right;

(2) Judgments rendered against property owners who have become delinquent in the payment of assessments levied to supply such fund; and

(3) In payment of certificates of purchase in cases where property of delinquents has been sold under execution or at tax sale for failure to pay assessments levied to supply such fund. [1965 c 7 § 35.45.140. Prior: (i) 1899 c 97 § 1; RRS § 9346. (ii) 1899 c 97 § 2; RRS § 9347. (iii) 1899 c 97 § 3; RRS § 9348. (iv) 1899 c 97 § 4; RRS § 9349. (v) 1899 c 97 § 5; RRS § 9350.]

**35.45.150 Installment notes—Interest certificates.** In addition to the issuance of bonds and warrants in payment of the cost and expense of any local improvement, any city or town may also issue and sell installment notes payable out of the local improvement district fund. Such installment notes may be issued any time after the thirty day period allowed by law for the payment of assessments of any district without penalty or interest, and may bear any denomination or denominations, the aggregate of which shall represent the balance of the cost and expense of the local improvement district which is to be borne by the property owners therein.

Application of local improvement district funds for the reduction of the principal and interest amounts due on any notes herein provided to finance said improvement shall be made not less than once each year beginning with the issue date thereof. Appropriate notification of such application of funds shall be made by the city or town treasurer to the registered payees of said notes, except those notes owned by funds of the issuing municipality. Such notes may be registered as provided in RCW 39.46.030. If more than one local improvement installment note is issued for a single district, said notes shall be numbered consecutively. All notes issued shall bear on the face thereof: (1) The name of the payee; (2) the number of the local improvement district from whose funds the notes are payable; (3) the date of issue of each note; (4) the date on which the note, or the final installment thereon shall become due; (5) the rate or rates of interest, as provided by the city or town legislative authority, to be paid on the unpaid balance thereof, and; (6) such manual or facsimile signatures and attestations as are required by state statute or city charter to appear on the warrants of each issuing municipality.

The reverse side of each installment note issued pursuant to this section shall bear a tabular payment record which shall indicate at prescribed installment dates, the receipt of any local improvement district funds for the purpose of servicing the debt evidenced by said notes. Such receipts shall first be applied toward the interest due on the unpaid balance of the note, and any additional moneys shall thereafter apply as a

reduction of the principal amount thereof. The tabular payment record shall, in addition to the above, show the unpaid principal balance due on each installment note, together with sufficient space opposite each transaction affecting said note for the manual signature of the city's or town's clerk, treasurer or other properly designated receiving officer of the municipality, or of any other registered payee presenting said note for such installment payments.

Whenever there are insufficient funds in a local improvement district to meet any payment of installment interest due on any note herein authorized, a noninterest-bearing defaulted installment interest certificate shall be issued by the city or town treasurer which shall consist of a written statement certifying the amount of such defaulted interest installment; the name of the payee of the note to whom the interest is due and the number of the local improvement district from whose funds the note and interest thereon is payable. Such certificates may be registered as provided in RCW 39.46.030. The certificate herein provided shall bear the manual signature of the city or town treasurer or his authorized agent. The defaulted installment interest certificate so issued shall be redeemed for the face amount thereof with any available funds in the local improvement guaranty fund.

Whenever at the date of maturity of any installment note issued pursuant to this section, there are insufficient funds in a local improvement district, due to delinquencies in the collection of assessments, to pay the final installment of the principal due thereon, the note shall be redeemed with any available funds in the local improvement guaranty fund for the amount of said final installment.

All certificates and notes issued pursuant to this section are to become subject to the same redemption privileges as apply to any local improvement district bonds and warrants now accorded the protection of the local improvement guaranty fund as provided in chapter 35.54 RCW, and whenever the certificates or notes issued as herein provided are redeemed by said local improvement guaranty fund, they shall be held therein as investments thereof in the same manner as prescribed for other defaulted local improvement district obligations.

Notwithstanding any other statutory provisions, local improvement installment notes authorized by this section which are within the protection of the local improvement guaranty fund law shall be considered legal investments for any available surplus funds of the issuing municipality which now or hereafter may be authorized to be invested in the city's or town's local improvement districts' bonds or warrants and shall be considered legal investments for all national and state banks, savings and loan institutions, and any and all other commercial banking or financial institutions to the same extent that the local improvement district bonds and any coupons issued pursuant to the provisions of this chapter have been and are legal investments for such institutions. Any such local improvement installment notes may be transferred or sold by said city or town upon such terms or conditions and in such manner as the local governing body of said city or town may determine, or may be issued to another fund of the city or town: PROVIDED, HOWEVER, That the same shall not be sold at less than par plus accrued interest.

Notwithstanding the provisions of this section, such notes and certificates may be issued, and such notes may be

sold, in accordance with chapter 39.46 RCW. [1983 c 167 § 44. Prior: 1981 c 323 § 4; 1981 c 156 § 2; prior: 1970 ex.s. c 93 § 2; 1970 ex.s. c 56 § 37; 1965 c 7 § 35.45.150; prior: 1961 c 165 § 1.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Severability—1970 ex.s. c 93:** See note following RCW 39.60.050.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

*Investment of public funds in notes, debentures:* RCW 39.60.050.

**35.45.155 Installment notes—Refunding.** Any city or town having issued one or more installment notes pursuant to RCW 35.45.150 may refund all of such notes or the principal thereof then outstanding payable from any one local improvement district fund by the issuance of local improvement district bonds pursuant to chapter 35.45 RCW and by the payment into the city or town fund or funds holding such notes the then outstanding principal amount of such notes plus the interest thereon accrued to the date of such refunding. The bonds shall be payable from the same local improvement district fund from which such notes were payable; shall be payable no later than the final payment date of the notes being refunded; shall be in the same total principal amount as the outstanding principal amount of the notes being refunded less any sums in the local improvement district fund the city or town applies to the redemption of such notes; and shall be sold at not less than par plus accrued interest to date of delivery. Any interest payable on the bonds in excess of the interest payable on assessment installments payable into the local improvement district fund shall be paid from the general fund of the city or town in accordance with RCW 35.45.065. The principal proceeds and interest accrued to date of delivery of the bonds shall be paid into the local improvement district fund and the notes shall be redeemed on that date. The city or town shall pay all costs and expenses of such refunding from moneys available therefor. [1969 ex.s. c 258 § 12.]

**35.45.160 Consolidated local improvement districts—Authorized—Purpose.** For the purpose of issuing bonds only, the governing body of any municipality may authorize the establishment of consolidated local improvement districts. The local improvements within such consolidated districts need not be adjoining, vicinal or neighboring. If the governing body orders the creation of such consolidated local improvement districts, the moneys received from the installment payment of the principal of and interest on assessments levied within original local assessment districts shall be deposited in a consolidated local improvement district bond redemption fund to be used to redeem outstanding consolidated local improvement district bonds. [1967 ex.s. c 44 § 3.]

**35.45.170 Refunding bonds—Limitations.** The legislative authority of any city or town may issue and sell bonds to refund outstanding local improvement district or consolidated local improvement district bonds issued after June 7, 1984, on the earliest date such outstanding bonds may be redeemed following the date of issuance of such refunding bonds. Such refunding shall be subject to the following:

(1) The refunding shall result in a net interest cost savings after paying the costs and expenses of the refunding, and the principal amount of the refunding bonds may not exceed the principal balance of the assessment roll or rolls pledged to pay the bonds being refunded at the time of the refunding.

(2) The refunding bonds shall be paid from the same local improvement fund or bond redemption fund as the bonds being refunded.

(3) The costs and expenses of the refunding shall be paid from the proceeds of the refunding bonds, or the same local improvement district fund or bond redemption fund for the bonds being refunded, except the city or town may advance such costs and expenses to such fund pending the receipt of assessment payments available to reimburse such advances.

(4) The last maturity of the refunding bonds shall be no later than one year after the last maturity of bonds being refunded.

(5) The refunding bonds may be exchanged for the bonds being refunded or may be sold in the same manner permitted at the time of sale for local improvement district bonds.

(6) All other provisions of law applicable to the refunded bonds shall apply to the refunding bonds. [1984 c 186 § 66.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**35.45.180 Transfer from general fund to local improvement fund authorized—Ordinance.** Any city or town, when authorized by ordinance, may transfer permanently or temporarily, money from its general fund, or from any other municipal fund as its council shall specify in that ordinance, to its local improvement guaranty fund or any of its local improvement funds to be used for the purposes of these local improvement funds, including the payment of bonds, interest coupons, warrants, or other short-term obligations. The powers granted by this section are to be exercised at the discretion of a council when found to be in the public interest, but money transferred by means of these powers shall not be pledged to the payment of any local improvement district obligations. [2003 c 139 § 1.]

**Effective date—2003 c 139:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 139 § 4.]

**Chapter 35.47 RCW**

**LOCAL IMPROVEMENTS—PROCEDURE FOR CANCELLATION OF NONGUARANTEED BONDS**

Sections

- 35.47.010 Distribution of moneys in local improvement funds to holders of bonds and warrants—Notice—Time limitation—Abandonment and transfer to general fund.
- 35.47.020 Declaration of obsolescence and cancellation upon distribution of moneys, untimely presentment, or lack of money in local improvement fund.
- 35.47.030 Cancellation procedure where no money in local improvement fund.
- 35.47.040 Action under RCW 35.47.010 through 35.47.030 unaffected by chapter 35.48 RCW or other law.
- 35.47.900 Severability—1965 ex.s. c 6.

**35.47.010 Distribution of moneys in local improvement funds to holders of bonds and warrants—Notice—Time limitation—Abandonment and transfer to general**

**fund.** Any city or town having any outstanding and unpaid local improvement bonds or warrants issued in connection with a local improvement therein to which the local guaranty fund law is not applicable and that have been delinquent for more than fifteen years, by ordinance, may direct that the money, if any, remaining in a given local improvement fund for which no real property is held in trust shall be distributed by the city or town on a pro rata basis, without any reference to numerical order, to the holders of outstanding bonds or warrants for each such fund, excluding the accrued interest thereon. If the outstanding bonds or warrants are not presented for payment within one year after the last date of publication of notice provided for herein, the money being held in the local improvement fund of a city or town shall be deemed abandoned, and shall be transferred to the city or town general fund: PROVIDED, That the city or town shall publish a notice once each week for two successive weeks in the official newspaper of the city or town in which it is indicated that L.I.D. bonds for . . . . . L.I.D. improvement Nos. . . . . to . . . . . inclusive must be presented to the city or town for payment not later than one year from this date or the money being held in the local improvement fund of the city or town shall be transferred to the city or town general fund. [1985 c 469 § 31; 1965 ex.s. c 6 § 1.]

**35.47.020 Declaration of obsolescence and cancellation upon distribution of moneys, untimely presentment, or lack of money in local improvement fund.** After the city or town having said bonds or warrants referred to in RCW 35.47.010 has distributed the money in a local improvement district fund in accordance with RCW 35.47.010, or such bonds or warrants are not presented for payment within one year after the last date of publication of notice provided for in RCW 35.47.010, such city or town may, by ordinance, declare such bonds and warrants, without any reference to numerical order, to be obsolete, cancel the same, and terminate all accounting thereon, and clear such bonds and warrants off their records including any unguaranteed bonds or warrants outstanding against districts in which there remains no money in the given local improvement fund. [1965 ex.s. c 6 § 2.]

**35.47.030 Cancellation procedure where no money in local improvement fund.** If the bonds or warrants outstanding against a district are unguaranteed and if there remains no money in the appropriate local improvement fund to pay them, and if no real property is held in trust for the fund, the city or town shall give notice in the same manner as provided in RCW 35.47.010, stating that L.I.D. . . . . (bonds or warrants) for . . . . . L.I.D. improvement Nos. . . . . to . . . . . inclusive will be canceled as provided in RCW 35.47.020, unless such bonds or warrants are presented to the city or town within one year from the date of last publication of the notice, together with good cause shown as to why such cancellation should not take place. If such bonds or warrants are not presented, with good cause shown, within one year after the last date of publication of such notice, they may be canceled as provided in RCW 35.47.020. [1965 ex.s. c 6 § 3.]

**35.47.040 Action under RCW 35.47.010 through 35.47.030 unaffected by chapter 35.48 RCW or other law.** Nothing in chapter 35.48 RCW or other existing law to the contrary shall preclude the action authorized herein. [1965 ex.s. c 6 § 4.]

**35.47.900 Severability—1965 ex.s. c 6.** If any provision of this act, or its application to any person or circumstance is held to be invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1965 ex.s. c 6 § 6.]

### Chapter 35.48 RCW

#### LOCAL IMPROVEMENTS— NONGUARANTEED BONDS

##### Sections

35.48.010	Special revolving fund for delinquent nonguaranteed bonds and warrants—Composition.
35.48.020	Use of revolving fund—Maximum bond price.
35.48.030	Subrogation—Refund of surplus.
35.48.040	Refund to revolving fund.
35.48.050	Purchase of warrants on previous funds—Transfer of assets to revolving fund—Disposition.
35.48.060	Procedure governed by ordinance.

**35.48.010 Special revolving fund for delinquent nonguaranteed bonds and warrants—Composition.** If any city or town has issued bonds or warrants payable from a local improvement or condemnation award fund, to which the local improvement guaranty fund law is not applicable, and if the assessment, or last installment thereof, against which the bonds or warrants were issued has been delinquent not more than thirty-two years, the city or town may create a special revolving fund and may provide moneys therefor by general tax levy, if the levy, together with other levies made or authorized by such city or town, will not exceed the levy which is legally allowed; or such city or town may place in said fund or advance or loan to said fund any money which it is not prohibited by law from advancing, loaning to or placing in said fund. [1965 c 7 § 35.48.010. Prior: 1961 c 46 § 1; 1943 c 244 § 2; Rem. Supp. 1943 § 9351-11.]

**Purpose—1943 c 244:** "WHEREAS, there are many millions of dollars of delinquent and unpaid local improvement district and condemnation award bonds and warrants issued by various cities of the state and not protected by the Local Improvement Guaranty Fund, only a small part of which for the present at least can be paid and many of which will never be paid because of inability of property owners to pay the special assessments levied to provide funds for payment thereof and the depreciated value of the real estate which is the only security provided by present law from which payment of the assessments may be enforced; and, WHEREAS, the cities are not legally liable under existing law for payment of such bonds and warrants except as there are moneys available in the special fund from which the same are payable; and, WHEREAS, such cities and its citizens as a whole have derived benefit from the improvements installed with the proceeds or as a result of the issuance of such bonds and warrants; and, WHEREAS, the nonpayment of such unpaid and delinquent bonds and warrants not only causes great hardship and suffering on those who have invested money in such bonds and warrants, but also reflects discredit on the financial structure of the various cities involved, to the detriment of the cities as a whole and also the entire state; NOW, THEREFORE, this law is enacted to enable cities to provide some relief from the hardship imposed by such conditions." [1943 c 244 § 1.]

**35.48.020 Use of revolving fund—Maximum bond price.** Any moneys in such revolving fund may be used for

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the purchase of unpaid delinquent local improvement warrants, or bonds and interest payments, or bonds and interest coupons thereon, issued by the city or town, payable from a local improvement district fund or condemnation award fund, to which the local improvement guaranty fund law is not applicable, if the assessment, or last installment thereof, against which the bonds or warrants have been issued, has been delinquent not more than thirty-two years. The maximum purchase price to be paid for said bonds or warrants shall be fixed by the municipality, and may from time to time be changed but shall never exceed fifty percent of the face value of the bonds, interest payments, interest coupons, or warrants: PROVIDED, That no warrants shall be issued payable from the revolving fund unless there is sufficient cash in said fund available for payment of such warrants. [1983 c 167 § 45; 1965 c 7 § 35.48.020. Prior: 1961 c 46 § 2; 1943 c 244 § 3; Rem. Supp. 1943 § 9351-12.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.48.030 Subrogation—Refund of surplus.** The purchase of any such bonds or warrants shall not relieve the local improvement or condemnation award fund from which the same are payable from liability for payment of the same, but the city or town upon purchase thereof shall become subrogated to all the rights of the former owners thereof and may proceed to enforcement of said bonds or warrants as any owner thereof might do. The city or town may sell any property acquired by it in such proceedings upon such terms and for such prices as it sees fit, or it may resell any of the bonds or warrants for such prices as it shall fix.

Any excess in any local improvement district fund or condemnation award fund which will average a payment of one dollar to each payer into said fund shall, after payment, retirement, or cancellation of all bonds or warrants payable from said fund, be refunded and paid to the payers into the fund in the proportion that their respective assessments bear to the entire original assessment levied for such improvement, and any unpaid assessments, or portion thereof, shall be reduced in the same proportion. Any proceeds derived from the sale of any bonds or warrants, or from the sale of real estate, shall be placed in the revolving fund. [1965 c 7 § 35.48.030. Prior: 1943 c 244 § 4; Rem. Supp. 1943 § 9351-13.]

**35.48.040 Refund to revolving fund.** If there are funds in any local improvement district fund or condemnation award fund sufficient to pay or retire any bond or warrant issued and payable from said fund, and the city or town is the owner and holder of the bond or warrant next payable from the fund, the city or town treasurer shall from the moneys in the local improvement or condemnation award fund place in the revolving fund a sum of money equivalent to the amount paid by the city or town for such bond or warrant and shall thereupon cancel, mark paid and remove from said revolving fund such bond or warrant. [1965 c 7 § 35.48.040. Prior: 1943 c 244 § 5; Rem. Supp. 1943 § 9351-14.]

**35.48.050 Purchase of warrants on previous funds—Transfer of assets to revolving fund—Disposition.** When-

ever a city or town has heretofore by ordinance created a fund for use in purchasing delinquent local improvement or condemnation award bonds or warrants not protected by the local improvement guaranty fund law, and has purchased any such bonds or warrants and issued warrants payable from said fund, which warrants are unpaid because of lack of funds and have remained unpaid for a period of less than thirty-two years from date of issue thereof, the city or town may use any funds available in the revolving fund to purchase said warrants at such price as it may determine, but in no event at more than fifty percent of the face value, without interest.

Whenever all such warrants have been purchased or paid, the city or town may transfer to the revolving fund any bonds, warrants or other assets belonging to said fund first above mentioned, and thereafter such bonds, warrants or other assets shall be held and disposed of for the benefit of said revolving fund in the same manner as other funds and assets therein: PROVIDED, That nothing contained in this chapter shall legalize any warrants heretofore issued or render any city or town liable thereunder. [1965 c 7 § 35.48.050. Prior: 1961 c 46 § 3; 1943 c 244 § 6; Rem. Supp. 1943 § 9351-15.]

**35.48.060 Procedure governed by ordinance.** All actions of a city or town respecting the purchase of bonds and warrants or sales of bonds, warrants or assets of the revolving fund shall be as directed by general or special ordinance. [1965 c 7 § 35.48.060. Prior: 1943 c 244 § 7; Rem. Supp. 1943 § 9351-16.]

## Chapter 35.49 RCW

### LOCAL IMPROVEMENTS— COLLECTION OF ASSESSMENTS

#### Sections

35.49.010	Collection by city treasurer—Notices.
35.49.020	Installments—Number—Due date.
35.49.030	Ordinance to prescribe time of payment—Interest—Penalties.
35.49.040	Payment without interest or penalty.
35.49.050	Prepayment of installments subsequently due.
35.49.060	Payment by city or town.
35.49.070	Payment by county.
35.49.080	Payment by metropolitan park district.
35.49.090	Payment by joint owner.
35.49.100	Payment in error—Remedy.
35.49.110	Record of payment.
35.49.130	Tax liens—City may protect assessment lien at foreclosure sale.
35.49.140	Tax liens—Payment by city after taking property on foreclosure of local assessments.
35.49.150	Tax title property—City may acquire from county before resale.
35.49.160	Tax title property—Disposition of proceeds upon resale.
35.49.170	Acquisition of property by state or political subdivisions which is subject to unpaid assessments and delinquencies.

*Prepayment of taxes and assessments: RCW 35.21.650.*

**35.49.010 Collection by city treasurer—Notices.** All assessments for local improvements in local improvement districts shall be collected by the city treasurer and shall be kept in a separate fund to be known as "local improvement fund, district No. . . ." and shall be used for no other purpose than the redemption of warrants drawn upon and bonds issued against the fund to provide payment for the cost and expense of the improvement.

All assessments for local improvements in a utility local improvement district shall be collected by the city treasurer, shall be paid into the appropriate revenue bond fund, and shall be used for no other purpose than the redemption of revenue bonds issued to provide funds for the cost and expense of the improvement.

As soon as the assessment roll has been placed in the hands of the city or town treasurer for collection, he shall publish a notice in the official newspaper of the city or town once a week for two consecutive weeks, that the roll is in his hands for collection and that all or any portion of the assessment may be paid within thirty days from the date of the first publication of the notice without penalty, interest or costs.

Within fifteen days of the first newspaper publication, the city or town treasurer shall notify each owner or reputed owner whose name appears on the assessment roll, at the address shown on the tax rolls of the county treasurer for each item of property described on the list, of the nature of the assessment, of the amount of his real property subject to such assessment, of the total amount of assessment due, and of the time during which such assessment may be paid without penalty, interest, or costs. [1972 ex.s. c 137 § 1; 1969 ex.s. c 258 § 13; 1967 c 52 § 13; 1965 c 7 § 35.49.010. Prior: (i) 1911 c 98 § 28; RRS § 9380. (ii) 1911 c 98 § 50, part; RRS § 9403, part.]

**Severability—1972 ex.s. c 137:** "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 137 § 6.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**Saving—1927 c 275:** "All local improvement initiated or proceedings commenced by any city or town before the taking effect of this act, relating to the making of any local improvement, or the collection and foreclosure of local improvement, or the collection and foreclosure of local improvement assessments, and the sale of property therefor, shall proceed without being in any manner affected by the passage of this act; PROVIDED, That any city or town may at its option foreclose in the manner provided in this act the lien of any local improvement assessment created prior to the effective date of this act, and cause deed to issue, but as to any such property purchased by such city or town at such foreclosure the same shall be held and sold by such city or town under and pursuant to the provisions of law in force and effect prior to the taking effect of this act." [1927 c 275 § 8.]

**35.49.020 Installments—Number—Due date.** In all cases where bonds are issued to pay the cost and expense of a local improvement, the ordinance levying the assessments shall provide that the sum charged against any lot, tract, and parcel of land or other property, or any portion thereof, may be paid during the thirty day period allowed for the payment of assessments without penalty or interest and that thereafter the sum remaining unpaid may be paid in equal annual principal installments or in equal annual installments of principal and interest. The number of installments shall be less by two than the number of years which the bonds issued to pay for the improvement are to run. The estimated interest rate may be stated in the ordinance confirming the assessment roll. Where payment is required in equal annual principal installments, interest on the whole amount unpaid at the rate fixed by the ordinance authorizing the issuance and sale of the bonds shall be due on the due date of the first installment of principal and each year thereafter on the due date of each installment of principal: PROVIDED, That the legislative

authority of any city or town having made a bond issue payable on or before twenty-two years after the date of issue may provide by ordinance that all assessments and portions of assessments unpaid after the thirty day period allowed for payment of assessments without penalty or interest may be paid in ten equal installments beginning with the eleventh year and ending with the twentieth year from the expiration of said thirty day period, together with interest on the unpaid installments at the rate fixed by such ordinance, and that in each year after the said thirty day period, to and including the tenth year thereafter, one installment of interest on the principal sum of the assessment at the rate so fixed shall be paid and collected, and that beginning with the eleventh year after the thirty day period one installment of the principal, together with the interest due thereon, and on all installments thereafter to become due shall be paid and collected. [1982 c 96 § 1; 1981 c 323 § 5; 1969 ex.s. c 258 § 14; 1965 c 7 § 35.49.020. Prior: 1925 ex.s. c 117 § 1; 1915 c 168 § 5; 1911 c 98 § 49; 1899 c 124 § 4; RRS § 9402.]

**35.49.030 Ordinance to prescribe time of payment—Interest—Penalties.** Every city and town shall prescribe by ordinance within what time assessments or installments thereof shall be paid, and shall provide for the payment and collection of interest thereon at a rate as shall be fixed by the legislative body of the city or town. Assessments or installments thereof, when delinquent, in addition to such interest, shall bear such penalty not less than five percent as shall be by general ordinance prescribed. [1971 ex.s. c 116 § 5; 1969 ex.s. c 258 § 15; 1965 c 7 § 35.49.030. Prior: 1955 c 353 § 3; prior: 1927 c 275 § 1, part; 1921 c 92 § 1, part; 1911 c 98 § 24, part; RRS § 9376, part.]

**35.49.040 Payment without interest or penalty.** The owner of any lot, tract, or parcel of land or other property charged with local improvement assessment may redeem it from all or any portion thereof by paying to the city or town treasurer all or any portion thereof without interest within thirty days after the first publication by the treasurer of notice that the assessment roll is in his hands for collection. [1965 c 7 § 35.49.040. Prior: 1911 c 98 § 50, part; RRS § 9403, part.]

**35.49.050 Prepayment of installments subsequently due.** The owner of any lot, tract, or parcel of land or other property charged with a local improvement assessment may redeem it from all liability for the unpaid amount of the assessment at any time after the thirty day period allowed for payment of assessments without penalty or interest by paying the entire installments of the assessment remaining unpaid to the city or town treasurer with interest thereon to the date of maturity of the installment next falling due. [1965 c 7 § 35.49.050. Prior: 1911 c 98 § 50, part; RRS § 9403, part.]

**35.49.060 Payment by city or town.** On or before the fifteenth day of August of each year, the city or town treasurer shall certify to the city or town council a detailed statement showing:

(1) The proceedings authorizing and confirming any local improvement assessments or utility local improvement assessments affecting city or town property,

(2) The lots, tracts, or parcels of lands of the city or town so assessed,

(3) The several assessments against each,

(4) The interest, penalties, and charges thereon,

(5) The penalties and charges which will accrue upon the assessments to the date of payment, and

(6) The total of all such assessments, interest, penalty, and charges.

The longest outstanding liens shall be paid first, but if the money in the "city (or town) property assessments redemption fund" is insufficient at any time to discharge all such liens against the lands of the city or town upon a given assessment roll, the city or town treasurer may pay such portion thereof as may be possible from the funds available.

If deemed necessary, the city or town council may transfer money from the general fund to the redemption fund as a loan to be repaid when the money is available for repayment. [1967 c 52 § 14; 1965 c 7 § 35.49.060. Prior: 1929 c 183 § 2, part; 1909 c 130 § 2; RRS § 9345, part.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.49.070 Payment by county.** Upon the confirmation of the assessment roll for a local improvement district or utility local improvement district, the city or town treasurer shall certify and forward to the board of county commissioners a statement of all the lots, tracts, or parcels of land held or owned by the county assessed thereon, separately describing each lot, tract, or parcel, with the amount of the assessment charged against it.

The board of county commissioners shall cause the amount of such local assessments to be paid to the city or town as other claims against the county are paid.

If title to any property thus described was acquired by the county through foreclosure of general tax liens, the county shall:

(1) Pay the assessment from the proceeds of the sale of the property; or

(2) Sell the property subject to the lien of the assessment. [1967 c 52 § 15; 1965 c 7 § 35.49.070. Prior: 1929 c 139 § 1; 1905 c 29 § 3; RRS § 9342.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.49.080 Payment by metropolitan park district.** Upon the confirmation of the assessment roll for a local improvement district or utility local improvement district, the city treasurer shall certify and forward to the board of park commissioners of any metropolitan park district in which the city is located, a statement of all the lots, tracts, and parcels of land or other property held or owned by the district, assessed thereon, separately describing each lot, tract, or parcel with the amount of the assessment charged against it.

The board of park commissioners shall cause the amount of the local assessments to be paid as other claims against the metropolitan park district are paid. [1967 c 52 § 16; 1965 c 7 § 35.49.080. Prior: 1929 c 204 § 3; RRS § 9343-3.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.49.090 Payment by joint owner.** If any assessment for a local improvement, or an installment thereof, or judgment for either of them is paid, or a certificate of sale for either of them is redeemed by a joint owner of any of the property so assessed, he may, after demand and refusal, recover from his co-owners, by an action brought in superior court, the respective portions of the payment which each co-owner should bear. He shall have a lien upon the undivided interests of his co-owners from the date of the payment made by him and in the action shall recover interest at ten percent from the date of payment by him and the costs of the action in addition to the principal sum due him. [1965 c 7 § 35.49.090. Prior: 1911 c 98 § 62; RRS § 9415.]

**35.49.100 Payment in error—Remedy.** If, through error or inadvertence, a person pays any assessment for a local improvement or an installment thereof upon the lands of another, he may, after demand and refusal, recover from the owner of such lands, by an action in the superior court, the amount so paid and the costs of the action. [1965 c 7 § 35.49.100. Prior: 1911 c 98 § 65; RRS § 9418.]

**35.49.110 Record of payment.** If the amount of any assessment for a local improvement with interest, penalty, costs, and charges accrued thereon is paid to the treasurer before sale of the property in foreclosure of the lien thereon, the city or town treasurer shall mark it paid upon the assessment roll with the date of payment thereof. [1965 c 7 § 35.49.110. Prior: 1927 c 275 § 2; 1911 c 98 § 30; RRS § 9382.]

**35.49.130 Tax liens—City may protect assessment lien at foreclosure sale.** If any property situated in a local improvement district or utility local improvement district created by a city or town is offered for sale for general taxes by the county treasurer, the city or town shall have power to protect the lien or liens of any local improvement assessments outstanding against the whole or portion of such property by purchase at the treasurer's foreclosure sale. [1995 c 38 § 2; 1994 c 301 § 4; 1965 c 7 § 35.49.130. Prior: (i) 1911 c 98 § 63; RRS § 9416. (ii) 1929 c 143 § 1, part; 1925 ex.s. c 170 § 1, part; 1911 c 98 § 40, part; RRS § 9393, part.]

**Acts of municipal officers ratified and confirmed—1995 c 38:** See note following RCW 3.02.045.

**35.49.140 Tax liens—Payment by city after taking property on foreclosure of local assessments.** If a city or town has bid in any property on sale for local improvement assessments, it may satisfy the lien of any outstanding general taxes upon the property by payment of the face of such taxes and costs, without penalty or interest, but this shall not apply where certificates of delinquency against the property have been issued to private persons. [1965 c 7 § 35.49.140. Prior: 1929 c 143 § 1, part; 1925 ex.s. c 170 § 1, part; 1911 c 98 § 40, part; RRS § 9393, part.]

**35.49.150 Tax title property—City may acquire from county before resale.** If property is struck off to or bid in by a county at a sale for general taxes, and is subject to local improvement assessments in any city or town, or has been

taken over by the city or town on the foreclosure of local improvement assessments, the city or town may acquire the property from the county at any time before resale and receive a deed therefor upon paying the face of such taxes and costs, without penalty or interest. [1965 c 7 § 35.49.150. Prior: 1929 c 143 § 1, part; 1925 ex.s. c 170 § 1, part; 1911 c 98 § 40, part; RRS § 9393, part.]

**35.49.160 Tax title property—Disposition of proceeds upon resale.** Whenever property struck off to or bid in by a county at a sale for general taxes is subsequently sold by the county, the proceeds of the sale shall first be applied to discharge in full the lien or liens for general taxes for which property was sold; the remainder, or such portion thereof as may be necessary, shall be paid to the city or town to discharge all local improvement assessment liens against the property; and the surplus, if any, shall be distributed among the proper county funds. [1965 c 7 § 35.49.160. Prior: 1929 c 143 § 1, part; 1925 ex.s. c 170 § 1, part; 1911 c 98 § 40, part; RRS § 9393, part.]

**35.49.170 Acquisition of property by state or political subdivisions which is subject to unpaid assessments and delinquencies.** See RCW 79.44.190.

## Chapter 35.50 RCW

### LOCAL IMPROVEMENTS— FORECLOSURE OF ASSESSMENTS

#### Sections

35.50.005	Filing of title, diagram, expense—Posting proposed roll.
35.50.010	Assessment lien—Attachment—Priority.
35.50.020	Assessment lien—Validity.
35.50.030	Authority and conditions precedent to foreclosure.
35.50.040	Entire assessment, foreclosure of.
35.50.050	Limitation of foreclosure action.
35.50.220	Procedure—Commencement of action.
35.50.225	Procedure—Form of summons.
35.50.230	Procedure—Parties and property included.
35.50.240	Procedure—Pleadings and evidence.
35.50.250	Procedure—Summons and service.
35.50.260	Procedure—Trial and judgment—Notice of sale.
35.50.270	Procedure—Sale—Right of redemption.

**35.50.005 Filing of title, diagram, expense—Posting proposed roll.** Within fifteen days after any city or town has ordered a local improvement and created a local improvement district, the city or town shall cause to be filed with the officer authorized by law to collect the assessments for such improvement, the title of the improvement and district number and a copy of the diagram or print showing the boundaries of the district and preliminary assessment roll or abstract of same showing thereon the lots, tracts and parcels of land that will be specially benefited thereby and the estimated cost and expense of such improvement to be borne by each lot, tract, or parcel of land. Such officer shall immediately post the proposed assessment roll upon his index of local improvement assessments against the properties affected by the local improvement. [1969 ex.s. c 258 § 16; 1965 c 7 § 35.50.005. Prior: 1955 c 353 § 1.]

**35.50.010 Assessment lien—Attachment—Priority.** The charge assessed upon the respective lots, tracts, or par-

cels of land and other property in the assessment roll confirmed by ordinance of the city or town council for the purpose of paying the cost and expense in whole or in part of any local improvement, shall be a lien upon the property assessed from the time the assessment roll is placed in the hands of the city or town treasurer for collection, but as between the grantor and grantee, or vendor and vendee of any real property, when there is no express agreement as to payment of the local improvement assessments against the real property, the lien of such assessment shall attach thirty days after the filing of the diagram or print and the estimated cost and expense of such improvement to be borne by each lot, tract, or parcel of land, as provided in RCW 35.50.005. Interest and penalty shall be included in and shall be a part of the assessment lien.

The assessment lien shall be paramount and superior to any other lien or encumbrance theretofore or thereafter created except a lien for general taxes. [1965 c 7 § 35.50.010. Prior: 1955 c 353 § 4; prior: (i) 1911 c 98 § 20; RRS § 9372. (ii) 1927 c 275 § 1, part; 1921 c 92 § 1; 1911 c 98 § 24, part; RRS § 9376, part.]

**35.50.020 Assessment lien—Validity.** If the city or town council in making assessments against any property within any local improvement district or utility local improvement district has acted in good faith and without fraud, the assessments shall be valid and enforceable as such and the lien thereof upon the property assessed shall be valid.

It shall be no objection to the validity of the assessment, or the lien thereof:

(1) That the contract for the improvement was not awarded in the manner or at the time required by law; or

(2) That the assessment was made by an unauthorized officer or person if the assessment roll was confirmed by the city or town authorities; or

(3) That the assessment is based upon a front foot basis, or upon a basis of benefits to the property within the improvement district unless it is made to appear that the city or town authorities did not act in good faith and did not attempt to act fairly in regard thereto or unless it is made to appear that the city or town authorities acted fraudulently or oppressively in making the assessment.

All local improvement assessments heretofore or hereafter made by city or town authorities in good faith are valid and in full force and effect. [1967 c 52 § 17; 1965 c 7 § 35.50.020. Prior: 1911 c 98 § 61; RRS § 9414.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.50.030 Authority and conditions precedent to foreclosure.** If on the first day of January in any year, two installments of any local improvement assessment are delinquent, or if the final installment thereof has been delinquent for more than one year, the city or town shall proceed with the foreclosure of the delinquent assessment or delinquent installments thereof by proceedings brought in its own name in the superior court of the county in which the city or town is situate.

The proceedings shall be commenced on or before March 1st of that year or on or before such other date in such year as may be fixed by general ordinance, but not before the city or town treasurer has notified by certified mail the per-

sons whose names appear on the current assessment roll as owners of the property charged with the assessments or installments which are delinquent, at the address last known to the treasurer, a notice thirty days before the commencement of the proceedings. If the person whose name appears on the assessment rolls of the county assessor as owner of the property, or whose name appears on the tax rolls of the county treasurer as taxpayer of the property, or the address shown for the owner, differs from that appearing on the city or town assessment roll, then the treasurer shall also mail a copy of the notice to that person or that address.

The notice shall state the amount due, including foreclosure costs, upon each separate lot, tract, or parcel of land and the date after which the proceedings will be commenced. The city or town treasurer shall file with the clerk of the superior court at the time of commencement of the foreclosure proceeding the affidavit of the person who mailed the notices. This affidavit shall be conclusive proof of compliance with the requirements of this section. [2002 c 168 § 1; 1997 c 393 § 1; 1983 c 303 § 18; 1982 c 91 § 1; 1981 c 323 § 6; 1965 c 7 § 35.50.030. Prior: 1933 c 9 § 1, part; 1927 c 275 § 5, part; 1919 c 70 § 2; 1915 c 185 § 1; 1911 c 98 §§ 34, 36, part; RRS § 9386, part; prior: 1897 c 111.]

**Severability—1983 c 303:** See RCW 36.60.905.

**Severability—1982 c 91:** "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 91 § 10.]

**Construction—1933 c 9:** "The provisions of this act shall be applicable to the lien of assessments heretofore as well as hereafter levied and to foreclosure proceedings now pending." [1933 c 9 § 3.]

**35.50.040 Entire assessment, foreclosure of.** When the local improvement assessment is payable in installments, the enforcement of the lien of any installment shall not prevent the enforcement of the lien of any subsequent installment.

A city or town may by general ordinance provide that upon failure to pay any installment due the entire assessment shall become due and payable and the collection thereof enforced by foreclosure: PROVIDED, That the payment of all delinquent installments together with interest, penalty, and administrative costs at any time before entry of judgment in foreclosure shall extend the time of payment on the remainder of the assessments as if there had been no delinquency or foreclosure. Where foreclosure of two installments of the same assessment on any lot, tract, or parcel is sought, the city or town treasurer shall cause such lot, tract, or parcel to be dismissed from the action, if the installment first delinquent together with interest, penalty, administrative costs, and charges is paid at any time before sale. [1997 c 393 § 2; 1965 c 7 § 35.50.040. Prior: (i) 1933 c 9 § 1, part; 1927 c 275 § 5, part; 1919 c 70 § 2, part; 1915 c 185 § 1; 1911 c 98 §§ 34, 36, part; RRS § 9386, part. (ii) 1919 c 70 § 1; 1911 c 98 § 35; RRS § 9388; prior: 1897 c 111.]

**35.50.050 Limitation of foreclosure action.** An action to collect a local improvement assessment or any installment thereof or to enforce the lien thereof whether brought by the city or town, or by any person having the right to bring such action must be commenced within ten years after the assess-

ment becomes delinquent or within ten years after the last installment becomes delinquent, if the assessment is payable in installments: PROVIDED, That the time during which payment of principal is deferred as to economically disadvantaged property owners as provided for in RCW 35.43.250 shall not be a part of the time limited for the commencement of action. [1989 c 11 § 6; 1972 ex.s. c 137 § 5; 1965 c 7 § 35.50.050. Prior: 1911 c 98 § 41; RRS § 9394.]

Severability—1989 c 11: See note following RCW 9A.56.220.

Severability—1972 ex.s. c 137: See note following RCW 35.49.010.

**35.50.220 Procedure—Commencement of action.** In foreclosing local improvement assessment liens, a city or town shall proceed by filing a complaint in the superior court of the county in which the city or town is located. It shall be sufficient to allege in the complaint (1) the passage of the ordinance authorizing the improvement, (2) the making of the improvement, (3) the levying of the assessment, (4) the confirmation thereof, (5) the date of delinquency of the installment or installments of the assessment for the enforcement of which the action is brought and (6) that they have not been paid prior to delinquency or at all. [1982 c 91 § 2; 1965 c 7 § 35.50.220. Prior: 1933 c 9 § 2, part; RRS § 9386-1, part.]

Severability—1982 c 91: See note following RCW 35.50.030.

**35.50.225 Procedure—Form of summons.** In foreclosing local improvement assessments, the summons shall be substantially in the following form:

SUPERIOR COURT OF WASHINGTON  
FOR [ . . . . . ] COUNTY

. . . . . , <i>Plaintiff,</i> v. . . . . . , <i>Defendant.</i>	}	No . . . . .  SUMMONS FOR FORECLOSURE OF LOCAL IMPROVEMENT ASSESSMENT LIEN
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To the Defendant: A lawsuit has been started against you in the above entitled court by . . . . . plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons. The purpose of this suit is to foreclose on your interest in the following described property:

[legal description]

which is located at:

[street address]

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

IMPORTANT NOTICE

If judgment is taken against you, either by default or after hearing by the court, your property will be sold at public auction.

You may prevent the sale by paying the amount of the judgment at any time prior to the sale.

If your property is sold, you may redeem the property at any time up to two years after the date of the sale, by paying the amount for which the property was sold, plus interest and costs of the sale.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

[signed] . . . . .  
 . . . . .  
 Print or Type Name  
 ( ) Plaintiff ( ) Plaintiff's  
 Attorney  
 P.O. Address . . . . .  
 Dated . . . . . Telephone Number . . . . .

[1982 c 91 § 6.]

Severability—1982 c 91: See note following RCW 35.50.030.

**35.50.230 Procedure—Parties and property included.** In foreclosing local improvement assessment liens, it is not necessary to bring a separate suit for each of the lots, tracts, or parcels of land or other property or for each separate local improvement district or utility local improvement district. All or any of the lots, tracts, or parcels of land or other property upon which local improvement assessments are delinquent under any and all local improvement assessment rolls in the city or town may be proceeded against in the same action. For all lots, tracts, or parcels which contain a residential structure with an assessed value of at least two thousand dollars, all persons owning or claiming to own the property shall be made defendants thereto. For all other lots, tracts, or parcels, the persons whose names appear on the assessment roll and property tax rolls as owners of the property charged with the assessments or taxes shall be made defendants thereto. [1983 c 303 § 19; 1982 c 91 § 3; 1967 c 52 § 19; 1965 c 7 § 35.50.230. Prior: 1933 c 9 § 2, part; RRS § 9386-1, part.]

Severability—1983 c 303: See RCW 36.60.905.

Severability—1982 c 91: See note following RCW 35.50.030.

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

**35.50.240 Procedure—Pleadings and evidence.** In foreclosing local improvement assessment liens, the assessment roll and the ordinance confirming it, or duly authenticated copies thereof shall be prima facie evidence of the regularity and legality of the proceedings connected therewith and the burden of proof shall be on the defendants. [1982 c 91 § 4; 1965 c 7 § 35.50.240. Prior: 1933 c 9 § 2, part; RRS § 9386-1, part.]

Severability—1982 c 91: See note following RCW 35.50.030.

**35.50.250 Procedure—Summons and service.** In foreclosing local improvement assessments, if the lot, tract, or parcel contains a residential structure with an assessed value of at least two thousand dollars, the summons shall be served upon the defendants in the manner required by RCW 4.28.080. For all other lots, tracts, or parcels the summons shall be served by either personal service on the defendants or by certified and regular mail. [1983 c 303 § 20; 1982 c 91 § 5; 1965 c 7 § 35.50.250. Prior: 1933 c 9 § 2, part; RRS § 9386-1, part.]

**Severability—1983 c 303:** See RCW 36.60.905.

**Severability—1982 c 91:** See note following RCW 35.50.030.

*Commencement of actions:* Chapter 4.28 RCW.

**35.50.260 Procedure—Trial and judgment—Notice of sale.** In foreclosing local improvement assessments the action shall be tried to the court without a jury. If the parties interested in any particular lot, tract, or parcel default, the court may enter judgment of foreclosure and sale as to such parties and lots, tracts, or parcels and the action may proceed as to the remaining defendants and lots, tracts, or parcels. Judgment and order of sale may be entered as to any one or more separate lots, tracts, or parcels involved in the action and the court shall retain jurisdiction to others.

The judgment shall specify separately the amount of the installments with interest, penalty, and all reasonable administrative costs, including, but not limited to, the title searches, chargeable to each lot, tract, or parcel. The judgment shall have the effect of a separate judgment as to each lot, tract, or parcel described in the judgment, and any appeal shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. In the judgment the court shall order the lots, tracts, or parcels therein described sold by the city or town treasurer or by the county sheriff and an order of sale shall issue pursuant thereto for the enforcement of the judgment.

In all other respects, the trial, judgment, and appeals to the supreme court or the court of appeals shall be governed by the statutes governing the foreclosure of mortgages on real property.

Prior to the sale of the property, if the property is shown on the property tax rolls under unknown owner or if the property contains a residential structure having an assessed value of two thousand dollars or more, the treasurer shall order or conduct a title search of the property to determine the record title holders and all persons claiming a mortgage, deed of trust, or mechanic's, laborer's, materialmen's, or vendor's lien on the property.

At least thirty days prior to the sale of the property, a copy of the notice of sale shall be mailed by certified and regular mail to all defendants in the foreclosure action as to that parcel, lot, or tract and, if the owner is unknown or the property contains a residential structure having an assessed value of two thousand dollars or more, a copy of the notice of sale shall be mailed by regular and certified mail to any additional record title holders and persons claiming a mortgage, deed of trust, or mechanic's, laborer's, materialmen's, or vendor's lien on the property.

In all other respects the procedure for sale shall be conducted in the same manner as property tax sales described in RCW 84.64.080. [1997 c 393 § 3; 1983 c 303 § 21; 1982 c

91 § 7; 1971 c 81 § 93; 1965 c 7 § 35.50.260. Prior: 1933 c 9 § 2, part; RRS § 9386-1, part.]

**Severability—1983 c 303:** See RCW 36.60.905.

**Severability—1982 c 91:** See note following RCW 35.50.030.

*Foreclosure of real estate mortgages and personal property liens:* Chapter 61.12 RCW.

*Foreclosure of special assessments by water-sewer districts—Attorneys' fees:* RCW 57.16.150.

**35.50.270 Procedure—Sale—Right of redemption.** In foreclosing local improvement assessments, all sales shall be subject to the right of redemption within two years from the date of sale. [1983 c 303 § 22; 1982 c 91 § 8; 1965 c 7 § 35.50.270. Prior: 1933 c 9 § 2, part; RRS § 9386-1, part.]

**Severability—1983 c 303:** See RCW 36.60.905.

**Severability—1982 c 91:** See note following RCW 35.50.030.

## Chapter 35.51 RCW

### LOCAL IMPROVEMENTS—CLASSIFICATION OF PROPERTY—RESERVE FUNDS

#### Sections

35.51.010	Definitions.
35.51.020	Joint planning, construction, and operation of improvements.
35.51.030	Alternative or additional method of assessment—Classification of property.
35.51.040	Reserve fund authorized—Use.
35.51.050	Loan agreements—Assessments may be pledged.
35.51.900	Authority supplemental—1985 c 397.
35.51.9001	Authority supplemental—1997 c 426.
35.51.901	Severability—1985 c 397.

**35.51.010 Definitions.** The definitions set forth in this section apply throughout this chapter.

(1) "Local improvement district" means any local improvement district, local utility district, or any other similar special assessment district.

(2) "Municipality" means any city, town, county, metropolitan municipal corporation, or any other municipal corporation or quasi-municipal corporation of the state of Washington authorized to order local improvements, to establish local improvement districts, and to levy special assessments on property specially benefited thereby to pay the expense of the improvements.

(3) "Permissible floor area" means the maximum total floor area, at grade and above and below grade, of a building or other structure that may lawfully be developed on a property.

(4) "Private land use restriction" means any restriction on the use of property imposed by agreement and enforceable by a court of law and that the legislative authority of a municipality determines is useful in measuring special benefits to a property from an improvement. Such restrictions include but are not limited to easements, covenants, and equitable servitudes that are not mere personal obligations.

(5) "Public land use restriction" means any restriction on the use of property imposed by federal, state, or local laws, regulations, ordinances, or resolutions. Such restrictions include but are not limited to local zoning ordinances and historic preservation statutes. [1985 c 397 § 5.]

**35.51.020 Joint planning, construction, and operation of improvements.** A municipality may contract with any other municipality, with a public corporation, or with the state of Washington, for the following purposes:

(1) To have the acquisition or construction of the whole or any part of an improvement performed by another municipality, by a public corporation, or by the state of Washington;

(2) To pay, from assessments on property within a local improvement district or from the proceeds of local improvement district bonds, notes or warrants, the whole or any part of the expense of an improvement ordered, constructed, acquired, or owned by another municipality or a public corporation; or

(3) To integrate the planning, financing, construction, acquisition, management, or operation, or any combination thereof, of the improvements of one municipality or a public corporation with the planning, financing, construction, acquisition, management, or operation, or any combination thereof, of the improvements of another municipality or public corporation on such terms and conditions as may be mutually agreed upon including, but not limited to, the allocation of the costs of the improvements and the allocation of planning, financing, construction, management, operation, or other responsibilities. [1987 c 242 § 5; 1985 c 397 § 6.]

**Policy—1987 c 242:** See note following RCW 35.43.005.

**35.51.030 Alternative or additional method of assessment—Classification of property.** (1) As an alternative or in addition to other methods of ascertaining assessments for local improvements, the legislative authority of a municipality may develop and apply a system of classification of properties based upon some or all of the public land use restrictions or private land use restrictions to which such property may be put at the time the assessment roll is confirmed.

(2) The legislative authority of a municipality may classify property into office, retail, residential, public, or any other classifications the legislative authority finds reasonable, and may levy special assessments upon different classes of property at different rates, but in no case may a special assessment exceed the special benefit to a particular property. A municipality also may exempt certain classes of property from assessment if the legislative authority of the municipality determines that properties within such classes will not specially benefit from the improvement.

(3) For each property within a classification, the legislative authority of the municipality may determine the special assessment after consideration of any or all of the following:

(a) Square footage of the property;

(b) Permissible floor area;

(c) Distance from or proximity of access to the local improvement;

(d) Private land use restrictions and public land use restrictions;

(e) Existing facilities on the property at the time the assessment roll is confirmed; and

(f) Any other factor the legislative authority finds to be a reasonable measure of the special benefits to the properties being assessed.

(4) If after the assessment roll is confirmed, the legislative authority of a municipality finds that the lawful uses of any assessed property have changed and that the property no

longer falls within its original classification, the legislative authority may, in its discretion, reclassify and reassess such property whether or not the bonds issued to pay any part of such costs remain outstanding. If such reassessment reduces the total outstanding assessments within the local improvement district, the legislative authority shall either reassess all other properties upward in an aggregate amount equal to such reduction, or shall pledge additional money, including money in a reserve fund, to the payment of principal of and interest on such bonds in an amount equal to such reduction.

(5) When the legislative authority of a municipality determines that it will use the alternative or additional method of assessment authorized by this section, it may select and describe the method or methods of assessment in the ordinance ordering a local improvement and creating a local improvement district if such method or methods of assessment have been described in the notice of hearing required under RCW 35.43.150. If the method or methods of assessment are so selected and described in the ordinance ordering a local improvement and creating a local improvement district, the action and decision of the legislative authority as to such method or methods of assessment shall be final and conclusive, and no lawsuit whatsoever may be maintained challenging such method or methods of assessment unless that lawsuit is served and filed no later than thirty days after the date of passage of the ordinance ordering the improvement, and creating the district or, when applicable, no later than thirty days after the expiration of the thirty-day protest period provided in RCW 35.43.180. [1985 c 397 § 7.]

**35.51.040 Reserve fund authorized—Use.** For the purpose of securing the payment of the principal of and interest on an issue of local improvement bonds, notes, warrants, or other short-term obligations, the legislative authority of a municipality may create a reserve fund in an amount not exceeding fifteen percent of the principal amount of the bonds, notes, or warrants issued. The cost of a reserve fund may be included in the cost and expense of any local improvement for assessment against the property in the local improvement district to pay the cost, or any part thereof. The reserve fund may be provided for from the proceeds of the bonds, notes, warrants, or other short-term obligations, from special assessment payments, or from any other money legally available therefor. The legislative authority of a municipality shall provide that after payment of administrative costs a sum in proportion to the ratio between the part of the original assessment against a given lot, tract, or parcel of land in a local improvement district assessed to create a reserve fund, if any, and the total original amount of such assessment, plus a proportionate share of any interest accrued in the reserve fund, shall be credited and applied, respectively, to any nondelinquent portion of the principal of that assessment and any nondelinquent installment interest on that assessment paid by a property owner, but in no event may the principal amount of bonds outstanding exceed the principal amount of assessments outstanding. Whether the payment is made during the thirty-day prepayment period referred to in RCW 35.49.010 and 35.49.020 or thereafter and whenever all or part of a remaining nondelinquent assessment or any nondelinquent installment payment of principal and interest is paid, the reserve fund balance shall be reduced accordingly as

each such sum is thus credited and applied to a nondelinquent principal payment and a nondelinquent interest payment. Each payment of a nondelinquent assessment or any nondelinquent installment payment of principal and interest shall be reduced by the amount of the credit. The balance of a reserve fund remaining after payment in full and retirement of all local improvement bonds, notes, warrants, or other short-term obligations secured by such fund shall be transferred to the municipality's guaranty fund.

Where, before July 26, 1987, a municipality established a reserve fund under this section that did not provide for a credit or reimbursement of the money remaining in the reserve fund to the owners of the lots, tracts, or parcels of property subject to the assessments, the balance in the reserve fund shall be distributed, after payment in full and retirement of all local improvement district bonds and other obligations secured by the reserve fund, to those owners of the lots, tracts, or parcels of property subject to the assessments at the time the final installment or assessment payment on the lot, tract, or parcel was made. No owner is eligible to receive reimbursement for a lot, tract, or parcel if a lien on an unpaid assessment, or an installment thereon, that was imposed on such property remains in effect at the time the reimbursement is made or was foreclosed on the property. The amount to be distributed to the owners of each lot, tract, or parcel that is eligible for reimbursement shall be equal to the balance in the reserve fund, multiplied by the assessment imposed on the lot, tract, or parcel, divided by the total of all the assessments on the lots, tracts, or parcels eligible for reimbursement. [1987 c 340 § 1; 1985 c 397 § 8.]

**35.51.050 Loan agreements—Assessments may be pledged.** Assessments for local improvements in a local improvement district created by a municipality may be pledged and applied when collected to the payment of its obligations under a loan agreement entered into under chapter 39.69 RCW to pay costs of improvements in such a local improvement district. [1997 c 426 § 4.]

**35.51.900 Authority supplemental—1985 c 397.** The authority granted by sections 1 through 8 of this act is supplemental and in addition to the authority granted by Title 35 RCW and to any other authority granted to cities, towns, or municipal corporations to levy special assessments. [1985 c 397 § 12.]

**35.51.9001 Authority supplemental—1997 c 426.** The authority granted by RCW 35.51.050 is supplemental and in addition to the authority granted by Title 35 RCW and to any other authority granted to cities, towns, or municipal corporations to levy, pledge, and apply special assessments. [1997 c 426 § 5.]

**35.51.901 Severability—1985 c 397.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 397 § 13.]

(2004 Ed.)

## Chapter 35.53 RCW

### LOCAL IMPROVEMENTS—DISPOSITION OF PROPERTY ACQUIRED

#### Sections

35.53.010	Property to be held in trust—Taxability.
35.53.020	Discharge of trust.
35.53.030	Sale or lease of trust property.
35.53.040	Termination of trust in certain property.
35.53.050	Termination of trust in certain property—Complaint—Allegations.
35.53.060	Termination of trust in certain property—Property—Parties—Summons.
35.53.070	Termination of trust in certain property—Receivership—Regulations.

**35.53.010 Property to be held in trust—Taxability.** Property bid in by the city or town or struck off to it pursuant to proceedings for the foreclosure of local improvement assessment liens shall be held in trust by the city or town for the fund of the improvement district or the revenue bond fund into which assessments in utility local improvement districts are pledged to be paid for the benefit of which the property was sold. Any property so held in trust shall be exempt from taxation for general state, county and municipal purposes during the period that it is so held. [1967 c 52 § 20; 1965 c 7 § 35.53.010. Prior: 1933 c 107 § 1, part; 1927 c 275 § 3, part; 1911 c 98 § 31, part; RRS § 9383, part.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.53.020 Discharge of trust.** The city or town may relieve itself of its trust relation to a local improvement district fund or revenue bond fund into which utility local improvement assessments are pledged to be paid as to any lot, tract, or parcel of property by paying into the fund the amount of the delinquent assessment for which the property was sold and all accrued interest, together with interest to the time of the next call of bonds or warrants against such fund at the rate provided thereon. Upon such payment the city or town shall hold the property discharged of the trust. [1967 c 52 § 21; 1965 c 7 § 35.53.020. Prior: 1933 c 107 § 1, part; 1927 c 275 § 3, part; 1911 c 98 § 31, part; RRS § 9383, part.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.53.030 Sale or lease of trust property.** A city or town may lease or sell and convey any such property held in trust by it, by virtue of the conveyance thereof to it by a local improvement assessment deed. The sale may be public or private and for such price and upon such terms as may be determined by resolution of the council, any provisions of law, charter, or ordinance to the contrary notwithstanding. After first reimbursing any funds which may have advanced moneys on account of any lot, tract, or parcel, all proceeds resulting from lease or sale thereof shall ratably belong and be paid into the funds of the local improvement concerned. [1965 c 7 § 35.53.030. Prior: 1927 c 275 § 4; 1911 c 98 § 32; RRS § 9384.]

**35.53.040 Termination of trust in certain property.** A city or town which has heretofore acquired or hereafter acquires any property through foreclosure of delinquent assessments for local improvements initiated or proceedings

commenced before June 8, 1927, may terminate its trust therein by an action in the superior court, if all the bonds and warrants outstanding in the local improvement district in which the assessments were levied are delinquent. [1965 c 7 § 35.53.040. Prior: 1929 c 142 § 1, part; RRS § 9384-1, part.]

**35.53.050 Termination of trust in certain property—Complaint—Allegations.** The complaint in any such action by a city or town to terminate its trust in property acquired at a local improvement assessment sale shall set forth:

(1) The number of the local improvement district or utility local improvement district,

(2) The bonds and warrants owing thereby,

(3) The owners thereof or that the owners are unknown,

(4) A description of the assets of the district with the estimated value thereof,

(5) The amount of the assessments, including penalty and interest, of any other local improvement districts or utility local improvement districts which are a lien upon the same property,

(6) The amount of the bonds and warrants owing by such other districts and the names of the owners thereof unless they are unknown, except where the bonds and warrants are guaranteed by a local improvement guaranty fund or pursuant to any other form of guaranty authorized by law. [1967 c 52 § 22; 1965 c 7 § 35.53.050. Prior: 1929 c 142 § 1, part; RRS § 9384-1, part.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.53.060 Termination of trust in certain property—Property—Parties—Summons.** Two or more delinquent districts and all property, bonds and warrants therein may be included in one action to terminate the trust.

All persons owning any bonds or warrants of the districts involved in the action or having an interest therein shall be made parties defendant except in cases where the bonds or warrants are guaranteed by a local improvement guaranty fund or pursuant to any other form of guaranty authorized by law.

Summons shall be served as in other actions. Unknown owners and unknown parties shall be served by publication. [1965 c 7 § 35.53.060. Prior: 1929 c 142 § 1, part; RRS § 9384-1, part.]

*Commencement of actions: Chapter 4.28 RCW.*

**35.53.070 Termination of trust in certain property—Receivership—Regulations.** In such an action the court after acquiring jurisdiction shall proceed as in the case of a receivership except that the city or town shall serve as trustee in lieu of a receiver.

The assets of the improvement districts involved shall be sold at such prices and in such manner as the court may deem advisable and be applied to the costs and expenses of the action and the liquidation of the bonds and warrants of the districts or revenue bonds to which utility local improvement assessments are pledged to pay.

No notice to present claims other than the summons in the action shall be necessary. Any claim presented shall be accompanied by the bonds and warrants upon which it is

based. Dividends upon any bonds or warrants for which no claim was filed shall be paid into the general fund of the city or town, but the owner thereof may obtain it at any time within five years thereafter upon surrender and cancellation of his bonds and warrants.

Upon the termination of the receivership the city or town shall be discharged from all trusts relating to the property, funds, bonds, and warrants involved in the action. [1967 c 52 § 23; 1965 c 7 § 35.53.070. Prior: 1929 c 142 § 1, part; RRS § 9384-1, part.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

## Chapter 35.54 RCW

### LOCAL IMPROVEMENTS—GUARANTY FUNDS

#### Sections

35.54.010	Establishment.
35.54.020	Rules and regulations.
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**35.54.010 Establishment.** (1) There is established in every city and town a fund to be designated the "local improvement guaranty fund" for the purpose of guaranteeing, to the extent of the fund, the payment of its local improvement bonds and warrants or other short-term obligations issued to pay for any local improvement ordered in the city or town or in any area wholly or partly outside its corporate boundaries: (a) In any city of the first class having a population of more than three hundred thousand, subsequent to June 8, 1927; (b) in any city or town having created and maintained a guaranty fund under chapter 141, Laws of 1923, subsequent to the date of establishment of such fund; and (c) in any other city or town subsequent to April 7, 1926: PROVIDED, That this shall not apply to any city of the first class which maintains a local improvement guaranty fund under chapter 138, Laws of 1917, but any such city maintaining a guaranty fund under chapter 138, Laws of 1917 may by ordinance elect to operate under the provisions of this chapter and may transfer to the guaranty fund created hereunder all the assets of the former fund and, upon such election and transfer, all bonds guaranteed under the former fund shall be guaranteed under the provisions of this chapter.

(2) The local improvement guaranty fund established under subsection (1) of this section shall not be subject to any claim by the owner or holder of any local improvement bond, warrant, or other short-term obligation issued under an ordinance that provides that such obligations shall not be secured by the local improvement guaranty fund. [2002 c 41 § 4; 1971 ex.s. c 116 § 7; 1965 c 7 § 35.54.010. Prior: (i) 1917 c 138 § 1; RRS § 8986. (ii) 1917 c 138 § 2; RRS § 8987. (iii) 1917 c 138 § 3; RRS § 8988. (iv) 1917 c 138 § 4; RRS §

8989. (v) 1917 c 138 § 5; RRS § 8990. (vi) 1917 c 138 § 6; RRS § 8991. (vii) 1927 c 209 § 1; 1925 ex.s. c 183 § 1; 1923 c 141 § 1; RRS § 9351-1. (viii) 1927 c 209 § 2, part; 1925 ex.s. c 183 § 2, part; 1923 c 141 § 2, part; RRS § 9351-2, part.]

**35.54.020 Rules and regulations.** Every city and town operating under the provisions of this chapter shall prescribe by ordinance appropriate rules and regulations for the maintenance and operation of the guaranty fund not inconsistent with the provisions of this chapter. [1965 c 7 § 35.54.020. Prior: 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part.]

**35.54.030 Source—Interest and earnings.** Interest and earnings from the local improvement guaranty fund shall be paid into the fund. [1965 c 7 § 35.54.030. Prior: 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part.]

**35.54.040 Source—Subrogation rights to assessments.** Whenever any sum is paid out of the local improvement guaranty fund on account of principal or interest of a local improvement bond or warrant, the city or town as trustee of the fund shall be subrogated to all the rights of the holder of the bond or interest coupon or warrant so paid, and the proceeds thereof, or of the underlying assessment, shall become part of the guaranty fund. [1965 c 7 § 35.54.040. Prior: 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part.]

**35.54.050 Source—Surplus from improvement funds.** If in any local improvement fund guaranteed by a local improvement guaranty fund there is a surplus remaining after the payment of all outstanding bonds and warrants payable therefrom, it shall be paid into the local improvement guaranty fund. [1965 c 7 § 35.54.050. Prior: 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part.]

**35.54.060 Source—Taxation.** For the purpose of maintaining the local improvement guaranty fund, every city and town shall, at the time of making its annual budget and tax levy, provide for the levy of a sum sufficient, with the other sources of the fund, to pay the warrants issued against the fund during the preceding fiscal year and to establish a balance therein: PROVIDED, That the levy in any one year shall not exceed the greater of: (1) Twelve percent of the outstanding obligations guaranteed by the fund, or (2) the total amount of delinquent assessments and interest accumulated on the delinquent assessments before the levy as of September 1.

The taxes levied for the maintenance of the local improvement guaranty fund shall be additional to and, if need be, in excess of all statutory and charter limitations applicable to tax levies in any city or town. [1981 c 323 § 7; 1965 c 7 § 35.54.060. Prior: (i) 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part. (ii) 1927 c 209 § 2, part; 1925 ex.s. c 183 § 2, part; 1923 c 141 § 2, part; RRS § 9351-2, part.]

(2004 Ed.)

*Special assessments or taxation for local improvements: State Constitution Art. 7 § 9.*

**35.54.070 Use of fund—Purchase of bonds, coupons and warrants.** Defaulted bonds, interest coupons and warrants against local improvement funds shall be purchased out of the guaranty fund, and as between the several issues of bonds, coupons, or warrants no preference shall exist, but they shall be purchased in the order of their presentation. [1965 c 7 § 35.54.070. Prior: 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part.]

**35.54.080 Use of fund—Purchase of general tax certificates or property on or after foreclosure—Disposition.** For the purpose of protecting the guaranty fund, so much of the guaranty fund as is necessary may be used to purchase certificates of delinquency for general taxes on property subject to local improvement assessments which underlie the bonds, coupons, or warrants guaranteed by the fund, or to purchase such property at county tax foreclosures, or from the county after foreclosure.

The city or town, as trustee of the fund, may foreclose the lien of general tax certificates of delinquency and purchase the property at foreclosure sale; when doing so the court costs, costs of publication, expense for clerical work and other expenses incidental thereto shall be charged to and paid from the local improvement guaranty fund.

After acquiring title to property by purchase at general tax foreclosure sale or from the county after foreclosure, a city or town may lease it or sell it at public or private sale at such price on such terms as may be determined by resolution of the council. All proceeds shall belong to and be paid into the local improvement guaranty fund. [1965 c 7 § 35.54.080. Prior: 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part.]

**35.54.090 Warrants against fund.** Warrants drawing interest at a rate established by the issuing officer under the direction of the legislative authority of the city or town shall be issued against the local improvement guaranty fund to meet any liability accruing against it. The warrants so issued shall at no time exceed five percent of the outstanding obligations guaranteed by the fund. [1981 c 323 § 8; 1965 c 7 § 35.54.090. Prior: 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part.]

**35.54.095 Transfer of assets to general fund—When authorized—Payment of claims as general obligation, when.** (1) Any city or town maintaining a local improvement guaranty fund under this chapter, upon certification by the city or town treasurer that the local improvement guaranty fund has sufficient funds currently on hand to meet all valid outstanding obligations of the fund and all other obligations of the fund reasonably expected to be incurred in the near future, may by ordinance transfer assets from such fund to its general fund. The net cash of the local improvement guaranty fund may be reduced by such transfer to an amount not less than ten percent of the net outstanding obligations guaranteed by such fund.

(2) If, at any time within five years of any transfer of assets from the local improvement guaranty fund to the general fund of a city or town, the net cash of the local improvement guaranty fund is reduced below the minimum amount specified in subsection (1) of this section, the city or town shall, to the extent of the amount transferred, pay valid claims against the local improvement guaranty fund as a general obligation of the city or town. In addition, such city or town shall pay all reasonable costs of collection necessarily incurred by the holders of valid claims against the local improvement guaranty fund. [1979 c 55 § 1.]

**35.54.100 Deferral of collection of assessments for economically disadvantaged persons—Payment from guaranty fund—Lien—Payment dates for deferred obligations.** Whenever payment of a local improvement district assessment is deferred pursuant to the provisions of RCW 35.43.250 the amount of the deferred assessment shall be paid out of the local improvement guaranty fund. The local improvement guaranty fund shall have a lien on the benefited property in an amount equal to the deferral together with interest as provided for by the establishing ordinance.

The lien may accumulate up to an amount not to exceed the sum of two installments: PROVIDED, That the ordinance creating the local improvement district may provide for one or additional deferrals of up to two installments. Local improvement assessment obligations deferred under chapter 137, Laws of 1972 ex. sess. shall become payable upon the earliest of the following dates:

(1) Upon the date and pursuant to conditions established by the political subdivision granting the deferral; or

(2) Upon the sale of property which has a deferred assessment lien upon it from the purchase price; or

(3) Upon the death of the person to whom the deferral was granted from the value of his estate; except a surviving spouse shall be allowed to continue the deferral which shall then be payable by that spouse as provided in this section. [1972 ex.s. c 137 § 3.]

**Severability—1972 ex.s. c 137:** See note following RCW 35.49.010.

## Chapter 35.55 RCW

### LOCAL IMPROVEMENTS—FILLING LOWLANDS

#### Sections

35.55.010	Authority—Second class cities.
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35.55.040	Damages—Eminent domain.
35.55.050	Estimates—Plans and specifications.
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35.55.180	Reassessments.
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*Assessments and charges against state lands: Chapter 79.44 RCW.*

**35.55.010 Authority—Second class cities.** If the city council of any city of the second class deems it necessary or expedient on account of the public health, sanitation, the general welfare, or other cause, to fill or raise the grade of any marshlands, swamplands, tidelands, shorelands, or lands commonly known as tideflats, or any other lowlands situated within the limits of the city, and to clear and prepare the lands for such filling, it may do so and assess the expense thereof, including the cost of making compensation for property taken or damaged, and all other costs and expense incidental to such improvement, to the property benefited, except such amount of such expense as the city council may direct to be paid out of the current or general expense fund.

If, in the judgment of the city council the special benefits for any such improvement shall extend beyond the boundaries of the filled area, the council may create an enlarged district which shall include, as near as may be, all the property, whether actually filled or not, which will be specially benefited by such improvement, and in such case the council shall specify and describe the boundaries of such enlarged district in the ordinance providing for such improvement and shall specify that such portion of the total cost and expense of such improvement as may not be borne by the current or general expense fund, shall be distributed and assessed against all the property of such enlarged district. [1994 c 81 § 57; 1965 c 7 § 35.55.010. Prior: 1917 c 63 § 1; 1909 c 147 § 1; RRS § 9432.]

**35.55.020 Alternative methods of financing.** If the city council desires to make any improvement authorized by the provisions of this chapter it shall provide therefor by ordinance and unless the ordinance provides that the improvement shall be paid for wholly or in part by special assessments upon the property benefited, compensation therefor shall be made from any general funds of the city applicable thereto. If the ordinance provides that the improvement shall be paid for wholly or in part by special assessments upon property benefited, the proceedings for the making of the special assessments shall be as hereinafter provided. [1965 c 7 § 35.55.020. Prior: 1909 c 147 § 2, part; RRS § 9433, part.]

*Special assessments or taxation for local improvements: State Constitution Art. 7 § 9.*

**35.55.030 Boundaries—Excepted property.** Such ordinance shall specify the boundaries of the proposed improvement district and shall describe the lands which it is proposed to assess for said improvement. If any parcel of land within the boundaries of such proposed improvement district has been wholly filled to the proposed grade elevation of the proposed fill, such parcel of land may be excluded from the lists of lands to be assessed, when in the opinion of the city council justice and equity require its exclusion. The boundaries of any improvement district may be altered so as to exclude land therefrom at any time up to the levying of the assessment but such changing of the boundaries shall be by ordinance. [1965 c 7 § 35.55.030. Prior: 1909 c 147 § 2, part; RRS § 9433, part.]

**35.55.040 Damages—Eminent domain.** If an ordinance has been passed as in this chapter provided, and it appears that in making of the improvement so authorized, pri-

vate property will be taken or damaged thereby, the city shall file a petition in the superior court of the county in which such city is situated, in the name of the city, praying that just compensation to be made for the property to be taken or damaged for the improvement specified in the ordinance be ascertained, and conduct proceedings in eminent domain in accordance with the statutes relating to cities for the ascertainment of the compensation to be made for the taking and damaging of property, except insofar as the same may be inconsistent with this chapter.

The filling of unimproved and uncultivated lowlands of the character mentioned in RCW 35.55.010 shall not be considered as damaging or taking of such lands. The damage if any, done to cultivated lands or growing crops thereon, or to buildings and other improvements situated within the district proposed to be filled, shall be ascertained and determined in the manner above provided; but no damage shall be awarded to any property owner for buildings or improvements placed upon lands included within said district after the publication of the ordinance defining the boundaries of the proposed improvement district: PROVIDED, That the city shall after the passage of such ordinance, proceed with said improvement with due diligence. If the improvement is to be made at the expense of the property benefited, no account shall be taken of benefits by the jury or court in assessing the amount of compensation to be made to the owner of any property within such district, but such compensation shall be assessed without regard to benefits to the end that said property for which damages may be so awarded, may be assessed the same as other property within the district for its just share and proportion of the expense of making said improvement, and the fact that compensation has been awarded for the damaging or taking of any parcel of land shall not preclude the assessment of such parcel of land for its just proportion of said improvement. [1965 c 7 § 35.55.040. Prior: 1909 c 147 § 3; RRS § 9434.]

*Eminent domain by cities: Chapter 8.12 RCW.*

**35.55.050 Estimates—Plans and specifications.** At the time of the initiation of the proceedings for any improvement as contemplated by this chapter, or at any time afterward, the city council shall cause plans and specifications for said improvement to be prepared and shall cause an estimate to be made of the cost and expense of making said improvement, including the cost of supervision and engineering, abstractor's fees, interest and discounts and all other expenses incidental to said improvement, including an estimate of the amount of damages for property taken or damaged, which plans, specifications and estimates shall be approved by the city council. [1965 c 7 § 35.55.050. Prior: 1909 c 147 § 4; RRS § 9435.]

**35.55.060 Assessment roll—Items—Assessment units—Installments.** When such plans and specifications have been prepared and the estimates of the cost and expense of making the improvement have been adopted by the council and when an estimate has been made of the compensation to be paid for property damaged or taken, either before or after the compensation has been ascertained in the eminent domain proceedings, the city council shall cause an assessment roll to

be prepared containing a list of all of the property within the improvement district which it is proposed to assess for the improvement, together with the names of the owners, if known, and if unknown the property shall be assessed to an unknown owner, and opposite each description shall be set the amount assessed to such description.

When so ordered by the council, the entire amount of compensation paid or to be paid for property damaged or taken, including all of the costs and expenses incidental to the condemnation proceedings together with the entire cost and expense of making the improvement, may be assessed against the property within the district subject to assessment, but the council may order any portion of the costs paid out of the current or general expense fund of the city.

The assessments shall be made according to and in proportion to surface area one square foot of surface to be the unit of assessment, except that the several parcels of land in any enlarged district not actually filled shall be assessed in accordance with special benefits: PROVIDED, That where any parcel of land was partially filled by the owner prior to the initiation of the improvement, an equitable deduction for such partial filling may be allowed.

The cost and expense incidental to the filling of the streets, alleys and public places within such assessment district shall be borne by the private property within such district subject to assessment when so ordered by the council. When the assessments are payable in installments, the assessment roll when equalized, shall show the number of installments and the amounts thereof. The assessments may be made payable in any number of equal annual installments not exceeding ten in number. [1965 c 7 § 35.55.060. Prior: 1917 c 63 § 2; 1909 c 147 § 5; RRS § 9436.]

**35.55.070 Hearing on assessment roll—Notice—Council's authority.** When such assessment roll has been prepared it shall be filed in the office of the city clerk and thereupon the city clerk shall give notice by publication in at least three issues of the official paper that such roll is on file in his office and that at a date mentioned in said notice, which shall be at least twenty days after the date of the first publication thereof, the city council will sit as a board of equalization to equalize said roll and to hear, consider and determine protests and objections against the same.

At the time specified in the notice, the city council shall sit as a board of equalization to equalize the roll and they may adjourn the sitting from time to time until the equalization of such roll is completed. The city council as board of equalization may hear, consider and determine objections and protests against any assessment and may make such alterations and modifications in the assessment roll as justice and equity may require. [1965 c 7 § 35.55.070. Prior: 1909 c 147 § 6; RRS § 9437.]

**35.55.080 Hearings—Appellate review.** Any person who has made objections to the assessment as equalized, shall have the right to appeal from the equalization as made by the city council to the superior court of the county. The appeal shall be made by filing a written notice of appeal with the city clerk within ten days after the equalization of the assessments by the council. The notice of appeal shall

describe the property and the objections of such appellant to such assessment.

The appellant shall also file with the clerk of the superior court within ten days from the time of taking the appeal a copy of the notice of appeal together with a copy of the assessment roll and proceedings thereon, certified by the city clerk and a bond to the city conditioned to pay all costs that may be awarded against appellant in such sum not less than two hundred dollars and with such security as shall be approved by the clerk of the court.

The case shall be docketed by the clerk of the court in the name of the person taking the appeal as plaintiff and the city as defendant. The cause shall then be at issue and shall be tried immediately by the court as in the case of equitable causes; no further pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment insofar as the same affects the property of the appellant. Appellate review of the superior court's decision may be sought as in other causes. [1988 c 202 § 38; 1971 c 81 § 94; 1965 c 7 § 35.55.080. Prior: 1909 c 147 § 7; RRS § 9438.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**35.55.090 Lien—Collection of assessments.** From and after the equalization of the roll, the several assessments therein shall become a lien upon the real estate described therein and shall remain a lien until paid. The assessment lien shall take precedence of all other liens against such property, except the lien of general taxes. The assessments shall be collected by the same officers and enforced in the same manner as provided by law for the collection and enforcement of local assessments for street improvements. All of the provisions of laws and ordinances relative to the enforcement and collection of local assessments for street improvements shall be applicable to these assessments. [1965 c 7 § 35.55.090. Prior: 1909 c 147 § 8; RRS § 9439.]

*Assessments for local improvements, collection and foreclosure: Chapters 35.49, 35.50 RCW.*

**35.55.100 Interest on assessments.** The local assessments shall bear interest at such rate as may be fixed by the council after the expiration of thirty days after the equalization of the assessment roll and shall bear such interest after delinquency as may be provided by general ordinance of the city. [1981 c 156 § 3; 1965 c 7 § 35.55.100. Prior: 1909 c 147 § 12, part; RRS § 9443, part.]

**35.55.110 Payment of cost of improvement—Interest on warrants.** If the improvement contemplated by this chapter is ordered to be made upon the immediate payment plan, the city council shall provide for the payment thereof by the issuance of local improvement fund warrants against the local improvement district, which warrants shall be paid only out of the funds derived from the local assessments in the district and shall bear interest at a rate determined by the city council from date of issuance. If the improvement is ordered to be made upon the bond installment plan, the city council shall provide for the issuance of bonds against the improvement district. [1981 c 156 § 4; 1965 c 7 § 35.55.110. Prior:

(i) 1909 c 147 § 12, part; RRS § 9443, part. (ii) 1909 c 147 § 9; RRS § 9440.]

**35.55.120 Local improvement bonds—Terms.** The city council shall have full authority to provide for the issuance of bonds against the improvement district fund in such denominations as the city council may provide which shall bear such rate of interest as the city council may fix. Interest shall be paid annually and the bonds shall become due and payable at such time, not exceeding ten years from the date thereof, as may be fixed by the council and shall be payable out of the local assessment district fund.

If so ordered by the council, the bonds may be issued in such a way that different numbers of the bonds may become due and payable at different intervals of time, or they may be so issued that all of the bonds against said district mature together. [1981 c 156 § 5; 1965 c 7 § 35.55.120. Prior: 1909 c 147 § 10, part; RRS § 9441, part.]

**35.55.130 Local improvement bonds—Guaranties.** The city may guarantee the payment of the whole or any part of the bonds issued against a local improvement district, but the guaranties on the part of the city, other than a city operating under the council-manager form or the commission form, shall be made only by ordinance passed by the vote of not less than nine councilmembers and the approval of the mayor in noncharter code cities that retained the old second class city plan of government with twelve council positions, and six councilmembers and approval of the mayor in cities of the second class. In a city under the council-manager form of government, such guaranties shall be made only in an ordinance passed by a vote of three out of five or five out of seven councilmembers, as the case may be, and approval of the mayor. In a city under the commission form of government, such guaranties shall be made only in an ordinance passed by a vote of two out of three of the commissioners. The mayor's approval shall not be necessary in commission form cities. [1994 c 81 § 58; 1965 c 7 § 35.55.130. Prior: 1909 c 147 § 10, part; RRS § 9441, part.]

**35.55.140 Local improvement bonds and warrants—Sale to pay damages, preliminary financing.** The city council may negotiate sufficient warrants or bonds against any local improvement district at a price not less than ninety-five percent of their par value to raise sufficient money to pay any and all compensation which may be awarded for property damaged or taken in the eminent domain proceedings including the costs of such proceedings. In lieu of so doing, the city council may negotiate current or general expense fund warrants at par to raise funds for the payment of such compensation and expenses in the first instance, but in that event the current or general expense fund shall be reimbursed out of the first moneys collected in any such local assessment district or realized from the negotiation or sale of local improvement warrants or bonds. [1965 c 7 § 35.55.140. Prior: 1909 c 147 § 11; RRS § 9442.]

**35.55.150 Local improvement fund—Investment.** If money accumulates in an improvement fund and is likely to lie idle awaiting the maturity of the bonds against the district,

the city council, under proper safeguards, may invest it temporarily, or may borrow it temporarily, at a reasonable rate of interest, but when so invested or borrowed, the city shall be responsible and liable for the restoration to such fund of the money so invested or borrowed with interest thereon, whenever required for the redemption of bonds maturing against such district. [1965 c 7 § 35.55.150. Prior: 1909 c 147 § 15; RRS § 9446.]

**35.55.160 Letting contract for improvement—Excess or deficiency of fund.** The contract for the making of the improvement may be let either before or after the making up of the equalization of the assessment roll, and warrants, or bonds may be issued against the local improvement district fund either before or after the equalization of the roll as in the judgment of the council may best subserve the public interest.

If, after the assessment roll is made up and equalized, based in whole or in part upon an estimate of the cost of the improvement, and it is found that the estimate was too high, the excess shall be rebated pro rata to the property owners on the assessment roll, the rebates to be deducted from the last installment, or installments, when the assessment is upon the installment plan.

If it is found that the estimated cost was too low and that the actual bona fide cost of the improvement is greater than the estimate, the city council, after due notice and a hearing, as in case of the original equalization of the roll, may add the required additional amount to the assessment roll to be apportioned among the several parcels of property upon the same rules and principles as if it had been originally included, except that the additional amount shall be added to the last installment of an assessment if assessments are payable upon the installment plan. The same notice shall be required for adding to the assessment roll in this manner as is required for the original equalization of the roll, and the property owner shall have the right of appeal. [1965 c 7 § 35.55.160. Prior: 1909 c 147 § 13; RRS § 9444.]

**35.55.170 Payment of contractor—Bonds, warrants, cash.** The city council may provide in letting the contract for an improvement, that the contractor shall accept special fund warrants or local improvement bonds against the local improvement district within which such improvement is to be made, in payment for the contract price of the work, and that the warrants or bonds may be issued to the contractor from time to time as the work progresses, or the city council may negotiate the special fund warrants or bonds against the local improvement district at not less than ninety-five cents in money for each dollar of warrants or bonds, and with the proceeds pay the contractor for the work and pay the other costs of such improvement. [1965 c 7 § 35.55.170. Prior: 1909 c 147 § 14; RRS § 9445.]

**35.55.180 Reassessments.** If any assessment is found to be invalid for any cause or if it is set aside for any reason in judicial proceeding, a reassessment may be made and all laws relative to the reassessment of local assessments, for street or other improvements, shall, as far as practicable, be applicable hereto. [1965 c 7 § 35.55.180. Prior: 1909 c 147 § 16; RRS § 9447.]

**35.55.190 Provisions of chapter not exclusive.** The provisions of this chapter shall not be construed as repealing or in any wise affecting any existing laws relative to the making of any such improvements, but shall be considered as concurrent therewith. [1965 c 7 § 35.55.190. Prior: 1909 c 147 § 17; RRS § 9448.]

### Chapter 35.56 RCW

## LOCAL IMPROVEMENTS—FILLING AND DRAINING LOWLANDS—WATERWAYS

### Sections

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*Assessments and charges against state lands: Chapter 79.44 RCW.*

**35.56.010 Authority—First and second class cities.** If the city council or commission of any city of the first or second class in this state deems it necessary or expedient on account of the public health, sanitation, the general welfare, or other cause, to fill or raise the grade or elevation of any marshlands, swamplands, tidelands or lands commonly known as tideflats, or any other lands situated within the limits of such city and to clear and prepare said lands for such filling it may do so by proceeding in accordance with the provisions of this chapter.

For the purpose of filling and raising the grade or elevation of such lands and to secure material therefor and to provide for the proper drainage thereof after such fill has been effected, the city council or commission may acquire rights of way (and where necessary or desirable, may vacate, use and appropriate streets and alleys for such purposes) and lay out, build, construct and maintain over and across such lowlands, canals or artificial waterways of at least sufficient width, depth and length to provide and afford the quantity of earth, dirt and material required to complete such fill, and with the earth, dirt and material removed in digging and constructing such canals and waterways, fill and raise the grade

or elevation of such marshlands, swamplands, tidelands or tideflats; and such canals or waterways shall be constructed of such width and depth (provided that all the earth, dirt and other suitable material removed in constructing the same shall be used to fill the lowlands as herein provided) as will make them available, convenient and suitable to provide water frontage for landings, wharves and other conveniences of navigation and commerce for the use and benefit of the city and the public. If canals or waterways are to be constructed as herein provided, such city may construct and maintain the necessary bridges over and across the same; such canals or waterways shall be forever under the control of such city and shall be and become public thoroughfares and waterways for the use and benefit of commerce, shipping, the city and the public generally.

The expense of making such improvement and in doing, accomplishing and effecting all the work provided for in this chapter including the cost of making compensation for property taken or damaged, and all other cost and expense incidental to such improvement, shall be assessed to the property benefited, except such amount of such expense as the city council or commission, in its discretion, may direct to be paid out of the current or general expense fund. [1994 c 81 § 59; 1965 c 7 § 35.56.010. Prior: 1929 c 63 § 1; 1913 c 16 § 1; RRS § 9449.]

**35.56.020 Alternative methods of financing.** If the city council or commission desires to make any improvement authorized by the provisions of this chapter it shall provide therefor by ordinance and unless the ordinance provides that the improvement shall be paid for wholly or in part by special assessment upon the property benefited, compensation therefor shall be made from any general or special funds of the city applicable thereto. If the ordinance provides that the improvement shall be paid for wholly or in part by special assessments upon property benefited, the proceedings for the making of such special assessment shall be as hereafter provided. [1965 c 7 § 35.56.020. Prior: 1913 c 16 § 2, part; RRS § 9450, part.]

*Special assessments or taxation for local improvements: State Constitution Art. 7 § 9.*

**35.56.030 Boundaries—Excepted property.** Such ordinance shall specify the boundaries of the proposed improvement district and shall describe the lands which it is proposed to assess for said improvement, and shall provide for the filling of such lowlands and shall outline the general scheme or plan of such fill. If any parcel of land within the boundaries of such proposed improvement district prior to the initiation of the improvement has been wholly filled to the proposed grade or elevation of the proposed fill, such parcel of land may be excluded from the lands to be assessed when in the opinion of the city council or commission justice and equity require its exclusion. The boundaries of any improvement district may be altered so as to exclude land therefrom at any time up to the levying of the assessment but such changing of the boundaries shall be by ordinance. [1965 c 7 § 35.56.030. Prior: 1913 c 16 § 2, part; RRS § 9450, part.]

**35.56.040 Conditions precedent to passage of ordinance—Protests.** Upon the introduction of an ordinance providing for such fill, if the city council or commission desires to proceed, it shall fix a time, not less than ten days, in which protests against said fill may be filed in the office of the city clerk. Thereupon it shall be the duty of the clerk of said city to publish in the official newspaper of said city in at least two consecutive issues thereof before the time fixed for the filing of protests, a notice of the time fixed for the filing of protests together with a copy of the proposed ordinance as introduced.

Protests against the proposed fill to be effective must be filed by the owners of more than half of the area of land situated within the proposed filling district exclusive of streets, alleys and public places on or before the date fixed for such filing. If an effective protest is filed the council shall not proceed further unless two-thirds of the members of the city council vote to proceed with the work; if the city is operating under a commission form of government composed of three commissioners, the commission shall not proceed further except by a unanimous affirmative vote of all the members thereof, if the commission is composed of five members, at least four affirmative votes thereof shall be necessary before proceeding.

If no effective protest is filed or if an effective protest is filed and two-thirds of the councilmen vote to proceed with the work or in cases where cities are operating under the commission form of government, the commissioners vote unanimously or four out of five commissioners vote to proceed with the work, the city council or commission shall at such meeting or in a succeeding meeting proceed to pass the proposed ordinance for the work, with such amendments and modifications as to the said city council or commission of said city may seem proper. The local improvement district shall be called "filling district No. . . ." [1965 c 7 § 35.56.040. Prior: 1913 c 16 § 2, part; RRS § 9450, part.]

**35.56.050 Damages—Eminent domain.** If an ordinance is passed as in this chapter provided, and it appears that in making of the improvements so authorized, private property will be taken or damaged thereby within or without the city, the city shall file a petition in the superior court of the county in which such city is situated, in the name of the city, praying that just compensation be made for the property to be taken or damaged for the improvement specified in the ordinance and conduct proceedings in eminent domain in accordance with the statutes relating to cities for the ascertainment of the compensation to be made for the taking and damaging of property, except insofar as the same may be inconsistent with this chapter.

The filling of unimproved and uncultivated lowlands of the character mentioned in RCW 35.56.010 shall not be considered as a damaging or taking of such lands. The damage, if any, done to cultivated lands or growing crops thereon, or to buildings and other improvements situated within the district proposed to be filled shall be ascertained and determined in the manner above provided; but no damage shall be awarded to any property owner for buildings or improvements placed upon lands included within said district after the publication of the ordinance defining the boundaries of the proposed improvement district: PROVIDED, That the city shall, after

the passage of such ordinance, proceed with said improvement with due diligence.

If the improvement is to be made at the expense of the property benefited, no account shall be taken of benefits by the jury or court in assessing the amount of compensation to be made to the owner of any property within such district, but such compensation shall be assessed without regard to benefits to the end that said property for which damages may be so awarded, may be assessed the same as other property within the district for its just share and proportion of the expense of making said improvement, and the fact that compensation has been awarded for the damaging or taking of any parcel of land shall not preclude the assessment of such parcel of land for its just proportion of said improvement. [1965 c 7 § 35.56.050. Prior: (i) 1913 c 16 § 3; RRS § 9451. (ii) 1929 c 63 § 4; 1913 c 16 § 21; RRS § 9469.]

*Eminent domain, cities: Chapter 8.12 RCW.*

**35.56.060 Estimates—Plans and specifications.** At the time of the initiation of the proceedings for any improvement as contemplated by this chapter or at any time afterward, the city council or commission shall cause plans and specifications for said improvement to be prepared and shall cause an estimate to be made of the cost and expense of making said improvement, including the cost of supervision and engineering, abstractor's fees, interest and discounts and all other expenses incidental to said improvement, including an estimate of the amount of damages for property taken or damaged, which plans, specifications and estimates shall be approved by the city council or commission. [1965 c 7 § 35.56.060. Prior: 1913 c 16 § 4; RRS § 9452.]

**35.56.070 Assessment roll—Items—Assessment units—Installments.** When such plans and specifications shall have been prepared and the estimate of the cost and expense of making the improvement has been adopted by the council or commission and when an estimate has been made of the compensation to be paid for property damaged or taken, either before or after the compensation has been ascertained in the eminent domain proceedings, the city council or commission shall cause an assessment roll to be prepared containing a list of all the property within the improvement district which it is proposed to assess for the improvements together with the names of the owners, if known, and if unknown, the property shall be assessed to an unknown owner, and opposite each description shall be set the amount assessed to such description.

When so ordered by the city council or commission, the entire amount of compensation paid or to be paid for property damaged or taken, including all of the costs and expenses incidental to the condemnation proceedings together with the entire cost and expense of making the improvement may be assessed against the property within the district subject to assessment, but the city council or commission may order any portion of the costs paid out of the current or general expense fund of the city. The assessments shall be made according to and in proportion to surface area, one square foot of surface to be the unit of assessment: PROVIDED, That where any parcel of land was wholly or partially filled by the owner prior to the initiation of the improvement an

equitable deduction for such filling or partial filling may be allowed.

The cost and expense incidental to the filling of the streets, alleys and public places within said assessment district shall be borne by the private property within such district subject to assessment when so ordered by the city council or commission. When the assessments are payable in installments, the assessment roll when equalized shall show the number of installments and the amounts thereof. The assessment may be made payable in any number of equal annual installments not exceeding fifteen in number. [1965 c 7 § 35.56.070. Prior: 1913 c 16 § 5; RRS § 9453.]

**35.56.080 Hearing on assessment roll—Notice—Council's authority.** When such assessment roll has been prepared it shall be filed in the office of the city clerk and thereupon the city clerk shall give notice by publication in at least three issues of the official paper that such roll is on file in his office and on a date mentioned in said notice, which shall be at least twenty days after the date of the first publication thereof, the city council or commission will sit as a board of equalization to equalize said roll and to hear, consider and determine protests and objections against the same.

At the time specified in the notice, the city council or commission shall sit as a board of equalization to equalize the roll and they may adjourn the sitting from time to time until the equalization of such roll is completed. The city council or commission as such board of equalization may hear, consider and determine objections and protests against any assessment and make such alterations and modifications in the assessment roll as justice and equity may require. [1965 c 7 § 35.56.080. Prior: 1913 c 16 § 6; RRS § 9454.]

**35.56.090 Hearing—Appellate review.** Any person who has made objections to the assessment as equalized, shall have the right to appeal from the equalization as made by the city council or commission to the superior court of the county. The appeal shall be made by filing a written notice of appeal with the city clerk within ten days after the equalization of the assessments by the council or commission. The notice of appeal shall describe the property and the objections of such appellant to such assessment.

The appellant shall also file with the clerk of the superior court within ten days from the time of taking the appeal a copy of the notice of appeal together with a copy of the assessment roll and proceedings thereon, certified by the city clerk and a bond to the city conditioned to pay all costs that may be awarded against appellant in such sum not less than two hundred dollars, and with such security as shall be approved by the clerk of the court.

The case shall be docketed by the clerk of the court in the name of the person taking the appeal as plaintiff, and the city as defendant. The cause shall then be at issue and shall be tried immediately by the court as in the case of equitable causes; no further pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment insofar as the same affects the property of the appellant. Appellate review of the superior court's decision may be sought as in other causes. [1988 c 202 § 39; 1971 c

81 § 95; 1965 c 7 § 35.56.090. Prior: 1913 c 16 § 7; RRS § 9455.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**35.56.100 Lien—Collection of assessments.** From and after the equalization of the roll, the several assessments therein shall become a lien upon the real estate described therein and shall remain a lien until paid. The assessment lien shall take precedence of all other liens against such property, except the lien of general taxes. The assessments shall be collected by the same officers and enforced in the same manner as provided by law for the collection and enforcement of local assessments for street improvements. All of the provisions of laws and ordinances relative to the guaranty, enforcement, and collection of local assessments for street improvements, including foreclosure in case of delinquency, shall be applicable to these assessments. [1965 c 7 § 35.56.100. Prior: 1929 c 63 § 2; 1913 c 16 § 8; RRS § 9456.]

*Assessments for local improvements, collection and foreclosure: Chapters 35.49, 35.50 RCW.*

**35.56.110 Interest on assessments.** The local assessments shall bear interest at such rate as may be fixed by the council or commission from and after the expiration of thirty days after the equalization of the assessment roll and shall bear such interest after delinquency as may be provided by general ordinance of the city. [1981 c 156 § 6; 1965 c 7 § 35.56.110. Prior: 1929 c 63 § 3; 1913 c 16 § 12; RRS § 9460.]

**35.56.120 Payment of cost of improvement—Interest on warrants.** If the improvement contemplated by this chapter is ordered to be made upon the immediate payment plan, the city council or commission shall provide for the payment thereof by the issuance of local improvement fund warrants against the local improvement district, which warrants shall be paid only out of the funds derived from the local assessments in the district and shall bear interest at a rate determined by the city council or commission from date of issuance. If the improvement is ordered to be made upon the bond installment plan, the city council or commission shall provide for the issuance of bonds against the improvement district. [1981 c 156 § 7; 1965 c 7 § 35.56.120. Prior: 1913 c 16 § 9; RRS § 9457.]

**35.56.130 Local improvement bonds—Terms.** The city council or commission shall have full authority to provide for the issuance of such bonds against the improvement district fund in such denominations as the city council or commission may provide, which shall bear such rate of interest as the city council or commission may fix. Interest shall be paid annually and the bonds shall become due and payable at such time, not exceeding fifteen years from the date thereof, as may be fixed by the said council or commission and shall be payable out of the assessment district funds.

If so ordered by the council or commission, the bonds may be issued in such a way that different numbers of the bonds may become due and payable at different intervals of time, or they may be so issued that all of the bonds against said district mature together. The city may reserve the right to

call or mature any bond on any interest paying date when sufficient funds are on hand for its redemption; but bonds shall be called in numerical order. [1981 c 156 § 8; 1965 c 7 § 35.56.130. Prior: 1913 c 16 § 10, part; RRS § 9458, part.]

**35.56.140 Local improvement bonds—Guaranties.** The city may guarantee the payment of the whole or any part of the bonds issued against a local improvement district, but the guaranties on the part of the city shall be made only by ordinance passed by the vote of not less than two-thirds of the councilmen and the approval of the mayor, or three commissioners in case the governing body consist of three commissioners, or four where such city is governed by five commissioners. [1965 c 7 § 35.56.140. Prior: 1913 c 16 § 10, part; RRS § 9458, part.]

**35.56.150 Local improvement bonds and warrants—Sale to pay damages—Preliminary financing.** The city council or commission may negotiate sufficient warrants or bonds against any local improvement district at a price not less than ninety-five percent of their par value to raise sufficient money to pay any and all compensation which may be awarded for property damaged or taken in the eminent domain proceedings, including the costs of such proceedings. In lieu of so doing, the city council or commission may negotiate current or general expense fund warrants at par to raise funds for the payment of such compensation and expenses in the first instance, but in that event the current or general expense fund shall be reimbursed out of the first moneys collected in any such local assessment district or realized from the negotiation or sale of local improvement warrants or bonds. [1965 c 7 § 35.56.150. Prior: 1913 c 16 § 11; RRS § 9459.]

**35.56.160 Local improvement fund—Investment.** If money accumulates in an improvement fund and is likely to lie idle waiting the maturity of the bonds against the district, the city council or commission, under proper safeguards, may invest it temporarily, or may borrow it temporarily, at a reasonable rate of interest, but when so invested or borrowed, the city shall be responsible and liable for the restoration to such fund of the money so invested or borrowed with interest thereon, whenever required for the redemption of bonds maturing against such district. [1965 c 7 § 35.56.160. Prior: 1913 c 16 § 15; RRS § 9463.]

**35.56.170 Letting contracts for improvement—Excess or deficiency of fund.** The contract for the making of the improvement may be let either before or after the making up of the equalization of the assessment roll, and warrants or bonds may be issued against the local improvement district fund either before or after the equalization of the roll as in the judgment of the council or commission may best subserve the public interest.

If after the assessment roll is made up and equalized, based in whole or in part upon an estimate of the cost of the improvement, and it is found that the estimate was too high, the excess shall be rebated pro rata to the property owners on the assessment roll, the rebates to be deducted from the last

installment, or installments, when the assessment is upon the installment plan.

If it is found that the estimated cost was too low and that the actual bona fide cost of the improvement is greater than the estimate, the city council or commission after due notice and a hearing, as in case of the original equalization of the roll, may add the required additional amount to the assessment roll to be apportioned among the several parcels of property upon the same rules and principles as if it had been originally included except that the additional amount shall be added to the last installment of an assessment if assessments are payable upon the installment plan. The same notice shall be required for adding to the assessment roll in this manner as is required for the original equalization of the roll, and the property owner shall have the right of appeal. [1965 c 7 § 35.56.170. Prior: 1913 c 16 § 13; RRS § 9461.]

**35.56.180 Payment of contractor—Bonds—Warrants—Cash.** The city council or commission may provide in letting the contract for an improvement, that the contractor shall accept special fund warrants or local improvement bonds against the local improvement district within which such improvement is to be made, in payment for the contract price of the work, and that the warrants or bonds may be issued to the contractor from time to time as the work progresses, or the city council or commission may negotiate the special fund warrants or bonds against the local improvement district at not less than ninety-five cents in money for each dollar of warrants or bonds, and with the proceeds pay the contractor for the work and pay the other costs of such improvement. [1965 c 7 § 35.56.180. Prior: 1913 c 16 § 14; RRS § 9462.]

**35.56.190 Tax levy—General—Purposes—Limit.** For the purpose of raising revenues to carry on any project under this chapter including funds for the payment for the lands taken, purchased, acquired or condemned and the expenses incident to the acquiring thereof, or any other cost or expenses incurred by the city under the provisions of this chapter but not including the cost of actually filling the lands for which the local improvement district was created, a city may levy an annual tax of not exceeding seventy-five cents per thousand dollars of assessed valuation of all property within the city. The city council or commission may create a fund into which all moneys so derived from taxation and moneys derived from rents and issues of the lands shall be paid and against which special fund warrants may be drawn or negotiable bonds issued to meet expenditures under this chapter. [1973 1st ex.s. c 195 § 22; 1965 c 7 § 35.56.190. Prior: 1913 c 16 § 19; RRS § 9467.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**35.56.200 Waterways constructed—Requirements.** In the filling of any marshland, swampland, tideland or tide-flats no canal or waterway shall be constructed in connection therewith less than three hundred feet wide at the top between the shore lines and with sufficient slope to the sides or banks thereof to as nearly as practicable render bulkheadings or other protection against caving or falling in of said sides or

banks unnecessary and of sufficient depth to meet all ordinary requirements of navigation and commerce. [1965 c 7 § 35.56.200. Prior: 1913 c 16 § 17, part; RRS § 9465, part.]

**35.56.210 Waterways constructed—Control.** The canal or waterway shall be and remain under the control of the city and immediately upon its completion the city shall establish outer dock lines lengthwise of said canal or waterway on both sides thereof in such manner and position that not less than two hundred feet of the width thereof shall always remain open between such lines and beyond and between which lines no right shall ever be granted to build wharves or other obstructions except bridges; nor shall any permanent obstruction to the free use of the channel so laid out between said wharf or dock lines excepting bridges, their approaches, piers, abutments and spans, ever be permitted but the same shall be kept open for navigation. [1965 c 7 § 35.56.210. Prior: 1913 c 16 § 17, part; RRS § 9465, part.]

**35.56.220 Waterways constructed—Leasing facilities.** The city shall have the right to lease the area so created between the said shore lines and the wharf lines so established or any part, parts or parcels thereof during times when the use thereof is not required by the city, for periods not exceeding thirty years, to private individuals or concerns for wharf, warehouse or manufacturing purposes at such annual rate or rental per lineal foot of frontage on the canal or waterway as it may deem reasonable.

The rates of wharfage, and other charges to the public which any lessee may impose shall be reasonable; and the city council or commission may regulate such rates. The lease so granted by the city shall never be transferred or assigned without the consent of the city council or commission having been first obtained.

A city shall never lease to any individual or concern more than four hundred lineal feet of frontage of the area lying between the shore lines and the dock lines and no individual or concern shall ever hold or occupy by lease, sublease or otherwise more than the said four hundred lineal feet of frontage of such area: PROVIDED, That any individual or concern may acquire by lease or sublease whatever additional number of lineal feet of frontage of such area may in the judgment of the city council or commission be necessary for the use of such individual or concern, upon petition therefor to the city council or commission signed by not less than five hundred resident freeholders of the city. [1965 c 7 § 35.56.220. Prior: 1913 c 16 § 17, part; RRS § 9465, part.]

**35.56.230 Waterway shoreline front—Lessee must lease abutting property.** If the city owns the land abutting upon any part of the area between the shore lines and dock lines, no portion of the area which has city owned property abutting upon it shall ever be leased unless an equal frontage of the abutting property immediately adjoining it is leased at the same time for the same period to the same individual or concern. [1965 c 7 § 35.56.230. Prior: 1913 c 16 § 17, part; RRS § 9465, part.]

**35.56.240 Waterways constructed—Acquisition of abutting property.** While acquiring the rights of way for

such canals or waterways or at any time thereafter such city may acquire for its own use and public use by purchase, gift, condemnation or otherwise, and pay therefor by any lawful means including but not restricted to payment out of the current expense fund of such city or by bonding the city or by pledging revenues to be derived from rents and issues therefrom, lands abutting upon the shore lines or right-of-way of such canals or waterways to a distance, depth or width of not more than three hundred feet back from the banks or shore lines of such canals or waterways on either side or both sides thereof, or not more than three hundred lineal feet back from and abutting on the outer lines of such rights-of-way on either side or both sides of such rights-of-way, and such area of such abutting lands as the council or commission may deem necessary for its use for public docks, bridges, wharves, streets and other conveniences of navigation and commerce and for its own use and benefit generally. [1965 c 7 § 35.56.240. Prior: 1913 c 16 § 18, part; RRS § 9466, part.]

**35.56.250 Waterways—Abutting city owned lands—Lease of.** If the city is not using the abutting lands so acquired it may lease any parcels thereof as may be deemed for the best interest and convenience of navigation, commerce and the public interest and welfare to private individuals or concerns for terms not exceeding thirty years each at such annual rate or rental as the city council or commission of such city may deem just, proper and fair, for the purpose of erecting wharves for wholesale and retail warehouses and for general commercial purposes and manufacturing sites, but the said city shall never convey or part with title to the abutting lands above mentioned and so acquired nor with the control other than in the manner herein specified. Any lease or leases granted by the city on such abutting lands shall never be transferred or assigned without the consent of the city council or commission having been first obtained.

A city shall never lease to any individual or concern more than four hundred lineal feet of canal or waterway frontage of said land and no individual or concern shall ever hold or occupy by lease, sublease, or otherwise more than the said four hundred lineal feet of said frontage: **PROVIDED**, That any individual or concern may acquire by lease or sublease whatever additional frontage of such abutting land may be in the judgment of the city council or commission necessary for the use of such individual or concern, upon petition presented to the city council or commission therefor signed by not less than five hundred resident freeholders of such city. [1965 c 7 § 35.56.250. Prior: 1913 c 16 § 18, part; RRS § 9466, part.]

**35.56.260 Waterways—Abutting lands—Lessee must lease shoreline property.** At the time that the city leases to any individual or concern any of the land abutting on the area between the shore lines and the dock lines the same individual or concern must likewise for the same period of time lease all of the area between the shore line and dock line of such canal or waterway lying contiguous to and immediately in front of the abutting land so leased. [1965 c 7 § 35.56.260. Prior: 1913 c 16 § 18, part; RRS § 9466, part.]

**35.56.270 Work by day labor.** When a city undertakes any improvement authorized by this chapter and the expenditures required exceed the sum of five hundred dollars, it shall be done by contract and shall be let to the lowest responsible bidder, after due notice, under such regulation as may be prescribed by ordinance: **PROVIDED**, That the city council or commission may reject all bids presented and readvertise, or, if in the judgment of the city council or commission the work can be performed, or supplies or materials furnished by the city independent of contract, cheaper than under the bid submitted, it may after having so advertised and examined the bids, cause the work to be performed or supplies or materials to be furnished independent of contract. This section shall be construed as a concurrent and cumulative power conferred on cities and shall not be construed as in any wise repealing or affecting any law now in force relating to the performing, execution and construction of public works. [1965 c 7 § 35.56.270. Prior: 1913 c 16 § 20; RRS § 9468.]

**35.56.280 Reassessments.** If any assessment is found to be invalid for any cause or if it is set aside for any reason in judicial proceeding, a reassessment may be made and all laws then in force relative to the reassessment of local assessments, for street or other improvements, shall, as far as practical, be applicable hereto. [1965 c 7 § 35.56.280. Prior: 1913 c 16 § 16; RRS § 9464.]

*Local improvements, assessments and reassessments: Chapter 35.44 RCW.*

**35.56.290 Provisions of chapter not exclusive.** The provisions of this chapter shall not be construed as repealing or in any wise affecting other existing laws relative to the making of any such improvements but shall be considered as concurrent therewith. [1965 c 7 § 35.56.290. Prior: 1929 c 63 § 5; 1913 c 16 § 22; RRS § 9470.]

## Chapter 35.57 RCW

### PUBLIC FACILITIES DISTRICTS

#### Sections

35.57.010	Creation—Board of directors—Corporate powers.
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35.57.900	Severability—1999 c 165.

**35.57.010 Creation—Board of directors—Corporate powers.** (1)(a) The legislative authority of any town or city located in a county with a population of less than one million may create a public facilities district.

(b) The legislative authorities of any contiguous group of towns or cities located in a county or counties each with a population of less than one million may enter an agreement under chapter 39.34 RCW for the creation and joint operation of a public facilities district.

(c) The legislative authority of any town or city, or any contiguous group of towns or cities, located in a county with

a population of less than one million and the legislative authority of a contiguous county, or the legislative authority of the county or counties in which the towns or cities are located, may enter into an agreement under chapter 39.34 RCW for the creation and joint operation of a public facilities district.

(2)(a) A public facilities district shall be coextensive with the boundaries of the city or town or contiguous group of cities or towns that created the district.

(b) A public facilities district created by an agreement between a town or city, or a contiguous group of towns or cities, and a contiguous county or the county in which they are located, shall be coextensive with the boundaries of the towns or cities, and the boundaries of the county or counties as to the unincorporated areas of the county or counties. The boundaries shall not include incorporated towns or cities that are not parties to the agreement for the creation and joint operation of the district.

(3)(a) A public facilities district created by a single city or town shall be governed by a board of directors consisting of five members selected as follows: (i) Two members appointed by the legislative authority of the city or town; and (ii) three members appointed by legislative authority based on recommendations from local organizations. The members appointed under (a)(i) of this subsection, shall not be members of the legislative authority of the city or town. The members appointed under (a)(ii) of this subsection, shall be based on recommendations received from local organizations that may include, but are not limited to the local chamber of commerce, local economic development council, and local labor council. The members shall serve four-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for four-year terms.

(b) A public facilities district created by a contiguous group of cities and towns shall be governed by a board of directors consisting of seven members selected as follows: (i) Three members appointed by the legislative authorities of the cities and towns; and (ii) four members appointed by the legislative authority based on recommendations from local organizations. The members appointed under (b)(i) of this subsection shall not be members of the legislative authorities of the cities and towns. The members appointed under (b)(ii) of this subsection, shall be based on recommendations received from local organizations that include, but are not limited to the local chamber of commerce, local economic development council, local labor council, and a neighborhood organization that is directly affected by the location of the regional center in their area. The members of the board of directors shall be appointed in accordance with the terms of the agreement under chapter 39.34 RCW for the joint operation of the district and shall serve four-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for four-year terms.

(c) A public facilities district created by a town or city, or a contiguous group of towns or cities, and a contiguous county or the county or counties in which they are located, shall be governed by a board of directors consisting of seven

members selected as follows: (i) Three members appointed by the legislative authorities of the cities, towns, and county; and (ii) four members appointed by the legislative authority based on recommendations from local organizations. The members appointed under (c)(i) of this subsection shall not be members of the legislative authorities of the cities, towns, or county. The members appointed under (c)(ii) of this subsection shall be based on recommendations received from local organizations that include, but are not limited to, the local chamber of commerce, the local economic development council, the local labor council, and a neighborhood organization that is directly affected by the location of the regional center in their area. The members of the board of directors shall be appointed in accordance with the terms of the agreement under chapter 39.34 RCW for the joint operation of the district and shall serve four-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for four-year terms.

(4) A public facilities district is a municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(5) A public facilities district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(6) A public facilities district may acquire and transfer real and personal property by lease, sublease, purchase, or sale. No direct or collateral attack on any public facilities district purported to be authorized or created in conformance with this chapter may be commenced more than thirty days after creation by the city and/or county legislative authority. [2002 c 363 § 1; 1999 c 165 § 1.]

**35.57.020 Regional centers—Charges and fees—Powers.** (1) A public facilities district is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate one or more regional centers. For purposes of this chapter, "regional center" means a convention, conference, or special events center, or any combination of facilities, and related parking facilities, serving a regional population constructed, improved, or rehabilitated after July 25, 1999, at a cost of at least ten million dollars, including debt service. "Regional center" also includes an existing convention, conference, or special events center, and related parking facilities, serving a regional population, that is improved or rehabilitated after July 25, 1999, where the costs of improvement or rehabilitation are at least ten million dollars, including debt service. A "special events center" is a facility, available to the public, used for community events, sporting events, trade shows, and artistic, musical, theatrical, or other cultural exhibitions, presentations, or performances. A regional center is conclusively presumed to serve a regional population if state and local government investment in the construction, improvement, or rehabilitation of the regional center is equal to or greater than ten million dollars.

(2) A public facilities district may enter into contracts with any city or town for the purpose of exercising any powers of a community renewal agency under chapter 35.81 RCW.

(3) A public facilities district may impose charges and fees for the use of its facilities, and may accept and expend or use gifts, grants, and donations for the purpose of a regional center.

(4) A public facilities district may impose charges, fees, and taxes authorized in RCW 35.57.040, and use revenues derived therefrom for the purpose of paying principal and interest payments on bonds issued by the public facilities district to construct a regional center.

(5) Notwithstanding the establishment of a career, civil, or merit service system, a public facilities district may contract with a public or private entity for the operation or management of its public facilities.

(6) A public facilities district is authorized to use the supplemental alternative public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of any regional center.

(7) A city or town in conjunction with any special agency, authority, or other district established by a county or any other governmental agency is authorized to use the supplemental alternative public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of any regional center funded in whole or in part by a public facilities district. [2002 c 363 § 2; 2002 c 218 § 25; 1999 c 165 § 2.]

**Reviser's note:** This section was amended by 2002 c 218 § 25 and by 2002 c 363 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.57.030 General obligation bonds.** (1) To carry out the purpose of this chapter, a public facilities district may issue general obligation bonds, not to exceed an amount, together with any outstanding nonvoter-approved general obligation indebtedness, equal to one-half of one percent of the value of the taxable property within the district, as the term "value of the taxable property" is defined in RCW 39.36.015. A facilities district additionally may issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to one and one-fourth percent of the value of the taxable property within the district, as the term "value of the taxable property" is defined in RCW 39.36.015, when authorized by the voters of the public facilities district pursuant to Article VIII, section 6 of the state Constitution, and to provide for the retirement thereof by taxes authorized in chapter 165, Laws of 1999.

(2) General obligation bonds may be issued with a maturity of up to thirty years, and shall be issued and sold in accordance with the provisions of chapter 39.46 RCW.

(3) The general obligation bonds may be payable from the operating revenues of the public facilities district in addition to the tax receipts of the district. [1999 c 165 § 3.]

**35.57.040 Authorized charges, fees, and taxes—Gifts.** (1) The board of directors of the public facilities district may impose the following for the purpose of funding a regional center:

- (a) Charges and fees for the use of any of its facilities;
- (b) Admission charges under RCW 35.57.100;
- (c) Vehicle parking charges under RCW 35.57.110; and
- (d) Sales and use taxes authorized under RCW 82.14.048 and 82.14.390.

(2) The board may accept and expend or use gifts, grants, and donations for the purpose of a regional center. The revenue from the charges, fees, and taxes imposed under this section shall be used only for the purposes authorized by this chapter. [1999 c 165 § 4.]

**35.57.050 Travel, expense reimbursement policy—Required.** The board of directors of the public facilities district shall adopt a resolution that may be amended from time to time that shall establish the basic requirements governing methods and amounts of reimbursement payable to such district officials and employees for travel and other business expenses incurred on behalf of the district. The resolution shall, among other things, establish procedures for approving such expenses; the form of the travel and expense voucher; and requirements governing the use of credit cards issued in the name of the district. The resolution may also establish procedures for payment of per diem to board members. The state auditor shall, as provided by general law, cooperate with the public facilities district in establishing adequate procedures for regulating and auditing the reimbursement of all such expenses. [1999 c 165 § 5.]

**35.57.060 Expenditure of funds—Purposes.** The board of directors of the public facilities district shall have authority to authorize the expenditure of funds for the public purposes of preparing and distributing information to the general public and promoting, advertising, improving, developing, operating, and maintaining a regional center. Nothing contained in this section may be construed to authorize preparation and distribution of information to the general public for the purpose of influencing the outcome of a district election. [1999 c 165 § 6.]

**35.57.070 Service provider agreements.** The public facilities district may secure services by means of an agreement with a service provider. The public facilities district shall publish notice, establish criteria, receive and evaluate proposals, and negotiate with respondents under requirements set forth by district resolution. [1999 c 165 § 7.]

**35.57.080 Purchases and sales—Procedures.** In addition to provisions contained in chapter 39.04 RCW, the public facilities district is authorized to follow procedures contained in RCW 43.19.1906 and 43.19.1911 for all purchases, contracts for purchase, and sales. [1999 c 165 § 8.]

**35.57.090 Revenue bonds—Limitations.** (1) A public facilities district may issue revenue bonds to fund revenue-generating facilities, or portions of facilities, which it is authorized to provide or operate. Whenever revenue bonds

are to be issued, the board of directors of the district shall create or have created a special fund or funds from which, along with any reserves created pursuant to RCW 39.44.140, the principal and interest on such revenue bonds shall exclusively be payable. The board may obligate the district to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues from the public improvements, projects, or facilities, and all related additions, that are funded by the revenue bonds. This amount or proportion shall be a lien and charge against these revenues, subject only to operating and maintenance expenses. The board shall have due regard for the cost of operation and maintenance of the public improvements, projects, or facilities, or additions, that are funded by the revenue bonds, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion, if any, of the revenue so previously pledged. The board may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(2) Revenue bonds issued under this section shall not be an indebtedness of the district issuing the bonds, and the interest and principal on the bonds shall only be payable from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created under RCW 39.44.140. The owner or bearer of a revenue bond or any interest coupon issued under this section shall not have any claim against the district arising from the bond or coupon except for payment from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created under RCW 39.44.140. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each bond issued under this section.

(3) Revenue bonds with a maturity in excess of thirty years shall not be issued. The board of directors of the district shall by resolution determine for each revenue bond issue the amount, date, form, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, and covenants including the refunding of existing revenue bonds. Facsimile signatures may be used on the bonds and any coupons. Refunding revenue bonds may be issued in the same manner as revenue bonds are issued. [1999 c 165 § 9.]

**35.57.100 Tax on admissions.** A public facility district may levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid by the person who pays an admission charge to a regional center. This includes a tax on persons who are admitted free of charge or at reduced rates if other persons pay a charge or a regular higher charge for the same privileges or accommodations.

The term "admission charge" includes:

- (1) A charge made for season tickets or subscriptions;
- (2) A cover charge, or a charge made for use of seats and tables reserved or otherwise, and other similar accommodations;
- (3) A charge made for food and refreshment if free entertainment, recreation, or amusement is provided;

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(4) A charge made for rental or use of equipment or facilities for purposes of recreation or amusement; if the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge;

(5) Automobile parking charges if the amount of the charge is determined according to the number of passengers in the automobile. [1999 c 165 § 10.]

**35.57.110 Tax on vehicle parking charges.** A public facility district may levy and fix a tax on any vehicle parking charges imposed at any parking facility that is owned or leased by the public facility district as part of a regional center. No county or city or town within which the regional center is located may impose a tax of the same or similar kind on any vehicle parking charges at the facility. For the purposes of this section, "vehicle parking charges" means only the actual parking charges exclusive of taxes and service charges and the value of any other benefit conferred. The tax authorized under this section shall be at the rate of not more than ten percent. [1999 c 165 § 11.]

**35.57.900 Severability—1999 c 165.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1999 c 165 § 23.]

## Chapter 35.58 RCW

### METROPOLITAN MUNICIPAL CORPORATIONS

#### Sections

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*Acquisition of*

*interests in land for conservation, protection, preservation, or open space purposes by metropolitan municipal corporation: RCW 64.04.130. open space, land, or rights to future development by counties, cities, or metropolitan municipal corporations, tax levy: RCW 84.34.200 through 84.34.240, 84.52.010.*

*County assumption of metropolitan municipal corporation functions: Chapter 36.56 RCW.*

*Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.*

*School districts, educational service districts, agreements with other governmental entities for transportation of students, the public or other non-common school purposes—Limitations: RCW 28A.160.120.*

*Transportation centers authorized: Chapter 81.75 RCW.*

**35.58.010 Declaration of policy and purpose.** It is hereby declared to be the public policy of the state of Washington to provide for the people of the populous metropolitan areas in the state the means of obtaining essential services not adequately provided by existing agencies of local government. The growth of urban population and the movement of people into suburban areas has created problems of water pollution abatement, garbage disposal, water supply, transportation, planning, parks and parkways which extend beyond the boundaries of cities, counties and special districts. For reasons of topography, location and movement of population, and land conditions and development, one or more of these problems cannot be adequately met by the individual cities, counties and districts of many metropolitan areas.

It is the purpose of this chapter to enable cities and counties to act jointly to meet these common problems in order that the proper growth and development of the metropolitan areas of the state may be assured and the health and welfare of the people residing therein may be secured. [1974 ex.s. c 70 § 1; 1965 c 7 § 35.58.010. Prior: 1957 c 213 § 1.]

**35.58.020 Definitions.** The definitions set forth in this section apply throughout this chapter.

(1) "Metropolitan municipal corporation" means a municipal corporation of the state of Washington created pursuant to this chapter, or a county which has by ordinance or resolution assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation pursuant to the provisions of chapter 36.56 RCW.

(2) "Metropolitan area" means the area contained within the boundaries of a metropolitan municipal corporation, or within the boundaries of an area proposed to be organized as such a corporation.

(3) "City" means an incorporated city or town.

(4) "Component city" means an incorporated city or town within a metropolitan area.

(5) "Component county" means a county, all or part of which is included within a metropolitan area.

(6) "Central city" means the city with the largest population in a metropolitan area.

(7) "Central county" means the county containing the city with the largest population in a metropolitan area.

(8) "Special district" means any municipal corporation of the state of Washington other than a city, county, or metropolitan municipal corporation.

(9) "Metropolitan council" means the legislative body of a metropolitan municipal corporation, or the legislative body of a county which has by ordinance or resolution assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation pursuant to the provisions of chapter 36.56 RCW.

(10) "City council" means the legislative body of any city or town.

(11) "Population" means the number of residents as shown by the figures released for the most recent official state, federal, or county census, or population determination

made under the direction of the office of financial management.

(12) "Metropolitan function" means any of the functions of government named in RCW 35.58.050.

(13) "Authorized metropolitan function" means a metropolitan function which a metropolitan municipal corporation shall have been authorized to perform in the manner provided in this chapter.

(14) "Metropolitan public transportation" or "metropolitan transportation" for the purposes of this chapter means the transportation of packages, passengers, and their incidental baggage by means other than by chartered bus, sightseeing bus, or any other motor vehicle not on an individual fare-paying basis, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people-moving systems: PROVIDED, That nothing in this chapter shall be construed to prohibit a metropolitan municipal corporation from leasing its buses to private certified carriers; to prohibit a metropolitan municipal corporation from providing school bus service for the transportation of pupils; or to prohibit a metropolitan municipal corporation from chartering an electric streetcar on rails which it operates entirely within a city.

(15) "Pollution" has the meaning given in RCW 90.48.020. [1982 c 103 § 1; 1979 c 151 § 28; 1977 ex.s. c 277 § 12. Prior: 1974 ex.s. c 84 § 1; 1974 ex.s. c 70 § 2; 1971 ex.s. c 303 § 2; 1965 c 7 § 35.58.020; prior: 1957 c 213 § 2.]

**Severability—Construction—Effective date—1977 ex.s. c 277:** See RCW 36.56.900 and 36.56.910.

*Population determinations, office of financial management: Chapter 43.62 RCW.*

**35.58.030 Corporations authorized—Limitation on boundaries.** Any area of the state containing two or more cities, at least one of which is of ten thousand or more population, may organize as a metropolitan municipal corporation for the performance of certain functions, as provided in this chapter. The boundaries of a metropolitan municipal corporation may not be expanded to include territory located in a county other than a component county except as a result of the consolidation of two or more contiguous metropolitan municipal corporations. [1993 c 240 § 1; 1965 c 7 § 35.58.030. Prior: 1957 c 213 § 3.]

*Inclusion of code cities in metropolitan municipal corporations: Chapter 35A.57 RCW.*

**35.58.040 Territory which must be included or excluded—Boundaries.** At the time of its formation no metropolitan municipal corporation shall include only a part of any city, and every city shall be either wholly included or wholly excluded from the boundaries of such corporation. If subsequent to the formation of a metropolitan municipal corporation a part only of any city shall be included within the boundaries of a metropolitan municipal corporation such part shall be deemed to be "unincorporated" for the purpose of selecting a member of the metropolitan council pursuant to \*RCW 35.58.120(3) and such city shall neither select nor participate in the selection of a member on the metropolitan council pursuant to RCW 35.58.120.

Any metropolitan municipal corporation now existing within a county with a population of one million or more

shall, upon May 21, 1971, have the same boundaries as those of the respective central county of such metropolitan corporation. The boundaries of such metropolitan corporation may not be enlarged or diminished after such date by annexation as provided in chapter 35.58 RCW and any purported annexation of territory shall be deemed void. Any contiguous metropolitan municipal corporations may be consolidated into a single metropolitan municipal corporation upon such terms, for the purpose of performing such metropolitan function or functions, and to be effective at such time as may be approved by resolutions of the respective metropolitan councils. In the event of such consolidation the component city with the largest population shall be the central city of such consolidated metropolitan municipal corporation and the component county with the largest population shall be the central county of such consolidated metropolitan municipal corporation. [1993 c 240 § 2; 1991 c 363 § 39; 1971 ex.s. c 303 § 3; 1967 c 105 § 1; 1965 c 7 § 35.58.040. Prior: 1957 c 213 § 4.]

**\*Reviser's note:** RCW 35.58.120 was amended by 1993 c 240 § 4 deleting subsection (3).

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**35.58.050 Functions authorized.** A metropolitan municipal corporation shall have the power to perform any one or more of the following functions, when authorized in the manner provided in this chapter:

- (1) Metropolitan water pollution abatement.
- (2) Metropolitan water supply.
- (3) Metropolitan public transportation.
- (4) Metropolitan garbage disposal.
- (5) Metropolitan parks and parkways.
- (6) Metropolitan comprehensive planning. [1974 ex.s. c 70 § 3; 1965 c 7 § 35.58.050. Prior: 1957 c 213 § 5.]

**35.58.060 Unauthorized functions to be performed under other law.** All functions of local government which are not authorized as provided in this chapter to be performed by a metropolitan municipal corporation, shall continue to be performed by the counties, cities and special districts within the metropolitan area as provided by law. [1965 c 7 § 35.58.060. Prior: 1957 c 213 § 6.]

**35.58.070 Resolution, petition for election—Requirements, procedure.** A metropolitan municipal corporation may be created by vote of the qualified electors residing in a metropolitan area in the manner provided in this chapter. An election to authorize the creation of a metropolitan municipal corporation may be called pursuant to resolution or petition in the following manner:

- (1) A resolution or concurring resolutions calling for such an election may be adopted by either:
  - (a) The city council of a central city; or
  - (b) The city councils of two or more component cities other than a central city; or
  - (c) The board of commissioners of a central county.

A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the board of commissioners of the central county.

(2) A petition calling for such an election shall be signed by at least four percent of the qualified voters residing within the metropolitan area and shall be filed with the auditor of the central county.

Any resolution or petition calling for such an election shall describe the boundaries of the proposed metropolitan area, name the metropolitan function or functions which the metropolitan municipal corporation shall be authorized to perform initially and state that the formation of the metropolitan municipal corporation will be conducive to the welfare and benefit of the persons and property within the metropolitan area. After the filing of a first sufficient petition or resolution with such county auditor or board of county commissioners respectively, action by such auditor or board shall be deferred on any subsequent petition or resolution until after the election has been held pursuant to such first petition or resolution.

Upon receipt of such a petition, the auditor shall examine the same and certify to the sufficiency of the signatures thereon. For the purpose of examining the signatures on such petition, the auditor shall be permitted access to the voter registration books of each component county and each component city. No person may withdraw his name from a petition after it has been filed with the auditor. Within thirty days following the receipt of such petition, the auditor shall transmit the same to the board of commissioners of the central county, together with his certificate as to the sufficiency thereof. [1965 c 7 § 35.58.070. Prior: 1957 c 213 § 7.]

**35.58.080 Hearings on petition, resolution—Inclusion, exclusion of territory—Boundaries—Calling election.** Upon receipt of a duly certified petition or a valid resolution calling for an election on the formation of a metropolitan municipal corporation, the board of commissioners of the central county shall fix a date for a public hearing thereon which shall be not more than sixty nor less than forty days following the receipt of such resolution or petition. Notice of such hearing shall be published once a week for at least four consecutive weeks in one or more newspapers of general circulation within the metropolitan area. The notice shall contain a description of the boundaries of the proposed metropolitan area, shall name the initial metropolitan function or functions and shall state the time and place of the hearing and the fact that any changes in the boundaries of the metropolitan area will be considered at such time and place. At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the effect of the formation of the proposed municipal metropolitan corporation. The commissioners may make such changes in the boundaries of the metropolitan area as they shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands, may not delete a portion of any city, and may not delete any portion of the proposed area which is contributing or may reasonably be expected to contribute to the pollution of any water course or body of water in the proposed area when the petition or resolution names metropolitan water pollution abatement as a function to be performed by the proposed metropolitan municipal corporation. If the commissioners shall determine that any additional territory should be included in the metropolitan area, a second hearing

shall be held and notice given in the same manner as for the original hearing. The commissioners may adjourn the hearing on the formation of a metropolitan municipal corporation from time to time not exceeding thirty days in all. At the next regular meeting following the conclusion of such hearing the commissioners shall adopt a resolution fixing the boundaries of the proposed metropolitan municipal corporation, declaring that the formation of the proposed metropolitan municipal corporation will be conducive to the welfare and benefit of the persons and property therein and providing for the calling of a special election on the formation of the metropolitan municipal corporation to be held not more than one hundred twenty days nor less than sixty days following the adoption of such resolution. [1974 ex.s. c 70 § 4; 1965 c 7 § 35.58.080. Prior: 1957 c 213 § 8.]

*Elections: Title 29A RCW.*

**35.58.090 Election procedure to form corporation and levy tax—Qualified voters—Establishment of corporation—First meeting of council.** The election on the formation of the metropolitan municipal corporation shall be conducted by the auditor of the central county in accordance with the general election laws of the state and the results thereof shall be canvassed by the county canvassing board of the central county, which shall certify the result of the election to the county legislative authority of the central county, and shall cause a certified copy of such canvass to be filed in the office of the secretary of state. Notice of the election shall be published in one or more newspapers of general circulation in each component county in the manner provided in the general election laws. No person shall be entitled to vote at such election unless that person is a qualified voter under the laws of the state in effect at the time of such election and has resided within the metropolitan area for at least thirty days preceding the date of the election. The ballot proposition shall be in substantially the following form:

"FORMATION OF METROPOLITAN MUNICIPAL CORPORATION

Shall a metropolitan municipal corporation be established for the area described in a resolution of the county legislative authority of . . . . . county adopted on the . . . . day of . . . . ., 19. . . , to perform the metropolitan functions of . . . . . (here insert the title of each of the functions to be authorized as set forth in the petition or initial resolution).

YES . . . . .   
NO . . . . .  "

If a majority of the persons voting on the proposition residing within the central city shall vote in favor thereof and a majority of the persons voting on the proposition residing in the metropolitan area outside of the central city shall vote in favor thereof, the metropolitan municipal corporation shall thereupon be established and the county legislative authority of the central county shall adopt a resolution setting a time and place for the first meeting of the metropolitan council which shall be held not later than sixty days after the date of such election. A copy of such resolution shall be transmitted to the legislative body of each component city and county and

of each special district which shall be affected by the particular metropolitan functions authorized.

At the same election there shall be submitted to the voters residing within the metropolitan area, for their approval or rejection, a proposition authorizing the metropolitan municipal corporation, if formed, to levy at the earliest time permitted by law on all taxable property located within the metropolitan municipal corporation a general tax, for one year, of twenty-five cents per thousand dollars of assessed value in excess of any constitutional or statutory limitation for authorized purposes of the metropolitan municipal corporation. The proposition shall be expressed on the ballots in substantially the following form:

"ONE YEAR TWENTY-FIVE CENTS PER THOUSAND DOLLARS OF ASSESSED VALUE LEVY

Shall the metropolitan municipal corporation, if formed, levy a general tax of twenty-five cents per thousand dollars of assessed value for one year upon all the taxable property within said corporation in excess of the constitutional and/or statutory tax limits for authorized purposes of the corporation?

YES ..... 
NO .....  "

Such proposition to be effective must be approved by a majority of at least three-fifths of the persons voting on the proposition to levy such tax, with a forty percent validation requirement, in the manner set forth in Article VII, section 2(a) of the Constitution of this state. [1993 c 240 § 3; 1973 1st ex.s. c 195 § 23; 1965 c 7 § 35.58.090. Prior: 1957 c 213 § 9.]

Severability—Effective dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Canvassing the returns, generally: Chapter 29A.60 RCW.

Conduct of elections—Canvass: RCW 29A.60.010.

35.58.100 Additional functions—Authorized by election. A metropolitan municipal corporation may be authorized to perform one or more metropolitan functions in addition to those which it has previously been authorized to perform, with the approval of the voters at an election, in the manner provided in this section.

An election to authorize a metropolitan municipal corporation to perform one or more additional metropolitan functions may be called pursuant to a resolution or a petition in the following manner:

- (1) A resolution calling for such an election may be adopted by:
(a) The city council of the central city; or
(b) The city councils of at least one-half in number of the component cities other than the central city; or
(c) The board of commissioners of the central county. Such resolution shall be transmitted to the metropolitan council.
(2) A petition calling for such an election shall be signed by at least four percent of the registered voters residing within the metropolitan area and shall be filed with the auditor of the central county.

Any resolution or petition calling for such an election shall name the additional metropolitan functions which the metropolitan municipal corporation shall be authorized to perform.

Upon receipt of such a petition, the auditor shall examine the signatures thereon and certify to the sufficiency thereof. For the purpose of examining the signatures on such petition, the auditor shall be permitted access to all voter registration books of any component county and of all component cities. No person may withdraw his name from a petition after it has been filed with the auditor. Within thirty days following the receipt of such petition, the auditor shall transmit the same to the metropolitan council, together with his certificate as to the sufficiency of signatures thereon.

Upon receipt of a valid resolution or duly certified petition calling for an election on the authorization of the performance of one or more additional metropolitan functions, the metropolitan council shall cause to be called a special election to be held not more than one hundred and twenty days nor less than sixty days following such receipt. Such special election shall be conducted and canvassed as provided in this chapter for an election on the question of forming a metropolitan municipal corporation. The ballot proposition shall be in substantially the following form:

"Shall the . . . . . metropolitan municipal corporation be authorized to perform the additional metropolitan functions of . . . . . (here insert the title of each of the additional functions to be authorized as set forth in the petition or resolution)?

YES ..... 
NO .....  "

If a majority of the persons voting on the proposition shall vote in favor thereof, the metropolitan municipal corporation shall be authorized to perform such additional metropolitan function or functions. [1967 c 105 § 2; 1965 c 7 § 35.58.100. Prior: 1957 c 213 § 10.]

35.58.110 Additional functions—Authorized without election. A metropolitan municipal corporation may be authorized to perform one or more metropolitan functions in addition to those which it previously has been authorized to perform, without an election, in the manner provided in this section. A resolution providing for the performance of such additional metropolitan function or functions shall be adopted by the metropolitan council. A copy of such resolution shall be transmitted by registered mail to the legislative body of each component city and county. If, within ninety days after the date of such mailing, a concurring resolution is adopted by the legislative body of each component county, of each component city of the first class, and of at least two-thirds of all other component cities, and such concurring resolutions are transmitted to the metropolitan council, such council shall by resolution declare that the metropolitan municipal corporation has been authorized to perform such additional metropolitan function or functions. A copy of such resolution shall be transmitted by registered mail to the legislative body of each component city and county and of each special district which will be affected by the particular addi-

tional metropolitan function authorized. [1965 c 7 § 35.58.110. Prior: 1957 c 213 § 11.]

*Election required to authorize public transportation function: RCW 35.58.245.*

**35.58.112 Recommended comprehensive plan for performance of additional function—Study and preparation.** The metropolitan council of a metropolitan municipal corporation upon the affirmative vote of two-thirds of the members of such council may make planning, engineering, legal, financial and feasibility studies preliminary to or incident to the preparation of a recommended comprehensive plan for any metropolitan function, and may prepare such a recommended comprehensive plan before the metropolitan municipal corporation has been authorized to perform such function. The studies and plan may cover territory within and without the metropolitan municipal corporation. A recommended comprehensive plan prepared pursuant to this section for any metropolitan function may not be adopted by the metropolitan council unless the metropolitan municipal corporation shall have been authorized to perform such function. [1967 c 105 § 7.]

**35.58.114 Recommended comprehensive plan for performance of additional function—Resolution for special election to authorize additional function—Contents—Hearings—Election procedure.** Whenever a recommended comprehensive plan for the performance of any additional metropolitan function shall have been prepared and the metropolitan council shall have found the plan to be feasible the council may by resolution call a special election to authorize the performance of such additional function without the filing of the petitions or resolutions provided for in RCW 35.58.100.

If the metropolitan council shall determine that the performance of such function requires enlargement of the metropolitan area, such resolution shall contain a description of the boundaries of the proposed metropolitan area and may be adopted only after a public hearing thereon before the council. Notice of such hearing shall be published once a week for at least two consecutive weeks in one or more newspapers of general circulation within the proposed metropolitan area. The notice shall contain a description of the boundaries of the proposed metropolitan area, shall name the additional function or functions to be performed and shall state the time and place of the hearing and the fact that any changes in the boundaries of the proposed metropolitan area will be considered at such time and place. At such hearing any interested person may appear and be heard. The council may make such changes in the proposed metropolitan area as they shall deem reasonable and proper, but may not delete any portion of the existing metropolitan area and may not delete any portion of the proposed additional area which will create an island of included or excluded lands. If the council shall determine that the proposed additional area should be further enlarged, a second hearing shall be held and notice given in the same manner as for the original hearing. The council may adjourn the hearing or hearings from time to time.

Following the conclusion of such hearing or hearings the council may adopt a resolution fixing the boundaries of the proposed metropolitan area and calling a special election on

the performance of such additional function. If the metropolitan municipal corporation is then authorized to perform the function of metropolitan sewage disposal the council may provide in such resolution that local governmental agencies collecting sewage from areas outside the metropolitan area as same is constituted on the date of adoption of such resolution will not thereafter be required to discharge such sewage into the metropolitan sewer system or to secure approval of local construction plans from the metropolitan municipal corporation unless such local agency shall first have entered into a contract with the metropolitan municipal corporation for the disposal of such sewage. The metropolitan council may also provide in such resolution that the authorization to perform such additional function be effective only if the voters at such election also authorize the issuance of any general obligation bonds required to carry out the recommended comprehensive plan.

The resolution calling such election shall fix the form of the ballot proposition and the same may vary from that specified in RCW 35.58.100. If the metropolitan council shall find that the issuance of general obligation bonds is necessary to perform such additional function and to carry out such recommended comprehensive plan then the ballot proposition shall set forth the principal amount of such bonds and the maximum maturity thereof and the proposition shall be so worded that the voters may by a single yes or no vote authorize the performance of the designated function in the area described in the resolution and the issuance of such general obligation bonds.

The persons voting at such election shall be all of the qualified voters who have resided within the boundaries of the proposed metropolitan area for at least thirty days preceding the date of the election. The election shall be conducted and canvassed as provided in RCW 35.58.090.

If the resolution calling such election does not require the approval of general obligation bonds as a condition of the performance of such additional function and if a majority of the persons voting on the ballot proposition residing within the existing metropolitan municipal corporation shall vote in favor thereof and a majority of the persons residing within the area proposed to be added to the existing metropolitan municipal corporation shall vote in favor thereof the boundaries described in the resolution calling the election shall become the boundaries of the metropolitan municipal corporation and the metropolitan municipal corporation shall be authorized to perform the additional function described in the proposition.

If the resolution calling such election shall require the authorization of general obligation bonds as a condition of the performance of such additional function, then to be effective the ballot proposition must be approved as provided in the preceding paragraph and must also be approved by at least three-fifths of the persons voting thereon and the number of persons voting on such proposition must constitute not less than forty percent of the total number of votes cast within such area at the last preceding state general election. [1967 c 105 § 8.]

**35.58.116 Proposition for issuance of general obligation bonds or levy of general tax—Submission at same election or special election.** The metropolitan council may

at the same election called to authorize the performance of an additional function or at a special election called by the council after it has been authorized to perform any metropolitan function submit a proposition for the issuance of general obligation bonds for capital purposes as provided in RCW 35.58.450 or a proposition for the levy of a general tax for any authorized purpose for one year in such total dollar amount as the metropolitan council may determine and specify in such proposition. Any such proposition to be effective must be assented to by at least three-fifths of the persons voting thereon and the number of persons voting on such proposition shall constitute not less than forty percent of the total number of votes cast within the metropolitan area at the last preceding state general election. Any such proposition shall only be effective if the performance of the additional function shall be authorized at such election or shall have been authorized prior thereto. [1967 c 105 § 9.]

#### **35.58.120 Metropolitan council—Composition.**

Unless the rights, powers, functions, and obligations of a metropolitan municipal corporation have been assumed by a county as provided in chapter 36.56 RCW, a metropolitan municipal corporation shall be governed by a metropolitan council composed of elected officials of the component counties and component cities, and possibly other persons, as determined by agreement of each of the component counties and the component cities equal in number to at least twenty-five percent of the total number of component cities that have at least seventy-five percent of the combined component city populations. The agreement shall remain in effect until altered in the same manner as the initial composition is determined. [1993 c 240 § 4; 1983 c 92 § 1; 1981 c 190 § 3; 1974 ex.s. c 70 § 5; 1971 ex.s. c 303 § 5; 1969 ex.s. c 135 § 1; 1967 c 105 § 3; 1965 c 7 § 35.58.120. Prior: 1957 c 213 § 12.]

**35.58.130 Metropolitan council—Organization, chairman, procedures.** At the first meeting of the metropolitan council following the formation of a metropolitan municipal corporation, the mayor of the central city shall serve as temporary chairman. As its first official act the council shall elect a chairman. The chairman shall be a voting member of the council and shall preside at all meetings. In the event of his absence or inability to act the council shall select one of its members to act as chairman pro tempore. A majority of all members of the council shall constitute a quorum for the transaction of business. A smaller number of council members than a quorum may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as the council may provide. The council shall determine its own rules and order of business, shall provide by resolution for the manner and time of holding all regular and special meetings and shall keep a journal of its proceedings which shall be a public record. Every legislative act of the council of a general or permanent nature shall be by resolution. [1965 c 7 § 35.58.130. Prior: 1957 c 213 § 13.]

**35.58.140 Metropolitan council—Terms.** Each member of a metropolitan council except those selected under the provisions of \*RCW 35.58.120 (1)(a), (5), (7), and (8), shall

hold office at the pleasure of the body which selected him. Each member, who shall hold office ex officio, may not hold office after he ceases to hold the position of elected county executive, mayor, commissioner, or councilman. The chairman shall hold office until the second Tuesday in July of each even-numbered year and may, if reelected, serve more than one term. Each member shall hold office until his successor has been selected as provided in this chapter. [1971 ex.s. c 303 § 6; 1969 ex.s. c 135 § 2; 1967 c 105 § 4; 1965 c 7 § 35.58.140. Prior: 1957 c 213 § 14.]

**\*Reviser's note:** RCW 35.58.120 was amended by 1993 c 240 § 4 deleting subsections (1)(a), (5), (7), and (8).

#### **35.58.150 Metropolitan council—Vacancies.**

A vacancy in the office of a member of the metropolitan council shall be filled in the same manner as provided for the original selection. The meeting of mayors to fill a vacancy of the member selected under the provisions of \*RCW 35.58.120(4) or of special district representatives to fill a vacancy of a member selected under \*RCW 35.58.120(7) shall be held at such time and place as shall be designated by the chairman of the metropolitan council after ten days' written notice mailed to the mayors of each of the cities specified in \*RCW 35.58.120(4) or to the representatives of the special purpose districts specified in \*RCW 35.58.120(7), whichever is applicable. [1984 c 44 § 1; 1967 c 105 § 5; 1965 c 7 § 35.58.150. Prior: 1957 c 213 § 15.]

**\*Reviser's note:** RCW 35.58.120 was amended by 1993 c 240 § 4 deleting subsections (4) and (7).

#### **35.58.160 Metropolitan council—Compensation—Waiver of compensation.**

The chairman and committee chairmen of the metropolitan council except elected public officials serving on a full-time salaried basis may receive such compensation as the other members of the metropolitan council shall provide. Members of the council other than the chairman and committee chairmen shall receive compensation of fifty dollars per day or portion thereof for attendance at metropolitan council or committee meetings, or for performing other services on behalf of the metropolitan municipal corporation, but not exceeding a total of four thousand eight hundred dollars in any year, in addition to any compensation which they may receive as officers of component cities or counties: **PROVIDED**, That elected public officers serving in such capacities on a full-time basis shall not receive compensation for attendance at metropolitan, council, or committee meetings, or otherwise performing services on behalf of the metropolitan municipal corporation: **PROVIDED FURTHER**, That committee chairmen shall not receive compensation in any one year greater than one-third of the compensation authorized for the county commissioners or county councilmen of the central county.

Any member of the council may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the council as provided in this section. The waiver, to be effective, must be filed any time after the member's selection and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

All members of the council shall be reimbursed for expenses actually incurred by them in the conduct of official business for the metropolitan municipal corporation. [1985 c 330 § 1; 1974 ex.s. c 84 § 2; 1965 c 7 § 35.58.160. Prior: 1957 c 213 § 16.]

**35.58.170 Corporation name and seal.** The name of a metropolitan municipal corporation shall be established by its metropolitan council. Each metropolitan municipal corporation shall adopt a corporate seal containing the name of the corporation and the date of its formation. [1965 c 7 § 35.58.170. Prior: 1957 c 213 § 17.]

**35.58.180 General powers of corporation.** In addition to the powers specifically granted by this chapter a metropolitan municipal corporation shall have all powers which are necessary to carry out the purposes of the metropolitan municipal corporation and to perform authorized metropolitan functions. A metropolitan municipal corporation may contract with the United States or any agency thereof, any state or agency thereof, any other metropolitan municipal corporation, any county, city, special district, or governmental agency and any private person, firm or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction or operation of metropolitan facilities and a metropolitan municipal corporation may contract with any governmental agency or with any private person, firm or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands and rights of way of all kinds which are owned, leased or held by the other party and for the purpose of planning, constructing or operating any facility or performing any service which the metropolitan municipal corporation may be authorized to operate or perform, on such terms as may be agreed upon by the contracting parties: PROVIDED, That before any contract for the lease or operation of any metropolitan public transportation facilities shall be let to any private person, firm or corporation, a general schedule of rental rates for bus equipment with or without drivers shall be publicly posted applicable to all private certificated carriers, and for other facilities competitive bids shall first be called upon such notice, bidder qualifications and bid conditions as the metropolitan council shall determine.

A metropolitan municipal corporation may sue and be sued in its corporate capacity in all courts and in all proceedings. [1974 ex.s. c 84 § 3; 1967 c 105 § 6; 1965 c 7 § 35.58.180. Prior: 1957 c 213 § 18.]

**35.58.190 Performance of function or functions—Commencement date.** The metropolitan council shall provide by resolution the effective date on which the metropolitan municipal corporation will commence to perform any one or more of the metropolitan functions which it shall have been authorized to perform. [1965 c 7 § 35.58.190. Prior: 1957 c 213 § 19.]

**35.58.200 Powers relative to water pollution abatement.** If a metropolitan municipal corporation shall be

authorized to perform the function of metropolitan water pollution abatement, it shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare a comprehensive water pollution abatement plan including provisions for waterborne pollutant removal, water quality improvement, sewage disposal, and storm water drainage for the metropolitan area.

(2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of metropolitan facilities for water pollution abatement, including but not limited to, removal of waterborne pollutants, water quality improvement, sewage disposal and storm water drainage within or without the metropolitan area, including but not limited to trunk, interceptor and outfall sewers, whether used to carry sanitary waste, storm water, or combined storm and sanitary sewage, lift and pumping stations, pipelines, drains, sewage treatment plants, flow control structures together with all lands, property rights, equipment and accessories necessary for such facilities. Sewer facilities which are owned by a county, city, or special district may be acquired or used by the metropolitan municipal corporation only with the consent of the legislative body of the county, city, or special districts owning such facilities. Counties, cities, and special districts are hereby authorized to convey or lease such facilities to metropolitan municipal corporations or to contract for their joint use on such terms as may be fixed by agreement between the legislative body of such county, city, or special district and the metropolitan council, without submitting the matter to the voters of such county, city, or district.

(3) To require counties, cities, special districts and other political subdivisions to discharge sewage collected by such entities from any portion of the metropolitan area which can drain by gravity flow into such metropolitan facilities as may be provided to serve such areas when the metropolitan council shall declare by resolution that the health, safety, or welfare of the people within the metropolitan area requires such action.

(4) To fix rates and charges for the use of metropolitan water pollution abatement facilities, and to expend the moneys so collected for authorized water pollution abatement activities.

(5) To establish minimum standards for the construction of local water pollution abatement facilities and to approve plans for construction of such facilities by component counties or cities or by special districts, which are connected to the facilities of the metropolitan municipal corporation. No such county, city, or special district shall construct such facilities without first securing such approval.

(6) To acquire by purchase, condemnation, gift, or grant, to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of facilities for the local collection of sewage or storm water in portions of the metropolitan area not contained within any city or special district operating local public sewer facilities and, with the consent of the legislative body of any such city or special district, to exercise such powers within such city or special district and for such purpose to have all the powers conferred by law upon such city or special district with respect to such local collection facilities: PROVIDED, That such consent shall not be required if the department of ecology certifies that a water

pollution problem exists within any such city or special district and notifies the city or special district to correct such problem and corrective construction of necessary local collection facilities shall not have been commenced within one year after notification. All costs of such local collection facilities shall be paid for by the area served thereby.

(7) To participate fully in federal and state programs under the federal water pollution control act (86 Stat. 816 et seq., 33 U.S.C. 1251 et seq.) and to take all actions necessary to secure to itself or its component agencies the benefits of that act and to meet the requirements of that act, including but not limited to the following:

(a) authority to develop and implement such plans as may be appropriate or necessary under the act.

(b) authority to require by appropriate regulations that its component agencies comply with all effluent treatment and limitation requirements, standards of performance requirements, pretreatment requirements, a user charge and industrial cost recovery system conforming to federal regulation, and all conditions of national permit discharge elimination system permits issued to the metropolitan municipal corporation or its component agencies. Adoption of such regulations and compliance therewith shall not constitute a breach of any sewage disposal contract between a metropolitan municipal corporation and its component agencies nor a defense to an action for the performance of all terms and conditions of such contracts not inconsistent with such regulations and such contracts, as modified by such regulations, shall be in all respects valid and enforceable. [1975 c 36 § 1; 1974 ex.s. c 70 § 6; 1971 ex.s. c 303 § 7; 1965 c 7 § 35.58.200. Prior: 1957 c 213 § 20.]

**35.58.210 Metropolitan water pollution abatement advisory committee.** If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water pollution abatement, the metropolitan council shall, prior to the effective date of the assumption of such function, cause a metropolitan water pollution abatement advisory committee to be formed by notifying the legislative body of each component city and county which operates a sewer system to appoint one person to serve on such advisory committee and the board of commissioners of each water-sewer district which operates a sewer system, any portion of which lies within the metropolitan area, to appoint one person to serve on such committee who shall be a commissioner of such a water-sewer district. The metropolitan water pollution abatement advisory committee shall meet at the time and place provided in the notice and elect a chairman. The members of such committee shall serve at the pleasure of the appointing bodies and shall receive no compensation other than reimbursement for expenses actually incurred in the performance of their duties. The function of such advisory committee shall be to advise the metropolitan council in matters relating to the performance of the water pollution abatement function. [1999 c 153 § 33; 1974 ex.s. c 70 § 7; 1965 c 7 § 35.58.210. Prior: 1957 c 213 § 21.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**35.58.215 Powers relative to systems of sewerage.** A metropolitan municipal corporation authorized to perform (2004 Ed.)

water pollution abatement may exercise all the powers relating to systems of sewerage authorized by RCW 36.94.010, 36.94.020, and 36.94.140 for counties. [1997 c 447 § 13.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**35.58.220 Powers relative to water supply.** If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water supply, it shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare a comprehensive plan for the development of sources of water supply, trunk supply mains and water treatment and storage facilities for the metropolitan area.

(2) To acquire by purchase, condemnation, gift or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of metropolitan facilities for water supply within or without the metropolitan area, including buildings, structures, water sheds, wells, springs, dams, settling basins, intakes, treatment plants, trunk supply mains and pumping stations, together with all lands, property, equipment and accessories necessary to enable the metropolitan municipal corporation to obtain and develop sources of water supply, treat and store water and deliver water through trunk supply mains. Water supply facilities which are owned by a city or special district may be acquired or used by the metropolitan municipal corporation only with the consent of the legislative body of the city or special district owning such facilities. Cities and special districts are hereby authorized to convey or lease such facilities to metropolitan municipal corporations or to contract for their joint use on such terms as may be fixed by agreement between the legislative body of such city or special district and the metropolitan council, without submitting the matter to the voters of such city or special district.

(3) To fix rates and charges for water supplied by the metropolitan municipal corporation.

(4) To acquire by purchase, condemnation, gift or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of facilities for the local distribution of water in portions of the metropolitan area not contained within any city, or water-sewer district that operates a water system, and, with the consent of the legislative body of any city or the water-sewer district, to exercise such powers within such city or water-sewer district and for such purpose to have all the powers conferred by law upon such city or water-sewer district with respect to such local distribution facilities. All costs of such local distribution facilities shall be paid for by the area served thereby. [1999 c 153 § 34; 1965 c 7 § 35.58.220. Prior: 1957 c 213 § 22.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**35.58.230 Metropolitan water advisory committee.** If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water supply, the metropolitan council shall, prior to the effective date of the assumption of such function, cause a metropolitan water advisory committee to be formed by notifying the legislative body of each component city which operates a water system to appoint one person to serve on such advisory committee

and the board of commissioners of each water-sewer district that operates a water system, any portion of which lies within the metropolitan area, to appoint one person to serve on such committee who shall be a water-sewer district commissioner. The metropolitan water advisory committee shall meet at the time and place provided in the notice and elect a chairman. The members of such committee shall serve at the pleasure of the appointing bodies and shall receive no compensation other than reimbursement for expenses actually incurred in the performance of their duties. The function of such advisory committee shall be to advise the metropolitan council with respect to matters relating to the performance of the water supply function.

The requirement to create a metropolitan water advisory committee shall not apply to a county that has assumed the rights, powers, functions, and obligations of the metropolitan municipal corporation under chapter 36.56 RCW. [1999 c 153 § 35; 1993 c 240 § 5; 1965 c 7 § 35.58.230. Prior: 1957 c 213 § 23.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**35.58.240 Powers relative to transportation.** If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan transportation, it shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare, adopt, and carry out a general comprehensive plan for public transportation service which will best serve the residents of the metropolitan area and to amend said plan from time to time to meet changed conditions and requirements.

(2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of metropolitan transportation facilities and properties within or without the metropolitan area, including systems of surface, underground, or overhead railways, tramways, buses, or any other means of local transportation except taxis, and including escalators, moving sidewalks, or other people-moving systems, passenger terminal and parking facilities and properties, and such other facilities and properties as may be necessary for passenger and vehicular access to and from such people-moving systems, terminal and parking facilities and properties, together with all lands, rights of way, property, equipment, and accessories necessary for such systems and facilities. Public transportation facilities and properties which are owned by any city may be acquired or used by the metropolitan municipal corporation only with the consent of the city council of the city owning such facilities. Cities are hereby authorized to convey or lease such facilities to metropolitan corporations or to contract for their joint use on such terms as may be fixed by agreement between the city council of such city and the metropolitan council, without submitting the matter to the voters of such city.

The facilities and properties of a metropolitan public transportation system whose vehicles will operate primarily within the rights of way of public streets, roads, or highways, may be acquired, developed and operated without the corridor and design hearings which are required by \*RCW

35.58.273 for mass transit facilities operating on a separate right of way.

(3) To fix rates, tolls, fares, and charges for the use of such facilities and to establish various routes and classes of service. Fares or charges may be adjusted or eliminated for any distinguishable class of users including, but not limited to, senior citizens, handicapped persons, and students. Classes of service and fares will be maintained in the several parts of the metropolitan area at such levels as will provide, insofar as reasonably practicable, that the portion of any annual transit operating deficit of the metropolitan municipal corporation attributable to the operation of all routes, taken as a whole, which are located within the central city is approximately in proportion to the portion of total taxes collected by or on behalf of the metropolitan municipal corporation for transit purposes within the central city, and that the portion of such annual transit operating deficit attributable to the operation of all routes, taken as a whole, which are located outside the central city, is approximately in proportion to the portion of such taxes collected outside the central city.

In the event any metropolitan municipal corporation shall extend its metropolitan transportation function to any area or service already offered by any company holding a certificate of public convenience and necessity from the Washington utilities and transportation commission under RCW 81.68.040, it shall by purchase or condemnation acquire at the fair market value, from the person holding the existing certificate for providing the services, that portion of the operating authority and equipment representing the services within the area of public operation. [1981 c 25 § 1; 1971 ex.s. c 303 § 8; 1967 c 105 § 11; 1965 c 7 § 35.58.240. Prior: 1957 c 213 § 24.]

\*Reviser's note: RCW 35.58.273 was repealed by 2002 c 6 § 2.

**35.58.245 Public transportation function—Authorization by election required—Procedure.** Notwithstanding any other provision of chapter 35.58 RCW a metropolitan municipal corporation may perform the function of metropolitan public transportation only if the performance of such function is authorized by election. The metropolitan council may call such election and certify the ballot proposition. The election shall be conducted and canvassed as provided in RCW 35.58.090 and the municipality shall be authorized to perform the function of metropolitan public transportation if a majority of the persons voting on the proposition shall vote in favor. [1971 ex.s. c 303 § 1.]

**35.58.250 Other local public passenger transportation service prohibited—Agreements—Purchase—Condemnation.** Except in accordance with an agreement made as provided herein, upon the effective date on which the metropolitan municipal corporation commences to perform the metropolitan transportation function, no person or private corporation shall operate a local public passenger transportation service within the metropolitan area with the exception of taxis, busses owned or operated by a school district or private school, and busses owned or operated by any corporation or organization solely for the purposes of the corporation or organization and for the use of which no fee or fare is charged.

An agreement may be entered into between the metropolitan municipal corporation and any person or corporation legally operating a local public passenger transportation service wholly within or partly within and partly without the metropolitan area and on said effective date under which such person or corporation may continue to operate such service or any part thereof for such time and upon such terms and conditions as provided in such agreement. Where any such local public passenger transportation service will be required to cease to operate within the metropolitan area, the commission may agree with the owner of such service to purchase the assets used in providing such service, or if no agreement can be reached, the commission shall condemn such assets in the manner provided herein for the condemnation of other properties.

Wherever a privately owned public carrier operates wholly or partly within a metropolitan municipal corporation, the Washington utilities and transportation commission shall continue to exercise jurisdiction over such operation as provided by law. [1965 c 7 § 35.58.250. Prior: 1957 c 213 § 25.]

**35.58.260 Transportation function—Acquisition of city system.** If a metropolitan municipal corporation shall be authorized to perform the metropolitan transportation function, it shall, upon the effective date of the assumption of such power, have and exercise all rights with respect to the construction, acquisition, maintenance, operation, extension, alteration, repair, control and management of passenger transportation which any component city shall have been previously empowered to exercise and such powers shall not thereafter be exercised by such component cities without the consent of the metropolitan municipal corporation: PROVIDED, That any city owning and operating a public transportation system on such effective date may continue to operate such system within such city until such system shall have been acquired by the metropolitan municipal corporation and a metropolitan municipal corporation may not acquire such system without the consent of the city council of such city. [1965 c 7 § 35.58.260. Prior: 1957 c 213 § 26.]

**35.58.265 Acquisition of existing transportation system—Assumption of labor contracts—Transfer of employees—Preservation of employee benefits—Collective bargaining.** If a metropolitan municipal corporation shall perform the metropolitan transportation function and shall acquire any existing transportation system, it shall assume and observe all existing labor contracts relating to such system and, to the extent necessary for operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions to those which they held at the time of such transfer, and no employee or retired or pensioned employee of such systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he enjoyed as an employee of such system prior to such acquisition. The metropolitan municipal corporation shall engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into

labor contracts with such employee labor organization. [1965 c 91 § 1.]

*Retention of employees, preservation of pension rights and other benefits upon acquisition of metropolitan facility: RCW 35.58.380 through 35.58.400.*

**35.58.268 Public transportation employees—Payroll deduction for political action committees.** Any public official authorized to disburse funds in payment of salaries and wages of public transportation employees may, upon written request of the employee, deduct from the salary or wages of the employee, contributions for payment of voluntary deductions for political action committees sponsored by labor or employee organizations with public transportation employees as members. For the purposes of this section, "public transportation employees" means employees of a public transportation system specified in RCW 35.58.272 who are covered by a collective bargaining agreement. [1985 c 204 § 1.]

**35.58.270 Metropolitan transit commission.** If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan transportation with a commission form of management, a metropolitan transit commission shall be formed prior to the effective date of the assumption of such function. Except as provided in this section, the metropolitan transit commission shall exercise all powers of the metropolitan municipal corporation with respect to metropolitan transportation facilities, including but not limited to the power to construct, acquire, maintain, operate, extend, alter, repair, control and manage a local public transportation system within and without the metropolitan area, to establish new passenger transportation services and to alter, curtail, or abolish any services as the commission may deem desirable and to fix tolls and fares.

The comprehensive plan for public transportation service and any amendments thereof shall be adopted by the metropolitan council and the metropolitan transit commission shall provide transportation facilities and service consistent with such plan. The metropolitan transit commission shall authorize expenditures for transportation purposes within the budget adopted by the metropolitan council. Tolls and fares may be fixed or altered by the commission only after approval thereof by the metropolitan council. Bonds of the metropolitan municipal corporation for public transportation purposes shall be issued by the metropolitan council as provided in this chapter.

The metropolitan transit commission shall consist of seven members. Six of such members shall be appointed by the metropolitan council and the seventh member shall be the chairman of the metropolitan council who shall be ex officio the chairman of the metropolitan transit commission. Three of the six appointed members of the commission shall be residents of the central city and three shall be residents of the metropolitan area outside of the central city. The three central city members of the first metropolitan transit commission shall be selected from the existing transit commission of the central city, if there be a transit commission in such city. The terms of first appointees shall be for one, two, three, four, five and six years, respectively. Thereafter, commissioners shall

serve for a term of four years. Compensation of transit commissioners shall be determined by the metropolitan council.

The requirement to create a metropolitan transit commission shall not apply to a county that has assumed the rights, powers, functions, and obligations of the metropolitan municipal corporation under chapter 36.56 RCW. [1993 c 240 § 6; 1967 c 105 § 12; 1965 c 7 § 35.58.270. Prior: 1957 c 213 § 27.]

**35.58.271 Public transportation in municipalities—Financing.** See chapter 35.95 RCW.

**35.58.2711 Local sales and use taxes for financing public transportation systems.** See RCW 82.14.045 through 82.14.060.

**35.58.2712 Public transportation feasibility study—Advanced financial support payments.** Any municipality, as defined in RCW 35.95.020, may be eligible to receive a one-time advanced financial support payment to perform a feasibility study to determine the need for public transportation to serve its residents. This payment shall be governed by the following conditions:

(1) The payment shall precede any advanced financial support payment to develop a plan pursuant to RCW 36.57A.150;

(2) The amount of such payment shall be commensurate with the number of residents in and the size of the land area of such municipality and the number and size of school districts in such municipality and shall not exceed one hundred ten thousand dollars; and

(3) Repayment of an advanced financial support payment shall be made to the general fund by the municipality within two years after the date such advanced payment was received. The study shall be completed within one year after the date such advanced payment was received. The study and its recommendations shall then be presented to the legislative authority of the municipality. Within six months of its receipt of the study and its recommendations, the legislative authority shall pass a resolution adopting or rejecting all or part of the study. A copy of the resolution shall be transmitted to the state agency administering this section. Such repayment shall be waived within two years of the date such advanced payment was received if the legislative authority or the voters in such municipality do not elect to levy and collect taxes to support public transportation in their area. Such repayment shall not be waived in the event any of the provisions of this subsection are not followed;

(4) The feasibility study shall give consideration to consolidating or coordinating all or any portion of the K-12 pupil transportation system within the proposed boundaries of the municipality. Any school district lying wholly or in part within the proposed boundaries shall fully cooperate in the study unless the school board shall pass a resolution to the contrary setting forth the reasons therefor. A copy of the resolution shall be forwarded to the secretary of the department of transportation for inclusion in the municipality's application file.

The department of transportation shall provide technical assistance in the preparation of feasibility studies, and shall

adopt reasonable rules and regulations to carry out the provisions of this section. [1979 c 59 § 1; 1977 ex.s. c 44 § 6.]

**Severability—Effective date—1977 ex.s. c 44:** See notes following RCW 36.57A.030.

**35.58.272 Public transportation systems—Definitions.** "Municipality" as used in \*RCW 35.58.272 through 35.58.279, as now or hereafter amended, and in RCW 36.57.080, 36.57.100, 36.57.110, 35.58.2721, 35.58.2794, and chapter 36.57A RCW, means any metropolitan municipal corporation which shall have been authorized to perform the function of metropolitan public transportation; any county performing the public transportation function as authorized by RCW 36.57.100 and 36.57.110 or which has established a county transportation authority pursuant to chapter 36.57 RCW; any public transportation benefit area established pursuant to chapter 36.57A RCW; and any city, which is not located within the boundaries of a metropolitan municipal corporation, county transportation authority, or public transportation benefit area, and which owns, operates or contracts for the services of a publicly owned or operated system of transportation: PROVIDED, That the term "municipality" shall mean in respect to any county performing the public transportation function pursuant to RCW 36.57.100 and 36.57.110 only that portion of the unincorporated area lying wholly within such unincorporated transportation benefit area.

"Motor vehicle" as used in \*RCW 35.58.272 through 35.58.279, as now or hereafter amended, shall have the same meaning as in RCW 82.44.010.

"County auditor" shall mean the county auditor of any county or any person designated to perform the duties of a county auditor pursuant to RCW 82.44.140.

"Person" shall mean any individual, corporation, firm, association or other form of business association. [1975 1st ex.s. c 270 § 1; 1969 ex.s. c 255 § 7.]

**\*Reviser's note:** RCW 35.58.273 through 35.58.279 were repealed by 2002 c 6 § 2.

**Severability—1975 1st ex.s. c 270:** "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 270 § 30.]

**Effective date—1975 1st ex.s. c 270:** "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 270 § 31.]

**Construction—1969 ex.s. c 255:** "The powers and authority conferred upon municipalities under the provisions of this 1969 act shall be in addition to and supplemental to powers or authority conferred by any other law, and nothing contained herein limits any other power or authority of such municipalities." [1969 ex.s. c 255 § 21.]

**Severability—1969 ex.s. c 255:** "If any provision of this 1969 act, or its application to any municipality, person or circumstance is held invalid, the remainder of this 1969 act or the application of the provisions to other municipalities, persons or circumstances is not affected." [1969 ex.s. c 255 § 22.]

*Contracts between political subdivisions for services and use of public transportation systems: RCW 39.33.050.*

**35.58.2721 Public transportation systems—Authority of municipalities to acquire, operate, etc.—Indebtedness—Bond issues.** (1) In addition to any other authority now provided by law, and subject only to constitutional limi-

tations, the governing body of any municipality shall be authorized to acquire, construct, operate, and maintain a public transportation system and additions and betterments thereto, and to issue general obligation bonds for public mass transportation capital purposes including but not limited to replacement of equipment: PROVIDED, That the general indebtedness incurred under this section when considered together with all the other outstanding general indebtedness of the municipality shall not exceed the amounts of indebtedness authorized by chapter 39.36 RCW and chapter 35.58 RCW, as now or hereafter amended, to be incurred without and with the assent of the voters. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

Any municipality is authorized to pledge for the payment or security of the principal of and interest on any bonds issued for authorized public transportation purposes all or any portion of any taxes authorized to be levied by the issuer, including, but not limited to, the local sales and use tax authorized pursuant to RCW 82.14.045, as now or hereafter amended. No motor vehicle excise taxes under \*RCW 35.58.273 may be pledged for bonds.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1990 c 42 § 315; 1983 c 167 § 46; 1979 ex.s. c 175 § 1; 1975 1st ex.s. c 270 § 7.]

\*Reviser's note: RCW 35.58.273 was repealed by 2002 c 6 § 2.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

*Financing of public transportation systems in municipalities: Chapter 35.95 RCW and RCW 82.14.045.*

**35.58.2794 Public transportation systems—Research, testing, development, etc., of systems—Powers to comply with federal laws.** Any city, county, public transportation benefit area authority, county transportation authority, or metropolitan municipal corporation operating a public transportation system shall be authorized to conduct, contract for, participate in and support research, demonstration, testing and development of public transportation systems, equipment and use incentives and shall have all powers necessary to comply with any criteria, standards, and regulations which may be adopted under the urban mass transportation act (78 Stat. 302 et seq., 49 U.S.C. 1601 et seq.) and to take all actions necessary to meet the requirements of that act. Any county in which a county transportation authority or public transportation benefit area shall have been established and any metropolitan municipal corporation which shall have been authorized to perform the function of metropolitan public transportation shall have, in addition to such powers, the authority to prepare, adopt and carry out a comprehensive transit plan and to make such other plans and studies and to perform such programs as the governing body of the county authority public transportation benefit area authority or metropolitan municipal corporation shall deem necessary to implement and comply with said federal act. [1975 1st ex.s. c 270 § 8.]

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**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**35.58.2795 Public transportation systems—Six-year transit plans.** By April 1st of each year, the legislative authority of each municipality, as defined in RCW 35.58.272, and each regional transit authority shall prepare a six-year transit development plan for that calendar year and the ensuing five years. The program shall be consistent with the comprehensive plans adopted by counties, cities, and towns, pursuant to chapter 35.63, 35A.63, or 36.70 RCW, the inherent authority of a first class city or charter county derived from its charter, or chapter 36.70A RCW. The program shall contain information as to how the municipality intends to meet state and local long-range priorities for public transportation, capital improvements, significant operating changes planned for the system, and how the municipality intends to fund program needs. The six-year plan for each municipality and regional transit authority shall specifically set forth those projects of regional significance for inclusion in the transportation improvement program within that region. Each municipality and regional transit authority shall file the six-year program with the state department of transportation, the transportation improvement board, and cities, counties, and regional planning councils within which the municipality is located.

In developing its program, the municipality and the regional transit authority shall consider those policy recommendations affecting public transportation contained in the state transportation policy plan approved by the state transportation commission and, where appropriate, adopted by the legislature. The municipality shall conduct one or more public hearings while developing its program and for each annual update. [1994 c 158 § 6; 1990 1st ex.s. c 17 § 60; 1989 c 396 § 1.]

**Captions not law—Severability—Effective date—1994 c 158:** See RCW 47.80.902 through 47.80.904.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**35.58.2796 Public transportation systems—Annual report by department.** The department of transportation shall develop an annual report summarizing the status of public transportation systems in the state. By September 1st of each year, copies of the report shall be submitted to the legislative transportation committee and to each municipality, as defined in RCW 35.58.272, and to individual members of the municipality's legislative authority. The department shall prepare and submit a preliminary report by December 1, 1989.

To assist the department with preparation of the report, each municipality shall file a system report by April 1st of each year with the state department of transportation identifying its public transportation services for the previous calendar year and its objectives for improving the efficiency and effectiveness of those services. The system report shall address those items required for each public transportation system in the department's report.

The department report shall describe individual public transportation systems, including contracted transportation services and dial-a-ride services, and include a statewide

summary of public transportation issues and data. The descriptions shall include the following elements and such other elements as the department deems appropriate after consultation with the municipalities and the legislative transportation committee:

- (1) Equipment and facilities, including vehicle replacement standards;
- (2) Services and service standards;
- (3) Revenues, expenses, and ending balances, by fund source;
- (4) Policy issues and system improvement objectives, including community participation in development of those objectives and how those objectives address statewide transportation priorities;
- (5) Operating indicators applied to public transportation services, revenues, and expenses. Operating indicators shall include operating cost per passenger trip, operating cost per revenue vehicle service hour, passenger trips per revenue service hour, passenger trips per vehicle service mile, vehicle service hours per employee, and farebox revenue as a percent of operating costs. [1989 c 396 § 2.]

**35.58.280 Powers relative to garbage disposal.** If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan garbage disposal, it shall have the following powers in addition to the general powers granted by this chapter:

- (1) To prepare a comprehensive garbage disposal plan for the metropolitan area.
- (2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of metropolitan facilities for garbage disposal within or without the metropolitan area, including garbage disposal sites, central collection station sites, structures, machinery and equipment for the operation of central collection stations and for the hauling and disposal of garbage by any means, together with all lands, property, equipment and accessories necessary for such facilities. Garbage disposal facilities which are owned by a city or county may be acquired or used by the metropolitan municipal corporation only with the consent of the legislative body of the city or county owning such facilities. Cities and counties are hereby authorized to convey or lease such facilities to metropolitan municipal corporations or to contract for their joint use on such terms as may be fixed by agreement between the legislative body of such city or county and the metropolitan council, without submitting the matter to the voters of such city or county.
- (3) To fix rates and charges for the use of metropolitan garbage disposal facilities.
- (4) With the consent of any component city, to acquire by purchase, condemnation, gift or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of facilities for the local collection of garbage within such city, and for such purpose to have all the powers conferred by law upon such city with respect to such local collection facilities. Nothing herein contained shall be deemed to authorize the local collection of garbage except in component cities. All costs of such local collection facilities shall be paid for by the area served thereby. [1965 c 7 § 35.58.280. Prior: 1957 c 213 § 28.]

**35.58.290 Powers relative to parks and parkways.** If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan parks and parkways, it shall have the following powers in addition to the general powers granted by this chapter:

- (1) To prepare a comprehensive plan of metropolitan parks and parkways.
- (2) To acquire by purchase, condemnation, gift or grant, to lease, construct, add to, improve, develop, replace, repair, maintain, operate and regulate the use of metropolitan parks and parkways, together with all lands, rights of way, property, equipment and accessories necessary therefor. A park or parkway shall be considered to be a metropolitan facility if the metropolitan council shall by resolution find it to be of use and benefit to all or a major portion of the residents of the metropolitan area. Parks or parkways which are owned by a component city or county may be acquired or used by the metropolitan municipal corporation only with the consent of the legislative body of such city or county. Cities and counties are hereby authorized to convey or lease such facilities to metropolitan municipal corporations or to contract for their joint use on such terms as may be fixed by agreement between the legislative bodies of such city or county and the metropolitan council, without submitting the matter to the voters of such city or county. If parks or parkways which have been acquired or used as metropolitan facilities shall no longer be used for park purposes by the metropolitan municipal corporation, such facilities shall revert to the component city or county which formerly owned them.
- (3) To fix fees and charges for the use of metropolitan park and parkway facilities. [1965 c 7 § 35.58.290. Prior: 1957 c 213 § 29.]

**35.58.300 Metropolitan park board.** If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan parks and parkways, a metropolitan park board shall be formed prior to the effective date of the assumption of such function. Except as provided in this section, the metropolitan park board shall exercise all powers of the metropolitan municipal corporation with respect to metropolitan park and parkway facilities.

The metropolitan park board shall authorize expenditures for park and parkway purposes within the budget adopted by the metropolitan council. Bonds of the metropolitan municipal corporation for park and parkway purposes shall be issued by the metropolitan council as provided in this chapter.

The metropolitan park board shall consist of five members appointed by the metropolitan council at least two of whom shall be residents of the central city. The terms of first appointees shall be for one, two, three, four and five years, respectively. Thereafter members shall serve for a term of four years. Compensation of park board members shall be determined by the metropolitan council.

The requirement to create a metropolitan park board shall not apply to a county that has assumed the rights, powers, functions, and obligations of the metropolitan municipal corporation under chapter 36.56 RCW. [1993 c 240 § 7; 1965 c 7 § 35.58.300. Prior: 1957 c 213 § 30.]

**35.58.310 Powers relative to planning.** If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan comprehensive planning, it shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare a recommended comprehensive land use and capital facilities plan for the metropolitan area.

(2) To review proposed zoning ordinances and resolutions or comprehensive plans of component cities and counties and make recommendations thereon. Such proposed zoning ordinances and resolutions or comprehensive plans must be submitted to the metropolitan council prior to adoption and may not be adopted until reviewed and returned by the metropolitan council. The metropolitan council shall cause such ordinances, resolutions and plans to be reviewed by the planning staff of the metropolitan municipal corporation and return such ordinances, resolutions and plans, together with their findings and recommendations thereon within sixty days following their submission.

(3) To provide planning services for component cities and counties upon request and upon payment therefor by the cities or counties receiving such service. [1965 c 7 § 35.58.310. Prior: 1957 c 213 § 31.]

**35.58.320 Eminent domain.** A metropolitan municipal corporation shall have power to acquire by purchase and condemnation all lands and property rights, both within and without the metropolitan area, which are necessary for its purposes. Such right of eminent domain shall be exercised by the metropolitan council in the same manner and by the same procedure as is or may be provided by law for cities, except insofar as such laws may be inconsistent with the provisions of this chapter. [1993 c 240 § 8; 1965 c 7 § 35.58.320. Prior: 1957 c 213 § 32.]

*Eminent domain by cities: Chapter 8.12 RCW.*

**35.58.330 Powers may be exercised with relation to public rights of way without franchise—Conditions.** A metropolitan municipal corporation shall have power to construct or maintain metropolitan facilities in, along, on, under, over, or through public streets, bridges, viaducts, and other public rights of way without first obtaining a franchise from the county or city having jurisdiction over the same: PROVIDED, That such facilities shall be constructed and maintained in accordance with the ordinances and resolutions of such city or county relating to construction, installation and maintenance of similar facilities in such public properties. [1965 c 7 § 35.58.330. Prior: 1957 c 213 § 33.]

**35.58.340 Disposition of unneeded property.** Except as otherwise provided herein, a metropolitan municipal corporation may sell, or otherwise dispose of any real or personal property acquired in connection with any authorized metropolitan function and which is no longer required for the purposes of the metropolitan municipal corporation in the same manner as provided for cities. When the metropolitan council determines that a metropolitan facility or any part thereof which has been acquired from a component city or county without compensation is no longer required for metropolitan purposes, but is required as a local facility by the city

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or county from which it was acquired, the metropolitan council shall by resolution transfer it to such city or county. [1993 c 240 § 9; 1965 c 7 § 35.58.340. Prior: 1957 c 213 § 34.]

**35.58.350 Powers and functions of metropolitan municipal corporation—Where vested—Powers of metropolitan council.** All the powers and functions of a metropolitan municipal corporation shall be vested in the metropolitan council unless expressly vested in specific officers, boards, or commissions by this chapter, or vested in the county legislative authority of a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation as provided in chapter 36.56 RCW. Without limitation of the foregoing authority, or of other powers given it by this chapter, the metropolitan council shall have the following powers:

(1) To establish offices, departments, boards and commissions in addition to those provided by this chapter which are necessary to carry out the purposes of the metropolitan municipal corporation, and to prescribe the functions, powers and duties thereof.

(2) To appoint or provide for the appointment of, and to remove or to provide for the removal of, all officers and employees of the metropolitan municipal corporation except those whose appointment or removal is otherwise provided by this chapter.

(3) To fix the salaries, wages and other compensation of all officers and employees of the metropolitan municipal corporation unless the same shall be otherwise fixed in this chapter.

(4) To employ such engineering, legal, financial, or other specialized personnel as may be necessary to accomplish the purposes of the metropolitan municipal corporation. [1993 c 240 § 10; 1965 c 7 § 35.58.350. Prior: 1957 c 213 § 35.]

**35.58.360 Rules and regulations—Penalties—Enforcement.** A metropolitan municipal corporation shall have power to adopt by resolution such rules and regulations as shall be necessary or proper to enable it to carry out authorized metropolitan functions and may provide penalties for the violation thereof. Actions to impose or enforce such penalties may be brought in the superior court of the state of Washington in and for the central county. [1965 c 7 § 35.58.360. Prior: 1957 c 213 § 36.]

**35.58.370 Merit system.** The metropolitan council shall establish and provide for the operation and maintenance of a personnel merit system for the employment, classification, promotion, demotion, suspension, transfer, layoff and discharge of its appointive officers and employees solely on the basis of merit and fitness without regard to political influence or affiliation. The person appointed or body created for the purpose of administering such personnel system shall have power to make, amend and repeal rules and regulations as are deemed necessary for such merit system. Such rules and regulations shall provide:

(1) That the person to be discharged or demoted must be presented with the reasons for such discharge or demotion specifically stated; and

(2) That he shall be allowed a reasonable time in which to reply thereto in writing and that he be given a hearing thereon within a reasonable time. [1965 c 7 § 35.58.370. Prior: 1957 c 213 § 37.]

**35.58.380 Retention of existing personnel.** A metropolitan municipal corporation shall offer to employ every person who on the date such corporation acquires a metropolitan facility is employed in the operation of such facility by a component city or county or by a special district. [1965 c 7 § 35.58.380. Prior: 1957 c 213 § 38.]

*Assumption of labor contracts upon acquisition of transportation system: RCW 35.58.265.*

**35.58.390 Prior employees pension rights preserved.** Where a metropolitan municipal corporation employs a person employed immediately prior thereto by a component city or county, or by a special district, such employee shall be deemed to remain an employee of such city, county, or special district for the purposes of any pension plan of such city, county, or special district, and shall continue to be entitled to all rights and benefits thereunder as if he had remained as an employee of the city, county, or special district, until the metropolitan municipal corporation has provided a pension plan and such employee has elected, in writing, to participate therein.

Until such election, the metropolitan municipal corporation shall deduct from the remuneration of such employee the amount which such employee is or may be required to pay in accordance with the provisions of the plan of such city, county, or special district and the metropolitan municipal corporation shall pay to the city, county, or special district any amounts required to be paid under the provisions of such plan by employer or employee. [1965 c 7 § 35.58.390. Prior: 1957 c 213 § 39.]

*Preservation of pension rights upon acquisition of transportation system: RCW 35.58.265.*

*Public employment, civil service and pensions: Title 41 RCW.*

**35.58.400 Prior employees sick leave and vacation rights preserved.** Where a metropolitan municipal corporation employs a person employed immediately prior thereto by a component city or county or by a special district, the employee shall be deemed to remain an employee of such city, county, or special district for the purposes of any sick leave credit plan of the component city, county, or special district until the metropolitan municipal corporation has established a sick leave credit plan for its employees, whereupon the metropolitan municipal corporation shall place to the credit of the employee the sick leave credits standing to his credit in the plan of such city, county, or special district.

Where a metropolitan municipal corporation employs a person theretofore employed by a component city, county, or by a special district, the metropolitan municipal corporation shall, during the first year of his employment by the metropolitan municipal corporation, provide for such employee a vacation with pay equivalent to that which he would have been entitled if he had remained in the employment of the city, county, or special district. [1965 c 7 § 35.58.400. Prior: 1957 c 213 § 40.]

*Preservation of sick leave, vacation, and other benefits upon acquisition of transportation system: RCW 35.58.265.*

**35.58.410 Budget—Expenditures—Revenue estimates—Requirements for a county assuming the powers of a metropolitan municipal corporation.** (1) On or before the third Monday in June of each year, each metropolitan municipal corporation shall adopt a budget for the following calendar year. Such budget shall include a separate section for each authorized metropolitan function. Expenditures shall be segregated as to operation and maintenance expenses and capital and betterment outlays. Administrative and other expense general to the corporation shall be allocated between the authorized metropolitan functions. The budget shall contain an estimate of all revenues to be collected during the following budget year, including any surplus funds remaining unexpended from the preceding year. The metropolitan council shall not be required to confine capital or betterment expenditures made from bond proceeds or emergency expenditures to items provided in the budget. The affirmative vote of three-fourths of all members of the metropolitan council shall be required to authorize emergency expenditures.

(2) Subsection (1) of this section shall not apply to a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW. This subsection (2) shall apply only to each county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW.

Each county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW shall, on or before the third Monday in June of each year, prepare an estimate of all revenues to be collected during the following calendar year, including any surplus funds remaining unexpended from the preceding year for each authorized metropolitan function.

By June 30 of each year, the county shall adopt the rate for sewage disposal that will be charged to component cities and water-sewer districts during the following budget year.

As long as any general obligation indebtedness remains outstanding that was issued by the metropolitan municipal corporation prior to the assumption by the county, the county shall continue to impose the taxes authorized by RCW 82.14.045 and \*35.58.273(4) at the maximum rates and on all of the taxable events authorized by law. If, despite the continued imposition of those taxes, the estimate of revenues made on or before the third Monday in June shows that estimated revenues will be insufficient to make all debt service payments falling due in the following calendar year on all general obligation indebtedness issued by the metropolitan municipal corporation prior to the assumption by the county of the rights, powers, functions, and obligations of the metropolitan municipal corporation, the remaining amount required to make the debt service payments shall be designated as "supplemental income" and shall be obtained from component cities and component counties as provided under RCW 35.58.420.

The county shall prepare and adopt a budget each year in accordance with applicable general law or county charter. If supplemental income has been designated under this subsection, the supplemental income shall be reflected in the budget

that is adopted. If during the budget year the actual tax revenues from the taxes imposed under the authority of RCW 82.14.045 and \*35.58.273(4) exceed the estimates upon which the supplemental income was based, the difference shall be refunded to the component cities and component counties in proportion to their payments promptly after the end of the budget year. A county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW shall not be required to confine capital or betterment expenditures for authorized metropolitan functions from bond proceeds or emergency expenditures to items provided in the budget. [1999 c 153 § 36; 1998 c 321 § 26 (Referendum Bill No. 49, approved November 3, 1998); 1993 c 240 § 11; 1965 c 7 § 35.58.410. Prior: 1957 c 213 § 41.]

**\*Reviser's note:** RCW 35.58.273 was repealed by 2002 c 6 § 2.

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**Purpose—Severability—1998 c 321:** See notes following RCW 82.14.045.

**Contingent effective dates—1998 c 321 §§ 23-42:** "(2) Sections 23 through 30 and 32 through 42 of this act take effect January 1, 1999, and section 31 of this act takes effect June 30, 2000, if sections 1 through 21 and 44 through 46 of this act are validly submitted to and are approved and ratified by the voters at a general election held in November 1998. If sections 1 through 21 and 44 through 46 of this act are not approved and ratified, sections 23 through 42 of this act are null and void in their entirety." [1998 c 321 § 47 (Referendum Bill No. 49, approved November 3, 1998).]

**35.58.420 Supplemental income payments by component city and county.** Each component city shall pay such proportion of the supplemental income of the metropolitan municipal corporation as the assessed valuation of property within its limits bears to the total assessed valuation of taxable property within the metropolitan area. Each component county shall pay such proportion of such supplemental income as the assessed valuation of the property within the unincorporated area of such county lying within the metropolitan area bears to the total assessed valuation of taxable property within the metropolitan area. In making such determination, the metropolitan council shall use the last available assessed valuations. The metropolitan council shall certify to each component city and county, prior to the fourth Monday in June of each year, the share of the supplemental income to be paid by such component city or county for the next calendar year. The latter shall then include such amount in its budget for the ensuing calendar year, and during such year shall pay to the metropolitan municipal corporation, in equal quarterly installments, the amount of its supplemental income share from whatever sources may be available to it. [1965 c 7 § 35.58.420. Prior: 1957 c 213 § 42.]

**35.58.430 Funds—Disbursements—Treasurer—Expenses—Election expenses.** The treasurer of each component county shall create a separate fund into which shall be paid all money collected from taxes levied by the metropolitan municipal corporation on property in such county and such money shall be forwarded quarterly by the treasurer of each such county to the treasurer of the central county as directed by the metropolitan council. The treasurer of the central county shall act as the treasurer of the metropolitan municipal corporation and shall establish and maintain such

funds as may be authorized by the metropolitan council. Money shall be disbursed from such funds upon warrants drawn by the auditor of the central county as authorized by the metropolitan council. The central county shall be reimbursed by the metropolitan municipal corporation for services rendered by the treasurer and auditor of the central county in connection with the receipt and disbursement of such funds. The expense of all special elections held pursuant to this chapter shall be paid by the metropolitan municipal corporation. [1965 c 7 § 35.58.430. Prior: 1957 c 213 § 43.]

**35.58.450 General obligation bonds—Issuance, sale, form, term, election, payment.** Notwithstanding the limitations of chapter 39.36 RCW and any other statutory limitations otherwise applicable and limiting municipal debt, a metropolitan municipal corporation shall have the power to contract indebtedness and issue general obligation bonds and to pledge the full faith and credit of the corporation to the payment thereof, for any authorized capital purpose of the metropolitan municipal corporation, not to exceed an amount, together with any outstanding nonvoter approved general indebtedness, equal to three-fourths of one percent of the value of the taxable property within the metropolitan municipal corporation, as the term "value of the taxable property" is defined in RCW 39.36.015. A metropolitan municipal corporation may additionally contract indebtedness and issue general obligation bonds, for any authorized capital purpose of a metropolitan municipal corporation, together with any other outstanding general indebtedness, not to exceed an amount equal to five percent of the value of the taxable property within the corporation, as the term "value of the taxable property" is defined in RCW 39.36.015, when a proposition authorizing the indebtedness has been approved by three-fifths of the persons voting on said proposition at said election at which such election the total number of persons voting on such bond proposition shall constitute not less than forty percent of the total number of voters voting within the area of said metropolitan municipal corporation at the last preceding state general election. Such general obligation bonds may be authorized in any total amount in one or more propositions and the amount of such authorization may exceed the amount of bonds which could then lawfully be issued. Such bonds may be issued in one or more series from time to time out of such authorization. The elections shall be held pursuant to RCW 39.36.050.

Whenever the voters of a metropolitan municipal corporation have, pursuant to RCW 84.52.056, approved excess property tax levies to retire such bond issues, both the principal of and interest on such general obligation bonds may be made payable from annual tax levies to be made upon all the taxable property within the metropolitan municipal corporation in excess of the constitutional and/or statutory tax limit. The principal of and interest on any general obligation bond may be made payable from any other taxes or any special assessments which the metropolitan municipal corporation may be authorized to levy or from any otherwise unpledged revenue which may be derived from the ownership or operation of properties or facilities incident to the performance of the authorized function for which such bonds are issued or may be made payable from any combination of the foregoing sources. The metropolitan council may include in the princi-

pal amount of such bond issue an amount for engineering, architectural, planning, financial, legal, urban design and other services incident to acquisition or construction solely for authorized capital purposes.

General obligation bonds shall be issued and sold by the metropolitan council as provided in chapter 39.46 RCW and shall mature in not to exceed forty years from the date of issue. [1993 c 240 § 13; 1984 c 186 § 18; 1983 c 167 § 47; 1973 1st ex.s. c 195 § 24; 1971 ex.s. c 303 § 9; 1970 ex.s. c 56 § 38; 1970 ex.s. c 42 § 13; 1970 ex.s. c 11 § 1. Prior: 1969 ex.s. c 255 § 17; 1969 ex.s. c 232 § 16; 1967 c 105 § 13; 1965 c 7 § 35.58.450; prior: 1957 c 213 § 45.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

*Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.*

**35.58.460 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions.** (1) A metropolitan municipal corporation may issue revenue bonds to provide funds to carry out its authorized metropolitan water pollution abatement, water supply, garbage disposal or transportation purposes, without submitting the matter to the voters of the metropolitan municipal corporation. The metropolitan council shall create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the metropolitan council may obligate the metropolitan municipal corporation to pay such amounts of the gross revenue of the particular utility constructed, acquired, improved, added to, or repaired out of the proceeds of sale of such bonds, as the metropolitan council shall determine and may obligate the metropolitan municipal corporation to pay such amounts out of otherwise unpledged revenue which may be derived from the ownership, use or operation of properties or facilities owned, used or operated incident to the performance of the authorized function for which such bonds are issued or out of otherwise unpledged fees, tolls, charges, tariffs, fares, rentals, special taxes or other sources of payment lawfully authorized for such purpose, as the metropolitan council shall determine. The principal of, and interest on, such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue of such utility or any other revenue, fees, tolls, charges, tariffs, fares, special taxes or other authorized sources pledged to the payment of such bonds.

Such revenue bonds and the interest thereon issued against such fund or funds shall be a valid claim of the owners thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the metropolitan municipal corporation.

Each such revenue bond shall state upon its face that it is payable from such special fund or funds, and all revenue bonds issued under this chapter shall be negotiable securities

within the provisions of the law of this state. Such revenue bonds may be registered either as to principal only or as to principal and interest as provided in RCW 39.46.030, or may be bearer bonds; shall be in such denominations as the metropolitan council shall deem proper; shall be payable at such time or times and at such places as shall be determined by the metropolitan council; shall bear interest at such rate or rates as shall be determined by the metropolitan council; shall be signed by the chairman and attested by the secretary of the metropolitan council, any of which signatures may be facsimile signatures, and the seal of the metropolitan municipal corporation shall be impressed or imprinted thereon; any attached interest coupons shall be signed by the facsimile signatures of said officials.

Such revenue bonds shall be sold in such manner, at such price and at such rate or rates of interest as the metropolitan council shall deem to be for the best interests of the metropolitan municipal corporation, either at public or private sale.

The metropolitan council may at the time of the issuance of such revenue bonds make such covenants with the owners of said bonds as it may deem necessary to secure and guarantee the payment of the principal thereof and the interest thereon, including but not being limited to covenants to set aside adequate reserves to secure or guarantee the payment of such principal and interest, to maintain rates sufficient to pay such principal and interest and to maintain adequate coverage over debt service, to appoint a trustee or trustees for the bond owners to safeguard the expenditure of the proceeds of sale of such bonds and to fix the powers and duties of such trustee or trustees and to make such other covenants as the metropolitan council may deem necessary to accomplish the most advantageous sale of such bonds. The metropolitan council may also provide that revenue bonds payable out of the same source may later be issued on a parity with revenue bonds being issued and sold.

The metropolitan council may include in the principal amount of any such revenue bond issue an amount to establish necessary reserves, an amount for working capital and an amount necessary for interest during the period of construction of any such metropolitan facilities plus six months. The metropolitan council may, if it deems it to be the best interest of the metropolitan municipal corporation, provide in any contract for the construction or acquisition of any metropolitan facilities or additions or improvements thereto or replacements or extensions thereof that payment therefor shall be made only in such revenue bonds at the par value thereof.

If the metropolitan municipal corporation shall fail to carry out or perform any of its obligations or covenants made in the authorization, issuance and sale of such bonds, the owner of any such bond may bring action against the metropolitan municipal corporation and compel the performance of any or all of such covenants.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1993 c 240 § 14; 1983 c 167 § 48; 1974 ex.s. c 70 § 8; 1970 ex.s. c 56 § 39; 1970 ex.s. c 11 § 2; 1969 ex.s. c 255 § 18; 1969 ex.s. c 232 § 17; 1967 c 105 § 14; 1965 c 7 § 35.58.460. Prior: 1957 c 213 § 46.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

*Alternative authority to issue revenue bonds:* RCW 39.46.150, 39.46.160.

*Funds for reserve purposes may be included in issue amount:* RCW 39.44.140.

**35.58.470 Funding, refunding bonds.** The metropolitan council may, by resolution, without submitting the matter to the voters of the metropolitan municipal corporation, provide for the issuance of funding or refunding general obligation bonds to refund any outstanding general obligation bonds or any part thereof at maturity, or before maturity if they are by their terms or by other agreement subject to prior redemption, with the right in the metropolitan council to combine various series and issues of the outstanding bonds by a single issue of funding or refunding bonds, and to issue refunding bonds to pay any redemption premium payable on the outstanding bonds being refunded. The funding or refunding general obligation bonds shall, except as specifically provided in this section, be issued in accordance with the provisions of this chapter with respect to general obligation bonds.

The metropolitan council may, by resolution, without submitting the matter to the voters of the metropolitan municipal corporation, provide for the issuance of funding or refunding revenue bonds to refund any outstanding revenue bonds or any part thereof at maturity, or before maturity if they are by their terms or by agreement subject to prior redemption, with the right in the metropolitan council to combine various series and issues of the outstanding bonds by a single issue of refunding bonds, and to issue refunding bonds to pay any redemption premium payable on the outstanding bonds being refunded. The funding or refunding revenue bonds shall be payable only out of a special fund created out of the gross revenue of the particular utility, and shall be a valid claim only as against such special fund and the amount of the revenue of the utility pledged to the fund. The funding or refunding revenue bonds shall, except as specifically provided in this section, be issued in accordance with the provisions of this chapter with respect to revenue bonds.

The metropolitan council may exchange the funding or refunding bonds at par for the bonds which are being funded or refunded, or it may sell them in such manner, at such price and at such rate or rates of interest as it deems for the best interest of the metropolitan municipal corporation. [1970 ex.s. c 56 § 40; 1969 ex.s. c 232 § 18; 1965 c 7 § 35.58.470. Prior: 1957 c 213 § 47.]

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**35.58.480 Borrowing money from component city or county.** A metropolitan municipal corporation shall have the power when authorized by a majority of all members of the metropolitan council to borrow money from any component city or county and such cities or counties are hereby authorized to make such loans or advances on such terms as may be mutually agreed upon by the legislative bodies of the metropolitan municipal corporation and any such component city or county to provide funds to carry out the purposes of the metropolitan municipal corporation. [1965 c 7 § 35.58.480. Prior: 1957 c 213 § 48.]

(2004 Ed.)

**35.58.490 Interest bearing warrants.** A metropolitan council shall have the power to authorize the issuance of interest bearing warrants on such terms and conditions as the metropolitan council shall provide and to repay the interest bearing warrants with any moneys legally authorized for such purposes, including tax receipts where appropriate. [1993 c 240 § 15; 1965 c 7 § 35.58.490. Prior: 1957 c 213 § 49.]

**35.58.500 Local improvement districts—Utility local improvement districts.** The metropolitan municipal corporation shall have the power to levy special assessments payable over a period of not exceeding twenty years on all property within the metropolitan area specially benefited by any improvement, on the basis of special benefits conferred, to pay in whole, or in part, the damages or costs of any such improvement, and for such purpose may establish local improvement districts and enlarged local improvement districts, issue local improvement warrants and bonds to be repaid by the collection of local improvement assessments and generally to exercise with respect to any improvements which it may be authorized to construct or acquire the same powers as may now or hereafter be conferred by law upon cities. Such local improvement districts shall be created and such special assessments levied and collected and local improvement warrants and bonds issued and sold in the same manner as shall now or hereafter be provided by law for cities. The duties imposed upon the city treasurer under such acts shall be imposed upon the treasurer of the county in which such local improvement district shall be located.

A metropolitan municipal corporation may provide that special benefit assessments levied in any local improvement district may be paid into such revenue bond redemption fund or funds as may be designated by the metropolitan council to secure the payment of revenue bonds issued to provide funds to pay the cost of improvements for which such assessments were levied. If local improvement district assessments shall be levied for payment into a revenue bond fund, the local improvement district created therefor shall be designated a utility local improvement district. A metropolitan municipal corporation that creates a utility local improvement district shall conform with the laws relating to utility local improvement districts created by a city. [1993 c 240 § 16; 1965 c 7 § 35.58.500. Prior: 1957 c 213 § 50.]

*Local improvements, supplemental authority:* Chapter 35.51 RCW.

*Special assessments or taxation for local improvements:* State Constitution Art. 7 § 9.

**35.58.510 Obligations of corporation are legal investments and security for public deposits.** All banks, trust companies, bankers, savings banks, and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, curators, trustees and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a metropolitan municipal corporation pursuant to this chapter. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any

persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities. [1965 c 7 § 35.58.510. Prior: 1957 c 213 § 51.]

**35.58.520 Investment of corporate funds.** A metropolitan municipal corporation shall have the power to invest its funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement, in any investments in which a city is authorized to invest, as provided in RCW 35.39.030. [1993 c 240 § 17; 1965 c 7 § 35.58.520. Prior: 1957 c 213 § 52.]

**35.58.530 Annexation—Requirements, procedure.** Territory located within a component county that is annexed to a component city after the establishment of a metropolitan municipal corporation shall by such act be annexed to the metropolitan municipal corporation. Territory within a metropolitan municipal corporation may be annexed to a city which is not within such metropolitan municipal corporation in the manner provided by law and in such event either (1) such city may be annexed to such metropolitan municipal corporation by ordinance of the legislative body of the city concurred in by resolution of the metropolitan council, or (2) if such city shall not be so annexed such territory shall remain within the metropolitan municipal corporation unless such city shall by resolution of its legislative body request the withdrawal of such territory subject to any outstanding indebtedness of the metropolitan corporation and the metropolitan council shall by resolution consent to such withdrawal.

Any territory located within a component county that is contiguous to a metropolitan municipal corporation and lying wholly within an incorporated city or town may be annexed to such metropolitan municipal corporation by ordinance of the legislative body of such city or town requesting such annexation concurred in by resolution of the metropolitan council.

Any other territory located within a component county that is adjacent to a metropolitan municipal corporation may be annexed thereto by vote of the qualified electors residing in the territory to be annexed, in the manner provided in this chapter. An election to annex such territory may be called pursuant to a petition or resolution in the following manner:

(1) A petition calling for such an election shall be signed by at least four percent of the qualified voters residing within the territory to be annexed and shall be filed with the auditor of the central county.

(2) A resolution calling for such an election may be adopted by the metropolitan council.

Any resolution or petition calling for such an election shall describe the boundaries of the territory to be annexed, and state that the annexation of such territory to the metropolitan municipal corporation will be conducive to the welfare and benefit of the persons or property within the metropolitan municipal corporation and within the territory proposed to be annexed.

Upon receipt of such a petition, the auditor shall examine the same and certify to the sufficiency of the signatures thereon. Within thirty days following the receipt of such petition, the auditor shall transmit the same to the metropolitan council, together with his certificate as to the sufficiency thereof. [1993 c 240 § 18; 1969 ex.s. c 135 § 3; 1967 c 105 § 15; 1965 c 7 § 35.58.530. Prior: 1957 c 213 § 53.]

**35.58.540 Annexation—Hearings—Inclusion, exclusion of territory—Boundaries—Calling election.** Upon receipt of a duly certified petition calling for an election on the annexation of territory to a metropolitan municipal corporation, or if the metropolitan council shall determine without a petition being filed, that an election on the annexation of any adjacent territory shall be held, the metropolitan council shall fix a date for a public hearing thereon which shall be not more than sixty nor less than forty days following the receipt of such petition or adoption of such resolution. Notice of such hearing shall be published once a week for at least four consecutive weeks in one or more newspapers of general circulation within the territory proposed to be annexed. The notice shall contain a description of the boundaries of the territory proposed to be annexed and shall state the time and place of the hearing thereon and the fact that any changes in the boundaries of such territory will be considered at such time and place. At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the proposed annexation. The metropolitan council may make such changes in the boundaries of the territory proposed to be annexed as it shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands and may not delete a portion of any city. If the metropolitan council shall determine that any additional territory should be included in the territory to be annexed, a second hearing shall be held and notice given in the same manner as for the original hearing. The metropolitan council may adjourn the hearing on the proposed annexation from time to time not exceeding thirty days in all. At the next regular meeting following the conclusion of such hearing, the metropolitan council shall, if it finds that the annexation of such territory will be conducive to the welfare and benefit of the persons and property therein and the welfare and benefit of the persons and property within the metropolitan municipal corporation, adopt a resolution fixing the boundaries of the territory to be annexed and causing to be called a special election on such annexation to be held not more than one hundred twenty days nor less than sixty days following the adoption of such resolution. [1965 c 7 § 35.58.540. Prior: 1957 c 213 § 54.]

**35.58.550 Annexation—Election—Favorable vote.** An election on the annexation of territory to a metropolitan municipal corporation shall be conducted and canvassed in the same manner as provided for the conduct of an election on the formation of a metropolitan municipal corporation except that notice of such election shall be published in one or more newspapers of general circulation in the territory proposed to be annexed and the ballot proposition shall be in substantially the following form:

ANNEXATION TO (here insert name of metropolitan municipal corporation).

"Shall the territory described in a resolution of the metropolitan council of (here insert name of metropolitan municipal corporation) adopted on the . . . . ., 19. . . , be annexed to such incorporation?

YES . . . . . 
NO . . . . .

If a majority of those voting on such proposition vote in favor thereof, the territory shall thereupon be annexed to the metropolitan municipal corporation. [1965 c 7 § 35.58.550. Prior: 1957 c 213 § 55.]

Canvassing returns, generally: Chapter 29A.60 RCW.
Conduct of elections—Canvass: RCW 29A.60.010.

35.58.560 Taxes—Counties or cities not to impose on certain operations—Credits or offsets against state taxes—Refund of motor vehicle fuel taxes paid. No county or city shall have the right to impose a tax upon the gross revenues derived by a metropolitan municipal corporation from the operation of a metropolitan sewage disposal, water supply, garbage disposal or public transportation system.

A metropolitan municipal corporation may credit or offset against the amount of any tax which is levied by the state during any calendar year upon the gross revenues derived by such metropolitan municipal corporation from the performance of any authorized function, the amount of any expenditures made from such gross revenues by such metropolitan municipal corporation during the same calendar year or any year prior to May 21, 1971 in planning for or performing the function of metropolitan public transportation and including interest on any moneys advanced for such purpose from other funds and to the extent of such credit a metropolitan municipal corporation may expend such revenues for such purposes.

A metropolitan municipal corporation authorized to perform the function of metropolitan public transportation and engaged in the operation of an urban passenger transportation system shall receive a refund of the amount of the motor vehicle fuel tax levied by the state and paid on each gallon of motor vehicle fuel used, whether such vehicle fuel tax has been paid either directly to the vendor from whom the motor vehicle fuel was purchased or indirectly by adding the amount of such tax to the price of such fuel: PROVIDED, That no refunds authorized by this section shall be granted on fuel used by any urban transportation vehicle on any trip where any portion of said trip is more than six road miles beyond the corporate limits of the metropolitan municipal corporation in which said trip originated. [1971 ex.s. c 303 § 10; 1967 c 105 § 16.]

35.58.570 Sewage facilities—Capacity charge. (1) A metropolitan municipal corporation that is engaged in the transmission, treatment, and disposal of sewage may impose a capacity charge on users of the metropolitan municipal corporation's sewage facilities when the user connects, reconnects, or establishes a new service to sewer facilities of a city, county, or special district that discharges into the metropol-

tan facilities. The capacity charge shall be based upon the cost of the sewage facilities' excess capacity that is necessary to provide sewerage treatment for new users to the system.

(2) The capacity charge is a monthly charge reviewed and approved annually by the metropolitan council. A metropolitan municipal corporation may charge property owners seeking to connect to the sewage facilities of the metropolitan municipal corporation as a condition to granting the right to so connect, in addition to the cost of such connection, such reasonable capacity charge as the legislative body of the metropolitan municipal corporation shall determine proper in order that such property owners shall bear their equitable share of the cost of such system. The equitable share may include interest charges applied from the date of construction of the sewage facilities until the connection, or for a period not to exceed ten years, at a rate commensurate with the rate of interest applicable to the metropolitan municipal corporation at the time of construction or major rehabilitation of the sewage facilities, or at the time of installation of the sewer lines to which the property owner is seeking to connect but not to exceed ten percent per year: PROVIDED, That the aggregate amount of interest shall not exceed the equitable share of the cost of the sewage facilities allocated to such property owners. Capacity charges collected shall be considered revenue of the sewage facilities.

(3) The council of the metropolitan municipal corporation shall enforce the collection of the capacity charge in the same manner provided for the collection, enforcement, and payment of rates and charges for water-sewer districts provided in RCW 57.08.081. At least thirty days before commencement of an action to foreclose a lien for a capacity charge, the metropolitan municipal corporation shall send written notice of delinquency in payment of the capacity charge to any first mortgage or deed of trust holder of record at the address of record. [2000 c 161 § 1; 1996 c 230 § 1602; 1989 c 389 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

35.58.900 Liberal construction. The rule of strict construction shall have no application to this chapter, but the same shall be liberally construed in all respects in order to carry out the purposes and objects for which this chapter is intended. [1965 c 7 § 35.58.900. Prior: 1957 c 213 § 56.]

35.58.911 Prior proceedings validated, ratified, approved and confirmed. All proceedings which have been taken prior to the date \*this 1967 amendatory act takes effect for the purpose of financing or aiding in the financing of any work, undertaking or project by any metropolitan municipal corporation, including all proceedings for the authorization and issuance of bonds and for the sale, execution, and delivery thereof, are hereby validated, ratified, approved, and confirmed, notwithstanding any lack of power (other than constitutional) of such metropolitan municipal corporation or the governing body or officers thereof, to authorize and issue such bonds, or to sell, execute, or deliver the same and notwithstanding any defects or irregularities (other than constitutional) in such proceedings. [1967 c 105 § 17.]

**\*Reviser's note:** The effective date of "this 1967 amendatory act" [1967 c 105] is March 21, 1967; see preface to 1967 session laws. For codification of 1967 c 105, see Codification Tables, Volume 0.

**35.58.920 Severability—1967 c 105.** If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1967 amendatory act, or the application of the provision to other persons or circumstances is not affected. [1967 c 105 § 18.]

**35.58.930 Severability—1971 ex.s. c 303.** If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 303 § 11.]

**35.58.931 Severability—1974 ex.s. c 70.** If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 70 § 9.]

## Chapter 35.59 RCW

### MULTI-PURPOSE COMMUNITY CENTERS

#### Sections

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**35.59.010 Definitions.** "Municipality" as used in this chapter means any county, city or town of the state of Washington.

"Government agency" as used in this chapter means the federal government or any agency thereof, or the state or any agency, subdivision, taxing district or municipal corporation thereof other than a county, city or town.

"Person" as used in this chapter means any private corporation, partnership, association or individual.

"Multi-purpose community center" as used in this chapter means the lands, interests in lands, property, property rights, equipment, buildings, structures and other improvements developed as an integrated, multi-purpose, public facility on a single site or immediately adjacent sites for the housing and furnishing of any combination of the following community or public services or facilities: Administrative, legislative or judicial offices and chambers of any municipality, public health facilities, public safety facilities including without limitation, adult and juvenile detention facilities, fire and police stations, public halls, auditoria, libraries and

museums, public facilities for the teaching, practice or exhibition of arts and crafts, educational facilities, playfields, playgrounds, parks, indoor and outdoor sports and recreation facilities. The term multi-purpose community center shall also mean and include walks, ramps, bridges, terminal and parking facilities for private vehicles and public transportation vehicles and systems, utilities, accessories, landscaping, and appurtenances incident to and necessary for such centers. [1967 c 110 § 1.]

**Effective date—1967 c 110:** "This act shall take effect on June 9, 1967." [1967 c 110 § 13.]

**35.59.020 Legislative finding—Purposes for which authority granted may be exercised.** The legislature finds that in many areas of the state local services and facilities can be more effectively and economically provided by combining two or more services and/or facilities in a single multi-purpose community center or a system of such centers. Any municipality shall have and exercise the authority and powers granted by this chapter whenever it appears to the legislative body of such municipality that the acquisition, construction, development and operation of a multi-purpose community center or a system of such centers will accomplish one or more of the following: Reduce costs of land acquisition, construction, maintenance or operation for affected public services or facilities; avoid duplication of structures, facilities or personnel; improve communication and coordination between departments of a municipality or governmental agency or between municipalities and governmental agencies; make local public services or facilities more convenient or useful to the residents and citizens of such municipality. [1967 c 110 § 2.]

**35.59.030 Acquisition, construction, operation, etc., of community centers authorized.** Any municipality is authorized either individually or jointly with any other municipality or municipalities or any governmental agency or agencies, or any combination thereof, to acquire by purchase, condemnation, gift or grant, to lease as lessee, and to construct, install, add to, improve, replace, repair, maintain, operate and regulate the use of multi-purpose community centers located within such municipality, and to pay for any investigations and any engineering, planning, financial, legal and professional services incident to the development and operation of such multi-purpose community centers. [1967 c 110 § 3.]

**35.59.040 Conveyance or lease of lands or facilities to other municipality for community center development—Participation in financing.** Any municipality, and any agency, subdivision, taxing district or municipal corporation of the state is authorized to convey or lease any lands, properties or facilities to any other municipality for the development by such other municipality of a multi-purpose community center or a system of such centers or to provide for the joint use of such lands, properties or facilities or any other facilities of a multi-purpose community center, and is authorized to participate in the financing of all or any part of such multi-purpose community center or system of such centers on such terms as may be fixed by agreement between the respec-

tive legislative bodies without submitting the matter to a vote of the electors thereof, unless the provisions of the Constitution or laws of this state applicable to the incurring of indebtedness shall require such submission. [1967 c 110 § 4.]

*Joint operations by municipal corporations, deposit and control of funds: RCW 43.09.285.*

**35.59.050 Powers of condemnation.** The accomplishment of the objectives authorized by this chapter is declared to be a strictly public purpose of the municipality or municipalities authorized to perform the same. Any such municipality shall have the power to acquire by condemnation and purchase any lands and property rights within its boundaries which are necessary to carry out the purposes authorized by this chapter. Such right of eminent domain shall be exercised by the legislative body of each such municipality in the manner provided by applicable general law. [1967 c 110 § 5.]

**35.59.060 Appropriation and expenditure of public moneys, issuance of general obligation bonds authorized—Procedure.** To carry out the purposes of this chapter any municipality shall have the power to appropriate and/or expend any public moneys available therefor and to issue general obligation bonds within the limitations now or hereafter prescribed by the Constitution and laws of this state. Such general obligation bonds shall be issued and sold as provided in chapter 39.46 RCW. If the governing body of any municipality shall submit a proposition for the approval of general obligation bonds at any general or special election and shall declare in the ordinance or resolution setting forth such proposition that its purpose is the creation of a single integrated multi-purpose community center or a city-wide or county-wide system of such centers, all pursuant to this chapter, and that the creation of such center or system of centers constitutes a single purpose, such declaration shall be presumed to be correct and, upon the issuance of the bonds, such presumption shall become conclusive. Any such election shall be held pursuant to RCW 39.36.050. [1984 c 186 § 19; 1983 c 167 § 49; 1967 c 110 § 6.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.59.070 Revenue bonds.** (1) To carry out the purposes authorized by this chapter the legislative body of any municipality shall have the power to issue revenue bonds, and to create a special fund or funds for the sole purpose of paying the principal of and interest on such bonds into which fund or funds the legislative body may obligate the municipality to pay all or part of the revenues derived from any one or more facilities or properties which will form part of the multi-purpose community center. The provisions of chapter 35.41 RCW not inconsistent with this chapter shall apply to the issuance and retirement of any revenue bonds issued for the purposes authorized in this chapter and for such purposes any municipality shall have and may exercise the powers, duties, and functions incident thereto held by cities and towns under such chapter 35.41 RCW. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. The legislative body of any municipality may fix the denominations of such bonds in any amount and

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the manner of executing such bonds, and may take such action as may be necessary and incidental to the issuance of such bonds and the retirement thereof.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 50; 1967 c 110 § 7.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.59.080 Lease or contract for use or operation of facilities.** The legislative body of any municipality owning or operating a multi-purpose community center acquired or developed pursuant to this chapter shall have power to lease to any municipality, governmental agency or person, or to contract for the use or operation by any municipality, governmental agency or person, of all or any part of the multi-purpose community center facilities authorized by this chapter, for such period and under such terms and conditions and upon such rentals, fees and charges as such legislative body may determine, and may pledge all or any portion of such rentals, fees and charges and any other revenue derived from the ownership and/or operation of any facilities of a multi-purpose community center to pay and to secure the payment of general obligation bonds and/or revenue bonds of such municipality issued for multi-purpose community center purposes. [1967 c 110 § 8.]

**35.59.090 Counties authorized to establish community centers.** Counties may establish multi-purpose community centers, pursuant to this chapter, in unincorporated areas and/or within cities or towns: PROVIDED, That no such center shall be located in any city or town without the prior consent of the legislative body of such city or town. [1967 c 110 § 9.]

**35.59.100 Prior proceedings validated and ratified.** All proceedings which have been taken prior to the date this chapter takes effect for the purpose of financing or aiding in the financing of any work, undertaking or project authorized in this chapter by any municipality, including all proceedings for the authorization and issuance of bonds and for the sale, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such municipality or the legislative body or officers thereof to authorize and issue such bonds, or to sell, execute, or deliver the same and notwithstanding any defects or irregularities (other than constitutional) in such proceedings. [1967 c 110 § 10.]

**35.59.110 Powers and authority conferred deemed additional and supplemental.** The powers and authority conferred upon municipalities under the provisions of this chapter, shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of such municipalities. [1967 c 110 § 11.]

**35.59.900 Severability—1967 c 110.** If any provision of this act, or its application to any person or circumstance is

held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 c 110 § 12.]

### Chapter 35.60 RCW

#### WORLD FAIRS OR EXPOSITIONS— PARTICIPATION BY MUNICIPALITIES

##### Sections

35.60.010	"Municipality" defined.
35.60.020	Participation, exercise of powers declared public purpose and necessity.
35.60.030	Participation authorized—Powers—Costs.
35.60.040	Bonds—Laws applicable to authorization and issuance.
35.60.050	Authorization to appropriate funds and levy taxes.
35.60.060	Cooperation between municipalities—Use of facilities after conclusion of fair or exposition—Intergovernmental disposition of property.
35.60.070	Chapter supplemental to other laws.

**35.60.010 "Municipality" defined.** "Municipality" as used in this chapter, means any political subdivision or municipal corporation of the state. [1965 c 7 § 35.60.010. Prior: 1961 c 149 § 1; prior: 1961 c 39 § 1.]

*State participation in world fair and state international trade fairs: RCW 43.31.800 through 43.31.850.*

**35.60.020 Participation, exercise of powers declared public purpose and necessity.** The participation of any municipality in any world fair or exposition, whether held within the boundaries of such municipality or within the boundaries of another municipality; the purchase, lease, or other acquisition of necessary lands therefor; the acquisition, lease, construction, improvements, maintenance, and equipping of buildings or other structures upon such lands or other lands; the operation and maintenance necessary for such participation, and the exercise of any other powers herein granted to such municipalities, are hereby declared to be public, governmental, county and municipal functions, exercised for a public purpose, and matters of public necessity, and such lands and other property acquired, constructed, improved, maintained, equipped, used, and disposed of by such municipalities in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired, constructed, improved, maintained, equipped, used, and disposed of for public, governmental, county, and municipal purposes and as a matter of public necessity. [1965 c 7 § 35.60.020. Prior: 1961 c 149 § 2; prior: 1961 c 39 § 2.]

**35.60.030 Participation authorized—Powers—Costs.** Municipalities are authorized to participate in any world fair or exposition to be held within the state by the state or any political subdivision or municipal corporation thereof, whether held within the boundaries of such municipality or within the boundaries of another municipality. Any municipality so participating is authorized, through its governing authorities, to purchase, lease, or otherwise acquire property, real or personal; to construct, improve, maintain and equip buildings or other structures; and expend moneys for investigations, planning, operations, and maintenance necessary for such participation.

The cost of any such acquisition, construction, improvement, maintenance, equipping, investigations, planning,

operation, or maintenance necessary for such participation may be paid for by appropriation of moneys available therefor, gifts, or wholly or partly from the proceeds of bonds of the municipality, as the governing authority of the municipality may determine. [1965 c 7 § 35.60.030. Prior: 1961 c 149 § 3; prior: 1961 c 39 § 3.]

**35.60.040 Bonds—Laws applicable to authorization and issuance.** Any bonds to be issued by any municipality pursuant to the provisions of RCW 35.60.030, shall be authorized and issued in the manner and within the limitations prescribed by the Constitution and laws of this state or charter of the municipality for the issuance and authorization of bonds thereof for public purposes generally and secured by a general tax levy as provided by law. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 20; 1983 c 167 § 51; 1965 c 7 § 35.60.040. Prior: 1961 c 149 § 4; prior: 1961 c 39 § 4.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.60.050 Authorization to appropriate funds and levy taxes.** The governing bodies having power to appropriate moneys within such municipalities for the purpose of purchasing, leasing or otherwise acquiring property, constructing, improving, maintaining, and equipping buildings or other structures, and the investigations, planning, operation or maintenance necessary to participation in any such world fair or exposition, are hereby authorized to appropriate and cause to be raised by taxation or otherwise in such municipalities, moneys sufficient to carry out such purpose. [1965 c 7 § 35.60.050. Prior: 1961 c 149 § 5; prior: 1961 c 39 § 5.]

**35.60.060 Cooperation between municipalities—Use of facilities after conclusion of fair or exposition—Intergovernmental disposition of property.** In any case where the participation of a municipality includes the construction of buildings or other structures on lands of another municipality, the governing authorities constructing such buildings or structures shall endeavor to cooperate with such other municipality for the construction and maintenance of such buildings or structures to a standard of health and safety common in the county where the world fair or exposition is being or will be held; and shall cooperate with such other municipality in any comprehensive plans it may promulgate for the general construction and maintenance of said world fair or exposition and utilization of the grounds and buildings or structures after the conclusion of such world fair or exposition to the end that a reasonable, economic use of said buildings or structures shall be returned for the life of said buildings or structures.

The governing authorities of any municipality are hereby authorized and empowered to sell, exchange, transfer, lease or otherwise dispose of any property, real or personal, acquired or constructed for the purpose of participation in such fair or exposition, in accordance with the provisions of RCW 39.33.010. [1965 c 7 § 35.60.060. Prior: 1961 c 149 § 6; prior: 1961 c 39 § 6.]

**35.60.070 Chapter supplemental to other laws.** The powers and authority conferred upon municipalities under the provisions of this chapter, shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of such municipalities. [1965 c 7 § 35.60.070. Prior: 1961 c 149 § 7; prior: 1961 c 39 § 7.]

### Chapter 35.61 RCW

## METROPOLITAN PARK DISTRICTS

#### Sections

35.61.001	Actions subject to review by boundary review board.
35.61.010	Creation—Territory included.
35.61.020	Election—Resolution or petition—Area.
35.61.030	Election—Review by boundary review board—Question stated.
35.61.040	Election—Creation of district.
35.61.050	Composition of board—Election of commissioners—Terms—Vacancies.
35.61.090	Elections—Laws governing.
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35.61.135	Contracts—Competitive bidding—Small works roster—Exemption.
35.61.137	Community revitalization financing—Public improvements.
35.61.140	Park commissioners—Civil service for employees.
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35.61.280	Territorial annexation—Election—Result.
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35.61.310	Dissolution.
35.61.315	Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.
35.61.350	Moorage facilities—Regulations authorized—Port charges, delinquency—Abandoned vessels, public sale.
35.61.360	Withdrawal or reannexation of areas.
35.61.370	Park district containing city with population over one hundred thousand—May commission police officers.

#### Acquisition of

*land for and operation of public parks, beaches or camps:* RCW 67.20.010.

*real or personal property for park purposes, conditional sales contracts:* RCW 39.30.010.

*Appeal of assessments and reassessments:* RCW 35.44.200 through 35.44.270.

*Contracts with community service organizations for public improvements:* RCW 35.21.278.

*Limitations upon indebtedness:* State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.

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*Local governmental organizations, actions affecting boundaries, etc., review by boundary review board:* Chapter 36.93 RCW.

*Metropolitan park district property subject to assessment:* RCW 35.44.170.

*Park and recreation districts:* Chapter 36.69 RCW.

*Public bonds, form, terms of sale, payment, etc.:* Chapter 39.44 RCW.

*Shorelands, parks or playgrounds, application, grant or exchange:* RCW 79.94.175, 79.94.181.

**35.61.001 Actions subject to review by boundary review board.** The creation of a metropolitan park district, and an annexation by, or dissolution or disincorporation of, a metropolitan park district may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 31.]

**35.61.010 Creation—Territory included.** A metropolitan park district may be created for the management, control, improvement, maintenance, and acquisition of parks, parkways, boulevards, and recreational facilities. A metropolitan park district may include territory located in portions or all of one or more cities or counties, or one or more cities and counties, when created or enlarged as provided in this chapter. [2002 c 88 § 1; 1994 c 81 § 60; 1985 c 416 § 1; 1965 c 7 § 35.61.010. Prior: 1959 c 45 § 1; 1943 c 264 § 1; Rem. Supp. 1943 § 6741-1; prior: 1907 c 98 § 1; RRS § 6720.]

**Validating—1943 c 264:** "Acts of Metropolitan Park District Commissioners, and of the officers, employees and agents of Metropolitan Park Districts heretofore performed in good faith in accordance with the statutes which are hereby re-enacted, are hereby validated, and all assessments, levies and collections and all proceedings to assess, levy and collect as well as all debts, contracts and obligations heretofore made or incurred by or in favor of any Metropolitan Park District heretofore at any time existing and all bonds or other obligations thereof are hereby declared to be legal and valid and of full force and effect." [1943 c 264 § 23.]

**35.61.020 Election—Resolution or petition—Area.** (1) When proposed by citizen petition or by local government resolution as provided in this section, a ballot proposition authorizing the creation of a metropolitan park district shall be submitted by resolution to the voters of the area proposed to be included in the district at any general election, or at any special election which may be called for that purpose.

(2) The ballot proposition shall be submitted if the governing body of each city in which all or a portion of the proposed district is located, and the legislative authority of each county in which all or a portion of the proposed district is located within the unincorporated portion of the county, each adopts a resolution submitting the proposition to create a metropolitan park district.

(3) As an alternative to the method provided under subsection (2) of this section, the ballot proposition shall be submitted if a petition proposing creation of a metropolitan park district is submitted to the county auditor of each county in which all or a portion of the proposed district is located that is signed by at least fifteen percent of the registered voters residing in the area to be included within the proposed district. Where the petition is for creation of a district in more than one county, the petition shall be filed with the county auditor of the county having the greater area of the proposed district, and a copy filed with each other county auditor of the other counties covering the proposed district.

Territory by virtue of its annexation to any city whose territory lies entirely within a park district shall be deemed to be within the limits of the metropolitan park district. Such an extension of a park district's boundaries shall not be subject to review by a boundary review board independent of the board's review of the city annexation of territory. [2002 c 88 § 2; 1965 c 7 § 35.61.020. Prior: 1943 c 264 § 2, part; Rem. Supp. 1943 § 6741-2, part; prior: 1909 c 131 § 1; 1907 c 98 § 2, part; RRS § 6721, part.]

**35.61.030 Election—Review by boundary review board—Question stated.** (1) Except as provided in subsection (2) of this section for review by a boundary review board, the ballot proposition authorizing creation of a metropolitan park district that is submitted to voters for their approval or rejection shall appear on the ballot of the next general election or at the next special election date specified under \*RCW 29.13.020 occurring sixty or more days after the last resolution proposing the creation of the park district is adopted or the date the county auditor certifies that the petition proposing the creation of the park district contains sufficient valid signatures. Where the petition or copy thereof is filed with two or more county auditors in the case of a proposed district in two or more counties, the county auditors shall confer and issue a joint certification upon finding that the required number of signatures on the petition has been obtained.

(2) Where the proposed district is located wholly or in part in a county in which a boundary review board has been created, notice of the proposal to create a metropolitan park district shall be filed with the boundary review board as provided under RCW 36.93.090 and the special election at which a ballot proposition authorizing creation of the park district shall be held on the special election date specified under \*RCW 29.13.020 that is sixty or more days after the date the boundary review board is deemed to have approved the proposal, approves the proposal, or modifies and approves the proposal. The creation of a metropolitan park district is not subject to review by a boundary review board if the proposed district only includes one or more cities and in such cases the special election at which a ballot proposition authorizing creation of the park district shall be held as if a boundary review board does not exist in the county or counties.

(3) The petition proposing the creation of a metropolitan park district, or the resolution submitting the question to the voters, shall choose and describe the composition of the initial board of commissioners of the district that is proposed under RCW 35.61.050 and shall choose a name for the district. The proposition shall include the following terms:

"For the formation of a metropolitan park district to be governed by [insert board composition described in ballot proposition]."

"Against the formation of a metropolitan park district."

[2002 c 88 § 3; 1985 c 469 § 32; 1965 c 7 § 35.61.030. Prior: 1943 c 264 § 2, part; Rem. Supp. 1943 § 6741-2, part; prior: 1909 c 131 § 1; 1907 c 98 § 2, part; RRS § 6721, part.]

\*Reviser's note: RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**35.61.040 Election—Creation of district.** If a majority of the voters voting on the ballot proposition authorizing the creation of the metropolitan park district vote in favor of the formation of a metropolitan park district, the metropolitan park district shall be created as a municipal corporation effective immediately upon certification of the election results and its name shall be that designated in the ballot proposition. [2002 c 88 § 4; 1965 c 7 § 35.61.040. Prior: 1943 c 264 § 3, part; Rem. Supp. 1943 § 6741-3, part; prior: 1909 c 131 § 2; 1907 c 98 § 3, part; RRS § 6722, part.]

**35.61.050 Composition of board—Election of commissioners—Terms—Vacancies.** (1) The resolution or petition submitting the ballot proposition shall designate the composition of the board of metropolitan park commissioners from among the alternatives provided under subsections (2) through (4) of this section. The ballot proposition shall clearly describe the designated composition of the board.

(2) The commissioners of the district may be selected by election, in which case at the same election at which the proposition is submitted to the voters as to whether a metropolitan park district is to be formed, five park commissioners shall be elected. The election of park commissioners shall be null and void if the metropolitan park district is not created. Candidates shall run for specific commission positions. No primary shall be held to nominate candidates. The person receiving the greatest number of votes for each position shall be elected as a commissioner. The staggering of the terms of office shall occur as follows: (a) The two persons who are elected receiving the two greatest numbers of votes shall be elected to six-year terms of office if the election is held in an odd-numbered year or five-year terms of office if the election is held in an even-numbered year; (b) the two persons who are elected receiving the next two greatest numbers of votes shall be elected to four-year terms of office if the election is held in an odd-numbered year or three-year terms of office if the election is held in an even-numbered year; and (c) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners shall take office immediately when they are elected and qualified, and for purposes of computing their terms of office the terms shall be assumed to commence on the first day of January in the year after they are elected. Thereafter, all commissioners shall be elected to six-year terms of office. All commissioners shall serve until their respective successors are elected and qualified and assume office in accordance with \*RCW 29.04.170. Vacancies shall occur and shall be filled as provided in chapter 42.12 RCW.

(3) In a district wholly located within a city or within the unincorporated area of a county, the governing body of such city or legislative authority of such county may be designated to serve in an ex officio capacity as the board of metropolitan park commissioners, provided that when creation of the district is proposed by citizen petition, the city or county approves by resolution such designation.

(4) Where the proposed district is located within more than one city, more than one county, or any combination of cities and counties, each city governing body and county legislative authority may be designated to collectively serve ex officio as the board of metropolitan park commissioners through selection of one or more members from each to serve as the board, provided that when creation of the district is proposed by citizen petition, each city governing body and county legislative authority approve by resolution such designation. Within six months of the date of certification of election results approving creation of the district, the size and membership of the board shall be determined through interlocal agreement of each city and county. The interlocal agreement shall specify the method for filling vacancies on the board.

(5) Metropolitan park districts created by a vote of the people prior to June 13, 2002, may not change the composition and method of selection of their governing authority without approval of the voters. Should such a change be desired, the board of park commissioners shall submit a ballot proposition to the voters of the metropolitan park district. [2002 c 88 § 5; 1994 c 223 § 23; 1979 ex.s. c 126 § 24; 1965 c 7 § 35.61.050. Prior: 1943 c 264 § 3, part; Rem. Supp. 1943 § 6741-3, part; prior: 1909 c 131 § 2; 1907 c 98 § 3, part; RRS § 6722, part.]

**\*Reviser's note:** RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**35.61.090 Elections—Laws governing.** The manner of holding any general or special election in a metropolitan park district shall be in accordance with the general election laws of this state insofar as they are not inconsistent with the provisions of this chapter. [1985 c 416 § 3; 1965 c 7 § 35.61.090. Prior: 1943 c 264 § 3, part; Rem. Supp. 1943 § 6741-3, part; prior: 1909 c 131 § 2; 1907 c 98 § 3, part; RRS § 6722, part.]

*Elections: Title 29A RCW.*

**35.61.100 Indebtedness limit—Without popular vote.** Every metropolitan park district through its board of commissioners may contract indebtedness and evidence such indebtedness by the issuance and sale of warrants, short-term obligations as provided by chapter 39.50 RCW, or general obligation bonds, for park, boulevard, aviation landings, playgrounds, and parkway purposes, and the extension and maintenance thereof, not exceeding, together with all other outstanding nonvoter approved general indebtedness, one-quarter of one percent of the value of the taxable property in such metropolitan park district, as the term "value of the taxable property" is defined in RCW 39.36.015. General obligation bonds shall not be issued with a maximum term in excess of twenty years. Such general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1993 c 247 § 1; 1989 c 319 § 2; 1984 c 186 § 21; 1983 c 61 § 1; 1970 ex.s. c 42 § 14; 1965 c 7 § 35.61.100. Prior: 1943 c 264 § 6; Rem. Supp. 1943 § 6741-6; prior: 1927 c 268 § 1; 1907 c 98 § 6; RRS § 6725.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

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### **35.61.110 Indebtedness limit—With popular vote.**

Every metropolitan park district may contract indebtedness not exceeding in amount, together with existing voter-approved indebtedness and nonvoter-approved indebtedness, equal to two and one-half percent of the value of the taxable property in said district, as the term "value of the taxable property" is defined in RCW 39.36.015, whenever three-fifths of the voters voting at an election held in the metropolitan park district assent thereto; the election may be either a special or a general election, and the park commissioners of the metropolitan park district may cause the question of incurring such indebtedness, and issuing negotiable bonds of such metropolitan park district, to be submitted to the qualified voters of the district at any time. [1989 c 319 § 3; 1970 ex.s. c 42 § 15; 1965 c 7 § 35.61.110. Prior: 1943 c 264 § 7; Rem. Supp. 1943 § 6741-7; prior: 1907 c 98 § 7; RRS § 6726.]

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

*Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.*

*Validation requirement: RCW 39.40.010.*

**35.61.115 Revenue bonds.** A metropolitan park district may issue and sell revenue bonds as provided in chapter 39.46 RCW to be made payable from the operating revenues of the metropolitan park district. [1989 c 319 § 1.]

**35.61.120 Park commissioners as officers of district—Organization.** The officers of a metropolitan park district shall be a board of park commissioners consisting of five members. The board shall annually elect one of their number as president and another of their number as clerk of the board. [1965 c 7 § 35.61.120. Prior: 1943 c 264 § 4, part; Rem. Supp. 1943 § 6741-4, part; prior: 1919 c 135 § 1, part; 1907 c 98 § 4; RRS § 6723, part.]

**35.61.130 Park commissioners—Authority generally.** A metropolitan park district has the right of eminent domain, and may purchase, acquire and condemn lands lying within or without the boundaries of said park district, for public parks, parkways, boulevards, aviation landings and playgrounds, and may condemn such lands to widen, alter and extend streets, avenues, boulevards, parkways, aviation landings and playgrounds, to enlarge and extend existing parks, and to acquire lands for the establishment of new parks, boulevards, parkways, aviation landings and playgrounds. The right of eminent domain shall be exercised and instituted pursuant to resolution of the board of park commissioners and conducted in the same manner and under the same procedure as is or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: PROVIDED, HOWEVER, Funds to pay for condemnation allowed by this section shall be raised only as specified in this chapter. The board of park commissioners shall have power to employ counsel, and to regulate, manage and control the parks, parkways, boulevards, streets, avenues, aviation landings and playgrounds under its control, and to provide for park policemen, for a secretary of the board of park commis-

sioners and for all necessary employees, to fix their salaries and duties. The board of park commissioners shall have power to improve, acquire, extend and maintain, open and lay out, parks, parkways, boulevards, avenues, aviation landings and playgrounds, within or without the park district, and to authorize, conduct and manage the letting of boats, or other amusement apparatus, the operation of bath houses, the purchase and sale of foodstuffs or other merchandise, the giving of vocal or instrumental concerts or other entertainments, the establishment and maintenance of aviation landings and playgrounds, and generally the management and conduct of such forms of recreation or business as it shall judge desirable or beneficial for the public, or for the production of revenue for expenditure for park purposes; and may pay out moneys for the maintenance and improvement of any such parks, parkways, boulevards, avenues, aviation landings and playgrounds as now exist, or may hereafter be acquired, within or without the limits of said city and for the purchase of lands within or without the limits of said city, whenever it deems the purchase to be for the benefit of the public and for the interest of the park district, and for the maintenance and improvement thereof and for all expenses incidental to its duties: PROVIDED, That all parks, boulevards, parkways, aviation landings and playgrounds shall be subject to the police regulations of the city within whose limits they lie. [1969 c 54 § 1; 1965 c 7 § 35.61.130. Prior: (i) 1943 c 264 § 4, part; Rem. Supp. 1943 § 6741-4, part; prior: 1919 c 135 § 1, part; 1907 c 98 § 4; RRS § 6723, part. (ii) 1943 c 264 § 14; Rem. Supp. 1943 § 6741-14; prior: 1919 c 135 § 2; 1907 c 98 § 14; RRS § 6733.]

*Outdoor recreation land acquisition or improvement under marine recreation land act: Chapter 79A.25 RCW.*

**35.61.132 Disposition of surplus property.** Every metropolitan park district may, by unanimous decision of its board of park commissioners, sell, exchange, or otherwise dispose of any real or personal property acquired for park or recreational purposes when such property is declared surplus for park or other recreational purposes: PROVIDED, That where the property is acquired by donation or dedication for park or recreational purposes, the consent of the donor or dedicator, his or her heirs, successors, or assigns is first obtained if the consent of the donor is required in the instrument conveying the property to the metropolitan park district. In the event the donor or dedicator, his or her heirs, successors, or assigns cannot be located after a reasonable search, the metropolitan park district may petition the superior court in the county where the property is located for approval of the sale. If sold, all sales shall be by public bids and sale made only to the highest and best bidder. [1989 c 319 § 4; 1965 c 7 § 35.61.132. Prior: 1959 c 93 § 1.]

**35.61.133 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when.** See RCW 39.30.010.

**35.61.135 Contracts—Competitive bidding—Small works roster—Exemption.** (1) All work ordered, the estimated cost of which is in excess of five thousand dollars, shall be let by contract and competitive bidding. Before

awarding any such contract the board of park commissioners shall publish a notice in a newspaper of general circulation where the district is located at least once thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work, plans, and specifications which must at the time of publication of such notice be on file in the office of the board of park commissioners subject to the public inspection. The notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of park commissioners on or before the day and hour named therein.

Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the metropolitan park district for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the metropolitan park district as liquidated damages the amount specified in the bond, unless the bidder enters into a contract in accordance with the bidder's bid, and no bid shall be considered unless accompanied by such check, cash, or bid bond. At the time and place named such bids shall be publicly opened and read and the board of park commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting the bidder's own plans and specifications. The board of park commissioners may reject all bids for good cause and readvertise and in such case all checks, cash, or bid bonds shall be returned to the bidders. If the contract is let, then all checks, cash, or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract is entered into for doing the work, and a bond to perform such work furnished with sureties satisfactory to the board of park commissioners in the full amount of the contract price between the bidder and the metropolitan park district in accordance with the bid. If the bidder fails to enter into the contract in accordance with the bid and furnish the bond within ten days from the date at which the bidder is notified that the bidder is the successful bidder, the check, cash, or bid bonds and the amount thereof shall be forfeited to the metropolitan park district. If the bidder fails to enter into a contract in accordance with the bidder's bid, and the board of park commissioners deems it necessary to take legal action to collect on any bid bond required by this section, then the metropolitan park district is entitled to collect from the bidder any legal expenses, including reasonable attorneys' fees occasioned thereby. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) As an alternative to requirements under subsection (1) of this section, a metropolitan park district may let contracts using the small works roster process under RCW 39.04.155.

(3) The park board may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within RCW 39.04.280 applies to the purchase or public work. [2001 c 29 § 1.]

**35.61.137 Community revitalization financing—Public improvements.** In addition to other authority that a metropolitan park district possesses, a metropolitan park district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a metropolitan park district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 12.]

**Severability—2001 c 212:** See RCW 39.89.902.

**35.61.140 Park commissioners—Civil service for employees.** A metropolitan park district may establish civil service for its employees by resolution upon the following plan:

(1) It shall create a civil service commission with authority to appoint a personnel officer and to make rules and regulations for classification based upon suitable differences in pay for differences in work, and for like pay for like work, and for competitive entrance and promotional examinations; for certifications, appointments, probationary service periods and for dismissals therein; for demotions and promotions based upon merit and for reemployments, suspensions, transfers, sick leaves and vacations; for lay-offs when necessary according to seniority; for separations from the service by discharge for cause; for hearings and reinstatements, for establishing status for incumbent employees, and for prescribing penalties for violations.

(2) The civil service commission and personnel officer shall adopt rules to be known as civil service rules to govern the administration of personnel transactions and procedure. The rules so adopted shall have the force and effect of law, and, in any and all proceedings, the rules shall be liberally interpreted and construed to the end that the purposes and basic requirements of the civil service system may be given the fullest force and effect. [1965 c 7 § 35.61.140. Prior: 1943 c 264 § 4, part; Rem. Supp. 1943 § 6741-4, part; prior: 1919 c 135 § 1, part; 1907 c 98 § 4; RRS § 6723, part.]

*Public employment, civil service and pensions: Title 41 RCW.*

**35.61.150 Park commissioners—Compensation.** Metropolitan park commissioners selected by election according to RCW 35.61.050(2) shall perform their duties and may provide, by resolution passed by the commissioners, for the payment of compensation to each of its commissioners at a rate of up to seventy dollars for each day or portion of a day devoted to the business of the district. However, the compensation for each commissioner must not exceed six thousand seven hundred twenty dollars per year.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the clerk of the board. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. [2002 c 88 § 6; 1998 c 121 § 1; 1965 c 7 § 35.61.150. Prior: 1943 c 264 § 3, part; Rem. Supp.

1943 § 6741-3, part; prior: 1909 c 131 § 2; 1907 c 98 § 3, part; RRS § 6722, part.]

**35.61.180 Designation of district treasurer.** The county treasurer of the county within which all, or the major portion, of the district lies shall be the ex officio treasurer of a metropolitan park district, but shall receive no compensation other than his or her regular salary for receiving and disbursing the funds of a metropolitan park district.

A metropolitan park district may designate someone other than the county treasurer who has experience in financial or fiscal affairs to act as the district treasurer if the board has received the approval of the county treasurer to designate this person. If the board designates someone other than the county treasurer to act as the district treasurer, the board shall purchase a bond from a surety company operating in the state that is sufficient to protect the district from loss. [1987 c 203 § 1; 1983 c 167 § 55; 1965 c 7 § 35.61.180. Prior: 1943 c 264 § 13; Rem. Supp. 1943 § 6741-13; prior: 1907 c 98 § 13; RRS § 6732.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.61.190 Park district bonds—Retirement.** Whenever there is money in the metropolitan park district fund and the commissioners of the park district deem it advisable to apply any part thereof to the payment of bonded indebtedness, they shall advertise in a newspaper of general circulation within the park district for the presentation to them for payment of as many bonds as they may desire to pay with the funds on hand, the bonds to be paid in numerical order, beginning with the lowest number outstanding and called by number.

Thirty days after the first publication of the notice by the board calling in bonds they shall cease to bear interest, and this shall be stated in the notice. [1985 c 469 § 33; 1965 c 7 § 35.61.190. Prior: 1943 c 264 § 11; Rem. Supp. 1943 § 6741-11; prior: 1907 c 98 § 11; RRS § 6730.]

**35.61.200 Park district bonds—Payment of interest.** Any coupons for the payment of interest on metropolitan park district bonds shall be considered for all purposes as warrants drawn upon the metropolitan park district fund against which the bonds were issued, and when presented after maturity to the treasurer of the county having custody of the fund. If there are no funds in the treasury to pay the coupons, the county treasurer shall endorse said coupons as presented for payment, in the same manner as county warrants are endorsed, and thereafter the coupon shall bear interest at the same rate as the bond to which it was attached. If there are no funds in the treasury to make payment on a bond not having coupons, the interest payment shall continue bearing interest at the bond rate until it is paid, unless otherwise provided in the proceedings authorizing the sale of the bonds. [1983 c 167 § 56; 1965 c 7 § 35.61.200. Prior: 1943 c 264 § 12; Rem. Supp. 1943 § 6741-12; prior: 1907 c 98 § 12; RRS § 6731.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.61.210 Park district tax levy—"Park district fund."** The board of park commissioners may levy or cause to be levied a general tax on all the property located in said park district each year not to exceed fifty cents per thousand dollars of assessed value of the property in such park district. In addition, the board of park commissioners may levy or cause to be levied a general tax on all property located in said park district each year not to exceed twenty-five cents per thousand dollars of assessed valuation. Although park districts are authorized to impose two separate regular property tax levies, the levies shall be considered to be a single levy for purposes of the limitation provided for in chapter 84.55 RCW.

The board is hereby authorized to levy a general tax in excess of its regular property tax levy or levies when authorized so to do at a special election conducted in accordance with and subject to all the requirements of the Constitution and laws of the state now in force or hereafter enacted governing the limitation of tax levies. The board is hereby authorized to call a special election for the purpose of submitting to the qualified voters of the park district a proposition to levy a tax in excess of the seventy-five cents per thousand dollars of assessed value herein specifically authorized. The manner of submitting any such proposition, of certifying the same, and of giving or publishing notice thereof, shall be as provided by law for the submission of propositions by cities or towns.

The board shall include in its general tax levy for each year a sufficient sum to pay the interest on all outstanding bonds and may include a sufficient amount to create a sinking fund for the redemption of all outstanding bonds. The levy shall be certified to the proper county officials for collection the same as other general taxes and when collected, the general tax shall be placed in a separate fund in the office of the county treasurer to be known as the "metropolitan park district fund" and paid out on warrants. [1997 c 3 § 205 (Referendum Bill No. 47, approved November 4, 1997); 1990 c 234 § 3; 1973 1st ex.s. c 195 § 25; 1965 c 7 § 35.61.210. Prior: 1951 c 179 § 1; prior: (i) 1943 c 264 § 10, part; Rem. Supp. 1943 § 6741-10, part; prior: 1909 c 131 § 4; 1907 c 98 § 10; RRS § 6729. (ii) 1947 c 117 § 1; 1943 c 264 § 5; Rem. Supp. 1947 § 6741-5; prior: 1925 ex.s. c 97 § 1; 1907 c 98 § 5; RRS § 6724.]

**Intent—1997 c 3 §§ 201-207:** See note following RCW 84.55.010.

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

*Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55, 59), RCW 84.52.050.*

**35.61.220 Petition for improvements on assessment plan.** If at any time any proposed improvement of any parkway, avenue, street, or boulevard is deemed by the board of metropolitan park commissioners to be a special benefit to the lands adjoining, contiguous, approximate to or in the neighborhood of the proposed improvement, which lie within the city, the board may so declare, describing the property to be benefited. Thereupon they may petition the city council to cause the improvement contemplated by the commissioners to be done and made on the local assessment plan, and the portion of the cost of the improvement as fixed by such

assessment roll to be assessed against the said property so benefited in the same manner and under the same procedure as of other local improvements, and the remainder of the cost of such improvement to be paid out of the metropolitan park district fund.

The board of park commissioners shall designate the kind, manner and style of the improvement to be made, and may designate the time within which it shall be made. [1965 c 7 § 35.61.220. Prior: 1943 c 264 § 15; Rem. Supp. 1943 § 6741-15; prior: 1909 c 131 § 5; 1907 c 98 § 15; RRS § 6734.]

*Local improvements, supplemental authority: Chapter 35.51 RCW.*

**35.61.230 Objections—Appeal.** Any person, firm or corporation feeling aggrieved by the assessment against his or its property may file objections with the city council and may appeal from the order confirming the assessment roll in the same manner as objections and appeals are made in regard to local improvements in cities of the first class. [1965 c 7 § 35.61.230. Prior: 1943 c 264 § 16; Rem. Supp. 1943 § 6741-16; prior: 1907 c 98 § 17; RRS § 6736.]

*Appeal of assessments and reassessments: RCW 35.44.200 through 35.44.270.*

**35.61.240 Assessment lien—Collection.** The assessment for local improvements authorized by this chapter shall become a lien in the same manner, and be governed by the same law, as is provided for local assessments in cities of the first class and be collected as such assessments are collected. [1965 c 7 § 35.61.240. Prior: 1943 c 264 § 17; Rem. Supp. 1943 § 6741-17; prior: 1907 c 98 § 18; RRS § 6737.]

*Collection and foreclosure of assessments: Chapters 35.49, 35.50 RCW.*

**35.61.250 Territorial annexation—Authority—Petition.** The territory adjoining a metropolitan park district may be annexed to and become a part thereof upon petition and an election held pursuant thereto. The petition shall define the territory proposed to be annexed and must be signed by twenty-five registered voters, resident within the territory proposed to be annexed, unless the territory is within the limits of another city when it must be signed by twenty percent of the registered voters residing within the territory proposed to be annexed. The petition must be addressed to the board of park commissioners requesting that the question be submitted to the legal voters of the territory proposed to be annexed, whether they will be annexed and become a part of the park district. [1985 c 416 § 4; 1965 c 7 § 35.61.250. Prior: 1943 c 264 § 20, part; Rem. Supp. 1943 § 6741-20, part; prior: 1907 c 98 § 20, part; RRS § 6739, part.]

**35.61.260 Territorial annexation—Hearing on petition.** Upon the filing of an annexation petition with the board of park commissioners, if the commissioners concur in the petition, they shall provide for a hearing to be held for the discussion of the proposed annexation at the office of the board of park commissioners, and shall give due notice thereof by publication at least once a week for two consecutive weeks before the hearing in a newspaper of general circulation in the park district. [1985 c 469 § 34; 1965 c 7 § 35.61.260. Prior: 1943 c 264 § 20, part; Rem. Supp. 1943 § 6741-20, part; prior: 1907 c 98 § 20, part; RRS § 6739, part.]

**35.61.270 Territorial annexation—Election—**

**Method.** If the park commissioners concur in the petition, they shall cause the proposal to be submitted to the electors of the territory proposed to be annexed, at an election to be held in the territory, which shall be called, canvassed and conducted in accordance with the general election laws. The board of park commissioners by resolution shall fix a time for the holding of the election to determine the question of annexation, and in addition to the notice required by \*RCW 29.27.080 shall give notice thereof by causing notice to be published once a week for two consecutive weeks in a newspaper of general circulation in the park district, and by posting notices in five public places within the territory proposed to be annexed in the district.

The ballot to be used at the election shall be in the following form:

- "For annexation to metropolitan park district."
- "Against annexation to metropolitan park district."

[1985 c 469 § 35; 1965 c 7 § 35.61.270. Prior: 1943 c 264 § 20, part; Rem. Supp. 1943 § 6741-20, part; prior: 1907 c 98 § 20, part; RRS § 6739, part.]

**\*Reviser's note:** RCW 29.27.080 was recodified as RCW 29A.52.350 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.52.350 was subsequently repealed by 2004 c 271 § 193.

*Canvassing returns, generally:* Chapter 29A.60 RCW.

*Conduct of elections—Canvass:* RCW 29A.60.010.

*Times for holding elections:* RCW 29A.04.311 through 29A.04.330.

**35.61.275 Territorial annexation—Park district containing city with population over one hundred thousand—Assumption of indebtedness.**

The board of park commissioners of any metropolitan park district which includes a city with a population greater than one hundred thousand may submit to the electorate of the territory sought to be annexed a proposition that all property within the area annexed shall, upon annexation, be assessed and taxed at the same rate and on the same basis as the property of such annexing metropolitan park district to pay for all or any portion of the then outstanding indebtedness of the metropolitan park district. [1989 c 319 § 6.]

**35.61.280 Territorial annexation—Election—Result.**

The canvassing authority shall cause a statement of the result of such election to be forwarded to the board of park commissioners for entry on the record of the board. If the majority of the votes cast upon that question at the election shall favor annexation, the territory shall immediately become annexed to the park district, and shall thenceforth be a part of the park district, the same as though originally included in the district. The expense of such election shall be paid out of park district funds. [1965 c 7 § 35.61.280. Prior: (i) 1943 c 264 § 20, part; Rem. Supp. 1943 § 6741-20, part; prior: 1907 c 98 § 20, part; RRS § 6739, part. (ii) 1943 c 264 § 21; Rem. Supp. 1943 § 6741-21; prior: 1907 c 98 § 21; RRS § 6740.]

**35.61.290 Transfer of city or county property—Authority—Emergency grant, loan, of funds by city.**

(1) Any city within or comprising any metropolitan park district may turn over to the park district any lands which it may own,

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or any street, avenue, or public place within the city for playground, park or parkway purposes, and thereafter its control and management shall vest in the board of park commissioners: PROVIDED, That the police regulations of such city shall apply to all such premises.

At any time that any such metropolitan park district is unable, through lack of sufficient funds, to provide for the continuous operation, maintenance and improvement of the parks and playgrounds and other properties or facilities owned by it or under its control, and the legislative body of any city within or comprising such metropolitan park district shall determine that an emergency exists requiring the financial aid of such city to be extended in order to provide for such continuous operation, maintenance and/or improvement of parks, playgrounds facilities, other properties, and programs of such park district within its limits, such city may grant or loan to such metropolitan park district such of its available funds, or such funds which it may lawfully procure and make available, as it shall find necessary to provide for such continuous operation and maintenance and, pursuant thereto, any such city and the board of park commissioners of such district are authorized and empowered to enter into an agreement embodying such terms and conditions of any such grant or loan as may be mutually agreed upon.

The board of metropolitan park commissioners may accept public streets of the city and grounds for public purposes when donated for park, playground, boulevard and park purposes.

(2) Counties may turn over to the park district any park and recreation lands and equipment that they own, and the board of metropolitan park commissioners may accept such lands and equipment. [1985 c 416 § 5; 1965 c 7 § 35.61.290. Prior: 1953 c 194 § 1. Formerly: (i) 1943 c 264 § 18; Rem. Supp. 1943 § 6741-18; prior: 1907 c 98 § 16; RRS § 6735. (ii) 1943 c 264 § 19; Rem. Supp. 1943 § 6741-19; prior: 1907 c 98 § 19; RRS § 6738.]

**35.61.300 Transfer of city or county property—Assumption of indebtedness.**

When any metropolitan park district shall be formed pursuant to this chapter and shall assume control of the parks, parkways, boulevards, and park property of the city in which said park district is created, or the metropolitan park district accepts county park and recreation lands, such park district shall assume all existing indebtedness, bonded or otherwise, against such park property, and shall arrange by taxation or issuing bonds, as herein provided, for the payment of such indebtedness, and shall relieve such city or county from such payment. Said park district is hereby given authority to issue refunding bonds when necessary in order to enable it to comply with this section. [1985 c 416 § 6; 1965 c 7 § 35.61.300. Prior: 1943 c 264 § 22; Rem. Supp. 1943 § 6741-22; prior: 1907 c 98 § 22; RRS § 6741.]

**35.61.310 Dissolution.** A board of commissioners of a metropolitan park district may, upon a majority vote of all its members, dissolve any metropolitan park district, prorate the liabilities thereof, and turn over to the city and/or county so much of the district as is respectively located therein, when:

(1) Such city and/or county, through its governing officials, agrees to, and petitions for, such dissolution and the assumption of such assets and liabilities, or;

(2) Ten percent of the voters of such city and/or county who voted at the last general election petition the governing officials for such a vote. [1965 c 7 § 35.61.310. Prior: 1953 c 269 § 1.]

*Dissolution of special districts: Chapters 36.96 and 53.48 RCW.*

**35.61.315 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.** See chapter 57.90 RCW.

**35.61.350 Moorage facilities—Regulations authorized—Port charges, delinquency—Abandoned vessels, public sale.** See RCW 53.08.310 and 53.08.320.

**35.61.360 Withdrawal or reannexation of areas.** (1) As provided in this section, a metropolitan park district may withdraw areas from its boundaries, or reannex areas into the metropolitan park district that previously had been withdrawn from the metropolitan park district under this section.

(2) The withdrawal of an area shall be authorized upon: (a) Adoption of a resolution by the park district commissioners requesting the withdrawal and finding that, in the opinion of the commissioners, inclusion of this area within the metropolitan park district will result in a reduction of the district's tax levy rate under the provisions of RCW 84.52.010; and (b) adoption of a resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the withdrawal, if the area is located outside of a city or town. A withdrawal shall be effective at the end of the day on the thirty-first day of December in the year in which the resolutions are adopted, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution.

The withdrawal of an area from the boundaries of a metropolitan park district shall not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the metropolitan park district existing at the time of the withdrawal.

(3) An area that has been withdrawn from the boundaries of a metropolitan park district under this section may be reannexed into the metropolitan park district upon: (a) Adoption of a resolution by the park district commissioners proposing the reannexation; and (b) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the reannexation, if the area is located outside of a city or town. The reannexation shall be effective at the end of the day on the thirty-first day of December in the year in which the adoption of the second resolution occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution. Referendum action on the proposed reannexation may be taken by the voters of the area proposed to be reannexed if a peti-

tion calling for a referendum is filed with the city or town council, or county legislative authority, within a thirty-day period after the adoption of the second resolution, which petition has been signed by registered voters of the area proposed to be reannexed equal in number to ten percent of the total number of the registered voters residing in that area.

If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date specified in \*RCW 29.13.020 that occurs forty-five or more days after the petitions have been validated. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation. [1987 c 138 § 2.]

**\*Reviser's note:** As enacted by 1987 c 138 § 2, this section contained an apparently erroneous reference to RCW 29.13.030, a section repealed in 1965. Pursuant to RCW 1.08.015, this reference has been changed to RCW 29.13.020, a later enactment of the section repealed. RCW 29.13.020 was subsequently recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**35.61.370 Park district containing city with population over one hundred thousand—May commission police officers.** A metropolitan park district which contains a city with a population greater than one hundred thousand may commission its own police officers with full police powers to enforce the laws and regulations of the city or county on metropolitan park district property. Police officers initially employed after June 30, 1989, pursuant to this section shall be required to successfully complete basic law enforcement training in accordance with chapter 43.101 RCW. [1989 c 319 § 5.]

## Chapter 35.62 RCW NAME—CHANGE OF

### Sections

35.62.010	Authority for.
35.62.021	Election—Petition or resolution.
35.62.031	Ballot—One name proposed.
35.62.041	Ballot—More than one name proposed—Votes necessary.
35.62.060	Results—Certification.

**35.62.010 Authority for.** Any city or town may change its name in accordance with the procedure provided in this chapter. [1965 c 7 § 35.62.010. Prior: 1925 ex.s. c 146 § 1; RRS § 8891-1.]

**35.62.021 Election—Petition or resolution.** The question of whether the name of a city or town shall be changed shall be presented to the voters of the city or town upon either: (1) The adoption of a resolution by the city or town council proposing a specific name change; or (2) the submission of a petition proposing a specific name change that has been signed by voters of the city or town equal in number to at least ten percent of the total number of voters of the city or town who voted at the last municipal general election. However, for any newly incorporated city or town that has not had city officials elected at a normal general municipal election, the election that is used as the base for determining the num-

ber of required signatures shall be the election at which the initial elected officials were elected.

The election on changing the name of the city or town shall be held at the next general election occurring sixty or more days after the resolution was adopted, or the resolution [petition] was submitted that has been certified by the county auditor as having sufficient valid signatures. [1990 c 193 § 1.]

**35.62.031 Ballot—One name proposed.** Where only one new name has been proposed by petition or resolution such question shall be in substantially the following form:

"Shall the name of the city (or town) of (insert name) be changed to the city (or town) of (insert the proposed new name) ?

Yes . . .  
No . . ."

If a majority of the votes cast favor the name change, the city or town shall have its name changed effective thirty days after the certification of the election results. [1990 c 193 § 2.]

**35.62.041 Ballot—More than one name proposed—Votes necessary.** Where more than one name is proposed by either petition or resolution, the question shall be separated into two separate parts and shall be in substantially the following form:

"Shall the name of the city (or town) of (insert name) be changed?

Yes . . .  
No . . ."

"If a name change is approved, which of the following should be the new name?

(insert name)  
(insert name)  
Vote for one."

Voters may select a name change whether or not they vote in favor of changing the name of the city or town. If a majority of the votes cast on the first proposition favor changing the name, the name that receives at least a majority of the total number of votes cast for an alternative name shall become the new name of the city or town effective thirty days after the certification of the election results.

If no alternative name receives a simple majority vote, then an election shall be held at the next November special election date, at which voters shall be given the option of choosing which of the two alternative names that received the most votes shall become the new name of the city or town. This ballot proposition shall be worded substantially as follows:

"Which of the following names shall become the new name of the city (or town) of (insert name) ?

(insert name)  
(insert name)  
Vote for one."

The name that receives the majority vote shall become the new name of the city or town effective thirty days after the certification of the election results. [1990 c 193 § 3.]

**35.62.060 Results—Certification.** Whenever any city or town has changed its name, the clerk shall certify the new name to the secretary of state prior to the date when the change takes effect. [1965 c 7 § 35.62.060. Prior: 1925 ex.s. c 146 § 6; RRS § 8891-6.]

**Chapter 35.63 RCW  
PLANNING COMMISSIONS**

Sections

- 35.63.010 Definitions.
- 35.63.015 "Solar energy system" defined.
- 35.63.020 Commissioners—Manner of appointment.
- 35.63.030 Commissioners—Number—Tenure—Compensation.
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- 35.63.050 Expenditures.
- 35.63.060 Powers of commissions.
- 35.63.065 Public notice—Identification of affected property.
- 35.63.070 Regional commissions—Appointment—Powers.
- 35.63.080 Restrictions on buildings—Use of land.
- 35.63.090 Restrictions—Purposes of.
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- 35.63.105 Amendments to comprehensive plan to be adopted, certified, and recorded or filed in accordance with RCW 35.63.100.
- 35.63.110 Restrictive zones.
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- 35.63.140 Residential care facilities—Review of need and demand—Adoption of ordinances.
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- 35.63.160 Prohibitions on manufactured homes—Review required—"Designated manufactured home" defined.
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- 35.63.185 Family day-care provider's home facility—City may not prohibit in residential or commercial area—Conditions.
- 35.63.200 Moratoria, interim zoning controls—Public hearing—Limitation on length.
- 35.63.210 Accessory apartments.
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- 35.63.240 Planning regulations—Copies provided to county assessor.
- 35.63.250 General aviation airports.
- 35.63.260 Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections—Mediation prior to appeal required.

*Acquisition of interests in land for conservation, protection, preservation, or open space purposes by cities or towns: RCW 64.04.130.*

*Adult family homes—Permitted use in residential and commercial zones: RCW 70.128.175.*

*Airport zoning: Chapter 14.12 RCW.*

*Appearance of fairness doctrine—Application to local land use decisions: RCW 42.36.010.*

*Approval of proposed plats, subdivisions, and dedications of land: Chapter 58.17 RCW.*

*Boundaries and plats: Title 58 RCW.*

*Counties, planning enabling act: Chapter 36.70 RCW.*

*County sewerage, water and drainage systems: Chapter 36.94 RCW.*

*Housing authorities law: Chapter 35.82 RCW.*

*Joint operations by municipal corporations or political subdivisions, deposit and control of funds: RCW 43.09.285.*

*Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.*

*Municipal revenue bond act: Chapter 35.41 RCW.*

*Police and sanitary regulations: State Constitution Art. 11 § 11.*

*Recording of plats: Chapter 58.08 RCW.*

**35.63.010 Definitions.** As used in this chapter the following terms shall have the meaning herein given them:

"Appointive members" means all members of a commission other than ex officio members;

"Board" means the board of county commissioners;

"City" includes every incorporated city and town;

"Commission" means a city or county planning commission;

"Council" means the chief legislative body of a city;

"Ex officio members" means the members of a commission chosen from among city or county officials;

"Highways" include streets, roads, boulevards, lanes, alleys, viaducts and other traveled ways;

"Mayor" means the chief executive of a city;

"Municipality" includes every county and city. [1965 c 7 § 35.63.010. Prior: 1935 c 44 § 1; RRS § 9322-1.]

**35.63.015 "Solar energy system" defined.** As used in this chapter, "solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (1) The heating or cooling of a structure or building;
- (2) The heating or pumping of water;
- (3) Industrial, commercial, or agricultural processes; or
- (4) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall. [1979 ex.s. c 170 § 2.]

**Severability—1979 ex.s. c 170:** See note following RCW 64.04.140.

*Local governments authorized to encourage and protect solar energy systems: RCW 64.04.140.*

**35.63.020 Commissioners—Manner of appointment.**

If any council or board desires to avail itself of the powers conferred by this chapter it shall create a city or county planning commission consisting of from three to twelve members to be appointed by the mayor or chairman of the municipality and confirmed by the council or board: PROVIDED, That in cities of the first class having a commission form of government consisting of three or more members, the commissioner of public works shall appoint the planning commission, which appointment shall be confirmed by a majority of the city commissioners. Cities of the first class operating under self-government charters may extend the membership and the duties and powers of its commission beyond those prescribed in this chapter. [1965 c 7 § 35.63.020. Prior: (i) 1935 c 44 § 2, part; RRS § 9322-2, part. (ii) 1935 c 44 § 12; RRS § 9322-12.]

**35.63.030 Commissioners—Number—Tenure—Compensation.** The ordinance, resolution or act creating the commission shall set forth the number of members to be appointed, not more than one-third of which number may be ex officio members by virtue of office held in any municipality. The term of office for ex officio members shall correspond to their respective tenures. The term of office for the first appointive members appointed to such commission shall be designated from one to six years in such manner as to provide that the fewest possible terms will expire in any one year. Thereafter the term of office for each appointive member shall be six years.

Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired term. Members may be removed, after public hearing, by the appointing official, with the approval of his council or board, for inefficiency, neglect of duty or malfeasance in office.

The members shall be selected without respect to political affiliations and they shall serve without compensation. [1965 c 7 § 35.63.030. Prior: 1935 c 44 § 2, part; RRS § 9322-2, part.]

**35.63.040 Commissions—Organization—Meeting—**

**Rules.** The commission shall elect its own chairman and create and fill such other offices as it may determine it requires. The commission shall hold at least one regular meeting in each month for not less than nine months in each year. It shall adopt rules for transaction of business and shall keep a written record of its meetings, resolutions, transactions, findings and determinations which record shall be a public record. [1965 c 7 § 35.63.040. Prior: 1935 c 44 § 3; RRS § 9322-3.]

**35.63.050 Expenditures.** The expenditures of any commission or regional commission authorized and established under this chapter, exclusive of gifts, shall be within the amounts appropriated for the purpose by the council or board. Within such limits, any commission may employ such employees and expert consultants as are deemed necessary for its work. [1965 c 7 § 35.63.050. Prior: 1935 c 44 § 4; RRS § 9322-4.]

**35.63.060 Powers of commissions.** The commission may act as the research and fact finding agency of the municipality. To that end it may make such surveys, analyses, researches and reports as are generally authorized or requested by its council or board, or by the state with the approval of its council or board. The commission, upon such request or authority may also:

(1) Make inquiries, investigations, and surveys concerning the resources of the county, including but not limited to the potential for solar energy development and alternative means to encourage and protect access to direct sunlight for solar energy systems;

(2) Assemble and analyze the data thus obtained and formulate plans for the conservation of such resources and the systematic utilization and development thereof;

(3) Make recommendations from time to time as to the best methods of such conservation, utilization, and development;

(4) Cooperate with other commissions and with other public agencies of the municipality, state and United States in such planning, conservation, and development; and

(5) In particular cooperate with and aid the state within its territorial limits in the preparation of the state master plan provided for in RCW 43.21A.350 and in advance planning of public works programs.

In carrying out its powers and duties, the commission should demonstrate how land use planning is integrated with transportation planning. [2002 c 189 § 1; 1988 c 127 § 1; 1979 ex.s. c 170 § 3; 1965 c 7 § 35.63.060. Prior: 1935 c 44 § 10; RRS § 9322-10.]

**Severability—1979 ex.s. c 170:** See note following RCW 64.04.140.

**35.63.065 Public notice—Identification of affected property.** Any notice made under chapter 35.63 RCW that identifies affected property may identify this affected property without using a legal description of the property including, but not limited to, identification by an address, written description, vicinity sketch, or other reasonable means. [1988 c 168 § 9.]

**35.63.070 Regional commissions—Appointment—Powers.** The commissions of two or more adjoining counties, of two or more adjacent cities and towns, of one or more cities and towns and/or one or more counties, together with the boards of such counties and the councils of such cities and towns may cooperate to form, organize and administer a regional planning commission for the making of a regional plan for the region defined as may be agreed upon by the commissions, boards and councils. The regional commission when requested by the commissions of its region, may further perform any of the other duties for its region that are specified in RCW 35.63.060 for city and county commissions. The number of members of a regional commission, their method of appointment and the proportion of the cost of regional planning, surveys and studies to be borne respectively by the various counties and cities in the region, shall be such as may be agreed upon by commissions, boards and councils.

Any regional planning commission, or the councils or boards respectively of any city, town, or county, are authorized to receive grants-in-aid from the government of the United States or of any of its agencies, and are authorized to enter into any reasonable agreement with any department or agency of the government of the United States to arrange for the receipt of federal funds for planning in the interest of furthering the planning program. [1965 c 7 § 35.63.070. Prior: 1957 c 130 § 1; 1935 c 44 § 11; RRS § 9322-11.]

*Commission as employer for retirement system purposes: RCW 41.40.010.*

**35.63.080 Restrictions on buildings—Use of land.** The council or board may provide for the preparation by its commission and the adoption and enforcement of coordinated plans for the physical development of the municipality. For this purpose the council or board, in such measure as is deemed reasonably necessary or requisite in the interest of health, safety, morals and the general welfare, upon recommendation by its commission, by general ordinances of the city or general resolution of the board, may regulate and restrict the location and the use of buildings, structures and

land for residence, trade, industrial and other purposes; the height, number of stories, size, construction and design of buildings and other structures; the size of yards, courts and other open spaces on the lot or tract; the density of population; the set-back of buildings along highways, parks or public water frontages; and the subdivision and development of land; and may encourage and protect access to direct sunlight for solar energy systems. A council where such ordinances are in effect, may, on the recommendation of its commission provide for the appointment of a board of adjustment, to make, in appropriate cases and subject to appropriate conditions and safeguards established by ordinance, special exceptions in harmony with the general purposes and intent and in accordance with general or specific rules therein contained. [1979 ex.s. c 170 § 4; 1965 c 7 § 35.63.080. Prior: 1935 c 44 § 5; RRS § 9322-5.]

**Severability—1979 ex.s. c 170:** See note following RCW 64.04.140.

**35.63.090 Restrictions—Purposes of.** All regulations shall be worked out as parts of a comprehensive plan which each commission shall prepare for the physical and other generally advantageous development of the municipality and shall be designed, among other things, to encourage the most appropriate use of land throughout the municipality; to lessen traffic congestion and accidents; to secure safety from fire; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to promote a coordinated development of the unbuilt areas; to encourage the formation of neighborhood or community units; to secure an appropriate allotment of land area in new developments for all the requirements of community life; to conserve and restore natural beauty and other natural resources; to encourage and protect access to direct sunlight for solar energy systems; and to facilitate the adequate provision of transportation, water, sewerage and other public uses and requirements, including protection of the quality and quantity of ground water used for public water supplies. Each plan shall include a review of drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute Puget Sound or waters entering Puget Sound. [1985 c 126 § 1; 1984 c 253 § 1; 1979 ex.s. c 170 § 5; 1965 c 7 § 35.63.090. Prior: 1935 c 44 § 7; RRS § 9322-7.]

**Severability—1979 ex.s. c 170:** See note following RCW 64.04.140.

**35.63.100 Restrictions—Recommendations of commission—Hearings—Adoption of comprehensive plan—Certifying—Filing or recording.** The commission may recommend to its council or board the plan prepared by it as a whole, or may recommend parts of the plan by successive recommendations; the parts corresponding with geographic or political sections, division or subdivisions of the municipality, or with functional subdivisions of the subject matter of the plan, or in the case of counties, with suburban settlement or arterial highway area. It may also prepare and recommend any amendment or extension thereof or addition thereto.

Before the recommendation of the initial plan to the municipality the commission shall hold at least one public hearing thereon, giving notice of the time and place by one publication in a newspaper of general circulation in the

municipality and in the official gazette, if any, of the municipality.

The council may adopt by resolution or ordinance and the board may adopt by resolution the plan recommended to it by the commission, or any part of the plan, as the comprehensive plan.

A true copy of the resolution of the board adopting or embodying such plan or any part thereof or any amendment thereto shall be certified by the clerk of the board and filed with the county auditor. A like certified copy of any map or plat referred to or adopted by the county resolution shall likewise be filed with the county auditor. The auditor shall record the resolution and keep on file the map or plat.

The original resolution or ordinance of the council adopting or embodying such plan or any part thereof or any amendment thereto shall be certified by the clerk of the city and filed by him. The original of any map or plat referred to or adopted by the resolution or ordinance of the council shall likewise be certified by the clerk of the city and filed by him. The clerk shall keep on file the resolution or ordinance and map or plat. [1967 ex.s. c 144 § 8; 1965 c 7 § 35.63.100. Prior: 1935 c 44 § 8; RRS § 9322-8.]

**Effective date—1967 ex.s. c 144:** The effective date of 1967 ex.s. c 144 is July 30, 1967.

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

**Validation—1967 ex.s. c 144:** "Any city comprehensive plan and all amendments thereto which have been filed or recorded with the county auditor prior to the effective date of this 1967 amendatory act shall be valid and need not be refiled with the clerk of the city to remain valid and in full force and effect." [1967 ex.s. c 144 § 10.]

**35.63.105 Amendments to comprehensive plan to be adopted, certified, and recorded or filed in accordance with RCW 35.63.100.** All amendments to a comprehensive plan shall be adopted, certified, and recorded or filed in the same manner as authorized in RCW 35.63.100 for an initial comprehensive plan. [1967 ex.s. c 144 § 9.]

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

**Validation—1967 ex.s. c 144:** See note following RCW 35.63.100.

**35.63.110 Restrictive zones.** For any or all of such purposes the council or board, on recommendation of its commission, may divide the municipality or any portion thereof into districts of such size, shape and area, or may establish such official maps, or development plans for the whole or any portion of the municipality as may be deemed best suited to carry out the purposes of this chapter and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. [1965 c 7 § 35.63.110. Prior: 1935 c 44 § 6; RRS § 9322-6.]

**35.63.120 Supplemental restrictions—Hearing—Affirmance, disaffirmance, modification of commission's decision.** Any ordinance or resolution adopting any such plan or regulations, or any part thereof, may be amended, supplemented or modified by subsequent ordinance or resolution.

Proposed amendments, supplementations, or modifications shall first be heard by the commission and the decision shall be made and reported by the commission within ninety

days of the time that the proposed amendments, supplementations, or modifications were made.

The council or board, pursuant to public hearing called by them upon application therefor by any interested party or upon their own order, may affirm, modify or disaffirm any decision of the commission. [1965 c 7 § 35.63.120. Prior: 1957 c 194 § 1; 1935 c 44 § 9; RRS § 9322-9.]

**35.63.125 Development regulations—Consistency with comprehensive plan.** Beginning July 1, 1992, the development regulations of each city and county that does not plan under RCW 36.70A.040 shall not be inconsistent with the city's or county's comprehensive plan. For the purposes of this section, "development regulations" has the same meaning as set forth in RCW 36.70A.030. [1990 1st ex.s. c 17 § 22.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**35.63.130 Hearing examiner system—Adoption authorized—Alternative—Functions—Procedures.** (1) As an alternative to those provisions of this chapter relating to powers or duties of the planning commission to hear and report on any proposal to amend a zoning ordinance, the legislative body of a city or county may adopt a hearing examiner system under which a hearing examiner or hearing examiners may hear and decide applications for amending the zoning ordinance when the amendment which is applied for is not of general applicability. In addition, the legislative body may vest in a hearing examiner the power to hear and decide those issues it believes should be reviewed and decided by a hearing examiner, including but not limited to:

(a) Applications for conditional uses, variances, subdivisions, shoreline permits, or any other class of applications for or pertaining to development of land or land use;

(b) Appeals of administrative decisions or determinations; and

(c) Appeals of administrative decisions or determinations pursuant to chapter 43.21C RCW.

The legislative body shall prescribe procedures to be followed by the hearing examiner.

(2) Each city or county legislative body electing to use a hearing examiner pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. The legal effect of such decisions may vary for the different classes of applications decided by the examiner but shall include one of the following:

(a) The decision may be given the effect of a recommendation to the legislative body;

(b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or

(c) Except in the case of a rezone, the decision may be given the effect of a final decision of the legislative body.

(3) Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the city's or county's comprehensive plan and the city's or county's development regulations. Each final decision of a hearing examiner, unless a

longer period is mutually agreed to in writing by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings. [1995 c 347 § 423; 1994 c 257 § 8; 1977 ex.s. c 213 § 1.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**Severability—1977 ex.s. c 213:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 213 § 5.]

**35.63.140 Residential care facilities—Review of need and demand—Adoption of ordinances.** Each municipality that does not provide for the siting of residential care facilities in zones or areas that are designated for single family or other residential uses, shall conduct a review of the need and demand for the facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 31, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the \*department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the \*department of community development as to why such implementing ordinances were not adopted. [1989 c 427 § 36.]

**\*Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994.

**Severability—1989 c 427:** See RCW 74.39.900.

**35.63.150 Conformance with chapter 43.97 RCW required.** With respect to the National Scenic Area, as defined in the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a county or city pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the Interstate Compact adopted by RCW 43.97.015, and with the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact. [1987 c 499 § 6.]

**35.63.160 Prohibitions on manufactured homes—Review required—"Designated manufactured home" defined. (Effective until July 1, 2005.)** (1) Each comprehensive plan which does not allow for the siting of manufactured homes on individual lots shall be subject to a review by the city of the need and demand for such homes. The review shall be completed by December 31, 1990.

(2) For the purpose of providing an optional reference for cities which choose to allow manufactured homes on individual lots, a "designated manufactured home" is a manufactured home constructed after June 15, 1976, in accordance with state and federal requirements for manufactured homes, which:

(2004 Ed.)

(a) Is comprised of at least two fully enclosed parallel sections each of not less than twelve feet wide by thirty-six feet long;

(b) Was originally constructed with and now has a composition or wood shake or shingle, coated metal, or similar roof of not less than 3:12 pitch; and

(c) Has exterior siding similar in appearance to siding materials commonly used on conventional site-built uniform building code single-family residences.

(3) Nothing in this section precludes cities from allowing any manufactured home from being sited on individual lots through local standards which differ from the designated manufactured home as described in this section, except that the term "designated manufactured home" shall not be used except as defined in subsection (2) of this section. [1988 c 239 § 1.]

**35.63.160 Regulation of manufactured homes—Definitions. (Effective July 1, 2005.)** (1) A "designated manufactured home" is a manufactured home constructed after June 15, 1976, in accordance with state and federal requirements for manufactured homes, which:

(a) Is comprised of at least two fully enclosed parallel sections each of not less than twelve feet wide by thirty-six feet long;

(b) Was originally constructed with and now has a composition or wood shake or shingle, coated metal, or similar roof of nominal 3:12 pitch; and

(c) Has exterior siding similar in appearance to siding materials commonly used on conventional site-built uniform building code single-family residences.

(2) "New manufactured home" means any manufactured home required to be titled under Title 46 RCW, which has not been previously titled to a retail purchaser, and is not a "used mobile home" as defined in RCW 82.45.032(2).

(3) Nothing in this section precludes cities from allowing any manufactured home from being sited on individual lots through local standards which differ from the designated manufactured home or new manufactured home as described in this section, except that the term "designated manufactured home" and "new manufactured home" shall not be used except as defined in subsections (1) and (2) of this section. [2004 c 256 § 5; 1988 c 239 § 1.]

**Findings—Intent—Effective date—2004 c 256:** See notes following RCW 35.21.684.

**35.63.161 Manufactured housing communities—Elimination of existing community by city prohibited.** After June 10, 2004, a city may designate a new manufactured housing community as a nonconforming use, but may not order the removal or phased elimination of an existing manufactured housing community because of its status as a nonconforming use. [2004 c 210 § 1.]

**35.63.170 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 35.22.660, 35.63.180, 35A.63.210, 36.32.520, and 36.70.675:

(1) "Family day care home" means a person regularly providing care during part of the twenty-four-hour day to six

or fewer children in the family abode of the person or persons under whose direct care the children are placed.

(2) "Mini-day care center" means a person or agency providing care during part of the twenty-four-hour day to twelve or fewer children in a facility other than the family abode of the person or persons under whose direct care the children are placed, or for the care of seven through twelve children in the family abode of such person or persons.

(3) "Day care center" means a person or agency that provides care for thirteen or more children during part of the twenty-four-hour day.

(4) "Child care facility" means a family day care home, mini-day care center, and day care center. [1989 c 335 § 3.]

**Findings—1989 c 335:** "The legislature finds that:

(1) A majority of women with preschool and school age children in Washington state are working outside of the home and are in need of child care services for their children;

(2) The supply of licensed child care facilities in Washington state is insufficient to meet the growing demand for child care services;

(3) The most convenient location of child care facilities for many working families is near the family's home or workplace." [1989 c 335 § 1.]

**Purpose—1989 c 335:** "The purpose of this act is to encourage the dispersion of child care facilities throughout cities and counties in Washington state so that child care services are available at convenient locations to working parents." [1989 c 335 § 2.]

**Severability—1989 c 335:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 335 § 10.]

**35.63.180 Child care facilities—Review of need and demand—Adoption of ordinances.** Each municipality that does not provide for the siting of family day care homes in zones or areas that are designated for single family or other residential uses, and for the siting of mini-day care centers and day care centers in zones or areas that are designated for any residential or commercial uses, shall conduct a review of the need and demand for child care facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 31, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the \*department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the \*department of community development as to why such implementing ordinances were not adopted. [1989 c 335 § 4.]

**\*Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994.

**Findings—Purpose—Severability—1989 c 335:** See notes following RCW 35.63.170.

**Definitions for RCW 35.63.180:** See RCW 35.63.170.

**35.63.185 Family day-care provider's home facility—City may not prohibit in residential or commercial area—Conditions.** (1) Except as provided in subsections (2) and (3) of this section, no city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or

official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

(2) A city may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the office of child care policy licenser as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(3) A city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licenser may provide a forum to resolve the dispute.

(4) Nothing in this section shall be construed to prohibit a city from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 74.15.020. [2003 c 286 § 3; 1995 c 49 § 1; 1994 c 273 § 14.]

**35.63.200 Moratoria, interim zoning controls—Public hearing—Limitation on length.** A council or board that adopts a moratorium or interim zoning control, without holding a public hearing on the proposed moratorium or interim zoning control, shall hold a public hearing on the adopted moratorium or interim zoning control within at least sixty days of its adoption, whether or not the council or board received a recommendation on the matter from the commission. If the council or board does not adopt findings of fact justifying its action before this hearing, then the council or board shall do so immediately after this public hearing. A moratorium or interim zoning control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium or interim zoning control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. [1992 c 207 § 1.]

**35.63.210 Accessory apartments.** Any local government, as defined in RCW 43.63A.215, that is planning under this chapter shall comply with RCW 43.63A.215(3). [1993 c 478 § 8.]

**35.63.220 Treatment of residential structures occupied by persons with handicaps.** No city may enact or maintain an ordinance, development regulation, zoning regu-

lation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602). [1993 c 478 § 20.]

**35.63.230 Watershed restoration projects—Permit processing—Fish habitat enhancement project.** A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of RCW 77.55.290(1) shall be reviewed and approved according to the provisions of RCW 77.55.290. [2003 c 39 § 15; 1998 c 249 § 5; 1995 c 378 § 8.]

**Findings—Purpose—Report—Effective date—1998 c 249:** See notes following RCW 77.55.290.

**35.63.240 Planning regulations—Copies provided to county assessor.** By July 31, 1997, a city planning under RCW 36.70A.040 shall provide to the county assessor a copy of the city's comprehensive plan and development regulations in effect on July 1st of that year and shall thereafter provide any amendments to the plan and regulations that were adopted before July 31st of each following year. [1996 c 254 § 3.]

**35.63.250 General aviation airports.** Adoption and amendment of comprehensive plan provisions and development regulations under this chapter affecting a general aviation airport are subject to RCW 36.70.547. [1996 c 239 § 3.]

**35.63.260 Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections—Mediation prior to appeal required.** (1) Prior to filing an appeal of a final decision by a hearing examiner involving a conditional or special use permit application requested by a party that is licensed or certified by the department of social and health services or the department of corrections, the aggrieved party must, within five days after the final decision, initiate formal mediation procedures in an attempt to resolve the parties' differences. If, after initial evaluation of the dispute, the parties agree to proceed with a mediation, the mediation shall be conducted by a trained mediator selected by agreement of the parties. The agreement to mediate shall be in writing and subject to RCW 5.60.070. If the parties are unable to agree on a mediator, each party shall nominate a mediator and the mediator shall be selected by lot from among the nominees. The mediator must be selected within five days after formal mediation procedures are initiated. The mediation process must be completed within fourteen days from the time the mediator is selected except that the mediation process may extend beyond fourteen days by agreement of the parties. The mediator shall, within the fourteen-day period or within the extension if an extension is agreed to, provide the parties with a written summary of the issues and any agreements reached. If the parties

agree, the mediation report shall be made available to the governing jurisdiction. The cost of the mediation shall be shared by the parties.

(2) Any time limits for filing of appeals are tolled during the pendency of the mediation process.

(3) As used in this section, "party" does not include county, city, or town. [1998 c 119 § 1.]

## Chapter 35.64 RCW ZOOS AND AQUARIUMS

### Sections

35.64.010	Contracts for management and operation—Terms—Public hearing.
35.64.020	Construction—Collective bargaining agreement not affected.

**35.64.010 Contracts for management and operation—Terms—Public hearing.** (1) If the legislative authority of a city with a population over one hundred fifty thousand that is not in a metropolitan park district contracts with one or more nonprofit corporations or other public organizations for the overall management and operation of a zoo, an aquarium, or both, that contract shall be subject to this section. No such contract for the overall management and operation of zoo or aquarium facilities by a nonprofit corporation or other public organization shall have an initial term or any renewal term longer than twenty years, but may be renewed by the legislative authority of the city upon the expiration of an initial term or any renewal term.

(2) Before approving each initial and any renewal contract with a nonprofit corporation or other public organization for the overall management and operation of any facilities, the city legislative authority shall hold a public hearing on the proposed management and operation by the nonprofit corporation or other public organization. At least thirty days prior to the hearing, a public notice setting forth the date, time, and place of the hearing must be published at least once in a local newspaper of general circulation. Notice of the hearing shall also be mailed or otherwise delivered to all who would be entitled to notice of a special meeting of the city legislative authority under RCW 42.30.080. The notice shall identify the facilities involved and the nonprofit corporation or other public organization proposed for management and operation under the contract with the city. The terms and conditions under which the city proposes to contract with the nonprofit corporation or other public organization for management and operation shall be available upon request from and after the date of publication of the hearing notice and at the hearing, but after the public hearing the city legislative authority may amend the proposed terms and conditions at open public meetings.

(3) As part of the management and operation contract, the legislative authority of the city may authorize the managing and operating entity to grant to any nonprofit corporation or public or private organization franchises or concessions that further the public use and enjoyment of the zoo or aquarium, as the case may be, and may authorize the managing and operating entity to contract with any public or private organization for any specific services as are routinely so procured by the city.

(4) Notwithstanding any provision in the charter of the city so contracting for the overall management and operation of a zoo or an aquarium, or any other provision of law, the nonprofit corporation or other public organization with responsibility for overall management or operation of any such facilities pursuant to a contract under this section may, in carrying out that responsibility under such contract, manage, supervise, and control those employees of the city employed in connection with the zoo or aquarium and may hire, fire, and otherwise discipline those employees. Notwithstanding any provision in the charter of the city so contracting for the overall management and operation of a zoo or an aquarium, or any other provision of law, the civil service system of any such city shall provide for the nonprofit corporation or other public organization to manage, supervise, control, hire, fire, and otherwise discipline those employees of the city employed in connection with the zoo or aquarium.

(5) As part of the management and operation contract, the legislative authority of the city shall provide for oversight of the managing and operating entity to ensure public accountability of the entity and its performance in a manner consistent with the contract. [2000 c 206 § 1.]

**35.64.020 Construction—Collective bargaining agreement not affected.** Nothing in this chapter shall be construed to affect any terms, conditions, or practices contained in a collective bargaining agreement in effect on June 8, 2000. [2000 c 206 § 2.]

### Chapter 35.66 RCW POLICE MATRONS

#### Sections

35.66.010	Authority to establish.
35.66.020	Appointment.
35.66.030	Assistance by police.
35.66.040	Compensation.
35.66.050	Persons under arrest—Separate quarters.

**35.66.010 Authority to establish.** There shall be annexed to the police force of each city in this state having a population of not less than ten thousand inhabitants one or more police matrons who, subject to the control of the chief of police or other proper officer, shall have the immediate care of all females under arrest and while detained in the city prison until they are finally discharged therefrom. [1965 c 7 § 35.66.010. Prior: 1893 c 15 § 1; RRS § 9282.]

**35.66.020 Appointment.** The police matron or matrons employed or appointed in accordance with the provisions of this chapter shall be employed or appointed in the same manner as other regular members of the police departments in the city where the appointment is made. [1965 c 7 § 35.66.020. Prior: 1939 c 115 § 1; 1893 c 15 § 4; RRS § 9285.] [SLC-RO-4]

**35.66.030 Assistance by police.** Any person on the police force or, in their absence, any other person present, must aid and assist the matron when from necessity she may require it. [1965 c 7 § 35.66.030. Prior: 1893 c 15 § 2; RRS § 9283.]

**35.66.040 Compensation.** A police matron must be paid such compensation for her services as shall be fixed by the city council and at such time as may be appointed for the payment of policemen. [1965 c 7 § 35.66.040. Prior: 1893 c 15 § 6; RRS § 9287.]

**35.66.050 Persons under arrest—Separate quarters.** For the purpose of effecting the main object of this chapter, no member of one sex under arrest shall be confined in the same cell or apartment of the city jail or prison, with any member of the other sex whatever. [1973 1st ex.s. c 154 § 53; 1965 c 7 § 35.66.050. Prior: 1893 c 15 § 3; RRS § 9284.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

### Chapter 35.67 RCW

#### SEWERAGE SYSTEMS—REFUSE COLLECTION AND DISPOSAL

#### Sections

35.67.010	Definitions—"System of sewerage," "public utility."
35.67.020	Authority to construct system and fix rates and charges—Classification of services and facilities—Assistance for low-income persons.
35.67.022	Extension outside city subject to review by boundary review board.
35.67.025	Public property subject to rates and charges for storm water control facilities.
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35.67.120	Revenue bond fund—Authority to establish.
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35.67.190	Revenues from system—Classification of services—Minimum rates—Compulsory use.
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35.67.310	Sewers—Outside city connections.
35.67.331	Water, sewerage, garbage systems—Combined facilities.
35.67.340	Statutes governing combined facility.
35.67.350	Penalty for sewer connection without permission.
35.67.360	Conservation of storm water and sewer services—Use of public moneys.
35.67.370	Mobile home parks—Replacement of septic systems—Charges for unused sewer service.
35.67.380	Cooperative watershed management.

*Assessments and charges against state lands: Chapter 79.44 RCW.*

*Municipal water and sewer facilities act: Chapter 35.91 RCW.*

*Prepayment of taxes and assessments: RCW 35.21.650.*

*Sewer facilities act: Chapter 35.91 RCW.*

*Sewerage improvement districts: Chapter 85.08 RCW.*

**35.67.010 Definitions**—"System of sewerage," "public utility." A "system of sewerage" means and may include any or all of the following:

- (1) Sanitary sewage collection, treatment, and/or disposal facilities and services, on-site or off-site sanitary sewerage facilities, inspection services and maintenance services for public or private on-site systems, or any other means of sewage treatment and disposal approved by the city;
- (2) Combined sanitary sewage disposal and storm or surface water sewers;
- (3) Storm or surface water sewers;
- (4) Outfalls for storm drainage or sanitary sewage and works, plants, and facilities for storm drainage or sanitary sewage treatment and disposal, and rights and interests in property relating to the system;
- (5) Combined water and sewerage systems;
- (6) Point and nonpoint water pollution monitoring programs that are directly related to the sewerage facilities and programs operated by a city or town;
- (7) Public restroom and sanitary facilities; and
- (8) Any combination of or part of any or all of such facilities.

The words "public utility" when used in this chapter has the same meaning as the words "system of sewerage." [1997 c 447 § 7; 1965 c 110 § 1; 1965 c 7 § 35.67.010. Prior: 1955 c 266 § 2; prior: 1941 c 193 § 1, part; Rem. Supp. 1941 § 9354-4, part.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**35.67.020 Authority to construct system and fix rates and charges—Classification of services and facilities—Assistance for low-income persons.** (1) Every city and town may construct, condemn and purchase, acquire, add to, maintain, conduct, and operate systems of sewerage and systems and plants for refuse collection and disposal together with additions, extensions, and betterments thereto, within and without its limits. Every city and town has full jurisdiction and authority to manage, regulate, and control them and, except as provided in subsection (3) of this section, to fix, alter, regulate, and control the rates and charges for their use.

(2) Subject to subsection (3) of this section, the rates charged under this section must be uniform for the same class of customers or service and facilities furnished. In classifying customers served or service and facilities furnished by such system of sewerage, the city or town legislative body may in its discretion consider any or all of the following factors:

- (a) The difference in cost of service and facilities to the various customers;
- (b) The location of the various customers within and without the city or town;
- (c) The difference in cost of maintenance, operation, repair, and replacement of the various parts of the system;
- (d) The different character of the service and facilities furnished various customers;
- (e) The quantity and quality of the sewage delivered and the time of its delivery;
- (f) The achievement of water conservation goals and the discouragement of wasteful water use practices;
- (g) Capital contributions made to the system, including but not limited to, assessments;

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(h) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and

(i) Any other matters which present a reasonable difference as a ground for distinction.

(3) The rate a city or town may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

(5) A city or town may provide assistance to aid low-income persons in connection with services provided under this chapter.

(6) Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

(7) Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

(8) A city or town shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using city or town employees unless the on-site system is connected by a publicly owned collection system to the city or town's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of state or local health officers to carry out their responsibilities under any other applicable law. [2003 c 394 § 1; 1997 c 447 § 8; 1995 c 124 § 3; 1991 c 347 § 17; 1965 c 7 § 35.67.020. Prior: 1959 c 90 § 1; 1955 c 266 § 3; prior: 1941 c 193 § 1, part; Rem. Supp. 1941 § 9354-4, part.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**Severability—1991 c 347:** See RCW 90.42.900.

**35.67.022 Extension outside city subject to review by boundary review board.** The extension of sewer facilities outside of the boundaries of a city or town may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 32.]

**35.67.025 Public property subject to rates and charges for storm water control facilities.** Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for storm water control facilities to the same extent private persons and private property are subject to such rates and charges that are imposed by cities and towns pursuant to RCW 35.67.020. In setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property. [1986 c 278 § 55; 1983 c 315 § 1.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Severability—1983 c 315:** See note following RCW 90.03.500.

*Flood control zone districts—Storm water control improvements: Chapter 86.15 RCW.*

*Rates and charges for storm water control facilities—Limitations—Definitions: RCW 90.03.500 through 90.03.525. See also RCW 35.92.021, 36.89.085, and 36.94.145.*

**35.67.030 Adoption of plan—Ordinance.** Whenever the legislative body of any city or town, shall deem it advisable that such city or town shall purchase, acquire or construct any public utility mentioned in RCW 35.67.020, or make any additions, betterments, or alterations thereto, or extensions thereof, such legislative body shall provide therefor by ordinance, which shall specify and adopt the system or plan proposed, and declare the estimated cost thereof as near as may be. [1985 c 445 § 1; 1965 c 7 § 35.67.030. Prior: 1941 c 193 § 2; Rem. Supp. 1941 § 9354-5.]

*Elections: Title 29A RCW.*

*Limitations upon indebtedness, how exceeded: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.*

**35.67.065 General obligation bonds—Issuance.** General obligation bonds issued by a city or town to pay for all or part of the costs of purchasing, acquiring, or constructing any public utility mentioned in RCW 35.67.020, or the costs of making any additions, betterments, or alterations thereto, or extensions thereof, shall be issued and sold in accordance with chapter 39.46 RCW. [1985 c 445 § 2.]

**35.67.110 General obligation bonds—Payment—Revenue from service charges.** In addition to taxes pledged to pay the principal of and interest on general obligation bonds issued to pay for costs of purchasing, acquiring, or constructing any public utility mentioned in RCW 35.67.020, or to make any additions, betterments, or alterations thereto, or extensions thereof, the city or town legislative body, may set aside into a special fund and pledge to the payment of such principal and interest any sums or amounts which may accrue from the collection of service rates and charges for the private and public use of said sewerage system or systems for the collection and disposal of refuse, in excess of the cost of operation and maintenance thereof as constructed or added to, and the same shall be applied solely to the payment of such interest and bonds. Such pledge of revenue shall constitute a binding obligation, according to its terms, to continue the collection of such revenue so long as such bonds or any of them are outstanding. If the rates and charges are sufficient to meet the debt service requirements on such bonds no general

tax need be levied. [1985 c 445 § 3; 1965 c 118 § 1; 1965 c 7 § 35.67.110. Prior: 1941 c 193 § 3, part; Rem. Supp. 1941 § 9354-6, part.]

**35.67.120 Revenue bond fund—Authority to establish.** After the city or town legislative body adopts a proposition for any such public utility, and either (1) no general indebtedness has been authorized, or (2) the city or town legislative body does not desire to incur a general indebtedness, and the legislative body can lawfully proceed without submitting the proposition to a vote of the people, it may create a special fund or funds for the sole purpose of defraying the cost of the proposed system, or additions, betterments or extensions thereto.

The city or town legislative body may obligate the city or town to set aside and pay into this special fund: (1) A fixed proportion of the gross revenues of the system, or (2) a fixed amount out of and not exceeding a fixed proportion of the gross revenues, or (3) a fixed amount without regard to any fixed proportion, and (4) amounts received from any utility local improvement district assessments pledged to secure such bonds. [1967 c 52 § 24; 1965 c 7 § 35.67.120. Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 § 9354-7, part.]

*Alternative authority to issue revenue bonds: RCW 39.46.150, 39.46.160.*

*Funds for reserve purposes may be included in issue amount: RCW 39.44.140.*

**35.67.130 Revenue bond fund—Limitations upon creation.** In creating the special fund, the city or town legislative body shall have due regard to the cost of operation and maintenance of the system as constructed or added to, and to any proportion or part of the revenue previously pledged as a fund for the payment of bonds, warrants and other indebtedness. It shall not set aside into the special fund a greater amount or proportion of the revenue and proceeds than in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion of the revenue so previously pledged. [1965 c 7 § 35.67.130. Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 § 9354-7, part.]

**35.67.140 Revenue bonds—Authority—Denominations—Terms.** A city or town may issue revenue bonds against the special fund or funds created solely from revenues. The revenue bonds so issued shall: (1) Be registered bonds as provided in RCW 39.46.030 or coupon bonds, (2) be issued in denominations of not less than one hundred dollars nor more than one thousand dollars, (3) be numbered from one upwards consecutively, (4) bear the date of their issue, (5) be serial in form finally maturing not more than thirty years from their date, (6) bear interest at the rate or rates as authorized by the legislative body of the city or town, payable annually or semiannually, (7) be payable as to principal and interest at such place as may be designated therein, and (8) shall state upon their face that they are payable from a special fund, naming it and the ordinance creating it: PROVIDED, That such bonds may also be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 59; 1970 ex.s. c 56 § 43; 1969 ex.s. c 232 § 71; 1965 c 7 § 35.67.140. Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 § 9354-7, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

### **35.67.150 Revenue bonds—Signatures—Form.**

Every revenue bond and any coupon shall be signed by the mayor and attested by the clerk. The seal of the city or town shall be attached to all bonds but not to any coupons. Signatures on any coupons may be printed or may be the lithographic facsimile of the signatures. The bonds shall be printed, engraved or lithographed upon good bond paper. [1983 c 167 § 60; 1965 c 7 § 35.67.150. Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 § 9354-7, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

### **35.67.160 Revenue bonds—Obligation against fund, not city.**

Revenue bonds or warrants and interest shall be payable only out of the special fund. Every bond or warrant and interest thereon issued against the special fund shall be a valid claim of the holder thereof only as against that fund and its fixed proportion of the amount of revenue pledged to the fund, and shall not constitute an indebtedness of the city or town. Every warrant as well as every bond shall state on its face that it is payable from a special fund, naming it and the ordinance creating it. [1965 c 7 § 35.67.160. Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 § 9354-7, part.]

### **35.67.170 Revenue bonds—Sale of—Other disposition.**

Revenue bonds and warrants may be sold in any manner the city or town legislative body deems for the best interests of the city or town. The legislative body may provide in any contract for the construction or acquisition of a proposed utility that payment therefor shall be made only in revenue bonds and warrants at their par value. [1965 c 7 § 35.67.170. Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 § 9354-7, part.]

### **35.67.180 Revenue bonds—Remedy of owners.**

If a city or town fails to set aside and pay into the special fund created for the payment of revenue bonds and warrants the amount which it has obligated itself in the ordinance creating the fund to set aside and pay therein, the owner of any bond or warrant issued against the fund may bring suit against the city or town to compel it to do so. [1983 c 167 § 61; 1965 c 7 § 35.67.180. Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 c 9354-7, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.67.190 Revenues from system—Classification of services—Minimum rates—Compulsory use.** The legislative body of such city or town may provide by ordinance for revenues by fixing rates and charges for the furnishing of service to those served by its system of sewerage or system for refuse collection and disposal, which rates and charges shall be uniform for the same class of customer or service. In classifying customers served or service furnished by such system of sewerage, the city or town legislative body may in its discretion consider any or all of the following factors: (1) The difference in cost of service to the various customers; (2) the location of the various customers within and without the city

or town; (3) the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; (4) the different character of the service furnished various customers; (5) the quantity and quality of the sewage delivered and the time of its delivery; (6) capital contributions made to the system, including but not limited to, assessments; (7) the nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and (8) any other matters which present a reasonable difference as a ground for distinction.

If special indebtedness bonds or warrants are issued against the revenues, the legislative body shall by ordinance fix charges at rates which will be sufficient to take care of the costs of maintenance and operation, bond and warrant principal and interest, sinking fund requirements, and all other expenses necessary for efficient and proper operation of the system.

All property owners within the area served by such sewerage system shall be compelled to connect their private drains and sewers with such city or town system, under such penalty as the legislative body of such city or town may by ordinance direct. Such penalty may in the discretion of such legislative body be an amount equal to the charge that would be made for sewer service if the property was connected to such system. All penalties collected shall be considered revenue of the system. [1995 c 124 § 4; 1965 c 7 § 35.67.190. Prior: 1959 c 90 § 2; 1941 c 193 § 5; Rem. Supp. 1941 § 9354-8.]

**35.67.194 Revenue bonds validated.** Any and all water, sewer, or water and sewer revenue bonds part or all of which may have been heretofore (prior to June 8, 1955) issued by any city or town for the purpose of providing funds to pay part or all of the cost of acquiring, constructing, or installing a system of storm or surface water sewers or any part thereof necessary for the proper and efficient operation of a system of sanitary sewage disposal sewers or a sanitary sewage treatment plant, the proceedings for the issuance of which were valid in all other respects, are approved, ratified and validated, and are declared to be legal and binding obligations of such city or town, both principal of and interest on which are payable only out of the revenues of the utility or utilities pledged for such payment. [1965 c 7 § 35.67.194. Prior: 1955 c 266 § 5.]

**35.67.200 Sewerage lien—Authority.** Cities and towns owning their own sewer systems shall have a lien for delinquent and unpaid rates and charges for sewer service, penalties levied pursuant to RCW 35.67.190, and connection charges, including interest thereon, against the premises to which such service has been furnished or is available, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. The city or town by ordinance may provide that delinquent charges shall bear interest at not exceeding eight percent per annum computed on a monthly basis: PROVIDED, That a city or town using the property tax system for utility billing may, by resolution or ordinance, adopt the alternative lien procedure as set forth in RCW 35.67.215. [1991 c 36 § 2; 1965 c 7 § 35.67.200. Prior: 1959 c 90 § 4; prior: 1941 c 193 § 6, part; Rem. Supp. 1941 § 9354-9, part.]

**35.67.210 Sewerage lien—Extent—Notice.** The sewerage lien shall be effective for a total of not to exceed six months' delinquent charges without the necessity of any writing or recording. In order to make such lien effective for more than six months' charges the city or town treasurer, clerk, or official charged with the administration of the affairs of the utility shall cause to be filed for record in the office of the county auditor of the county in which such city or town is located, a notice in substantially the following form:

"Sewerage lien notice  
City (or town) of .....  
vs.  
..... reputed owner.

Notice is hereby given that the city (or town) of ..... has and claims a lien for sewer charges against the following described premises situated in ..... county, Washington, to wit:

(here insert legal description of premises)

Said lien is claimed for not exceeding six months such charges and interest now delinquent, amount to \$....., and is also claimed for future sewerage charges against said premises.

Dated .....  
City (or town) of .....  
By ....."

The lien notice may be signed by the city or town treasurer or clerk or other official in charge of the administration of the utility. The lien notice shall be recorded as prescribed by law for the recording of mechanics' liens. [1965 c 7 § 35.67.210. Prior: 1959 c 90 § 5; prior: 1941 c 193 § 6, part; Rem. Supp. 1941 § 9354-9, part.]

**35.67.215 Sewerage lien—Extension of coverage.** Any city or town may, by resolution or ordinance, provide that the sewerage lien shall be effective for a total not to exceed one year's delinquent service charges without the necessity of any writing or recording of the lien with the county auditor, in lieu of the provisions provided for in RCW 35.67.210. [1991 c 36 § 3.]

**35.67.220 Sewerage lien foreclosure—Parts—Tracts.** The city or town may foreclose its sewerage lien in an action in the superior court. All or any of the tracts subject to the lien may be proceeded against in the same action, and all parties appearing of record as owning or claiming to own, having or claiming to have any interest in or lien upon the tracts involved in the action shall be impleaded in the action as parties defendant. [1965 c 7 § 35.67.220. Prior: 1941 c 193 § 7, part; Rem. Supp. 1941 § 9354-10, part.]

**35.67.230 Sewerage lien foreclosure—Limitation on time of commencement.** An action to foreclose a sewerage lien pursuant to a lien notice filed as required by law must be commenced within two years from the date of the filing thereof.

An action to foreclose a six months' lien may be commenced at any time after six months subsequent to the furnishing of the sewerage service for which payment has not been made. [1965 c 7 § 35.67.230. Prior: 1941 c 193 § 7, part; Rem. Supp. 1941 § 9354-10, part.]

**35.67.240 Sewerage lien foreclosure—Procedure.** The service of summons, and all other proceedings except as herein otherwise prescribed including appeal, order of sale, sale, redemption, and issuance of deed, shall be governed by the statutes now or hereafter in force relating to the foreclosure of mortgages on real property. The terms "judgment debtor" or "successor in interest" in the statutes governing redemption when applied herein shall include an owner or a vendee. [1965 c 7 § 35.67.240. Prior: 1941 c 193 § 7, part; Rem. Supp. 1941 § 9354-10, part.]

**35.67.250 Sewerage lien foreclosure—Trial.** A sewerage lien foreclosure action shall be tried before the court without a jury. The court may allow in addition to interest on the service charges at a rate not exceeding eight percent per year from date of delinquency, costs and disbursements as provided by statute and such attorneys' fees as the court may adjudge reasonable.

If the owners and parties interested in any particular tract default, the court may enter judgment of foreclosure and sale as to such parties and tracts and the action may proceed as to the remaining defendants and tracts. The judgment shall specify separately the amount of the sewerage charges, with interest, penalty and costs chargeable to each tract. The judgment shall have the effect of a separate judgment as to each tract described in the judgment, and any appeal shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. In the judgment the court shall order the tracts therein described sold at one general sale, and an order of sale shall issue pursuant thereto for the enforcement of the judgment. Judgment may be entered as to any one or more separate tracts involved in the action, and the court shall retain jurisdiction of other properties. [1965 c 7 § 35.67.250. Prior: 1941 c 193 § 7, part; Rem. Supp. 1941 § 9354-10, part.]

**35.67.260 Sewerage lien foreclosure—Redemption.** All sales shall be subject to the right of redemption within one year from date of sale. [1965 c 7 § 35.67.260. Prior: 1941 c 193 § 7, part; Rem. Supp. 1941 § 9354-10, part.]

**35.67.270 Sewerage sale acquired property—Disposition.** At any time after deed is issued to it pursuant to lien, a city or town may lease or sell or convey any property at public or private sale for such price and on such terms as may be determined by resolution of the city or town legislative body, any provision of law, charter or ordinance to the contrary notwithstanding. [1965 c 7 § 35.67.270. Prior: 1941 c 193 § 8; Rem. Supp. 1941 § 9354-11.]

**35.67.280 Sewerage sale acquired property—Payment of delinquent taxes.** After the entry of judgment of foreclosure against any tract, the city or town may pay delinquent general taxes or purchase certificates of delinquency

for general taxes on the tract or purchase the tract at county tax foreclosure or from the county after foreclosure.

After entry of judgment of foreclosure against any premises the city or town may pay local or special assessments which are delinquent or are about to become delinquent and if the tract has been foreclosed upon for local or special assessments and the time for redemption has not expired, it may redeem it.

No moneys shall be expended for the purposes enumerated in this section except upon enactment by the city or town legislative body of a resolution determining the desirability or necessity of making the expenditure. [1965 c 7 § 35.67.280. Prior: 1941 c 193 § 9; Rem. Supp. 1941 § 9354-12.]

**35.67.290 Sewerage lien—Enforcement—Alternative method.** As an additional and concurrent method of enforcing the lien authorized in this chapter any city or town operating its own municipal water system may provide by ordinance for the enforcement of the lien by cutting off the water service from the premises to which such sewer service was furnished after the charges become delinquent and unpaid, until the charges are paid.

The right to enforce the lien by cutting off and refusing water service shall not be exercised after two years from the date of the recording of sewerage lien notice except to enforce payment of six months' charges for which no lien notice is required to be recorded. [1965 c 7 § 35.67.290. Prior: 1941 c 193 § 10; Rem. Supp. 1941 § 9354-13.]

**35.67.300 Water-sewer districts and municipalities—Joint agreements.** Any city, town, or organized and established water-sewer district owning or operating its own sewer system, whenever topographic conditions shall make it feasible and whenever such existing sewer system shall be adequate therefor in view of the sewerage and drainage requirements of the property in such city, town, or water-sewer district, served or to be served by such system, may contract with any other city, town, or organized and established water-sewer district for the discharge into its sewer system of sewage from all or any part or parts of such other city, town, or water-sewer district upon such terms and conditions and for such periods of time as may be deemed reasonable.

Any city, town, or organized and established water-sewer district may contract with any other city, town, or organized and established water-sewer district for the construction and/or operation of any sewer or sewage disposal facilities for the joint use and benefit of the contracting parties upon such terms and conditions and for such period of time as the governing bodies of the contracting parties may determine. Any such contract may provide that the responsibility for the management of the construction and/or maintenance and operation of any sewer disposal facilities or part thereof covered by such contract shall be vested solely in one of the contracting parties, with the other party or parties thereto paying to the managing party such portion of the expenses thereof as shall be agreed upon. [1999 c 153 § 37; 1965 c 7 § 35.67.300. Prior: 1947 c 212 § 3; 1941 c 193 § 11; Rem. Supp. 1947 § 9354-14.]

(2004 Ed.)

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**35.67.310 Sewers—Outside city connections.** Every city or town may permit connections with any of its sewers, either directly or indirectly, from property beyond its limits, upon such terms, conditions and payments as may be prescribed by ordinance, which may be required by the city or town to be evidenced by a written agreement between the city or town and the owner of the property to be served by the connecting sewer.

If any such agreement is made and filed with the county auditor of the county in which said property is located, it shall constitute a covenant running with the land and the agreements and covenants therein shall be binding on the owner and all persons subsequently acquiring any right, title or interest in or to said property.

If the terms and conditions of the ordinance or of the agreement are not kept and performed, or the payments made, as required, the city or town may disconnect the sewer and for that purpose may at any time enter upon any public street or road or upon said property. [1965 c 7 § 35.67.310. Prior: 1941 c 75 § 1; Rem. Supp. 1941 § 9354-19.]

**35.67.331 Water, sewerage, garbage systems—Combined facilities.** A city or town may by ordinance provide that its water system, sewerage system, and garbage and refuse collection and disposal system may be acquired, constructed, maintained and operated jointly, either by combining any two of such systems or all three. All powers granted to cities and towns to acquire, construct, maintain and operate such systems may be exercised in the joint acquisition, construction, maintenance and operation of such combined systems: PROVIDED, That if a general indebtedness is to be incurred to pay a part or all of the cost of construction, maintenance, or operation of such a combined system, no such indebtedness shall be incurred without such indebtedness first being authorized by a vote of the people at a special or general election conducted in the manner prescribed by law: PROVIDED FURTHER, That nothing in chapter 51, Laws of 1969 ex. sess. shall be construed to supersede charter provisions to the contrary. [1969 ex.s. c 51 § 1.]

**35.67.340 Statutes governing combined facility.** The operation by a city or town of a combined facility as provided for in RCW 35.67.331 shall be governed by the statutes relating to the establishment and maintenance of a city or town water system if the water system is one of the systems included in the combined acquisition, construction, or operation; otherwise the combined system shall be governed by the statutes relating to the establishment and maintenance of a city or town sewerage system. [1969 ex.s. c 51 § 2; 1965 c 7 § 35.67.340. Prior: 1941 c 193 § 12, part; Rem. Supp. 1941 § 9354-15, part.]

**35.67.350 Penalty for sewer connection without permission.** It is unlawful and a misdemeanor to make or cause to be made or to maintain any sewer connection with any sewer of any city or town, or with any sewer which is connected directly or indirectly with any sewer of any city or town without having permission from the city or town. [1965

c 7 § 35.67.350. Prior: 1943 c 100 § 1; Rem. Supp. 1943 § 9354-20.]

**35.67.360 Conservation of storm water and sewer services—Use of public moneys.** Any city, code city, town, county, special purpose district, municipal corporation, or quasi-municipal corporation that is engaged in the sale or distribution of storm water or sewer services may use public moneys or credit derived from operating revenues from the sale of storm water or sewer services to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of storm water or sewer services in such structures or equipment. Except for the necessary support of the poor and infirm, an appropriate charge-back shall be made for the extension of public moneys or credit. The charge-back shall be a lien against the structure benefited or a security interest in the equipment benefited. [1998 c 31 § 2.]

**Findings—Intent—1998 c 31:** "The legislature finds that the voters approved an amendment to Article VIII, section 10 of the state Constitution in 1997. The legislature finds that this amendment to the state Constitution will allow necessary improvements to be made to storm water and sewer services so that less pollution is discharged into the waters of the state, less treatment will be needed, and capacity for existing treatment systems will be saved. It is the intent of the legislature to enact legislation that grants specific authority to units of local government that provide storm water and sewer services to operate programs that are consistent with the authority granted in House Joint Resolution No. 4209." [1998 c 31 § 1.]

**Effective date—1998 c 31 § 2:** "Section 2 of this act takes effect July 1, 1998." [1998 c 31 § 3.]

**35.67.370 Mobile home parks—Replacement of septic systems—Charges for unused sewer service.** (1) Cities, towns, or counties may not require existing mobile home parks to replace existing, functional septic systems with a sewer system within the community unless the local board of health determines that the septic system is failing.

(2) Cities, towns, and counties are prohibited from requiring existing mobile home parks to pay a sewer service availability charge, standby charge, consumption charge, or any other similar types of charges associated with available but unused sewer service, including any interest or penalties for nonpayment or enforcement charges, until the mobile home park connects to the sewer service. When a mobile home park connects to a sewer, cities, towns, and counties may only charge mobile home parks prospectively from the date of connection for their sewer service. Chapter 297, Laws of 2003 is remedial in nature and applies retroactively to 1993. [2003 c 297 § 1; 1998 c 61 § 1.]

**35.67.380 Cooperative watershed management.** In addition to the authority provided in RCW 35.67.020, a city may, as part of maintaining a system sewerage, participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 12.]

**Finding—Intent—2003 c 327:** See note following RCW 39.34.190.

## Chapter 35.68 RCW

### SIDEWALKS, GUTTERS, CURBS, AND DRIVEWAYS—ALL CITIES AND TOWNS

#### Sections

35.68.010	Authority conferred.
35.68.020	Resolution—Contents.
35.68.030	Resolution—Publication—Notice—Hearing.
35.68.040	"Sidewalk construction fund."
35.68.050	Assessment roll—Hearing—Notice—Confirmation—Appeal.
35.68.060	Method of payment of assessments.
35.68.070	Collection of assessments.
35.68.075	Curb ramps for physically handicapped—Required—Standards and requirements.
35.68.076	Curb ramps for physically handicapped—Model standards.
35.68.080	Construction of chapter.

*Assessments and charges against state lands: Chapter 79.44 RCW.*

**35.68.010 Authority conferred.** Any city or town, hereinafter referred to as city, is authorized to construct, reconstruct, and repair sidewalks, gutters and curbs along and driveways across sidewalks, which work is hereafter referred to as the improvement, and to pay the costs thereof from any available funds, or to require the abutting property owner to construct the improvement at the owner's own cost or expense, or, subject to the limitations in RCW 35.69.020 (2) and (3), to assess all or any portion of the costs thereof against the abutting property owner. [1996 c 19 § 1; 1965 c 7 § 35.68.010. Prior: 1949 c 177 § 1; Rem. Supp. 1949 § 9332a.]

**35.68.020 Resolution—Contents.** No such improvement shall be undertaken or required except pursuant to a resolution of the council or commission of the city or town, hereinafter referred to as the city council. The resolution shall state whether the cost of the improvement shall be borne by the city or whether all or a specified portion shall be borne by the abutting property owner; or whether the abutting owner is required to construct the improvement at his own cost and expense. If the abutting owner is required to construct the improvement the resolution shall specify the time within which the construction shall be commenced and completed; and further that if the improvement or construction is not undertaken and completed within the time specified that the city will perform or complete the improvement and assess the cost against the abutting owner. [1965 c 7 § 35.68.020. Prior: 1949 c 177 § 2; Rem. Supp. 1949 § 9332b.]

**35.68.030 Resolution—Publication—Notice—Hearing.** If all or any portion of the cost is to be assessed against the abutting property owner, or if the abutting property owner is required to construct the improvement, the resolution shall fix a time from and after its passage, and a place, for hearing on the resolution. The resolution shall be published for two consecutive weeks before the time of hearing in the official newspaper or regularly published official publication of the city or town and a notice of the date of the hearing shall be given each owner or reputed owner of the abutting property by mailing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer, at the address shown thereon a notice of the date of hearing, the mailing to be at least ten days before the date fixed for the hearing. If the publication and mailing is made as herein required, proof

thereof by affidavit shall be filed with the city clerk, comptroller or auditor of the city before the hearing. The hearing may be postponed from time to time to a definite date until the hearing is held. At the time of hearing the council shall hear persons who appear for or against the improvement, and determine whether it will or will not proceed with the improvement and whether it will make any changes in the original plan, and what the changes shall be. This action may be taken by motion adopted in the usual manner. [1985 c 469 § 37; 1965 c 7 § 35.68.030. Prior: 1949 c 177 § 3; Rem. Supp. 1949 § 9332c.]

**35.68.040 "Sidewalk construction fund."** When all or any portion of the cost is to be assessed against the abutting property owner, the city council may create a "sidewalk construction fund No. . . ." to be numbered differently for each improvement; and with warrants drawn on this fund the cost of the respective improvements may be paid. The city may advance as a loan to the sidewalk construction fund from any available funds the amounts necessary to pay any costs of the improvement. When any assessments are made for the improvement, payments therefor shall be paid into the particular sidewalk improvement fund; and whenever any funds are available over the amounts necessary to pay outstanding warrants any advances or loans made to the fund shall be repaid. Whenever warrants are drawn on any such fund which are not paid for want of sufficient funds, they shall be so stamped and shall bear interest until called and paid at a rate established by the city council by resolution. [1965 c 7 § 35.68.040. Prior: 1949 c 177 § 4; Rem. Supp. 1949 § 9332d.]

**35.68.050 Assessment roll—Hearing—Notice—Confirmation—Appeal.** Where all or any portion of the costs are to be assessed against the abutting property, an assessment roll shall be prepared by the proper city official or by the city council which shall to the extent necessary be based on benefits and which shall describe the property assessed, the name of the owner, if known, otherwise stating that the owner is unknown and fixing the amount of the assessment. The assessment roll shall be filed with the city clerk, and when so filed the council shall by resolution fix a date for hearing thereon and direct the clerk to give notice of the hearing and the time and place thereof. The notice of hearing shall be mailed to the person whose name appears on the county treasurer's tax roll as the owner or reputed owner of the property, at the address shown thereon, and shall be published before the date fixed for the hearing for two consecutive weeks in the official newspaper or regular official publication of the city. The notice shall be mailed and first publication made at least ten days before the hearing date. Proof of mailing and publication shall be made by affidavit and shall be filed with the city clerk before the date fixed for the hearing. Following the hearing the city council shall by ordinance affirm, modify, or reject or order recasting of the assessment roll. An appeal may be taken to the superior court from the ordinance confirming the assessment roll in the same manner as is provided for appeals from the assessment roll by chapters 35.43 to 35.54 RCW, inclusive, as now or hereafter amended. [1985 c 469 § 38; 1965 c 7 § 35.68.050. Prior: 1949 c 177 § 5; Rem. Supp. 1949 § 9332e.]

(2004 Ed.)

**35.68.060 Method of payment of assessments.** The city council shall by resolution provide whether the full amount of the assessment shall be paid in one payment or whether it may be paid in installments and shall prescribe the time and amount of such payments; and if more than one payment is provided for, the city council may by resolution provide for interest on unpaid installments and fix the rate thereof. [1965 c 7 § 35.68.060. Prior: 1949 c 177 § 6; Rem. Supp. 1949 § 9332f.]

**35.68.070 Collection of assessments.** The assessment roll as affirmed or modified by the city council shall be filed with the city treasurer for collection, and the amount thereof including interest, if any, shall become a lien against the property described therein from the date of such filing. Whenever any payment on any assessment or installment is delinquent and unpaid for a period of thirty days or more the lien may be foreclosed in the same manner and with the same effect as is provided by chapters 35.43 to 35.54 RCW, inclusive; as now or hereafter amended. Whenever the deed is issued after the sale therein provided, the regularity, validity and correctness of the proceedings relating to such improvement and the assessment therefor shall be final and conclusive and no action shall thereafter be brought by or in behalf of any person to set aside said deed. [1965 c 7 § 35.68.070. Prior: 1949 c 177 § 7; Rem. Supp. 1949 § 9332g.]

**35.68.075 Curb ramps for physically handicapped—Required—Standards and requirements.** (1) The standard for construction on any county road, or city or town street, for which curbs in combination with sidewalks, paths, or other pedestrian access ways are to be constructed, shall be not less than two ramps per lineal block on or near the crosswalks at intersections. Such ramps shall be at least thirty-six inches wide and so constructed as to allow reasonable access to the crosswalk for physically handicapped persons, without uniquely endangering blind persons.

(2) Standards set for curb ramping under subsection (1) of this section shall not apply to any curb existing upon enactment of this section but shall apply to all new curb construction and to all replacement curbs constructed at any point in a block which gives reasonable access to a crosswalk.

(3) Upon September 21, 1977, every ramp thereafter constructed under subsection (1) of this section, which serves one end of a crosswalk, shall be matched by another ramp at the other end of the crosswalk. However, no ramp shall be required at the other end of the crosswalk if there is no curb nor sidewalk at the other end of the crosswalk. Nor shall any matching ramp constructed pursuant to this subsection require a subsequent matching ramp. [1989 c 173 § 1; 1977 ex.s. c 137 § 1; 1973 c 83 § 1.]

**35.68.076 Curb ramps for physically handicapped—Model standards.** The department of general administration shall, pursuant to chapter 34.05 RCW, the Administrative Procedure Act, adopt several suggested model design, construction, or location standards to aid counties, cities, and towns in constructing curb ramps to allow reasonable access to the crosswalk for physically handicapped persons without uniquely endangering blind persons. The department of general administration shall consult with handicapped persons,

blind persons, counties, cities, and the state building code council in adopting the suggested standards. [1989 c 175 § 84; 1977 ex.s. c 137 § 2.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**35.68.080 Construction of chapter.** This chapter is supplemental and additional to any and all other laws relating to construction, reconstruction, and repair of sidewalks, gutters, and curbs along driveways across sidewalks in cities and towns. [1965 c 7 § 35.68.080. Prior: 1949 c 177 § 8; Rem. Supp. 1949 § 9332h.]

### Chapter 35.69 RCW

#### SIDEWALKS—CONSTRUCTION, RECONSTRUCTION IN FIRST AND SECOND CLASS CITIES

##### Sections

35.69.010	Definitions.
35.69.020	Resolution of necessity—Liability of abutting property—Reconstruction.
35.69.030	Notice to owners—Service—Contents—Assessment—Collection.
35.69.040	Abutting property defined.
35.69.050	Construction of chapter.

*Assessments and charges against state lands: Chapter 79.44 RCW.*

**35.69.010 Definitions.** The term "street" as used herein includes boulevard, avenue, street, alley, way, lane, square or place.

The term "city" includes any city of the first or second class or any other city of equal population working under a special charter.

The term "sidewalk" includes any and all pedestrian structures or forms of improvement for pedestrians included in the space between the street margin, as defined by a curb or the edge of the traveled road surface, and the line where the public right of way meets the abutting property. [1996 c 19 § 2; 1994 c 81 § 61; 1965 c 7 § 35.69.010. Prior: 1927 c 203 § 1; RRS § 9332-1.]

**35.69.020 Resolution of necessity—Liability of abutting property—Reconstruction.** (1) Whenever a portion, not longer than one block in length, of any street in any city is not improved by the construction of a sidewalk thereon, or the sidewalk thereon has become unfit or unsafe for purposes of public travel, and such street adjacent to both ends of said portion is so improved and in good repair, and the city council of such city by resolution finds that the improvement of such portion of such street by the construction or reconstruction of a sidewalk thereon is necessary for the public safety and convenience, the duty, burden, and expense of constructing or reconstructing such sidewalk shall devolve upon the property directly abutting upon such portion except as provided in subsections (2) and (3) of this section.

(2) An abutting property shall not be charged with any costs of construction or reconstruction under this chapter, or under chapter 35.68 or 35.70 RCW, in excess of fifty percent of the valuation of such abutting property, exclusive of improvements thereon, according to the valuation last placed upon it for purposes of general taxation.

(3) An abutting property shall not be charged with any costs of reconstruction under this chapter, or under chapter 35.68 or 35.70 RCW, if the reconstruction is required to correct deterioration of or damage to the sidewalk that is the direct result of actions by the city or its agents or to correct deterioration of or damage to the sidewalk that is the direct result of the failure of the city to enforce its ordinances. [1996 c 19 § 3; 1965 c 7 § 35.69.020. Prior: 1927 c 203 § 2; RRS § 9332-2.]

**35.69.030 Notice to owners—Service—Contents—Assessment—Collection.** Whenever the city council of any such city has adopted such resolution it shall cause a notice to be served on the owner of the property directly abutting on such portion of such street, instructing him to construct or reconstruct a sidewalk on such portion in accordance with the plans and specifications which shall be attached to such notice. The notice shall be deemed sufficiently served if delivered in person to the owner or if left at the home of such owner with a person of suitable age and discretion then resident therein, or with an agent of such owner, authorized to collect rentals on such property, or, if the owner is a nonresident of the state of Washington, by mailing a copy to his last known address, or if he is unknown or if his address is unknown, then by posting a copy in a conspicuous place at such portion of the street where the improvement is to be made. The notice shall specify a reasonable time within which such construction or reconstruction shall be made, and shall state that in case the owner fails to make the same within such time, the city will proceed to make it through the officer or department thereof charged with the inspection of sidewalks and that such officer or department will report to the city council, at a subsequent date, to be definitely stated in the notice, an assessment roll showing the lot or parcel of land directly abutting on such portion of the street so improved, the cost of the improvement, and the name of the owner, if known, and that the city council at the time stated in the notice or at the time or times to which the same may be adjourned, will hear any and all protests against the proposed assessment. Upon the expiration of the time fixed within which the owner is required to construct or reconstruct such sidewalk, if the owner has failed to perform such work, the city may proceed to perform it, and the officer or department of the city performing the work shall, within the time fixed in the notice, report to the city council an assessment roll showing the lot or parcel of land directly abutting on that portion of the street so improved, the cost of the work, and the name of the owner, if known. The city council shall, at the time in such notice designated, or at an adjourned time or times, assess the cost of such improvement against said property and shall fix the time and manner for payment thereof, which said assessment shall become a lien upon said property and shall be collected in the manner as is provided by law for collection of local improvements assessments under this title. [1965 c 7 § 35.69.030. Prior: 1927 c 203 § 3; RRS § 9332-3.]

**35.69.040 Abutting property defined.** For the purposes of this chapter all property having a frontage upon the sides or margins of any street shall be deemed to be abutting property, and such property shall be chargeable, as provided

herein, for all costs of construction or reconstruction or any form of sidewalk improvement between the margin of said street and the roadway lying in front of and adjacent to said property. [1965 c 7 § 35.69.040. Prior: 1927 c 203 § 4; RRS § 9332-4.]

**35.69.050 Construction of chapter.** Nothing in this chapter shall be construed to limit or repeal any existing powers of cities with reference to the construction or reconstruction of sidewalks or the improvement or maintenance of streets, but the power and authority herein granted is to be exercised concurrent with or in extension of powers and authority now existing. The legislative authority of any city before exercising the powers and authority herein granted shall, by proper ordinance, provide for the application and enforcement of the same within the limitations herein specified. [1965 c 7 § 35.69.050. Prior: 1927 c 203 § 5; RRS § 9332-5.]

### Chapter 35.70 RCW

#### SIDEWALKS—CONSTRUCTION IN SECOND CLASS CITIES AND TOWNS

##### Sections

35.70.010	Definitions.
35.70.020	Owners' responsibility.
35.70.030	Convenience and necessity reported by superintendent.
35.70.040	Council's resolution and notice—Adoption.
35.70.050	Council's resolution and notice—Contents.
35.70.060	Notice of resolution and order—Service.
35.70.070	Superintendent to construct and prepare assessment roll.
35.70.080	Hearing on assessment roll—Notice.
35.70.090	Lien of assessments and foreclosure.
35.70.100	Provisions of chapter not exclusive.

*Assessments and charges against state lands: Chapter 79.44 RCW.*

**35.70.010 Definitions.** For the purposes of this chapter all property having a frontage on the side or margin of any street shall be deemed abutting property, and such property shall be chargeable, as provided in this chapter, with all costs of construction of any form of sidewalk improvement, between the margin of the street, as defined by a curb or the edge of the traveled road surface, and the line where the public right of way meets the abutting property, and the term sidewalk as used in this chapter shall be construed to mean and include any and all pedestrian structures or forms of improvement for pedestrians included in the space between the street margin, as defined by a curb or the edge of the traveled road surface, and the line where the public right of way meets the abutting property. [1996 c 19 § 4; 1965 c 7 § 35.70.010. Prior: 1915 c 149 § 7; RRS § 9161.]

**35.70.020 Owners' responsibility.** In all cities of the second class and towns the burden and expense of constructing sidewalks along the side of any street or other public place shall devolve upon and be borne by the property directly abutting thereon. The cost of reconstructing or repairing existing sidewalks may devolve upon the abutting property subject to the limitations in RCW 35.69.020 (2) and (3). [1996 c 19 § 5; 1994 c 81 § 62; 1965 c 7 § 35.70.020. Prior: 1915 c 149 § 1; RRS § 9155.]

(2004 Ed.)

**35.70.030 Convenience and necessity reported by superintendent.** If in the judgment of the officer or department having superintendence of streets and public places, public convenience or safety requires that a sidewalk be constructed along either side of any street, he shall report the fact to the city or town council immediately. [1965 c 7 § 35.70.030. Prior: 1915 c 149 § 2, part; RRS § 9156, part.]

**35.70.040 Council's resolution and notice—Adoption.** If upon receiving a report from the proper officer, the city or town council deems the construction of the proposed sidewalk necessary or convenient for the public it shall by an appropriate resolution order the sidewalk constructed and shall cause a written notice to be served upon the owner of each parcel of land abutting upon that portion and side of the street where the sidewalk is constructed requiring him to construct the sidewalk in accordance with the resolution. [1965 c 7 § 35.70.040. Prior: 1915 c 149 § 2, part; RRS § 9156, part.]

**35.70.050 Council's resolution and notice—Contents.** The resolution and notice and order to construct a sidewalk shall:

- (1) Describe each parcel of land abutting upon that portion and side of the street where the sidewalk is ordered to be constructed,
- (2) Specify the kind of sidewalk required, its size and dimensions, the method and material to be used in construction,
- (3) Contain an estimate of the cost thereof, and
- (4) State that unless the sidewalk is constructed in compliance with the notice, and within a reasonable time therein specified, the city or town will construct the sidewalk and assess the cost and expense thereof against the abutting property described in the notice. [1965 c 7 § 35.70.050. Prior: 1915 c 149 § 3; RRS § 9157.]

**35.70.060 Notice of resolution and order—Service.** The notice shall be served:

- (1) By delivering a copy to the owner or reputed owner of each parcel of land affected, or to the authorized agent of the owners, or
- (2) By leaving a copy thereof at the usual place of abode of the owner in the city or town with a person of suitable age and discretion residing therein, or
- (3) If the owner is a nonresident of the city or town and his place of residence is known by mailing a copy to the owner addressed to his last known place of residence, or
- (4) If the place of residence of the owner is unknown or if the owner of any parcel of land affected is unknown, by publication in the official newspaper of the city or town once a week for two consecutive weeks. The notice shall specify a reasonable time within which the sidewalk shall be constructed which in the case of publication of the notice shall not be less than sixty days from the date of the first publication of such notice. [1985 c 469 § 36; 1965 c 7 § 35.70.060. Prior: 1915 c 149 § 4; RRS § 9158.]

**35.70.070 Superintendent to construct and prepare assessment roll.** If the notice and order to construct a side-

walk is not complied with within the time therein specified, the officer or department having the superintendence of streets shall proceed to construct said sidewalk forthwith and shall report to the city or town council at its next regular meeting or as soon thereafter as is practicable an assessment roll showing each parcel of land abutting upon the sidewalk, the name of the owner thereof if known, and apportion the cost of said improvement to be assessed against each parcel of such land. [1965 c 7 § 35.70.070. Prior: 1915 c 149 § 5, part; RRS § 9159, part.]

### 35.70.080 Hearing on assessment roll—Notice.

Thereupon the city or town council shall set a date for hearing any protests against the proposed assessment roll and shall cause a notice of the time and place of the hearing to be published once a week for two successive weeks in the official newspaper of the city or town, the date of the hearing to be not less than thirty days from the date of the first publication of the notice. At the hearing or at any adjournment thereof the council by ordinance shall assess the cost of constructing the sidewalk against the abutting property in accordance with the benefits thereto. [1985 c 469 § 39; 1965 c 7 § 35.70.080. Prior: (i) 1915 c 149 § 5, part; RRS § 9159, part. (ii) 1915 c 149 § 6, part; RRS § 9160, part.]

**35.70.090 Lien of assessments and foreclosure.** The assessments shall become a lien upon the respective parcels of land and shall be collected in the manner provided by law for the collection of local improvement assessments and shall bear interest at the rate of six percent per annum from the date of the approval of said assessment thereon. [1965 c 7 § 35.70.090. Prior: 1915 c 149 § 6, part; RRS § 9160, part.]

*Collection and foreclosure of local improvement assessments: Chapters 35.49, 35.50 RCW.*

**35.70.100 Provisions of chapter not exclusive.** This chapter shall not be construed as repealing or amending any provision relating to the improvement of streets or public places by special assessments commonly known as local improvement laws, but shall be considered as additional legislation and auxiliary thereto and the city or town council, of any city of the second class or town before exercising the authority herein granted may by ordinance provide for the application and enforcement of the provisions of this chapter within the limitations herein specified. [1994 c 81 § 63; 1965 c 7 § 35.70.100. Prior: 1915 c 149 § 8; RRS § 9162.]

## Chapter 35.71 RCW PEDESTRIAN MALLS

### Sections

35.71.010	Definitions.
35.71.020	Establishment declared public purpose—Authority to establish—General powers.
35.71.030	Resolution of intention—Traffic limitation—Property owner's right of ingress and egress.
35.71.040	Plan—Alternate vehicle routes—Off-street parking—Hearing, notice.
35.71.050	Real estate appraisers—Report.
35.71.060	Financing methods.
35.71.070	Waivers and quitclaim deeds—Rights in right of way.
35.71.080	Vacating, replatting right of way for mall purposes.

35.71.090	"Mall organization"—Powers in general—Directors—Officers.
35.71.100	Special assessment.
35.71.110	Claims for damages.
35.71.120	Contracts with mall organization for administration—Conflicting charter provisions.
35.71.130	Election to discontinue mall—Ordinance—Outstanding obligations—Restoration to former status.
35.71.910	Chapter controls inconsistent laws.

**35.71.010 Definitions.** As used in this chapter, the following terms shall have the meaning herein given to each of them:

"City" means any city or town.

"Chief executive" means the mayor in a mayor-council or commission city and city manager in a council-manager city.

"Corporate authority" means the legislative body of any city.

"Project" means a pedestrian mall project.

"Right of way" means that area of land dedicated for public use or secured by the public for purposes of ingress and egress to abutting property and other public purposes.

"Mall" means an area of land, part of which may be surfaced, landscaped, and used entirely for pedestrian movements, except with respect to governmental functions, utilities, and loading and unloading of goods.

"Mall organization" means a group of property owners, lessors, or lessees in an area that has been organized to consider the establishment, maintenance, and operation of a mall in a given area and persons owning or having any legal or equitable interest in the real property affected by the establishment of the mall. [1965 c 7 § 35.71.010. Prior: 1961 c 111 § 1.]

**35.71.020 Establishment declared public purpose—Authority to establish—General powers.** The establishment of pedestrian malls is declared to be for a public purpose. Any corporate authority, by ordinance, may establish and regulate any street right of way as a mall, may prohibit, in whole or in part, vehicular traffic on a mall, and may provide for the acquisition of any interest in the right of way necessary to its establishment, and may provide for the determination of legal damages, if any, to abutting property. [1965 c 7 § 35.71.020. Prior: 1961 c 111 § 2.]

**35.71.030 Resolution of intention—Traffic limitation—Property owner's right of ingress and egress.** When the corporate authority determines that the public interest, safety, and convenience is best served by the establishment of a mall and that vehicular traffic will not be unduly inconvenienced thereby, it may adopt a resolution declaring its intention to do so, and announcing the intended extent of traffic limitation. Any corporate authority is authorized to limit the utilization of any right of way, except for utilities and governmental functions, provided adequate alternative routes for vehicular movement, and the loading and unloading of goods are established or are available. The abutting property owner's right of ingress and egress shall be considered to have been satisfied whenever the corporate authority has planned and constructed, or there is available, an alternate route, alleyway, and service driveway. [1965 c 7 § 35.71.030. Prior: 1961 c 111 § 3.]

**35.71.040 Plan—Alternate vehicle routes—Off-street parking—Hearing, notice.** Before a mall is established, a plan shall be formulated consistent with the city's comprehensive plan, including at least the area of the right of way between two intersecting streets and showing alternate routes outside the mall area upon which any vehicles excluded from using the mall may be accommodated; it may include a provision for on and off-street parking. After the plans have been prepared, the corporate authority shall hold a public hearing thereon, giving notice of time and place at least two weeks in advance of the hearing in a newspaper of general circulation in the city and as required by chapter 42.32 RCW. [1965 c 7 § 35.71.040. Prior: 1961 c 111 § 4.]

**35.71.050 Real estate appraisers—Report.** The corporate authority is authorized to engage duly qualified real estate appraisers, for the purpose of determining the value, or legal damages, if any, to any person, owning or having any legal or equitable interest in any real property who contends that he would suffer damage if a projected mall were established; in connection therewith the city shall take into account any increment in value that may result from the establishment of the mall. The appraisers shall submit their findings in writing to the chief executive of the city. [1965 c 7 § 35.71.050. Prior: 1961 c 111 § 5.]

**35.71.060 Financing methods.** The corporate authority may finance the establishment of a mall, including, but not limited to, right of way improvements, traffic control devices, and off-street parking facilities in the vicinity of the mall, by one or more of the following methods or by a combination of any two or more of them:

(1) By creating local improvement districts under the laws applicable thereto in Title 35 RCW.

(2) By issuing revenue bonds pursuant to chapter 35.41 RCW, \*RCW 35.24.305, chapter 35.92 RCW, RCW 35.81.100, and by such other statutes that may authorize such bonds.

(3) By issuing general obligation bonds pursuant to chapter 39.52 RCW, RCW 35.81.115, and by such other statutes and applicable provisions of the state Constitution that may authorize such bonds.

(4) By use of gifts and donations.

(5) General fund and other available moneys: PROVIDED, That if any general fund moneys are expended for a mall, provision may be made for repayment thereof to the general fund from money received from the financing of the mall.

The corporate authority may include within the cost of any mall project the expense of moving utilities, or any facility located within a right of way. [1965 c 7 § 35.71.060. Prior: 1961 c 111 § 6.]

\*Reviser's note: RCW 35.24.305 was recodified as RCW 35.23.454 pursuant to 1994 c 81 § 90.

**35.71.070 Waivers and quitclaim deeds—Rights in right of way.** The corporate authority may formulate, solicit, finance and acquire, purchase, or negotiate the acquisition of waivers and the execution of quitclaim deeds by persons owning or having any legal or equitable interest in the real property affected by the establishment of a mall, conveying

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the necessary rights to the city to prohibit through vehicular traffic and otherwise limit vehicular access to, and from, such right of way: PROVIDED, That the execution of such waivers and quitclaim deeds shall not operate to extinguish the rights of the abutting owner, lessor, or lessee in the right of way, not included in such waiver or quitclaim deed. [1965 c 7 § 35.71.070. Prior: 1961 c 111 § 7.]

**35.71.080 Vacating, replatting right of way for mall purposes.** The corporate authority, as an alternate to the preceding methods, may find that the right of way no longer is needed as a right of way. When persons owning or having any legal or equitable interest in the real property affected by a proposed mall, present a petition to the corporate authority for vacating the right of way pursuant to chapter 35.79 RCW, or the corporate authority initiates by resolution such a vacation proceeding, a right of way may be vacated and replatted for mall purposes, and closed to vehicular traffic except as provided in RCW 35.71.030, consistent with the subdivision standards allowed by Title 58 RCW, and chapter 35.63 RCW. [1965 c 7 § 35.71.080. Prior: 1961 c 111 § 8.]

**35.71.090 "Mall organization"—Powers in general—Directors—Officers.** The corporate authority may cause an organization of persons to be known as a "Mall organization" interested in creating a mall in a given area to be formed to provide for consultative assistance to the city with respect to the establishment and administration of a mall. This organization may elect a board of directors of not less than three nor more than twelve members. The board shall elect a president, a vice president, and a secretary from its membership. [1965 c 7 § 35.71.090. Prior: 1961 c 111 § 9.]

**35.71.100 Special assessment.** After the establishment of the mall, the corporate authority may levy a special assessment on the real property within the area specially benefited by the improvement. Such special levy, if any, shall be for operation and maintenance of the mall and appurtenances thereto, which may not exceed one percent of the aggregate actual valuation of the real property (including twenty-five percent of the actual valuation of the improvements thereon) according to the valuation last placed upon it for purposes of general taxation: PROVIDED, That if a mall organization board of directors exists as authorized by RCW 35.71.090, the corporate authority may entertain a recommendation from this organization with respect to such a levy by the corporate authority. [1965 c 7 § 35.71.100. Prior: 1961 c 111 § 10.]

**35.71.110 Claims for damages.** Following the public hearing on the ordinance to establish a mall any person owning or having any legal or equitable interest in property which might be affected by reason of the establishment of the proposed mall or the board of directors of a mall organization shall, within twenty days of such hearing, file with the city clerk a statement describing the real property as to which the claim is made, the nature of the claimant's interest therein, the nature of the alleged damage thereto and the amount of damages claimed. After the receipt thereof, the corporate authority may negotiate with the affected parties concerning them

or deny them. [1965 c 7 § 35.71.110. Prior: 1961 c 111 § 11.]

**35.71.120 Contracts with mall organization for administration—Conflicting charter provisions.** If the corporate authority desires to have the mall administered by a mall organization rather than by one of its departments, the corporate authority may execute a contract with such an organization for the administration of the mall upon mutually satisfactory terms and conditions: PROVIDED, That if any provision of a city charter conflicts with this section, such provision of the city charter shall prevail. [1965 c 7 § 35.71.120. Prior: 1961 c 111 § 12.]

**35.71.130 Election to discontinue mall—Ordinance—Outstanding obligations—Restoration to former status.** The board of directors of a mall organization may call for an election, after the mall has been in operation for two years, at which the voting shall be by secret ballot, on the question: "Shall the mall be continued in operation?" If sixty percent of the membership of the organization vote to discontinue the mall, the results of the election shall be submitted to the corporate authority. The corporate authority may initiate proceedings by ordinance for the discontinuation of the mall, allocate the proportionate amount of the outstanding obligations of the mall to the abutting property of the mall or property specially benefited if a local improvement district is established, subject to the provisions of any applicable statutes and bond ordinances, resolutions, or agreements, and thereafter, at a time set by the corporate authority, the mall may be restored to its former right of way status. [1965 c 7 § 35.71.130. Prior: 1961 c 111 § 13.]

**35.71.910 Chapter controls inconsistent laws.** Insofar as the provisions of this chapter are inconsistent with a provision of any other law, the provisions of this chapter shall be controlling. [1965 c 7 § 35.71.910. Prior: 1961 c 111 § 15.]

### Chapter 35.72 RCW

#### CONTRACTS FOR STREET, ROAD, AND HIGHWAY PROJECTS

##### Sections

35.72.010	Contracts authorized for street projects.
35.72.020	Reimbursement by other property owners.
35.72.030	Reimbursement by other property owners—Reimbursement share.
35.72.040	Assessment reimbursement contracts.
35.72.050	Alternative financing methods—Participation in or creation of assessment reimbursement area by county, city, town, or department of transportation—Eligibility for reimbursement.

**35.72.010 Contracts authorized for street projects.** The legislative authority of any city, town, or county may contract with owners of real estate for the construction or improvement of street projects which the owners elect to install as a result of ordinances that require the projects as a prerequisite to further property development. [1983 c 126 § 1.]

#### **35.72.020 Reimbursement by other property owners.**

The contract may provide for the partial reimbursement to the owner or the owner's assigns for a period not to exceed fifteen years of a portion of the costs of the project by other property owners who:

- (1) Are determined to be within the assessment reimbursement area pursuant to RCW 35.72.040;
- (2) Are determined to have a reimbursement share based upon a benefit to the property owner pursuant to RCW 35.72.030;
- (3) Did not contribute to the original cost of the street project; and
- (4) Subsequently develop their property within the fifteen-year period and at the time of development were not required to install similar street projects because they were already provided for by the contract.

Street projects subject to reimbursement may include design, grading, paving, installation of curbs, gutters, storm drainage, sidewalks, street lighting, traffic controls, and other similar improvements, as required by the street standards of the city, town, or county. [1983 c 126 § 2.]

**35.72.030 Reimbursement by other property owners—Reimbursement share.** The reimbursement shall be a pro rata share of construction and reimbursement of contract administration costs of the street project. A city, town, or county shall determine the reimbursement share by using a method of cost apportionment which is based on the benefit to the property owner from such project. [1983 c 126 § 3.]

**35.72.040 Assessment reimbursement contracts.** The procedures for assessment reimbursement contracts shall be governed by the following:

(1) An assessment reimbursement area shall be formulated by the city, town, or county based upon a determination by the city, town, or county of which parcels adjacent to the improvements would require similar street improvements upon development.

(2) The preliminary determination of area boundaries and assessments, along with a description of the property owners' rights and options, shall be forwarded by certified mail to the property owners of record within the proposed assessment area. If any property owner requests a hearing in writing within twenty days of the mailing of the preliminary determination, a hearing shall be held before the legislative body, notice of which shall be given to all affected property owners. The legislative body's ruling is determinative and final.

(3) The contract must be recorded in the appropriate county auditor's office within thirty days of the final execution of the agreement.

(4) If the contract is so filed, it shall be binding on owners of record within the assessment area who are not party to the contract. [1988 c 179 § 16; 1983 c 126 § 4.]

**Severability—Prospective application—Section captions—1988 c 179:** See RCW 39.92.900 and 39.92.901.

**35.72.050 Alternative financing methods—Participation in or creation of assessment reimbursement area by county, city, town, or department of transportation—Eligibility for reimbursement.** (1) As an alternative to financ-

ing projects under this chapter solely by owners of real estate, a county, city, or town may join in the financing of improvement projects and may be reimbursed in the same manner as the owners of real estate who participate in the projects, if the county, city, or town has specified the conditions of its participation in an ordinance. As another alternative, a county, city, or town may create an assessment reimbursement area on its own initiative, without the participation of a private property owner, finance the costs of the road or street improvements, and become the sole beneficiary of the reimbursements that are contributed. A county, city, or town may be reimbursed only for the costs of improvements that benefit that portion of the public who will use the developments within the assessment reimbursement area established pursuant to RCW 35.72.040(1). No county, city, or town costs for improvements that benefit the general public may be reimbursed.

(2) The department of transportation may, for state highways, participate with the owners of real estate or may be the sole participant in the financing of improvement projects, in the same manner and subject to the same restrictions as provided for counties, cities, and towns, in subsection (1) of this section. The department shall enter into agreements whereby the appropriate county, city, or town shall act as an agent of the department in administering this chapter. [1997 c 158 § 1; 1987 c 261 § 1; 1986 c 252 § 1.]

**Chapter 35.73 RCW**

**STREET GRADES—SANITARY FILLS**

Sections

- 35.73.010 Authority—First and second class cities.
- 35.73.020 Estimates—Intention—Property included—Resolution.
- 35.73.030 Hearing—Time of—Publication of resolution.
- 35.73.040 Ordinance—Assessments.
- 35.73.050 Lien of assessments.
- 35.73.060 Improvement district bonds—Issuance.
- 35.73.070 Improvement district bonds—Payment—Remedies.
- 35.73.080 Provisions not exclusive.

**35.73.010 Authority—First and second class cities.** If a city of the first or second class establishes the grade of any street or alley at a higher elevation than any private property abutting thereon, thereby rendering the drainage of such private property or any part thereof impracticable without the raising of the surface of such private property, or if the surface of any private property in any such city is so low as to make sanitary drainage thereof impracticable and it is determined by resolution of the city council of such city that a fill of such private property is necessary as a sanitary measure, the city may provide therefor, and by general or special ordinance or both make provision for the necessary surveys, estimates, bids, contract, bond and supervision of the work and for making and approving the assessment roll of the local improvement district and for the collection of the assessments made thereby, and for the doing of everything which in their discretion may be necessary or be incidental thereto: PROVIDED, That before the approval of the assessment roll, notice shall be given and an opportunity offered for the owners of the property affected by the assessment roll to be heard before such city council in the same manner as in case of assessments for drainage or sewerage in the city. [1965 c 7 §

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35.73.010. Prior: (i) 1907 c 243 § 1; RRS § 9426. (ii) 1907 c 243 § 4; RRS § 9429.]

**35.73.020 Estimates—Intention—Property included—Resolution.** Before establishing a grade for property or providing for the fill of property, the city must adopt a resolution declaring its intention to do so.

The resolution shall:

- (1) Describe the property proposed to be improved by the fill,
- (2) State the estimated cost of making the improvement,
- (3) State that the cost thereof is to be assessed against the property improved thereby, and
- (4) Fix a time not less than thirty days after the first publication of the resolution within which protests against the proposed improvement may be filed with the city clerk.

The resolution may include as many separate parcels of property as may seem desirable whether or not they are contiguous so long as they lie in the same general neighborhood and may be included conveniently in one local improvement district. [1965 c 7 § 35.73.020. Prior: 1907 c 243 § 2, part; RRS § 9427, part.]

**35.73.030 Hearing—Time of—Publication of resolution.** Upon the passage of the resolution the city clerk shall cause it to be published in the official newspaper of the city in at least two successive issues before the time fixed in the resolution for filing protests. Proof of publication by affidavit shall be filed as part of the record of the proceedings. [1965 c 7 § 35.73.030. Prior: 1907 c 243 § 2, part; RRS § 9427, part.]

**35.73.040 Ordinance—Assessments.** If no protest is filed, or if protests are filed but the city council after full hearing determines that it is necessary to fill any portion of the private property it shall proceed to enact an ordinance for such improvement. By the provisions of the ordinance, a local improvement district shall be established to be called "local improvement district No. . . .," which shall include all the property found by the said council to require the fill as a sanitary measure. The ordinance shall provide that such improvement shall be made and shall fix and establish the grades to which the said property and the different portions thereof shall be brought by such improvement, and that the cost and expense thereof shall be taxed and assessed upon all the property in such local improvement district, which cost shall be assessed in proportion to the number of cubic yards of earth and bulkheading required for the different portions of said property included in said improvement district and in proportion to the benefits derived by such improvement: PROVIDED, That the city council may expend from the general fund for such purposes such sums as in its judgment may seem fair and equitable in consideration of the benefits accruing to the general public by reason of such improvement. [1965 c 7 § 35.73.040. Prior: 1907 c 243 § 3, part; RRS § 9428, part.]

**35.73.050 Lien of assessments.** Whenever any expense or cost of work has been assessed the amount of such expense and cost shall become a lien upon said lands against which

the same are so assessed and shall take precedence of all other liens, except general tax liens and special assessment liens theretofore assessed by the said city thereon and which may be foreclosed in accordance with law in the name of such city as plaintiff. And in any such proceeding if the court trying the same shall be satisfied that the work has been done or material furnished for the fill of such property, a recovery shall be permitted or charge enforced to the extent of the proper proportion of the value of the work or material which would be chargeable on such lot or land notwithstanding any informality, irregularity or defects in any of the proceedings of such municipal corporation or its officers. [1965 c 7 § 35.73.050. Prior: 1907 c 243 § 3, part; RRS § 9428, part.]

*Collection and foreclosure of local improvement district assessments: Chapters 35.49, 35.50 RCW.*

### **35.73.060 Improvement district bonds—Issuance.**

(1) The city may, in its discretion, by general or special ordinance, or both, instead of requiring immediate payment for the said work to be made by the owners of property included in the assessment roll, authorize the issuance of interest bearing bonds or warrants of the local improvement district, payable on or before a date not to exceed twelve years from and after their date. The bonds may be issued subject to call, the amount of the said assessment to be payable in installments or otherwise, and the bonds to be of such terms as may be provided in the ordinances and to bear interest at such rate or rates as may be prescribed in the ordinances. Such bonds or warrants may be of any form, including bearer bonds or bearer warrants, or registered bonds or registered warrants as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds or warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 62; 1981 c 156 § 9; 1979 ex.s. c 30 § 1; 1965 c 7 § 35.73.060. Prior: 1915 c 87 § 1, part; 1907 c 243 § 5, part; RRS § 9430, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.73.070 Improvement district bonds—Payment—Remedies.** The bonds or warrants shall be payable only from the fund created by the special assessments upon the property in the local improvement district, and the owner of any bond or warrant shall look only to this fund for the payment of the principal and interest thereof and shall have no claim or lien therefor against the city by which the same was issued except from that fund. [1983 c 167 § 63; 1965 c 7 § 35.73.070. Prior: 1915 c 87 § 1, part; 1907 c 243 § 5, part; RRS § 9430, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.73.080 Provisions not exclusive.** The provisions and remedies provided by this chapter for filling lowlands in connection with establishing street grades or for sanitary reasons are cumulative. [1965 c 7 § 35.73.080. Prior: 1907 c 243 § 6; RRS § 9431.]

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## **Chapter 35.74 RCW STREETS—DRAWBRIDGES**

### Sections

35.74.010	Authority to construct or grant franchise to construct.
35.74.020	Initiation of proceedings—Notice to county commissioners.
35.74.030	Determination of width of draw—Appeal.
35.74.040	Required specifications.
35.74.050	City may operate as toll bridges.
35.74.060	Prerequisites of grant of franchise—Approval of bridge—Tolls.
35.74.070	License fees—Renewal of license.

*Counties may assist as to certain bridges on city streets: RCW 36.75.200.*

**35.74.010 Authority to construct or grant franchise to construct.** Every city and town may erect and maintain drawbridges across navigable streams that flow through or penetrate the boundaries thereof, when the public necessity requires it, or it may grant franchises to persons or corporations to erect them and charge toll thereon. [1965 c 7 § 35.74.010. Prior: 1890 p 54 § 1; RRS § 9323.]

**35.74.020 Initiation of proceedings—Notice to county commissioners.** If the city or town council desires to erect a drawbridge across any navigable stream on any street, or to grant the privilege so to do to any corporation or individual, it shall notify the board of county commissioners to that effect stating the precise point where such bridge is proposed to be located. [1965 c 7 § 35.74.020. Prior: 1890 p 54 § 2, part; RRS § 9324, part.]

**35.74.030 Determination of width of draw—Appeal.** The board of county commissioners within ten days from the receipt of the notice, if in session, and if not in session, within five days after the first day of the next regular or special session, shall designate the width of the draw to be made in such bridge, and the length of span necessary to permit the free flow of water: PROVIDED, That if any persons deem themselves aggrieved by the determination of the matter by the board, they may appeal to the superior court which may hear and determine the matter upon such further notice and on such testimony as it shall direct to be produced. [1965 c 7 § 35.74.030. Prior: 1890 p 54 § 2, part; RRS § 9324, part.]

**35.74.040 Required specifications.** All bridges constructed under the provisions of this chapter must be so constructed as not to obstruct navigation, and must have a draw or swing of sufficient space or span to permit the safe, convenient, and expeditious passage at all times of any steamer or vessel or raft which may navigate the stream or waters bridged. [1965 c 7 § 35.74.040. Prior: 1890 p 55 § 5; RRS § 9327.]

**35.74.050 City may operate as toll bridges.** A city or town may build and maintain toll bridges and charge and collect tolls thereon, and to that end may provide a system and elect or appoint persons to operate the same, or the said bridges may be made free, as it may elect. [1965 c 7 § 35.74.050. Prior: 1890 p 55 § 6; RRS § 9328.]

**35.74.060 Prerequisites of grant of franchise—Approval of bridge—Tolls.** Before any franchise to build

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any bridge across any such navigable stream is granted by any city or town council it shall fix a license tax, not to exceed ten percent of the tolls collected annually. Upon the completion of the bridge the city or town council shall cause it to be inspected and if it is found to comply in all respects with the specifications previously made, and to be safe and convenient for the public, the council shall declare it open as a toll bridge, and shall immediately fix the rates of toll thereof. [1965 c 7 § 35.74.060. Prior: 1890 p 55 § 3; RRS § 9325.]

**35.74.070 License fees—Renewal of license.** The owner or keeper of any toll bridges in any city or town shall, before the renewal of any license, report to the city or town council under oath, the actual cost of construction and equipment of the toll bridge, the repairs and cost of maintaining it during the preceding year, the amount of tax collected, and the estimated cash value of the bridge, exclusive of the franchise. All funds arising from the license tax shall be paid into the general fund of the city or town. [1965 c 7 § 35.74.070. Prior: 1890 p 55 § 4; RRS § 9326.]

### Chapter 35.75 RCW

#### STREETS—BICYCLES—PATHS

##### Sections

35.75.010	Authority to regulate and license bicycles—Penalties.
35.75.020	Use of bicycle paths for other purposes prohibited.
35.75.030	License fees authorized.
35.75.040	Rules regulating use of bicycle paths.
35.75.050	Bicycle road fund—Sources—Use.
35.75.060	Use of street and road funds for bicycle paths, lanes, routes and improvements authorized—Standards.

*Bicycle awareness program:* RCW 43.43.390.

*Bicycle transportation management program:* RCW 47.04.190.

*Pavement marking standards:* RCW 47.36.280.

*Rules of the road, bicycles:* RCW 46.61.750 through 46.61.780.

**35.75.010 Authority to regulate and license bicycles—Penalties.** Every city and town may by ordinance regulate and license the riding of bicycles and other similar vehicles upon or along the streets, alleys, highways, or other public grounds within its limits and may construct and maintain bicycle paths or roadways within or outside of and beyond its limits leading to or from the city or town. The city or town may provide by ordinance for reasonable fines and penalties for violation of the ordinance. [1965 c 7 § 35.75.010. Prior: (i) 1899 c 31 § 1; RRS § 9204. (ii) 1899 c 31 § 2; RRS § 9205.]

**35.75.020 Use of bicycle paths for other purposes prohibited.** It shall be unlawful for any person to lead, drive, ride, or propel any team, wagon, animal, or vehicle other than a bicycle, electric personal assistive mobility device, or similar vehicle upon and along any bicycle path constructed within or without the corporate limits of any city or town excepting at suitable crossings to be provided in the construction of such paths. Any person violating the provisions of this section shall be guilty of a misdemeanor. [2002 c 247 § 8; 1965 c 7 § 35.75.020. Prior: 1899 c 31 § 3; RRS § 9206.]

**Legislative review—2002 c 247:** See note following RCW 46.04.1695.

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**35.75.030 License fees authorized.** Every city and town by ordinance may establish and collect reasonable license fees from all persons riding a bicycle or other similar vehicle within its respective corporate limits, and may enforce the payment thereof by reasonable fines and penalties. [1965 c 7 § 35.75.030. Prior: 1899 c 31 § 4; RRS § 9207.]

**35.75.040 Rules regulating use of bicycle paths.** The license fee to be paid and the rules regulating the riding of bicycles or other similar vehicles within any city or town shall be fixed by ordinance, and the rules regulating the use of such bicycle paths or roadways constructed or maintained within its limits and the fines and penalties for the violation of such rules shall be fixed by ordinance. [1965 c 7 § 35.75.040. Prior: 1899 c 31 § 5; RRS § 9208.]

**35.75.050 Bicycle road fund—Sources—Use.** The city or town council shall by ordinance provide that the whole amount or any amount not less than seventy-five percent of all license fees, penalties or other moneys collected under the authority of this chapter shall be paid into and placed to the credit of a special fund to be known as the "bicycle road fund." The moneys in the bicycle road fund shall not be transferred to any other fund and shall be paid out for the sole purpose of building and maintaining bicycle paths and roadways authorized to be constructed and maintained by this chapter or for special policemen, bicycle tags, stationery and other expenses growing out of the regulating and licensing of the riding of bicycles and other vehicles and the construction, maintenance and regulation of the use of bicycle paths and roadways. [1965 c 7 § 35.75.050. Prior: 1899 c 31 § 6; RRS § 9209.]

**35.75.060 Use of street and road funds for bicycle paths, lanes, routes and improvements authorized—Standards.** Any city or town may use any funds available for street or road construction, maintenance, or improvement for building, improving, and maintaining bicycle paths, lanes, roadways, and routes, and for improvements to make existing streets and roads more suitable and safe for bicycle traffic: PROVIDED, That any such paths, lanes, roadways, routes, or streets for which any such street or road funds are expended shall be suitable for bicycle transportation purposes and not solely for recreation purposes. Bicycle facilities constructed or modified after June 10, 1982, shall meet or exceed the standards of the state department of transportation. [1982 c 55 § 1; 1974 ex.s. c 141 § 10.]

### Chapter 35.76 RCW

#### STREETS—BUDGET AND ACCOUNTING

##### Sections

35.76.010	Declaration of purpose—Budget and accounting by functional categories.
35.76.020	Cost accounting and reporting—Cities over eight thousand.
35.76.030	Cost accounting and reporting—Cities of eight thousand or less.
35.76.040	Manual of instructions.
35.76.050	Cost-audit examination and report.
35.76.060	Budgets.

[Title 35 RCW—page 247]

**35.76.010 Declaration of purpose—Budget and accounting by functional categories.** Records of city street expenditures are generally inadequate to meet the needs of cities for planning and administration of their street programs and the needs of the legislature in providing for city street financing. It is the intent of the legislature that each city and town shall budget and thereafter maintain records and accounts for all street expenditures by functional categories in a manner consistent with its size, administrative capabilities, and the amounts of money expended by it for street purposes. [1965 c 7 § 35.76.010. Prior: 1963 c 115 § 1.]

**35.76.020 Cost accounting and reporting—Cities over eight thousand.** The state auditor shall formulate, prescribe, and install a system of cost accounting and reporting for each city having a population of more than eight thousand, according to the last official census, which will correctly show all street expenditures by functional categories. The system shall also provide for reporting all revenues available for street purposes from whatever source including local improvement district assessments and state and federal aid. [1995 c 301 § 48; 1965 c 7 § 35.76.020. Prior: 1963 c 115 § 2.]

*Cities over eight thousand, equipment rental fund in street department: RCW 35.21.088.*

**35.76.030 Cost accounting and reporting—Cities of eight thousand or less.** Consistent with the intent of this chapter as stated in RCW 35.76.010, the state auditor, from and after July 1, 1965, is authorized and directed to prescribe accounting and reporting procedures for street expenditures for cities and towns having a population of eight thousand or less, according to the last official census. [1995 c 301 § 49; 1965 c 7 § 35.76.030. Prior: 1963 c 115 § 3.]

**35.76.040 Manual of instructions.** The state auditor, after consultation with the association of Washington cities and the planning division of the state department of transportation shall prepare and distribute to the cities and towns a manual of instructions governing accounting and reporting procedures for all street expenditures. [1984 c 7 § 21; 1965 c 7 § 35.76.040. Prior: 1963 c 115 § 4.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**35.76.050 Cost-audit examination and report.** The state auditor shall annually make a cost-audit examination of street records for each city and town and make a written report thereon to the legislative body of each city and town. The expense of the examination shall be paid out of that portion of the motor vehicle fund allocated to the cities and towns and withheld for use by the state department of transportation under the terms of RCW 46.68.110(1). [1995 c 301 § 50; 1984 c 7 § 22; 1965 c 7 § 35.76.050. Prior: 1963 c 115 § 5.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**35.76.060 Budgets.** Expenditures for city and town streets shall be budgeted by each city and town according to the same functional categories prescribed by the state auditor

for purposes of accounting and reporting as provided in RCW 35.76.020 and 35.76.030.

In the preparation of city and town budgets, including the preparation and filing of budget estimates, adoption of preliminary budgets and adoption of final budgets, all expenditures for street purposes shall be designated by such functional categories only. [1965 c 7 § 35.76.060. Prior: 1963 c 115 § 6.]

## Chapter 35.77 RCW

### STREETS—PLANNING, ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE

#### Sections

- 35.77.010 Perpetual advanced six-year plans for coordinated transportation program expenditures—Nonmotorized transportation—Railroad right-of-way.
- 35.77.015 Provisions for bicycle paths, lanes, routes, roadways and improvements to be included in annual revision or extension of comprehensive street programs—Exception.
- 35.77.020 Agreements with county for planning, establishment, construction, and maintenance.
- 35.77.030 Agreements with county for planning, establishment, construction, and maintenance—County may use road fund—Payments by city—Contracts, bids.
- 35.77.040 Agreements with county for planning, establishment, construction, and maintenance—Act is additional and concurrent method.

*Bicycle awareness program: RCW 43.43.390.*

*Bicycle transportation management program: RCW 47.04.190.*

*Local adopt-a-highway programs: RCW 47.40.105.*

*Pavement marking standards: RCW 47.36.280.*

*Planning commissions: Chapter 35.63 RCW.*

*State highways in urban areas, allocation of funds, planning, bond issue, etc.: Chapter 47.26 RCW.*

*Urban arterials, planning, construction by cities and counties, transportation improvement board, bond issue, etc.: Chapter 47.26 RCW.*

**35.77.010 Perpetual advanced six-year plans for coordinated transportation program expenditures—Nonmotorized transportation—Railroad right-of-way.** (1) The legislative body of each city and town, pursuant to one or more public hearings thereon, shall prepare and adopt a comprehensive transportation program for the ensuing six calendar years. If the city or town has adopted a comprehensive plan pursuant to chapter 35.63 or 35A.63 RCW, the inherent authority of a first class city derived from its charter, or chapter 36.70A RCW, the program shall be consistent with this comprehensive plan.

The program shall be filed with the secretary of transportation not more than thirty days after its adoption. Annually thereafter the legislative body of each city and town shall review the work accomplished under the program and determine current city transportation needs. Based on these findings each such legislative body shall prepare and after public hearings thereon adopt a revised and extended comprehensive transportation program before July 1st of each year, and each one-year extension and revision shall be filed with the secretary of transportation not more than thirty days after its adoption. The purpose of this section is to assure that each city and town shall perpetually have available advanced plans looking to the future for not less than six years as a guide in carrying out a coordinated transportation program. The pro-

gram may at any time be revised by a majority of the legislative body of a city or town, but only after a public hearing.

The six-year plan for each city or town shall specifically set forth those projects and programs of regional significance for inclusion in the transportation improvement program within that region.

(2) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a city or town will expend its moneys, including funds made available pursuant to chapter 47.30 RCW, for nonmotorized transportation purposes.

(3) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a city or town shall act to preserve railroad right-of-way in the event the railroad ceases to operate in the city's or town's jurisdiction. [1994 c 179 § 1; 1994 c 158 § 7; 1990 1st ex.s. c 17 § 59; 1988 c 167 § 6; 1984 c 7 § 23; 1977 ex.s. c 317 § 7; 1975 1st ex.s. c 215 § 1; 1967 ex.s. c 83 § 27; 1965 c 7 § 35.77.010. Prior: 1961 c 195 § 2.]

**Reviser's note:** This section was amended by 1994 c 158 § 7 and by 1994 c 179 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Captions not law—Severability—Effective date—1994 c 158:** See RCW 47.80.902 through 47.80.904.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**Savings—Severability—1988 c 167:** See notes following RCW 47.26.121.

**Severability—1984 c 7:** See note following RCW 47.01.141.

**Effective dates—Severability—1977 ex.s. c 317:** See notes following RCW 82.36.010.

**Severability—Effective dates—1967 ex.s. c 83:** See RCW 47.26.900 and 47.26.910.

*Highways, roads, streets in urban areas, urban arterials, development: Chapter 47.26 RCW.*

*Long-range arterial construction planning, counties and cities to prepare data: RCW 47.26.170.*

*Perpetual advanced six-year plans for coordinated transportation program: RCW 36.81.121.*

*Transportation improvement board: Chapter 47.26 RCW.*

**35.77.015 Provisions for bicycle paths, lanes, routes, roadways and improvements to be included in annual revision or extension of comprehensive street programs—Exception.** The annual revision and extension of comprehensive street programs pursuant to RCW 35.77.010 shall include consideration of and, wherever reasonably practicable, provisions for bicycle routes: PROVIDED, That no provision need be made for any such route where the cost of establishing it would be excessively disproportionate to the need or probable use. [1974 ex.s. c 141 § 11.]

**35.77.020 Agreements with county for planning, establishment, construction, and maintenance.** Any city or town may enter into an agreement with the county in which it is located authorizing the county to perform all or any part of the construction, repair, and maintenance of streets in such city or town at such cost as shall be mutually agreed upon. The agreement shall be approved by ordinance of the governing body of the city or town and by resolution of the board of county commissioners.

Any such agreement may include, but shall not be limited to the following:

(1) A provision that the county shall perform all or a specified part of the construction, repair, or maintenance of the city or town streets and bridges to the same standards provided by the county in unincorporated areas, or to increased standards as shall be specified which may include construction, repair, or maintenance of drainage facilities including storm sewers, sidewalks and curbs, street lighting, and traffic control devices.

(2) A provision that the county may provide engineering and administrative services necessary for the planning, establishment, construction, and maintenance of the streets of the city or town, including engineering and clerical services necessary for the establishment of local improvement districts. In providing such services the county engineer may exercise all the powers and perform all the duties vested by law or by ordinance in the city or town engineer or other officer or department charged with street administration.

(3) A provision that the city or town shall enact ordinances for the administration, establishment, construction, repair, maintenance, regulation, and protection of its streets as may be necessary to authorize the county to lawfully carry out the terms of the agreement. [1965 c 7 § 35.77.020. Prior: 1961 c 245 § 1.]

**35.77.030 Agreements with county for planning, establishment, construction, and maintenance—County may use road fund—Payments by city—Contracts, bids.** Pursuant to an agreement authorized by RCW 35.77.020, the board of county commissioners may expend funds from the county road fund for the construction, repair, and maintenance of the streets of such city or town and for engineering and administrative services. Payments by a city or town under such an agreement shall be made to the county treasurer and by him deposited in the county road fund. Such construction, repair, maintenance, and engineering service shall be ordered by resolution and proceedings conducted in respect thereto in the same manner as provided for the construction, repair, and maintenance of county roads by counties, and for the preparation of maps, plans and specifications, advertising and award of contracts therefor: PROVIDED, That except in case of emergency all construction work performed by a county on city streets pursuant to RCW 35.77.020 through 35.77.040, which exceeds ten thousand dollars, shall be done by contract, unless after advertisement and solicitation of competitive bids it appears that bids are unobtainable or that the lowest bid exceeds the amount for which such construction can be done by means other than contract. No street construction project shall be divided into lesser component parts for the purpose of avoiding the requirements for competitive bidding. [1965 c 7 § 35.77.030. Prior: 1961 c 245 § 2.]

**35.77.040 Agreements with county for planning, establishment, construction, and maintenance—Act is additional and concurrent method.** RCW 35.77.020 through 35.77.040 shall not repeal, amend, or modify any law providing for joint or cooperative agreements between cities and counties with respect to city streets, but shall be held to

be an additional and concurrent method providing for such purpose. [1965 c 7 § 35.77.040. Prior: 1961 c 245 § 3.]

**Chapter 35.78 RCW**  
**STREETS—CLASSIFICATION**  
**AND DESIGN STANDARDS**

## Sections

35.78.010	Classification of streets.
35.78.020	State design standards—Committee—Membership.
35.78.030	Committee to adopt uniform design standards.
35.78.040	Design standards must be followed by municipalities—Approval of deviations.

*City and town streets as part of state highways: Chapter 47.24 RCW.*

*Design standards committee for county roads: Chapter 43.32 RCW, RCW 36.86.070, 36.86.080.*

**35.78.010 Classification of streets.** The governing body of each municipal corporation shall classify and designate city streets as follows:

Major arterials, which are defined as transportation arteries which connect the focal points of traffic interest within a city; arteries which provide communications with other communities and the outlying areas; or arteries which have relatively high traffic volume compared with other streets within the city;

Secondary arterials, which are defined as routes which serve lesser points of traffic interest within a city; provide communication with outlying districts in the same degree or serve to collect and distribute traffic from the major arterials to the local streets;

Access streets, which are defined as land service streets and are generally limited to providing access to abutting property. They are tributary to the major and secondary thoroughfares and generally discourage through traffic. [1965 c 7 § 35.78.010. Prior: 1949 c 164 § 1; Rem. Supp. 1949 § 9300-1.]

**35.78.020 State design standards—Committee—Membership.** There is created a state design standards committee of seven members, six of whom shall be appointed by the executive committee of the Association of Washington Cities to hold office at its pleasure and the seventh to be the state aid engineer. The members to be appointed by the executive committee of the Association of Washington Cities shall be restricted to the membership of the association or to those holding office and/or performing the function of chief engineer in any of the several municipalities in the state. [1984 c 7 § 24; 1965 c 7 § 35.78.020. Prior: 1949 c 164 § 2; Rem. Supp. 1949 § 9300-2.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**35.78.030 Committee to adopt uniform design standards.** The design standards committee shall from time to time adopt uniform design standards for major arterial and secondary arterial streets. [1965 c 7 § 35.78.030. Prior: 1949 c 164 § 3; Rem. Supp. 1949 § 9300-3.]

**35.78.040 Design standards must be followed by municipalities—Approval of deviations.** The governing body of the several municipalities shall apply the uniform

design standards adopted under RCW 35.78.030 to all new construction on major arterial and secondary arterial streets and to reconstruction of old such streets as far as practicable. No deviation from the design standards as to such streets may be made without approval of the state aid engineer. [1984 c 7 § 25; 1965 c 7 § 35.78.040. Prior: 1949 c 164 § 4; Rem. Supp. 1949 § 9300-4.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**Chapter 35.79 RCW**  
**STREETS—VACATION**

## Sections

35.79.010	Petition by owners—Fixing time for hearing.
35.79.020	Notice of hearing—Objections prior to hearing.
35.79.030	Hearing—Ordinance of vacation.
35.79.035	Limitations on vacations of streets abutting bodies of water—Procedure.
35.79.040	Title to vacated street or alley.
35.79.050	Vested rights not affected.

**35.79.010 Petition by owners—Fixing time for hearing.** The owners of an interest in any real estate abutting upon any street or alley who may desire to vacate the street or alley, or any part thereof, may petition the legislative authority to make vacation, giving a description of the property to be vacated, or the legislative authority may itself initiate by resolution such vacation procedure. The petition or resolution shall be filed with the city or town clerk, and, if the petition is signed by the owners of more than two-thirds of the property abutting upon the part of such street or alley sought to be vacated, legislative authority by resolution shall fix a time when the petition will be heard and determined by such authority or a committee thereof, which time shall not be more than sixty days nor less than twenty days after the date of the passage of such resolution. [1965 c 7 § 35.79.010. Prior: 1957 c 156 § 2; 1901 c 84 § 1, part; RRS § 9297, part.]

**35.79.020 Notice of hearing—Objections prior to hearing.** Upon the passage of the resolution the city or town clerk shall give twenty days' notice of the pendency of the petition by a written notice posted in three of the most public places in the city or town and a like notice in a conspicuous place on the street or alley sought to be vacated. The said notice shall contain a statement that a petition has been filed to vacate the street or alley described in the notice, together with a statement of the time and place fixed for the hearing of the petition. In all cases where the proceeding is initiated by resolution of the city or town council or similar legislative authority without a petition having been signed by the owners of more than two-thirds of the property abutting upon the part of the street or alley sought to be vacated, in addition to the notice hereinabove required, there shall be given by mail at least fifteen days before the date fixed for the hearing, a similar notice to the owners or reputed owners of all lots, tracts or parcels of land or other property abutting upon any street or alley or any part thereof sought to be vacated, as shown on the rolls of the county treasurer, directed to the address thereon shown: PROVIDED, That if fifty percent of the abutting property owners file written objection to the proposed vacation with the clerk, prior to the time of hearing, the city shall be prohibited from proceeding with the resolution.

[1965 c 7 § 35.79.020. Prior: 1957 c 156 § 3; 1901 c 84 § 1, part; RRS § 9297, part.]

**35.79.030 Hearing—Ordinance of vacation.** The hearing on such petition may be held before the legislative authority, or before a committee thereof upon the date fixed by resolution or at the time said hearing may be adjourned to. If the hearing is before such a committee the same shall, following the hearing, report its recommendation on the petition to the legislative authority which may adopt or reject the recommendation. If such hearing be held before such a committee it shall not be necessary to hold a hearing on the petition before such legislative authority. If the legislative authority determines to grant said petition or any part thereof, such city or town shall be authorized and have authority by ordinance to vacate such street, or alley, or any part thereof, and the ordinance may provide that it shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate such city or town in an amount which does not exceed one-half the appraised value of the area so vacated. If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property or portions thereof were acquired at public expense, the city or town may require the owners of the property abutting the street or alley to compensate the city or town in an amount that does not exceed the full appraised value of the area vacated. The ordinance may provide that the city retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services. A certified copy of such ordinance shall be recorded by the clerk of the legislative authority and in the office of the auditor of the county in which the vacated land is located. One-half of the revenue received by the city or town as compensation for the area vacated must be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city or town. [2002 c 55 § 1; 2001 c 202 § 1; 1987 c 228 § 1; 1985 c 254 § 1; 1969 c 28 § 4. Prior: 1967 ex.s. c 129 § 1; 1967 c 123 § 1; 1965 c 7 § 35.79.030; prior: 1957 c 156 § 4; 1949 c 14 § 1; 1901 c 84 § 2; Rem. Supp. 1949 § 9298.]

**35.79.035 Limitations on vacations of streets abutting bodies of water—Procedure.** (1) A city or town shall not vacate a street or alley if any portion of the street or alley abuts a body of fresh or salt water unless:

(a) The vacation is sought to enable the city or town to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses;

(b) The city or town, by resolution of its legislative authority, declares that the street or alley is not presently being used as a street or alley and that the street or alley is not suitable for any of the following purposes: Port, beach or water access, boat moorage, launching sites, park, public view, recreation, or education; or

(c) The vacation is sought to enable a city or town to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline area to which the streets or alleys sought to be

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vacated abut, had the properties included in the plan not been vacated.

(2) Before adopting a resolution vacating a street or alley under subsection (1)(b) of this section, the city or town shall:

(a) Compile an inventory of all rights of way within the city or town that abut the same body of water that is abutted by the street or alley sought to be vacated;

(b) Conduct a study to determine if the street or alley to be vacated is suitable for use by the city or town for any of the following purposes: Port, boat moorage, launching sites, beach or water access, park, public view, recreation, or education;

(c) Hold a public hearing on the proposed vacation in the manner required by this chapter, where in addition to the normal requirements for publishing notice, notice of the public hearing is posted conspicuously on the street or alley sought to be vacated, which posted notice indicates that the area is public access, it is proposed to be vacated, and that anyone objecting to the proposed vacation should attend the public hearing or send a letter to a particular official indicating his or her objection; and

(d) Make a finding that the street or alley sought to be vacated is not suitable for any of the purposes listed under (b) of this subsection, and that the vacation is in the public interest.

(3) No vacation shall be effective until the fair market value has been paid for the street or alley that is vacated. Moneys received from the vacation may be used by the city or town only for acquiring additional beach or water access, acquiring additional public view sites to a body of water, or acquiring additional moorage or launching sites. [1987 c 228 § 2.]

**35.79.040 Title to vacated street or alley.** If any street or alley in any city or town is vacated by the city or town council, the property within the limits so vacated shall belong to the abutting property owners, one-half to each. [1965 c 7 § 35.79.040. Prior: 1901 c 84 § 3; RRS § 9299.]

**35.79.050 Vested rights not affected.** No vested rights shall be affected by the provisions of this chapter. [1965 c 7 § 35.79.050. Prior: 1901 c 84 § 4; RRS § 9300.]

## Chapter 35.80 RCW

### UNFIT DWELLINGS, BUILDINGS, AND STRUCTURES

#### Sections

35.80.010	Declaration of purpose.
35.80.020	Definitions.
35.80.030	Permissible ordinances—Appeal.
35.80.040	Discrimination prohibited.

**35.80.010 Declaration of purpose.** It is hereby found that there exist, in the various municipalities and counties of the state, dwellings which are unfit for human habitation, and buildings, structures, and premises or portions thereof which are unfit for other uses due to dilapidation, disrepair, structural defects, defects increasing the hazards of fire, accidents, or other calamities, inadequate ventilation and uncleanliness, inadequate light or sanitary facilities, inadequate drainage,

overcrowding, or due to other conditions which are inimical to the health and welfare of the residents of such municipalities and counties.

It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended, and that the necessity of the public interest for the enactment of this law is hereby declared to be a matter of local legislative determination. [1989 c 133 § 1; 1969 ex.s. c 127 § 1; 1967 c 111 § 1; 1965 c 7 § 35.80.010. Prior: 1959 c 82 § 1.]

**35.80.020 Definitions.** The following terms, however used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(1) "Board" shall mean the improvement board as provided for in RCW 35.80.030(1)(a);

(2) "Local governing body" shall mean the council, board, commission, or other legislative body charged with governing the municipality or county;

(3) "Municipality" shall mean any city, town or county in the state;

(4) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality or county relating to health, fire, building regulation, or other activities concerning dwellings, buildings, structures, or premises in the municipality or county. [1989 c 133 § 2; 1969 ex.s. c 127 § 2; 1967 c 111 § 2; 1965 c 7 § 35.80.020. Prior: 1959 c 82 § 2.]

**35.80.030 Permissible ordinances—Appeal.** (1) Whenever the local governing body of a municipality finds that one or more conditions of the character described in RCW 35.80.010 exist within its territorial limits, said governing body may adopt ordinances relating to such dwellings, buildings, structures, or premises. Such ordinances may provide for the following:

(a) That an "improvement board" or officer be designated or appointed to exercise the powers assigned to such board or officer by the ordinance as specified herein. Said board or officer may be an existing municipal board or officer in the municipality, or may be a separate board or officer appointed solely for the purpose of exercising the powers assigned by said ordinance.

If a board is created, the ordinance shall specify the terms, method of appointment, and type of membership of said board, which may be limited, if the local governing body chooses, to public officers as herein defined.

(b) If a board is created, a public officer, other than a member of the improvement board, may be designated to work with the board and carry out the duties and exercise the powers assigned to said public officer by the ordinance.

(c) That if, after a preliminary investigation of any dwelling, building, structure, or premises, the board or officer finds that it is unfit for human habitation or other use, he shall cause to be served either personally or by certified mail, with return receipt requested, upon all persons having any interest therein, as shown upon the records of the auditor's office of the county in which such property is located, and shall post in a conspicuous place on such property, a complaint stating in

what respects such dwelling, building, structure, or premises is unfit for human habitation or other use. If the whereabouts of any of such persons is unknown and the same cannot be ascertained by the board or officer in the exercise of reasonable diligence, and the board or officer makes an affidavit to that effect, then the serving of such complaint or order upon such persons may be made either by personal service or by mailing a copy of the complaint and order by certified mail, postage prepaid, return receipt requested, to each such person at the address of the building involved in the proceedings, and mailing a copy of the complaint and order by first class mail to any address of each such person in the records of the county assessor or the county auditor for the county where the property is located. Such complaint shall contain a notice that a hearing will be held before the board or officer, at a place therein fixed, not less than ten days nor more than thirty days after the serving of said complaint; and that all parties in interest shall be given the right to file an answer to the complaint, to appear in person, or otherwise, and to give testimony at the time and place in the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the board or officer. A copy of such complaint shall also be filed with the auditor of the county in which the dwelling, building, structure, or premise [premises] is located, and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law.

(d) That the board or officer may determine that a dwelling, building, structure, or premises is unfit for human habitation or other use if it finds that conditions exist in such dwelling, building, structure, or premises which are dangerous or injurious to the health or safety of the occupants of such dwelling, building, structure, or premises, the occupants of neighboring dwellings, or other residents of such municipality. Such conditions may include the following, without limitations: Defects therein increasing the hazards of fire or accident; inadequate ventilation, light, or sanitary facilities, dilapidation, disrepair, structural defects, uncleanliness, overcrowding, or inadequate drainage. The ordinance shall state reasonable and minimum standards covering such conditions, including those contained in ordinances adopted in accordance with subdivision (7)(a) herein, to guide the board or the public officer and the agents and employees of either, in determining the fitness of a dwelling for human habitation, or building, structure, or premises for other use.

(e) That the determination of whether a dwelling, building, structure, or premises should be repaired or demolished, shall be based on specific stated standards on (i) the degree of structural deterioration of the dwelling, building, structure, or premises, or (ii) the relationship that the estimated cost of repair bears to the value of the dwelling, building, structure, or premises, with the method of determining this value to be specified in the ordinance.

(f) That if, after the required hearing, the board or officer determines that the dwelling is unfit for human habitation, or building or structure or premises is unfit for other use, it shall state in writing its findings of fact in support of such determination, and shall issue and cause to be served upon the owner or party in interest thereof, as is provided in subdivision (1)(c), and shall post in a conspicuous place on said property, an order which (i) requires the owner or party in interest,

within the time specified in the order, to repair, alter, or improve such dwelling, building, structure, or premises to render it fit for human habitation, or for other use, or to vacate and close the dwelling, building, structure, or premises, if such course of action is deemed proper on the basis of the standards set forth as required in subdivision (1)(e); or (ii) requires the owner or party in interest, within the time specified in the order, to remove or demolish such dwelling, building, structure, or premises, if this course of action is deemed proper on the basis of said standards. If no appeal is filed, a copy of such order shall be filed with the auditor of the county in which the dwelling, building, structure, or premises is located.

(g) The owner or any party in interest, within thirty days from the date of service upon the owner and posting of an order issued by the board under the provisions of subdivision (c) of this subsection, may file an appeal with the appeals commission.

The local governing body of the municipality shall designate or establish a municipal agency to serve as the appeals commission. The local governing body shall also establish rules of procedure adequate to assure a prompt and thorough review of matters submitted to the appeals commission, and such rules of procedure shall include the following, without being limited thereto: (i) All matters submitted to the appeals commission must be resolved by the commission within sixty days from the date of filing therewith and (ii) a transcript of the findings of fact of the appeals commission shall be made available to the owner or other party in interest upon demand.

The findings and orders of the appeals commission shall be reported in the same manner and shall bear the same legal consequences as if issued by the board, and shall be subject to review only in the manner and to the extent provided in subdivision (2) of this section.

If the owner or party in interest, following exhaustion of his rights to appeal, fails to comply with the final order to repair, alter, improve, vacate, close, remove, or demolish the dwelling, building, structure, or premises, the board or officer may direct or cause such dwelling, building, structure, or premises to be repaired, altered, improved, vacated, and closed, removed, or demolished.

(h) That the amount of the cost of such repairs, alterations or improvements; or vacating and closing; or removal or demolition by the board or officer, shall be assessed against the real property upon which such cost was incurred unless such amount is previously paid. Upon certification to him by the treasurer of the municipality in cases arising out of the city or town or by the county improvement board or officer, in cases arising out of the county, of the assessment amount being due and owing, the county treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates and in such manner as provided for in RCW 84.56.020, as now or hereafter amended, for delinquent taxes, and when collected to be deposited to the credit of the general fund of the municipality. If the dwelling, building, structure, or premises is removed or demolished by the board or officer, the board or officer shall, if possible, sell the materials of such dwelling, building, structure, [or] premises in accordance with procedures set forth in said

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ordinance, and shall credit the proceeds of such sale against the cost of the removal or demolition and if there be any balance remaining, it shall be paid to the parties entitled thereto, as determined by the board or officer, after deducting the costs incident thereto.

The assessment shall constitute a lien against the property which shall be of equal rank with state, county and municipal taxes.

(2) Any person affected by an order issued by the appeals commission pursuant to subdivision (1)(f) hereof may, within thirty days after the posting and service of the order, petition to the superior court for an injunction restraining the public officer or members of the board from carrying out the provisions of the order. In all such proceedings the court is authorized to affirm, reverse, or modify the order and such trial shall be heard de novo.

(3) An ordinance adopted by the local governing body of the municipality may authorize the board or officer to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this section. These powers shall include the following in addition to others herein granted: (a)(i) To determine which dwellings within the municipality are unfit for human habitation; (ii) to determine which buildings, structures, or premises are unfit for other use; (b) to administer oaths and affirmations, examine witnesses and receive evidence; and (c) to investigate the dwelling and other property conditions in the municipality or county and to enter upon premises for the purpose of making examinations when the board or officer has reasonable ground for believing they are unfit for human habitation, or for other use: PROVIDED, That such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose after submitting evidence in support of an application which is adequate to justify such an order from a court of competent jurisdiction in the event entry is denied or resisted.

(4) The local governing body of any municipality adopting an ordinance pursuant to this chapter may appropriate the necessary funds to administer such ordinance.

(5) Nothing in this section shall be construed to abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

(6) Nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

(7) Any municipality may (by ordinance adopted by its governing body) (a) prescribe minimum standards for the use and occupancy of dwellings throughout the municipality, or county, (b) prescribe minimum standards for the use or occupancy of any building, structure, or premises used for any other purpose, (c) prevent the use or occupancy of any dwelling, building, structure, or premises, which is injurious to the public health, safety, morals, or welfare, and (d) prescribe punishment for the violation of any provision of such ordinance. [1989 c 133 § 3; 1984 c 213 § 1; 1973 1st ex.s. c 144

§ 1; 1969 ex.s. c 127 § 3; 1967 c 111 § 3; 1965 c 7 § 35.80.030. Prior: 1959 c 82 § 3.]

**35.80.040 Discrimination prohibited.** For all the purposes of this chapter and the ordinances adopted as provided herein, no person shall, because of race, creed, color, or national origin, be subjected to any discrimination. [1965 c 7 § 35.80.040. Prior: 1959 c 82 § 4.]

*Discrimination—Human rights commission: Chapter 49.60 RCW.*

## Chapter 35.80A RCW

### CONDEMNATION OF BLIGHTED PROPERTY

#### Sections

- 35.80A.010 Condemnation of blighted property.
- 35.80A.020 Transfer of blighted property acquired by condemnation.
- 35.80A.030 Disposition of blighted property—Procedures.
- 35.80A.040 Authority to enter blighted buildings or property—Acceptance of financial assistance.
- 35.80A.900 Severability—1989 c 271.

**35.80A.010 Condemnation of blighted property.** Every county, city, and town may acquire by condemnation, in accordance with the notice requirements and other procedures for condemnation provided in Title 8 RCW, any property, dwelling, building, or structure which constitutes a blight on the surrounding neighborhood. A "blight on the surrounding neighborhood" is any property, dwelling, building, or structure that meets any two of the following factors: (1) If a dwelling, building, or structure exists on the property, the dwelling, building, or structure has not been lawfully occupied for a period of one year or more; (2) the property, dwelling, building, or structure constitutes a threat to the public health, safety, or welfare as determined by the executive authority of the county, city, or town, or the designee of the executive authority; or (3) the property, dwelling, building, or structure is or has been associated with illegal drug activity during the previous twelve months. Prior to such condemnation, the local governing body shall adopt a resolution declaring that the acquisition of the real property described therein is necessary to eliminate neighborhood blight. Condemnation of property, dwellings, buildings, and structures for the purposes described in this chapter is declared to be for a public use. [1994 c 175 § 1; 1989 c 271 § 239.]

**35.80A.020 Transfer of blighted property acquired by condemnation.** Counties, cities, and towns may sell, lease, or otherwise transfer real property acquired pursuant to this chapter for residential, recreational, commercial, industrial, or other uses or for public use, subject to such covenants, conditions, and restrictions, including covenants running with the land, as the county, city, or town deems to be necessary or desirable to rehabilitate and preserve the dwelling, building, or structure in a habitable condition. The purchasers or lessees and their successors and assigns shall be obligated to comply with such other requirements as the county, city, or town may determine to be in the public interest, including the obligation to begin, within a reasonable time, any improvements on such property required to make the dwelling, building, or structure habitable. Such real property or interest shall be sold, leased, or otherwise transferred,

at not less than its fair market value. In determining the fair market value of real property for uses in accordance with this section, a municipality shall take into account and give consideration to, the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee. [1989 c 271 § 240.]

**35.80A.030 Disposition of blighted property—Procedures.** A county, city, or town may dispose of real property acquired pursuant to this section to private persons only under such reasonable, competitive procedures as it shall prescribe. The county, city, or town may accept such proposals as it deems to be in the public interest and in furtherance of the purposes of this chapter. Thereafter, the county, city, or town may execute and deliver contracts, deeds, leases, and other instruments of transfer. [1989 c 271 § 241.]

**35.80A.040 Authority to enter blighted buildings or property—Acceptance of financial assistance.** Every county, city, or town may, in addition to any other authority granted by this chapter: (1) Enter upon any building or property found to constitute a blight on the surrounding neighborhood in order to make surveys and appraisals, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; and (2) borrow money, apply for, and accept, advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, a county, or other public body, or from any sources, public or private, for the purposes of this chapter, and enter into and carry out contracts in connection herewith. [1989 c 271 § 242.]

**35.80A.900 Severability—1989 c 271.** See note following RCW 9.94A.510.

## Chapter 35.81 RCW

### COMMUNITY RENEWAL LAW

(Formerly: Urban renewal law)

#### Sections

- 35.81.005 Declaration of purpose and necessity.
- 35.81.015 Definitions.
- 35.81.030 Encouragement of private enterprise.
- 35.81.040 Formulation of workable program.
- 35.81.050 Findings by local governing body required—Exercise of community renewal agency powers.
- 35.81.060 Comprehensive plan—Preparation—Hearing—Approval—Modification—Effect.
- 35.81.070 Powers of municipality.
- 35.81.080 Eminent domain.
- 35.81.090 Acquisition, disposal of real property in community renewal area.
- 35.81.095 Selection of person to undertake redevelopment or rehabilitation of real property.
- 35.81.100 Bonds—Issuance—Form, terms, payment, etc.—Fund for excess property tax, excise tax.
- 35.81.110 Bonds as legal investment, security.
- 35.81.115 General obligation bonds authorized.
- 35.81.120 Property of municipality exempt from process and taxes.
- 35.81.130 Powers of public bodies.
- 35.81.140 Conveyance to purchaser, etc., presumed to be in compliance with chapter.
- 35.81.150 Exercise of community renewal project powers.
- 35.81.160 Exercise of community renewal project powers—Assignment of powers—Community renewal agency.
- 35.81.170 Discrimination prohibited.
- 35.81.180 Restrictions against public officials or employees acquiring or owning an interest in project, contract, etc.

- 35.81.190 Local improvement districts—Establishment—Special assessments—Bonds.  
 35.81.200 Local improvement districts—Content of notice.  
 35.81.910 Short title.

**35.81.005 Declaration of purpose and necessity.** It is hereby found and declared that blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state exist in municipalities of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime and depreciation of property values, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, hinders job creation and economic growth, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of such areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, are conducive to fires, are difficult to police and to provide police protection for, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services, and facilities.

It is further found and declared that certain of such areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation; that other areas or portions thereof may, through the means provided in this chapter, be susceptible of rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that to the extent feasible salvable blighted areas should be rehabilitated through voluntary action and the regulatory process.

It is further found and declared that there is an urgent need to enhance the ability of municipalities to act effectively and expeditiously to revive blighted areas and to prevent further blight due to shocks to the economy of the state and their actual and threatened effects on unemployment, poverty, and the availability of private capital for businesses and projects in the area.

It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination. [2002 c 218 § 2; 1965 c 7 § 35.81.020. Prior: 1957 c 42 § 2. Formerly RCW 35.81.020.]

**Severability—2002 c 218:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 218 § 28.]

**Savings—Construction—2002 c 218:** "(1) This act does not impair any authority granted, any actions undertaken, or any liability or obligation incurred under the sections amended in this act or under any rule, order, plan, or project adopted under those sections, nor does it impair any proceedings instituted under those sections.

(2) Any power granted in this act with respect to a community renewal

plan, and any process authorized for the exercise of the power, may be used by any municipality in implementing any urban renewal plan or project adopted under chapter 35.81 RCW, to the same extent as if the plan were adopted as a community renewal plan.

(3) This act shall be liberally construed." [2002 c 218 § 29.]

**35.81.015 Definitions.** The following terms wherever used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(1) "Agency" or "community renewal agency" means a public agency created under RCW 35.81.160 or otherwise authorized to serve as a community renewal agency under this chapter.

(2) "Blighted area" means an area which, by reason of the substantial physical dilapidation, deterioration, defective construction, material, and arrangement and/or age or obsolescence of buildings or improvements, whether residential or nonresidential, inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality; inappropriate uses of land or buildings; existence of overcrowding of buildings or structures; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility or usefulness; excessive land coverage; insanitary or unsafe conditions; deterioration of site; existence of hazardous soils, substances, or materials; diversity of ownership; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; improper subdivision or obsolete platting; existence of persistent and high levels of unemployment or poverty within the area; or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime; substantially impairs or arrests the sound growth of the municipality or its environs, or retards the provision of housing accommodations; constitutes an economic or social liability; and/or is detrimental, or constitutes a menace, to the public health, safety, welfare, or morals in its present condition and use.

(3) "Bonds" means any bonds, notes, or debentures (including refunding obligations) herein authorized to be issued.

(4) "Clerk" means the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(5) "Community renewal area" means a blighted area which the local governing body designates as appropriate for a community renewal project or projects.

(6) "Community renewal plan" means a plan, as it exists from time to time, for a community renewal project or projects, which plan (a) shall be consistent with the comprehensive plan or parts thereof for the municipality as a whole; (b) shall be sufficiently complete to indicate such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the community renewal area; zoning and planning changes, if any, which may include, among other things, changes related to land uses, densities, and building requirements; and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public

transportation, public utilities, recreational and community facilities, and other public improvements; (c) shall address the need for replacement housing, within the municipality, where existing housing is lost as a result of the community renewal project undertaken by the municipality under this chapter; and (d) may include a plan to address any persistent high levels of unemployment or poverty in the community renewal area.

(7) "Community renewal project" includes one or more undertakings or activities of a municipality in a community renewal area: (a) For the elimination and the prevention of the development or spread of blight; (b) for encouraging economic growth through job creation or retention; (c) for redevelopment or rehabilitation in a community renewal area; or (d) any combination or part thereof in accordance with a community renewal plan.

(8) "Federal government" includes the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(9) "Local governing body" means the council or other legislative body charged with governing the municipality.

(10) "Mayor" means the chief executive of a city or town, or the elected executive, if any, of any county operating under a charter, or the county legislative authority of any other county.

(11) "Municipality" means any incorporated city or town, or any county, in the state.

(12) "Obligee" includes any bondholder, agent, or trustees for any bondholders, any lessor demising to the municipality property used in connection with a community renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

(13) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or school district; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(14) "Persons of low income" means an individual with an annual income, at the time of hiring or at the time assistance is provided under this chapter, that does not exceed the higher of either: (a) Eighty percent of the statewide median family income, adjusted for family size; or (b) eighty percent of the median family income for the county or standard metropolitan statistical area, adjusted for family size, where the community renewal area is located.

(15) "Public body" means the state or any municipality, board, commission, district, or any other subdivision or public body of the state or of a municipality.

(16) "Public officer" means any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(17) "Real property" includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(18) "Redevelopment" includes (a) acquisition of a blighted area or portion thereof; (b) demolition and removal

of buildings and improvements; (c) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the community renewal provisions of this chapter in accordance with the community renewal plan; (d) making the land available for development or redevelopment by private enterprise or public bodies (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with the community renewal plan; and (e) making loans or grants to a person or public body for the purpose of creating or retaining jobs, a substantial portion of which, as determined by the municipality, shall be for persons of low income.

(19) "Rehabilitation" includes the restoration and renewal of a blighted area or portion thereof, in accordance with a community renewal plan, by (a) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements; (b) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (c) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the community renewal provisions of this chapter; and (d) the disposition of any property acquired in such community renewal area for uses in accordance with such community renewal plan. [2002 c 218 § 1; 1991 c 363 § 41; 1975 c 3 § 1; 1971 ex.s. c 177 § 6; 1965 c 7 § 35.81.010. Prior: 1957 c 42 § 1. Formerly RCW 35.81.010.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**35.81.030 Encouragement of private enterprise.** A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this chapter, shall afford maximum opportunity, consistent with the needs of the municipality as a whole, to the rehabilitation or redevelopment of the community renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this chapter, including the formulation of a workable program, the approval of community renewal plans (consistent with the comprehensive plan or parts thereof for the municipality), the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements. [2002 c 218 § 3; 1965 c 7 § 35.81.030. Prior: 1957 c 42 § 3.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.81.040 Formulation of workable program.** A municipality for the purposes of this chapter may formulate a workable program for using appropriate private and public

resources to eliminate, and prevent the development or spread of, blighted areas, to encourage needed community rehabilitation, to provide for the redevelopment of such areas, or to undertake the activities, or other feasible municipal activities as may be suitably employed to achieve the objectives of the workable program. The workable program may include, without limitation, provision for: The prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation of blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; the replacement of housing that is lost as a result of community renewal activities within a community renewal area; the clearance and redevelopment of blighted areas or portions thereof; and the reduction of unemployment and poverty within the community renewal area by providing financial or technical assistance to a person or public body that is used to create or retain jobs, a substantial portion of which, as determined by the municipality, shall be for persons of low income. [2002 c 218 § 4; 1965 c 7 § 35.81.040. Prior: 1957 c 42 § 4.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.81.050 Findings by local governing body required—Exercise of community renewal agency powers.**

(1) No municipality shall exercise any of the powers hereafter conferred upon municipalities by this chapter until after its local governing body shall have adopted an ordinance or resolution finding that: (a) One or more blighted areas exist in such municipality; and (b) the rehabilitation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality.

(2) After adoption of the ordinance or resolution making the findings described in subsection (1) of this section, the local governing body of the municipality may elect to have the powers of a community renewal agency under this chapter exercised in one of the following ways:

(a) By appointing a board or commission composed of not less than five members, which board or commission shall include municipal officials and elected officials, selected by the mayor, with approval of the local governing body of the municipality; or

(b) By the local governing body of the municipality directly; or

(c) By the board of a public corporation, commission, or authority under chapter 35.21 RCW, or a public facilities district created under chapter 35.57 or 36.100 RCW, or a public port district created under chapter 53.04 RCW, or a housing authority created under chapter 35.82 RCW, that is authorized to conduct activities as a community renewal agency under this chapter. [2002 c 218 § 5; 1965 c 7 § 35.81.050. Prior: 1957 c 42 § 5.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

(2004 Ed.)

**35.81.060 Comprehensive plan—Preparation—Hearing—Approval—Modification—Effect.** (1) A municipality shall not approve a community renewal project for a community renewal area unless the local governing body has, by ordinance or resolution, determined such an area to be a blighted area and designated the area as appropriate for a community renewal project. The local governing body shall not approve a community renewal plan until a comprehensive plan or parts of the plan for an area which would include a community renewal area for the municipality have been prepared as provided in chapter 36.70A RCW. For municipalities not subject to the planning requirements of chapter 36.70A RCW, any proposed comprehensive plan must be consistent with a local comprehensive plan adopted under chapter 35.63 or 36.70 RCW, or any other applicable law. A municipality shall not acquire real property for a community renewal project unless the local governing body has approved the community renewal project plan in accordance with subsection (4) of this section.

(2) The municipality may itself prepare or cause to be prepared a community renewal plan, or any person or agency, public or private, may submit such a plan to the municipality. Prior to its approval of a community renewal project, the local governing body shall review and determine the conformity of the community renewal plan with the comprehensive plan or parts thereof for the development of the municipality as a whole. If the community renewal plan is not consistent with the existing comprehensive plan, the local governing body may amend its comprehensive plan or community renewal plan.

(3) Prior to adoption, the local governing body shall hold a public hearing on a community renewal plan after providing public notice. The notice shall be given by publication once each week for two consecutive weeks not less than ten nor more than thirty days prior to the date of the hearing in a newspaper having a general circulation in the community renewal area of the municipality and by mailing a notice of the hearing not less than ten days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owner or reputed owner of the property, at the address shown on the tax roll. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the community renewal area affected, and shall outline the general scope of the community renewal plan under consideration.

(4) Following the hearing, the local governing body may approve a community renewal project if it finds that (a) a feasible plan exists for making available adequate housing for the residents who may be displaced by the project; (b) the community renewal plan conforms to the comprehensive plan for the municipality; (c) the community renewal plan will afford maximum opportunity, consistent with the needs of the municipality, for the rehabilitation or redevelopment of the community renewal area by private enterprise; (d) a sound and adequate financial program exists for the financing of the project; and (e) the community renewal project area is a blighted area as defined in RCW 35.81.015(2).

(5) A community renewal project plan may be modified at any time by the local governing body. However, if modified after the lease or sale by the municipality of real property in the community renewal project area, the modification shall

be subject to the rights at law or in equity as a lessee or purchaser, or the successor or successors in interest may be entitled to assert.

(6) Unless otherwise expressly stated in an ordinance or resolution of the governing body of the municipality, a community renewal plan shall not be considered a subarea plan or part of a comprehensive plan for purposes of chapter 36.70A RCW. However, a municipality that has adopted a comprehensive plan under chapter 36.70A RCW may adopt all or part of a community renewal plan at any time as a new or amended subarea plan, whether or not any subarea plan has previously been adopted for all or part of the community renewal area. Any community renewal plan so adopted, unless otherwise determined by the growth management hearings board with jurisdiction under a timely appeal in RCW 36.70A.280, shall be conclusively presumed to comply with the requirements in this chapter for consistency with the comprehensive plan. [2002 c 218 § 6; 1965 c 7 § 35.81.060. Prior: 1957 c 42 § 6.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.81.070 Powers of municipality.** Every municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others granted under this chapter:

(1) To undertake and carry out community renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter, and to disseminate blight clearance and community renewal information.

(2) To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for, or in connection with, a community renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a community renewal project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

(3) To provide financial or technical assistance, using available public or private funds, to a person or public body for the purpose of creating or retaining jobs, a substantial portion of which, as determined by the municipality, shall be for persons of low income.

(4) To make payments, loans, or grants to, provide assistance to, and contract with existing or new owners and tenants of property in the community renewal areas as compensation for any adverse impacts, such as relocation or interruption of business, that may be caused by the implementation of a community renewal project, and/or consideration for commitments to develop, expand, or retain land uses that contribute to the success of the project or plan, including without limitation businesses that will create or retain jobs, a substan-

tial portion of which, as determined by the municipality, shall be for persons of low income.

(5) To contract with a person or public body to provide financial assistance, authorized under this section, to property owners and tenants impacted by the implementation of the community renewal plan and to provide incentives to property owners and tenants to encourage them to locate in the community renewal area after adoption of the community renewal plan.

(6) Within the municipality, to enter upon any building or property in any community renewal area, in order to make surveys and appraisals, provided that such entries shall be made in such a manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise, any real property and such personal property as may be necessary for the administration of the provisions herein contained, together with any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance: **PROVIDED**, That no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality in the exercise of such functions with respect to a community renewal project.

(7) To invest any community renewal project funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement, in property or securities in which mutual savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to RCW 35.81.100 at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.

(8) To borrow money and to apply for, and accept, advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this chapter, and to enter into and carry out contracts in connection therewith. A municipality may include in any application or contract for financial assistance with the federal government for a community renewal project such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter.

(9) Within the municipality, to make or have made all plans necessary to the carrying out of the purposes of this chapter and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans. Such plans may include, without limitation: (a) A comprehensive plan or parts thereof for the locality as a whole, (b) community renewal plans, (c) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, (d) plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory

repair, rehabilitation, demolition, or removal of buildings and improvements, (e) appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of community renewal projects, and (f) plans to provide financial or technical assistance to a person or public body for the purpose of creating or retaining jobs, a substantial portion of which, as determined by the municipality, shall be for persons of low income. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of blight, for job creation or retention activities, and to apply for, accept, and utilize grants of, funds from the federal government for such purposes.

(10) To prepare plans for the relocation of families displaced from a community renewal area, and to coordinate public and private agencies in such relocation, including requesting such assistance for this purpose as is available from other private and governmental agencies, both for the municipality and other parties.

(11) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this chapter, and in accordance with state law: (a) Levy taxes and assessments for such purposes; (b) acquire land either by negotiation or eminent domain, or both; (c) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; (d) plan or replan, zone or rezone any part of the municipality; (e) adopt annual budgets for the operation of a community renewal agency, department, or offices vested with community renewal project powers under RCW 35.81.150; and (f) enter into agreements with such agencies or departments (which agreements may extend over any period) respecting action to be taken by such municipality pursuant to any of the powers granted by this chapter.

(12) Within the municipality, to organize, coordinate, and direct the administration of the provisions of this chapter as they apply to such municipality in order that the objective of remedying blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively.

(13) To contract with a person or public body to assist in carrying out the purposes of this chapter.

(14) To exercise all or any part or combination of powers herein granted. [2002 c 218 § 7; 1965 c 7 § 35.81.070. Prior: 1957 c 42 § 7.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.81.080 Eminent domain.** A municipality shall have the right to acquire by condemnation, in accordance with the procedure provided for condemnation by such municipality for other purposes, any interest in real property, which it may deem necessary for a community renewal project under this chapter after the adoption by the local governing body of a resolution declaring that the acquisition of the real property described therein is necessary for such purpose. Condemnation for community renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or a predecessor in inter-

est by eminent domain may be condemned for the purposes of this chapter.

The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction, or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the improvements begun on real property after notice to the owner of such property of the institution of proceedings to condemn such property. Evidence shall be admissible bearing upon the insanitary, unsafe, or substandard condition of the premises, or the unlawful use thereof. [2002 c 218 § 8; 1965 c 7 § 35.81.080. Prior: 1957 c 42 § 8.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

*Eminent domain by cities: Chapter 8.12 RCW.*

**35.81.090 Acquisition, disposal of real property in community renewal area.** (1) A municipality, with approval of its legislative authority, may acquire real property, or any interest therein, for the purposes of a community renewal project (a) prior to the selection of one or more persons interested in undertaking to redevelop or rehabilitate the real property, or (b) after the selection of one or more persons interested in undertaking to redevelop or rehabilitate such real property. In either case the municipality may select a redeveloper through a competitive bidding process consistent with this section or through a process consistent with RCW 35.81.095.

(2) A municipality, with approval of its legislative authority, may sell, lease, or otherwise transfer real property or any interest therein acquired by it for a community renewal project, in a community renewal area for residential, recreational, commercial, industrial, or other uses or for public use, and may enter into contracts with respect thereto, or may retain such a property or interest only for parks and recreation, education, public utilities, public transportation, public safety, health, highways, streets, and alleys, administrative buildings, or civic centers, in accordance with the community renewal project plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this chapter. However, such a sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the community renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote the real property only to the uses specified in the community renewal plan, and may be obligated to comply with any other requirements as the municipality may determine to be in the public interest, including the obligation to begin and complete, within a reasonable time, any improvements on the real property required by the community renewal plan or promised by the transferee. The real property or interest shall be sold, leased, or otherwise transferred for the consideration the municipality determines adequate. In determining the adequacy of consideration, a municipality may take into account the uses permitted under the community renewal plan; the restrictions upon, and the covenants, conditions, and obligations assumed by, the trans-

ferree; and the public benefits to be realized, including furthering of the objectives of the plan for the prevention of the recurrence of blighted areas.

(3) The municipality in any instrument of conveyance to a private purchaser or lessee may provide that the purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property, or to permit changes in ownership or control of a purchaser or lessee that is not a natural person, in each case without the prior written consent of the municipality until the purchaser or lessee has completed the construction of all improvements that it has obligated itself to construct thereon. The municipality may also retain the right, upon any earlier transfer or change in ownership or control without consent; or any failure or change in ownership or control without consent; or any failure to complete the improvements within the time agreed to terminate the transferee's interest in the property; or to retain or collect on any deposit or instrument provided as security, or both. The enforcement of these restrictions and remedies is declared to be consistent with the public policy of this state. Real property acquired by a municipality that, in accordance with the provisions of the community renewal plan, is to be transferred, shall be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the community renewal plan. The inclusion in any contract or conveyance to a purchaser or lessee of any covenants, restrictions, or conditions (including the incorporation by reference therein of the provisions of a community renewal plan or any part thereof) shall not prevent the recording of such a contract or conveyance in the land records of the auditor or the county in which the city or town is located, in a manner that affords actual or constructive notice thereof.

(4)(a)(i) A municipality may dispose of real property in a community renewal area, acquired by the municipality under this chapter, to any private persons only under those reasonable competitive bidding procedures as it shall prescribe, or by competitive bidding as provided in this subsection, through direct negotiation where authorized under (c) of this subsection, or by a process authorized in RCW 35.81.095.

(ii) A competitive bidding process may occur (A) prior to the purchase of the real property by the municipality, or (B) after the purchase of the real property by the municipality.

(b)(i) A municipality may, by public notice by publication once each week for three consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite bids from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate a community renewal area, or any part thereof. This notice shall identify the area, or portion thereof, and shall state that further information as is available may be obtained at the office as shall be designated in the notice.

(ii) The municipality shall consider all responsive redevelopment or rehabilitation bids and the financial and legal ability of the persons making the bids to carry them out. The municipality may accept the bids as it deems to be in the pub-

lic interest and in furtherance of the purposes of this chapter. Thereafter, the municipality may execute, in accordance with the provisions of subsection (2) of this section, and deliver contracts, deeds, leases, and other instruments of transfer.

(c) If the legislative authority of the municipality determines that the sale of real property to a specific person is necessary to the success of a neighborhood revitalization or community renewal project for which the municipality is providing assistance to a nonprofit organization from federal community development block grant funds under 42 U.S.C. Sec. 5305(a)(15), or successor provision, under a plan or grant application approved by the United States department of housing and urban development, or successor agency, then the municipality may sell or lease that property to that person through direct negotiation, for consideration determined by the municipality to be adequate consistent with subsection (2) of this section. This direct negotiation may occur, and the municipality may enter into an agreement for sale or lease, either before or after the acquisition of the property by the municipality. Unless the municipality has provided notice to the public of the intent to sell or lease the property by direct negotiation, as part of a citizen participation process adopted under federal regulations for the plan or grant application under which the federal community development block grant funds have been awarded, the municipality shall publish notice of the sale at least fifteen days prior to the conveyance of the property.

(5) A municipality may operate and maintain real property acquired in a community renewal area for a period of three years pending the disposition of the property for redevelopment, without regard to the provisions of subsection (2) of this section, for such uses and purposes as may be deemed desirable even though not in conformity with the community renewal plan. However, the municipality may, after a public hearing, extend the time for a period not to exceed three years.

(6) Any covenants, restrictions, promises, undertakings, releases, or waivers in favor of a municipality contained in any deed or other instrument accepted by any transferee of property from the municipality or community renewal agency under this chapter, or contained in any document executed by any owner of property in a community renewal area, shall run with the land to the extent provided in the deed, instrument, or other document, so as to bind, and be enforceable by the municipality against, the person accepting or making the deed, instrument, or other document and that person's heirs, successors in interest, or assigns having actual or constructive notice thereof. [2002 c 218 § 9; 1965 c 7 § 35.81.090. Prior: 1957 c 42 § 9.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.81.095 Selection of person to undertake redevelopment or rehabilitation of real property.** (1) The process authorized under this section may occur (a) prior to the purchase of the real property by the municipality, or (b) after the purchase of the real property by the municipality.

(2) A municipality may, by public notice once each week for three consecutive weeks in a legal newspaper in the municipality, or prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to

the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite statements of interest and qualifications and, at the municipality's option, proposals from any persons interested in undertaking to redevelop or rehabilitate the real property.

(3) The notice required under this section shall identify the area, or portion thereof, the process the municipality will use to evaluate qualifications and, if applicable, proposals submitted by redevelopers or any persons, and other information relevant to the community renewal project. The notice shall also state that further information, as is available, may be obtained at the offices designated in the notice.

(4)(a) Based on its evaluation of qualifications and, if applicable, proposals, the municipality may select a proposer with whom to negotiate or may select two or more finalists to submit proposals, or to submit more detailed or revised proposals. The municipality may, in its sole discretion, reject all responses or proposals, amend any solicitation to allow modification or supplementation of qualifications or proposals, or waive irregularities in the content or timing of any qualifications or proposals.

(b) The municipality may initiate negotiations with the person selected on the basis of qualifications or proposals. If the municipality does not enter into a contract with that person, it may (i) enter into negotiations with the person that submitted the next highest ranked qualifications or proposal, (ii) solicit additional proposals using a process permitted by RCW 35.81.090, or (iii) otherwise dispose of or retain the real property consistent with the provisions of this chapter. A municipality shall not be required to select or enter into a contract with any proposer or to compensate any proposer for the cost of preparing a proposal or negotiating with the municipality.

(c) A municipality, with approval of its legislative authority, may select and enter into a contract with more than one proposer to carry out different aspects or parts of a community renewal plan. [2002 c 218 § 10.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.81.100 Bonds—Issuance—Form, terms, payment, etc.—Fund for excess property tax, excise tax.** (1) A municipality shall have the power to issue bonds from time to time in its discretion to finance the undertaking of any community renewal project under this chapter, including, without limiting the generality of this power, the payment of principal and interest upon any advances for surveys and plans for community renewal projects, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from, or held in connection with, its undertaking and carrying out of community renewal projects under this chapter. However, the payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the municipality, the federal government, or from other sources, in aid of any community renewal projects of the municipality under this chapter.

(2004 Ed.)

(2) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under the provisions of this chapter are declared to be issued for an essential public and governmental purpose, and together with interest thereon and income therefrom, shall be exempted from all taxes.

(3) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered as provided in RCW 39.46.030, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(4) Such bonds may be sold at not less than ninety-eight percent of par at public or private sale, or may be exchanged for other bonds on the basis of par: **PROVIDED**, That such bonds may be sold to the federal government at private sale at not less than par and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at public or private sale at not less than ninety-eight percent of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

(5)(a) The municipality may annually pay into a fund to be established for the benefit of such bonds any and all excess of the taxes received by it from the same property over and above the average of the annual taxes authorized without vote for a five-year period immediately preceding the acquisition of the property by the municipality for renewal purposes, such payment to continue until such time as all bonds payable from the fund are paid in full. Any other taxing unit that receives property tax revenues from property in the community renewal area is authorized to allocate excess taxes, computed in the same manner, to the municipality or municipalities in which it is situated.

(b) In addition to the excess property tax revenues from property in the community renewal area, authorized in this subsection, the municipality may annually pay into the fund, established in this subsection, any and all excess of the excise tax received by it from business activity in the community renewal area over and above the average of the annual excise tax collected for a five-year period immediately preceding the establishment of a community renewal area. The payment may continue until all the bonds payable from the fund are paid in full. Any other taxing unit that receives excise tax from business activity in the community renewal area is authorized to allocate excess excise tax, computed in the same manner, to the municipality or municipalities in which it is situated. As used in this subsection, "excise tax" means a local retail sales and use tax authorized in chapter 82.14

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RCW. The legislature declares that it is a proper purpose of a municipality to allocate an excise tax for purposes of a community renewal project under this chapter.

(6) In case any of the public officials of the municipality whose signatures appear on any bonds or any coupons issued under this chapter shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds, issued pursuant to this chapter shall be fully negotiable.

(7) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with a community renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this chapter.

(8) Notwithstanding subsections (1) through (7) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2002 c 218 § 11; 1983 c 167 § 64; 1970 ex.s. c 56 § 44; 1969 ex.s. c 232 § 21; 1965 c 7 § 35.81.100. Prior: 1957 c 42 § 10.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**35.81.110 Bonds as legal investment, security.** All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality under this chapter. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities. [2002 c 218 § 12; 1965 c 7 § 35.81.110. Prior: 1957 c 42 § 11.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.81.115 General obligation bonds authorized.** For the purposes of this chapter a municipality may (in addition to any authority to issue bonds pursuant to RCW 35.81.100) issue and sell its general obligation bonds. Any bonds issued by a municipality pursuant to this section shall be issued in

the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally. [1965 c 7 § 35.81.115. Prior: 1959 c 79 § 1.]

**35.81.120 Property of municipality exempt from process and taxes.** (1) All property of a municipality, including funds, owned or held by it for the purposes of this chapter, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property: PROVIDED, That the provisions of this section shall not apply to, or limit the right of, obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this chapter by a municipality on its rents, fees, grants, or revenues from community renewal projects.

(2) The property of a municipality, acquired or held for the purposes of this chapter, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof: PROVIDED, That such tax exemption shall terminate when the municipality sells, leases, or otherwise disposes of such property in a community renewal area to a purchaser or lessee that is not a public body or other organization normally entitled to tax exemption with respect to such property. [2002 c 218 § 15; 1965 c 7 § 35.81.120. Prior: 1957 c 42 § 12.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.81.130 Powers of public bodies.** For the purpose of aiding in the planning, undertaking, or carrying out of a community renewal project located within the area in which it is authorized to act, any public body authorized by law or by this chapter, may, upon such terms, with or without consideration, as it may determine: (1) Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or other rights or privileges therein to a municipality or other public body; (2) incur the entire expense of any public improvements made by a public body, in exercising the powers granted in this section; (3) do any and all things necessary to aid or cooperate in the planning or carrying out of a community renewal plan; (4) lend, grant, or contribute funds, including without limitation any funds derived from bonds issued or other borrowings authorized in this chapter, to a municipality or other public body and, subject only to any applicable constitutional limits, to any other person; (5) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance in connection with a community renewal project; (6) cause public building and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works that it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; (7) abate environmental problems; (8) plan or replan, zone or rezone any part

of the community renewal area; and (9) provide such administrative and other services as may be deemed requisite to the efficient exercise of the powers herein granted. [2002 c 218 § 16; 1965 c 7 § 35.81.130. Prior: 1957 c 42 § 13.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

*Demonstration Cities and Metropolitan Development Act—Authority to contract with federal government:* RCW 35.21.660.

**35.81.140 Conveyance to purchaser, etc., presumed to be in compliance with chapter.** Any instrument executed by a municipality and purporting to convey any right, title, or interest in any property under this chapter shall be conclusively presumed to have been executed in compliance with the provisions of this chapter insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned. [1965 c 7 § 35.81.140. Prior: 1957 c 42 § 14.]

**35.81.150 Exercise of community renewal project powers.** (1) A municipality may itself exercise its community renewal project powers or may, if the local governing body by ordinance or resolution determines such action to be in the public interest, elect to have such powers exercised by the community renewal agency or a department or other officers of the municipality or by any other public body.

(2) In the event the local governing body determines to have the powers exercised by the community renewal agency, such body may authorize the community renewal agency or department or other officers of the municipality to exercise any of the following community renewal project powers:

(a) To formulate and coordinate a workable program as specified in RCW 35.81.040.

(b) To prepare community renewal plans.

(c) To prepare recommended modifications to a community renewal project plan.

(d) To undertake and carry out community renewal projects as required by the local governing body.

(e) To acquire, own, lease, encumber, and sell real or personal property. The agency may not acquire real or personal property using the eminent domain process, unless authorized independently of this chapter.

(f) To create local improvement districts under RCW 35.81.190 and 35.81.200.

(g) To issue bonds from time to time in its discretion to finance the undertaking of any community renewal project under this chapter. The bonds issued under this section must meet the requirements of RCW 35.81.100.

(h) To make and execute contracts as specified in RCW 35.81.070, with the exception of contracts for the purchase or sale of real or personal property.

(i) To disseminate blight clearance and community renewal information.

(j) To exercise the powers prescribed by RCW 35.81.070(2), except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages, shall be reserved to the local governing body.

(k) To enter any building or property, in any community renewal area, in order to make surveys and appraisals in the manner specified in RCW 35.81.070(6).

(l) To improve, clear, or prepare for redevelopment any real or personal property in a community renewal area.

(m) To insure real or personal property as provided in RCW 35.81.070(6).

(n) To effectuate the plans provided for in RCW 35.81.070(9).

(o) To prepare plans for the relocation of families displaced from a community renewal area and to coordinate public and private agencies in such relocation.

(p) To prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements.

(q) To conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of community renewal projects.

(r) To negotiate for the acquisition of land.

(s) To study the closing, vacating, planning, or replanning of streets, roads, sidewalks, ways, or other places and to make recommendations with respect thereto.

(t) To provide financial and technical assistance to a person or public body, for the purpose of creating or retaining jobs, a substantial portion of which, as determined by the municipality, shall be for persons of low income.

(u) To make payments, grants, and other assistance to, or contract with, existing or new owners and tenants of property in the community renewal area, under RCW 35.81.070.

(v) To organize, coordinate, and direct the administration of the provisions of this chapter.

(w) To perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and the performance of the duties and responsibilities entrusted to the local governing body.

Any powers granted in this chapter that are not included in this subsection (2) as powers of the community renewal agency or a department or other officers of a municipality in lieu thereof may only be exercised by the local governing body or other officers, boards, and commissions as provided by law. [2002 c 218 § 17; 1965 c 7 § 35.81.150. Prior: 1957 c 42 § 15.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.81.160 Exercise of community renewal project powers—Assignment of powers—Community renewal agency.** (1) When a municipality has made the finding prescribed in RCW 35.81.050 and has elected to have the community renewal project powers, as specified in RCW 35.81.150, exercised, such community renewal project powers may be assigned to a department or other officers of the municipality or to any existing public body corporate, or the legislative body of a municipality may create a community renewal agency in such municipality to be known as a public body corporate to which such powers may be assigned.

(2) If the community renewal agency is authorized to transact business and exercise powers under this chapter, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the community renewal agency which shall consist of five com-

missioners. The initial membership shall consist of one commissioner appointed for one year, one for two years, one for three years, and two for four years; and each appointment thereafter shall be for four years, except that in the case of death, incapacity, removal, or resignation of a commissioner, the replacement may be appointed to serve the remainder of the commissioner's term.

(3) A commissioner shall receive no compensation for services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his or her duties. Each commissioner shall hold office until a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers and responsibilities of a community renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the municipality.

The community renewal agency or department or officers exercising community renewal project powers shall be staffed with the necessary technical experts and such other agents and employees, permanent and temporary, as it may require. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before March 31st of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a legal newspaper in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the clerk of the municipality and in the office of the agency.

(4) For inefficiency, neglect of duty, or misconduct in office, a commissioner may be removed by the legislative body of the municipality. [2002 c 218 § 18; 1965 c 7 § 35.81.160. Prior: 1957 c 42 § 16.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.81.170 Discrimination prohibited.** For all of the purposes of this chapter, no person shall, because of race, creed, color, sex, or national origin, be subjected to any discrimination. [2002 c 218 § 19; 1965 c 7 § 35.81.170. Prior: 1957 c 42 § 17.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

*Discrimination—Human rights commission: Chapter 49.60 RCW.*

**35.81.180 Restrictions against public officials or employees acquiring or owning an interest in project, contract, etc.** No official or department or division head of a municipality or community renewal agency or department or

officers with responsibility for making or supervising any decisions in the exercise of community renewal project powers and responsibilities under RCW 35.81.150 shall voluntarily acquire any interest, direct or indirect, in any community renewal project, or in any property included or planned to be included in any community renewal project of such municipality, or in any contract or proposed contract in connection with such community renewal project. Whether or not such an acquisition is voluntary, the person acquiring it shall immediately disclose the interest acquired in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body. If any such official or department or division head owns or controls, or owned or controlled within two years prior to the date of the first public hearing on the community renewal project, any interest, direct or indirect, in any property that he or she knows is included in a community renewal project, he or she shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body, and any such official or department or division head shall not participate in any action on that particular project by the municipality or community renewal agency. Any willful violation of the provisions of this section shall constitute misconduct in office. [2002 c 218 § 20; 1965 c 7 § 35.81.180. Prior: 1957 c 42 § 18.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.81.190 Local improvement districts—Establishment—Special assessments—Bonds.** (1) A community renewal agency may establish local improvement districts within the community renewal area, and levy special assessments, in annual installments extending over a period not exceeding twenty years on all property specially benefited by the local improvement, on the basis of special benefits, to pay in whole or in part the damages or costs of the local improvement, and issue local improvement bonds to be paid from local improvement assessments. The formation of the local improvement districts, the determination, levy, and collection of such assessments, and the issuance of such bonds shall be as provided for the formation of local improvement districts, the determination, levy, and collection of local improvement assessments, and the issuance of local improvement bonds by cities and towns, insofar as consistent with this chapter. These bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, the bonds authorized under subsection (1) of this section may be issued and sold in accordance with chapter 39.46 RCW. [2002 c 218 § 13.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.81.200 Local improvement districts—Content of notice.** Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district created under RCW 35.81.190 shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased benefit the improvement adds to the property. [2002 c 218 § 14.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.81.910 Short title.** This chapter shall be known and may be cited as the "community renewal law." [2002 c 218 § 21; 1965 c 7 § 35.81.910. Prior: 1957 c 42 § 20.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**Chapter 35.82 RCW  
HOUSING AUTHORITIES LAW**

Sections

35.82.010 Finding and declaration of necessity.  
 35.82.020 Definitions.  
 35.82.030 Creation of housing authorities.  
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*Eminent domain: Title 8 RCW.*

*Loans and grants for low-income housing: RCW 35.21.685 and 36.32.415.*

*Planning commissions: Chapter 35.63 RCW.*

**35.82.010 Finding and declaration of necessity.** It is hereby declared: (1) That there exist in the state insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the state there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment,

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public health and safety, fire and accident protection, and other public services and facilities; (2) that these areas in the state cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, through the operation of private enterprise, and that the construction of housing projects for persons of low income (as herein defined) would therefore not be competitive with private enterprise; (3) that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern; (4) that it is in the public interest that work on projects for such purposes be commenced as soon as possible in order to relieve unemployment which now (1939) constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination. [1965 c 7 § 35.82.010. Prior: 1939 c 23 § 2; RRS § 6889-2. Formerly RCW 74.24.010.]

**35.82.020 Definitions.** The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "housing authority" shall mean any of the public corporations created by RCW 35.82.030.

(2) "City" shall mean any city, town, or code city. "County" shall mean any county in the state. "The city" shall mean the particular city for which a particular housing authority is created. "The county" shall mean the particular county for which a particular housing authority is created.

(3) "Governing body" shall mean, in the case of a city, the city council or the commission and in the case of a county, the county legislative authority.

(4) "Mayor" shall mean the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of the city.

(5) "Clerk" shall mean the clerk of the city or the clerk of the county legislative authority, as the case may be, or the officer charged with the duties customarily imposed on such clerk.

(6) "Area of operation": (a) In the case of a housing authority of a city, shall include such city and the area within five miles from the territorial boundaries thereof: PROVIDED, That the area of operation of a housing authority of any city shall not include any area which lies within the territorial boundaries of some other city, as herein defined; (b) in the case of a housing authority of a county, shall include all of the county except that portion which lies within the territorial boundaries of any city as herein defined.

(7) "Federal government" shall include the United States of America, the United States housing authority or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(8) "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health and morals.

(9) "Housing project" shall mean any work or undertaking: (a) To demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adaptation of such area to public purposes, including parks or other recreational or community purposes; or (b) to provide decent, safe and sanitary urban or rural dwellings, apartments, mobile home parks, or other living accommodations for persons of low income; such work or undertaking may include the rehabilitation of dwellings owned by persons of low income, and also may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes; or (c) without limitation by implication, to provide decent, safe, and sanitary urban and rural dwellings, apartments, mobile home parks, or other living accommodations for senior citizens; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare, or other purposes; or (d) to accomplish a combination of the foregoing. The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(10) "Persons of low income" shall mean persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(11) "Bonds" shall mean any bonds, notes, interim certificates, debentures, or other obligations issued by the authority pursuant to this chapter.

(12) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(13) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, or lessor demising to the authority property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the authority.

(14) "Mortgage loan" shall mean an interest bearing obligation secured by a mortgage.

(15) "Mortgage" shall mean a mortgage deed, deed of trust or other instrument securing a mortgage loan and constituting a lien on real property held in fee simple, or on a leasehold under a lease having a remaining term at the time the mortgage is acquired of not less than the term for repayment of the mortgage loan secured by the mortgage, improved or to be improved by a housing project.

(16) "Senior citizen" means a person age sixty-two or older who is determined by the authority to be poor or infirm

but who is otherwise in some manner able to provide the authority with revenue which (together with all other available moneys, revenues, income, and receipts of the authority, from whatever sources derived) will be sufficient: (a) To pay, as the same become due, the principal and interest on bonds of the authority; (b) to meet the cost of, and to provide for, maintaining and operating projects (including the cost of insurance) and administrative expenses of the authority; and (c) to create (by not less than the six years immediately succeeding the issuance of any bonds) a reserve sufficient to meet the principal and interest payments which will be due on the bonds in any one year thereafter and to maintain such reserve.

(17) "Commercial space" shall mean space which, because of its proximity to public streets, sidewalks, or other thoroughfares, is well suited for commercial or office use. Commercial space includes but is not limited to office as well as retail space. [1989 c 363 § 1; 1983 c 225 § 1; 1979 ex.s. c 187 § 1; 1977 ex.s. c 274 § 1; 1965 c 7 § 35.82.020. Prior: 1939 c 23 § 3; RRS § 6889-3. Formerly RCW 74.24.020.]

**Severability—1983 c 225:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 225 § 4.]

**Severability—1979 ex.s. c 187:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 187 § 4.]

**35.82.030 Creation of housing authorities.** In each city (as herein defined) and in each county of the state there is hereby created a public body corporate and politic to be known as the "Housing Authority" of the city or county: PROVIDED, HOWEVER, That such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city or the county, as the case may be, by proper resolution shall declare at any time hereafter that there is need for an authority to function in such city or county. The determination as to whether or not there is such need for an authority to function (1) may be made by the governing body on its own motion or (2) shall be made by the governing body upon the filing of a petition signed by twenty-five residents of the city or county, as the case may be, asserting that there is need for an authority to function in such city or county and requesting that the governing body so declare.

The governing body shall adopt a resolution declaring that there is need for a housing authority in the city or county, as the case may be, if it shall find (1) that insanitary or unsafe inhabited dwelling accommodations exist in such city or county; (2) that there is a shortage of safe or sanitary dwelling accommodations in such city or county available to persons of low income at rentals they can afford; or (3) that there is a shortage of safe or sanitary dwellings, apartments, mobile home parks, or other living accommodations available for senior citizens. In determining whether dwelling accommodations are unsafe or insanitary said governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions exist in such

buildings which endanger life or property by fire or other causes.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body declaring the need for the authority. Such resolution or resolutions shall be deemed sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms (no further detail being necessary) that either or both of the above enumerated conditions exist in the city or county, as the case may be. A copy of such resolution duly certified by the clerk shall be admissible in evidence in any suit, action or proceeding. [1979 ex.s. c 187 § 2; 1965 c 7 § 35.82.030. Prior: 1939 c 23 § 4; RRS § 6889-4. Formerly RCW 74.24.030.]

**Severability—1979 ex.s. c 187:** See note following RCW 35.82.020.

**35.82.040 Appointment, qualifications, and tenure of commissioners.** Except as provided in RCW 35.82.045, when the governing body of a city adopts a resolution declaring that there is a need for a housing authority, it shall promptly notify the mayor of such adoption. Upon receiving such notice, the mayor shall appoint five persons as commissioners of the authority created for the city. When the governing body of a county adopts a resolution declaring that there is a need for a housing authority, it shall appoint five persons as commissioners of the authority created for the county. The commissioners who are first appointed shall be designated to serve for terms of one, two, three, four and five years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed for a term of office of five years except that all vacancies shall be filled for the unexpired term. No commissioner of an authority may be an officer or employee of the city or county for which the authority is created, unless the commissioner is an employee of a separately elected county official other than the county governing body in a county with a population of less than one hundred seventy-five thousand as of the 1990 federal census, and the total government employment in that county exceeds forty percent of total employment. A commissioner shall hold office until a successor has been appointed and has qualified, unless sooner removed according to this chapter. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his or her services for the authority, in any capacity, but he or she shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his or her duties.

The powers of each authority shall be vested in the commissioners thereof in office from time to time. Except as provided in RCW 35.82.045, three commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number. The

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mayor (or in the case of an authority for a county, the governing body of the county) shall designate which of the commissioners appointed shall be the first chair of the commission and he or she shall serve in the capacity of chair until the expiration of his or her term of office as commissioner. When the office of the chair of the authority becomes vacant, the authority shall select a chair from among its commissioners. An authority shall select from among its commissioners a vice-chair, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. For such legal services as it may require, an authority may call upon the chief law officer of the city or the county or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

If federal law requires that the membership of the board of commissioners of a local authority contains one member who is directly assisted by the authority, the board may by resolution temporarily or permanently increase its size to six members. The board may determine the length of the term of the position filled by a directly assisted member. A person appointed to such a position may serve in that position only as long as he or she is directly assisted by the authority. [1999 c 77 § 1; 1998 c 140 § 1; 1995 c 293 § 1; 1965 c 7 § 35.82.040. Prior: 1939 c 23 § 5; RRS § 6889-5. Formerly RCW 74.24.040.]

**35.82.045 Cities with a population of 400,000 or more—Appointment of additional commissioners—Appointment, compensation of commissioners—Organization of authority.** (1) After June 11, 1998, the governing body of a city with a population of four hundred thousand or more, that has created a housing authority under RCW 35.82.040, shall adopt a resolution to expand the number of commissioners on the housing authority from five to seven. Upon receiving the notice, the mayor, with approval of the city council, shall appoint additional persons as commissioners of the authority created for the city.

(2) In appointing commissioners, the mayor shall consider persons that represent the community, provided that two commissioners shall consist of tenants that reside in a housing project that is owned by the housing authority.

(3) After June 11, 1998, all commissioners shall be appointed to serve four-year terms, except that all vacancies shall be filled for the remainder of the unexpired term. A commissioner of an authority may not be an officer or employee of the city for which the authority is created. A commissioner shall hold office until a successor has been appointed and has qualified, unless sooner removed according to this chapter.

(4) A commissioner may be reappointed only after review and approval by the city council.

(5) A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and the certificate is conclusive evidence of the due and proper appointment of the commissioner.

(6) A commissioner shall receive no compensation for his or her services for the authority, in any capacity, but he or

she is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his or her duties.

(7) The powers of each authority vest in the commissioners of the authority in office from time to time. Four commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number.

(8) The mayor, with consent of the city council, shall designate which of the commissioners appointed shall be the first chair of the commission and he or she shall serve in the capacity of chair until the expiration of his or her term of office as commissioner. When the office of the chair of the authority becomes vacant, the authority shall select a chair from among its commissioners. An authority shall select from among its commissioners a vice-chair, and the authority may employ a secretary, who shall be executive director, technical experts and such other officers, agents, and employees, permanent and temporary, as the authority requires, and shall determine their qualifications, duties, and compensation.

(9) For such legal services as it may require, an authority may call upon the chief law officer of the city or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. [1998 c 140 § 2.]

**35.82.050 Conflicts of interest for commissioners, employees, and appointees.** (1) No commissioner, employee, or appointee to any decision-making body for the housing authority shall own or hold an interest in any contract or property or engage in any business, transaction, or professional or personal activity, that would:

(a) Be, or appear to be, in conflict with the commissioner's, employee's, or appointee's official duties to any decision-making body for the housing authority duties relating to the housing authority served by or subject to the authority of such commissioner, employee, or appointee to any decision-making body for the housing authority;

(b) Secure, or appear to secure, unwarranted privileges or advantages for such commissioner, employee, or appointee to any decision-making body for the housing authority, or others; or

(c) Prejudice, or appear to prejudice, such commissioner's, employee's, or appointee's to any decision-making body for the housing authority independence of judgment in exercise of his or her official duties relating to the housing authority served by or subject to the authority of the commissioner, employee, or appointee to any decision-making body for the housing authority.

(2) No commissioner, employee, or appointee to any decision-making body for the housing authority shall act in an official capacity in any manner in which such commissioner, employee, or appointee to any decision-making body of the housing authority has a direct or indirect financial or personal involvement.

(3) No commissioner, employee, or appointee to any decision-making body for the housing authority shall use his or her public office or employment to secure financial gain to

such commissioner, employee, or appointee to any decision-making body for the housing authority.

(4) If any commissioner or employee of an authority or any appointee to any decision-making body for the housing authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he immediately shall disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to disclose such interest shall constitute misconduct in office. Upon such disclosure such commissioner, employee, or appointee to any decision-making body for the housing authority shall not participate in any action by the authority affecting such property.

(5) No provision of this section shall preclude a tenant of the public housing authority from serving as a commissioner, employee, or appointee to any decision-making body of the housing authority. No provision of this section shall preclude a tenant of the public housing authority who is serving as a commissioner, employee, or appointee to any decision-making body of the housing authority from voting on any issue or decision, or participating in any action by the authority, unless a conflict of interest, as set forth in subsections (1) through (4) of this section, exists as to that particular tenant and the particular property or interest at issue before, or subject to action by the housing authority. [1998 c 140 § 3; 1965 c 7 § 35.82.050. Prior: 1939 c 23 § 6; RRS § 6889-6. Formerly RCW 74.24.050.]

**35.82.060 Removal of commissioners.** For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the mayor (or in the case of an authority for a county, by the governing body of said county), but a commissioner shall be removed only after he shall have been given a copy of the charges at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk. [1965 c 7 § 35.82.060. Prior: 1939 c 23 § 7; RRS § 6889-7. Formerly RCW 74.24.060.]

**35.82.070 Powers of authority.** An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

(1) To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments, including but not limited to partnership agreements and joint venture agreements, necessary or convenient to the exercise of the powers of the authority; to participate in the organization or the operation of a nonprofit corporation which has as one of its purposes to provide or assist in the provision of housing for persons of low income; and to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this chapter, to carry into effect the powers and purposes of the authority.

(2) Within its area of operation: To prepare, carry out, acquire, lease and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to agree to rent or sell dwellings forming part of the projects to or for persons of low income. Where an agreement or option is made to sell a dwelling to a person of low income, the authority may convey the dwelling to the person upon fulfillment of the agreement irrespective of whether the person is at the time of the conveyance a person of low income. Leases, options, agreements, or conveyances may include such covenants as the authority deems appropriate to assure the achievement of the objectives of this chapter.

(3) To acquire, lease, rent, sell, or otherwise dispose of any commercial space located in buildings or structures containing a housing project or projects.

(4) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; and (notwithstanding anything to the contrary contained in this chapter or in any other provision of law) to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(5) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and (subject to the limitations contained in this chapter) to establish and revise the rents or charges therefor; to own or manage buildings containing a housing project or projects as well as commercial space or other dwelling units that do not constitute a housing project as that term is defined in this chapter. However, notwithstanding the provisions under subsection (1) of this section, dwelling units made available or sold to persons of low income, together with functionally related and subordinate facilities, shall occupy at least fifty percent of the interior space in the total development owned by the authority or at least fifty percent of the total number of units in the development owned by the authority, whichever produces the greater number of units for persons of low income, and for mobile home parks, the mobile home lots made available to persons of low income shall be at least fifty percent of the total number of mobile home lots in the park owned by the authority; to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise including financial assistance and other aid from the state or any public body, person or corporation, any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal property or any interest therein; to sell, lease, exchange, transfer, or dispose of any real or personal property or interest therein at less than fair market value to a governmental entity for any purpose when such action assists the housing authority in carrying out its powers and purposes under this chapter, to a low-income person or family for the purpose of providing housing for that person or family, or to a nonprofit corporation provided the nonprofit corporation

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agrees to sell the property to a low-income person or family or to use the property for the provision of housing for persons of low income for at least twenty years; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on any such insurance.

(6) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be canceled.

(7) Within its area of operation: To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstructing of slum areas, and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(8) Acting through one or more commissioners or other person or persons designated by the authority: To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or excused from attendance; to make available to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

(9) To initiate eviction proceedings against any tenant as provided by law. Activity occurring in any housing authority unit that constitutes a violation of chapter 69.41, 69.50 or 69.52 RCW shall constitute a nuisance for the purpose of RCW 59.12.030(5).

(10) To exercise all or any part or combination of powers herein granted.

No provisions of law with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

(11) To agree (notwithstanding the limitation contained in RCW 35.82.210) to make such payments in lieu of taxes as the authority finds consistent with the achievement of the purposes of this chapter.

(12) Upon the request of a county or city, to exercise any powers of a community renewal agency under chapter 35.81

RCW or a public corporation, commission, or authority under chapter 35.21 RCW.

(13) To exercise the powers granted in this chapter within the boundaries of any city, town, or county not included in the area in which such housing authority is originally authorized to function: PROVIDED, HOWEVER, The governing or legislative body of such city, town, or county, as the case may be, adopts a resolution declaring that there is a need for the authority to function in such territory.

(14) To administer contracts for assistance payments to persons of low income in accordance with section 8 of the United States Housing Act of 1937, as amended by Title II, section 201 of the Housing and Community Development Act of 1974, P.L. 93-383.

(15) To sell at public or private sale, with or without public bidding, for fair market value, any mortgage or other obligation held by the authority.

(16) To the extent permitted under its contract with the holders of bonds, notes, and other obligations of the authority, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract or agreement of any kind to which the authority is a party.

(17) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans to persons of low income to enable them to acquire, construct, reconstruct, rehabilitate, improve, lease, or refinance their dwellings, and to take such security therefor as is deemed necessary and prudent by the authority.

(18) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans for the acquisition, construction, reconstruction, rehabilitation, improvement, leasing, or refinancing of land, buildings, or developments for housing for persons of low income. For purposes of this subsection, development shall include either land or buildings or both.

(a) Any development financed under this subsection shall be subject to an agreement that for at least twenty years the dwelling units made available to persons of low income together with functionally related and subordinate facilities shall occupy at least fifty percent of the interior space in the total development or at least fifty percent of the total number of units in the development, whichever produces the greater number of units for persons of low income. For mobile home parks, the mobile home lots made available to persons of low income shall be at least fifty percent of the total number of mobile home lots in the park. During the term of the agreement, the owner shall use its best efforts in good faith to maintain the dwelling units or mobile home lots required to be made available to persons of low income at rents affordable to persons of low income. The twenty-year requirement under this subsection (18)(a) shall not apply when an authority finances the development by nonprofit corporations or governmental units of dwellings or mobile home lots intended for sale to persons of low and moderate income, and shall not apply to construction or other short-term financing provided to nonprofit corporations or governmental units when the financing has a repayment term of one year or less.

(b) In addition, if the development is owned by a for-profit entity, the dwelling units or mobile home lots required

to be made available to persons of low income shall be rented to persons whose incomes do not exceed fifty percent of the area median income, adjusted for household size, and shall have unit or lot rents that do not exceed fifteen percent of area median income, adjusted for household size, unless rent subsidies are provided to make them affordable to persons of low income.

For purposes of this subsection (18)(b), if the development is owned directly or through a partnership by a governmental entity or a nonprofit organization, which nonprofit organization is itself not controlled by a for-profit entity or affiliated with any for-profit entity that a nonprofit organization itself does not control, it shall not be treated as being owned by a for-profit entity when the governmental entity or nonprofit organization exercises legal control of the ownership entity and in addition, (i) the dwelling units or mobile home lots required to be made available to persons of low income are rented to persons whose incomes do not exceed sixty percent of the area median income, adjusted for household size, and (ii) the development is subject to an agreement that transfers ownership to the governmental entity or nonprofit organization or extends an irrevocable right of first refusal to purchase the development under a formula for setting the acquisition price that is specified in the agreement.

(c) Commercial space in any building financed under this subsection that exceeds four stories in height shall not constitute more than twenty percent of the interior area of the building. Before financing any development under this subsection the authority shall make a written finding that financing is important for project feasibility or necessary to enable the authority to carry out its powers and purposes under this chapter.

(19) To contract with a public authority or corporation, created by a county, city, or town under RCW 35.21.730 through 35.21.755, to act as the developer for new housing projects or improvement of existing housing projects. [2002 c 218 § 22; 1993 c 478 § 17; 1991 c 167 § 1; 1989 c 363 § 2; 1985 c 386 § 1; 1983 c 225 § 2; 1977 ex.s. c 274 § 2; 1965 c 7 § 35.82.070. Prior: 1945 c 43 § 1; 1939 c 23 § 8; Rem. Supp. 1945 § 6889-8. Formerly RCW 74.24.070.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**Severability—1983 c 225:** See note following RCW 35.82.020.

**35.82.076 Small works roster.** A housing authority may establish and use a small works roster for awarding contracts under RCW 39.04.155. [2000 c 138 § 205.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**35.82.080 Operation not for profit.** It is hereby declared to be the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for low-income dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city or the county. To this end, an authority shall fix the rentals for rental units for persons of low income in projects owned or leased by the authority at no higher rates

than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income and receipts of the authority from whatever sources derived) will be sufficient (1) to pay, as the same become due, the principal and interest on the bonds or other obligations of the authority issued or incurred to finance the projects; (2) to meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and (3) to create (during not less than the six years immediately succeeding its issuance of any such bonds) a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter and to maintain such reserve. Nothing contained in this section shall be construed to limit an authority's power to rent commercial space located in buildings containing housing projects or non low-income units owned, acquired, financed, or constructed under \*RCW 35.82.070(5), (16), or (17) at profitable rates and to use any profit realized from such rentals in carrying into effect the powers and purposes provided to housing authorities under this chapter. [1989 c 363 § 3; 1983 c 225 § 3; 1977 ex.s. c 274 § 3; 1965 c 7 § 35.82.080. Prior: 1939 c 23 § 9; RRS § 6889-9. Formerly RCW 74.24.080.]

**\*Reviser's note:** RCW 35.82.070 was amended by 1991 c 167 § 1, changing subsections (16) and (17) to subsections (17) and (18); and subsequently amended by 1993 c 478 § 17 changing subsections (17) and (18) to subsections (18) and (19).

**Severability—1983 c 225:** See note following RCW 35.82.020.

**35.82.090 Rentals and tenant selection.** In the operation and management of rental units which are rented to persons of low income in any housing project an authority shall at all times observe the following duties with respect to rentals and tenant selection: (1) It may rent or lease the dwelling accommodations therein to persons of low income and at rentals within the financial reach of such persons of low income; (2) it may rent or lease to a low-income tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and (3) it shall not accept any person as a low income tenant in any housing project designated for persons of low income if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five times the annual rental of the quarters to be furnished such person or persons, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental. This income limitation does not apply to housing projects designated for senior citizens.

Nothing contained in this section or RCW 35.82.080 shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restric-

tions imposed by this section or RCW 35.82.080. [1989 c 363 § 4; 1979 ex.s. c 187 § 3; 1977 ex.s. c 274 § 4; 1965 c 7 § 35.82.090. Prior: 1939 c 23 § 10; RRS § 6889-10. Formerly RCW 74.24.090.]

**Severability—1979 ex.s. c 187:** See note following RCW 35.82.020.

**35.82.100 Cooperation between authorities.** Any two or more authorities may join or cooperate with one another in the exercise of any or all of the powers conferred hereby for the purpose of financing, planning, undertaking, constructing or operating a housing project or projects located within the area of operation of any one or more of said authorities. [1965 c 7 § 35.82.100. Prior: 1939 c 23 § 11; RRS § 6889-11. Formerly RCW 74.24.100.]

**35.82.110 Eminent domain.** An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under this chapter after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the same manner and under the same procedure as now is or may be hereafter provided by law in the case of other corporations authorized by the laws of the state to exercise the right of eminent domain; or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner: PROVIDED, That no real property belonging to the city, the county, the state or any political subdivision thereof may be acquired without its consent. [1965 c 7 § 35.82.110. Prior: 1939 c 23 § 12; RRS § 6889-12. Formerly RCW 74.24.110.]

*Eminent domain: Title 8 RCW.*

**35.82.120 Planning, zoning and building laws.** All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. In the planning and location of any housing project, an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions. [1965 c 7 § 35.82.120. Prior: 1939 c 23 § 13; RRS § 6889-13. Formerly RCW 74.24.120.]

*Ordinances—Adoption of codes by reference: RCW 35.21.180.*

*Planning commissions: Chapter 35.63 RCW.*

**35.82.130 Bonds.** An authority shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable: (1) Exclusively from the income and revenues of the housing project financed with the proceeds of such bonds; (2) exclusively from the income and revenues of certain designated housing projects whether or

not they are financed in whole or in part with the proceeds of such bonds; or (3) from all or part of its revenues or assets generally. Any such bonds may be additionally secured by a pledge of any grant or contributions from the federal government or other source, or a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority. Any pledge made by the authority shall be valid and binding from the time when the pledge is made; the revenues, moneys, or property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice thereof.

Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such bonds and obligations shall so state on their face) shall not be a debt of the city, the county, the state or any political subdivision thereof and neither the city or the county, nor the state or any political subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of the authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes. Nothing in this section shall prevent an authority from issuing bonds the interest on which is included in gross income of the owners thereof for income tax purposes. [1995 c 293 § 2; 1991 c 167 § 2; 1977 ex.s. c 274 § 5; 1965 c 7 § 35.82.130. Prior: 1939 c 23 § 14; RRS § 6889-14. Formerly RCW 74.24.130.]

**35.82.140 Form and sale of bonds.** (1) Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered as provided in RCW 39.46.030, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

The bonds may be sold at public or private sale.

In case any of the commissioners or officers of the authority whose signatures appear on any bond or any coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

In any suit, action or proceedings involving the validity or enforceability of any bond of an authority or the security

therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed to have been issued for a housing project of such character and said project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of this chapter.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 65; 1977 ex.s. c 274 § 6; 1970 ex.s. c 56 § 45; 1969 ex.s. c 232 § 22; 1965 c 7 § 35.82.140. Prior: 1939 c 23 § 15; RRS § 6889-15. Formerly RCW 74.24.140.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**35.82.150 Provisions of bonds, trust indentures, and mortgages.** In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, an authority, in addition to its other powers, shall have power:

(1) To pledge all or any part of its gross or net rents, fees, revenues, or assets, including mortgage loans and obligations securing the same, to which its right then exists or may thereafter come into existence.

(2) To mortgage all or any part of its real or personal property, then owned or thereafter acquired.

(3) To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it.

(4) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(5) To covenant (subject to the limitations contained in this chapter) as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(6) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must

consent thereto and the manner in which such consent may be given.

(7) To covenant as to use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(8) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(9) To vest in a trustee or trustees or the holders of bonds or any proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said authority, to take possession and use, operate and manage any housing project or part thereof, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the authority with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds.

(10) To covenant as to the use and disposition of the gross income from mortgages owned by the authority and payment of principal of the mortgages.

(11) To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said authority, as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein. [1977 ex.s. c 274 § 7; 1965 c 7 § 35.82.150. Prior: 1939 c 23 § 16; RRS § 6889-16. Formerly RCW 74.24.150.]

**35.82.160 Certification by attorney general.** Any authority may submit to the attorney general of the state any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the attorney general, it shall be the duty of the attorney general to examine into and pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of this chapter and are otherwise regular in form and if such bonds when delivered and paid for will constitute binding and legal obligations of the authority enforceable according to the terms thereof, the attorney general shall certify in substance upon the back of each of said bonds that it is issued in accordance with the Constitution and laws of the state of Washington. [1965 c 7 § 35.82.160. Prior: 1939 c 23 § 17; RRS § 6889-17. Formerly RCW 74.24.160.]

(2004 Ed.)

**35.82.170 Remedies of an obligee of authority.** An obligee of an authority shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action or proceeding at law or in equity to compel said authority and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said authority with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said authority and the fulfillment of all duties imposed upon said authority by this chapter.

(2) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said authority. [1965 c 7 § 35.82.170. Prior: 1939 c 23 § 18; RRS § 6889-18. Formerly RCW 74.24.170.]

**35.82.180 Additional remedies conferable by authority.** An authority shall have power by its resolution, trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any housing project or any part thereof to be surrendered to any such obligee.

(2) To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said authority as the court shall direct.

(3) To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust. [1965 c 7 § 35.82.180. Prior: 1939 c 23 § 19; RRS § 6889-19. Formerly RCW 74.24.180.]

**35.82.190 Exemption of property from execution sale.** All real property of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against an authority be a charge or lien upon its real property: PROVIDED, HOWEVER, That the provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of an authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees or revenues. [1965 c 7 § 35.82.190. Prior: 1939 c 23 § 20; RRS § 6889-20. Formerly RCW 74.24.190.]

**35.82.200 Aid from federal government.** In addition to the powers conferred upon an authority by other provisions of this chapter, an authority is empowered to borrow money or accept contributions, grants or other financial assistance

from the federal government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this chapter to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any housing project by such authority. [1965 c 7 § 35.82.200. Prior: 1939 c 23 § 21; RRS § 6889-21. Formerly RCW 74.24.200.]

**35.82.210 Tax exemption and payments in lieu of taxes—Definitions.** (1) The property of an authority is declared to be public property used for essential public and governmental purposes and such property and an authority shall be exempt from all taxes and special assessments of the city, the county, the state or any political subdivision thereof: PROVIDED, HOWEVER, That in lieu of such taxes an authority may agree to make payments to the city or the county or any such political subdivision for improvements, services and facilities furnished by such city, county or political subdivision for the benefit of a housing project, but in no event shall such payments exceed the amount last levied as the annual tax of such city, county or political subdivision upon the property included in said project prior to the time of its acquisition by the authority.

(2) For the sole purpose of the exemption from tax under this section:

(a) "Authority," in addition to the meaning in RCW 35.82.020, also means tribal housing authorities and intertribal housing authorities.

(b) "Intertribal housing authority" means a housing authority created by a consortium of tribal governments to operate and administer housing programs for persons of low income or senior citizens for and on behalf of such tribes.

(c) "Tribal government" means the governing body of a federally recognized Indian tribe.

(d) "Tribal housing authority" means the tribal government or an agency or branch of the tribal government that operates and administers housing programs for persons of low income or senior citizens. [2000 c 187 § 2; 1965 c 7 § 35.82.210. Prior: 1939 c 23 § 22; RRS § 6889-22. Formerly RCW 74.24.210.]

**Finding—2000 c 187:** "Affordable and accessible housing is of great concern and importance to the legislature and the people of this state. The legislature recognizes the important role housing authorities serve in creating and maintaining housing for low-income persons and senior citizens. The legislature finds that tribal housing authorities should be afforded the same exemptions from tax as all other housing authorities and extends the exemption from state and local tax to tribal housing authorities." [2000 c 187 § 1.]

**Effective date—2000 c 187:** "This act takes effect July 1, 2000." [2000 c 187 § 3.]

**35.82.220 Housing bonds legal investments and security.** Notwithstanding any restrictions on investments contained in any laws of this state, the state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and

loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to the housing authorities law of this state or issued by any public housing authority or agency in the United States, and such bonds and other obligations shall be authorized security for all public deposits; it being the purpose of this chapter to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or other obligations: PROVIDED, HOWEVER, That nothing contained in this chapter shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities. [1977 ex.s. c 274 § 8; 1965 c 7 § 35.82.220. Prior: 1939 c 23 § 23; RRS § 6889-23. Formerly RCW 74.24.220.]

**35.82.230 Reports.** At least once a year, an authority shall file with the clerk a report of its activities for the preceding year, and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this chapter. [1965 c 7 § 35.82.230. Prior: 1939 c 23 § 24; RRS § 6889-24. Formerly RCW 74.24.230.]

**35.82.240 Rural housing projects.** Housing authorities created for counties are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low income as herein defined. In providing such housing, such housing authorities shall not be subject to the tenant selection limitations provided in RCW 35.82.090(3). In connection with such projects, such housing authorities may enter into such leases or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to assure the achievement of the objectives of this chapter. Such leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate. Nothing contained in this section shall be construed as limiting any other powers of any housing authority. [1965 c 7 § 35.82.240. Prior: 1941 c 69 § 1; Rem. Supp. 1941 § 6889-23a. Formerly RCW 74.24.240.]

**35.82.250 Housing applications by farmers.** The owner of any farm operated, or worked upon, by farmers of low income in need of safe and sanitary housing may file an application with a housing authority of a county requesting that it provide for a safe and sanitary dwelling or dwellings

for occupancy by such farmers of low income. Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income. [1965 c 7 § 35.82.250. Prior: 1941 c 69 § 2; Rem. Supp. 1941 § 6889-23b. Formerly RCW 74.24.250.]

**35.82.260 Farmers of low income.** "Farmers of low income" shall mean persons or families who at the time of their admission to occupancy in a dwelling of a housing authority: (1) live under unsafe or insanitary housing conditions; (2) derive their principal income from operating or working upon a farm; and (3) had an aggregate average annual net income for the three years preceding their admission that was less than the amount determined by the housing authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe and sanitary housing without overcrowding. [1965 c 7 § 35.82.260. Prior: 1941 c 69 § 3; Rem. Supp. 1941 § 6889-23c. Formerly RCW 74.24.260.]

**35.82.270 Powers are additional.** The powers conferred by RCW 35.82.240 through 35.82.270 shall be in addition and supplemental to the powers conferred by any other law, and nothing contained herein shall be construed as limiting any other powers of any housing authority. [1965 c 7 § 35.82.270. Prior: 1941 c 69 § 4; Rem. Supp. 1941 § 6889-23d. Formerly RCW 74.24.270.]

**35.82.280 Supplemental projects.** Except as limited by this section, an authority shall have the same powers with respect to supplemental projects as hereinafter in this section defined as are now or hereafter granted to it under this chapter with respect to housing projects.

No funds shall be expended by an authority for a supplemental project except by resolution adopted on notice at a public hearing as provided by chapter 42.32 RCW, supported by formal findings of fact incorporated therein, establishing that:

(1) Low-income housing needs within the area of operation of the authority are being or will be adequately met by existing programs; and

(2) A surplus of funds will exist after meeting such low-income housing needs.

Expenditures for supplemental projects shall be limited to those funds determined to be surplus.

"Supplemental project" for the purposes of this chapter shall mean any work or undertaking to provide buildings, land, equipment, facilities, and other real or personal property for recreational, group home, halfway house or other community purposes which by resolution of the housing authority is determined to be necessary for the welfare of the community within its area of operation and to fully accomplish the purposes of this chapter. Such project need not be in conjunction with the clearing of a slum area under subsection (9)(a) of RCW 35.82.020 or with the providing of low-income housing under subsection (9)(b) of RCW 35.82.020. [1971 ex.s. c 300 § 2.]

(2004 Ed.)

**35.82.285 Group homes or halfway houses for released juveniles or developmentally disabled.** Housing authorities created under this chapter may establish and operate group homes or halfway houses to serve juveniles released from state juvenile or correctional institutions, or to serve the developmentally disabled as defined in \*RCW 71A.10.020(2). Authorities may contract for the operation of facilities so established, with qualified nonprofit organizations as agent of the authority. Authorities may provide support or supportive services in facilities serving juveniles, the developmentally disabled or other persons under a disability, and the frail elderly, whether or not they are operated by the authority.

Action under this section shall be taken by the authority only after a public hearing as provided by chapter 42.30 RCW. In exercising this power the authority shall not be empowered to acquire property by eminent domain, and the facilities established shall comply with all zoning, building, fire, and health regulations and procedures applicable in the locality. [1991 c 167 § 3; 1973 1st ex.s. c 198 § 2.]

**\*Reviser's note:** RCW 71A.10.020 was amended by 1998 c 216 § 2, changing subsection (2) to subsection (3).

**Effective date—1973 1st ex.s. c 198:** See note following RCW 13.06.050.

**35.82.300 Joint housing authorities—Creation authorized—Contents of ordinances creating—Powers.** This section applies to all cities and counties.

(1) Joint housing authorities are hereby authorized when the legislative authorities of one or more counties and the legislative authorities of any city or cities within any of those counties or in another county or counties have authorized such joint housing authority by ordinance.

(2) The ordinances enacted by the legislative authorities creating the joint housing authority shall prescribe the number of commissioners, the method for their appointment and length of their terms, the election of officers, and the method for removal of commissioners.

(3) The ordinances enacted by the legislative authorities creating the joint housing authority shall prescribe the allocation of all costs of the joint housing authority and any other matters necessary for the operation of the joint housing authority.

(4) A joint housing authority shall have all the powers as prescribed by this chapter for any housing authority. The area of operation of a joint housing authority shall be the combined areas, defined by RCW 35.82.020(6), of the housing authorities created in each city and county authorizing the joint housing authority.

(5) The provisions of RCW 35.82.040 and 35.82.060 shall not apply to a joint housing authority created pursuant to this section. [2002 c 258 § 1; 1980 c 25 § 1.]

**35.82.320 Deactivation of housing authority—Procedure.** A housing authority created under this chapter and activated by a resolution by the governing body of a city, town, or county may be deactivated by a resolution by the city, town, or county. The findings listed in RCW 35.82.030 to activate the housing authority shall be considered prior to deactivating the housing authority. For the sole purposes of winding up the affairs of a deactivated housing authority, the

governing body of the city, town, or county may exercise any power granted to a housing authority under this chapter. [1987 c 275 § 1.]

**35.82.325 Deactivation of housing authority—Distribution of assets.** The assets of an authority in the process of deactivation shall be applied and distributed as follows:

(1) All liabilities and obligations of the authority shall be paid, satisfied, and discharged, or adequate provision shall be made therefor;

(2) Assets held by the authority upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the deactivation shall be returned, transferred, or conveyed in accordance with such requirements;

(3) Assets received and held by the authority subject to limitations permitting their use only for activities purposes contained in RCW 35.82.070, but not held upon a condition requiring return, transfer, or conveyance by reason of the deactivation, shall be transferred or conveyed to the governing body of the city, town, or county and used to engage in activities contained in RCW 35.82.070;

(4) Other assets, if any, shall be returned to the governing body of the city, town, or county for uses allowed under state law. [1987 c 275 § 2.]

**35.82.900 Short title.** This chapter shall be known and may be cited as the "Housing Authorities Law." [1965 c 7 § 35.82.900. Prior: 1939 c 23 § 1.]

**35.82.910 Chapter controlling.** Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. [1965 c 7 § 35.82.910. Prior: 1939 c 23 § 26.]

### Chapter 35.83 RCW

#### HOUSING COOPERATION LAW

##### Sections

35.83.005	Short title.
35.83.010	Finding and declaration of necessity.
35.83.020	Definitions.
35.83.030	Cooperation in undertaking housing projects.
35.83.040	Agreements as to payments by housing authority.
35.83.050	Advances to housing authority.
35.83.060	Procedure for exercising powers.
35.83.070	Supplemental nature of chapter.

*Housing authorities law: Chapter 35.82 RCW.*

**35.83.005 Short title.** This act may be referred to as the "Housing Cooperation Law." [1965 c 7 § 35.83.005. Prior: 1939 c 24 § 1; RRS § 6889-31.]

**35.83.010 Finding and declaration of necessity.** It has been found and declared in the housing authorities law that there exist in the state unsafe and insanitary housing conditions and a shortage of safe and sanitary dwelling accommodations for persons of low income; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; and that the public interest requires the remedying of these conditions. It is hereby found and

declared that the assistance herein provided for the remedying of the conditions set forth in the housing authorities law constitutes a public use and purpose and an essential governmental function for which public moneys may be spent, and other aid given; that it is a proper public purpose for any state public body to aid any housing authority operating within its boundaries or jurisdiction or any housing project located therein, as the state public body derives immediate benefits and advantages from such an authority or project; and that the provisions hereinafter enacted are necessary in the public interest. [1965 c 7 § 35.83.010. Prior: 1939 c 24 § 2; RRS § 6889-32. Formerly RCW 74.28.010.]

**35.83.020 Definitions.** The following terms, whenever used or referred to in this chapter shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Housing authority" shall mean any housing authority created pursuant to the housing authorities law of this state.

(2) "Housing project" shall mean any work or undertaking of a housing authority pursuant to the housing authorities law or any similar work or undertaking of the federal government.

(3) "State public body" shall mean the state of Washington and any city, town, county, municipal corporation, commission, district, authority, other subdivision or public body of the state.

(4) "Governing body" shall mean the council, the commission, board of county commissioners or other body having charge of the fiscal affairs of the state public body.

(5) "Federal government" shall include the United States of America, the United States housing authority, or any other agency or instrumentality, corporate or otherwise, of the United States of America. [1991 c 167 § 4; 1965 c 7 § 35.83.020. Prior: 1939 c 24 § 3; RRS § 6889-33. Formerly RCW 74.28.020.]

**35.83.030 Cooperation in undertaking housing projects.** For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, grant, convey, or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to a housing authority or the federal government;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any part of such state public body; make exceptions from building regulations and ordinances; any city or town also may change its map;

(5) Cause services to be furnished to the housing authority of the character which such state public body is otherwise empowered to furnish;

(6) Enter into agreements with respect to the exercise by such state public body of its powers relating to the repair, elimination or closing of unsafe, insanitary or unfit dwellings;

(7) Employ (notwithstanding the provisions of any other law) any funds belonging to or within the control of such state public body, including funds derived from the sale or furnishing of property or facilities to a housing authority, in the purchase of the bonds or other obligations of a housing authority; and exercise all the rights of any holder of such bonds or other obligations;

(8) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects;

(9) Incur the entire expense of any public improvements made by such state public body in exercising the powers granted in this chapter;

(10) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary), with a housing authority respecting action to be taken by such state public body pursuant to any of the powers granted by this chapter. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a state public body without appraisal, advertisement or public bidding: PROVIDED, There must be five days public notice given either by posting in three public places or publishing in the official county newspaper of the county wherein the property is located; and

(11) With respect to any housing project which a housing authority has acquired or taken over from the federal government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no state public body shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction. [1991 c 167 § 5; 1965 c 7 § 35.83.030. Prior: 1939 c 24 § 4; RRS § 6889-34. Formerly RCW 74.28.030.]

**35.83.040 Agreements as to payments by housing authority.** In connection with any housing project located wholly or partly within the area in which it is authorized to act, any state public body may agree with a housing authority or the federal government that a certain sum (in no event to exceed the amount last levied as the annual tax of such state public body upon the property included in said project prior to the time of its acquisition by the housing authority) or that no sum, shall be paid by the authority in lieu of taxes for any year or period of years. [1965 c 7 § 35.83.040. Prior: 1939 c 24 § 5; RRS § 6889-35. Formerly RCW 74.28.040.]

**35.83.050 Advances to housing authority.** Any city, town, or county located in whole or in part within the area of operation of a housing authority shall have the power from time to time to lend or donate money to such authority or to

agree to take such action. Such housing authority, when it has money available therefor, shall make reimbursements for all such loans made to it. [1965 c 7 § 35.83.050. Prior: 1939 c 24 § 6; RRS § 6889-36. Formerly RCW 74.28.050.]

**35.83.060 Procedure for exercising powers.** The exercise by a state public body of the powers herein granted may be authorized by resolution of the governing body of such state public body adopted by a majority of the members of its governing body present at a meeting of said governing body, which resolution may be adopted at the meeting at which such resolution is introduced. Such a resolution or resolutions shall take effect immediately and need not be laid over or published or posted. [1965 c 7 § 35.83.060. Prior: 1939 c 24 § 7; RRS § 6889-37. Formerly RCW 74.28.060.]

**35.83.070 Supplemental nature of chapter.** The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law. [1965 c 7 § 35.83.070. Prior: 1939 c 24 § 8; RRS § 6889-39. Formerly RCW 74.28.070.]

## Chapter 35.84 RCW

### UTILITY AND OTHER SERVICES BEYOND CITY LIMITS

#### Sections

35.84.010	Electric energy—Sale of—Purchase.
35.84.020	Electric energy facilities—Right to acquire.
35.84.030	Limitation on right of eminent domain.
35.84.040	Fire apparatus—Use beyond city limits.
35.84.050	Fireman injured outside corporate limits.
35.84.060	Street railway extensions.

**35.84.010 Electric energy—Sale of—Purchase.** Every city or town owning its own electric power and light plant, shall have the right to sell and dispose of electric energy to any other city or town, public utility district, governmental agency, or municipal corporation, mutual association, or to any person, firm, or corporation, inside or outside its corporate limits, and to purchase electric energy therefrom. [1965 c 7 § 35.84.010. Prior: 1933 c 51 § 1; RRS § 9209-1.]

*Reduced utility rates for low-income senior citizens and other low-income citizens: RCW 74.38.070.*

**35.84.020 Electric energy facilities—Right to acquire.** Every city or town owning its own electric power and light plant may acquire, construct, purchase, condemn and purchase, own, operate, control, add to and maintain lands, easements, rights-of-way, franchises, distribution systems, substations, inter-tie or transmission lines, to enable it to use, purchase, sell, and dispose of electric energy inside or outside its corporate limits, or to connect its electric plant with any other electric plant or system, or to connect parts of its own electric system. [1965 c 7 § 35.84.020. Prior: 1933 c 51 § 2; RRS § 9209-2.]

**35.84.030 Limitation on right of eminent domain.** Every city or town owning its own electric power and light plant may exercise the power of eminent domain as provided

by law for the condemnation of private property for any of the corporate uses or purposes of the city or town: PROVIDED, That no city or town shall acquire, by purchase or condemnation, any publicly or privately owned electric power and light plant or electric system located in any other city or town except with the approval of a majority of the qualified electors of the city or town in which the property to be acquired is situated; nor shall any city or town acquire by condemnation the electric power and light plant or electric system, or any part thereof, belonging to or owned or operated by any municipal corporation, mutual, nonprofit, or cooperative association or organization, or by a public utility district. [1965 c 7 § 35.84.030. Prior: 1933 c 51 § 3; RRS § 9209-3.]

*Eminent domain by cities: Chapter 8.12 RCW.*

#### **35.84.040 Fire apparatus—Use beyond city limits.**

Every municipal corporation which owns, operates, or maintains fire apparatus and equipment may permit, under conditions prescribed by the governing body of such corporation, such equipment and the personnel operating the same to go outside of the corporate limits of such municipality for the purpose of extinguishing or aiding in the extinguishing or control of fires. Any use made of such equipment or personnel under the authority of this section shall be deemed an exercise of a governmental function of such municipal corporation. [1965 c 7 § 35.84.040. Prior: 1941 c 96 § 1; Rem. Supp. 1941 § 9213-9.]

#### **35.84.050 Fireman injured outside corporate limits.**

Whenever a fireman engages in any duty outside the limits of such municipality, such duty shall be considered as part of his duty as fireman for the municipality, and a fireman who is injured while engaged in such duties outside the limits of the municipality shall be entitled to the same benefits that he or his family would be entitled to receive had he been injured within the municipality. [1965 c 7 § 35.84.050. Prior: 1941 c 96 § 2; Rem. Supp. 1941 § 9563-1.]

**35.84.060 Street railway extensions.** Every municipal corporation which owns or operates an urban public transportation system as defined in RCW 47.04.082 within its corporate limits may acquire, construct, extend, own, or operate such urban public transportation system to any point or points not to exceed fifteen miles outside of its corporate limits: PROVIDED, That no municipal corporation shall extend its urban public transportation system beyond its corporate limits to operate in any territory already served by a privately operated auto transportation company holding a certificate of public convenience and necessity from the utilities and transportation commission.

As a condition of receiving state funding, the municipal corporation shall submit a maintenance management plan for certification by the transportation commission or its successor entity. The plan must inventory all transportation system assets within the direction and control of the municipality, and provide a preservation plan based on lowest life-cycle cost methodologies. [2003 c 363 § 302; 1969 ex.s. c 281 § 26; 1965 c 7 § 35.84.060. Prior: 1919 c 138 § 1; 1917 c 59 § 1; RRS § 9213.]

[Title 35 RCW—page 278]

**Finding—Intent—2003 c 363:** "The legislature finds that roads, streets, bridges, and highways in the state represent public assets worth over one hundred billion dollars. These investments require regular maintenance and preservation, or rehabilitation, to provide cost-effective transportation services. Many of these facilities are in poor condition. Given the magnitude of public investment and the importance of safe, reliable roadways to the motoring public, the legislature intends to create stronger accountability to ensure that cost-effective maintenance and preservation is provided for these transportation facilities." [2003 c 363 § 301.]

**Part headings not law—Severability—2003 c 363:** See notes following RCW 47.28.241.

### **Chapter 35.85 RCW**

#### **VIADUCTS, ELEVATED ROADWAYS, TUNNELS AND SUBWAYS**

##### Sections

35.85.010	Authority to construct viaducts, bridges, elevated roadways, etc.
35.85.020	Assessment district—Resolution—Hearing—Ordinance ordering improvement.
35.85.030	Limit of assessment—Lien—Priority.
35.85.040	Operation by city—Leases—Use of income.
35.85.050	Authority to construct tunnels and subways.
35.85.060	Procedure.
35.85.070	Assessments—Bonds.
35.85.080	Construction of chapter.

**35.85.010 Authority to construct viaducts, bridges, elevated roadways, etc.** Any city of the first class shall have power to provide for the construction, maintenance and operation upon public streets and upon the extensions and connections thereof over intervening tidelands to and across any harbor reserves, waterways, canals, rivers, natural watercourses and other channels, any bridges, drawbridges, viaducts, elevated roadways and tunnels or any combination thereof together with all necessary approaches thereto, with or without street railway tracks thereon or therein, and to make any and all necessary cuts, fills, or other construction, upon, in, or along such streets and approaches as a part of any such improvement, and to order any and all work to be done which shall be necessary to complete any such improvement. The word "approaches" as used in this section shall include any arterial highway or highways or streets connecting with any such bridge, drawbridge, viaduct, elevated roadway or tunnel, or combination thereof, which are necessary to give convenient access thereto or therefrom from any portion of the improvement district which may be specially benefited by such improvement and which is liable to assessment for such improvement.

Whenever it is desired to pay the whole or any portion of the cost and expense of any such improvement by special assessments, the council or other legislative body of such city shall in the ordinance ordering such improvement fix and establish the boundaries of the improvement district, the property within which is to bear such assessment, which district shall include as near as may be, all the property specially benefited by such improvement. [1965 c 7 § 35.85.010. Prior: 1911 c 103 § 1; 1909 ex.s. c 14 § 1; RRS § 9001.]

*First class cities, generally: Chapter 35.22 RCW.*

**35.85.020 Assessment district—Resolution—Hearing—Ordinance ordering improvement.** Any such improvement may be initiated by the city council, or other legislative body, by a resolution, declaring its intention to

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order such improvement, which resolution shall set forth the nature and territorial extent of such proposed improvement, shall specify and describe the boundaries of the proposed improvement district and notify all persons who may desire to object thereto to appear and present such objections at a meeting of the council specified in such resolution and directing the board of public works, or other proper board, officer, or authority of the city, to submit to such council at or prior to the date fixed for such hearing the estimated cost and expense of the improvement, and a statement of the proportionate amount thereof which should be borne by the property within the proposed improvement district, and a statement of the aggregate assessed valuation of the real property exclusive of improvements, within said district, according to the valuation last placed upon it for purposes of general taxation. Such resolution shall be published in at least two consecutive issues of the official newspaper of the city, the date of the first publication to be at least thirty days prior to the date fixed by the resolution for hearing before the council.

Upon such hearing, or upon any adjournment thereof, the council shall have power to amend, change, extend, or contract the boundaries of the proposed improvement district as specified in the resolution, and to consider and determine all matters in relation to the proposed improvement, and, upon the conclusion of the hearing, or any adjournment thereof, shall have power by ordinance to order the improvement to be made and to adopt, fix and establish the boundaries of the improvement district. The action of such council in ordering such improvement, or in abandoning it, and in fixing and establishing the boundaries of the improvement district shall be final and conclusive. Any such ordinance may be passed upon majority vote of the council or other legislative body of the city.

Such ordinance may provide for the construction of the improvement in sections, the letting of separate contracts for each such section, and, in case the same is made in sections, separate assessment rolls to defray the cost and expense of any such section of such improvement may be prepared, and the amounts thereon appearing as finally determined, may be levied and assessed against real property within the improvement district. The provisions of law, charter and ordinance of any such city, relating to supplemental assessments, reassessments and omitted property shall be applicable to any improvement authorized in this chapter.

The city council, or other legislative body of such city, shall by general ordinance, make provision for hearing any objections in writing, to any assessment roll for such improvement, filed with the city clerk or comptroller at a prior date to the hearing thereon. Any right of appeal to the superior court provided by law to be taken from any local improvement assessment levied and assessed by any such city, may be exercised, within the time and in the manner therein provided, by any person so objecting to any assessment levied and assessed for any improvement authorized in this chapter. [1965 c 7 § 35.85.020. Prior: 1911 c 103 § 2; 1909 ex.s. c 14 § 2; RRS § 9002.]

*Appeal from local improvement district assessments: RCW 35.44.200 through 35.44.270.*

**35.85.030 Limit of assessment—Lien—Priority.** The city council may prescribe by general ordinance, the mode

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and manner in which the charge upon property in such local improvement district shall be assessed and determined for the purpose of paying the cost and expense of establishing and constructing such improvement: PROVIDED, That no assessment shall be levied on any such district, the aggregate of which is a greater sum than twenty-five percent of the assessed value of all the real property in such district according to the last equalized assessment thereof for general taxation: PROVIDED FURTHER, That there shall be, in all cases, an opportunity for a hearing upon objections to the assessment roll by the parties affected thereby, before the council as a board of equalization, which hearing shall be after publication of a reasonable notice thereof, such notice to be published in such manner and for such time as may be prescribed by ordinance. At such hearing, or at legal adjournments thereof, such changes may be made in the assessment roll as the city council may find necessary to make the same just and equitable. Railroad rights-of-way shall be assessed for such benefits as shall inure or accrue to the owners, lessees, or operators of the same, resulting or to result from the construction and maintenance of any such improvement, whether such rights-of-way lie within the limits of any street or highway or not; such assessment to lie against the franchise rights when such right-of-way is within such street or highway.

When the assessment roll has been finally confirmed by the city council, the charges therein made shall be and become a lien against the property or franchise therein described, paramount to all other liens (except liens for assessments and taxes) upon the property assessed from the time the assessment roll shall be placed in the hands of the collector. [1965 c 7 § 35.85.030. Prior: 1909 ex.s. c 14 § 3; RRS § 9003.]

**35.85.040 Operation by city—Leases—Use of income.** As a part of the original construction of any improvement herein authorized, or afterward as an alteration or renewal thereof, any such city, notwithstanding any charter provision to the contrary, may, at its own cost, construct, maintain and operate street railway tracks in the roadway thereof, and may provide electric power for the propulsion of cars, and may lease the use of such tracks and power for the operation of street cars or interurban railways; or such city may authorize any operator of the street or interurban railways to construct and furnish such street railway tracks and electric power and use the same for street or interurban purposes, under lease or franchise ordinance: PROVIDED, That no such lease or franchise shall be exclusive, but shall at all times reserve the right to the city to permit other lines of street or interurban railway to use such street railway tracks in common with any preceding lessee or grantee, upon equal terms. The rate of lease or use of such street railway tracks for streets or interurban cars shall be as fixed by the legislative authority of the city, but shall not be less than one mill for each passenger carried, or ten cents for each freight car moved over such improvement. The income from such charges, rental and leasing shall be used wholly for the maintenance, repair and betterment of said improvement and the extinguishment of any debt incurred by the city in constructing it. [1965 c 7 § 35.85.040. Prior: 1909 ex.s. c 14 § 4; RRS § 9004.]

**35.85.050 Authority to construct tunnels and subways.** Any city of the first class shall have power to provide for the construction, maintenance and operation within such city of tunnels, subways, or both, with or without roadways, sidewalks, street railway tracks or any combination thereof therein, together with all necessary approaches thereto; and to order any and all work to be done which shall be necessary to complete any such improvement. The word "approaches," as used in this section, shall include any arterial highway or highways or streets connecting with any such tunnel or subway which may be necessary to give convenient access thereto or therefrom from any portion of the improvement district which may be specially benefited by such improvement, and which is liable to assessment for such improvement.

Whenever it is desired to pay the whole or any portion of the cost and expense of any such improvement by special assessments, the council or other legislative body of such city shall, in the ordinance ordering such improvement, fix and establish the boundaries of the improvement district, the property in which is to bear such assessment, which district shall include as near as may be all the property specially benefited by such improvement. [1965 c 7 § 35.85.050. Prior: 1925 ex.s. c 168 § 1; RRS § 9005-1.]

**35.85.060 Procedure.** Any such improvement may be initiated and assessments therefor determined and levied as prescribed in RCW 35.85.020 to 35.85.040, inclusive. [1965 c 7 § 35.85.060. Prior: 1925 ex.s. c 168 § 2; RRS § 9005-2.]

**35.85.070 Assessments—Bonds.** Any assessments so levied shall be collected, and bonds may be issued for the payment of the whole or any part of the cost of such improvement, in the manner now or hereafter provided for the collection of assessments and the issuance of bonds for other local improvements. [1965 c 7 § 35.85.070. Prior: 1925 ex.s. c 168 § 3; RRS § 9005-3.]

**35.85.080 Construction of chapter.** The provisions and remedies provided by this chapter are cumulative of existing provisions and remedies, and nothing herein contained shall be held to repeal any provision of the existing law or of any charter of any city upon the subject matter thereof, but such existing law or charter provision shall continue in full force and effect, and it shall be optional with the city authorities to proceed under either such existing law, charter provision or this chapter. [1965 c 7 § 35.85.080. Prior: (i) 1909 ex.s. c 14 § 5; RRS § 9005. (ii) 1925 ex.s. c 168 § 4; RRS § 9005-4.]

## Chapter 35.86 RCW

### OFF-STREET PARKING FACILITIES

#### Sections

35.86.010	Space and facilities authorized.
35.86.020	Financing.
35.86.030	Acquisition and disposition of real property.
35.86.040	Operation—Leasing.
35.86.045	Operation of parking facilities by cities prohibited, exception—Bid requirements and procedure.
35.86.050	Procedure to establish—Plan, surveys, hearings.
35.86.060	Maximum parking fee schedule.

35.86.080	Leasing for store space in lieu of undesirable off-street parking facility.
35.86.910	Chapter prevails over inconsistent laws.

**35.86.010 Space and facilities authorized.** Cities of the first and second classes are authorized to provide off-street parking space and facilities located on land dedicated for park or civic center purposes, or on other municipally-owned land where the primary purpose of such off-street parking facility is to provide parking for persons who use such park or civic center facilities. In addition a city may own other off-street parking facilities and operate them in accordance with RCW 35.86A.120. [1997 c 361 § 16; 1975 1st ex.s. c 221 § 1; 1967 ex.s. c 144 § 13; 1965 c 7 § 35.86.010. Prior: 1961 c 186 § 1; 1959 c 302 § 1.]

**Severability—1975 1st ex.s. c 221:** "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 221 § 5.]

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

*Off-street parking space and facilities in towns:* RCW 35.27.550 through 35.27.600.

*Public parks in or beneath off-street parking space or facilities—Revenue bond financing—Special funds—Use of off-street and on-street parking revenues:* RCW 35.41.010.

**35.86.020 Financing.** In order to provide for off-street parking space and/or facilities, such cities are authorized, in addition to the powers already possessed by them for financing public improvements, to finance their acquisition and construction through the issuance and sale of revenue bonds or general obligation bonds or both. Any bonds issued by such cities pursuant to this section shall be issued in the manner and within the limitations prescribed by the Constitution and the laws of this state.

In addition local improvement districts may be created and their financing procedures used for this purpose in accordance with the provisions of Title 35 RCW as now or hereafter amended.

Such cities may authorize and finance the economic and physical surveys and plans, acquisition and construction, for off-street parking spaces and facilities, and the maintenance and management of such off-street parking spaces and facilities either within their general budget or by issuing revenue bonds or general obligation bonds or both.

General obligation bonds issued hereunder may additionally be made payable from any otherwise unpledged revenue, fees or charges which may be derived from the ownership, operation, lease or license of off-street parking space or facilities or which may be derived from the license of on-street parking space.

Such cities may, in addition to utilizing the pledging revenues from off-street parking spaces and facilities, utilize and pledge revenues from on-street parking meters in exercising any of the powers provided by this chapter, including the financing of economic and physical surveys and plans, acquisition, and construction, for off-street parking facilities, the maintenance and management thereof, and for the payment of debt service of revenue bonds issued therefor.

In the event revenue bonds are issued, such cities are authorized to make such covenants pertaining to the continued maintenance of on-street and/or off-street parking spaces

and facilities and the fixing of rates and charges for the use thereof as are deemed necessary to effectuate the sale of such revenue bonds. [1969 ex.s. c 204 § 14; 1967 ex.s. c 144 § 14; 1965 c 7 § 35.86.020. Prior: 1961 c 186 § 2; 1959 c 302 § 2.]

**Severability—1969 ex.s. c 204:** See note following RCW 35.86A.010.

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

*Public parks in or beneath off-street parking space or facilities—Revenue bond financing—Special funds—Use of off-street and on-street parking revenues: RCW 35.41.010.*

**35.86.030 Acquisition and disposition of real property.** Such cities are authorized to obtain by lease, purchase, donation and/or gift, or by eminent domain in the manner provided by law for the exercise of this power by cities, such real property for off-street parking as the legislative bodies thereof determine to be necessary by ordinance. Such property or any fraction or fractions thereof may be sold, transferred, exchanged, leased, or otherwise disposed of by the city when its legislative body has determined by ordinance such property or fraction or fractions thereof is no longer necessary for off-street parking purposes. [1965 c 7 § 35.86.030. Prior: 1961 c 186 § 3; 1959 c 302 § 3.]

*Eminent domain by cities: Chapter 8.12 RCW.*

**35.86.040 Operation—Leasing.** Such cities are authorized to establish the method of operation of off-street parking space and/or facilities by ordinance, which may include leasing or municipal operation. [1975 1st ex.s. c 221 § 2; 1969 ex.s. c 204 § 13; 1965 c 7 § 35.86.040. Prior: 1959 c 302 § 4.]

**Severability—1975 1st ex.s. c 221:** See note following RCW 35.86.010.

**Severability—1969 ex.s. c 204:** See note following RCW 35.86A.010.

**35.86.045 Operation of parking facilities by cities prohibited, exception—Bid requirements and procedure.** See RCW 35.86A.120.

**35.86.050 Procedure to establish—Plan, surveys, hearings.** In the establishment of off-street parking space and/or facilities, cities shall proceed with the development of the plan therefor by making such economic and physical surveys as are necessary, shall prepare comprehensive plans therefor, and shall hold a public hearing thereon prior to the adoption of any ordinances relating to the leasing or acquisition of property and providing for the financing thereof for this purpose. [1965 c 7 § 35.86.050. Prior: 1959 c 302 § 5.]

**35.86.060 Maximum parking fee schedule.** The lease referred to in RCW 35.86.040 shall specify a schedule of maximum parking fees which the operator may charge. This maximum parking fee schedule may be modified from time to time by agreement of the city and the operator. [1965 c 7 § 35.86.060. Prior: 1959 c 302 § 6.]

**35.86.080 Leasing for store space in lieu of undesirable off-street parking facility.** Cities are expressly authorized to lease space which would otherwise be wasted in an off-street parking facility for store space, both for the enhancement of civic beauty and aesthetic values and for rev-

enue which such leasing can provide. [1965 c 7 § 35.86.080. Prior: 1961 c 186 § 4.]

**35.86.910 Chapter prevails over inconsistent laws.** Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. [1965 c 7 § 35.86.910. Prior: 1959 c 302 § 9.]

## Chapter 35.86A RCW OFF-STREET PARKING— PARKING COMMISSIONS

### Sections

35.86A.010	Declaration.
35.86A.020	Authority of cities of first and second class to establish parking facilities through parking commissions.
35.86A.030	Definitions.
35.86A.040	Ownership, control and use of parking facilities.
35.86A.050	Parking commission—Creation authorized—Purpose—Membership—Terms—Vacancies—Expenses.
35.86A.060	Parking commission—Chairman—Rules—Resolutions.
35.86A.070	Powers and authority of parking commission.
35.86A.080	New off-street parking facilities—Powers of parking commission and city council.
35.86A.090	Powers of cities.
35.86A.100	Disposition of revenues—Expenditure procedure.
35.86A.110	Excise tax to reimburse taxing authorities for loss of property tax revenue.
35.86A.120	Operation of parking facilities—Bid requirements and procedure.

**35.86A.010 Declaration.** It is hereby determined and declared:

(1) The free circulation of traffic of all kinds through our cities is necessary to the health, safety and general welfare of the public, whether residing in, traveling to or through the cities of this state;

(2) The most efficient use of the street and highway system requires availability of strategically located parking for vehicles in localities where large numbers of persons congregate;

(3) An expanding suburban population has increased demands for further concentration of uses in central metropolitan areas, necessitating an increasing investment in streets and highways;

(4) On-street parking is now inadequate, and becomes increasingly an inefficient and uneconomical method for temporary storage of vehicles in commercial, industrial and high-density residential areas, causing such immediate adverse consequences as the following, among others:

(a) Serious traffic congestion from on-street parking, which interferes with use of streets for travel, disrupts public surface transportation at peak hours, impedes rapid and effective fighting of fires and disposition of police forces, slows emergency vehicles, and inflicts hardship upon handicapped persons and others dependent upon private vehicles for transportation;

(b) On-street parking absorbs right-of-way useful and usable for travel;

(c) On-street parking reduces the space available for truck and passenger loading for the abutting properties, hinders ready access, and impedes cleaning of streets;

(d) Inability to temporarily store automobiles has discouraged the public from travel to and within our cities, from

congregating at public events, and from using public facilities.

(5) Insufficient off-street parking has had long-range results, as the following, among others:

(a) Metropolitan street and highway systems have lost efficiency and the free circulation of traffic and persons has been impaired;

(b) The growth and development of metropolitan areas has been retarded;

(c) Business, industry, and housing has become unnecessarily and uneconomically dispersed;

(d) Limited and valuable land area is under used.

All of which cause loss of payrolls, business and productivity, and property values, with resulting impairment of the public health, safety and welfare, the utility of our streets and highways, and tax revenues;

(6) Establishment of public off-street parking facilities will promote the public health, safety, convenience, and welfare, by:

(a) Expediting the movement of the public, and of goods in metropolitan areas, alleviating traffic congestion, and preserving the large investment in streets and highways;

(b) Permitting a greater use of public facilities, congregation of the public, and more intensive development of private property within the community;

(7) Establishment of public off-street parking is a necessary ancillary to and extension of an efficient street and highway system in metropolitan areas, as much so as a station or terminal is to a railroad or urban transit line;

(8) Public off-street parking facilities, open to the public and owned by a city or town, are and remain a public use and a public function, irrespective of whether:

(a) Parking fees are charged to users;

(b) The management or operation of one or more parking facilities is conducted by a public agency, or under contract or lease by private enterprise; or

(c) A portion of the facilities is used for commercial, store or automobile accessory purposes;

(9) Public parking facilities under the control of a parking commission are appropriately treated differently from other parking facilities of a city. [1969 ex.s. c 204 § 1.]

**Severability—1969 ex.s. c 204:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 204 § 15.]

**35.86A.020 Authority of cities of first and second class to establish parking facilities through parking commissions.** Cities of the first and second class are authorized and empowered to establish and maintain public off-street parking facilities through a parking commission; the use of property and property rights for such purpose is declared to be a public use; and parking facilities under the control of such parking commission shall be governed by the provisions of this chapter. [1994 c 81 § 64; 1969 ex.s. c 204 § 2.]

**35.86A.030 Definitions.** (1) "Parking facilities" means lots, garages, parking terminals, buildings and structures and accommodations for parking of motor vehicles off the street or highway, open to public use, with or without charge.

(2) "Parking commission" shall mean the department or agency created by the legislative authority of the municipality as hereinafter provided.

(3) "City council" shall mean the city council or legislative authority of the municipality.

(4) "Mayor" shall mean the chief executive officer of the municipality. [1969 ex.s. c 204 § 3.]

**35.86A.040 Ownership, control and use of parking facilities.** Parking facilities established pursuant to this chapter shall be owned by the city, under the control of the parking commission (unless relinquished), and for the use of the public. The provisions of chapter 35.86 RCW as now or hereafter amended shall not apply to such parking facilities or other facilities under parking commission control. [1969 ex.s. c 204 § 4.]

**35.86A.050 Parking commission—Creation authorized—Purpose—Membership—Terms—Vacancies—Expenses.** Any city of the first or second class may by ordinance create a parking commission for the purpose of establishing and operating off-street parking facilities.

Such parking commission shall consist of five members appointed by the mayor and confirmed by the city council, who shall serve without compensation but may be reimbursed for necessary expenses. One member of the parking commission shall be selected from among persons actively engaged in the private parking industry, if available.

Three of those first appointed shall be designated to serve for one, two, and three years respectively, and two shall be designated to serve four years. The terms for all subsequently appointed members shall be four years. In event of any vacancy, the mayor, subject to confirmation of the city council, shall make appointments to fill the unexpired portion of the term.

A member may be reappointed, and shall hold office until his or her successor has been appointed and has qualified. Members may be removed by the mayor upon consent of the city council. [1994 c 81 § 65; 1969 ex.s. c 204 § 5.]

**35.86A.060 Parking commission—Chairman—Rules—Resolutions.** The parking commission shall select from its members a chairman, and may establish its own rules, regulations and procedures not inconsistent with this chapter. No resolution shall be adopted by the parking commission except upon the concurrence of at least three members. [1969 ex.s. c 204 § 6.]

**35.86A.070 Powers and authority of parking commission.** The parking commission is authorized and empowered, in the name of the municipality by resolution to:

(1) Own and acquire property and property rights by purchase, gift, devise, or lease for the construction, maintenance, or operation of off-street parking facilities, or for effectuating the purpose of this chapter; and accept grants-in-aid, including compliance with conditions attached thereto;

(2) Construct, maintain, and operate off-street parking facilities located on land dedicated for park or civic center purposes, or on other municipally-owned land where the primary purpose of such off-street parking facility is to provide

parking for persons who use such park or civic center facilities, and undertake research, and prepare plans incidental thereto subject to applicable statutes and charter provisions for municipal purchases, expenditures, and improvements; and in addition may own other off-street parking facilities and operate them in accordance with RCW 35.86A.120: PROVIDED, That the provisions of chapter 35.86 RCW as now or hereafter amended shall not apply to such construction, operation or maintenance;

(3) Establish and collect parking fees, require that receipts be provided for parking fees, make exemption for handicapped persons, lease space for commercial, store, advertising or automobile accessory purposes, and regulate prices and service charges, for use of and within and the aerial space over parking facilities under its control;

(4) Subject to applicable city civil service provisions, provide for the appointment, removal and control of officers and employees, and prescribe their duties and compensation, and to control all equipment and property under the commission's jurisdiction;

(5) Contract with private persons and organizations for the management and/or operation of parking facilities under its control, and services related thereto, including leasing of such facilities or portions thereof;

(6) Cause construction of parking facilities as a condition of an operating agreement or lease, derived through competitive bidding, or in the manner authorized by chapter 35.42 RCW;

(7) Execute and accept instruments, including deeds, necessary or convenient for the carrying on of its business; acquire rights to develop parking facilities over or under city property; and to contract to operate and manage parking facilities under the jurisdiction of other city departments or divisions and of other public bodies;

(8) Determine the need for and recommend to the city council:

(a) The establishment of local improvement districts to pay the cost of parking facilities or any part thereof;

(b) The issuance of bonds or other financing by the city for construction of parking facilities;

(c) The acquisition of property and property rights by condemnation from the public, or in street areas;

(9) Transfer its control of property to the city and liquidate its affairs, so long as such transfer does not contravene any covenant or agreement made with the holders of bonds or other creditors; and

(10) Require payment of the excise tax hereinafter provided.

Parking fees for parking facilities under the control of the parking commission shall be maintained commensurate with and neither higher nor lower than prevailing rates for parking charged by commercial operators in the general area. [1980 c 127 § 1; 1975 1st ex.s. c 221 § 3; 1969 ex.s. c 204 § 7.]

**Severability—1975 1st ex.s. c 221:** See note following RCW 35.86.010.

**35.86A.080 New off-street parking facilities—Powers of parking commission and city council.** (1) Whenever the parking commission intends to construct new off-street parking facilities it shall:

(a) Prepare plans for such proposed development, which shall meet the approval of the planning commission, other appropriate city planning agency, or city council;

(b) Prepare a report to the city council stating the proposed method of financing and property acquisition;

(c) Specify the property rights, if any, to be secured from the public or of property devoted to public use; the uses of streets necessary therefor, or realignment or vacation of streets and alleys; the relocation of street utilities; and any street area to be occupied or closed during construction.

(2) In the event the proposed parking facility shall require:

(a) Creation of a local improvement district;

(b) Issuance of bonds, allocation or appropriation of municipal revenues from other sources, or guarantees of or use of the credit of the municipality;

(c) Exercise of the power of eminent domain; or

(d) Use of, or vacation, realignment of streets and alleys, or relocation of municipal utilities.

One or more public hearings shall be held thereon before the city council, or an assigned committee thereof, which shall report its recommendations to be approved, revised, or rejected by the city council. Such hearings may be consolidated with any required hearings for street vacations, or creation of a local improvement district. Pursuant to such hearing, the city council may:

(1) Create a local improvement district to finance all or part of the parking facility, in accordance with Title 35 RCW, as now existing or hereinafter amended: PROVIDED, HOWEVER, That assessments against property within the district may be measured per lot, per square foot, by property valuation, or any other method as fairly reflects the special benefits derived therefrom, and credit in calculating the assessment may be allowed for property rights or services performed;

(2) Provide for issuance of revenue bonds payable from revenues of the proposed parking facility, from other off-street parking facilities, on-street meter collections, or allocations of other sources of funds; issue general obligation bonds; make reimbursable or nonrefundable appropriations from the general fund, or reserves; and/or guarantee bonds issued or otherwise pledge the city's credit, all in such combination, and under such terms and conditions as the city council shall specify;

(3) Authorize acquisition of the necessary property and property rights by eminent domain proceedings, in the manner authorized by law for cities in Title 8 RCW: PROVIDED, That the city council shall first determine that the proposed parking facility will promote the circulation of traffic or the more convenient or efficient use by the public of streets or public facilities in the immediate area than would exist if the proposed parking facility were not provided, or that the parking facility otherwise enhances the public health, safety and welfare; and

(4) Authorize and execute the necessary transfer or control of property rights; vacate or realign streets and alleys or permit uses within the same; and direct relocation of street utilities.

In event none of the four above powers need be exercised, the city council's approval of construction plans shall

be deemed full authority to construct and complete the parking facility. [1969 ex.s. c 204 § 8.]

**35.86A.090 Powers of cities.** The city may:

(1) Transfer control of off-street parking facilities under other departments to the parking commission under such conditions as deemed appropriate;

(2) Issue revenue bonds pursuant to chapter 35.41 RCW, and RCW \*35.24.305, and 35.81.100 as now or hereafter amended, and such other statutes as may authorize such bonds for parking facilities authorized herein;

(3) Issue general obligation bonds pursuant to chapters 39.44, 39.52 RCW, and RCW 35.81.115 as now or hereafter amended, and such other statutes and applicable provisions of the state Constitution that may authorize such bonds for parking facilities authorized herein;

(4) Appropriate funds for the parking commission; and

(5) Enact such ordinances as may be necessary to carry out the provisions of this chapter, notwithstanding any charter provisions to the contrary. [1969 ex.s. c 204 § 9.]

\*Reviser's note: RCW 35.24.305 was recodified as RCW 35.23.454 pursuant to 1994 c 81 § 90.

**35.86A.100 Disposition of revenues—Expenditure procedure.** All revenues received shall be paid to the municipal treasurer for the credit of the general fund, or such other funds as may be provided by ordinance.

Expenditures of the parking commission shall be made in accordance with the budget adopted by the municipality pursuant to chapter 35.32A RCW. [1969 ex.s. c 204 § 10.]

**35.86A.110 Excise tax to reimburse taxing authorities for loss of property tax revenue.** Such cities shall pay to the county treasurer an annual excise tax equal to the amount which would be paid upon real property devoted to the purpose of off-street parking, were it in private ownership. This section shall apply to parking facilities acquired and/or operated under this chapter. The proceeds of such excise tax shall be allocated by the county treasurer to the various taxing authorities in which such property is situated, in the same manner as though the property were in private ownership. [1969 ex.s. c 204 § 11.]

**35.86A.120 Operation of parking facilities—Bid requirements and procedure.** Except for off-street parking facilities situated on real property leased or rented to a city and not used for park and civic center parking, cities may operate off-street parking facilities with city forces. Leased or rented off-street parking facilities shall be operated by responsible, experienced private operators of such facilities. The call for bids shall specify the terms and conditions under which the facility will be leased for private operation. The call for bids shall specify the time and place at which the bids will be received and the time and when the same will be opened, and such call shall be advertised once a week for two successive weeks before the time fixed for the filing of bids in a newspaper of general circulation in the city. If no bid is received for the operation of such an off-street parking facility, or if the bids received are not satisfactory, the legislative body of the city may reject such bids and shall readvertise the

facility for lease. In the event that no bids or no satisfactory bids shall have been received following the second advertising, the city may negotiate with a private operator for the operation of the facility without competitive bidding. In the event the city shall be unable to negotiate for satisfactory private operation within a reasonable time, the city may operate the facility for a period not to exceed three years, at which time it shall readvertise as provided above in this section. [1980 c 127 § 2; 1975 1st ex.s. c 221 § 4; 1969 ex.s. c 204 § 12.]

**Severability—1975 1st ex.s. c 221:** See note following RCW 35.86.010.

## Chapter 35.87 RCW

### PARKING FACILITIES—CONVEYANCE OF LAND FOR IN CITIES OVER 300,000

#### Sections

35.87.010	Sale, lease or conveyance of real property for free public parking authorized—"Municipality" defined.
35.87.020	Notice of intention to sell, lease or convey real property in business area—Posting—Publication—Preference right to purchase or lease.
35.87.030	Consideration, terms and conditions—Reversion.
35.87.040	RCW 35.87.020 inapplicable to sale, lease or conveyance to federal government or agency or to the state or any county, city or political subdivision.

**35.87.010 Sale, lease or conveyance of real property for free public parking authorized—"Municipality" defined.** Any municipality may sell, lease or convey any real property located in an area zoned to permit the operation of retail business, when such property is no longer needed for the use or purposes of the municipality, to any private corporation or association established to develop and maintain free public parking facilities. "Municipality" as used in RCW 35.87.010 through 35.87.040, means any city with a population over three hundred thousand and any municipal corporation or other political subdivision located within the boundaries of such city. [1967 ex.s. c 144 § 2.]

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

**35.87.020 Notice of intention to sell, lease or convey real property in business area—Posting—Publication—Preference right to purchase or lease.** Before any municipality may sell, lease or convey any real property located in an area zoned to permit the operation of retail business, it shall post in a conspicuous place on such property and publish in the official newspaper for the county in which such property is located for fifteen days prior to such sale, lease or conveyance a notice giving the legal description of such property and disclosing an intention to sell, lease or convey such property; and it shall offer in its notice, and shall give, the first right of purchase or lease of the whole or any part of such property to any private corporation or association (1) established to develop and maintain free public parking facilities and (2) which agrees to dedicate such property for free public parking. [1967 ex.s. c 144 § 3.]

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

**35.87.030 Consideration, terms and conditions—Reversion.** A sale, lease or conveyance to such corporation

or association may be made for such consideration and on such terms and conditions as the municipality deems appropriate: PROVIDED, That the price charged such corporation or association shall not be in excess of the fair market value of such property: PROVIDED FURTHER, That all deeds, leases and other instruments of conveyance shall incorporate a reversion to the municipality of the property or property interest so deeded, leased or conveyed, in the event that such property should no longer be used as a free public parking facility. [1967 ex.s. c 144 § 4.]

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

**35.87.040 RCW 35.87.020 inapplicable to sale, lease or conveyance to federal government or agency or to the state or any county, city or political subdivision.** The provisions of RCW 35.87.020 shall not apply to any sale, lease or conveyance to the federal government or to any agency thereof, or to the state or any agency, county, city, town or other political subdivision of this state. [1967 ex.s. c 144 § 5.]

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

**Chapter 35.87A RCW**

**PARKING AND BUSINESS IMPROVEMENT AREAS**

Sections

- 35.87A.010 Authorized—Purposes—Special assessments.
- 35.87A.020 Definitions.
- 35.87A.030 Initiation petition or resolution—Contents.
- 35.87A.040 Resolution of intention to establish—Contents—Hearing.
- 35.87A.050 Notice of hearing.
- 35.87A.060 Hearings.
- 35.87A.070 Change of boundaries.
- 35.87A.075 Modification of boundaries.
- 35.87A.080 Special assessments—Legislative authority may make reasonable classifications—Assessments for separate purposes.
- 35.87A.090 Special assessments—Same basis or rate for classes not required—Factors as to parking facilities.
- 35.87A.100 Ordinance to establish—Adoption—Contents.
- 35.87A.110 Use of revenue—Contracts to administer operation of area.
- 35.87A.120 Use of assessment proceeds restricted.
- 35.87A.130 Collection of assessments.
- 35.87A.140 Changes in assessment rates.
- 35.87A.150 Benefit zones—Authorized—Rates.
- 35.87A.160 Benefit zones—Establishment, modification and disestablishment of area provisions and procedure to be followed.
- 35.87A.170 Exemption period for new businesses and projects.
- 35.87A.180 Disestablishment of area—Hearing.
- 35.87A.190 Disestablishment of area—Assets and liabilities.
- 35.87A.200 Bids required—Monetary amount.
- 35.87A.210 Computing cost of improvement for bid requirement.
- 35.87A.220 Existing laws not affected—Chapter supplemental—Purposes may be accomplished in conjunction with other methods.
- 35.87A.900 Severability—1971 ex.s. c 45.

*Assessments and charges against state lands: Chapter 79.44 RCW.*

**35.87A.010 Authorized—Purposes—Special assessments.** To aid general economic development and neighborhood revitalization, and to facilitate the cooperation of merchants, businesses, and residential property owners which assists trade, economic viability, and liveability, the legislature hereby authorizes all counties and all incorporated cities and towns, including unclassified cities and towns operating under special charters:

(1) To establish, after a petition submitted by the operators responsible for sixty percent of the assessments by businesses and multifamily residential or mixed-use projects

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within the area, parking and business improvement areas, hereafter referred to as area or areas, for the following purposes:

- (a) The acquisition, construction or maintenance of parking facilities for the benefit of the area;
- (b) Decoration of any public place in the area;
- (c) Sponsorship or promotion of public events which are to take place on or in public places in the area;
- (d) Furnishing of music in any public place in the area;
- (e) Providing professional management, planning, and promotion for the area, including the management and promotion of retail trade activities in the area; or
- (f) Providing maintenance and security for common, public areas.

(2) To levy special assessments on all businesses and multifamily residential or mixed-use projects within the area and specially benefited by a parking and business improvement area to pay in whole or in part the damages or costs incurred therein as provided in this chapter. [2000 c 201 § 1; 1993 c 429 § 1; 1985 c 128 § 1; 1981 c 279 § 1; 1971 ex.s. c 45 § 1.]

**35.87A.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Business" means all types of business, including professions.

(2) "Legislative authority" means the legislative authority of any city or town including unclassified cities or towns operating under special charters or the legislative authority of any county.

(3) "Multifamily residential or mixed-use project" means any building or buildings containing four or more residential units or a combination of residential and commercial units, whether title to the entire property is held in single or undivided ownership or title to individual units is held by owners who also, directly or indirectly through an association, own real property in common with the other unit owners.

(4) "Residential operator" means the owner or operator of a multifamily residential or mixed-use project if title is held in single or undivided ownership, or, if title is held in a form of common interest ownership, the association of unit owners, condominium association, homeowners' association, property owners' association, or residential cooperative corporation. [1993 c 429 § 2; 1971 ex.s. c 45 § 2.]

**35.87A.030 Initiation petition or resolution—Contents.** For the purpose of establishing a parking and business improvement area, an initiation petition may be presented to the legislative authority having jurisdiction of the area in which the proposed parking and business improvement area is to be located or the legislative authority may by resolution initiate a parking and business improvement area. The initiation petition or resolution shall contain the following:

- (1) A description of the boundaries of the proposed area;
- (2) The proposed uses and projects to which the proposed special assessment revenues shall be put and the total estimated cost thereof;
- (3) The estimated rate of levy of special assessment with a proposed breakdown by class of business and multifamily

residential or mixed-use project if such classification is to be used.

The initiating petition shall also contain the signatures of the persons who operate businesses and residential operators in the proposed area which would pay fifty percent of the proposed special assessments. [1993 c 429 § 3; 1971 ex.s. c 45 § 3.]

**35.87A.040 Resolution of intention to establish—Contents—Hearing.** The legislative authority, after receiving a valid initiation petition or after passage of an initiation resolution, shall adopt a resolution of intention to establish an area. The resolution shall state the time and place of a hearing to be held by the legislative authority to consider establishment of an area and shall restate all the information contained in the initiation petition or initiation resolution regarding boundaries, projects and uses, and estimated rates of assessment. [1971 ex.s. c 45 § 4.]

**35.87A.050 Notice of hearing.** Notice of a hearing held under the provisions of this chapter shall be given by:

(1) One publication of the resolution of intention in a newspaper of general circulation in the city; and

(2) Mailing a complete copy of the resolution of intention to each business and multifamily residential or mixed-use project in the proposed, or established, area. Publication and mailing shall be completed at least ten days prior to the time of the hearing. [1993 c 429 § 4; 1971 ex.s. c 45 § 5.]

**35.87A.060 Hearings.** Whenever a hearing is held under this chapter, the legislative authority shall hear all protests and receive evidence for or against the proposed action. The legislative authority may continue the hearing from time to time. Proceedings shall terminate if protest is made by businesses and residential operators in the proposed area which would pay a majority of the proposed special assessments. [1993 c 429 § 5; 1971 ex.s. c 45 § 6.]

**35.87A.070 Change of boundaries.** If the legislative authority decides to change the boundaries of the proposed area, the hearing shall be continued to a time at least fifteen days after such decision and notice shall be given as prescribed in RCW 35.87A.050, showing the boundary amendments, but no resolution of intention is required. [1971 ex.s. c 45 § 7.]

**35.87A.075 Modification of boundaries.** (1) The legislative authority may modify the boundaries of a parking and business improvement area by ordinance, adopted after a hearing before the legislative authority. The legislative authority may modify an area either by expanding or reducing the existing boundaries. If the modification to the boundaries is to expand existing boundaries, the expansion area must be adjacent to an existing boundary. A modification to an existing boundary may occur no more than once per year and may not affect an area with a projected assessment fee greater than ten percent of the current assessment role for the existing area. If the modification of an area results in the boundary being expanded, the assessments for the new area shall be established pursuant to RCW 35.87A.080 and

35.87A.090 and any other applicable provision of this chapter.

(2) The legislative authority shall adopt a resolution of intention to modify the boundaries of an area at least fifteen days prior to the hearing required in subsection (1) of this section. The resolution shall specify the proposed modification and shall give the time and place of the hearing. Notice of the hearing shall be made in accordance with RCW 35.87A.050. [2002 c 69 § 1.]

**35.87A.080 Special assessments—Legislative authority may make reasonable classifications—Assessments for separate purposes.** For purposes of the special assessments to be imposed pursuant to this chapter, the legislative authority may make a reasonable classification of businesses and multifamily residential or mixed-use projects, giving consideration to various factors such as business and occupation taxes imposed, square footage of the business, number of employees, gross sales, or any other reasonable factor relating to the benefit received, including the degree of benefit received from parking. Whenever it is proposed that a parking and business improvement area provide more than one of the purposes listed in RCW 35.87A.010, special assessments may be imposed in a manner that measures benefit from each of the separate purposes, or any combination of the separate purposes. Special assessments shall be imposed and collected annually, or on another basis specified in the ordinance establishing the parking and business improvement area. [1993 c 429 § 6; 1985 c 128 § 2; 1981 c 279 § 2; 1971 ex.s. c 45 § 8.]

**35.87A.090 Special assessments—Same basis or rate for classes not required—Factors as to parking facilities.** The special assessments need not be imposed on different classes of business and multifamily residential or mixed-use projects, as determined pursuant to RCW 35.87A.080, on the same basis or the same rate. The special assessments imposed for the purpose of the acquisition, construction or maintenance of parking facilities for the benefit of the area shall be imposed on the basis of benefit determined by the legislative authority after giving consideration to the total cost to be recovered from the businesses and multifamily residential or mixed-use projects upon which the special assessment is to be imposed, the total area within the boundaries of the parking and business improvement area, the assessed value of the land and improvements within the area, the total business volume generated within the area and within each business, and such other factors as the legislative authority may find and determine to be a reasonable measure of such benefit. [1993 c 429 § 7; 1971 ex.s. c 45 § 9.]

**35.87A.100 Ordinance to establish—Adoption—Contents.** If the legislative authority, following the hearing, decides to establish the proposed area, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

(1) The number, date and title of the resolution of intention pursuant to which it was adopted;

(2) The time and place the hearing was held concerning the formation of such area;

(3) The description of the boundaries of such area;

(4) A statement that the businesses and multifamily residential or mixed-use projects in the area established by the ordinance shall be subject to the provisions of the special assessments authorized by RCW 35.87A.010;

(5) The initial or additional rate or levy of special assessment to be imposed with a breakdown by classification of business and multifamily residential or mixed-use project, if such classification is used; and

(6) A statement that a parking and business improvement area has been established.

(7) The uses to which the special assessment revenue shall be put. Uses shall conform to the uses as declared in the initiation petition presented pursuant to RCW 35.87A.030. [1993 c 429 § 8; 1971 ex.s. c 45 § 10.]

**35.87A.110 Use of revenue—Contracts to administer operation of area.** The legislative authority of each city or town or county shall have sole discretion as to how the revenue derived from the special assessments is to be used within the scope of the purposes; however, the legislative authority may appoint existing advisory boards or commissions to make recommendations as to its use, or the legislative authority may create a new advisory board or commission for the purpose.

The legislative authority may contract with a chamber of commerce or other similar business association operating primarily within the boundaries of the legislative authority to administer the operation of a parking and business improvement area, including any funds derived pursuant thereto: PROVIDED, That such administration must comply with all applicable provisions of law including this chapter, with all county, city, or town resolutions and ordinances, and with all regulations lawfully imposed by the state auditor or other state agencies. [1971 ex.s. c 45 § 11.]

**35.87A.120 Use of assessment proceeds restricted.** The special assessments levied hereunder must be for the purposes specified in the ordinances and the proceeds shall not be used for any other purpose. [1971 ex.s. c 45 § 12.]

**35.87A.130 Collection of assessments.** Collections of assessments imposed pursuant to this chapter shall be made at the same time and in the same manner as otherwise prescribed by Title 35 RCW or in such other manner as the legislative authority shall determine. [1971 ex.s. c 45 § 13.]

**35.87A.140 Changes in assessment rates.** Changes may be made in the rate or additional rate of special assessment as specified in the ordinance establishing the area, by ordinance adopted after a hearing before the legislative authority.

The legislative authority shall adopt a resolution of intention to change the rate or additional rate of special assessment at least fifteen days prior to the hearing required by this section. This resolution shall specify the proposed change and shall give the time and place of the hearing. Proceedings to change the rate or impose an additional rate of special assessments shall terminate if protest is made by businesses or multifamily residential or mixed-use projects in the proposed area which would pay a majority of the proposed

increase or additional special assessments. [1993 c 429 § 9; 1971 ex.s. c 45 § 14.]

**35.87A.150 Benefit zones—Authorized—Rates.** The legislative authority may, for each of the purposes set out in RCW 35.87A.010, establish and modify one or more separate benefit zones based upon the degree of benefit derived from the purpose and may impose a different rate of special assessment within each such benefit zone. [1971 ex.s. c 45 § 15.]

**35.87A.160 Benefit zones—Establishment, modification and disestablishment of area provisions and procedure to be followed.** All provisions of this chapter applicable to establishment or disestablishment of an area also apply to the establishment, modification, or disestablishment of benefit zones pursuant to \*RCW 35.87A.150. The establishment or the modification of any such zone shall follow the same procedure as provided for the establishment of a parking and business improvement area and the disestablishment shall follow the same procedure as provided for disestablishment of an area. [1971 ex.s. c 45 § 16.]

*\*Reviser's note:* "RCW 35.87A.150" has been translated from "section 13 of this act," as the reference to section 13, herein codified as RCW 35.87A.130, was apparently erroneous.

**35.87A.170 Exemption period for new businesses and projects.** Businesses or multifamily residential or mixed-use projects established after the creation of an area within the area may be exempted from the special assessments imposed pursuant to this chapter for a period not exceeding one year from the date they commenced business in the area. [1993 c 429 § 10; 1971 ex.s. c 45 § 17.]

**35.87A.180 Disestablishment of area—Hearing.** The legislative authority may disestablish an area by ordinance after a hearing before the legislative authority. The legislative authority shall adopt a resolution of intention to disestablish the area at least fifteen days prior to the hearing required by this section. The resolution shall give the time and place of the hearing. [1971 ex.s. c 45 § 18.]

**35.87A.190 Disestablishment of area—Assets and liabilities.** Upon disestablishment of an area, any proceeds of the special assessments, or assets acquired with such proceeds, or liabilities incurred as a result of the formation of such area, shall be subject to disposition as the legislative authority shall determine: PROVIDED, HOWEVER, Any liabilities, either current or future, incurred as a result of action taken to accomplish the purposes of RCW 35.87A.010 shall not be an obligation of the general fund or any special fund of the city or town, but such liabilities shall be provided for entirely from available revenue generated from the projects or facilities authorized by RCW 35.87A.010 or from special assessments on the property specially benefited within the area. [1971 ex.s. c 45 § 19.]

**35.87A.200 Bids required—Monetary amount.** Any city or town or county authorized by this chapter to establish a parking improvement area shall call for competitive bids by appropriate public notice and award contracts, whenever the

estimated cost of such work or improvement, including cost of materials, supplies and equipment, exceeds the sum of two thousand five hundred dollars. [1971 ex.s. c 45 § 20.]

**35.87A.210 Computing cost of improvement for bid requirement.** The cost of the improvement for the purposes of this chapter shall be aggregate of all amounts to be paid for the labor, materials and equipment on one continuous or inter-related project where work is to be performed simultaneously or in near sequence. Breaking an improvement into small units for the purposes of avoiding the minimum dollar amount prescribed in RCW 35.87A.200 is contrary to public policy and is prohibited. [1971 ex.s. c 45 § 21.]

**35.87A.220 Existing laws not affected—Chapter supplemental—Purposes may be accomplished in conjunction with other methods.** This chapter providing for parking and business improvement areas shall not be deemed or construed to affect any existing act, or any part thereof, relating to special assessments or other powers of counties, cities and towns, but shall be supplemental thereto and concurrent therewith.

The purposes and functions of parking and business improvement areas as set forth by the provisions of this chapter may be accomplished in part by the establishment of an area pursuant to this chapter and in part by any other method otherwise provided by law, including provisions for local improvements. [1971 ex.s. c 45 § 22.]

**35.87A.900 Severability—1971 ex.s. c 45.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1971 ex.s. c 45 § 23.]

## Chapter 35.88 RCW

### WATER POLLUTION—PROTECTION FROM

#### Sections

35.88.010	Authority over sources of supply.
35.88.020	Enforcement of ordinance—Special police.
35.88.030	Pollution declared to be a nuisance—Abatement.
35.88.040	Pollution as criminal nuisance—Punishment.
35.88.050	Prosecution—Trial—Abatement of nuisance.
35.88.060	Health officers and mayor must enforce.
35.88.070	Injunction proceeding.
35.88.080	Inland cities over 100,000—Discharge of sewage and other discharges prohibited—Nuisance.
35.88.090	Inland cities over 100,000—Investigation of disposal systems by secretary of social and health services.

*Furnishing impure water:* RCW 70.54.020.

*Pollution of watershed or source of drinking water:* RCW 70.54.010, 70.54.030.

*Sewerage improvement districts:* Chapter 85.08 RCW.

*Water-sewer districts:* Title 57 RCW.

**35.88.010 Authority over sources of supply.** For the purpose of protecting the water furnished to the inhabitants of cities and towns from pollution, cities and towns are given jurisdiction over all property occupied by the works, reservoirs, systems, springs, branches and pipes, by means of which, and of all the lakes, rivers, springs, streams, creeks, or tributaries constituting the sources of supply from which the

cities and towns or the companies or individuals furnishing water to the inhabitants thereof obtain their supply of water, or store or conduct it, and over all property acquired for any of the foregoing works or purposes or for the preservation and protection of the purity of the water supply, and over all property within the areas draining into the lakes, rivers, springs, streams, creeks, or tributaries constituting the sources of supply whether they or any of them are within the city or town limits or outside. [1965 c 7 § 35.88.010. Prior: 1907 c 227 § 1, part; 1899 c 70 § 1, part; RRS § 9473, part.]

**35.88.020 Enforcement of ordinance—Special police.** Every city and town may by ordinance prescribe what acts shall constitute offenses against the purity of its water supply and the punishment or penalties therefor and enforce them. The mayor of each city and town may appoint special policemen, with such compensation as the city or town may fix, who shall, after taking oath, have the powers of constables, and who may arrest with or without warrant any person committing, within the territory over which any city or town is given jurisdiction by this chapter, any offense declared by law or by ordinance, against the purity of the water supply, or which violate any rule or regulation lawfully promulgated by the state board of health for the protection of the purity of such water supply. Every special policeman whose appointment is authorized herein may take any person arrested for any such offense or violation before any court having jurisdiction thereof to be proceeded with according to law. Every such special policeman shall, when on duty wear in plain view a badge or shield bearing the words "special police" and the name of the city or town by which he has been appointed. [1965 c 7 § 35.88.020. Prior: 1907 c 227 § 1, part; 1899 c 70 § 1, part; RRS § 9473, part.]

**35.88.030 Pollution declared to be a nuisance—Abatement.** The establishment or maintenance of any slaughter pens, stock feeding yards, hogpens, or the deposit or maintenance of any uncleanly or unwholesome substance, or the conduct of any business or occupation, or the allowing of any condition upon or sufficiently near the (1) sources from which the supply of water for the inhabitants of any city or town is obtained, or (2) where its water is stored, or (3) the property or means through which the same may be conveyed or conducted so that such water would be polluted or the purity of such water or any part thereof destroyed or endangered, is prohibited and declared to be unlawful, and is declared to constitute a nuisance, and may be abated as other nuisances are abated. [1965 c 7 § 35.88.030. Prior: 1899 c 70 § 2, part; RRS § 9474, part.]

**35.88.040 Pollution as criminal nuisance—Punishment.** Any person who does, establishes, maintains, or creates any of the things which have the effect of polluting any such sources of water supply, or water, and any person who does any of the things in RCW 35.88.030 declared to be unlawful, shall be deemed guilty of creating and maintaining a nuisance, and may be prosecuted therefor, and upon conviction thereof may be fined in any sum not exceeding five hundred dollars. [1965 c 7 § 35.88.040. Prior: 1899 c 70 § 2, part; RRS § 9474, part.]

*Nuisance: Chapter 9.66 RCW.*

**35.88.050 Prosecution—Trial—Abatement of nuisance.** If upon the trial of any person for the violation of any of the provisions of this chapter he is found guilty of creating or maintaining a nuisance or of violating any of the provisions of this chapter, he shall forthwith abate the nuisance, and if he fails so to do within one day after such conviction, unless further time is granted by the court, a warrant shall be issued by the court wherein the conviction was obtained, directed to the sheriff of the county in which such nuisance exists and the sheriff shall forthwith proceed to abate the said nuisance and the cost thereof shall be taxed against the person so convicted as a part of the costs of such case. [1965 c 7 § 35.88.050. Prior: 1899 c 70 § 3; RRS § 9475.]

**35.88.060 Health officers and mayor must enforce.** The city health officer, city physician, board of public health, mayor, or any other officer, who has the sanitary condition of the city or town in charge, shall see that the provisions of this chapter are enforced and upon complaint being made to any such officer of an alleged violation, he shall immediately investigate the said complaint and if the same appears to be well founded he shall file a complaint against the person or persons violating any of the provisions of this chapter and cause their arrest and prosecution. [1965 c 7 § 35.88.060. Prior: 1899 c 70 § 4; RRS § 9476.]

**35.88.070 Injunction proceeding.** If any provision of this chapter is being violated, the city or town supplied with the water or a corporation owning waterworks for the purpose of supplying the city or town or the inhabitants thereof with water may, by civil action in the superior court of the proper county, have the maintenance of the nuisance which pollutes or tends to pollute the said water, enjoined and such injunction may be perpetual. [1965 c 7 § 35.88.070. Prior: 1899 c 70 § 5; RRS § 9477.]

**35.88.080 Inland cities over 100,000—Discharge of sewage and other discharges prohibited—Nuisance.** Any city not located on tidewater, having a population of one hundred thousand or more, is hereby prohibited from discharging, draining or depositing, or causing to be discharged, drained or deposited, any sewage, garbage, feculent matter, offal, refuse, filth, or any animal, mineral, or vegetable matter or substance, offensive, injurious or dangerous to health, into any springs, streams, rivers, lakes, tributaries thereof, wells, or into any subterranean or other waters used or intended to be used for human or animal consumption or for domestic purposes.

Anything done, maintained, or suffered, in violation of any of the provisions of this section, shall be deemed to be a public nuisance, and may be summarily abated as such by any court of competent jurisdiction at the suit of the secretary of social and health services or any person whose supply of water for human or animal consumption or for domestic purposes is or may be affected. [1979 c 141 § 40; 1965 c 7 § 35.88.080. Prior: (i) 1941 c 186 § 1; Rem. Supp. 1941 § 9354-1. (ii) 1941 c 186 § 3; Rem. Supp. 1941 § 9354-3.]

*Nuisance: Chapter 9.66 RCW.*

(2004 Ed.)

**35.88.090 Inland cities over 100,000—Investigation of disposal systems by secretary of social and health services.** The secretary of social and health services shall have the power, and it shall be his duty, to investigate the system of disposal of sewage, garbage, feculent matter, offal, refuse, filth, or any animal, mineral, or vegetable matter or substance, by cities not located on tidewater, having a population of one hundred thousand or more, and if he shall determine upon investigation that any such system or systems of disposal is or may be injurious or dangerous to health, he shall have the power, and it shall be his duty, to order such city or cities to provide for, construct, and maintain a system or systems of disposal which will not be injurious or dangerous to health. [1979 c 141 § 41; 1965 c 7 § 35.88.090. Prior: 1941 c 186 § 2; Rem. Supp. 1941 § 9354-2.]

## Chapter 35.89 RCW

### WATER REDEMPTION BONDS

#### Sections

35.89.010	Authority to issue water redemption bonds.
35.89.020	Bonds—Terms—Execution—Rights of owner.
35.89.030	Bonds exchange—Subrogation.
35.89.040	Water redemption fund—Creation.
35.89.050	Water redemption fund—Sources.
35.89.060	Water redemption fund—Trust fund.
35.89.070	Payment of interest on bonds.
35.89.080	Payment of principal of bonds.
35.89.090	Violations—Penalties—Personal liability.
35.89.100	Water systems—What included.

*Water-sewer districts: Title 57 RCW.*

**35.89.010 Authority to issue water redemption bonds.** If a public water system has been constructed within any local improvement district of any city or town for the construction of which bonds of the local improvement district were issued and are outstanding and unpaid, and if the city or town has taken over the system or is operating it as a public utility or has incorporated it into or connected it with any system operated by city or town as a public utility, from the operation of which such city or town derives a revenue, the city or town may by resolution of its council authorize the issue of bonds to an amount not exceeding the amount of the local improvement bonds issued for the construction of the water system then outstanding and unpaid with interest due and unpaid, and may redeem the outstanding local improvement bonds by exchanging therefor an equal amount at par of the bonds authorized by this chapter. The new bonds shall be called water redemption bonds. [1965 c 7 § 35.89.010. Prior: (i) 1929 c 85 § 1; 1923 c 52 § 1; RRS § 9154-1. (ii) 1923 c 52 § 2, part; RRS § 9154-2, part.]

**35.89.020 Bonds—Terms—Execution—Rights of owner.** (1) Water redemption bonds shall be in denominations of not more than one thousand nor less than one hundred dollars each, and shall bear interest at a rate or rates as authorized by the city or town council, payable semiannually, and shall bear a serial number and shall be signed by the mayor of the city or town and shall be otherwise executed in such manner and payable at such time and place not exceeding twenty years after the date of issue as the city or town council shall determine and such bonds shall be payable only out of the special fund created by authority of this chapter and

shall be a valid claim of the owner thereof only against that fund and the fixed portion or amount of the revenues of the water system pledged to the fund, and shall not constitute an indebtedness of the city or town. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 66; 1970 ex.s. c 56 § 46; 1969 ex.s. c 232 § 23; 1965 c 7 § 35.89.020. Prior: 1923 c 52 § 2, part; RRS § 9154-2, part.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**35.89.030 Bonds exchange—Subrogation.** Water redemption bonds issued under the authority of this chapter shall only be sold or disposed of in exchange for an equal amount in par value of principal and interest of the local improvement district bonds issued for the construction of water systems taken over and operated by the city or town, or incorporated into or connected with a water system operated by it.

Upon the exchange of the water redemption bonds authorized by this chapter for local improvement district bonds the city or town shall be subrogated to all the rights of the owners and holders of such local improvement district bonds against the property of the local improvement district and against any person or corporation liable thereon.

Any money derived by the city or town from the sale or enforcement of such local improvement district bonds shall be paid into the city's water redemption fund. [1965 c 7 § 35.89.030. Prior: 1923 c 52 § 3; RRS § 9154-3.]

**35.89.040 Water redemption fund—Creation.** The city or town council before issuing water redemption bonds shall by ordinance establish a fund for the payment of the bonds at maturity and of interest thereon as it matures to be designated the water redemption fund. [1965 c 7 § 35.89.040. Prior: 1923 c 52 § 4; RRS § 9154-4.]

**35.89.050 Water redemption fund—Sources.** Every city and town shall have power to regulate and control the use and price of water supplied through a water system taken over from a local improvement district.

It shall establish such rates and charges for the water as shall be sufficient after providing for the operation and maintenance of the system to provide for the payment of the water redemption bonds at maturity and of interest thereon as it matures, and such portion shall be included in and collected as a part of the charges made by such city or town for water supplied through such water system and such portion shall be paid into the water redemption fund. [1965 c 7 § 35.89.050. Prior: 1923 c 52 § 5; RRS § 9154-5.]

**35.89.060 Water redemption fund—Trust fund.** All moneys paid into or collected for the water redemption fund shall be used for the payment of principal and interest of the

water redemption bonds issued under the authority of this chapter and no part thereof while any of said bonds are outstanding and unpaid, shall be diverted to any other fund or use: PROVIDED, That when both principal and interest on all water redemption bonds issued and outstanding have been paid, any unexpended balance remaining in the fund may be transferred to the general fund or such other fund as the city or town council may direct. [1965 c 7 § 35.89.060. Prior: 1923 c 52 § 8; RRS § 9154-8.]

**35.89.070 Payment of interest on bonds.** The treasurer of such city or town shall pay the interest on the water redemption bonds authorized by this chapter out of the money in the water redemption fund. [1965 c 7 § 35.89.070. Prior: 1923 c 52 § 6; RRS § 9154-6.]

**35.89.080 Payment of principal of bonds.** Whenever there is sufficient money in the water redemption fund, over and above the amount that will be required to pay the interest on the bonds up to the time of maturity of the next interest payment, to pay the principal of one or more bonds, the city or town treasurer shall call in and pay such bonds. The bonds shall be called and paid in their numerical order, and the call shall be made by publication in the official newspaper of the city or town. The call shall state the total amount and the serial number or numbers of the bonds called and that they will be paid on the date when the next semiannual payment of interest will be due, and that interest on the bonds called will cease from such date. [1965 c 7 § 35.89.080. Prior: 1923 c 52 § 7; RRS § 9154-7.]

**35.89.090 Violations—Penalties—Personal liability.** Every ordinance, resolution, order, or action of the council, board, or officer of any city or town, and every warrant or other instrument made, issued, passed or done in violation of the provisions of this chapter shall be void.

Every officer, agent, employee, or member of the council of the city or town, and every person or corporation who shall knowingly commit any violation of the provisions of this chapter or knowingly aid in such violation, shall be liable to the city or town for all money transferred, diverted or paid out in violation thereof and such liability shall attach to and be enforceable against the official bond, if any, of such official agent, employee, or member of the council. [1965 c 7 § 35.89.090. Prior: 1923 c 52 § 9; RRS § 9154-9.]

**35.89.100 Water systems—What included.** The term "water system" as used in this chapter shall include and be applicable to all reservoirs, storage and clarifying tanks, conduits, mains, laterals, pipes, hydrants and other equipment used or constructed for the purpose of supplying water for public or domestic use, and shall include not only water systems constructed by local improvement districts, but also any system with which the same may be incorporated or connected. [1965 c 7 § 35.89.100. Prior: 1923 c 52 § 10; RRS § 9154-10.]

## Chapter 35.91 RCW

## MUNICIPAL WATER AND SEWER FACILITIES ACT

## Sections

- 35.91.010 Declaration of purpose—Short title.  
 35.91.020 Contracts with owners of real estate for water or sewer facilities—Reimbursement of costs by subsequent users.  
 35.91.025 Extension outside city subject to review by boundary review board.  
 35.91.030 Approval and acceptance of facilities by municipality—Rates, costs.  
 35.91.040 Contract payment to be made prior to tap, connection, or use—Removal of tap or connection.  
 35.91.050 Owner's pro rata share of cost to which he did not contribute.

*Water-sewer districts: Title 57 RCW.*

**35.91.010 Declaration of purpose—Short title.** The improvement of public health and the implementation of both urban and rural development being furthered by adequate and comprehensive water facilities and storm and sanitary sewer systems, and there being a need for legislation enabling such aids to the welfare of the state, there is hereby enacted the "municipal water and sewer facilities act." [1965 c 7 § 35.91.010. Prior: 1959 c 261 § 1.]

**35.91.020 Contracts with owners of real estate for water or sewer facilities—Reimbursement of costs by subsequent users.** The governing body of any city, town, county, water-sewer district, or drainage district, hereinafter referred to as a "municipality" may contract with owners of real estate for the construction of storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances, hereinafter called "water or sewer facilities," within their boundaries or (except for counties) within ten miles from their corporate limits connecting with the public water or sewerage system to serve the area in which the real estate of such owners is located, and to provide for a period of not to exceed fifteen years for the reimbursement of such owners and their assigns by any owner of real estate who did not contribute to the original cost of such water or sewer facilities and who subsequently tap onto or use the same of a fair pro rata share of the cost of the construction of said water or sewer facilities, including not only those directly connected thereto, but also users connected to laterals or branches connecting thereto, subject to such reasonable rules and regulations as the governing body of such municipality may provide or contract, and notwithstanding the provisions of any other law. To the extent it may require in the performance of such contract, such municipality may install said water or sewer facilities in and along the county streets in the area to be served as hereinabove provided, subject to such reasonable requirements as to the manner of occupancy of such streets as the county may by resolution provide. The provisions of such contract shall not be effective as to any owner of real estate not a party thereto unless such contract has been recorded in the office of the county auditor of the county in which the real estate of such owner is located prior to the time such owner taps into or connects to said water or sewer facilities. [1999 c 153 § 38; 1981 c 313 § 11; 1967 c 113 § 1; 1965 c 7 § 35.91.020. Prior: 1959 c 261 § 2.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

(2004 Ed.)

**Severability—1981 c 313:** See note following RCW 36.94.020.

**35.91.025 Extension outside city subject to review by boundary review board.** The extension of water or sewer facilities outside of the boundaries of a city or town may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 33.]

**35.91.030 Approval and acceptance of facilities by municipality—Rates, costs.** Upon the completion of water or sewer facilities pursuant to contract mentioned in the foregoing section, the governing body of any such municipality shall be authorized to approve their construction and accept the same as facilities of the municipality and to charge for their use such water or sewer rates as such municipality may be authorized by law to establish, and if any such water or sewer facilities are so approved and accepted, all further maintenance and operation costs of said water or sewer lines and facilities shall be borne by such municipality. [1965 c 7 § 35.91.030. Prior: 1959 c 261 § 3.]

**35.91.040 Contract payment to be made prior to tap, connection, or use—Removal of tap or connection.** No person, firm or corporation shall be granted a permit or be authorized to tap into, or use any such water or sewer facilities or extensions thereof during the period of time prescribed in such contract without first paying to the municipality, in addition to any and all other costs and charges made or assessed for such tap, or use, or for the water lines or sewers constructed in connection therewith, the amount required by the provisions of the contract under which the water or sewer facilities so tapped into or used were constructed. All amounts so received by the municipality shall be paid out by it under the terms of such contract within sixty days after the receipt thereof. Whenever any tap or connection is made into any such contracted water or sewer facilities without such payment having first been made, the governing body of the municipality may remove, or cause to be removed, such unauthorized tap or connection and all connecting tile, or pipe located in the facility right of way and dispose of unauthorized material so removed without any liability whatsoever. [1965 c 7 § 35.91.040. Prior: 1959 c 261 § 4.]

**35.91.050 Owner's pro rata share of cost to which he did not contribute.** Whenever the cost, or any part thereof, of any water or sewer improvement, whether local or general, is or will be assessed against the owners of real estate and such water or sewer improvement will be connected into or will make use of, contracted water or sewer facilities constructed under the provisions of this chapter and to the cost of which such owners, or any of them, did not contribute, there shall be included in the engineer's estimate before the hearing on any such improvement, separately itemized, and in such assessments, a sum equal to the amount provided in or computed from such contract as the fair pro rata share due from such owners upon and for such contracted water or sewer facilities. [1965 c 7 § 35.91.050. Prior: 1959 c 261 § 5.]

**Chapter 35.92 RCW**  
**MUNICIPAL UTILITIES**

## Sections

- 35.92.010 Authority to acquire and operate waterworks—Generation of electricity—Classification of services for rates.
- 35.92.012 May accept and operate water-sewer district's property when boundaries are identical.
- 35.92.014 Acquisition of out-of-state waterworks.
- 35.92.015 Acquisition of out-of-state waterworks—Joint acquisition and operation.
- 35.92.017 Authority to assist customers in the acquisition of water conservation equipment—Limitations.
- 35.92.020 Authority to acquire and operate sewerage and solid waste handling systems, plants, sites, or facilities—Classification of services and facilities for rates—Assistance for low-income persons.
- 35.92.021 Public property subject to rates and charges for storm water control facilities.
- 35.92.023 Solid waste—Compliance with chapter 70.95 RCW required.
- 35.92.025 Authority to make charges for connecting to water or sewerage system—Interest charges.
- 35.92.027 Extension of water and sewer facilities outside city subject to review by boundary review board.
- 35.92.030 Authority to acquire and operate stone or asphalt plants.
- 35.92.040 Authority to acquire and operate public markets and cold storage plants—"Public markets" defined.
- 35.92.050 Authority to acquire and operate utilities.
- 35.92.052 First class cities operating electrical facilities—Participation in agreements to use or own high voltage transmission facilities and other electrical generating facilities—Terms—Limitations.
- 35.92.054 May acquire electrical distribution property from public utility district.
- 35.92.060 Authority to acquire and operate transportation facilities.
- 35.92.070 Procedure—Election.
- 35.92.075 Indebtedness incurred on credit of expected utility revenues.
- 35.92.080 General obligation bonds.
- 35.92.090 Limit of indebtedness.
- 35.92.100 Revenue bonds or warrants.
- 35.92.105 Revenue bonds, warrants, or other evidences of indebtedness for energy or water conservation programs.
- 35.92.110 Funding or refunding bonds.
- 35.92.120 Funding or refunding bonds—Bonds not general obligation.
- 35.92.130 Funding or refunding bonds—Single issue may refund multiple series.
- 35.92.140 Funding or refunding bonds—Issuance of bonds—Ordinance.
- 35.92.150 Funding or refunding bonds—Terms of bonds.
- 35.92.160 Funding or refunding bonds—Recourse of bond owners.
- 35.92.170 City may extend water system outside limits.
- 35.92.180 City may extend water system outside limits—May acquire property outside city.
- 35.92.190 City may extend water system outside limits—Cannot condemn irrigation system.
- 35.92.200 City may extend water system outside limits—Contracts for outside service.
- 35.92.220 Acquisition of water rights—Consolidation of irrigation assessment districts.
- 35.92.230 Acquisition of water rights—Special assessments.
- 35.92.240 Acquisition of water rights—Levy of assessments.
- 35.92.250 Acquisition of water rights—District property need not be contiguous.
- 35.92.260 Acquisition of water rights—Mode of assessment.
- 35.92.263 Acquisition of water rights—Water rights acquired by purchase of shares in water users' association or corporation—Authority to acquire and hold shares.
- 35.92.265 Acquisition of water rights—Existing local improvement districts validated—Debts, obligations, assessments, etc., declared legal and valid.
- 35.92.270 Passenger transportation systems—Authority to make studies—Contracts with and acquisition of privately owned systems.
- 35.92.275 Assumption of obligations of private pension plan when urban transportation system acquired.
- 35.92.280 Cities over 150,000, joint undertaking with P.U.D. as to electric utility properties—"Electric utility properties" defined.
- 35.92.290 Cities over 150,000, joint undertaking with P.U.D. as to electric utility properties—Agreements.
- 35.92.300 Cities over 150,000, joint undertaking with P.U.D. as to electric utility properties—Financing.
- 35.92.310 Cities over 150,000, joint undertaking with P.U.D. as to electric utility properties—Authority granted is additional power.

- 35.92.350 Electrical construction or improvement—Bid proposals—Contract proposal forms—Conditions for issuance—Refusal—Appeal.
- 35.92.355 Energy conservation—Legislative findings.
- 35.92.360 Energy conservation plan—Financing authorized for energy conservation projects in structures or equipment—Limitations.
- 35.92.365 Tariff for irrigation pumping service—Authority to buy back electricity.
- 35.92.370 Lease of real property under electrical transmission lines for private gardening purposes.
- 35.92.380 Waiver or delay of collection of tap-in charges, connection or hookup fees for low income persons.
- 35.92.390 Municipal utilities encouraged to provide customers with landscaping information and to request voluntary donations for urban forestry.
- 35.92.400 Provision of water services and facilities—Contract with Canadian corporation.
- 35.92.410 Provision of sewer services and facilities—Contract with Canadian corporation.
- 35.92.420 Purchase of electric power and energy from joint operating agency.

*Assessments and charges against state lands: Chapter 79.44 RCW.*

*Electric franchises and rights of way: Chapter 80.32 RCW.*

*Electrical utilities and facilities owned by cities, support for political subdivisions and taxing districts: RCW 35.21.420 through 35.21.440.*

*Hydroelectric resources, creation of separate legal authority by irrigation districts and cities, towns, or public utility districts: RCW 87.03.825 through 87.03.840.*

*Joint development of nuclear, thermal power facilities: Chapter 54.44 RCW.*

*Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.*

*Local improvement districts, creation: Chapter 35.43 RCW.*

*Public utility districts: Title 54 RCW.*

*Sewerage improvement districts: Chapter 85.08 RCW.*

*Special assessments or taxation for local improvements: State Constitution Art. 7 § 9.*

*Street railways: Chapter 81.64 RCW.*

*Water-sewer districts: Title 57 RCW.*

**35.92.010 Authority to acquire and operate waterworks—Generation of electricity—Classification of services for rates.** A city or town may construct, condemn and purchase, purchase, acquire, add to, alter, maintain and operate waterworks, including fire hydrants as an integral utility service incorporated within general rates, within or without its limits, for the purpose of furnishing the city and its inhabitants, and any other persons, with an ample supply of water for all purposes, public and private, including water power and other power derived therefrom, with full power to regulate and control the use, distribution, and price thereof: **PROVIDED**, That the rates charged must be uniform for the same class of customers or service. Such waterworks may include facilities for the generation of electricity as a byproduct and such electricity may be used by the city or town or sold to an entity authorized by law to distribute electricity. Such electricity is a byproduct when the electrical generation is subordinate to the primary purpose of water supply.

In classifying customers served or service furnished, the city or town governing body may in its discretion consider any or all of the following factors: The difference in cost of service to the various customers; location of the various customers within and without the city or town; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of

the water furnished; the time of its use; the achievement of water conservation goals and the discouragement of wasteful water use practices; capital contributions made to the system including, but not limited to, assessments; and any other matters which present a reasonable difference as a ground for distinction. No rate shall be charged that is less than the cost of the water and service to the class of customers served.

For such purposes any city or town may take, condemn and purchase, purchase, acquire, and retain water from any public or navigable lake or watercourse, surface or ground, and, by means of aqueducts or pipe lines, conduct it to the city or town; and it may erect and build dams or other works across or at the outlet of any lake or watercourse in this state for the purpose of storing and retaining water therein up to and above high water mark; and for all the purposes of erecting such aqueducts, pipe lines, dams, or waterworks or other necessary structures in storing and retaining water, or for any of the purposes provided for by this chapter, the city or town may occupy and use the beds and shores up to the high water mark of any such watercourse or lake, and acquire the right by purchase, or by condemnation and purchase, or otherwise, to any water, water rights, easements or privileges named in this chapter, or necessary for any of said purposes, and the city or town may acquire by purchase or condemnation and purchase any properties or privileges necessary to be had to protect its water supply from pollution. Should private property be necessary for any such purposes or for storing water above high water mark, the city or town may condemn and purchase, or purchase and acquire such private property. For the purposes of waterworks which include facilities for the generation of electricity as a byproduct, nothing in this section may be construed to authorize a city or town that does not own or operate an electric utility system to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owner. [2002 c 102 § 2; 1991 c 347 § 18. Prior: 1985 c 445 § 4; 1985 c 444 § 2; 1965 c 7 § 35.92.010; prior: 1959 c 90 § 6; 1957 c 209 § 2; prior: 1951 c 252 § 1; 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.010.]

**Purpose—Findings—2002 c 102:** "The purpose of this act is to affirm the authority of cities and towns to operate fire hydrants and streetlights as part of their rate-based water and electric utilities, respectively. The legislature finds that it has been the practice of most, if not all, cities and towns, as well as water and sewer districts, to include the operation of fire hydrants for fire and maintenance purposes and to incorporate the cost of this operation as a normal part of the utility's services and general rate structure. The legislature further finds and declares that it has been the intent of the legislature that cities and towns, just as water and sewer districts, have the right to operate and maintain streetlights in the same manner as fire hydrants, that is, as a normal part of the electric utility and a normal part of that utility's general rate structure. The legislature therefore affirms that authority." [2002 c 102 § 1.]

**Severability—2002 c 102:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 102 § 4.]

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**Severability—1991 c 347:** See RCW 90.42.900.

**Intent—1985 c 444:** "For the purposes of this act, the legislature finds it is the policy of the state of Washington that:

(1) The quality of the natural environment shall be protected and, where possible, enhanced as follows: Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(2) Development of water supply systems, whether publicly or privately owned, which provide water to the public generally in regional areas within the state shall be encouraged. Development of water supply systems for multiple domestic use which will not serve the public generally shall be discouraged where water supplies are available from water systems serving the public." [1985 c 444 § 1.]

**Construction—Economic feasibility study—1985 c 444:** "(1) Nothing in this act exempts any city or town, water district, or sewer district from compliance with applicable state and federal statutes and regulations including but not limited to: State environmental policy act, chapter 43.21C RCW; national environmental policy act, 42 U.S.C. Sec. 4321 et seq.; federal power act, 16 U.S.C. Sec. 791 et seq.; public utility regulatory policies act, 15 U.S.C. Sec. 717f; Pacific northwest electric power planning and conservation act, 16 U.S.C. Sec. 839; energy financing voter approval act, chapter 80.52 RCW; water resources act, chapter 90.54 RCW; federal clean water act, 33 U.S.C. Sec. 1251 et seq.; the public water system coordination act, chapter 70.116 RCW; and the state clean water act, chapter 90.48 RCW.

(2) In addition, if the work proposed under this act involves a new water supply project combined with an electric generation facility with an installed capacity in excess of five megawatts which may produce electricity for sale in excess of present and future needs of the water system, then each of those with a greater than twenty-five percent ownership interest in the project shall jointly prepare an independent economic feasibility study evaluating the cost-effectiveness of the combined facility in the context of forecast regional water needs, alternate sources of water supply, and the potential impact of the combined facility on rates charged for water and electricity.

In addition to the economic feasibility study, the results of the environmental impact statement required by chapter 43.21C RCW and any review by the department of ecology made pursuant to chapter 90.54 RCW shall be made available to the public at least sixty days prior to any public vote on the new combined project.

(3) This act supplements the authority of cities and towns, water districts, and sewer districts and does not restrict or impose limits on any authority such municipal corporations may otherwise have under any laws of this state nor may the authority of such municipal corporations under other laws of this state be construed more narrowly on account of this act." [1985 c 444 § 7.]

**Severability—1985 c 444:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 444 § 8.]

**Validating—1917 c 12:** "Whenever any city or town has heretofore issued or authorized to be issued by such vote of its electors as is required by law at any election duly and legally held to vote on such proposition, such utility bonds for the purpose of purchasing, paying for or acquiring any such utility as is described in this act, in every such case such utility bonds are hereby declared to be legal and valid, and such city or town is hereby authorized and empowered to proceed to issue and negotiate such bonds and to continue and conclude proceedings for the purchase or acquirement of such utility, and is hereby given full power to maintain and operate the same within all and every part of such contiguous territory whether incorporated or unincorporated." [1917 c 12 § 2.]

**Validating—1909 c 150:** "That in all cases where the qualified electors of any city or town have heretofore, at any election, ratified any plan or system of any public utility mentioned in section 1 of this act, and shall have authorized a general indebtedness of such city or town and the issuance of bonds therefor, or the creation of a special fund or funds out of the revenues of the public utility the plan or system of which was so ratified, and the issuance of bonds or warrants payable only out of such fund or funds; and pursuant to such authorization or ratification a general indebtedness shall have been incurred or authorized to be incurred, and bonds or other obligations issued or contracted to be issued or authorized to be issued, or a special fund or funds shall have been created out of the revenue of any such public utility by pledging or setting aside a fixed proportion of such revenues, or a fixed amount out of and not exceeding a fixed proportion or a fixed amount without regard to any fixed proportion, and bonds or warrants payable either upon the call of such city or town or at a fixed date, but only out of such spe-

cial fund or funds, issued or contracted to be issued or authorized to be issued, or a contract or contracts for the purchase, construction, acquisition, improvement, betterment, or addition to such public utility entered into; such general indebtedness, bonds or other obligations, contracts, special funds, and bonds or warrants, payable out of such special funds, and all proceedings relating thereto, are hereby ratified, confirmed and validated; and any bonds or other obligations constituting a general indebtedness, or bonds or warrants payable out of such special funds, heretofore so authorized, may be hereafter issued or sold as if all of said proceedings were taken pursuant to and under the authority of this act, and in full compliance therewith." [1909 c 150 § 5.]

*Eminent domain by cities: Chapter 8.12 RCW.*

*Evaluation of application to appropriate water for electric generation facility: RCW 90.54.170.*

**35.92.012 May accept and operate water-sewer district's property when boundaries are identical.** A city or town, whose boundaries are identical with those of a water-sewer district, or within which a water-sewer district is entirely located, which is free from all debts and liabilities except contractual obligations between the district and the town, may accept the property and assets of the district and operate such property and assets as a municipal waterworks, if the district and the city or town each participate in a summary dissolution proceedings for the district as provided in RCW 57.04.110. [1999 c 153 § 39; 1965 c 7 § 35.92.012. Prior: 1955 c 358 § 2. Formerly RCW 80.40.012.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**35.92.014 Acquisition of out-of-state waterworks.** Municipalities of this state under ordinance of the governing body are empowered to acquire by purchase or lease, and to maintain and operate, in cooperation with neighboring municipalities of states bordering this state, the out-of-state property, plant and equipment of privately owned utilities supplying water to the purchasing municipalities from an out-of-state source: PROVIDED, The legislature of the state in which such property, plant, equipment and supply are located, by enabling legislation similar to this, authorizes its municipalities to join in such acquisition, maintenance and operation. [1965 c 7 § 35.92.014. Prior: 1951 c 39 § 1. Formerly RCW 80.40.014.]

**35.92.015 Acquisition of out-of-state waterworks—Joint acquisition and operation.** The governing bodies of the municipalities acting jointly under RCW 35.92.014 and this section shall have authority by mutual agreement to exercise jointly all powers granted to each individual municipality in the acquisition, maintenance and operation of a water supply system. [1965 c 7 § 35.92.015. Prior: 1951 c 39 § 2. Formerly RCW 80.40.015.]

**35.92.017 Authority to assist customers in the acquisition of water conservation equipment—Limitations.** Any city or town engaged in the sale or distribution of water is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures in financing the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or more efficient use of water in the structures under a water conservation plan adopted by the city or town if the cost per unit of water saved or conserved

by the use of the fixtures, systems, and equipment is less than the cost per unit of water supplied by the next least costly new water source available to the city or town to meet future demand. Except where otherwise authorized, assistance shall be limited to:

(1) Providing an inspection of the structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation fixtures, systems, and equipment for which financial assistance will be approved and the estimated life cycle savings to the water system and the consumer that are likely to result from the installation of the fixtures, systems, or equipment;

(2) Providing a list of businesses that sell and install the fixtures, systems, and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize the fixtures, systems, and equipment in accordance with the prevailing national standards;

(3) Arranging to have approved conservation fixtures, systems, and equipment installed by a private contractor whose bid is acceptable to the owner of the structure and verifying the installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation fixtures, systems, and equipment. The fixtures, systems, and equipment shall be purchased or installed by a private business, the owner, or the utility.

Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length. [1989 c 421 § 3.]

**Intent—Water conservation encouraged—1989 c 421:** "The conservation and efficient use of water is found and declared to be a public purpose of highest priority. The legislature further finds and declares that all municipal corporations, public utility districts, water districts, and other political subdivisions of the state that are engaged in the sale or distribution of water should be granted the authority to develop and carry out programs that will conserve resources, reduce waste, and encourage more efficient use of water by consumers.

In order to establish the most effective statewide program for water conservation, the legislature hereby encourages any company, corporation, or association engaged in selling or furnishing utility services to assist their customers in the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or more efficient use of water." [1989 c 421 § 1.]

**Contingent effective date—1989 c 421:** "This act shall take effect on the same date as the proposed amendment to Article VIII of the state Constitution, authorizing the use of public moneys or credit to promote conservation or more efficient use of water, is validly submitted and is approved and ratified by the voters at a general election held in November 1989. If the proposed amendment is not so approved and ratified, this act shall be void in its entirety." [1989 c 421 § 6.] Senate Joint Resolution No. 8210 was approved and ratified by the voters at the November 7, 1989, general election.

**35.92.020 Authority to acquire and operate sewerage and solid waste handling systems, plants, sites, or facilities—Classification of services and facilities for rates—Assistance for low-income persons.** (1) A city or town may construct, condemn and purchase, purchase, acquire, add to, alter, maintain, and operate systems, plants, sites, or other facilities of sewerage as defined in RCW 35.67.010, or solid waste handling as defined by RCW 70.95.030. A city or

town shall have full authority to manage, regulate, operate, control, and, except as provided in subsection (3) of this section, to fix the price of service and facilities of those systems, plants, sites, or other facilities within and without the limits of the city or town.

(2) Subject to subsection (3) of this section, the rates charged shall be uniform for the same class of customers or service and facilities. In classifying customers served or service and facilities furnished by a system or systems of sewerage, the legislative authority of the city or town may in its discretion consider any or all of the following factors:

(a) The difference in cost of service and facilities to customers;

(b) The location of customers within and without the city or town;

(c) The difference in cost of maintenance, operation, repair, and replacement of the parts of the system;

(d) The different character of the service and facilities furnished to customers;

(e) The quantity and quality of the sewage delivered and the time of its delivery;

(f) Capital contributions made to the systems, plants, sites, or other facilities, including but not limited to, assessments;

(g) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and

(h) Any other factors that present a reasonable difference as a ground for distinction.

(3) The rate a city or town may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

(5) A city or town may provide assistance to aid low-income persons in connection with services provided under this chapter.

(6) Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

(7) Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide informa-

tion on estimated rates or charges that may be imposed for the service.

(8) A city or town shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using city or town employees unless the on-site system is connected by a publicly owned collection system to the city or town's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of state or local health officers to carry out their responsibilities under any other applicable law. [2003 c 394 § 2; 1997 c 447 § 9; 1995 c 124 § 5; 1989 c 399 § 6; 1985 c 445 § 5; 1965 c 7 § 35.92.020. Prior: 1959 c 90 § 7; 1957 c 288 § 3; 1957 c 209 § 3; prior: 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.020.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**35.92.021 Public property subject to rates and charges for storm water control facilities.** Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for storm water control facilities to the same extent private persons and private property are subject to such rates and charges that are imposed by cities and towns pursuant to RCW 35.92.020. In setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property. [1986 c 278 § 56; 1983 c 315 § 2.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Severability—1983 c 315:** See note following RCW 90.03.500.

*Flood control zone districts—Storm water control improvements: Chapter 86.15 RCW.*

*Rates and charges for storm water control facilities—Limitations—Definitions: RCW 90.03.500 through 90.03.525. See also RCW 35.67.025, 36.89.085, and 36.94.145.*

**35.92.023 Solid waste—Compliance with chapter 70.95 RCW required.** See RCW 35.21.154.

**35.92.025 Authority to make charges for connecting to water or sewerage system—Interest charges.** Cities and towns are authorized to charge property owners seeking to connect to the water or sewerage system of the city or town as a condition to granting the right to so connect, in addition to the cost of such connection, such reasonable connection charge as the legislative body of the city or town shall determine proper in order that such property owners shall bear their equitable share of the cost of such system. The equitable share may include interest charges applied from the date of construction of the water or sewer system until the connection, or for a period not to exceed ten years, at a rate commensurate with the rate of interest applicable to the city or town at the time of construction or major rehabilitation of the water or sewer system, or at the time of installation of the water or sewer lines to which the property owner is seeking to connect but not to exceed ten percent per year: PROVIDED, That the aggregate amount of interest shall not exceed the equitable share of the cost of the system allocated to such property

owners. Connection charges collected shall be considered revenue of such system. [1985 c 445 § 6; 1965 c 7 § 35.92.025. Prior: 1959 c 90 § 8. Formerly RCW 80.40.025.]

**35.92.027 Extension of water and sewer facilities outside city subject to review by boundary review board.** The extension of water or sewer facilities outside of the boundaries of a city or town may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 34.]

**35.92.030 Authority to acquire and operate stone or asphalt plants.** A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain, and operate works, plants and facilities for the preparation and manufacture of all stone or asphalt products or compositions or other materials which may be used in street construction or maintenance, together with the right to use them, and also fix the price of and sell such products for use in the construction of municipal improvements. [1985 c 445 § 8; 1965 c 7 § 35.92.030. Prior: 1957 c 288 § 4; 1957 c 209 § 4; prior: 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.030.]

*Eminent domain by cities: Chapter 8.12 RCW.*

**35.92.040 Authority to acquire and operate public markets and cold storage plants—"Public markets" defined.** A city or town may also construct, acquire, and operate public markets and cold storage plants for the sale and preservation of butter, eggs, meats, fish, fruits, vegetables, and other perishable provisions. Whenever the words "public markets" are used in this chapter and the public market is managed in whole or in part by a public corporation created by a city, the words shall be construed to include all real or personal property located in a district or area designated by a city as a public market and traditionally devoted to providing farmers, crafts vendors and other merchants with retail space to market their wares to the public. Property located in such a district or area need not be exclusively or primarily used for such traditional public market retail activities and may include property used for other public purposes including, but not limited to, the provision of human services and low-income or moderate-income housing. [1990 c 189 § 4; 1965 c 7 § 35.92.040. Prior: 1957 c 288 § 5; 1957 c 209 § 5; prior: 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.040.]

**35.92.050 Authority to acquire and operate utilities.** A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain and operate works, plants, facilities for the purpose of furnishing the city or town and its inhabitants, and any other persons, with gas, electricity, and other means of power and facilities for lighting, including streetlights as an integral utility service incorpo-

rated within general rates, heating, fuel, and power purposes, public and private, with full authority to regulate and control the use, distribution, and price thereof, together with the right to handle and sell or lease, any meters, lamps, motors, transformers, and equipment or accessories of any kind, necessary and convenient for the use, distribution, and sale thereof; authorize the construction of such plant or plants by others for the same purpose, and purchase gas, electricity, or power from either within or without the city or town for its own use and for the purpose of selling to its inhabitants and to other persons doing business within the city or town and regulate and control the use and price thereof. [2002 c 102 § 3; 1985 c 445 § 9; 1965 c 7 § 35.92.050. Prior: 1957 c 288 § 6; 1957 c 209 § 6; prior: 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.050.]

**Purpose—Findings—Severability—2002 c 102:** See notes following RCW 35.92.010.

**35.92.052 First class cities operating electrical facilities—Participation in agreements to use or own high voltage transmission facilities and other electrical generating facilities—Terms—Limitations.** (1) Except as provided in subsection (3) of this section, cities of the first class which operate electric generating facilities and distribution systems shall have power and authority to participate and enter into agreements for the use or undivided ownership of high voltage transmission facilities and capacity rights in those facilities and for the undivided ownership of any type of electric generating plants and facilities, including, but not limited to, nuclear and other thermal power generating plants and facilities and transmission facilities including, but not limited to, related transmission facilities, to be called "common facilities"; and for the planning, financing, acquisition, construction, operation, and maintenance with: (a) Each other; (b) electrical companies which are subject to the jurisdiction of the Washington utilities and transportation commission or the regulatory commission of any other state, to be called "regulated utilities"; (c) rural electric cooperatives, including generation and transmission cooperatives in any state; (d) municipal corporations, utility districts, or other political subdivisions in any state; and (e) any agency of the United States authorized to generate or transmit electrical energy. It shall be provided in such agreements that each city shall use or own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction of or additions or improvements to the facility and shall own and control or provide for the use of a like percentage of the electrical transmission or output.

(2) A city using or owning common facilities under this section may issue revenue bonds or other obligations to finance the city's share of the use or ownership of the common facilities.

(3) Cities of the first class shall have the power and authority to participate and enter into agreements for the use or undivided ownership of a coal-fired thermal electric generating plant and facility placed in operation before July 1, 1975, including related common facilities, and for the plan-

ning, financing, acquisition, construction, operation, and maintenance of the plant and facility. It shall be provided in such agreements that each city shall use or own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by the city for the acquisition and construction of or additions or improvements to the facility and shall own and control or provide for the use of a like percentage of the electrical transmission or output of the facility. Cities may enter into agreements under this subsection with each other, with regulated utilities, with rural electric cooperatives, with utility districts, with electric companies subject to the jurisdiction of the regulatory commission of any other state, and with any power marketer subject to the jurisdiction of the federal energy regulatory commission.

(4) The agreement must provide that each participant shall defray its own interest and other payments required to be made or deposited in connection with any financing undertaken by it to pay its percentage of the money furnished or value of property supplied by it for the planning, acquisition, and construction of any common facility, or any additions or betterments. The agreement shall provide a uniform method of determining and allocating operation and maintenance expenses of a common facility.

(5) Each city participating in the ownership, use, or operation of a common facility shall pay all taxes chargeable to its share of the common facility and the electric energy generated under any applicable statutes and may make payments during preliminary work and construction for any increased financial burden suffered by any county or other existing taxing district in the county in which the common facility is located, under agreement with such county or taxing district.

(6) In carrying out the powers granted in this section, each such city shall be severally liable only for its own acts and not jointly or severally liable for the acts, omissions, or obligations of others. No money or property supplied by any such city for the planning, financing, acquisition, construction, operation, or maintenance of, or addition or improvement to any common facility shall be credited or otherwise applied to the account of any other participant therein, nor shall the undivided share of any city in any common facility be charged, directly or indirectly, with any debt or obligation of any other participant or be subject to any lien as a result thereof. No action in connection with a common facility shall be binding upon any city unless authorized or approved by resolution or ordinance of its governing body.

(7) Any city acting jointly outside the state of Washington, by mutual agreement with any participant under authority of this section, shall not acquire properties owned or operated by any public utility district, by any regulated utility, or by any public utility owned by a municipality without the consent of the utility owning or operating the property, and shall not participate in any condemnation proceeding to acquire such properties. [1997 c 230 § 1; 1992 c 11 § 1; 1989 c 249 § 1.]

**35.92.054 May acquire electrical distribution property from public utility district.** Any city or town may acquire by purchase or condemnation from any public utility district or combination of public utility districts any electrical distribution property within the boundaries of such city or

town: PROVIDED, That such right of condemnation shall not apply to a city or town located within a public utility district that owns the electric distribution properties sought to be condemned. [1965 c 7 § 35.92.054. Prior: 1953 c 97 § 1; 1951 c 272 § 1. Formerly RCW 80.40.054.]

*Right of county-wide utility district to acquire distribution properties: RCW 54.32.040.*

**35.92.060 Authority to acquire and operate transportation facilities.** A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain, operate, or lease cable, electric, and other railways, automobiles, motor cars, motor buses, auto trucks, and any and all other forms or methods of transportation of freight or passengers within the corporate limits of the city or town, and a first class city may also construct, purchase, acquire, add to, alter, maintain, operate, or lease cable, electric, and other railways beyond those corporate limits only within the boundaries of the county in which the city is located and of any adjoining county, for the transportation of freight and passengers above, upon, or underneath the ground. It may also fix, alter, regulate, and control the fares and rates to be charged therefor; and fares or rates may be adjusted or eliminated for any distinguishable class of users including, but not limited to, senior citizens, handicapped persons, and students. Without the payment of any license fee or tax, or the filing of a bond with, or the securing of a permit from, the state, or any department thereof, the city or town may engage in, carry on, and operate the business of transporting and carrying passengers or freight for hire by any method or combination of methods that the legislative authority of any city or town may by ordinance provide, with full authority to regulate and control the use and operation of vehicles or other agencies of transportation used for such business. [1995 c 42 § 1; 1991 c 124 § 1; 1990 c 43 § 49; 1985 c 445 § 10; 1981 c 25 § 2; 1965 c 7 § 35.92.060. Prior: 1957 c 288 § 7; 1957 c 209 § 7; prior: 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.060.]

**Construction—Severability—Headings—1990 c 43:** See notes following RCW 81.100.010.

*Public transportation systems, financing, purchase of leased systems: Chapter 35.95 RCW.*

**35.92.070 Procedure—Election.** When the governing body of a city or town deems it advisable that the city or town purchase, acquire, or construct any such public utility, or make any additions and betterments thereto or extensions thereof, it shall provide therefor by ordinance, which shall specify and adopt the system or plan proposed, and declare the estimated cost thereof, as near as may be, and the ordinance shall be submitted for ratification or rejection by majority vote of the voters of the city or town at a general or special election.

(1) No submission shall be necessary:

(a) When the work proposed is an addition to, or betterment of, extension of, or an increased water supply for existing waterworks, or an addition, betterment, or extension of an existing system or plant of any other public utility;

(b) When in the charter of a city a provision has been adopted authorizing the corporate authorities thereof to provide by ordinance for acquiring, opening, or operating any of such public utilities; or

(c) When in the judgment of the corporate authority, the public health is being endangered by the discharge of raw or untreated sewage into any body of water and the danger to the public health may be abated by the construction and maintenance of a sewage disposal plant.

(2) Notwithstanding subsection (1) of this section, submission to the voters shall be necessary if:

(a) The project or work may produce electricity for sale in excess of present or future needs of the water system;

(b) The city or town does not own or operate an electric utility system;

(c) The work involves an ownership greater than twenty-five percent in a new water supply project combined with an electric generation facility; and

(d) The combined facility has an installed capacity in excess of five megawatts.

(3) Notwithstanding subsection (1) of this section, submission to the voters shall be necessary to make extensions to a public utility which would expand the previous service capacity by fifty percent or more, where such increased service capacity is financed by the issuance of general obligation bonds.

(4) Thirty days' notice of the election shall be given in the official newspaper of the city or town, by publication at least once each week in the paper during such time.

(5) When a proposition has been adopted, or in the cases where no submission is necessary, the corporate authorities of the city or town may proceed forthwith to purchase, construct, and acquire the public utility or make additions, betterments, and extensions thereto and to make payment therefor. [1987 c 145 § 1. Prior: 1985 c 445 § 11; 1985 c 444 § 3; 1965 c 7 § 35.92.070; prior: 1941 c 147 § 1; 1931 c 53 § 2; 1909 c 150 § 2; 1901 c 85 § 1; 1897 c 112 § 2; 1893 c 8 § 2; 1891 c 141 § 1; 1890 p 520 § 2; Rem. Supp. 1941 § 9489. Formerly RCW 80.40.070.]

**Intent—Construction—Severability—1985 c 444:** See notes following RCW 35.92.010.

*Elections: Title 29A RCW.*

**35.92.075 Indebtedness incurred on credit of expected utility revenues.** A city or town may contract indebtedness and borrow money for a period not in excess of two years for any public utility purpose on the credit of the revenues expected from such public utility. [1982 c 24 § 1.]

**35.92.080 General obligation bonds.** General obligation bonds may be issued by a city or town for the purposes of providing all or part of the costs of purchasing, acquiring, or constructing a public utility or making any additions, betterments, or alterations thereto, or extensions thereof. The bonds shall be issued and sold in accordance with chapter 39.46 RCW.

There shall be levied each year a tax upon the taxable property of the city or town sufficient to pay the interest on and principal of the bonds then due, which taxes shall become due and collectible as other taxes: PROVIDED, That it may pledge to the payment of such principal and interest

the revenue of the public utility being acquired, constructed, or improved out of the proceeds of sale of such bonds. Such pledge of revenue shall constitute a binding obligation, according to its terms, to continue the collection of such revenue so long as such bonds or any of them are outstanding, and to the extent that revenues are insufficient to meet the debt service requirements on such bonds, the governing body of the municipality shall provide for the levy of taxes sufficient to meet such deficiency. [1985 c 445 § 12; 1984 c 186 § 23; 1983 c 167 § 67; 1970 ex.s. c 56 § 47; 1969 ex.s. c 232 § 24; 1967 c 107 § 1; 1965 c 118 § 2; 1965 c 7 § 35.92.080. Prior: 1909 c 150 § 3, part; RRS § 9490, part. Formerly RCW 80.40.080.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.92.090 Limit of indebtedness.** The total general indebtedness incurred under this chapter, added to all other indebtedness of a city or town at any time outstanding, shall not exceed the amounts of indebtedness authorized by chapter 39.36 RCW, as now or hereafter amended, to be incurred without and with the assent of the voters: PROVIDED, That a city or town may become indebted to a larger amount, but not exceeding the amount authorized therefor by chapter 39.36 RCW, as now or hereafter amended, for supplying it with water, artificial light, and sewers when works for supplying such water, light, and sewers are owned and controlled by the city or town. [1965 c 7 § 35.92.090. Prior: 1909 c 150 § 3, part; RRS § 9490, part. Formerly RCW 80.40.090.]

*Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), RCW 84.52.050.*

**35.92.100 Revenue bonds or warrants.** (1) When the voters of a city or town, or the corporate authorities thereof, have adopted a proposition for any public utility and either no general indebtedness has been authorized or the corporate authorities do not desire to incur a general indebtedness, and when the corporate authorities are authorized to exercise any of the powers conferred by this chapter without submitting the proposition to a vote, the corporate authorities may create a special fund for the sole purpose of defraying the cost of the public utility or addition, betterment, or extension thereto, into which special fund they may obligate and bind the city or town to set aside and pay a fixed proportion of the gross revenues of the utility, or any fixed amount out of and not exceeding a fixed proportion of such revenues, or a fixed amount without regard to any fixed proportion, and issue and sell bonds or warrants bearing interest at a rate or rates as authorized by the corporate authorities; payable semiannually, executed in such manner and payable at such times and places as the corporate authorities shall determine, but the bonds or warrants and the interest thereon shall be payable only out of the special fund and shall be a lien and charge against payments received from any utility local improvement district assessments pledged to secure such bonds. Such bonds shall be negotiable instruments within the meaning of the negotiable instruments law, Title 62A RCW, notwithstanding same are made payable out of a particular fund contrary to the provisions of RCW 62A.3-105. Such bonds and warrants may be of any form, including bearer bonds or

bearer warrants, or registered bonds or registered warrants as provided in RCW 39.46.030.

When corporate authorities deem it necessary to construct any sewage disposal plant, it may be considered as a part of the waterworks department of the city or town and the cost of construction and maintenance thereof may be chargeable to the water fund of the municipality, or to any other special fund which the corporate authorities may by ordinance designate.

In creating a special fund, the corporate authorities shall have due regard to the cost of operation and maintenance of the plant or system as constructed or added to, and to any proportion or part of the revenue previously pledged as a fund for the payment of bonds, warrants, or other indebtedness, and shall not set aside into such special fund a greater amount or proportion of the revenue and proceeds than in their judgment will be available above such cost of maintenance and operation and the amount or proportion, if any, of the revenue so previously pledged. Rates shall be maintained adequate to service such bonds and to maintain the utility in sound financial condition.

The bonds or warrants and interest thereon issued against any such fund shall be a valid claim of the owner thereof only as against the special fund and its fixed proportion or amount of the revenue pledged thereto, and shall not constitute an indebtedness of the city or town within the meaning of constitutional provisions and limitations. Each bond or warrant shall state upon its face that it is payable from a special fund, naming it and the ordinance creating it. The bonds and warrants shall be sold in such manner as the corporate authorities shall deem for the best interest of the city or town, and they may provide in any contract for the construction and acquirement of the proposed improvement that payment therefor shall be made only in such bonds and warrants at par value thereof.

When a special fund is created and any such obligation is issued against it, a fixed proportion, or a fixed amount out of and not exceeding such fixed proportion, or a fixed amount without regard to any fixed proportion, of revenue shall be set aside and paid into such fund as provided in the ordinance creating it, and in case the city or town fails to thus set aside and pay such fixed proportion or amount, the owner of any bond or warrant against the fund may bring action against the city or town and compel such setting aside and payment: PROVIDED, That whenever the corporate authorities of any city or town shall so provide by ordinance then all such bonds thereafter issued shall be on a parity, without regard to date of issuance or authorization and without preference or priority of right or lien with respect to participation of special funds in amounts from gross revenues for payment thereof.

(2) Notwithstanding subsection (1) of this section, such bonds and warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 68; 1983 c 3 § 57; 1970 ex.s. c 56 § 48; 1969 ex.s. c 232 § 25; 1967 c 52 § 25; 1965 c 7 § 35.92.100. Prior: 1953 c 231 § 1; 1931 c 53 § 3; 1909 c 150 § 4; RRS § 9491. Formerly RCW 80.40.100.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

(2004 Ed.)

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

*Alternative authority to issue revenue bonds:* RCW 39.46.150, 39.46.160.

*Funds for reserve purposes may be included in issue amount:* RCW 39.44.140.

*Instruments payable from a particular fund:* RCW 62A.3-105.

*Municipal revenue bond act:* Chapter 35.41 RCW.

**35.92.105 Revenue bonds, warrants, or other evidences of indebtedness for energy or water conservation programs.** A city or town engaged in the sale or distribution of water or energy may issue revenue bonds, warrants, or other evidences of indebtedness in the manner provided by this chapter for the purpose of defraying the cost of financing programs for the conservation or more efficient use of energy or water. The bonds, warrants, or other evidences of indebtedness shall be deemed to be for capital purposes within the meaning of the uniform system of accounts for municipal corporations. [1992 c 25 § 1; 1981 c 273 § 1.]

*Uniform system of accounts for local governments:* RCW 43.09.200.

**35.92.110 Funding or refunding bonds.** The legislative authority of a city or town which has any outstanding warrants or bonds issued for the purpose of purchasing, acquiring, or constructing any such public utility or for making any additions or betterments thereto or extensions thereof, whether the warrants or bonds are general obligation warrants or bonds of the municipality or are payable solely from a special fund, into which fund the city or town is bound and obligated to set aside and pay any proportion or part of the revenue of the public utility, for the purchase, acquisition, or construction of which utility or the making of any additions and betterments thereto or extensions thereof such outstanding warrants or bonds were issued, may, without submitting the matter to the voters, provide for the issuance of funding or refunding bonds with which to take up, cancel, retire, and refund such outstanding warrants or bonds, or any part thereof, at maturity thereof, or before the maturity thereof, if they are subject to call for prior redemption. [1965 c 7 § 35.92.110. Prior: 1935 c 81 § 1; RRS § 9492-1. Formerly RCW 80.40.110.]

**35.92.120 Funding or refunding bonds—Bonds not general obligation.** Such funding or refunding bonds shall not be a general indebtedness of the city or town, but shall be payable solely from a special fund created therefor by ordinance. Each bond shall state upon its face that it is payable from a special fund, naming the fund and the ordinance creating it. [1965 c 7 § 35.92.120. Prior: 1935 c 81 § 2; RRS § 9492-2. Formerly RCW 80.40.120.]

**35.92.130 Funding or refunding bonds—Single issue may refund multiple series.** At the option of the legislative authority of the city or town various series and issues of outstanding warrants or bonds, or parts thereof, issued for the purpose of acquiring or constructing any public utility, or for making any additions or betterments thereto or extensions thereof, may be funded or refunded by a single issue of funding or refunding bonds. No proportion or part of the revenue of any one such public utility shall be pledged for the payment of funding or refunding bonds issued to fund or refund

warrants or bonds issued for the acquisition or construction, or the making of additions or betterments to or extensions of, any other public utility. [1965 c 7 § 35.92.130. Prior: 1935 c 81 § 3; RRS § 9492-3. Formerly RCW 80.40.130.]

**35.92.140 Funding or refunding bonds—Issuance of bonds—Ordinance.** When the legislative authority of a city or town determines to issue such funding or refunding bonds, it shall provide therefor by ordinance, which shall create a special fund for the sole purpose of paying the bonds and the interest thereon, into which fund the ordinance shall bind and obligate the city or town to set aside and pay a fixed amount without regard to any fixed proportion out of the gross revenue of the public utility as provided therein. In creating such special fund, the legislative authority shall have due regard to the cost of operation and maintenance of the utility as constructed or added to, and to any proportion or part of the revenue thereof previously pledged as a fund for the payment of bonds, warrants, or other indebtedness, and shall not bind and obligate the city or town to set aside into the fund a greater amount of the revenue of the utility than in its judgment will be available above the cost of maintenance and operation and the amount or proportion of the revenue thereof so previously pledged. [1965 c 7 § 35.92.140. Prior: 1935 c 81 § 4, part; RRS § 9492-4, part. Formerly RCW 80.40.140.]

**35.92.150 Funding or refunding bonds—Terms of bonds.** (1) Such funding or refunding bonds, together with the interest thereon, issued against the special fund shall be a valid claim of the owner thereof only as against such fund, and the amount of the revenue of the utility pledged thereto, and shall not constitute an indebtedness of the city or town within the meaning of constitutional or statutory provisions and limitations. They shall be sold in such manner as the corporate authorities shall deem for the best interest of the municipality. The effective rate of interest on the bonds shall not exceed the effective rate of interest on warrants or bonds to be funded or refunded thereby. Interest on the bonds shall be paid semiannually. The bonds shall be executed in such manner and payable at such time and place as the legislative authority shall by ordinance determine. Nothing in this chapter shall prevent a city or town from funding or refunding any of its indebtedness in any other manner provided by law. Such bonds may be of any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 69; 1965 c 7 § 35.92.150. Prior: 1935 c 81 § 4, part; RRS § 9492-4, part. Formerly RCW 80.40.150.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.92.160 Funding or refunding bonds—Recourse of bond owners.** When such funding or refunding bonds have been issued and the city or town fails to set aside and pay into the special fund from which they are payable, the amount without regard to any fixed proportion out of the gross revenue of the public utility which the city or town has, by ordinance, bound and obligated itself to set aside and pay into the

special fund, the owner of any funding or refunding bond may bring action against the city or town and compel such setting aside and payment. [1983 c 167 § 70; 1965 c 7 § 35.92.160. Prior: 1935 c 81 § 5; RRS § 9492-5. Formerly RCW 80.40.160.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**35.92.170 City may extend water system outside limits.** When a city or town owns or operates a municipal waterworks system and desires to extend such utility beyond its corporate limits it may acquire, construct and maintain any addition to or extension of the system, and dispose of and distribute water to any other municipality, water-sewer district, community, or person desiring to purchase it. [1999 c 153 § 40; 1965 c 7 § 35.92.170. Prior: 1933 ex.s. c 17 § 1; RRS § 9502-1. Cf. 1917 c 12 § 1. Formerly RCW 80.40.170.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

*Water-sewer districts: Title 57 RCW.*

**35.92.180 City may extend water system outside limits—May acquire property outside city.** A city or town may construct, purchase, or acquire any waterworks, pipe lines, distribution systems and any extensions thereof, necessary to furnish such outside service. [1965 c 7 § 35.92.180. Prior: 1933 ex.s. c 17 § 2; RRS § 9502-2. Cf. 1917 c 12 § 1. Formerly RCW 80.40.180.]

**35.92.190 City may extend water system outside limits—Cannot condemn irrigation system.** No city or town may exercise the power of eminent domain to take or damage any waterworks, storage reservoir, site, pipe line distribution system or any extension thereof, or any water right, water appropriation, dam, canal, plant, or any interest in, or to any of the above used, operated, held, or owned by an irrigation district. [1965 c 7 § 35.92.190. Prior: 1933 ex.s. c 17 § 2A; RRS § 9502-2A. Formerly RCW 80.40.190.]

*Eminent domain by cities: Chapter 8.12 RCW.*

**35.92.200 City may extend water system outside limits—Contracts for outside service.** A city or town may enter into a firm contract with any outside municipality, community, corporation, or person, for furnishing them with water without regard to whether said water shall be considered as surplus or not and regardless of the source from which such water is obtained, which contract may fix the terms upon which the outside distribution systems will be installed and the rates at which and the manner in which payment shall be made for the water supplied or for the service rendered. [1965 c 7 § 35.92.200. Prior: 1961 c 125 § 1; 1957 c 288 § 8; 1933 ex.s. c 17 § 3; RRS § 9502-3. Cf. 1917 c 12 § 1. Formerly RCW 80.40.200.]

**35.92.220 Acquisition of water rights—Consolidation of irrigation assessment districts.** (1) A city or town, situated within or served by, an irrigation project, or projects, owned or operated by the United States government, a water users' association, associations, corporation, or corporations or another city or town or towns, where the legislative author-

ity deems it feasible to furnish water for irrigation and domestic purposes, or either, and where the water used for irrigation and domestic purposes or either, is appurtenant or may become appurtenant to the land located within such city or town, may purchase, lease, or otherwise acquire water or water rights for the purpose of furnishing the city or town and the inhabitants thereof with a supply of water for irrigation and domestic purposes, or either; purchase, construct, or otherwise acquire systems and means of distribution and delivery of water within and without the limits of the city or town, or for the delivery of water where the owner of land within the city or town owns a water right appurtenant to his or her land, with full power to maintain, repair, reconstruct, regulate, and control the same, and if private property is necessary for such purposes, the city or town may condemn and purchase or purchase and acquire property, enter into any contract, and order any and all work to be done that is necessary to carry out such purposes, and it may do so either by the entire city or town or by assessment districts, consisting of the whole or any portion thereof, as the legislative authority of the city or town may determine.

(2) The legislative authority of any city or town may by ordinance authorize the consolidation of separate irrigation assessment districts, previously established pursuant to this section, for the purposes of construction or rehabilitation of improvements, or of ongoing administration, service, repair, and reconstruction of irrigation systems. The separate irrigation assessment districts to be consolidated need not be adjoining, vicinal, or neighboring. If the legislative authority orders the creation of such consolidated irrigation assessment districts, the money received and on hand from assessments levied within the original districts shall be deposited in a consolidated fund to be used by the municipality for future expenses within the consolidated district. [1995 c 89 § 1; 1965 c 130 § 1; 1965 c 7 § 35.92.220. Prior: 1915 c 112 § 1; RRS § 9495. Formerly RCW 80.40.220.]

**35.92.230 Acquisition of water rights—Special assessments.** For the purpose of paying for a water right purchased by the city or town from the United States government where the purchase price has not been fully paid; paying annual maintenance or annual rental charge to the United States government or any corporation or individual furnishing the water for irrigation and domestic purposes, or either; paying assessments made by any water users' association; paying the cost of constructing or acquiring any system or means of distribution or delivery of water for such purposes; and for the upkeep, repair, reconstruction, operation, and maintenance thereof; accumulating reasonable operating fund reserves to pay for system upkeep, repair, operation, and maintenance, in such amount as is determined by the city or town legislative authority; accumulating reasonable capital fund reserves in an amount not to exceed the total estimated cost of system construction, reconstruction, or refurbishment, over such period of time as is determined by the city or town legislative authority; and for any expense incidental to such purposes, the city or town may levy and collect special assessments against the property within any district created pursuant to RCW 35.92.220, to pay the whole or any part of any such costs and expenses. [1995 c 89 § 2; 1965 c 130 § 2;

(2004 Ed.)

1965 c 7 § 35.92.230. Prior: 1915 c 112 § 2; RRS § 9496. Formerly RCW 80.40.230.]

**35.92.240 Acquisition of water rights—Levy of assessments.** All such assessments shall be levied upon the several parcels of land located within the local improvement district in accordance to the special benefits conferred on such property in proportion to the surface area, one square foot of surface to be the unit of assessment: PROVIDED, That where the water right is acquired or a special improvement is made for a portion of any district, the cost of the water right or the cost of such special improvement shall be levied in the same manner upon such portion of the district as shall be specially benefited thereby: PROVIDED FURTHER, That whenever a special improvement is made for a portion of any district, the land assessed for the cost thereof shall be entitled to an equitable reduction in the annual assessments in proportion to the reduced cost of operation on account of the construction of the improvement. [1965 c 7 § 35.92.240. Prior: 1915 c 112 § 3; RRS § 9497. Formerly RCW 80.40.240.]

**35.92.250 Acquisition of water rights—District property need not be contiguous.** One local improvement district may be established for any or all of the purposes embraced herein even though the area assessed for such purposes may not coincide or be contiguous: PROVIDED, That whenever the legislative body of the city or town decides to construct a special improvement in a distribution system, a separate local improvement district may be formed for such portion and bonds may be issued therefor as provided in the general local improvement law. [1965 c 7 § 35.92.250. Prior: 1915 c 112 § 4; RRS § 9498. Formerly RCW 80.40.250.]

*Creation of local improvement districts: Chapter 35.43 RCW.*

*Issuance of bonds to pay for local improvements: Chapters 35.45, 35.48 RCW.*

**35.92.260 Acquisition of water rights—Mode of assessment.** When a city or town makes local improvements for any of the purposes specified in RCW 35.92.220 and RCW 35.92.230, as now or hereafter amended, the proceedings relative to the creation of districts, financing of improvements, levying and collecting assessments and all other procedure shall be had, and the legislative authority shall proceed in accordance with the provisions of the laws relating to local improvement districts in cities of the first class: PROVIDED, That when the improvement is initiated upon petition, the petition shall set forth the fact that the signers are the owners according to the records in the office of the county auditor, of property to an aggregate amount of a majority of the surface area within the limits of the assessment district to be created: PROVIDED FURTHER, That when an assessment is made for any purpose other than the construction or reconstruction of any system or means of distribution or delivery of water, it shall not be necessary for the legislative authority to be furnished with a statement of the aggregate assessed valuation of the real estate exclusive of improvements in the district according to the valuation last placed upon it for purposes of general taxation, or the estimated amount of the cost of the improvement to be borne by each

tract of land or other property, but a statement by the engineer or other officer, showing the estimated cost of the improvement per square foot, shall be sufficient: PROVIDED FURTHER, That when the legislative authority of a city or town shall deem it necessary to levy special assessments for the purposes specified in RCW 35.92.230, as now or hereafter amended, other than for the purpose of paying the costs of acquiring, constructing or reconstructing any system or means of distribution or delivery of water for irrigation or domestic purposes, the legislative authority for such city or town may hold a single hearing on the assessment rolls for all irrigation local improvement districts within the city or town. Such legislative authority shall fix the date of such hearing and shall direct the city or town clerk to give notice thereof, in the form prescribed by RCW 35.44.080, by publication thereof in a legal newspaper of general circulation in the city or town, once, not less than fifteen days prior to the date fixed for hearing; and by mailing, not less than fifteen days prior to the date fixed for hearing, notice thereof to the owner or reputed owner of each item of property described on the assessment roll whose name appears on such roll at the address of such owner or reputed owner shown on the tax rolls of the county treasurer for each such item of property: PROVIDED FURTHER, That when an assessment roll is once prepared and does not include the cost of purchase, construction, or reconstruction of works of delivery or distribution and the legislative authority of such city or town decides to raise a similar amount the ensuing year, it shall not be necessary to prepare a new assessment roll, but the legislative authority may pass a resolution of intention estimating the cost for the ensuing year to be the same as the preceding year, and directing the clerk to give notice stating the estimated cost per square foot of all land within the district and refer persons interested to the books of the treasurer, and fixing the date for a hearing on such assessment roll. Notice of such hearing shall be given by the city or town clerk in the form and manner required in the preceding proviso. The treasurer shall be present at the hearing and shall note any changes on his books. The legislative authority shall have the same right to make changes in the assessment roll as in an original assessment, and after all changes have been made it shall, by ordinance, confirm the assessment and direct the treasurer to extend it on the books of his office. [1965 c 130 § 3; 1965 c 7 § 35.92.260. Prior: 1915 c 112 § 5; RRS § 9499. Formerly RCW 80.40.260.]

**35.92.263 Acquisition of water rights—Water rights acquired by purchase of shares in water users' association or corporation—Authority to acquire and hold shares.** Whenever the public interest, welfare, convenience and necessity require that a city or town acquire water rights for the purposes set forth in RCW 35.92.220, as now or hereafter amended, and that such water rights be acquired through the purchases of shares in a water users' association or corporation, such city or town shall have full authority and power to acquire, or to hold in trust, such shares as shall be necessary for said purposes. [1965 c 130 § 4.]

**35.92.265 Acquisition of water rights—Existing local improvement districts validated—Debts, obligations,**

**assessments, etc., declared legal and valid.** Each and all of the respective areas of land heretofore organized into local improvement assessment districts for irrigation or domestic water supply purposes including all areas annexed thereto, under the provisions of chapter 112, Laws of 1915, codified as RCW 35.92.220-35.92.260, whether organized by or within a city or town other than a city of the first class or by or within a city of the first class, are hereby validated and declared to be duly existing local improvement districts having the respective boundaries set forth in their organization or annexation proceedings as shown by the files in the office of the clerk of the city or town in which formed. All debts, contracts and obligations heretofore made or incurred by or in favor of any such local improvement district and any and all assessments or levies and all other things and proceedings done or taken by the city or town within, and by which such districts were organized, under or in pursuance of such organization, and under or in pursuance of the levy and collection of special assessments by the city or town to pay the whole or any part of the cost and expense or upkeep, repair, reconstruction, operation and maintenance of such local improvement districts and any expense incident to said purposes are hereby declared legal and valid and in full force and effect. [1965 c 130 § 5.]

**35.92.270 Passenger transportation systems—Authority to make studies—Contracts with and acquisition of privately owned systems.** Every passenger transportation system owned by a municipal corporation may:

(1) Engage in planning, studies and surveys with respect to areas within and beyond the corporate boundaries of such municipal corporation, in order to develop a sound factual basis for any possible future adjustment or expansion of such municipally owned passenger transportation system;

(2) Purchase or lease privately owned passenger transportation systems: PROVIDED, That such purchases shall not, per se, extend the area of service of such municipally owned passenger transportation system;

(3) Contract with privately owned passenger transportation systems in order to provide adequate service in the service area of the municipal transportation system. [1965 c 7 § 35.92.270. Prior: 1957 c 114 § 1. Formerly RCW 80.40.270.]

**35.92.275 Assumption of obligations of private pension plan when urban transportation system acquired.** See RCW 54.04.160.

**35.92.280 Cities over 150,000, joint undertaking with P.U.D. as to electric utility properties—"Electric utility properties" defined.** As used in RCW 35.92.280 through 35.92.310 "electric utility properties" shall mean any and all permits, licenses, property rights, water rights and any and all works, plants, dams, powerhouses, transmission lines, switchyards, substations, property and facilities of every kind and character which may be used, or may be useful, in the generation and transmission of electric power and energy, produced by water power, steam or any other methods. [1965 c 7 § 35.92.280. Prior: 1957 c 287 § 1. Formerly RCW 80.40.280.]

**35.92.290 Cities over 150,000, joint undertaking with P.U.D. as to electric utility properties—Agreements.** Any city or town with a population over one hundred fifty thousand within the state of Washington owning an electric public utility is authorized to cooperate with any public utility district within this state in the joint acquisition, purchase, construction, ownership, maintenance and operation, within or without the respective limits of any such city or town or public utility district, of electric utility properties. The respective governing bodies of any such city or town and of any such public utility district desiring to cooperate in the joint ownership, maintenance and operation of electric utility properties pursuant to the authority contained in RCW 35.92.280 through 35.92.310, shall by mutual agreement provide for such joint ownership, maintenance and operation. Such agreement shall prescribe the rights and property interest which the parties thereto shall have in such electric utility properties, which property interest may be either divided or undivided; and shall further provide for the rights of the parties thereto in the ownership and disposition of the power and energy produced by such electric utility properties, and for the operation and management thereof. [1965 c 7 § 35.92.290. Prior: 1957 c 287 § 2. Formerly RCW 80.40.290.]

**35.92.300 Cities over 150,000, joint undertaking with P.U.D. as to electric utility properties—Financing.** Any city or town and any public utility district cooperating under the provisions of RCW 35.92.280 through 35.92.310 may, without an election or other proceedings under any existing law, contribute money and property, both real and personal, to any joint undertaking pursuant hereto, and may issue and sell revenue bonds to pay its respective share of the costs of acquisition and construction of such electric utility properties. Such bonds shall be issued under the provisions of applicable laws authorizing the issuance of revenue bonds for the acquisition and construction of electric public utility properties by cities, towns and public utility districts, as the case may be. [1965 c 7 § 35.92.300. Prior: 1957 c 287 § 3. Formerly RCW 80.40.300.]

*Revenue bonds and warrants issued by*

*cities and towns to finance acquisition of public utilities: RCW 35.92.100.  
public utility districts: Chapter 54.24 RCW.*

**35.92.310 Cities over 150,000, joint undertaking with P.U.D. as to electric utility properties—Authority granted is additional power.** The authority and power granted by RCW 35.92.280 through 35.92.310 is an additional grant of power to cities, towns, and public utility districts to acquire and operate electric public utilities, and the provisions hereof shall be construed liberally to effectuate the authority herein conferred, and no restriction or limitation prescribed in any other law shall prohibit the cities, towns and public utility districts of this state from exercising the authority herein conferred: PROVIDED, That nothing in RCW 35.92.280 through 35.92.310 shall authorize any public utility district or city cooperating under the provisions of RCW 35.92.280 through 35.92.310 to condemn any property owned or operated by any privately owned utility. [1965 c 7 § 35.92.310. Prior: 1957 c 287 § 4. Formerly RCW 80.40.310.]

(2004 Ed.)

**35.92.350 Electrical construction or improvement—Bid proposals—Contract proposal forms—Conditions for issuance—Refusal—Appeal.** Any city or town owning an electrical utility shall require that bid proposals upon any electrical construction or improvement shall be made upon contract proposal form supplied by the governing authority of such utility, and in no other manner. The governing authority shall, before furnishing any person, firm or corporation desiring to bid upon any electrical work with a contract proposal form, require from such person, firm or corporation, answers to questions contained in a standard form of questionnaire and financial statement, including a complete statement of the financial ability and experience of such person, firm, or corporation in performing electrical work. Such questionnaire shall be sworn to before a notary public or other person authorized to take acknowledgment of deeds, and shall be submitted once a year and at such other times as the governing authority may require. Whenever the governing authority is not satisfied with the sufficiency of the answers contained in such questionnaire and financial statement or whenever the governing authority determines that such person, firm, or corporation does not meet all of the requirements hereinafter set forth it may refuse to furnish such person, firm or corporation with a contract proposal form and any bid proposal of such person, firm or corporation must be disregarded. In order to obtain a contract proposal form, a person, firm or corporation shall have all of the following requirements:

- (1) Adequate financial resources, or the ability to secure such resources;
- (2) The necessary experience, organization, and technical qualifications to perform the proposed contract;
- (3) The ability to comply with the required performance schedule taking into consideration all of its existing business commitments;
- (4) A satisfactory record of performance, integrity, judgment, and skills; and
- (5) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

Such refusal shall be conclusive unless appeal therefrom to the superior court of the county where the utility district is situated or Thurston county be taken within fifteen days, which appeal shall be heard summarily within ten days after the same is taken and on five days' notice thereof to the governing authority of the utility. [1971 ex.s. c 220 § 1.]

**35.92.355 Energy conservation—Legislative findings.** The conservation of energy in all forms and by every possible means is found and declared to be a public purpose of highest priority. The legislature further finds and declares that all municipal corporations, quasi municipal corporations, and other political subdivisions of the state which are engaged in the generation, sale, or distribution of energy should be granted the authority to develop and carry out programs which will conserve resources, reduce waste, and encourage more efficient use of energy by consumers.

In order to establish the most effective statewide program for energy conservation, the legislature hereby encourages any company, corporation, or association engaged in selling or furnishing utility services to assist their customers in the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more

efficient use of energy. The use of appropriate tree plantings for energy conservation is encouraged as part of these programs. [1993 c 204 § 5; 1979 ex.s. c 239 § 1.]

**Findings—1993 c 204:** See note following RCW 35.92.390.

**Effective date—Contingency—1979 ex.s. c 239:** See note following RCW 35.92.360.

**35.92.360 Energy conservation plan—Financing authorized for energy conservation projects in structures or equipment—Limitations.** Any city or town engaged in the generation, sale, or distribution of energy is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy in such structures or equipment pursuant to an energy conservation plan adopted by the city or town if the cost per unit of energy saved or produced by the use of such materials and equipment is less than the cost per unit of energy produced by the next least costly new energy resource which the city or town could acquire to meet future demand. Any financing authorized under this chapter shall only be used for conservation purposes in existing structures, and such financing shall not be used for any purpose which results in a conversion from one energy source to another. For the purposes of this section, "conservation purposes in existing structures" may include projects to allow a municipal electric utility's customers to generate all or a portion of their own electricity through the on-site installation of a distributed electricity generation system that uses as its fuel solar, wind, geothermal, or hydro-power, or other renewable resource that is available on-site and not from a commercial source. Such projects shall not be considered "a conversion from one energy source to another" which is limited to the change or substitution of one commercial energy supplier for another commercial energy supplier. Except where otherwise authorized, such assistance shall be limited to:

(1) Providing an inspection of the structure or equipment, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation materials and equipment for which financial assistance will be approved and the estimated life cycle savings in energy costs that are likely to result from the installation of such materials or equipment;

(2) Providing a list of businesses who sell and install such materials and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize such materials in accordance with the prevailing national standards.

(3) Arranging to have approved conservation materials and equipment installed by a private contractor whose bid is acceptable to the owner of the residential structure and verifying such installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation materials and equipment. Such materials and equipment shall be purchased

from a private business and shall be installed by a private business or the owner.

(5) Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length. [2002 c 276 § 2; 1989 c 268 § 1; 1979 ex.s. c 239 § 2.]

**Findings—Intent—2002 c 276:** "The legislature finds that energy conservation can take many useful and cost-effective forms, and that the types of conservation projects available to utilities and customers evolve with time as technologies are developed and market conditions change. In some cases, electricity conservation projects are most cost-effective when they reduce the total amount of electricity consumed by an individual customer, and in other cases they can be cost-effective by reducing the amount of electricity a customer needs to purchase from an electric utility.

The legislature intends to encourage and support a broad array of cost-effective energy conservation by electric utilities and customers alike by clarifying that public utilities may assist in the financing of projects that allow customers to generate their own electricity from renewable resources that do not depend on commercial sources of fuel thereby reducing the amount of electricity a public utility needs to generate or acquire on their customers' behalf." [2002 c 276 § 1.]

**Effective date—Contingency—1979 ex.s. c 239:** "This 1979 act shall take effect on the same date as the proposed amendment to Article VIII of the state Constitution, authorizing the use of public moneys or credit to promote conservation or more efficient use of energy, is validly submitted and is approved and ratified by the voters at a general election held in November, 1979. If the proposed amendment is not so approved and ratified, this 1979 act shall be null and void in its entirety." [1979 ex.s. c 239 § 4.] The referenced constitutional amendment (1979 Substitute Senate Joint Resolution No. 120) was approved by the voters on November 6, 1979. See Article VIII, section 10 of the state Constitution.

**35.92.365 Tariff for irrigation pumping service—Authority to buy back electricity.** The council or board may approve a tariff for irrigation pumping service that allows the municipal utility to buy back electricity from customers to reduce electricity usage by those customers during the municipal utility's particular irrigation season. [2001 c 122 § 3.]

**Effective date—2001 c 122:** See note following RCW 80.28.310.

**35.92.370 Lease of real property under electrical transmission lines for private gardening purposes.** A city or town owning facilities for the purpose of furnishing the city or town and its inhabitants with electricity may lease for private gardening purposes the real property under its electrical transmission and distribution lines for a nominal rent to any person who has an income of less than ten thousand dollars per year. [1981 c 100 § 1.]

**35.92.380 Waiver or delay of collection of tap-in charges, connection or hookup fees for low income persons.** Whenever a city or town waives or delays collection of tap-in charges, connection fees, or hookup fees for low income persons, or class of low income persons, to connect to lines or pipes used by the city or town to provide utility service, the waiver or delay shall be pursuant to a program established by ordinance. As used in this section, the provision of "utility service" includes, but is not limited to, water, sanitary or storm sewer service, electricity, gas, other means of power, and heat. [1980 c 150 § 1.]

**35.92.390 Municipal utilities encouraged to provide customers with landscaping information and to request**

**voluntary donations for urban forestry.** (1) Municipal utilities under this chapter are encouraged to provide information to their customers regarding landscaping that includes tree planting for energy conservation.

(2) Municipal utilities under this chapter are encouraged to request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of request for a voluntary donation. [1993 c 204 § 2.]

**Findings—1993 c 204:** "The legislature finds that large-scale reduction of tree cover increases the temperature of urban areas, known as the "heat island effect." Planting trees in urban areas for shading and cooling mitigates the urban heat island effect and reduces energy consumption. Tree planting also can benefit the environment by combating global climate change, reducing soil erosion, and improving air quality. Urban forestry programs can improve urban aesthetics that will improve public and private property values.

The legislature also finds that urban forestry programs should consider the relationship between urban forests and public service facilities such as water, sewer, natural gas, telephone, and electric power lines. Urban forestry programs should promote the use of appropriate tree species that will not interfere with or cause damage to such public service facilities." [1993 c 204 § 1.]

#### **35.92.400 Provision of water services and facilities—**

**Contract with Canadian corporation.** A city or town contiguous with Canada may contract with a Canadian corporation for the purchase of water and for the construction, purchase, maintenance, and supply of waterworks to furnish the city or town and other areas within its water service area, and inhabitants thereof, and residents of Canada with an ample supply of water. [1999 c 61 § 1.]

#### **35.92.410 Provision of sewer services and facilities—**

**Contract with Canadian corporation.** A city or town contiguous with Canada may contract with a Canadian corporation for the discharge of sewage from all or any portion of the city's or town's sewer service area into the sewer system of the Canadian corporation. A city or town contiguous with Canada may contract with a Canadian corporation for the construction, operation, or maintenance of sewers and sewage treatment and disposal facilities for their joint use and benefit upon such terms and conditions and for such period of time as the contracting parties may determine, which may include vesting one of the contracting parties with the sole authority to construct, operate, or maintain the facilities with the other contracting party or parties paying an agreed-upon portion of the expenses to the party with sole authority to construct, operate, or maintain the facilities. [1999 c 61 § 2.]

**35.92.420 Purchase of electric power and energy from joint operating agency.** A city or town may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the city or town must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and

energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or public utility district under the contract or other instrument. [2003 c 138 § 3.]

### **Chapter 35.94 RCW**

#### **SALE OR LEASE OF MUNICIPAL UTILITIES**

##### Sections

35.94.010	Authority to sell or let.
35.94.020	Procedure.
35.94.030	Execution of lease or conveyance.
35.94.040	Lease or sale of land or property originally acquired for public utility purposes.
35.94.050	Application of chapter to certain service provider agreements under chapter 70.150 RCW.

**35.94.010 Authority to sell or let.** A city may lease for any term of years or sell and convey any public utility works, plant, or system owned by it or any part thereof, together with all or any equipment and appurtenances thereof. [1965 c 7 § 35.94.010. Prior: 1917 c 137 § 1; RRS § 9512. Cf. 1907 c 86 §§ 1-3; 1897 c 106 §§ 1-4. Formerly RCW 80.48.010.]

**35.94.020 Procedure.** The legislative authority of the city, if it deems it advisable to lease or sell the works, plant, or system, or any part thereof, shall adopt a resolution stating whether it desires to lease or sell. If it desires to lease, the resolution shall state the general terms and conditions of the lease, but not the rent. If it desires to sell the general terms of sale shall be stated, but not the price. The resolution shall direct the city clerk, or other proper official, to publish the resolution not less than once a week for four weeks in the official newspaper of the city, together with a notice calling for sealed bids to be filed with the clerk or other proper official not later than a certain time, accompanied by a certified check payable to the order of the city, for such amount as the resolution shall require, or a deposit of a like sum in money. Each bid shall state that the bidder agrees that if his bid is accepted and he fails to comply therewith within the time hereinafter specified, the check or deposit shall be forfeited to the city. If bids for a lease are called for, bidders shall bid the amount to be paid as the rent for each year of the term of the lease. If bids for a sale are called for, the bids shall state the price offered. The legislative authority of the city may reject any or all bids and accept any bid which it deems best. At the first meeting of the legislative authority of the city held after the expiration of the time fixed for receiving bids, or at some later meeting, the bids shall be considered. In order for the legislative authority to declare it advisable to accept any bid it shall be necessary for two-thirds of all the members elected to the legislative authority to vote in favor of a resolution making the declaration. If the resolution is adopted it shall be necessary, in order that the bid be accepted, to enact an ordinance accepting it and directing the execution of a lease or conveyance by the mayor and city clerk or other proper official. The ordinance shall not take effect until it has been submitted to the voters of the city for their approval or rejection at the next general election or at a special election called for that purpose, and a majority of the voters voting thereon have

approved it. If approved it shall take effect as soon as the result of the vote is proclaimed by the mayor. If it is so submitted and fails of approval, it shall be rejected and annulled. The mayor shall proclaim the vote as soon as it is properly certified. [1985 c 469 § 40; 1965 c 7 § 35.94.020. Prior: 1917 c 137 § 2; RRS § 9513. Cf. 1907 c 86 §§ 1-3; 1897 c 106 §§ 1-4. Formerly RCW 80.48.020.]

*Elections: Title 29A RCW.*

**35.94.030 Execution of lease or conveyance.** Upon the taking effect of the ordinance the mayor and the city clerk or other proper official shall execute, in the name and on behalf of the city, the lease or conveyance directed thereby. The lessee or grantee shall accept and execute the instrument within ten days after notice of its execution by the city or forfeit to the city, the amount of the check or deposit accompanying his bid: PROVIDED, That if litigation in good faith is instituted within ten days to determine the rights of the parties, no forfeiture shall take place unless the lessee or grantee fails for five days after the termination of the litigation in favor of the city to accept and execute the lease or conveyance. [1965 c 7 § 35.94.030. Prior: 1917 c 137 § 3; RRS § 9514. Cf. 1907 c 86 §§ 1-3; 1897 c 106 §§ 1-4. Formerly RCW 80.48.030.]

**35.94.040 Lease or sale of land or property originally acquired for public utility purposes.** Whenever a city shall determine, by resolution of its legislative authority, that any lands, property, or equipment originally acquired for public utility purposes is surplus to the city's needs and is not required for providing continued public utility service, then such legislative authority by resolution and after a public hearing may cause such lands, property, or equipment to be leased, sold, or conveyed. Such resolution shall state the fair market value or the rent or consideration to be paid and such other terms and conditions for such disposition as the legislative authority deems to be in the best public interest.

The provisions of RCW 35.94.020 and 35.94.030 shall not apply to dispositions authorized by this section. [1973 1st ex.s. c 95 § 1.]

**35.94.050 Application of chapter to certain service provider agreements under chapter 70.150 RCW.** This chapter does not apply to dispositions of utility property in connection with an agreement entered into pursuant to chapter 70.150 RCW provided there is compliance with the procurement procedure under RCW 70.150.040. [1986 c 244 § 11.]

**Severability—1986 c 244:** See RCW 70.150.905.

## Chapter 35.95 RCW

### PUBLIC TRANSPORTATION SYSTEMS IN MUNICIPALITIES

#### Sections

35.95.010	Declaration of intent and purpose.
35.95.020	Definitions.
35.95.030	Appropriation of funds for transportation systems authorized—Referendum.
35.95.040	Levy and collection of excise taxes authorized—Business and occupation tax—Excise tax on residents—Appropriation and use of proceeds—Voter approval.
35.95.050	Collection of tax—Billing.

35.95.060	Funds derived from taxes—Restrictions on classification, etc.
35.95.070	Purchase of leased public transportation system—Purchase price.
35.95.080	Referendum rights not impaired.
35.95.090	Corporate authorities may refer ordinance levying tax to voters.
35.95.100	Public transportation systems.
35.95.900	Severability—1965 ex.s. c 111.

*Contracts between political subdivisions for services or use of public transportation systems: RCW 39.33.050.*

*Local sales and use taxes for financing public transportation systems: RCW 82.14.045 through 82.14.060.*

*Public transportation systems: RCW 35.58.272 through 35.58.2794.*

**35.95.010 Declaration of intent and purpose.** We, the legislature find that an increasing number of municipally owned, or leased, and operated transportation systems in the urban areas of the state of Washington, as in the nation, are finding it impossible, from the revenues derived from tolls, tariffs and fares, to maintain the financial solvency of such systems, and as a result thereof such municipalities have been forced to subsidize such systems to the detriment of other essential public services.

All persons in a community benefit from a solvent and adequate public transportation system, either directly or indirectly, and the responsibility of financing the operation, maintenance, and capital needs of such systems is a community obligation and responsibility which should be shared by all.

We further find and declare that the maintenance and operation of an adequate public transportation system is an absolute necessity and is essential to the economic, industrial and cultural growth, development and prosperity of a municipality and of the state and nation, and to protect the health and welfare of the residents of such municipalities and the public in general.

We further find and declare that the appropriation of general funds and levying and collection of taxes by such municipalities as authorized in the succeeding sections of this chapter is necessary, and any funds so derived and expended are for a public purpose for which public funds may properly be used. [1969 ex.s. c 255 § 1; 1965 ex.s. c 111 § 1.]

**Construction—Severability—1969 ex.s. c 255:** See notes following RCW 35.58.272.

**35.95.020 Definitions.** The following terms however used or referred to in this chapter, shall have the following meanings, unless a different meaning is required by the context:

(1) "Corporate authority" shall mean the council or other legislative body of a municipality.

(2) "Municipality" shall mean any incorporated city, town, county pursuant to RCW 36.57.100 and 36.57.110, any county transportation authority created pursuant to chapter 36.57 RCW, any public transportation benefit area created pursuant to chapter 36.57A RCW, or any metropolitan municipal corporation created pursuant to RCW 35.58.010, et seq: PROVIDED, That the term "municipality" shall mean in respect to any county performing the public transportation function pursuant to RCW 36.57.100 and 36.57.110 only that portion of the unincorporated area lying wholly within such unincorporated transportation benefit area.

(3) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, school district or political subdivision of the state, fraternal, benevolent, religious or charitable society, club or organization, and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity. The term "person" shall not be construed to include the United States nor the state of Washington. [1975 1st ex.s. c 270 § 3; 1969 ex.s. c 255 § 2; 1967 ex.s. c 145 § 65; 1965 ex.s. c 111 § 2.]

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**Severability—Construction—1969 ex.s. c 255:** See notes following RCW 35.58.272.

**35.95.030 Appropriation of funds for transportation systems authorized—Referendum.** The corporate authorities of any municipality are authorized to appropriate general funds for the operation, maintenance, and capital needs of municipally owned or leased and municipally operated public transportation systems subject to the right of referendum as provided by statute or charter. [1965 ex.s. c 111 § 3.]

**35.95.040 Levy and collection of excise taxes authorized—Business and occupation tax—Excise tax on residents—Appropriation and use of proceeds—Voter approval.** The corporate authorities of a municipality are authorized to adopt ordinances for the levy and collection of excise taxes and/or for the imposition of an additional tax for the act or privilege of engaging in business activities. Such business and occupation tax shall be imposed in such amounts as fixed and determined by the corporate authorities of the municipality and shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be. The terms "business", "engaging in business", "gross proceeds of sales", and "gross income of the business" shall for the purpose of this chapter have the same meanings as defined and set forth in chapter 82.04 RCW or as said chapter may hereafter be amended.

The excise taxes other than the business and occupation tax above provided for shall be levied and collected from all persons within the municipality in such amounts as shall be fixed and determined by the corporate authorities of the municipality: PROVIDED, That such excise tax shall not exceed one dollar per month for each housing unit. For the purposes of this section, the term "housing unit" shall mean a building or portion thereof designed for or used as the residence or living quarters of one or more persons living together, or of one family.

All taxes herein authorized shall be taxes other than a retail sales tax defined in chapter 82.08 RCW and a use tax defined in chapter 82.12 RCW, and the municipality shall appropriate and use the proceeds derived from all taxes authorized herein only for the operation, maintenance and capital needs of its municipally owned or leased and municipally operated public transportation system.

Before any county transportation authority established pursuant to chapter 36.57 RCW or any public transportation benefit area authority established pursuant to chapter 36.57A RCW may impose any of the excise taxes authorized pursu-

ant to this section, the authorization for imposition of such taxes shall be approved by the voters residing within such respective area.

The county on behalf of an unincorporated transportation benefit area established pursuant to RCW 36.57.100 and 36.57.110 may impose any of the excise taxes authorized pursuant to this section only within the boundaries of such unincorporated transportation benefit area. [1975 1st ex.s. c 270 § 4; 1965 ex.s. c 111 § 4.]

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

*Municipal taxation of motor carriers of freight for hire:* RCW 35.21.840.

**35.95.050 Collection of tax—Billing.** The tax levied under the provisions of RCW 35.95.040 shall be billed and collected at such times and in the manner fixed and determined by the corporate authorities in an ordinance levying the tax: PROVIDED, That the tax shall be designated and identified as a tax to be used solely for the operation, maintenance, and capital needs of the municipally owned or leased and municipally operated public transit system: AND PROVIDED FURTHER, That the corporate authorities may in connection with municipally owned or leased transit systems enter into contracts covering the operation and maintenance of such systems, including the employment of personnel. [1967 ex.s. c 145 § 66; 1965 ex.s. c 111 § 5.]

**Severability—1967 ex.s. c 145:** See RCW 47.98.043.

**35.95.060 Funds derived from taxes—Restrictions on classification, etc.** No funds derived from any tax levied under the provisions of this chapter shall, for any purpose whatsoever, be classified as or constitute income, earnings, or revenue of the public transportation system for which the tax is levied nor of any other public utility owned or leased and operated by such municipality; nor shall such funds constitute or be classified as any part of the rate structure or rate charged for the public utility. [1965 ex.s. c 111 § 6.]

**35.95.070 Purchase of leased public transportation system—Purchase price.** In the event the corporate authorities of any municipality during the term of a lease or any renewal thereof of a public transportation system desire to purchase the said system, the purchase price shall be no greater than the fair market value of the said system at the commencement of the lease. [1965 ex.s. c 111 § 7.]

*Authority to acquire and operate transportation facilities:* RCW 35.92.060.

**35.95.080 Referendum rights not impaired.** Nothing contained in this chapter nor the provisions of any city charter shall prevent a referendum on any ordinance or action adopted or taken by any municipality under the provisions of this chapter. [1965 ex.s. c 111 § 8.]

**35.95.090 Corporate authorities may refer ordinance levying tax to voters.** The corporate authorities of a municipality adopting an ordinance for the levy and collection of an excise tax or additional tax as provided in RCW 35.95.040 may refer such ordinance to the voters of the municipality before making such ordinance effective. [1967 ex.s. c 145 § 67.]

**Severability—1967 ex.s. c 145:** See RCW 47.98.043.

**35.95.100 Public transportation systems.** See RCW 35.58.272 through 35.58.2794.

**35.95.900 Severability—1965 ex.s. c 111.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 ex.s. c 111 § 9.]

## Chapter 35.95A RCW

### CITY TRANSPORTATION AUTHORITY— MONORAIL TRANSPORTATION

#### Sections

35.95A.010	Definitions.
35.95A.020	Creation of authority—Vote of the people.
35.95A.030	Creation by ordinance—Proposal by petition.
35.95A.040	Authority subject to standard requirements of governmental entity.
35.95A.050	Powers.
35.95A.060	Funds and accounts—Designation of treasurer.
35.95A.070	Excess levies—General obligation bonds—Revenue bonds.
35.95A.080	Special excise tax—Public hearings.
35.95A.090	Vehicle license fees—Vote of the people.
35.95A.100	Property tax levies.
35.95A.110	Taxes and fees—Limitation on use.
35.95A.120	Dissolution of authority.
35.95A.130	Special excise tax—Collection.

**35.95A.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means a city transportation authority created pursuant to chapter 248, Laws of 2002.

(2) "Authority area" means the territory within a city as designated in the ordinance creating the authority.

(3) "Bonds" means bonds, notes, or other evidences of indebtedness.

(4) "Public monorail transportation function" means the transportation of passengers and their incidental baggage by means of public monorail transportation facilities as authorized in this chapter.

(5) "Public monorail transportation facilities" means a transportation system that utilizes train cars running on a guideway, together with the necessary passenger stations, terminals, parking facilities, related facilities or other properties, and facilities necessary and appropriate for passenger and vehicular access to and from people-moving systems, not including fixed guideway light rail systems.

(6) "Qualified elector" means any person registered to vote within the city boundaries. [2002 c 248 § 1.]

**35.95A.020 Creation of authority—Vote of the people.** (1) A city transportation authority to perform a public monorail transportation function may be created in every city with a population greater than three hundred thousand to perform a public monorail transportation function. The authority shall embrace all the territory in the authority area. A city transportation authority is a municipal corporation, an independent taxing "authority" within the meaning of Article 7, section 1 of the state Constitution, and a "taxing district"

within the meaning of Article 7, section 2 of the state Constitution.

(2) Any city transportation authority and proposed taxes established pursuant to this chapter, either by ordinance or petition as provided in this chapter, must be approved by a majority vote of the electors residing within the proposed authority area voting at a regular or special election. [2002 c 248 § 2.]

**35.95A.030 Creation by ordinance—Proposal by petition.** (1) A city that undertakes to propose creation of an authority must propose the authority by ordinance of the city legislative body. The ordinance must:

(a) Propose the authority area and the size and method of selection of the governing body of the authority, which governing body may be appointed or elected, provided that officers or employees of any single city government body may not compose a majority of the members of the authority's governing body;

(b) Propose whether all or a specified portion of the public monorail transportation function will be exercised by the authority;

(c) Propose an initial array of taxes to be voted upon by the electors within the proposed authority area; and

(d) Provide for an interim governing body of the authority which will govern the authority upon voter approval of formation of the authority, until a permanent governing body is selected, but in no event longer than fourteen months.

(2) An authority may also be proposed to be created by a petition setting forth the matters described in subsection (1) of this section, and signed by one percent of the qualified electors of the proposed authority area.

(3) Upon approval by the qualified electors of the formation of the city transportation authority and any proposed taxes, either by ordinance or by petition as provided in this chapter, the governing body of an authority, or interim governing body, as applicable, will adopt bylaws determining, among other things, the authority's officers and the method of their selection, and other matters the governing body deems appropriate. [2002 c 248 § 3.]

**35.95A.040 Authority subject to standard requirements of governmental entity.** The authority is subject to all standard requirements of a governmental entity pursuant to RCW 35.21.759. [2002 c 248 § 4.]

**35.95A.050 Powers.** Every authority has the following powers:

(1) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of public monorail transportation facilities, including passenger terminal and parking facilities and properties, and other facilities and properties as may be necessary for passenger and vehicular access to and from public monorail transportation facilities, together with all lands, rights of way, and property within or outside the authority area, and together with equipment and accessories necessary or appropriate for these facilities, except that property, including but not limited to other types of public transportation facilities, that is owned by any city, county, county

transportation authority, public transportation benefit area, metropolitan municipal corporation, or regional transit authority may be acquired or used by an authority only with the consent of the public entity owning the property. The entities are authorized to convey or lease property to an authority or to contract for their joint use on terms fixed by agreement between the entity and the authority;

(2) To fix rates, tolls, fares, and charges for the use of facilities and to establish various routes and classes of service. Rates, tolls, fares, or charges may be adjusted or eliminated for any distinguishable class of users including, but not limited to, senior citizens and handicapped persons;

(3) To contract with the United States or any of its agencies, any state or any of its agencies, any metropolitan municipal corporation, and other country, city, other political subdivision or governmental instrumentality, or governmental agency, or any private person, firm, or corporation for the purpose of receiving any gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction, operation, or maintenance of public monorail transportation facilities as follows:

(a) Notwithstanding the provisions of any law to the contrary, and in addition to any other authority provided by law, the governing body of a city transportation authority may contract with one or more vendors for the design, construction, operation, or maintenance, or other service related to the development of a monorail public transportation system including, but not limited to, monorail trains, operating systems and control equipment, guideways, and pylons, together with the necessary passenger stations, terminals, parking facilities, and other related facilities necessary and appropriate for passenger and vehicular access to and from the monorail train.

(b) If the governing body of the city transportation authority decides to proceed with the consideration of qualifications or proposals for services from qualified vendors, the authority must publish notice of its requirements and request submission of qualifications statements or proposals. The notice must be published in the official newspaper of the city creating the authority at least once a week for two weeks, not less than sixty days before the final date for the submission of qualifications statements or proposals. The notice must state in summary form: (i) The general scope and nature of the design, construction, operation, maintenance, or other services being sought related to the development of the proposed monorail, tram, or trolley public transportation system; (ii) the name and address of a representative of the city transportation authority who can provide further details; (iii) the final date for the submission of qualifications statements or proposals; (iv) an estimated schedule for the consideration of qualifications statements or proposals, the selection of vendors, and the negotiation of a contract or contracts for services; (v) the location of which a copy of any requests for qualifications statements or requests for proposals will be made available; and (vi) the criteria established by the governing body of the authority to select a vendor or vendors, which may include, but is not limited to, the vendor's prior experience, including design, construction, operation, or maintenance of other similar public transportation facilities, respondent's management capabilities, proposed project schedule, availability and financial resources, costs of the

services to be provided, nature of facility design proposed by the vendors, system reliability, performance standards required for the facilities, compatibility with existing public transportation facilities operated by the authority or any other public body or other providers of similar services to the public, project performance guarantees, penalties, and other enforcement provisions, environmental protection measures to be used by the vendor, consistency with the applicable regional transportation plans, and the proposed allocation of project risks.

(c) If the governing body of the city transportation authority decides to proceed with the consideration of qualifications statements or proposals submitted by vendors, it may designate a representative to evaluate the vendors who submitted qualifications statements or proposals and conduct discussions regarding qualifications or proposals with one or more vendors. The governing body or its representative may request submission of qualifications statements and may later request more detailed proposals from one or more vendors who have submitted qualifications statements, or may request detailed proposals without having first received and evaluated qualifications statements. The governing body or its representative will evaluate the qualifications or proposals, as applicable. If two or more vendors submit qualifications or proposals that meet the criteria established by the governing body of the authority, discussions and interviews must be held with at least two vendors. Any revisions to a request for qualifications or request for proposals must be made available to all vendors then under consideration by the governing body of the authority and must be made available to any other person who has requested receipt of that information.

(d) Based on the criteria established by the governing body of the authority, the representative will recommend to the governing body a vendor or vendors that are initially determined to be the best qualified to provide one or more of the design, construction, operation or maintenance, or other service related to the development of the proposed monorail public transportation system.

(e) The governing body of the authority or its representative may attempt to negotiate a contract with the vendor or vendors selected for one or more of the design, construction, operation or maintenance, or other service related to the development of the proposed monorail public transportation system on terms that the governing body of the authority determines to be fair and reasonable and in the best interest of the authority. If the governing body, or its representative, is unable to negotiate a contract with any one or more of the vendors first selected on terms that it determines to be fair and reasonable and in the best interest of the authority, negotiations with any one or more of the vendors must be terminated or suspended and another qualified vendor or vendors may be selected in accordance with the procedures set forth in this section. If the governing body decides to continue the process of selection, negotiations will continue with a qualified vendor or vendors in accordance with this section at the sole discretion of the governing body of the authority until an agreement is reached with one or more qualified vendors, or the process is terminated by the governing body. The process may be repeated until an agreement is reached.

(f) Prior to entering into a contract with a vendor, the governing body of the authority must make written findings,

after holding a public hearing on the proposal, that it is in the public interest to enter into the contract, that the contract is financially sound, and that it is advantageous for the governing body of the authority to use this method for awarding contracts for one or more of the design, construction, or operation or maintenance of the proposed monorail public transportation system as compared to all other methods of awarding such contracts.

(g) Each contract must include a project performance bond or bonds or other security by the vendor.

(h) The provisions of chapters 39.12 and 39.19 RCW apply to a contract entered into under this section as if the public transportation systems and facilities were owned by a public body.

(i) The vendor selection process permitted by this section is supplemental to and is not construed as a repeal of or limitation on any other authority granted by law.

(j) Contracts for the construction of facilities, other than contracts for facilities to be provided by the selected vendor, with an estimated cost greater than two hundred thousand dollars must be awarded after a competitive bid process consistent with chapter 39.04 RCW or awarded through an alternative public works contracting procedure consistent with chapter 39.10 RCW;

(4) To contract with the United States or any of its agencies, any state or any of its agencies, any metropolitan municipal corporation, any other county, city, other political subdivision or governmental instrumentality, any governmental agency, or any private person, firm, or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands, and rights of way of all kinds which are owned, leased, or held by the other party and for the purpose of planning, designing, constructing, operating any public transportation facility, or performing any service related to transportation which the authority is authorized to operate or perform, on terms as may be agreed upon by the contracting parties;

(5) To acquire any existing public transportation facility by conveyance, sale, or lease. In any acquisition from a county, city, or other political subdivision of the state, the authority will receive credit from the county or city or other political subdivision for any federal assistance and state matching assistance used by the county or city or other political subdivision in acquiring any portion of the public transportation facility. Upon acquisition, the authority must assume and observe all existing labor contracts relating to the public transportation facility and, to the extent necessary for operation of the public transportation facility, all of the employees of the public transportation facility whose duties are necessary to efficiently operate the public transportation facility must be appointed to comparable positions to those which they held at the time of the transfer, and no employee or retired or pensioned employee of the public transportation facility will be placed in any worse position with respect to pension seniority, wages, sick leave, vacation, or other benefits than he or she enjoyed as an employee of the public transportation facility prior to the acquisition. Furthermore, the authority must engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired facility and

may enter into labor contracts with the employee labor organization;

(6) To contract for, participate in, and support research, demonstration, testing, and development of public monorail transportation facilities, equipment, and use incentives, and have all powers necessary to comply with any criteria, standards, and regulations which may be adopted under state and federal law, and to take all actions necessary to meet the requirements of those laws. The authority has, in addition to these powers, the authority to prepare, adopt, and carry out a comprehensive public monorail plan and to make other plans and studies and to perform programs as the authority deems necessary to implement and comply with those laws;

(7) To establish local improvement districts within the authority area to finance public monorail transportation facilities, to levy special assessments on property specially benefited by those facilities, and to issue local improvement bonds to be repaid by the collection of local improvement assessments. The method of establishment, levying, collection, enforcement, and all other matters relating to the local improvement districts, assessments, collection, and bonds are as provided in the statutes governing local improvement districts of cities and towns. The duties devolving upon the city treasurer in those statutes are imposed on the treasurer of the authority;

(8) To exercise all other powers necessary and appropriate to carry out its responsibilities, including without limitation the power to sue and be sued, to own, construct, purchase, lease, add to, and maintain any real and personal property or property rights necessary for the conduct of the affairs of the authority, to enter into contracts, and to employ the persons as the authority deems appropriate. An authority may also sell, lease, convey, or otherwise dispose of any real or personal property no longer necessary for the conduct of the affairs of the authority. [2002 c 248 § 5.]

**35.95A.060 Funds and accounts—Designation of treasurer.** Each authority will establish necessary and appropriate funds and accounts consistent with the uniform system of accounts developed pursuant to RCW 43.09.210. The authority may designate a treasurer or may contract with any city with territory within the authority area for treasury and other financial functions. The city must be reimbursed for the expenses of treasury services. However, no city whose treasurer serves as treasurer of an authority is liable for the obligations of the authority. [2002 c 248 § 6.]

**35.95A.070 Excess levies—General obligation bonds—Revenue bonds.** Every authority has the power to:

(1) Levy excess levies upon the property included within the authority area, in the manner prescribed by Article VII, section 2 of the state Constitution and by RCW 84.52.052 for operating funds, capital outlay funds, and cumulative reserve funds;

(2) Issue general obligation bonds, not to exceed an amount, together with any outstanding nonvoter-approved general obligation indebtedness equal to one and one-half percent of the value of the taxable property within the authority area, as the term "value of the taxable property" is defined in RCW 39.36.015. An authority may additionally issue gen-

eral obligation bonds, together with outstanding voter-approved and nonvoter-approved general obligation indebtedness, equal to two and one-half percent of the value of the taxable property within the authority area, as the term "value of the taxable property" is defined in RCW 39.36.015, when the bonds are approved by three-fifths of the qualified electors of the authority at a general or special election called for that purpose and may provide for the retirement thereof by levies in excess of dollar rate limitations in accordance with the provisions of RCW 84.52.056. These elections will be held as provided in RCW 39.36.050;

(3) Issue revenue bonds payable from any revenues other than taxes levied by the authority, and to pledge those revenues for the repayment of the bonds. Proceeds of revenue bonds may only be expended for the costs of public monorail transportation facilities, for financing costs, and for capitalized interest during construction plus six months thereafter. The bonds and warrants will be issued and sold in accordance with chapter 39.46 RCW.

No bonds issued by an authority are obligations of any city, county, or the state of Washington or any political subdivision thereof other than the authority, and the bonds will so state, unless the legislative authority of any city or county or the legislature expressly authorizes particular bonds to be either guaranteed by or obligations of its respective city or county or of the state. [2002 c 248 § 8.]

#### **35.95A.080 Special excise tax—Public hearings.** (1)

Every authority has the power to levy and collect a special excise tax not exceeding two and one-half percent on the value of every motor vehicle owned by a resident of the authority area for the privilege of using a motor vehicle. Before utilization of any excise tax money collected under this section for acquisition of right of way or construction of a public monorail transportation facility on a separate right of way, the authority must adopt rules affording the public an opportunity for corridor public hearings and design public hearings, which provide in detail the procedures necessary for public participation in the following instances: (a) Prior to adoption of location and design plans having a substantial social, economic, or environmental effect upon the locality upon which they are to be constructed; or (b) on the public transportation facilities operating on a separate right of way whenever a substantial change is proposed relating to location or design in the adopted plan. In adopting rules the authority must adhere to the provisions of the administrative procedure act.

(2) A "corridor public hearing" is a public hearing that: (a) Is held before the authority is committed to a specific route proposal for the public transportation facility, and before a route location is established; (b) is held to afford an opportunity for participation by those interested in the determination of the need for, and the location of, the public transportation facility; and (c) provides a public forum that affords a full opportunity for presenting views on the public transportation facility route location, and the social, economic, and environmental effects on that location and alternate locations. However, the hearing is not deemed to be necessary before adoption of a transportation plan as provided in \*section 7 of this act or a vote of the qualified electors under subsection (5) of this section.

(3) A "design public hearing" is a public hearing that: (a) Is held after the location is established but before the design is adopted; (b) is held to afford an opportunity for participation by those interested in the determination of major design features of the public monorail transportation facility; and (c) provides a public forum to afford a full opportunity for presenting views on the public transportation system design, and the social, economic, and environmental effects of that design and alternate designs, including people-mover technology.

(4) An authority imposing a tax under subsection (1) of this section may also impose a sales and use tax, in addition to any tax authorized by RCW 82.14.030, upon retail car rentals within the city that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax must not exceed 1.944 percent of the base of the tax. The base of the tax will be the selling price in the case of a sales tax or the rental value of the vehicle used in the case of a use tax. The revenue collected under this subsection will be distributed in the same manner as sales and use taxes under chapter 82.14 RCW.

(5) Before any authority may impose any of the taxes authorized under this section, the authorization for imposition of the taxes must be approved by the qualified electors of the authority area. [2002 c 248 § 9.]

\*Reviser's note: Section 7 of this act was vetoed by the governor.

#### **35.95A.090 Vehicle license fees—Vote of the people.**

(1) Every authority has the power to fix and impose a fee, not to exceed one hundred dollars per vehicle, for each vehicle that is subject to relicensing tab fees under RCW 46.16.0621 and for each vehicle that is subject to RCW 46.16.070 with an unladen weight of six thousand pounds or less, and that is determined by the department of licensing to be registered within the boundaries of the authority area. The department of licensing must provide an exemption from the fee for any vehicle the owner of which demonstrates is not operated within the authority area.

(2) The department of licensing will administer and collect the fee. The department will deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected, for administration and collection expenses incurred by it. The remaining proceeds will be remitted to the custody of the state treasurer for monthly distribution to the authority.

(3) The authority imposing this fee will delay the effective date at least six months from the date the fee is approved by the qualified voters of the authority area to allow the department of licensing to implement administration and collection of the fee.

(4) Before any authority may impose any of the fees authorized under this section, the authorization for imposition of the fees must be approved by a majority of the qualified electors of the authority area voting. [2002 c 248 § 10.]

**35.95A.100 Property tax levies.** (1) Every authority has the power to impose annual regular property tax levies in an amount equal to one dollar and fifty cents or less per thousand dollars of assessed value of property in the authority area when specifically authorized to do so by a majority of the voters voting on a proposition submitted at a special elec-

tion or at the regular election of the authority. A proposition authorizing the tax levies will not be submitted by an authority more than twice in any twelve-month period. Ballot propositions must conform with \*RCW 29.30.111. The number of years during which the regular levy will be imposed may be limited as specified in the ballot proposition or may be unlimited in duration. In the event an authority is levying property taxes, which in combination with property taxes levied by other taxing districts subject to the limitations provided in RCW 84.52.043 and 84.52.050, exceed these limitations, the authority's property tax levy shall be reduced or eliminated consistent with RCW 84.52.010.

(2) The limitation in RCW 84.55.010 does not apply to the first levy imposed under this section following the approval of the levies by the voters under subsection (1) of this section. [2002 c 248 § 11.]

**\*Reviser's note:** RCW 29.30.111 was recodified as RCW 29A.36.210 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**35.95A.110 Taxes and fees—Limitation on use.** All taxes and fees levied and collected by an authority must be used solely for the purpose of paying all or any part of the cost of acquiring, designing, constructing, equipping, maintaining, or operating public monorail transportation facilities or contracting for the services thereof, or to pay or secure the payment of all or part of the principal of or interest on any general obligation bonds or revenue bonds issued for authority purposes. Until expended, money accumulated in the funds and accounts of an authority may be invested in the manner authorized by the governing body of the authority, consistent with state law.

If any of the revenue from any tax or fee authorized to be levied by an authority has been pledged by the authority to secure the payment of any bonds as herein authorized, then as long as that pledge is in effect the legislature will not withdraw from the authority the authorization to levy and collect the tax or fee. [2002 c 248 § 12.]

**35.95A.120 Dissolution of authority.** The city transportation authority may be dissolved by a vote of the people residing within the boundaries of the authority if the authority is faced with significant financial problems. However, the authority may covenant with holders of its bonds that it may not be dissolved and shall continue to exist solely for the purpose of continuing to levy and collect any taxes or assessments levied by it and pledged to the repayment of debt and to take other actions, including the appointment of a trustee, as necessary to allow it to repay any remaining debt. No such debt may be incurred by the authority on a project until thirty days after a final environmental impact statement on that project has been issued as required by chapter 43.21C RCW. The amount of the authority's initial bond issue is limited to the amount of the project costs in the subsequent two years as documented by a certified engineer or by submitted bids, plus any reimbursable capital expenses already incurred at the time of the bond issue. The authority may size the first bond issue consistent with the internal revenue service five-year spend down schedule if an independent financial advisor recommends such an approach is financially advisable. Any referendum petition to dissolve the city transportation authority must be filed with the city council and contain provisions for

dissolution of the authority. Within seven days, the city prosecutor must review the validity of the petition and submit its report to the petitioner and city council. If the petitioner's claims are deemed valid by the city prosecutor, within ten days of the petitioner's filing, the city council will confer with the petitioner concerning the form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title must be posed as a question and an affirmative vote on the measure results in authority retention and a negative vote on the measure results in the authority's dissolution. The petitioner will be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner has ninety days in which to secure on petition forms, the signatures of not less than fifteen percent of the registered voters in the authority area and to file the signed petitions with the filing officer. Each petition form must contain the ballot title and the full text of the measure to be referred. The filing officer will verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the filing officer shall submit the initiative to the authority area voters at a general or special election held on one of the dates provided in \*RCW 29.13.010 as determined by the city council, which election will not take place later than one hundred twenty days after the signed petition has been filed with the filing officer. [2003 c 147 § 14; 2002 c 248 § 13.]

**\*Reviser's note:** RCW 29.13.010 was recodified as RCW 29A.04.320 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193.

**Effective date—2003 c 147:** See note following RCW 47.10.861.

**35.95A.130 Special excise tax—Collection.** The special excise tax imposed under RCW 35.95A.080(1) will be collected at the same time and in the same manner as relicensing tab fees under RCW 46.16.0621 and 35.95A.090. Every year on January 1st, April 1st, July 1st, and October 1st the department of licensing shall remit special excise taxes collected on behalf of an authority, back to the authority, at no cost to the authority. Valuation of motor vehicles for purposes of the special excise tax imposed under RCW 35.95A.080(1) must be consistent with chapter 82.44 RCW. [2002 c 248 § 14.]

## Chapter 35.96 RCW

### ELECTRIC AND COMMUNICATION FACILITIES— CONVERSION TO UNDERGROUND

#### Sections

35.96.010	Declaration of public interest and purpose.
35.96.020	Definitions.
35.96.030	Conversion of electric and communication facilities to underground facilities authorized—Local improvement districts—Special assessments.
35.96.040	Contracts for conversion—Authorized—Provisions.
35.96.050	Notice to owners to convert service lines to underground—Objections—Hearing—Time limitation for conversion.
35.96.060	Application of provisions relating to local improvements in cities and towns to chapter.
35.96.070	Validation of preexisting debts, contracts, obligations, etc., made or incurred incidental to conversion of electric and communication facilities to underground facilities.
35.96.080	Authority granted deemed alternative and additional.
35.96.900	Severability—1967 c 119.

*Counties, conversion of overhead electric and communication facilities to underground facilities: RCW 36.88.410 through 36.88.480.*

*Local improvements for underground utilities transmission lines: RCW 35.43.040(12).*

### **35.96.010 Declaration of public interest and purpose.**

It is hereby found and declared that the conversion of overhead electric and communication facilities to underground facilities is substantially beneficial to the public safety and welfare, is in the public interest and is a public purpose, notwithstanding any resulting incidental private benefit to any electric or communication utility affected by such conversion. [1967 c 119 § 2.]

**35.96.020 Definitions.** As used in this chapter, unless specifically defined otherwise, or unless the context indicates otherwise:

"Conversion area" means that area in which existing overhead electric and communication facilities are to be converted to underground facilities pursuant to the provisions of this chapter.

"Electric utility" means any publicly or privately owned utility engaged in the business of furnishing electric energy to the public in all or part of the conversion area and includes electrical companies as defined by RCW 80.04.010 and public utility districts.

"Communication utility" means any utility engaged in the business of affording telephonic, telegraphic, cable television or other communication service to the public in all or part of the conversion area and includes telephone companies and telegraph companies as defined by RCW 80.04.010. [1967 c 119 § 3.]

**35.96.030 Conversion of electric and communication facilities to underground facilities authorized—Local improvement districts—Special assessments.** Every city or town shall have the power to convert existing overhead electric and communication facilities to underground facilities pursuant to RCW 35.43.190 where such facilities are owned or operated by the city or town. Where such facilities are not so owned or operated, every city or town shall have the power to contract with electric and communication utilities, as hereinafter provided, for the conversion of existing overhead electric and communication facilities to underground facilities. To provide funds to pay the whole or any part of the cost of any such conversion, either where the existing overhead electric and communication facilities are owned or operated by the city or town or where they are not so owned or operated, every city or town shall have the power to create local improvement districts and to levy and collect special assessments against the real property specially benefited by such conversion. For the purpose of ascertaining the amount to be assessed against each lot or parcel of land within any local improvement district established pursuant to this chapter, in addition to other methods provided by law for apportioning special benefits, the legislative authority of any city or town may apportion all or part of the special benefits accruing on a square footage basis or on a per lot basis. [1967 c 119 § 4.]

(2004 Ed.)

**35.96.040 Contracts for conversion—Authorized—Provisions.** Every city or town shall have the power to contract with electric and communication utilities for the conversion of existing overhead electric and communication facilities to underground facilities including all work incidental to such conversion. Such contracts may include, among other provisions, any of the following:

- (1) For the supplying and approval by electric and communication utilities of plans and specifications for such conversion;
- (2) For the payment to the electric and communication utilities for any work performed or services rendered by it in connection with the conversion project;
- (3) For the payment to the electric and communication utilities for the value of the overhead facilities removed pursuant to the conversion;
- (4) For ownership of the underground facilities by the electric and communication utilities. [1967 c 119 § 5.]

**35.96.050 Notice to owners to convert service lines to underground—Objections—Hearing—Time limitation for conversion.** When service from the underground electric and communication facilities is available in all or part of a conversion area, the city or town shall mail a notice to the owners of all structures or improvements served from the existing overhead facilities in the area, which notice shall state that:

- (1) Service from the underground facilities is available;
- (2) All electric and communication service lines from the existing overhead facilities within the area to any structure or improvement must be disconnected and removed within ninety days after the date of the mailing of the notice;
- (3) Should such owner fail to convert such service lines from overhead to underground within ninety days after the date of the mailing of the notice, the city or town will order the electric and communication utilities to disconnect and remove the service lines;
- (4) Should the owner object to the disconnection and removal of the service lines he may file his written objections thereto with the city or town clerk within thirty days after the date of the mailing of the notice and failure to so object within such time will constitute a waiver of his right thereafter to object to such disconnection and removal.

If the owner of any structure or improvement served from the existing overhead electric and communication facilities within a conversion area shall fail to convert to underground the service lines from such overhead facilities to such structure or improvement within ninety days after the mailing to him of the notice, the city or town shall order the electric and communication utilities to disconnect and remove all such service lines: PROVIDED, That if the owner has filed his written objections to such disconnection and removal with the city or town clerk within thirty days after the mailing of the notice then the city or town shall not order such disconnection and removal until after the hearing on such objections.

Upon the timely filing by the owner of objections to the disconnection and removal of the service lines, the legislative authority of such city or town, or a committee thereof, shall conduct a hearing to determine whether the removal of all or any part of the service lines is in the public benefit. The hear-

ing shall be held at such time as the legislative authority of such city or town may establish for hearings on the objections and shall be held in accordance with the regularly established procedure set by the legislative authority of the city or town. If the hearing is before a committee, the committee shall following the hearing report its recommendation to the legislative authority of the city or town for final action. The determination reached by the legislative authority shall be final in the absence of an abuse of discretion. [1967 c 119 § 6.]

**35.96.060 Application of provisions relating to local improvements in cities and towns to chapter.** Unless otherwise provided in this chapter, the general provisions relating to local improvements in cities and towns including but not limited to chapters 35.43, 35.44, 35.45, 35.48, 35.49, 35.50, 35.53 and 35.54 RCW shall apply to local improvements authorized by this chapter. [1967 c 119 § 7.]

**35.96.070 Validation of preexisting debts, contracts, obligations, etc., made or incurred incidental to conversion of electric and communication facilities to underground facilities.** All debts, contracts and obligations heretofore made or incurred by or in favor of any city or town incident to the conversion of overhead electric and communication facilities to underground facilities and all bonds, warrants, or other obligations issued by any such city or town, or by any local improvement district created to effect such conversion and any and all assessments heretofore levied in any such local improvement district, and all other things and proceedings relating thereto are hereby declared to be legal and valid and of full force and effect from the date thereof. [1967 c 119 § 8.]

**35.96.080 Authority granted deemed alternative and additional.** The authority granted by this chapter shall be considered an alternative and additional method for converting existing overhead electric and communication facilities to underground facilities, and for paying all or part of the cost thereof, and shall not be construed as a restriction or limitation upon any other authority for or method of converting any such facilities or placing such facilities underground or paying all or part of the cost thereof, including, but not limited to, existing authority or methods under chapter 35.43 RCW and chapter 35.44 RCW. [1967 c 119 § 10.]

**35.96.900 Severability—1967 c 119.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 c 119 § 9.]

## Chapter 35.97 RCW HEATING SYSTEMS

### Sections

35.97.010	Definitions.
35.97.020	Heating systems authorized.
35.97.030	Heating systems—General powers of municipalities.
35.97.040	Heating systems—Specific powers of municipalities.
35.97.050	Heating systems—Authorized by legislative authority of municipality—Competitive bidding.

35.97.060	Municipality may impose rates and charges—Classification of customers.
35.97.070	Municipality may shut off heat for nonpayment—Late payment charges authorized.
35.97.080	Connection charges authorized.
35.97.090	Local improvement district—Assessments—Bonds and warrants.
35.97.100	Special funds authorized.
35.97.110	Revenue bonds—Form, terms, etc.
35.97.120	Revenue warrants.
35.97.130	Revenue bonds and warrants—Holder may enforce.
35.97.900	Severability—1983 c 216.

**35.97.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Biomass energy system" means a system that provides for the production or collection of organic materials such as wood and agricultural residues and municipal solid waste that are primarily organic materials and the conversion or use of that material for the production of heat or substitute fuels through several processes including, but not limited to, burning, pyrolysis, or anaerobic digestion.

(2) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source.

(3) "Cogeneration facility" means any machinery, equipment, structure, process, or property or any part thereof, installed or acquired for the primary purpose of cogeneration by a person or corporation.

(4) "Geothermal heat" means the natural thermal energy of the earth.

(5) "Waste heat" means the thermal energy which otherwise would be released to the environment from an industrial process, electric generation, or other process.

(6) "Heat" means thermal energy.

(7) "Heat source" includes but is not limited to (a) any integral part of a heat production or heat rejection system of an industrial facility, cogeneration facility, or electric power generation facility, (b) geothermal well or spring, (c) biomass energy system, (d) solar collection facility, and (e) hydrothermal resource or heat extraction process.

(8) "Municipality" means a county, city, town, irrigation district which distributes electricity, water-sewer district, port district, or metropolitan municipal corporation.

(9) "Heating facilities or heating systems" means all real and personal property, or interests therein, necessary or useful for: (a) The acquisition, production, or extraction of heat; (b) the storage of heat; (c) the distribution of heat from its source to the place of utilization; (d) the extraction of heat at the place of utilization from the medium by which the heat is distributed; (e) the distribution of heat at the place of utilization; and (f) the conservation of heat.

(10) "Hydrothermal resource" means the thermal energy available in wastewater, sewage effluent, wells, or other water sources, natural or manmade. [1999 c 153 § 41; 1987 c 522 § 4; 1983 c 216 § 2.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**35.97.020 Heating systems authorized.** (1) Counties, cities, towns, irrigation districts which distribute electricity, sewer districts, water districts, port districts, and metropolitan municipal corporations are authorized pursuant to this

chapter to establish heating systems and supply heating services from Washington's heat sources.

(2) Nothing in this chapter authorizes any municipality to generate, transmit, distribute, or sell electricity. [1989 c 11 § 7; 1987 c 522 § 3; 1983 c 216 § 1.]

**Severability—1989 c 11:** See note following RCW 9A.56.220.

**35.97.030 Heating systems—General powers of municipalities.** A municipality may construct, purchase, acquire, add to, extend, maintain, and operate a system of heating facilities, within or without its limits, for the purpose of supplying its inhabitants and other persons with heat, with full power to regulate and control the use, distribution, and price of supplying heat, and to enter into agreements for the maintenance and operation of heating facilities under terms and conditions determined by the legislative authority of the municipality. The provision of heat and heating facilities and the establishment and operation of heating systems by a municipality under this chapter are hereby declared to be a public use and a public and strictly municipal purpose. However, nothing in this chapter shall be construed to restrain or limit the authority of any individual, partnership, corporation, or private utility from establishing and operating heating systems. [1983 c 216 § 3.]

**35.97.040 Heating systems—Specific powers of municipalities.** In addition to the general powers under RCW 35.97.030, and not by way of limitation, municipalities have the following specific powers:

(1) The usual powers of a corporation, to be exercised for public purposes;

(2) To acquire by purchase, gift, or condemnation property or interests in property within and without the municipality, necessary for the construction and operation of heating systems, including additions and extensions of heating systems. No municipality may acquire any heat source by condemnation. To the extent judged economically feasible by the municipality, public property and rights of way shall be utilized in lieu of private property acquired by condemnation. The municipality shall determine in cooperation with existing users that addition of district heating facilities to any public property or rights of way shall not be a hazard or interference with existing uses or, if so, that the cost for any relocation of facilities of existing users shall be a cost and expense of installing the heating facility;

(3) To acquire, install, add to, maintain, and operate heating facilities at a heat source or to serve particular consumers of heat, whether such facilities are located on property owned by the municipality, by the consumer of heat, or otherwise;

(4) To sell, lease, or otherwise dispose of heating facilities;

(5) To contract for the operation of heating facilities;

(6) To apply and qualify for and receive any private or federal grants, loans, or other funds available for carrying out the objects of the municipality under this chapter;

(7) Full and exclusive authority to sell and regulate and control the use, distribution, rates, service, charges, and price of all heat supplied by the municipality and to carry out any other powers and duties under this chapter free from the juris-

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dition and control of the utilities and transportation commission;

(8) To utilize fuels other than the heat sources described in RCW 35.97.020 on a standby basis, to meet start up and emergency requirements, to meet peak demands, or to supplement those heat sources as necessary to provide a reliable and economically feasible supply of heat;

(9) To the extent permitted by the state Constitution, to make loans for the purpose of enabling suppliers or consumers of heat to finance heating facilities;

(10) To enter into cooperative agreements providing for the acquisition, construction, ownership, financing, use, control, and regulation of heating systems and heating facilities by more than one municipality or by one or more municipalities on behalf of other municipalities. [1983 c 216 § 4.]

**35.97.050 Heating systems—Authorized by legislative authority of municipality—Competitive bidding.** If the legislative authority of a municipality deems it advisable that the municipality purchase, acquire, or construct a heating system, or make any additions or extensions to a heating system, the legislative authority shall so provide by an ordinance or a resolution specifying and adopting the system or plan proposed, declaring the estimated cost thereof, as near as may be, and specifying the method of financing and source of funds. Any construction, alteration, or improvement of a heating system by any municipality shall be in compliance with the appropriate competitive bidding requirements in Titles 35, 36, 53, 57, or 87 RCW. [1999 c 153 § 42; 1996 c 230 § 1603; 1983 c 216 § 5.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**35.97.060 Municipality may impose rates and charges—Classification of customers.** A municipality may impose rates, charges, or rentals for heat, service, and facilities provided to customers of the system if the rates charged are uniform for the same class of customers or service. In classifying customers served or service furnished, the legislative authority may consider: The difference in cost of service to the various customers; location of the various customers within or without the municipality; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the heat furnished; the time heat is used; the demand on the system; capital contributions made to the system including, but not limited to, assessments or the amount of capital facilities provided for use by the customer; and any other matters which present a reasonable difference as a ground for distinction. [1983 c 216 § 6.]

**35.97.070 Municipality may shut off heat for nonpayment—Late payment charges authorized.** If prompt payment of a heating rate, charge, or rental is not made, a municipality after reasonable notice may shut off the heating supply to the building, place, or premises to which the municipality supplied the heating. A municipality may also make an additional charge for late payment. [1983 c 216 § 7.]

**35.97.080 Connection charges authorized.** A municipality may charge property owners seeking to connect to the heating system, as a condition to granting the right to connect and in addition to the cost of the connection, such reasonable connection charge as the legislative authority determines to be proper in order that the property owners bear their pro rata share of the cost of the system. Potential customers shall not be compelled to subscribe or connect to the heating system. The cost of connection to the system shall include the cost of acquisition and installation of heating facilities necessary or useful for the connection, including any heating facilities located or installed on the property being served. Connection charges may, in the discretion of the municipality, be made payable in installments over a period of not more than thirty years or the estimated life of the facilities installed, whichever is less. Installments, if any, shall bear interest and penalties at such rates and be payable at such times and in such manner as the legislative authority of the municipality may provide. [1983 c 216 § 8.]

**35.97.090 Local improvement district—Assessments—Bonds and warrants.** For the purpose of paying all or a portion of the cost of heating facilities, a municipality may form local improvement districts or utility local improvement districts, foreclose on, levy, and collect assessments, reassessments, and supplemental assessments; and issue local improvement district bonds and warrants in the manner provided by law for cities or towns. [1983 c 216 § 9.]

**35.97.100 Special funds authorized.** For the purpose of providing funds for defraying all or a portion of the costs of planning, purchase, leasing, condemnation, or other acquisition, construction, reconstruction, development, improvement, extension, repair, maintenance, or operation of a heating system, and the implementation of the powers in RCW 35.97.030 and 35.97.040, a municipality may authorize, by ordinance or resolution, the creation of a special fund or funds into which the municipality shall be obligated to set aside and pay all or any designated proportion or amount of any or all revenues derived from the heating system, including any utility local improvement district assessments, any grants received to pay the cost of the heating system, and any municipal license fees specified in the ordinance or resolution creating such special fund. [1983 c 216 § 10.]

**35.97.110 Revenue bonds—Form, terms, etc.** If the legislative authority of a municipality deems it advisable to finance all or a portion of the costs of planning, purchase, leasing, condemnation, or other acquisition, construction, reconstruction, development, improvement, and extension of a heating system, or for the implementation of the powers in RCW 35.97.030 and 35.97.040, or for working capital, interest during construction and for a period of up to one year thereafter, debt service and other reserves, and the costs of issuing revenue obligations, a municipality may issue revenue bonds against the special fund or fund created from revenues or assessments. The revenue bonds so issued may be issued in one or more series and shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times as may be determined by the legislative authority of the municipality, and may be made redeemable before maturity

at such price or prices and under such terms and conditions as may be fixed by the legislative authority of the municipality prior to the issuance of the bonds. The legislative authority of the municipality shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. If an officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be such officer before the delivery of the bonds, the signature shall for all purposes have the same effect as if the officer had remained in office until the delivery. The bonds may be issued in coupon or in registered form or both, and provisions may be made for the registration of any coupon bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. Bonds may be sold at public or private sale for such price and bearing interest at such fixed or variable rate as may be determined by the legislative authority of the municipality.

The principal of and interest on any revenue bonds shall be secured by a pledge of the revenues and receipts derived from the heating system, including any amounts pledged to be paid into a special fund under RCW 35.97.100, and may be secured by a mortgage covering all or any part of the system, including any enlargements of and additions to such system thereafter made. The revenue bonds shall state upon their face that they are payable from a special fund, naming it and the ordinance creating it, and that they do not constitute a general indebtedness of the municipality. The ordinance or resolution under which the bonds are authorized to be issued and any such mortgage may contain agreements and provisions respecting the maintenance of the system, the fixing and collection of rates and charges, the creation and maintenance of special funds from such revenues, the rights and remedies available in the event of default, and other matters improving the marketability of the revenue bonds, all as the legislative authority of the municipality deems advisable. Any revenue bonds issued under this chapter may be secured by a trust agreement by and between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the state. Any such trust agreement or ordinance or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bond owners as may be reasonable and proper and not in violation of law. Any such trust agreement may set forth the rights and remedies of the bond owners and of the trustee and may restrict the individual right of action by bond owners as is customary in trust agreements or trust indentures. [1983 c 216 § 11.]

**35.97.120 Revenue warrants.** Revenue warrants may be issued and such warrants and interest thereon may be payable out of the special fund or refunded through the proceeds of the sale of refunding revenue warrants or revenue bonds. Every revenue warrant and the interest thereon issued against the special fund is a valid claim of the owner thereof only as against that fund and the amount of revenue pledged to the fund, and does not constitute an indebtedness of the authorized municipality. Every revenue warrant shall state on its

face that it is payable from a special fund, naming it and the ordinance or resolution creating it. [1983 c 216 § 12.]

**35.97.130 Revenue bonds and warrants—Holder may enforce.** If a municipality fails to set aside and pay into the special fund created for the payment of revenue bonds and warrants the amount which it has obligated itself in the ordinance or resolution creating the fund to set aside and pay therein, the holder of any bond or warrant issued against the bond may bring suit against the municipality to compel it to do so. [1983 c 216 § 13.]

**35.97.900 Severability—1983 c 216.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 216 § 15.]

## Chapter 35.98 RCW CONSTRUCTION

### Sections

35.98.010	Continuation of existing law.
35.98.020	Title, chapter, section headings not part of law.
35.98.030	Invalidity of part of title not to affect remainder.
35.98.040	Repeals and saving.
35.98.050	Emergency—1965 c 7.

**35.98.010 Continuation of existing law.** The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1965 c 7 § 35.98.010.]

**35.98.020 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1965 c 7 § 35.98.020.]

**35.98.030 Invalidity of part of title not to affect remainder.** If any provision, section, or chapter of this title or its application to any person or circumstance is held invalid, the remainder of the provision, section, chapter, or title, or the application thereof to other persons or circumstances is not affected. [1965 c 7 § 35.98.030.]

**35.98.040 Repeals and saving.** See 1965 c 7 § 35.98.040.

**35.98.050 Emergency—1965 c 7.** This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing institutions and shall take effect immediately. [1965 c 7 § 35.98.050.]

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## Chapter 35.99 RCW

### TELECOMMUNICATIONS, CABLE TELEVISION SERVICE—USE OF RIGHT OF WAY

#### Sections

35.99.010	Definitions.
35.99.020	Permits for use of right of way.
35.99.030	Master, use permits—Injunctive relief—Notice—Service providers' duties.
35.99.040	Local regulations, ordinances—Limitations.
35.99.050	Personal wireless services—Limitations on moratoria—Dispute resolution.
35.99.060	Relocation of facilities—Notice—Reimbursement.
35.99.070	Additional ducts or conduits—City or town may require.
35.99.080	Existing franchises or contracts not preempted.

**35.99.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Cable television service" means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

(2) "Facilities" means all of the plant, equipment, fixtures, appurtenances, antennas, and other facilities necessary to furnish and deliver telecommunications services and cable television services, including but not limited to poles with crossarms, poles without crossarms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to the distribution and use of telecommunications services and cable television services.

(3) "Master permit" means the agreement in whatever form whereby a city or town may grant general permission to a service provider to enter, use, and occupy the right of way for the purpose of locating facilities. This definition is not intended to limit, alter, or change the extent of the existing authority of a city or town to require a franchise nor does it change the status of a service provider asserting an existing statewide grant based on a predecessor telephone or telegraph company's existence at the time of the adoption of the Washington state Constitution to occupy the right of way. For the purposes of this subsection, a franchise, except for a cable television franchise, is a master permit. A master permit does not include cable television franchises.

(4) "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(5) "Right of way" means land acquired or dedicated for public roads and streets, but does not include:

- (a) State highways;
- (b) Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public;
- (c) Structures, including poles and conduits, located within the right of way;
- (d) Federally granted trust lands or forest board trust lands;
- (e) Lands owned or managed by the state parks and recreation commission; or

(f) Federally granted railroad rights of way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use.

(6) "Service provider" means every corporation, company, association, joint stock association, firm, partnership, person, city, or town owning, operating, or managing any facilities used to provide and providing telecommunications or cable television service for hire, sale, or resale to the general public. Service provider includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, person, city, or town.

(7) "Telecommunications service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this subsection, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this chapter, telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals.

(8) "Use permit" means the authorization in whatever form whereby a city or town may grant permission to a service provider to enter and use the specified right of way for the purpose of installing, maintaining, repairing, or removing identified facilities. [2000 c 83 § 1.]

**35.99.020 Permits for use of right of way.** A city or town may grant, issue, or deny permits for the use of the right of way by a service provider for installing, maintaining, repairing, or removing facilities for telecommunications services or cable television services pursuant to ordinances, consistent with chapter 83, Laws of 2000. [2000 c 83 § 2.]

**35.99.030 Master, use permits—Injunctive relief—Notice—Service providers' duties.** (1) Cities and towns may require a service provider to obtain a master permit. A city or town may request, but not require, that a service provider with an existing statewide grant to occupy the right of way obtain a master permit for wireline facilities.

(a) The procedures for the approval of a master permit and the requirements for a complete application for a master permit shall be available in written form.

(b) Where a city or town requires a master permit, the city or town shall act upon a complete application within one hundred twenty days from the date a service provider files the complete application for the master permit to use the right of way, except:

- (i) With the agreement of the applicant; or
- (ii) Where the master permit requires action of the legislative body of the city or town and such action cannot reasonably be obtained within the one hundred twenty day period.

(2) A city or town may require that a service provider obtain a use permit. A city or town must act on a request for a use permit by a service provider within thirty days of receipt of a completed application, unless a service provider consents to a different time period or the service provider has not obtained a master permit requested by the city or town.

(a) For the purpose of this section, "act" means that the city makes the decision to grant, condition, or deny the use permit, which may be subject to administrative appeal, or

notifies the applicant in writing of the amount of time that will be required to make the decision and the reasons for this time period.

(b) Requirements otherwise applicable to holders of master permits shall be deemed satisfied by a holder of a cable franchise in good standing.

(c) Where the master permit does not contain procedures to expedite approvals and the service provider requires action in less than thirty days, the service provider shall advise the city or town in writing of the reasons why a shortened time period is necessary and the time period within which action by the city or town is requested. The city or town shall reasonably cooperate to meet the request where practicable.

(d) A city or town may not deny a use permit to a service provider with an existing statewide grant to occupy the right of way for wireline facilities on the basis of failure to obtain a master permit.

(3) The reasons for a denial of a master permit shall be supported by substantial evidence contained in a written record. A service provider adversely affected by the final action denying a master permit, or by an unreasonable failure to act on a master permit as set forth in subsection (1) of this section, may commence an action within thirty days to seek relief, which shall be limited to injunctive relief.

(4) A service provider adversely affected by the final action denying a use permit may commence an action within thirty days to seek relief, which shall be limited to injunctive relief. In any appeal of the final action denying a use permit, the standard for review and burden of proof shall be as set forth in RCW 36.70C.130.

(5) A city or town shall:

(a) In order to facilitate the scheduling and coordination of work in the right of way, provide as much advance notice as reasonable of plans to open the right of way to those service providers who are current users of the right of way or who have filed notice with the clerk of the city or town within the past twelve months of their intent to place facilities in the city or town. A city is not liable for damages for failure to provide this notice. Where the city has failed to provide notice of plans to open the right of way consistent with this subsection, a city may not deny a use permit to a service provider on the basis that the service provider failed to coordinate with another project.

(b) Have the authority to require that facilities are installed and maintained within the right of way in such a manner and at such points so as not to inconvenience the public use of the right of way or to adversely affect the public health, safety, and welfare.

(6) A service provider shall:

(a) Obtain all permits required by the city or town for the installation, maintenance, repair, or removal of facilities in the right of way;

(b) Comply with applicable ordinances, construction codes, regulations, and standards subject to verification by the city or town of such compliance;

(c) Cooperate with the city or town in ensuring that facilities are installed, maintained, repaired, and removed within the right of way in such a manner and at such points so as not to inconvenience the public use of the right of way or to adversely affect the public health, safety, and welfare;

(d) Provide information and plans as reasonably necessary to enable a city or town to comply with subsection (5) of this section, including, when notified by the city or town, the provision of advance planning information pursuant to the procedures established by the city or town;

(e) Obtain the written approval of the facility or structure owner, if the service provider does not own it, prior to attaching to or otherwise using a facility or structure in the right of way;

(f) Construct, install, operate, and maintain its facilities at its expense; and

(g) Comply with applicable federal and state safety laws and standards.

(7) Nothing in this section shall be construed as:

(a) Creating a new duty upon city [cities] or towns to be responsible for construction of facilities for service providers or to modify the right of way to accommodate such facilities;

(b) Creating, expanding, or extending any liability of a city or town to any third-party user of facilities or third-party beneficiary; or

(c) Limiting the right of a city or town to require an indemnification agreement as a condition of a service provider's facilities occupying the right of way.

(8) Nothing in this section creates, modifies, expands, or diminishes a priority of use of the right of way by a service provider or other utility, either in relation to other service providers or in relation to other users of the right of way for other purposes. [2000 c 83 § 3.]

**35.99.040 Local regulations, ordinances—Limitations.** (1) A city or town shall not adopt or enforce regulations or ordinances specifically relating to use of the right of way by a service provider that:

(a) Impose requirements that regulate the services or business operations of the service provider, except where otherwise authorized in state or federal law;

(b) Conflict with federal or state laws, rules, or regulations that specifically apply to the design, construction, and operation of facilities or with federal or state worker safety or public safety laws, rules, or regulations;

(c) Regulate the services provided based upon the content or kind of signals that are carried or are capable of being carried over the facilities, except where otherwise authorized in state or federal law; or

(d) Unreasonably deny the use of the right of way by a service provider for installing, maintaining, repairing, or removing facilities for telecommunications services or cable television services.

(2) Nothing in this chapter, including but not limited to the provisions of subsection (1)(d) of this section, limits the authority of a city or town to regulate the placement of facilities through its local zoning or police power, if the regulations do not otherwise:

(a) Prohibit the placement of all wireless or of all wireline facilities within the city or town;

(b) Prohibit the placement of all wireless or of all wireline facilities within city or town rights of way, unless the city or town is less than five square miles in size and has no commercial areas, in which case the city or town may make available land other than city or town rights of way for the placement of wireless facilities; or

(c) Violate section 253 of the telecommunications act of 1996, P.L. 104-104 (110 Stat. 56).

(3) This section does not amend, limit, repeal, or otherwise modify the authority of cities or towns to regulate cable television services pursuant to federal law. [2000 c 83 § 4.]

**35.99.050 Personal wireless services—Limitations on moratoria—Dispute resolution.** A city or town shall not place or extend a moratorium on the acceptance and processing of applications, permitting, construction, maintenance, repair, replacement, extension, operation, or use of any facilities for personal wireless services, except as consistent with the guidelines for facilities siting implementation, as agreed to on August 5, 1998, by the federal communications commission's local and state government advisory committee, the cellular telecommunications industry association, the personal telecommunications industry association, and the American mobile telecommunications association. Any city or town implementing such a moratorium shall, at the request of a service provider impacted by the moratorium, participate with the service provider in the informal dispute resolution process included with the guidelines for facilities siting implementation. [2000 c 83 § 5.]

**35.99.060 Relocation of facilities—Notice—Reimbursement.** (1) Cities and towns may require service providers to relocate authorized facilities within the right of way when reasonably necessary for construction, alteration, repair, or improvement of the right of way for purposes of public welfare, health, or safety.

(2) Cities shall notify service providers as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. In calculating the date that relocation must be completed, cities shall consult with affected service providers and consider the extent of facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the city's overall project construction sequence and constraints, to safely complete the relocation. Service providers shall complete the relocation by the date specified, unless the city, or a reviewing court, establishes a later date for completion, after a showing by the service provider that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

(3) Service providers may not seek reimbursement for their relocation expenses from the city or town requesting relocation under subsection (1) of this section except:

(a) Where the service provider had paid for the relocation cost of the same facilities at the request of the city or town within the past five years, the service provider's share of the cost of relocation will be paid by the city or town requesting relocation;

(b) Where aerial to underground relocation of authorized facilities is required by the city or town under subsection (1) of this section, for service providers with an ownership share of the aerial supporting structures, the additional incremental cost of underground compared to aerial relocation, or as provided for in the approved tariff if less, will be paid by the city or town requiring relocation; and

(c) Where the city or town requests relocation under subsection (1) of this section solely for aesthetic purposes, unless otherwise agreed to by the parties.

(4) Where a project in subsection (1) of this section is primarily for private benefit, the private party or parties shall reimburse the cost of relocation in the same proportion to their contribution to the costs of the project. Service providers will not be precluded from recovering their costs associated with relocation required under subsection (1) of this section, provided that the recovery is consistent with subsection (3) of this section and other applicable laws.

(5) A city or town may require the relocation of facilities at the service provider's expense in the event of an unforeseen emergency that creates an immediate threat to the public safety, health, or welfare. [2000 c 83 § 6.]

**35.99.070 Additional ducts or conduits—City or town may require.** A city or town may require that a service provider that is constructing, relocating, or placing ducts or conduits in public rights of way provide the city or town with additional duct or conduit and related structures necessary to access the conduit, provided that:

(1) The city or town enters into a contract with the service provider consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the service provider. If the city or town makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing telecommunications or cable television service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the entity that constructed the conduit or duct, shall recover at least the fully allocated costs of the service provider. The service provider shall state both contract rates in the contract. The city or town shall inform the service provider of the use, and any change in use, of the requested duct or conduit and related access structures to determine the applicable rate to be paid by the city or town.

(2) Except as otherwise agreed by the service provider and the city or town, the city or town shall agree that the requested additional duct or conduit space and related access structures will not be used by the city or town to provide telecommunications or cable television service for hire, sale, or resale to the general public.

(3) The city or town shall not require that the additional duct or conduit space be connected to the access structures and vaults of the service provider.

(4) The value of the additional duct or conduit requested by a city or town shall not be considered a public works construction contract.

(5) This section shall not affect the provision of an institutional network by a cable television provider under federal law. [2000 c 83 § 7.]

**35.99.080 Existing franchises or contracts not preempted.** Chapter 83, Laws of 2000 shall not preempt specific provisions in existing franchises or contracts between cities or towns and service providers. [2000 c 83 § 9.]

## Chapter 35.100 RCW

### DOWNTOWN AND NEIGHBORHOOD COMMERCIAL DISTRICTS

#### Sections

35.100.010	Findings—Intent.
35.100.020	Definitions.
35.100.030	Local retail sales and use tax increment revenue—Applications.
35.100.040	Local sales and use tax increment revenue—Authorization of use by legislative authority.
35.100.050	Determination of amount of revenue.
35.100.900	Severability—2002 c 79.

**35.100.010 Findings—Intent.** (1) The legislature finds:

(a) The continued economic vitality of downtown and neighborhood commercial districts in our state's cities is essential to community preservation, social cohesion, and economic growth;

(b) In recent years there has been a deterioration of downtown and neighborhood commercial districts in both rural and urban communities due to a shifting population base, changes in the marketplace, and greater competition from suburban shopping malls, discount centers, and through the internet;

(c) This decline has eroded the ability of businesses and property owners to renovate and enhance their commercial and residential properties;

(d) In many areas of the state, downtown and neighborhood commercial areas are burdened further by deteriorating buildings, vacant building that cannot be legally occupied, and vacant brownfield infill sites which pose significant health and safety problems to tenants and pedestrians, and constitute a significant blight and detrimental impact on the health, safety, and welfare of the community, as well as its economic health;

(e) Business owners in these districts need to maintain their local economies in order to provide goods and services to adjacent residents, to provide employment opportunities, to restore blighted properties, and to avoid disinvestment and economic dislocations, and have developed downtown and neighborhood commercial district revitalization programs to address these problems; and

(f) It is in the best interest of the state of Washington to stop the decay of community areas and to promote and facilitate the orderly redevelopment of these areas.

(2) It is the intent of the legislature to establish a program to:

(a) Provide for the allocation of a portion of locally imposed excise taxes to assist local governments in the financing of needed health and safety improvements, public improvements, and other public investments, to encourage private development and to enhance and revitalize neighborhood business districts and downtown areas; and

(b) Provide technical assistance and training to local governments, business organizations, downtown and neighborhood commercial district organizations, and business and property owners to accomplish community and economic revitalization and development of business districts. [2002 c 79 § 1.]

**35.100.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Local retail sales and use tax" means the tax levied by a city or town under RCW 82.14.030, excluding that portion which a county is entitled to receive under RCW 82.14.030.

(2) "Local retail sales and use tax increment revenue" means that portion of the local retail sales and use tax collected in each year upon any retail sale or any use of an article of tangible personal property within a downtown or neighborhood commercial district that is in excess of the amount of local retail sales and use tax collected on sales or uses within the downtown or neighborhood commercial district in the year preceding.

(3) "Downtown or neighborhood commercial district" means (a) an area or areas designated by the legislative authority of a city or town with a population over one hundred thousand and that are typically limited to the pedestrian core area or the central commercial district and compact business districts that serve specific neighborhoods within the city or town; or (b) commercial areas designated as main street areas by the office of trade and economic development.

(4) "Community revitalization project" means:

(a) Health and safety improvements authorized to be publicly financed under chapter 35.80 or 35.81 RCW;

(b) Publicly owned or leased facilities within the jurisdiction of a local government which the sponsor has authority to provide; and

(c) Expenditure for any of the following purposes:

(i) Providing environmental analysis, professional management, planning, and promotion within a downtown or neighborhood commercial district including the management and promotion of retail trade activities in the district;

(ii) Providing maintenance and security for common or public areas in the downtown or neighborhood commercial district;

(iii) Historic preservation activities authorized under RCW 35.21.395; or

(iv) Project design and planning, land acquisition, site preparation, construction, reconstruction, rehabilitation, improvement, operation, and installation of a public facility; the costs of financing, including interest during construction, legal and other professional services, taxes, and insurance; the costs of complying with this chapter and other applicable law; and the administrative costs reasonably necessary and related to these costs. [2002 c 79 § 2.]

**35.100.030 Local retail sales and use tax increment revenue—Applications.** Local retail sales and use tax increment revenue, or any portion thereof, may be applied as follows:

(1) To pay downtown or neighborhood commercial district community revitalization costs;

(2) To pay into bond redemption funds established to pay the principal and interest on general obligation or revenue bonds issued to finance a downtown or neighborhood commercial district community revitalization project;

(3) In combination with any other public or private funds available to the city or town for the purposes provided in this section; or

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(4) To pay any combination of costs under subsection (1), (2), or (3) of this section. [2002 c 79 § 3.]

**35.100.040 Local sales and use tax increment revenue—Authorization of use by legislative authority.** (1) The legislative authority of a city or town may authorize the use of local sales and use tax increment revenue for any purpose authorized in this chapter within the boundaries of a downtown or one or more neighborhood commercial districts.

(2) Prior to authorizing the use of local sales and use tax increment revenue, the legislative authority must designate the boundaries of each downtown or neighborhood commercial district.

(3) The legislative authority of a city or town may choose to pool the local sales and use tax increment revenue collected in the various downtown and neighborhood commercial districts within the city or town for the purposes authorized in this chapter. [2002 c 79 § 4.]

**35.100.050 Determination of amount of revenue.** A city or town shall determine at its own cost the amount of local sales and use tax increment revenue that may be generated in the downtown and neighborhood commercial districts it designates. The department of revenue may, at its discretion, provide advice or other assistance to cities and towns to assist in determining local sales and use tax increment revenue. [2002 c 79 § 5.]

**35.100.900 Severability—2002 c 79.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2002 c 79 § 6.]

## Chapter 35.101 RCW

### TOURISM PROMOTION AREAS

#### Sections

35.101.010	Definitions.
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35.101.030	Resolution of intention to establish area—Hearing.
35.101.040	Limitations on area included—Interlocal agreements.
35.101.050	Lodging charge—Limitations.
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35.101.080	Establishment of area—Ordinance.
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35.101.100	Local tourism promotion account created.
35.101.110	Charges are in addition to special assessments.
35.101.120	Charges are not a tax on sale of lodging.
35.101.130	Legislative authority has sole discretion concerning use for tourism promotion—Contracts for operation of area.
35.101.140	Disestablishment of area—Hearing—Resolution.

**35.101.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Area" means a tourism promotion area.

(2) "Legislative authority" means the legislative authority of any county with a population greater than forty thousand but less than one million, or of any city or town within such a county, including unclassified cities or towns operating under special charters.

(3) "Lodging business" means a person that furnishes lodging taxable by the state under chapter 82.08 RCW that has forty or more lodging units.

(4) "Tourism promotion" means activities and expenditures designed to increase tourism and convention business, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists, and operating tourism destination marketing organizations. [2003 c 148 § 1.]

**35.101.020 Establishment—Petition.** For the purpose of establishing a tourism promotion area, an initiation petition must be presented to the legislative authority having jurisdiction of the area in which the proposed tourism promotion area is to be located. The initiation petition must include the following:

- (1) A description of the boundaries of the proposed area;
- (2) The proposed uses and projects to which the proposed revenue from the charge shall be put and the total estimated costs;
- (3) The estimated rate for the charge with a proposed breakdown by class of lodging business if such classification is to be used; and
- (4) The signatures of the persons who operate lodging businesses in the proposed area who would pay sixty percent or more of the proposed charges. [2003 c 148 § 2.]

**35.101.030 Resolution of intention to establish area—Hearing.** A legislative authority shall, after receiving a valid initiation petition under RCW 35.101.020, adopt a resolution of intention to establish an area. The resolution must state:

- (1) The time and place of a hearing to be held by the legislative authority to consider the establishment of an area;
- (2) A description of boundaries in the proposed area;
- (3) The proposed area uses and projects to which the proposed revenues from the charge shall be dedicated and the total estimated cost of projects; and
- (4) The estimated rate or rates of the charge with a proposed breakdown of classifications as described in RCW 35.101.050. [2003 c 148 § 3.]

**35.101.040 Limitations on area included—Interlocal agreements.** (1) Except as provided in subsection (2) of this section, no legislative authority may establish a tourism promotion area that includes within the boundaries of the area:

- (a) Any portion of an incorporated city or town, if the legislative authority is that of the county; and
- (b) Any portion of the county outside of an incorporated city or town, if the legislative authority is that of the city or town.

(2) By interlocal agreement adopted pursuant to chapter 39.34 RCW, a county, city, or town may establish a tourism promotion area that includes within the boundaries of the area portions of its own jurisdiction and another jurisdiction, if the other jurisdiction is party to the agreement. [2003 c 148 § 4.]

**35.101.050 Lodging charge—Limitations.** A legislative authority may impose a charge on the furnishing of lodging by a lodging business located in the area.

- (1) There shall not be more than six classifications upon which a charge can be imposed.
- (2) Classifications can be based upon the number of rooms, room revenue, or location within the area.
- (3) Each classification may have its own rate, which shall be expressed in terms of nights of stay.
- (4) In no case may the rate under this section be in excess of two dollars per night of stay. [2003 c 148 § 5.]

**35.101.060 Notice of hearing.** Notice of a hearing held under RCW 35.101.030 shall be given by:

- (1) One publication of the resolution of intention in a newspaper of general circulation in the city or county in which the area is to be established; and
  - (2) Mailing a complete copy of the resolution of intention to each lodging business in the proposed area.
- Publication and mailing shall be completed at least ten days prior to the date and time of the hearing. [2003 c 148 § 6.]

**35.101.070 Conduct of hearing—Termination of proceedings.** Whenever a hearing is held under RCW 35.101.030, the legislative authority shall hear all protests and receive evidence for or against the proposed action. The legislative authority may continue the hearing from time to time. Proceedings shall terminate if protest is made by the lodging businesses in the area which would pay a majority of the proposed charges. [2003 c 148 § 7.]

**35.101.080 Establishment of area—Ordinance.** Only after an initiation petition has been presented to the legislative authority under RCW 35.101.020 and only after the legislative authority has conducted a hearing under RCW 35.101.030, may the legislative authority adopt an ordinance to establish an area. If the legislative authority adopts an ordinance to establish an area, the ordinance shall contain the following information:

- (1) The number, date, and title of the resolution of intention pursuant to which it was adopted;
  - (2) The time and place the hearing was held concerning the formation of the area;
  - (3) The description of the boundaries of the area;
  - (4) The initial or additional rate of charges to be imposed with a breakdown by classification, if such classification is used;
  - (5) A statement that an area has been established; and
  - (6) The uses to which the charge revenue shall be put.
- Uses shall conform to the uses declared in the initiation petition under RCW 35.101.020. [2003 c 148 § 8.]

**35.101.090 Administration, collection of lodging charge.** (1) The charge authorized by this chapter shall be administered by the department of revenue and shall be collected by lodging businesses from those persons who are taxable by the state under chapter 82.08 RCW. Chapter 82.32 RCW applies to the charge imposed under this chapter.

(2) At least seventy-five days prior to the effective date of the resolution or ordinance imposing the charge, the legislative authority shall contract for the administration and collection by the department of revenue.

(3) The charges authorized by this chapter that are collected by the department of revenue shall be deposited by the department in the local tourism promotion account created in RCW 35.101.100. [2003 c 148 § 9.]

**35.101.100 Local tourism promotion account created.** The local tourism promotion account is created in the custody of the state treasurer. All receipts from the charges for tourism promotion must be deposited into this account. Expenditures from the account may only be used for tourism promotion. The state treasurer shall distribute the money in the account on a monthly basis to the legislative authority on whose behalf the money was collected. [2003 c 148 § 10.]

**35.101.110 Charges are in addition to special assessments.** The charges imposed under this chapter are in addition to the special assessments that may be levied under chapter 35.87A RCW. [2003 c 148 § 11.]

**35.101.120 Charges are not a tax on sale of lodging.** The charges imposed under this chapter are not a tax on the "sale of lodging" for the purposes of RCW 82.14.410. [2003 c 148 § 12.]

**35.101.130 Legislative authority has sole discretion concerning use for tourism promotion—Contracts for operation of area.** (1) The legislative authority imposing the charge shall have sole discretion as to how the revenue derived from the charge is to be used to promote tourism. However, the legislative authority may appoint existing advisory boards or commissions to make recommendations as to its use, or the legislative authority may create a new advisory board or commission for the [that] purpose.

(2) The legislative authority may contract with tourism destination marketing organizations or other similar organizations to administer the operation of the area, so long as the administration complies with all applicable provisions of law, including this chapter, and with all county, city, or town resolutions and ordinances, and with all regulations lawfully imposed by the state auditor or other state agencies. [2003 c 148 § 13.]

**35.101.140 Disestablishment of area—Hearing—Resolution.** The legislative authority may disestablish an area by ordinance after a hearing before the legislative authority. The legislative authority shall adopt a resolution of intention to disestablish the area at least fifteen days prior to the hearing required by this section. The resolution shall give the time and place of the hearing. [2003 c 148 § 14.]

## Chapter 35.102 RCW

### MUNICIPAL BUSINESS AND OCCUPATION TAX

#### Sections

35.102.010 Findings—Intent.  
35.102.020 Limited scope.

(2004 Ed.)

35.102.030 Definitions.  
35.102.040 Model ordinance—Mandatory provisions.  
35.102.050 Nexus required.  
35.102.060 Multiple taxation—Credit system.  
35.102.070 Reporting frequency.  
35.102.080 Computation of interest.  
35.102.090 Penalties.  
35.102.100 Claim period.  
35.102.110 Refund period.  
35.102.120 Definitions—Tax classifications.  
35.102.130 Allocation and apportionment of income.  
35.102.1301 Municipal business and occupation tax—Study of potential net fiscal impacts.  
35.102.140 Municipal business and occupation tax—Implementation by cities—Contingent authority.  
35.102.900 Captions not law—2003 c 79.

**35.102.010 Findings—Intent.** The legislature finds that businesses in Washington are concerned about the potential for multiple taxation that arises due to the various city business and occupation taxes and are concerned about the lack of uniformity among city jurisdictions. The current system has a negative impact on Washington's business climate. The legislature further finds that local business and occupation tax revenue provides a sizable portion of city revenue that is used for essential services. The legislature recognizes that local government services contribute to a healthy business climate.

The legislature intends to provide for a more uniform system of city business and occupation taxes that eliminates multiple taxation, while allowing for some continued local control and flexibility to cities. [2003 c 79 § 1.]

**35.102.020 Limited scope.** Chapter 79, Laws of 2003 does not apply to taxes on any service that historically or traditionally has been taxed as a utility business for municipal tax purposes, such as:

- (1) A light and power business or a natural gas distribution business, as defined in RCW 82.16.010;
- (2) A telephone business, as defined in RCW 82.04.065;
- (3) Cable television services;
- (4) Sewer or water services;
- (5) Drainage services;
- (6) Solid waste services; or
- (7) Steam services. [2003 c 79 § 2.]

**35.102.030 Definitions.** The definitions in this section apply throughout chapter 79, Laws of 2003, unless the context clearly requires otherwise.

(1) "Business" has the same meaning as given in chapter 82.04 RCW.

(2) "City" means a city, town, or code city.

(3) "Business and occupation tax" or "gross receipts tax" means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

(4) "Value of products" has the same meaning as given in chapter 82.04 RCW.

(5) "Gross income of the business" has the same meaning as given in chapter 82.04 RCW.

(6) "Gross proceeds of sales" has the same meaning as given in chapter 82.04 RCW. [2003 c 79 § 3.]

**35.102.040 Model ordinance—Mandatory provisions.** (1)(a) The cities, working through the association of Washington cities, shall form a model ordinance development committee made up of a representative sampling of cities that as of July 27, 2003, impose a business and occupation tax. This committee shall work through the association of Washington cities to adopt a model ordinance on municipal gross receipts business and occupation tax. The model ordinance and subsequent amendments shall be adopted using a process that includes opportunity for substantial input from business stakeholders and other members of the public. Input shall be solicited from statewide business associations and from local chambers of commerce and downtown business associations in cities that levy a business and occupation tax.

(b) The municipal research council shall contract to post the model ordinance on an internet web site and to make paper copies available for inspection upon request. The department of revenue and the department of licensing shall post copies of or links to the model ordinance on their internet web sites. Additionally, a city that imposes a business and occupation tax must make copies of its ordinance available for inspection and copying as provided in chapter 42.17 RCW.

(c) The definitions and tax classifications in the model ordinance may not be amended more frequently than once every four years, however the model ordinance may be amended at any time to comply with changes in state law. Any amendment to a mandatory provision of the model ordinance must be adopted with the same effective date by all cities.

(2) A city that imposes a business and occupation tax must adopt the mandatory provisions of the model ordinance. The following provisions are mandatory:

(a) A system of credits that meets the requirements of RCW 35.102.060 and a form for such use;

(b) A uniform, minimum small business tax threshold of at least the equivalent of twenty thousand dollars in gross income annually. A city may elect to deviate from this requirement by creating a higher threshold or exemption but it shall not deviate lower than the level required in this subsection. If a city has a small business threshold or exemption in excess of that provided in this subsection as of January 1, 2003, and chooses to deviate below the threshold or exemption level that was in place as of January 1, 2003, the city must notify all businesses licensed to do business within the city at least one hundred twenty days prior to the potential implementation of a lower threshold or exemption amount;

(c) Tax reporting frequencies that meet the requirements of RCW 35.102.070;

(d) Penalty and interest provisions that meet the requirements of RCW 35.102.080 and 35.102.090;

(e) Claim periods that meet the requirements of RCW 35.102.100;

(f) Refund provisions that meet the requirements of RCW 35.102.110; and

(g) Definitions, which at a minimum, must include the definitions enumerated in RCW 35.102.030 and 35.102.120. The definitions in chapter 82.04 RCW shall be used as the baseline for all definitions in the model ordinance, and any deviation in the model ordinance from these definitions must be described by a comment in the model ordinance.

(3) Except for the system of credits developed to address multiple taxation under subsection (2)(a) of this section, a city may adopt its own provisions for tax exemptions, tax credits, and tax deductions.

(4) Any city that adopts an ordinance that deviates from the nonmandatory provisions of the model ordinance shall make a description of such differences available to the public, in written and electronic form. [2003 c 79 § 4.]

**35.102.050 Nexus required.** A city may not impose a business and occupation tax on a person unless that person has nexus with the city. For the purposes of this section, the term "nexus" means business activities conducted by a person sufficient to subject that person to the taxing jurisdiction of a city under the standards established for interstate commerce under the commerce clause of the United States Constitution. [2003 c 79 § 5.]

**35.102.060 Multiple taxation—Credit system.** (1) A city that imposes a business and occupation tax shall provide for a system of credits to avoid multiple taxation as follows:

(a) Persons who engage in business activities that are within the purview of more than one classification of the tax shall be taxable under each applicable classification.

(b) Notwithstanding anything to the contrary in this section, if imposition of the tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit only to the extent necessary to preserve the validity of the tax.

(c) Persons taxable under the retailing or wholesaling classification with respect to selling products in a city shall be allowed a credit against those taxes for any eligible gross receipts taxes paid by the person (i) with respect to the manufacturing of the products sold in the city, and (ii) with respect to the extracting of the products, or the ingredients used in the products, sold in the city. The amount of the credit shall not exceed the tax liability arising with respect to the sale of those products.

(d) Persons taxable under the manufacturing classification with respect to manufacturing products in a city shall be allowed a credit against that tax for any eligible gross receipts tax paid by the person with respect to extracting the ingredients of the products manufactured in the city and with respect to manufacturing the products other than in the city. The amount of the credit shall not exceed the tax liability arising with respect to the manufacturing of those products.

(e) Persons taxable under the retailing or wholesaling classification with respect to selling products in a city shall be allowed a credit against those taxes for any eligible gross receipts taxes paid by the person with respect to the printing, or the printing and publishing, of the products sold within the city. The amount of the credit shall not exceed the tax liability arising with respect to the sale of those products.

(2) The model ordinance shall be drafted to address the issue of multiple taxation for those tax classifications that are in addition to those enumerated in subsection (1)(c) through (e) of this section. The objective of any such provisions shall be to eliminate multiple taxation of the same income by two or more cities. [2003 c 79 § 6.]

**35.102.070 Reporting frequency.** A city that imposes a business and occupation tax shall allow reporting and payment of tax on a monthly, quarterly, or annual basis. The frequency for any particular person may be assigned at the discretion of the city, except that monthly reporting may be assigned only if it can be demonstrated that the taxpayer is remitting excise tax to the state on a monthly basis. For persons assigned a monthly frequency, payment is due within the same time period provided for monthly taxpayers under RCW 82.32.045. For persons assigned a quarterly or annual frequency, payment is due within the same time period as provided for quarterly or annual frequency under RCW 82.32.045. [2003 c 79 § 7.]

**35.102.080 Computation of interest.** (1) A city that imposes a business and occupation tax shall compute interest charged a taxpayer on an underpaid tax or penalty in accordance with RCW 82.32.050.

(2) A city that imposes a business and occupation tax shall compute interest paid on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060. [2003 c 79 § 8.]

**35.102.090 Penalties.** A city that imposes a business and occupation tax shall provide for the imposition of penalties in accordance with chapter 82.32 RCW. [2003 c 79 § 9.]

**35.102.100 Claim period.** The provisions relating to the time period allowed for an assessment or correction of an assessment for additional taxes, penalties, or interest shall be in accordance with chapter 82.32 RCW. [2003 c 79 § 10.]

**35.102.110 Refund period.** The provisions relating to the time period allowed for a refund of taxes paid shall be in accordance with chapter 82.32 RCW. [2003 c 79 § 11.]

**35.102.120 Definitions—Tax classifications.** (1) In addition to the definitions in RCW 35.102.030, the following terms and phrases must be defined in the model ordinance under RCW 35.102.040, and such definitions shall include any specific requirements as noted in this subsection:

- (a) Eligible gross receipts tax.
- (b) Extracting.
- (c) Manufacturing. Software development may not be defined as a manufacturing activity.
- (d) Retailing.
- (e) Retail sale.
- (f) Services. The term "services" excludes retail or wholesale services.
- (g) Wholesale sale.
- (h) Wholesaling.
- (i) To manufacture.
- (j) Commercial and industrial use.
- (k) Engaging in business.
- (l) Person.

(2) Any tax classifications in addition to those enumerated in subsection (1) of this section that are included in the model ordinance must be uniform among all cities. [2003 c 79 § 12.]

(2004 Ed.)

**35.102.130 Allocation and apportionment of income.** (*Effective January 1, 2008.*) A city that imposes a business and occupation tax shall provide for the allocation and apportionment of a person's gross income, other than persons subject to the provisions of chapter 82.14A RCW, as follows:

(1) Gross income derived from all activities other than those taxed as service or royalties shall be allocated to the location where the activity takes place.

(a) In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

(b) If a business activity allocated under this subsection (1) takes place in more than one city and all cities impose a gross receipts tax, a credit shall be allowed as provided in RCW 35.102.060; if not all of the cities impose a gross receipts tax, the affected cities shall allow another credit or allocation system as they and the taxpayer agree.

(2) Gross income derived as royalties from the granting of intangible rights shall be allocated to the commercial domicile of the taxpayer.

(3) Gross income derived from activities taxed as services shall be apportioned to a city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

(a) The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

- (i) The individual is primarily assigned within the city;
- (ii) The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of his or her service for the tax period in the city; or

(iii) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of his or her service in any city[,] and the employee resides in the city.

(b) The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if:

- (i) The customer location is in the city; or
- (ii) The income-producing activity is performed in more than one location and a greater proportion of the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or

(iii) The service-income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.

(c) If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business, the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:

- (i) Separate accounting;

(ii) The use of a single factor;  
 (iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(4) The definitions in this subsection apply throughout this section.

(a) "Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

(b) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.

(c) "Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(d) "Customer location" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

(e) "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

(f) "Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.

(g) "Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

(h) "Taxable in the customer location" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so. [2003 c 79 § 13.]

**Effective date—2003 c 79 § 13:** "Section 13 of this act takes effect January 1, 2008." [2003 c 79 § 19.]

**35.102.1301 Municipal business and occupation tax—Study of potential net fiscal impacts.** (1) The department of revenue shall conduct a study of the net fiscal impacts of chapter 79, Laws of 2003, with particular emphasis on the revenue impacts of the apportionment and allocation method contained in RCW 35.102.130 and any revenue impact resulting from the increased uniformity and consistency provided through the model ordinance. In conducting the study, the department shall use, and regularly consult with, a committee composed of an equal representation from interested business representatives and from a representative sampling of cities imposing business and occupation taxes.

The department shall report the final results of the study to the governor and the fiscal committees of the legislature by November 30, 2005. In addition, the department shall provide progress reports to the governor and the fiscal committees of the legislature on November 30, 2003, and November 30, 2004. As part of its report, the department shall examine and recommend options to address any adverse revenue impacts to local jurisdictions.

(2) For the purposes of this section, "net fiscal impacts" means accounting for the potential of both positive and negative fiscal impacts on local jurisdictions that may result from chapter 79, Laws of 2003.

(3) It is the intent of the legislature through this study to provide accurate fiscal impact analysis and recommended options to alleviate revenue impacts from chapter 79, Laws of 2003 so as to allow local jurisdictions to anticipate and appropriately address any potential adverse revenue impacts from chapter 79, Laws of 2003. [2003 c 79 § 15.]

**35.102.140 Municipal business and occupation tax—Implementation by cities—Contingent authority.** Cities imposing business and occupation taxes must comply with all requirements of RCW 35.102.020 through 35.102.130 by December 31, 2004. A city that has not complied with the requirements of RCW 35.102.020 through 35.102.130 by December 31, 2004, may not impose a tax that is imposed by a city on the privilege of engaging in business activities. Cities imposing business and occupation taxes after December 31, 2004, must comply with RCW 35.102.020 through 35.102.130. [2003 c 79 § 14.]

**35.102.900 Captions not law—2003 c 79.** Captions used in this act are not any part of the law. [2003 c 79 § 17.]

# Title 35A

## OPTIONAL MUNICIPAL CODE

### Chapters

- 35A.01 Interpretation of terms.
- 35A.02 Procedure for incorporated municipality to become a noncharter code city.
- 35A.03 Incorporation as noncharter code city.
- 35A.05 Consolidation of code cities.
- 35A.06 Adoption and abandonment of noncharter code city classification or plan of government.
- 35A.07 Procedure for city operating under charter to become a charter code city.
- 35A.08 Procedure for adoption of charter as charter code city.
- 35A.09 Amendment or revision of charters of charter code cities.
- 35A.10 Adoption and abandonment of charter code city classification.
- 35A.11 Laws governing noncharter code cities and charter code cities—Powers.
- 35A.12 Mayor-council plan of government.
- 35A.13 Council-manager plan of government.
- 35A.14 Annexation by code cities.
- 35A.15 Disincorporation.
- 35A.16 Reduction of city limits.
- 35A.21 Provisions affecting all code cities.
- 35A.24 Aeronautics.
- 35A.27 Libraries, museums and historical activities.
- 35A.28 Schools.
- 35A.29 Municipal elections in code cities.
- 35A.31 Accident claims and funds.
- 35A.33 Budgets in code cities.
- 35A.34 Biennial budgets.
- 35A.35 Intergovernmental relations.
- 35A.36 Execution of bonds by proxy in code cities.
- 35A.37 Funds, special purpose.
- 35A.38 Emergency services.
- 35A.39 Public documents and records.
- 35A.40 Fiscal provisions applicable to code cities.
- 35A.41 Public employment.
- 35A.42 Public officers and agencies, meetings, duties and powers.
- 35A.43 Local improvements in code cities.
- 35A.44 Census.
- 35A.46 Motor vehicles.
- 35A.47 Highways and streets.
- 35A.49 Labor and safety regulations.
- 35A.56 Local service districts.
- 35A.57 Inclusion of code cities in metropolitan municipal corporations.
- 35A.58 Boundaries and plats.
- 35A.60 Liens.
- 35A.63 Planning and zoning in code cities.
- 35A.64 Public property, real and personal.
- 35A.65 Publication and printing.
- 35A.66 Health and safety—Alcohol.
- 35A.67 Recreation and parks.
- 35A.68 Cemeteries and morgues.
- 35A.69 Food and drug.
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- 35A.74 Welfare.
- 35A.79 Property and materials.
- 35A.80 Public utilities.
- 35A.81 Public transportation.
- 35A.82 Taxation—Excises.
- 35A.84 Taxation—Property.
- 35A.88 Harbors and navigation.
- 35A.90 Construction.

*Acquisition of open space, land, or rights to future development by counties, cities, or metropolitan municipal corporations, tax levy: RCW 84.34.200 through 84.34.240, 84.52.010. See also RCW 64.04.130.*

*Boundary review board, extension of water and sewer service beyond corporate boundaries to go before: RCW 36.93.090.*

*Credit card use by local governments: RCW 43.09.2855.*

*Labor relations consultants: RCW 43.09.230.*

*Local adopt-a-highway programs: RCW 47.40.105.*

*Municipal business and occupation tax: Chapter 35.102 RCW.*

*Pollution control—Municipal bonding authority: Chapter 70.95A RCW.*

*Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.*

*School districts agreements with other governmental entities for transportation of students or the public or for other noncommon school purposes—Limitations: RCW 28A.160.120.*

*Senior citizens programs—Authorization to establish and administer: RCW 36.39.060.*

*Tourism promotion areas: Chapter 35.101 RCW.*

### Chapter 35A.01 RCW

#### INTERPRETATION OF TERMS

##### Sections

- 35A.01.010 Purpose and policy of this title—Interpretation.
- 35A.01.020 Noncharter code city.
- 35A.01.030 Charter code city.
- 35A.01.035 Code city.
- 35A.01.040 Sufficiency of petitions.
- 35A.01.050 The general law.
- 35A.01.060 Optional municipal code—This title.
- 35A.01.070 Definitions—Change of plan or classification of municipal government.
- 35A.01.080 "Councilman" defined.

**35A.01.010 Purpose and policy of this title—Interpretation.** The purpose and policy of this title is to confer upon two optional classes of cities created hereby the broadest powers of local self-government consistent with the Constitution of this state. Any specific enumeration of municipal powers contained in this title or in any other general law shall not be construed in any way to limit the general description of power contained in this title, and any such specifically enumerated powers shall be construed as in addition and supplementary to the powers conferred in general terms by this title. All grants of municipal power to municipalities electing to be governed under the provisions of this title, whether the grant is in specific terms or in general terms, shall be liberally construed in favor of the municipality. [1967 ex.s. c 119 § 35A.01.010.]

**35A.01.020 Noncharter code city.** A noncharter code city is one, regardless of population, which has initially incorporated as a noncharter code city, subject to the provisions of this title, or is an incorporated municipality which has elected, under the procedure prescribed in this title, to be classified as a noncharter code city and to be governed according to the provisions of this title under one of the optional forms of government provided for noncharter code cities. [1967 ex.s. c 119 § 35A.01.020.]

**35A.01.030 Charter code city.** A charter code city is one having at least ten thousand inhabitants at the time of its organization or reorganization which has either initially incorporated as a charter code city and has adopted a charter under the procedure prescribed in this title; or which, as an incorporated municipality, has elected to be classified as a charter code city and to be governed according to the provisions of this title and of its adopted charter. [1967 ex.s. c 119 § 35A.01.030.]

**35A.01.035 Code city.** The term "code city" means any noncharter code city or charter code city. [1967 ex.s. c 119 § 35A.01.035.]

**35A.01.040 Sufficiency of petitions.** Wherever in this title petitions are required to be signed and filed, the following rules shall govern the sufficiency thereof:

(1) A petition may include any page or group of pages containing an identical text or prayer intended by the circulators, signers or sponsors to be presented and considered as one petition and containing the following essential elements when applicable, except that the elements referred to in (d) and (e) of this subsection are essential for petitions referring or initiating legislative matters to the voters, but are directory as to other petitions:

(a) The text or prayer of the petition which shall be a concise statement of the action or relief sought by petitioners and shall include a reference to the applicable state statute or city ordinance, if any;

(b) If the petition initiates or refers an ordinance, a true copy thereof;

(c) If the petition seeks the annexation, incorporation, withdrawal, or reduction of an area for any purpose, an accurate legal description of the area proposed for such action and if practical, a map of the area;

(d) Numbered lines for signatures with space provided beside each signature for the name and address of the signer and the date of signing;

(e) The warning statement prescribed in subsection (2) of this section.

(2) Petitions shall be printed or typed on single sheets of white paper of good quality and each sheet of petition paper having a space thereon for signatures shall contain the text or prayer of the petition and the following warning:

#### WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal

voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the name and address of the signer and the date of signing.

(3) The term "signer" means any person who signs his or her own name to the petition.

(4) To be sufficient a petition must contain valid signatures of qualified registered voters or property owners, as the case may be, in the number required by the applicable statute or ordinance. Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters, or to the county assessor for petitions signed by property owners for determination of sufficiency. The officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness and shall file with the officer receiving the petition for filing a certificate stating the date upon which such determination was begun, which date shall be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the appropriate filing officer prior to such terminal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the receiving officer prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and the petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn.

(5) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(6) A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(7) Signatures, including the original, of any person who has signed a petition two or more times shall be stricken.

(8) Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken.

(9) When petitions are required to be signed by the owners of property, the determination shall be made by the county assessor. Where validation of signatures to the petition is required, the following shall apply:

(a) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse;

(b) In the case of mortgaged property, the signature of the mortgagor shall be sufficient, without the signature of his or her spouse;

(c) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of

the county auditor, shall be deemed sufficient, without the signature of his or her spouse;

(d) Any officer of a corporation owning land within the area involved who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign on behalf of such corporation, and shall attach to the petition a certified excerpt from the bylaws of such corporation showing such authority;

(e) When property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property; and

(f) When a parcel of property is owned by multiple owners, the signature of an owner designated by the multiple owners is sufficient.

(10) The officer or officers responsible for determining the sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed. [2003 c 331 § 9; 1996 c 286 § 7; 1985 c 281 § 26; 1967 ex.s. c 119 § 35A.01.040.]

**Intent—Severability—Effective date—2003 c 331:** See notes following RCW 35.13.410.

**Severability—1985 c 281:** See RCW 35.10.905.

**35A.01.050 The general law.** For the purposes of this optional municipal code, "the general law" means any provision of state law, not inconsistent with this title, enacted before or after the enactment of this title, which is by its terms applicable or available to all cities or towns. Except when expressly provided to the contrary, whenever in this optional municipal code reference is made to "the general law", or to specific provisions of the Revised Code of Washington, it shall mean "the general law, or such specific provisions of the Revised Code of Washington as now enacted or as the same may hereafter be amended". [1967 ex.s. c 119 § 35A.01.050.]

**35A.01.060 Optional municipal code—This title.** References contained in this title to "Optional Municipal Code", "this title", "this code" or to any specific chapter, section, or provision thereof shall refer to the whole or appropriate part of Title 35A RCW, as now or hereafter amended. [1967 ex.s. c 119 § 35A.01.060.]

**35A.01.070 Definitions—Change of plan or classification of municipal government.** Where used in this title with reference to procedures established by this title in regard to a change of plan or classification of government, unless a different meaning is plainly required by the context:

(1) "Classify" means a change from a city of the first or second class, an unclassified city, or a town, to a code city.

(2) "Classification" means either that portion of the general law under which a city or a town operates under Title 35 RCW as a first or second class city, unclassified city, or town, or otherwise as a code city.

(3) "Organize" means to provide for officers after becoming a code city, under the same general plan of government under which the city operated prior to becoming a code city, pursuant to RCW 35A.02.055.

(2004 Ed.)

(4) "Organization" means the general plan of government under which a city operates.

(5) "Plan of government" means a mayor-council form of government under chapter 35A.12 RCW, council-manager form of government under chapter 35A.13 RCW, or a mayor-council, council-manager, or commission form of government in general that is retained by a noncharter code city as provided in RCW 35A.02.130, without regard to variations in the number of elective offices or whether officers are elective or appointive.

(6) "Reclassify" means changing from a code city to the classification, if any, held by such a city immediately prior to becoming a code city.

(7) "Reclassification" means changing from city or town operating under Title 35 RCW to a city operating under Title 35A RCW, or vice versa; a change in classification.

(8) "Reorganize" means changing the plan of government under which a city or town operates to a different general plan of government. A city or town shall not be deemed to have reorganized simply by increasing or decreasing the number of members of its legislative body.

(9) "Reorganization" means a change in general plan of government under which a city operates, but an increase or decrease in the number of members of its legislative body shall not be deemed to constitute a reorganization. [2001 c 33 § 1. Prior: 1994 c 223 § 24; 1994 c 81 § 66; 1979 ex.s. c 18 § 1.]

**Severability—1979 ex.s. c 18:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 18 § 36.]

**35A.01.080 "Councilman" defined.** As used in this title, the term "councilman" or "councilmen" means councilmember or councilmembers. [1981 c 213 § 2.]

**Chapter 35A.02 RCW**

**PROCEDURE FOR INCORPORATED MUNICIPALITY TO BECOME A NONCHARTER CODE CITY**

Sections

- 35A.02.010 Adoption of noncharter code city classification authorized.
- 35A.02.020 Petition method—Direct.
- 35A.02.025 Referendum.
- 35A.02.030 Resolution method.
- 35A.02.035 Referendum.
- 35A.02.040 Certification of ordinance—Transcript of record to secretary of state.
- 35A.02.050 Election of new officers.
- 35A.02.055 Election of new officers—Exception where same general plan of government is retained.
- 35A.02.060 Petition for election.
- 35A.02.070 Resolution for election.
- 35A.02.080 Election of officers upon approval of plan of government by voters.
- 35A.02.090 Alternative plan of government.
- 35A.02.120 Effective date of reclassification and reorganization.
- 35A.02.130 Adoption of classification of noncharter code city without change of governmental plan.
- 35A.02.140 Petition or resolution pending—Restriction—Exception.

*Incorporation subject to approval by boundary review board: RCW 36.93.090.*

**35A.02.010 Adoption of noncharter code city classification authorized.** Any incorporated city or town may

become a noncharter code city in accordance with, and be governed by, the provisions of this title relating to noncharter code cities and may select one of the plans of government authorized by this title. A city or town adopting and organizing under the optional municipal code shall not be deemed to have reorganized and to have abandoned its existing general plan of government, upon changing classification and becoming a noncharter code city, solely because organizing under a plan of government authorized in this title changes the number of elective offices or changes the terms thereof, or because an office becomes appointive rather than elective, or because that city or town has come under the optional municipal code, or because of any combination of these factors. [1979 ex.s. c 18 § 2; 1967 ex.s. c 119 § 35A.02.010.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.02.020 Petition method—Direct.** When a petition is filed, signed by registered voters of an incorporated city or town, in number equal to not less than fifty percent of the votes cast at the last general municipal election, seeking the adoption by the city or town of the classification of noncharter code city, either under its existing authorized plan of government or naming one of the plans of government authorized for noncharter code cities, the county auditor shall promptly proceed to determine the sufficiency of the petition under the rules set forth in RCW 35A.01.040. If the petition is found to be sufficient, the county auditor shall file with the legislative body a certificate of sufficiency of the petition. Thereupon the legislative body of such city or town shall, by resolution, declare that the inhabitants of the city or town have decided to adopt the classification of noncharter code city and to be governed under the provisions of this title. If a prayer for reorganization is included in the petition such resolution shall also declare that the inhabitants of the city or town have decided to reorganize under the plan of government specified in the petition. The legislative body shall cause such resolution to be published at least once in a newspaper of general circulation within the city or town not later than ten days after the passage of the resolution. Upon the expiration of the ninetieth day from, but excluding the date of, first publication of the resolution, if no timely and sufficient referendum petition has been filed pursuant to RCW 35A.02.025, as now or hereafter amended, as determined by RCW 35A.29.170, the legislative body at its next regular meeting shall effect the decision of the inhabitants, as expressed in the petition, by passage of an ordinance adopting for the city the classification of noncharter code city, and if the petition also sought governmental reorganization by adoption of one of the plans of government authorized for noncharter code cities involving a different general plan of government from that under which the city is operating, then the legislative body shall provide at that time for such reorganization by ordinance and for election of all new officers pursuant to RCW 35A.02.050, as now or hereafter amended. [1990 c 259 § 2; 1979 ex.s. c 18 § 3; 1967 ex.s. c 119 § 35A.02.020.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.02.025 Referendum.** Upon the filing of a referendum petition in the manner provided in RCW 35A.29.170

signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general municipal election, such resolution as authorized by RCW 35A.02.020 shall be referred to the voters for confirmation or rejection in the next general municipal election if one is to be held within one hundred and eighty days from the date of filing of the referendum petition, or at a special election to be called for that purpose in accordance with \*RCW 29.13.020. [1979 ex.s. c 18 § 4; 1967 ex.s. c 119 § 35A.02.025.]

**\*Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.02.030 Resolution method.** When a majority of the legislative body of an incorporated city or town determines that it would serve the best interests and general welfare of such municipality to change the classification of such city or town to that of noncharter code city, such legislative body may, by resolution, declare its intention to adopt for the city or town the classification of noncharter code city. If the legislative body so determines, such resolution may also contain a declaration of intention to reorganize the municipal government under one of the plans of government authorized in this title, naming such plan; but it shall also be lawful for the legislative body of any incorporated city or town which is governed under a plan of government authorized prior to the time this title takes effect to adopt for the city or town the classification of noncharter code city while retaining the same general plan of government under which such city or town is then operating. Within ten days after the passage of the resolution, the legislative body shall cause it to be published at least once in a newspaper of general circulation within the city or town. Upon the expiration of the ninetieth day from, but excluding the date of first publication of the resolution, if no timely and sufficient referendum petition has been filed pursuant to RCW 35A.02.035, as determined by RCW 35A.29.170, the intent expressed in such resolution shall at the next regular meeting of the legislative body be effected by an ordinance adopting for the city or town the classification of noncharter code city; and, if the resolution includes a declaration of intention to reorganize, the legislative body shall provide at that time for such reorganization by ordinance. [1979 ex.s. c 18 § 5; 1967 ex.s. c 119 § 35A.02.030.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.02.035 Referendum.** Upon the filing of a referendum petition in the manner provided in RCW 35A.29.170 signed by qualified electors of an incorporated city or town in number equal to not less than ten percent of the votes cast in the last general municipal election, such resolution shall be referred for approval or rejection by the voters at an election as specified in RCW 35A.02.025. [1967 ex.s. c 119 § 35A.02.035.]

**35A.02.040 Certification of ordinance—Transcript of record to secretary of state.** When one or more ordinances are passed under RCW 35A.02.020 or 35A.02.030, as now or hereafter amended, the clerk of the city or town shall forward to the secretary of state a certified copy of any such

ordinance. Upon the filing in the office of the secretary of state of a certified copy of an ordinance adopting the classification of noncharter code city, such city or town shall thereafter be classified as a noncharter code city; except that if there is also filed with the secretary of state a certified copy of an ordinance providing for reorganization of the municipal government of such city or town under a different general plan of government, such reclassification and reorganization shall not be effective until the election, qualification, and assumption of office under RCW 35A.02.050 as now or hereafter amended of at least a quorum of all new officers under the plan of government so adopted. [1979 ex.s. c 18 § 6; 1970 ex.s. c 52 § 1; 1967 ex.s. c 119 § 35A.02.040.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.02.050 Election of new officers.** The first election of officers where required for reorganization under a different general plan of government newly adopted in a manner provided in RCW 35A.02.020, 35A.02.030, 35A.06.030, or 35A.06.060, as now or hereafter amended, shall be at the next general municipal election if one is to be held more than ninety days but not more than one hundred and eighty days after certification of a reorganization ordinance or resolution, or otherwise at a special election to be held for that purpose in accordance with \*RCW 29.13.020. In the event that the first election of officers is to be held at a general municipal election, such election shall be preceded by a primary election pursuant to \*RCW 29.21.010 and 29.13.070. In the event that the first election of all officers is to be held at a special election rather than at a general election, and notwithstanding any provisions of any other law to the contrary, such special election shall be preceded by a primary election to be held on a date authorized by \*RCW 29.13.010, and the persons nominated at that primary election shall be voted upon at the next succeeding special election that is authorized by \*RCW 29.13.010: PROVIDED, That in the event the ordinances calling for reclassification or reclassification and reorganization under the provisions of Title 35A RCW have been filed with the secretary of state pursuant to RCW 35A.02.040 in an even-numbered year at least ninety days prior to a state general election then the election of new officers shall be concurrent with the state primary and general election and shall be conducted as set forth in general election law.

Upon reorganization, candidates for all offices shall file or be nominated for and successful candidates shall be elected to specific council positions. The initial terms of office for those elected at a first election of all officers shall be as follows: (1) A simple majority of the persons who are elected as councilmembers receiving the greatest numbers of votes and the mayor in a city with a mayor-council plan of government shall be elected to four-year terms of office, if the election is held in an odd-numbered year, or three-year terms of office, if the election is held in an even-numbered year; and (2) the other persons who are elected as councilmembers shall be elected to two-year terms of office, if the election is held in an odd-numbered year, or one-year terms of office, if the election is held in an even-numbered year. The newly elected officials shall take office immediately when they are elected and qualified, but the length of their terms of office shall be calculated from the first day of Janu-

ary in the year following the election. Thereafter, each person elected as a councilmember or mayor in a city with a mayor-council plan of government shall be elected to a four-year term of office. Each councilmember and mayor in a city with a mayor-council plan of government shall serve until a successor is elected and qualified and assumes office as provided in \*RCW 29.04.170.

The former officers shall, upon the election and qualification of new officers, deliver to the proper officers of the reorganized noncharter code city all books of record, documents and papers in their possession belonging to such municipal corporation before the reorganization thereof. [1994 c 223 § 25; 1979 ex.s. c 18 § 7; 1971 ex.s. c 251 § 1; 1970 ex.s. c 52 § 2; 1967 ex.s. c 119 § 35A.02.050.]

**\*Reviser's note:** RCW 29.13.020, 29.21.010, 29.13.070, 29.13.010, and 29.04.170 were recodified as RCW 29A.04.330, 29A.52.210, 29A.04.310, 29A.04.320, and 29A.20.040, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.310 and 29A.04.320 were subsequently repealed by 2004 c 271 § 193.

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**Severability—1971 ex.s. c 251:** See RCW 35A.90.050.

### **35A.02.055 Election of new officers—Exception where same general plan of government is retained.**

Where a city elects to become a noncharter code city under one of the optional plans of government provided in Title 35A RCW for code cities which involves the same general plan of government as that under which the city operated prior to the choice and where with the change in classification the number of councilmanic positions in a city remains the same or increases from five to seven, the procedures for the first election of officers which appear in RCW 35A.02.050 shall not be followed. When membership in a city council remains the same or is increased upon becoming a noncharter code city, the terms of incumbent council members shall not be affected. If the number of council members is increased from five to seven, the city council shall, by majority vote, pursuant to RCW 35A.12.050 and 35A.13.020, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term.

A first election of all officers upon a change in classification to a noncharter code city is also not required where the change in classification otherwise retains the same general or specific plan of government and where the change in classification results in a decrease in the number of councilmanic positions in a city.

If the membership in a city council is decreased from seven to five members upon adopting the classification of noncharter code city, this decrease in the number of council members shall be determined in the following manner: The council members shall determine by lot which two councilmanic positions shall be eliminated upon the expiration of their terms of office. The terms of the remaining council members shall not be affected. [1979 ex.s. c 18 § 8.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.02.060 Petition for election.** When a petition which is sufficient under the rules set forth in RCW 35A.01.040 is filed with the legislative body of an incorpo-

rated city or town, signed by qualified electors of such municipality in number equal to not less than ten percent of the votes cast at the last general municipal election, seeking adoption by the city or town of the classification of noncharter code city and the reorganization of the city or town under one of the plans of government authorized in this title, the county auditor shall file with the legislative body thereof a certificate of sufficiency of such petition. Thereupon, the legislative body shall cause such proposal to be submitted to the voters at the next general municipal election if one is to be held within one hundred eighty days after certification of the sufficiency of the petition, or at a special election to be held for that purpose not less than ninety days nor more than one hundred and eighty days from such certification of sufficiency. Ballot titles for elections under this chapter shall be prepared by the city attorney as provided in \*RCW 35A.29.120. [1990 c 259 § 3; 1967 ex.s. c 119 § 35A.02.060.]

\*Reviser's note: RCW 35A.29.120 was repealed by 1994 c 223 § 92.

**35A.02.070 Resolution for election.** The legislative body of an incorporated city or town may, by resolution, submit to the voters in the next general municipal election if one is to be held within one hundred and eighty days after passage of the resolution, or in a special election to be called for that purpose not less than ninety days nor more than one hundred and eighty days after passage of the resolution, a proposal that the city or town adopt the classification of noncharter code city and organize under one of the plans of government authorized in this title, naming such plan. [1967 ex.s. c 119 § 35A.02.070.]

**35A.02.080 Election of officers upon approval of plan of government by voters.** If the majority of votes cast at an election for organization under a plan provided in this title favor the plan, the city or town shall elect in accordance with RCW 35A.02.050 the officers for the positions created. The former officers of the municipality shall, upon the election and qualification of the new officers, deliver to the proper officers of the new noncharter code city all books of record, documents and papers in their possession belonging to such municipal corporation before reorganization. [1971 ex.s. c 251 § 2; 1967 ex.s. c 119 § 35A.02.080.]

Severability—1971 ex.s. c 251: See RCW 35A.90.050.

**35A.02.090 Alternative plan of government.** Proposals for each of the plans of government authorized by this title may be placed on the ballots in the same election by timely petition as provided in this chapter. When the ballot contains alternative proposals for each of the plans of government the ballot shall clearly state that voters may vote for only one of the plans of government. [1971 ex.s. c 251 § 3; 1967 ex.s. c 119 § 35A.02.090.]

Severability—1971 ex.s. c 251: See RCW 35A.90.050.

**35A.02.120 Effective date of reclassification and reorganization.** Upon the filing of the certified copy of the resolution with the secretary of state, the county auditor shall issue certificates of election to the successful candidates for the offices under the plan of government for which a majority

of the votes were cast, and upon the issuance of such certificates, such city or town shall become a noncharter code city governed under the plan of government chosen by the voters, under the provisions of this title and with the powers conferred by this title. [1967 ex.s. c 119 § 35A.02.120.]

**35A.02.130 Adoption of classification of noncharter code city without change of governmental plan.** Any incorporated city or town governed under a plan of government authorized prior to the time this title takes effect may become a noncharter code city without changing such plan of government by the use of the petition-for-election or resolution-for-election procedures provided in RCW 35A.02.060 and 35A.02.070 to submit to the voters a proposal that such municipality adopt the classification of noncharter code city while retaining its existing plan of government, and upon a favorable vote on the proposal, such municipality shall be classified as a noncharter code city and retain its old plan of government, such reclassification to be effective upon the filing of the record of such election with the office of the secretary of state. Insofar as the provisions of \*RCW 35A.02.100 and 35A.02.110 are applicable to an election on such a reclassification proposal they shall apply to such election. [1994 c 223 § 26; 1994 c 81 § 67; 1967 ex.s. c 119 § 35A.02.130.]

\*Reviser's note: RCW 35A.02.100 and 35A.02.110 were repealed by 1994 c 223 § 92.

**35A.02.140 Petition or resolution pending—Restriction—Exception.** While proceedings are pending under any petition or resolution relating to reclassification of a municipality or reorganization of the government thereof pursuant to this chapter, no resolution shall be passed for the purpose of initiating other such proceedings or submitting other such proposals to the voters at an election thereunder; and no petition for reclassification or reorganization of such municipality shall be accepted for filing pending such proceedings, except that a timely and sufficient petition seeking to place on the ballot for such election a proposal for an alternative plan of government authorized by this title, as provided in RCW 35A.02.090, may be filed and acted upon. [1967 ex.s. c 119 § 35A.02.140.]

## Chapter 35A.03 RCW

### INCORPORATION AS NONCHARTER CODE CITY

#### Sections

- 35A.03.001 Actions subject to review by boundary review board.
- 35A.03.005 Incorporation to be governed by chapter 35.02 RCW.

**35A.03.001 Actions subject to review by boundary review board.** Actions taken under chapter 35A.03 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 36.]

**35A.03.005 Incorporation to be governed by chapter 35.02 RCW.** Noncharter code cities shall be incorporated as provided in chapter 35.02 RCW. [1986 c 234 § 36.]

### Chapter 35A.05 RCW

#### CONSOLIDATION OF CODE CITIES

##### Sections

- 35A.05.001 Actions subject to review by boundary review board.  
35A.05.005 Consolidation of code cities.

**35A.05.001 Actions subject to review by boundary review board.** Actions taken under chapter 35A.05 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 37.]

**35A.05.005 Consolidation of code cities.** Code cities shall consolidate as provided in chapter 35.10 RCW. [1985 c 281 § 14.]

**Severability—1985 c 281:** See RCW 35.10.905.

### Chapter 35A.06 RCW

#### ADOPTION AND ABANDONMENT OF NONCHARTER CODE CITY CLASSIFICATION OR PLAN OF GOVERNMENT

##### Sections

- 35A.06.010 Each optional plan of government declared complete form of government.  
35A.06.020 Laws applicable to noncharter code cities.  
35A.06.030 Abandonment of plan of government of a noncharter code city.  
35A.06.040 Abandonment—Resolution or petition for election.  
35A.06.050 Abandonment—Election.  
35A.06.060 Abandonment—Reorganization under plan adopted—Effective date.  
35A.06.070 Abandonment of noncharter code city classification without reorganization.

**35A.06.010 Each optional plan of government declared complete form of government.** Each of the optional plans of government authorized by chapter 35A.12 RCW and chapter 35A.13 RCW, with any amendments thereto, is declared to be a complete and separate plan of government authorized by the legislature for submission to the voters of a municipality or for adoption by resolution of the legislative body thereof in the manner provided herein, and is additional to the plans of government existing prior to the time this title takes effect. [1967 ex.s. c 119 § 35A.06.010.]

**35A.06.020 Laws applicable to noncharter code cities.** The classifications of municipalities as first class cities, second class cities, unclassified cities, and towns, and the restrictions, limitations, duties, and obligations specifically imposed by law upon such classes of cities and towns, shall have no application to noncharter code cities, but every noncharter code city, by adopting such classification, has elected to be governed by the provisions of this title, with the powers granted hereby. However, any code city that retains its old plan of government is subject to the laws applicable to that old plan of government until the city abandons its old plan of government and reorganizes and adopts a plan of government under chapter 35A.12 or 35A.13 RCW. [1997 c 361 § 17; 1995 c 134 § 11. Prior: 1994 c 223 § 27; 1994 c 81 § 68; 1967 ex.s. c 119 § 35A.06.020.]

**35A.06.030 Abandonment of plan of government of a noncharter code city.** By use of the resolution for election

(2004 Ed.)

or petition for election methods described in RCW 35A.06.040, any noncharter code city which has operated for more than six consecutive years under one of the optional plans of government authorized by this title, or for more than a combined total of six consecutive years under a particular plan of government both as a code city and under the same general plan under Title 35 RCW immediately prior to becoming a code city, may abandon such organization and may reorganize and adopt another plan of government authorized for noncharter code cities, but only after having been a noncharter code city for more than one year or a city after operating for more than six consecutive years under a particular plan of government as a noncharter code city: **PROVIDED**, That these limitations shall not apply to a city seeking to adopt a charter.

In reorganization under a different general plan of government as a noncharter code city, officers shall serve the remainder of their terms. If a city with a mayor-council plan of government is reorganized with a council-manager plan of government, the mayor shall serve as a councilmember for the remainder of his or her term. If a city with a council-manager plan of government is reorganized with a mayor-council plan of government, the mayor shall be elected as provided in RCW 35A.02.050. When a noncharter code city adopts a plan of government other than those authorized under Title 35A RCW, such city ceases to be governed under this optional municipal code, shall be classified as a city or town of the class selected in the proceeding for adoption of such new plan, with the powers granted to such class under the general law, and shall elect officers as provided in RCW 35A.02.050. [2001 c 33 § 2; 1994 c 223 § 28; 1994 c 81 § 69; 1979 ex.s. c 18 § 14; 1971 ex.s. c 251 § 13; 1967 ex.s. c 119 § 35A.06.030.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**Severability—1971 ex.s. c 251:** See RCW 35A.90.050.

**35A.06.040 Abandonment—Resolution or petition for election.** Upon the passage of a resolution of the legislative body of a noncharter code city, or upon the filing of a sufficient petition with the county auditor signed by registered voters in number equal to not less than ten percent of the votes cast at the last general municipal election therein, proposing abandonment by the city of the plan of government under which it is then operating and adoption of another plan, naming such plan, the sufficiency of the petition for abandonment shall be determined, an election ordered and conducted, and the results declared generally as provided in chapter 35A.02 RCW insofar as such provisions are applicable. If the resolution or petition proposes a plan of government other than those authorized in chapters 35A.12 RCW and 35A.13 RCW of this title, the resolution or petition shall specify the class under which such city will be classified upon adoption of such plan. [1990 c 259 § 4; 1967 ex.s. c 119 § 35A.06.040.]

*Sufficiency of petition in code city: RCW 35A.01.040.*

**35A.06.050 Abandonment—Election.** The proposal for abandonment of a plan of government as authorized in RCW 35A.06.030 and for adoption of the plan named in the resolution or petition shall be voted upon at the next general

election in accordance with RCW 29A.04.330. The ballot title and statement of the proposition shall be prepared by the city attorney as provided in RCW \*29.27.060 and 35A.29.120. [2004 c 268 § 2; 1994 c 223 § 29; 1979 ex.s. c 18 § 15; 1967 ex.s. c 119 § 35A.06.050.]

**\*Reviser's note:** RCW 29.27.060 was repealed by 2000 c 197 § 15.

**Effective date—2004 c 268:** "This act takes effect July 1, 2004." [2004 c 268 § 3.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.06.060 Abandonment—Reorganization under plan adopted—Effective date.** If a majority of votes cast at the election favor abandonment of the general plan of government under which the noncharter code city is then organized and reorganization under the different general plan proposed in the resolution or petition, the officers to be elected shall be those prescribed by the plan of government so adopted, and they shall be elected as provided in RCW 35A.06.030. If the city is adopting a plan of government other than those authorized under this title, the officers shall be elected at the next succeeding general municipal election. Upon the election, qualification, and assumption of office by such officers the reorganization of the government of such municipality shall be complete and such municipality shall thereafter be governed under such plan. If the plan so adopted is not a plan authorized for noncharter code cities, upon the election, qualification, and assumption of office by such officers the municipality shall cease to be a noncharter code city governed under the provisions of this optional municipal code and shall revert to the classification selected and shall be governed by the general laws relating to municipalities of such class with the powers conferred by law upon municipalities of such class. Such change of classification shall not affect the then existing property rights or liabilities of the municipal corporation. [2001 c 33 § 3; 1979 ex.s. c 18 § 16; 1967 ex.s. c 119 § 35A.06.060.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.06.070 Abandonment of noncharter code city classification without reorganization.** By means of the procedures set forth in this chapter, insofar as they apply, any noncharter code city which has been governed under the provisions of this title for more than six years may abandon the classification of noncharter code city and elect to be governed under the general law relating to cities or towns of the classification held by such city immediately prior to becoming a noncharter code city, if any, or relating to cities or towns of the highest class for which it is qualified by population, with the powers conferred by law upon such class, while retaining the plan of government under which it is then organized. A change of classification approved by a majority of the voters voting on such proposition shall become effective upon the filing of the record of such election with the office of the secretary of state. [1967 ex.s. c 119 § 35A.06.070.]

## Chapter 35A.07 RCW

### PROCEDURE FOR CITY OPERATING UNDER CHARTER TO BECOME A CHARTER CODE CITY

#### Sections

35A.07.010	Adoption of charter code city classification authorized.
35A.07.020	Petition method—Direct.
35A.07.025	Referendum.
35A.07.030	Resolution method.
35A.07.035	Referendum.
35A.07.040	Certification of ordinance—Transcript of record to secretary of state.
35A.07.050	Petition for election.
35A.07.060	Resolution for election.
35A.07.070	Election on reclassification—Effective date of reclassification upon favorable vote.

**35A.07.010 Adoption of charter code city classification authorized.** Any city having ten thousand inhabitants which is governed under a charter may become a charter code city by a procedure prescribed in this chapter and be governed under this title, with the powers conferred hereby. [1967 ex.s. c 119 § 35A.07.010.]

**35A.07.020 Petition method—Direct.** When a petition is filed, signed by registered voters of a charter city in number equal to not less than fifty percent of the votes cast at the last general municipal election, seeking the adoption by the charter city of the classification of charter code city the legislative body of such city shall direct the county auditor to determine the sufficiency of the petition under the rules set forth in RCW 35A.01.040. If the petition is found to be sufficient, the county auditor shall file with the legislative body a certificate of sufficiency of the petition. Thereupon the legislative body of the charter city shall, by resolution, declare that the inhabitants of such city have decided to adopt the classification of charter code city and to be governed under this title. The legislative body shall cause such resolution to be published at least once in a newspaper of general circulation within the city not later than ten days after the passage of the resolution. Upon the expiration of the ninetieth day from, but excluding the date of first publication of the resolution, if no timely and sufficient referendum petition has been filed, as determined by RCW 35A.29.170, the legislative body shall effect the decision of the inhabitants, as expressed in the petition, by passage of an ordinance adopting for the city the classification of charter code city. [1990 c 259 § 5; 1967 ex.s. c 119 § 35A.07.020.]

**35A.07.025 Referendum.** Upon the filing of a referendum petition in the manner provided in RCW 35A.29.170 signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general municipal election, the resolution authorized by RCW 35A.07.020 shall be referred to the voters for confirmation or rejection in the next general municipal election, if one is to be held within one hundred and eighty days from the date of filing of the referendum petition, or at a special election to be called for that purpose not less than ninety days nor more than one hundred and eighty days from the filing of such referendum petition. [1967 ex.s. c 119 § 35A.07.025.]

**35A.07.030 Resolution method.** When a majority of the legislative body of a charter city determines that it would

serve the best interests and general welfare of such city to become a charter code city, such legislative body may, by resolution, declare its intention to adopt for the city the classification of charter code city and to be governed under the provisions of this title, with the powers conferred hereby. Within ten days after the passage of the resolution, the legislative body shall cause it to be published at least once in a newspaper of general circulation within the city. Upon the expiration of the ninetieth day from, but excluding the date of first publication of the resolution, if no timely and sufficient referendum petition has been filed, as determined by RCW 35A.29.170, the intent expressed in such resolution shall be effected by passage of an ordinance adopting for the city the classification of charter code city. [1967 ex.s. c 119 § 35A.07.030.]

**35A.07.035 Referendum.** Upon the filing of a referendum petition in the manner provided in RCW 35A.29.170 signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general municipal election, the resolution authorized by RCW 35A.07.030 shall be referred to the voters for approval or rejection at an election as specified in RCW 35A.07.025. [1967 ex.s. c 119 § 35A.07.035.]

**35A.07.040 Certification of ordinance—Transcript of record to secretary of state.** When an ordinance is passed as provided in RCW 35A.07.020 or 35A.07.030, the clerk of the charter city shall forward to the secretary of state a certified copy thereof. Upon the filing of the certified copy of the ordinance in the office of the secretary of state, such city shall be classified as a charter code city and shall thereafter be governed under the provisions of this optional municipal code and have the powers conferred hereby. [1967 ex.s. c 119 § 35A.07.040.]

**35A.07.050 Petition for election.** When a petition which is sufficient under the rules set forth in RCW 35A.01.040 is filed with the legislative body of a charter city, signed by registered voters of such city in number equal to not less than ten percent of the votes cast at the last general municipal election, seeking adoption by the city of the classification of charter code city, the county auditor shall file with the legislative body thereof a certificate of sufficiency of such petition. Thereupon the legislative body shall cause such proposal to be submitted to the voters at the next general municipal election if one is to be held within one hundred eighty days, or at a special election to be held for that purpose not less than ninety days nor more than one hundred and eighty days after the filing of such petition. Ballot titles for such election shall be prepared by the city attorney as provided in \*RCW 35A.29.120. [1990 c 259 § 6; 1967 ex.s. c 119 § 35A.07.050.]

\*Reviser's note: RCW 35A.29.120 was repealed by 1994 c 223 § 92.

**35A.07.060 Resolution for election.** The legislative body of a charter city may, by resolution, submit to the voters at an election held within the time period specified in RCW 35A.07.050 a proposal that the city adopt the classification of charter code city and be governed under the provisions of this

title with the powers conferred hereby. [1967 ex.s. c 119 § 35A.07.060.]

**35A.07.070 Election on reclassification—Effective date of reclassification upon favorable vote.** Notice of elections under this chapter shall be given, the election conducted, and the result declared generally as provided in chapter 35A.02 RCW, insofar as such provisions are applicable. If a majority of votes cast on the proposition are in favor of adoption of the classification of charter code city, upon the certification of the record of election to the office of the secretary of state, such city shall become a charter code city and shall be governed under the provisions of this title and have the powers conferred on charter code cities. [1967 ex.s. c 119 § 35A.07.070.]

## Chapter 35A.08 RCW

### PROCEDURE FOR ADOPTION OF CHARTER AS CHARTER CODE CITY

#### Sections

35A.08.010	Adoption of charter authorized.
35A.08.020	Determining population.
35A.08.030	Resolution or petition for election.
35A.08.040	Election on question—Election of charter commission.
35A.08.050	Organization of charter commission—Vacancies—Duties.
35A.08.060	Expenses of commission members—Consultants and assistants.
35A.08.070	Public hearing.
35A.08.080	Submission of charter—Election of officers—Publication.
35A.08.090	Conduct of elections.
35A.08.100	Ballot titles.
35A.08.110	Certificates of election to officers—Effective date of becoming charter code city.
35A.08.120	Authentication of charter.

**35A.08.010 Adoption of charter authorized.** Any city having a population of ten thousand or more inhabitants may become a charter code city and be governed under the provisions of this title by adopting a charter for its own government in the manner prescribed in this chapter. Once any city, having ten thousand population, has adopted such a charter, any subsequent decrease in population below ten thousand shall not affect its status as a charter code city. [1967 ex.s. c 119 § 35A.08.010.]

**35A.08.020 Determining population.** For the purposes of this chapter, the population of a city shall be the number of residents shown by the figures released for the most recent official state or federal census, by a population determination made under the direction of the office of financial management, or by a city census conducted in the following manner:

(1) The legislative authority of any such city may provide by ordinance for the appointment by the mayor thereof, of such number of persons as may be designated in the ordinance to make an enumeration of all persons residing within the corporate limits of the city. The enumerators so appointed, before entering upon their duties, shall take an oath for the faithful performance thereof and within five days after their appointment proceed, within their respective districts, to make an enumeration of all persons residing therein, with their names and places of residence.

(2) Immediately upon the completion of the enumeration, the enumerators shall make return thereof upon oath to

the legislative authority of the city, who at its next meeting or as soon thereafter as practicable, shall canvass and certify the returns.

(3) If it appears therefrom that the whole number of persons residing within the corporate limits of the city is ten thousand or more, the mayor and clerk under the corporate seal of the city shall certify the number so ascertained to the secretary of state, who shall file it in his office. This certificate when so filed shall be conclusive evidence of the population of the city. [1979 c 151 § 32; 1967 ex.s. c 119 § 35A.08.020.]

*Population determinations, office of financial management: Chapter 43.62 RCW.*

**35A.08.030 Resolution or petition for election.** The legislative body of any city having ten thousand or more inhabitants may, by resolution, provide for submission to the voters of the question whether the city shall become a charter code city and be governed in accordance with a charter to be adopted by the voters under the provisions of this title. The legislative body must provide for such an election upon receipt of a sufficient petition therefor signed by qualified electors in number equal to not less than ten percent of the votes cast at the last general municipal election therein. The question may be submitted to the voters at the next general municipal election if one is to be held within one hundred and eighty days or at a special election held for that purpose not less than ninety nor more than one hundred and eighty days after the passage of the resolution or the filing of the certificate of sufficiency of the petition. At such election provision shall also be made for the election of fifteen freeholders who, upon a favorable vote on the question, shall constitute the charter commission charged with the duty of framing a charter for submission to the voters. If the vote in favor of adopting a charter receives forty percent or less of the total vote on the question of charter adoption, no new election on the question of charter adoption may be held for a period of two years from the date of the election in which the charter proposal failed. [2001 c 33 § 4; 1967 ex.s. c 119 § 35A.08.030.]

*Sufficiency of petition in code city: RCW 35A.01.040.*

**35A.08.040 Election on question—Election of charter commission.** The election on the question whether to adopt a charter and become a charter code city and the nomination and election of the members of the charter commission shall be conducted, and the result declared, according to the laws regulating and controlling elections in the city. Candidates for election to the charter commission must be nominated by petition signed by ten registered voters of the city and residents therein for a period of at least two years preceding the election. A nominating petition shall be filed within the time allowed for filing declarations of candidacy and shall be verified by an affidavit of one or more of the signers to the effect that the affiant believes that the candidate and all of the signers are registered voters of the city and he signed the petition in good faith for the purpose of endorsing the person named therein for election to the charter commission. A written acceptance of the nomination by the nominee shall be affixed to the petition when filed with the county auditor. Nominating petitions need not be in the form prescribed in RCW 35A.01.040. Any nominee may withdraw his nomina-

tion by a written statement of withdrawal filed at any time not later than five days before the last day allowed for filing nominations. The positions on the charter commission shall be designated by consecutive numbers one through fifteen, and the positions so designated shall be considered as separate offices for all election purposes. A nomination shall be made for a specific numbered position. [1990 c 259 § 7; 1967 ex.s. c 119 § 35A.08.040.]

**35A.08.050 Organization of charter commission—Vacancies—Duties.** Within ten days after its election the charter commission shall hold its first meeting, elect one of the members as chairman, and adopt such rules for the conduct of its business as it may deem advisable. In the event of a vacancy in the charter commission, the remaining members shall fill it by appointment thereto of some properly qualified person. A majority shall constitute a quorum for transaction of business but final charter recommendations shall require a majority vote of the whole membership of the commission. The commission shall study the plan of government of the city, compare it with other available plans of government, and determine whether, in its judgment, the government of the city could be strengthened, made more responsive or accountable to the people, or whether its operation could be made more economical or more efficient by amendment of the existing plan or adoption of another plan of government. The commission shall consider the plans of government described in this title but shall not be limited to such plans in its recommendations for the government of the city and may frame a charter for any plan it deems suitable for the good government of the city; except that the provisions of such charter shall not be valid if inconsistent with the Constitution of this state, the provisions of this title, or the general laws of the state, insofar as they are applicable to cities governed under this title. [1967 ex.s. c 119 § 35A.08.050.]

**35A.08.060 Expenses of commission members—Consultants and assistants.** Members of the charter commission shall serve without compensation but shall be reimbursed by the city from any funds for their necessary expenses incurred in the performance of their duties. The legislative body may, in its discretion, make a reasonable appropriation of the city funds to provide for public information and discussion concerning the purposes and progress of the commission's work and/or to provide technical or clerical assistance to the commission in its work. Within the limits of any such appropriation and privately contributed funds and services as may be available to it, the charter commission may appoint one or more consultants and clerical or other assistants to serve at the pleasure of the commission and may fix a reasonable compensation to be paid such consultants and assistants. [1967 ex.s. c 119 § 35A.08.060.]

**35A.08.070 Public hearing.** The charter commission shall hold at least one public hearing in the course of its deliberations, may hold committee meetings and may sponsor public forums and promote public education and discussion respecting its work. [1967 ex.s. c 119 § 35A.08.070.]

**35A.08.080 Submission of charter—Election of officers—Publication.** Within one hundred and eighty days from the date of its first meeting, the charter commission, or a majority thereof, shall frame a charter for the city and submit the charter to the legislative body of the city, which, within five days thereafter shall initiate proceedings for the submission of the proposed charter to the qualified electors of the city at the next general election if one is to be held within one hundred and eighty days or at a special election to be held for that purpose not less than ninety nor more than one hundred and eighty days after submission of the charter to the legislative body. The legislative body shall cause the proposed charter to be published in a newspaper of general circulation in the city at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval. At this election the first officers to serve under the provisions of the proposed charter shall also be elected. If the election is from wards, the division into wards as specified in the proposed charter shall govern; in all other respects the then existing laws relating to such elections shall govern. The notice of election shall specify the objects for which the election is held and shall be given as required by law. [1967 ex.s. c 119 § 35A.08.080.]

**35A.08.090 Conduct of elections.** The election upon the question of becoming a charter code city and framing a charter and the election of the charter commission, and the election upon the adoption or rejection of the proposed charter and the officers to be elected thereunder, the returns of both elections, the canvassing thereof, and the declaration of the result shall be governed by the laws regulating and controlling elections in the city. [1967 ex.s. c 119 § 35A.08.090.]

**35A.08.100 Ballot titles.** Ballot titles for elections under this chapter shall be prepared by the city attorney as provided in \*RCW 35A.29.120. The ballot statement in the election for adopting or rejecting the proposed charter shall clearly state that, upon adoption of the proposed charter, the city would be governed by its charter and by this title. [1967 ex.s. c 119 § 35A.08.100.]

\*Reviser's note: RCW 35A.29.120 was repealed by 1994 c 223 § 92.

**35A.08.110 Certificates of election to officers—Effective date of becoming charter code city.** If a majority of the votes cast at the election upon the adoption of the proposed charter favor it, certificates of election shall be issued to each officer elected at that election. Within ten days after the issuance of the certificates of election, the newly elected officers shall qualify as provided in the charter, and on the tenth day thereafter at twelve o'clock noon of that day or on the next business day if the tenth day is a Saturday, Sunday or holiday, the officers so elected and qualified shall enter upon the duties of the offices to which they were elected and at such time the charter shall be authenticated, recorded, attested and go into effect, and the city shall thereafter be classified as a charter code city. When so authenticated, recorded and attested, the charter shall become the organic law of the city and supersede any existing charter and amendments thereto

and all special laws inconsistent therewith. [1967 ex.s. c 119 § 35A.08.110.]

**35A.08.120 Authentication of charter.** The authentication of the charter shall be by certificate of the mayor in substance as follows:

"I, . . . . ., mayor of the city of . . . . ., do hereby certify that in accordance with the provisions of the Constitution and statutes of the state of Washington, the city of . . . . . caused fifteen freeholders to be elected on the . . . . . day of . . . . ., 19. . . as a charter commission to prepare a charter for the city; that due notice of that election was given in the manner provided by law and that the following persons were declared elected to prepare and propose a charter for the city, to wit:

. . . . .  
That thereafter on the . . . . day of . . . . ., 19. . . the charter commission returned a proposed charter for the city of . . . . . signed by the following members thereof: . . . . .

That thereafter the proposed charter was published in . . . . . (indicate name of newspaper in which published), for at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval. (Indicate dates of publication.)

That thereafter on the . . . . day of . . . . ., 19. . ., at an election duly called and held, the proposed charter was submitted to the qualified electors thereof, and the returns canvassed resulting as follows: For the proposed charter . . . . votes; against the proposed charter, . . . . votes; majority for the proposed charter, . . . . votes; whereupon the charter was declared adopted by a majority of the qualified electors voting at the election.

I further certify that the foregoing is a full, true and complete copy of the proposed charter so voted upon and adopted as aforesaid.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the corporate seal of the said city at my office this . . . . day of . . . . ., 19. . .

. . . . .  
Mayor of the city of . . . . .

Attest:

. . . . .  
Clerk of the city of . . . . . (corporate seal)."

Immediately after authentication, the authenticated charter shall be recorded by the city clerk in a book provided for that purpose known as the charter book of the city of . . . . . and when so recorded shall be attested by the clerk and mayor under the corporate seal of the city. All amendments shall be in like manner recorded and attested.

All courts shall take judicial notice of a charter and all amendments thereto when recorded and attested as required in this section. [1967 ex.s. c 119 § 35A.08.120.]

**Chapter 35A.09 RCW  
AMENDMENT OR REVISION OF CHARTERS OF  
CHARTER CODE CITIES**

Sections

- 35A.09.010 Amendment of charter—Initiated by legislative body.
- 35A.09.020 Petition for submission of charter amendment.

- 35A.09.030 New or revised charter—Petition—Charter commission.
- 35A.09.040 Submission of new or revised charter—Election.
- 35A.09.050 Publication of proposed charter.
- 35A.09.060 Conduct of elections.
- 35A.09.070 Effect of favorable vote.

**35A.09.010 Amendment of charter—Initiated by legislative body.** The charter of a charter code city may be amended by proposals therefor submitted by resolution of the legislative authority of such city to the electors thereof at any general election, after publication of such proposed charter amendment in the manner provided in chapter 35A.08 RCW for publication of a proposed charter, and upon notice of election as provided by law. If such proposed charter amendment is ratified by a majority of the qualified electors voting thereon it shall become a part of the charter organic law governing such charter code city. [1967 ex.s. c 119 § 35A.09.010.]

**35A.09.020 Petition for submission of charter amendment.** Upon the filing with the county auditor of a sufficient petition signed by registered voters of a charter code city, in number equal to at least ten percent of the votes cast at the last general municipal election, seeking the adoption of a specified charter amendment set forth in the petition, providing for any matter within the realm of local affairs, or municipal business, or structure of municipal government, offices, and departments, said amendment shall be submitted to the voters at the next general municipal election if one is to be held within one hundred and eighty days, or at a special election to be held for that purpose not less than ninety days, nor more than one hundred and eighty days after the filing of the certificate of sufficiency of the petition. The proposed charter amendment shall be published as provided in RCW 35A.09.050. Upon approval by a majority of the registered voters voting thereon, such amendment shall become a part of the charter organic law governing such charter code city. [1990 c 259 § 8; 1967 ex.s. c 119 § 35A.09.020.]

*Sufficiency of petition in code city: RCW 35A.01.040.*

**35A.09.030 New or revised charter—Petition—Charter commission.** On the petition of a number of qualified electors of a charter code city equal to ten percent of the total votes cast at the last preceding municipal general election, the legislative body of such charter code city shall, or without such petition, may, by resolution, cause an election to be held for the election of a charter commission of fifteen freeholders for the purpose of preparing a new or revised charter for the city by altering, revising, adding to, or repealing the existing charter including all amendments thereto. The members of the charter commission shall be qualified and nominated as provided by chapter 35A.08 RCW. At such election the proposition of whether or not a charter commission shall be created at all shall be separately stated on the ballots and unless a majority of the votes cast upon that proposition favor it, no further steps shall be taken in the proceedings. [1967 ex.s. c 119 § 35A.09.030.]

*Sufficiency of petition in code city: RCW 35A.01.040.*

**35A.09.040 Submission of new or revised charter—Election.** Within ten days after the results of the election

authorized by RCW 35A.09.030 have been determined, if a majority of the votes cast favor the proposition, the members of the charter commission elected thereat shall convene and prepare a new or revised charter by altering, revising, adding to, or repealing the existing charter including all amendments thereto and within one hundred and eighty days thereafter file it with the county auditor. The charter commission shall be organized, vacancies filled, alternative plans of government considered, and a public hearing held all in the manner provided in sections of chapter 35A.08 RCW relating to charter commissions, and the commission members shall be reimbursed for their expenses and may obtain technical and clerical assistance in the manner provided in chapter 35A.08 RCW. Upon the filing of the proposed new, altered, changed, or revised charter with the county auditor, it shall be submitted to the registered voters of the charter code city at an election conducted as provided in RCW 35A.09.060. [1990 c 259 § 9; 1967 ex.s. c 119 § 35A.09.040.]

**35A.09.050 Publication of proposed charter.** The proposed new, altered, or revised charter shall be published in the newspaper having the largest general circulation within the city at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval. [1985 c 469 § 41; 1967 ex.s. c 119 § 35A.09.050.]

**35A.09.060 Conduct of elections.** The election of the charter commission and the election upon the proposition of adopting the proposed new, altered, or revised charter, may be general or special elections held within the corresponding time period specified in chapter 35A.08 RCW, and except as herein provided, said elections, the notice specifying the objects thereof, the returns, the canvassing, and the declaration of the result shall be governed by the laws regulating and controlling elections in the charter code city. [1967 ex.s. c 119 § 35A.09.060.]

**35A.09.070 Effect of favorable vote.** If a majority of the voters voting upon the adoption of the proposed new, altered, or revised charter favor it, it shall become the charter of the charter code city and the organic law thereof, superseding any existing charter; but if any offices are abolished or dispensed with by the new, altered, or revised charter, and any new offices created thereby, such charter shall not go into effect until the election and qualification of such new officers at the next general municipal election if one is to be held within one hundred and eighty days, or at a special election to be held for that purpose not less than ninety days, nor more than one hundred and eighty days after approval of such charter by the voters. [1967 ex.s. c 119 § 35A.09.070.]

## Chapter 35A.10 RCW

### ADOPTION AND ABANDONMENT OF CHARTER CODE CITY CLASSIFICATION

#### Sections

- 35A.10.010 Laws applicable to charter code cities.
- 35A.10.020 Abandonment of charter code city classification.
- 35A.10.030 Resolution or petition for change of classification—Election.
- 35A.10.040 No subsequent vote for six years.

**35A.10.010 Laws applicable to charter code cities.**

The classifications of municipalities which existed prior to the time this title goes into effect—first class cities, second class cities, unclassified cities, and towns—and the restrictions, limitations, duties and obligations specifically imposed by law upon such classes of cities and towns, shall have no application to charter code cities, but every charter code city, by adopting such classification, has elected to be governed by its charter and by the provisions of this title, with the powers thereby granted. [1994 c 81 § 70; 1967 ex.s. c 119 § 35A.10.010.]

**35A.10.020 Abandonment of charter code city classification.** Any charter code city, which has been so classified under the provisions of this title for more than six years may abandon such classification and elect to be governed according to its charter under the general law relating to charter cities of the classification held by such city immediately prior to becoming a charter code city, if any, or may elect to be governed by the general law relating to charter cities of the highest class, or other class, for which it is qualified by population. [1967 ex.s. c 119 § 35A.10.020.]

**35A.10.030 Resolution or petition for change of classification—Election.** Upon the passage of a resolution of the legislative body of a charter code city, or upon the filing with the county auditor of a sufficient petition signed by registered voters of a charter code city in number equal to not less than ten percent of the votes cast at the last general municipal election therein, proposing abandonment of the classification of charter code city and that the city be governed under its charter and the general law relating to cities of the classification named in the petition or resolution, the legislative body thereof shall cause the propositions to be submitted to the voters at the next general municipal election if one is to be held within one hundred and eighty days or at a special election to be held for that purpose not less than ninety days nor more than one hundred and eighty days after the passage of the resolution or the filing of the certificate of sufficiency of the petition. Notice of election shall be given, the election conducted, and results declared generally as provided in chapter 35A.02 RCW, insofar as such provisions are applicable. If a majority of the votes cast upon such proposition are in favor of abandonment of the classification of charter code city, upon the certification of the record of election to the office of the secretary of state, such charter city shall be classified as a city of the class selected and shall be governed by the laws relating thereto. [1990 c 259 § 10; 1967 ex.s. c 119 § 35A.10.030.]

*Sufficiency of petition in code city: RCW 35A.01.040.*

**35A.10.040 No subsequent vote for six years.** When a proposition for abandonment of the classification of charter code city has been submitted to the voters of the charter code city in an election and has been rejected by a majority of such voters, such proposition shall not again be submitted to the voters for six years thereafter. [1967 ex.s. c 119 § 35A.10.040.]

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**Chapter 35A.11 RCW****LAWS GOVERNING NONCHARTER CODE CITIES AND CHARTER CODE CITIES—POWERS**

## Sections

- 35A.11.010 Rights, powers and privileges.
- 35A.11.020 Powers vested in legislative bodies of noncharter and charter code cities.
- 35A.11.030 Applicability of general law.
- 35A.11.035 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.
- 35A.11.037 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts.
- 35A.11.040 Intergovernmental cooperation and action.
- 35A.11.050 Statement of purpose and policy.
- 35A.11.060 Participation in Economic Opportunity Act programs.
- 35A.11.070 Tourist promotion.
- 35A.11.080 Initiative and referendum—Election to exercise—Restriction or abandonment.
- 35A.11.090 Initiative and referendum—Effective date of ordinances—Exceptions.
- 35A.11.100 Initiative and referendum—Exercise of powers.
- 35A.11.110 Members of legislative bodies authorized to serve as volunteer fire fighters or reserve law enforcement officers.
- 35A.11.200 Criminal code repeal by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration.
- 35A.11.210 Juvenile curfews.

**35A.11.010 Rights, powers and privileges.** Each city governed under this optional municipal code, whether charter or noncharter, shall be entitled "City of . . . ." (naming it), and by such name shall have perpetual succession; may sue and be sued in all courts and proceedings; use a corporate seal approved by its legislative body; and, by and through its legislative body, such municipality may contract and be contracted with; may purchase, lease, receive, or otherwise acquire real and personal property of every kind, and use, enjoy, hold, lease, control, convey or otherwise dispose of it for the common benefit. [1967 ex.s. c 119 § 35A.11.010.]

**35A.11.020 Powers vested in legislative bodies of noncharter and charter code cities.** The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people: PROVIDED, That nothing in this section or in this title shall permit any city, whether a code city or otherwise, to enact any provisions establishing or respecting a merit system or system of civil service for firemen and policemen which does not substantially accomplish the same purpose as provided by general law in chapter 41.08 RCW for firemen and chapter 41.12 RCW for policemen now or as hereafter amended, or enact any provision establishing or respecting a pension or retirement system for firemen or policemen which provides different pensions or retirement benefits than are provided by general law for such classes.

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may

impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property, in regard to all aspects of collective bargaining as provided for and subject to the provisions of chapter 41.56 RCW, as now or hereafter amended, and in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080. [1993 c 83 § 8; 1986 c 278 § 7; 1984 c 258 § 807; 1969 ex.s. c 29 § 1; 1967 ex.s. c 119 § 35A.11.020.]

**Effective date—1993 c 83:** See note following RCW 35.21.163.

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Effective date—1969 ex.s. c 29:** "The effective date of this act is July 1, 1969." [1969 ex.s. c 29 § 2.]

**35A.11.030 Applicability of general law.** Powers of eminent domain, borrowing, taxation, and the granting of franchises may be exercised by the legislative bodies of code cities in the manner provided in this title or by the general law of the state where not inconsistent with this title; and the duties to be performed and the procedure to be followed by such cities in regard to the keeping of accounts and records, official bonds, health and safety and other matters not specifically provided for in this title, shall be governed by the general law. For the purposes of this title, "the general law" means any provision of state law, not inconsistent with this title, enacted before or after the passage of this title which is by its terms applicable or available to all cities or towns. [1967 ex.s. c 119 § 35A.11.030.]

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**35A.11.035 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.** See chapter 80.58 RCW.

**35A.11.037 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts.** See RCW 87.03.825 through 87.03.840.

**35A.11.040 Intergovernmental cooperation and action.** The legislative body of a code city may exercise any of its powers or perform any of its functions including purchasing, and participate in the financing thereof, jointly or in cooperation, as provided for in chapter 39.34 RCW. The legislative body of a code city shall have power to accept any gift or grant for any public purpose and may carry out any conditions of such gift or grant when not in conflict with state or federal law. [1979 ex.s. c 18 § 17; 1967 ex.s. c 119 § 35A.11.040.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.11.050 Statement of purpose and policy.** The general grant of municipal power conferred by this chapter and this title on legislative bodies of noncharter code cities and charter code cities is intended to confer the greatest power of local self-government consistent with the Constitution of this state and shall be construed liberally in favor of such cities. Specific mention of a particular municipal power or authority contained in this title or in the general law shall be construed as in addition and supplementary to, or explanatory of the powers conferred in general terms by this chapter. [1967 ex.s. c 119 § 35A.11.050.]

**35A.11.060 Participation in Economic Opportunity Act programs.** The legislative body of any city or town is hereby authorized and empowered in its discretion by resolution or ordinance passed by a majority of the legislative body, to take whatever action it deems necessary to enable the city or town to participate in the programs set forth in the Economic Opportunity Act of 1964 (Public Law 88-452; 78 Stat. 508), as amended. Such participation may be engaged in as a sole city or town operation or in conjunction or cooperation with the state, any other city or town, county, or municipal corporation, or any private corporation qualified under said Economic Opportunity Act. [1971 ex.s. c 177 § 4.]

**35A.11.070 Tourist promotion.** See RCW 35.21.700.

**35A.11.080 Initiative and referendum—Election to exercise—Restriction or abandonment.** The qualified electors or legislative body of a noncharter code city may provide for the exercise in their city of the powers of initiative and referendum, upon electing so to do in the manner provided for changing the classification of a city or town in RCW 35A.02.020, 35A.02.025, 35A.02.030, and 35A.02.035, as now or hereafter amended.

The exercise of such powers may be restricted or abandoned upon electing so to do in the manner provided for abandoning the plan of government of a noncharter code city in RCW 35A.06.030, 35A.06.040, 35A.06.050, and

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35A.06.060, as now or hereafter amended. [1979 ex.s. c 18 § 18; 1973 1st ex.s. c 81 § 1.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

*Imposition or increase of business and occupation tax—Referendum procedure required—Exclusive procedure:* RCW 35.21.706.

*Initiative and referendum petitions:* RCW 35A.29.170.

**35A.11.090 Initiative and referendum—Effective date of ordinances—Exceptions.** Ordinances of noncharter code cities the qualified electors of which have elected to exercise the powers of initiative and referendum shall not go into effect before thirty days from the time of final passage and are subject to referendum during the interim except:

- (1) Ordinances initiated by petition;
- (2) Ordinances necessary for immediate preservation of public peace, health, and safety or for the support of city government and its existing public institutions which contain a statement of urgency and are passed by unanimous vote of the council;
- (3) Ordinances providing for local improvement districts;
- (4) Ordinances appropriating money;
- (5) Ordinances providing for or approving collective bargaining;
- (6) Ordinances providing for the compensation of or working conditions of city employees; and
- (7) Ordinances authorizing or repealing the levy of taxes; which excepted ordinances shall go into effect as provided by the general law or by applicable sections of Title 35A RCW as now or hereafter amended. [1973 1st ex.s. c 81 § 2.]

**35A.11.100 Initiative and referendum—Exercise of powers.** Except as provided in RCW 35A.11.090, and except that the number of registered voters needed to sign a petition for initiative or referendum shall be fifteen percent of the total number of names of persons listed as registered voters within the city on the day of the last preceding city general election, the powers of initiative and referendum in noncharter code cities shall be exercised in the manner set forth for the commission form of government in RCW 35.17.240 through 35.17.360, as now or hereafter amended. [1973 1st ex.s. c 81 § 3.]

*Sufficiency of petition in code city:* RCW 35A.01.040.

**35A.11.110 Members of legislative bodies authorized to serve as volunteer fire fighters or reserve law enforcement officers.** Notwithstanding any other provision of law, the legislative body of any code city, by resolution adopted by a two-thirds vote of the full legislative body, may authorize any of its members to serve as volunteer fire fighters or reserve law enforcement officers, or both, and to receive the same compensation, insurance and other benefits as are applicable to other volunteer fire fighters or reserve law enforcement officers employed by the code city. [1993 c 303 § 2; 1974 ex.s. c 60 § 2.]

**35A.11.200 Criminal code repeal by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration.** A code city operating a municipal court may not repeal in its entirety that por-

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tion of its municipal code defining crimes unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 209.]

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**35A.11.210 Juvenile curfews.** (1) Any code city has the authority to enact an ordinance, for the purpose of preserving the public safety or reducing acts of violence by or against juveniles that are occurring at such rates as to be beyond the capacity of the police to assure public safety, establishing times and conditions under which juveniles may be present on the public streets, in the public parks, or in any other public place during specified hours.

(2) The ordinance shall not contain any criminal sanctions for a violation of the ordinance. [1994 sp.s. c 7 § 503.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

## Chapter 35A.12 RCW

### MAYOR-COUNCIL PLAN OF GOVERNMENT

#### Sections

- 35A.12.010 Elective city officers—Size of council.
- 35A.12.020 Appointive officers—Duties—Compensation.
- 35A.12.030 Eligibility to hold elective office.
- 35A.12.040 Elections—Terms of elective officers—Numbering of council positions.
- 35A.12.050 Vacancies.
- 35A.12.060 Vacancy for nonattendance.
- 35A.12.065 Pro tempore appointments.
- 35A.12.070 Compensation of elective officers—Expenses.
- 35A.12.080 Oath and bond of officers.
- 35A.12.090 Appointment and removal of officers—Terms.
- 35A.12.100 Duties and authority of the mayor—Veto—Tie-breaking vote.
- 35A.12.110 Council meetings.
- 35A.12.120 Council—Quorum—Rules—Voting.
- 35A.12.130 Ordinances—Style—Requisites—Veto.
- 35A.12.140 Adoption of codes by reference.
- 35A.12.150 Ordinances—Authentication and recording.
- 35A.12.160 Publication of ordinances or summary—Public notice of hearings and meeting agendas.
- 35A.12.170 Audit and allowance of demands against city.
- 35A.12.180 Optional division of city into wards.
- 35A.12.190 Powers of council.

**35A.12.010 Elective city officers—Size of council.** The government of any noncharter code city or charter code city electing to adopt the mayor-council plan of government authorized by this chapter shall be vested in an elected mayor and an elected council. The council of a noncharter code city having less than twenty-five hundred inhabitants shall consist of five members; when there are twenty-five hundred or more

inhabitants, the council shall consist of seven members. A city with a population of less than twenty-five hundred at the time of reclassification as an optional municipal code city may choose to maintain a seven-member council. The decision concerning the number of councilmembers shall be made by the council and be incorporated as a section of the ordinance adopting for the city the classification of noncharter code city. If the population of a city after having become a code city decreases from twenty-five hundred or more to less than twenty-five hundred, it shall continue to have a seven member council. If, after a city has become a mayor-council code city, its population increases to twenty-five hundred or more inhabitants, the number of councilmanic offices in such city may increase from five to seven members upon the affirmative vote of a majority of the existing council to increase the number of councilmanic offices in the city. When the population of a mayor-council code city having five councilmanic offices increases to five thousand or more inhabitants, the number of councilmanic offices in the city shall increase from five to seven members. In the event of an increase in the number of councilmanic offices, the city council shall, by majority vote, pursuant to RCW 35A.12.050, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term. The number of inhabitants shall be determined by the most recent official state or federal census or determination by the state office of financial management. A charter adopted under the provisions of this title, incorporating the mayor-council plan of government set forth in this chapter, may provide for an uneven number of councilmembers not exceeding eleven.

A noncharter code city of less than five thousand inhabitants which has elected the mayor-council plan of government and which has seven councilmanic offices may establish a five-member council in accordance with the following procedure. At least six months prior to a municipal general election, the city council shall adopt an ordinance providing for reduction in the number of councilmanic offices to five. The ordinance shall specify which two councilmanic offices, the terms of which expire at the next general election, are to be terminated. The ordinance shall provide for the renumbering of council positions and shall also provide for a two-year extension of the term of office of a retained councilmanic office, if necessary, in order to comply with RCW 35A.12.040.

However, a noncharter code city that has retained its old mayor-council plan of government, as provided in RCW 35A.02.130, is subject to the laws applicable to that old plan of government. [1997 c 361 § 6; 1994 c 223 § 30; 1994 c 81 § 71; 1985 c 106 § 1; 1983 c 128 § 1; 1979 ex.s. c 18 § 19; 1979 c 151 § 33; 1967 ex.s. c 119 § 35A.12.010.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

*Population determinations, office of financial management: Chapter 43.62 RCW.*

**35A.12.020 Appointive officers—Duties—Compensation.** The appointive officers shall be those provided for by charter or ordinance and shall include a city clerk and a chief law enforcement officer. The office of city clerk may be merged with that of a city treasurer, if any, with an appropri-

ate title designated therefor. Provision shall be made for obtaining legal counsel for the city, either by appointment of a city attorney on a full-time or part-time basis, or by any reasonable contractual arrangement for such professional services. The authority, duties and qualifications of all appointive officers shall be prescribed by charter or ordinance, consistent with the provisions of this title, and any amendments thereto, and the compensation of appointive officers shall be prescribed by ordinance: PROVIDED, That the compensation of an appointed municipal judge shall be within applicable statutory limits. [1987 c 3 § 14; 1967 ex.s. c 119 § 35A.12.020.]

**Severability—1987 c 3:** See note following RCW 3.46.020.

**35A.12.030 Eligibility to hold elective office.** No person shall be eligible to hold elective office under the mayor-council plan unless the person is a registered voter of the city at the time of filing his declaration of candidacy and has been a resident of the city for a period of at least one year next preceding his election. Residence and voting within the limits of any territory which has been included in, annexed to, or consolidated with such city is construed to have been residence within the city. A mayor or councilman shall hold within the city government no other public office or employment except as permitted under the provisions of chapter 42.23 RCW. [1979 ex.s. c 18 § 20; 1967 ex.s. c 119 § 35A.12.030.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.12.040 Elections—Terms of elective officers—Numbering of council positions.** Officers shall be elected at biennial municipal elections to be conducted as provided in chapter 35A.29 RCW. The mayor and the councilmembers shall be elected for four-year terms of office and until their successors are elected and qualified and assume office in accordance with \*RCW 29.04.170. At any first election upon reorganization, councilmembers shall be elected as provided in RCW 35A.02.050. Thereafter the requisite number of councilmembers shall be elected biennially as the terms of their predecessors expire and shall serve for terms of four years. The positions to be filled on the city council shall be designated by consecutive numbers and shall be dealt with as separate offices for all election purposes. Election to positions on the council shall be by majority vote from the city at large, unless provision is made by charter or ordinance for election by wards. The mayor and councilmembers shall qualify by taking an oath or affirmation of office and as may be provided by law, charter, or ordinance. [1994 c 223 § 31; 1979 ex.s. c 18 § 21; 1970 ex.s. c 52 § 3; 1967 ex.s. c 119 § 35A.12.040.]

**\*Reviser's note:** RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.12.050 Vacancies.** The office of a mayor or councilmember shall become vacant if the person who is elected or appointed to that position fails to qualify as provided by law, fails to enter upon the duties of that office at the time fixed by law without a justifiable reason, or as provided in RCW 35A.12.060 or 42.12.010. A vacancy in the office of mayor or in the council shall be filled as provided in chapter

42.12 RCW. [1994 c 223 § 32; 1967 ex.s. c 119 § 35A.12.050.]

**35A.12.060 Vacancy for nonattendance.** In addition a council position shall become vacant if the councilmember fails to attend three consecutive regular meetings of the council without being excused by the council. [1994 c 223 § 33; 1967 ex.s. c 119 § 35A.12.060.]

**35A.12.065 Pro tempore appointments.** Biennially at the first meeting of a new council, or periodically, the members thereof, by majority vote, may designate one of their number as mayor pro tempore or deputy mayor for such period as the council may specify, to serve in the absence or temporary disability of the mayor; or, in lieu thereof, the council may, as the need may arise, appoint any qualified person to serve as mayor pro tempore in the absence or temporary disability of the mayor. In the event of the extended excused absence or disability of a councilman, the remaining members by majority vote may appoint a councilman pro tempore to serve during the absence or disability. [1967 ex.s. c 119 § 35A.12.065.]

**35A.12.070 Compensation of elective officers—Expenses.** The salaries of the mayor and the councilmen shall be fixed by ordinance and may be revised from time to time by ordinance, but any increase in the compensation attaching to an office shall not be applicable to the term then being served by the incumbent if such incumbent is a member of the city legislative body fixing his own compensation or as mayor in a mayor-council code city casts a tie-breaking vote relating to such ordinance: PROVIDED, That if the mayor of such a city does not cast such a vote, his salary may be increased during his term of office.

Until the first elective officers under this mayor-council plan of government may lawfully be paid the compensation provided by such salary ordinance, such officers shall be entitled to be compensated in the same manner and in the same amount as the compensation paid to officers of such city performing comparable services immediately prior to adoption of this mayor-council plan.

Until a salary ordinance can be passed and become effective as to elective officers of a newly incorporated code city, such first officers shall be entitled to compensation as follows: In cities having less than five thousand inhabitants, the mayor shall be entitled to a salary of one hundred and fifty dollars per calendar month and a councilman shall be entitled to twenty dollars per meeting for not more than two meetings per month; in cities having more than five thousand but less than fifteen thousand inhabitants, the mayor shall be entitled to a salary of three hundred and fifty dollars per calendar month and a councilman shall be entitled to one hundred and fifty dollars per calendar month; in cities having more than fifteen thousand inhabitants, the mayor shall be entitled to a salary of twelve hundred and fifty dollars per calendar month and a councilman shall be entitled to four hundred dollars per calendar month: PROVIDED, That such interim compensation shall remain in effect only until a salary ordinance is passed and becomes effective as to such officers, and the amounts herein provided shall not be construed as fixing the

usual salary of such officers. The mayor and councilmen shall receive reimbursement for their actual and necessary expenses incurred in the performance of the duties of their office, or the council by ordinance may provide for a per diem allowance. Procedure for approval of claims for expenses shall be as provided by ordinance. [1971 ex.s. c 251 § 5; 1967 ex.s. c 119 § 35A.12.070.]

**Severability—1971 ex.s. c 251:** See RCW 35A.90.050.

*Limitations on salaries: State Constitution Art. 11 § 8.*

**35A.12.080 Oath and bond of officers.** Any officer before entering upon the performance of his duties may be required to take an oath or affirmation as prescribed by charter or by ordinance for the faithful performance of his duties. The oath or affirmation shall be filed with the county auditor. The clerk, treasurer, if any, chief of police, and such other officers or employees as may be designated by ordinance or by charter shall be required to furnish annually an official bond conditioned on the honest and faithful performance of their official duties. The terms and penalty of official bonds and the surety therefor shall be prescribed by ordinance or charter and the bond shall be approved by the chief administrative officer of the city. The premiums on such bonds shall be paid by the city. When the furnishing of an official bond is required of an officer or employee, compliance with such provisions shall be an essential part of qualification for office. [1986 c 167 § 20; 1967 ex.s. c 119 § 35A.12.080.]

**Severability—1986 c 167:** See note following RCW 29A.04.049.

**35A.12.090 Appointment and removal of officers—Terms.** The mayor shall have the power of appointment and removal of all appointive officers and employees subject to any applicable law, rule, or regulation relating to civil service. The head of a department or office of the city government may be authorized by the mayor to appoint and remove subordinates in such department or office, subject to any applicable civil service provisions. All appointments of city officers and employees shall be made on the basis of ability and training or experience of the appointees in the duties they are to perform, from among persons having such qualifications as may be prescribed by ordinance or by charter, and in compliance with provisions of any merit system applicable to such city. Confirmation by the city council of appointments of officers and employees shall be required only when the city charter, or the council by ordinance, provides for confirmation of such appointments. Confirmation of mayoral appointments by the council may be required by the council in any instance where qualifications for the office or position have not been established by ordinance or charter provision. Appointive offices shall be without definite term unless a term is established for such office by law, charter or ordinance. [1987 c 3 § 15; 1967 ex.s. c 119 § 35A.12.090.]

**Severability—1987 c 3:** See note following RCW 3.46.020.

**35A.12.100 Duties and authority of the mayor—Veto—Tie-breaking vote.** The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees, with authority to designate assistants and department heads. The mayor may appoint and remove a chief administrative officer or assistant administra-

tive officer, if so provided by ordinance or charter. He shall see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city, and shall have general supervision of the administration of city government and all city interests. All official bonds and bonds of contractors with the city shall be submitted to the mayor or such person as he may designate for approval or disapproval. He shall see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed, and to this end he may cause any legal proceedings to be instituted and prosecuted in the name of the city, subject to approval by majority vote of all members of the council. The mayor shall preside over all meetings of the city council, when present, but shall have a vote only in the case of a tie in the votes of the councilmen with respect to matters other than the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money. He shall report to the council concerning the affairs of the city and its financial and other needs, and shall make recommendations for council consideration and action. He shall prepare and submit to the council a proposed budget, as required by chapter 35A.33 RCW. The mayor shall have the power to veto ordinances passed by the council and submitted to him as provided in RCW 35A.12.130 but such veto may be overridden by the vote of a majority of all council members plus one more vote. The mayor shall be the official and ceremonial head of the city and shall represent the city on ceremonial occasions, except that when illness or other duties prevent the mayor's attendance at an official function and no mayor pro tempore has been appointed by the council, a member of the council or some other suitable person may be designated by the mayor to represent the city on such occasion. [1979 ex.s. c 18 § 22; 1967 ex.s. c 119 § 35A.12.100.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.12.110 Council meetings.** The city council and mayor shall meet regularly, at least once a month, at a place and at such times as may be designated by the city council. All final actions on resolutions and ordinances must take place within the corporate limits of the city. Special meetings may be called by the mayor or any three members of the council by written notice delivered to each member of the council at least twenty-four hours before the time specified for the proposed meeting. All actions that have heretofore been taken at special council meetings held pursuant to this section, but for which the number of hours of notice given has been at variance with requirements of RCW 42.30.080, are hereby validated. All council meetings shall be open to the public except as permitted by chapter 42.30 RCW. No ordinance or resolution shall be passed, or contract let or entered into, or bill for the payment of money allowed at any meeting not open to the public, nor at any public meeting the date of which is not fixed by ordinance, resolution, or rule, unless public notice of such meeting has been given by such notice to each local newspaper of general circulation and to each local radio or television station, as provided in RCW 42.30.080 as now or hereafter amended. Meetings of the council shall be presided over by the mayor, if present, or otherwise by the mayor pro tempore, or deputy mayor if one has been appointed, or by a member of the council selected

by a majority of the council members at such meeting. Appointment of a council member to preside over the meeting shall not in any way abridge his right to vote on matters coming before the council at such meeting. In the absence of the clerk, a deputy clerk or other qualified person appointed by the clerk, the mayor, or the council, may perform the duties of clerk at such meeting. A journal of all proceedings shall be kept, which shall be a public record. [1993 c 199 § 3; 1979 ex.s. c 18 § 23; 1967 ex.s. c 119 § 35A.12.110.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.12.120 Council—Quorum—Rules—Voting.** At all meetings of the council a majority of the councilmen shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The council shall determine its own rules and order of business, and may establish rules for the conduct of council meetings and the maintenance of order. At the desire of any member, any question shall be voted upon by roll call and the ayes and nays shall be recorded in the journal.

The passage of any ordinance, grant or revocation of franchise or license, and any resolution for the payment of money shall require the affirmative vote of at least a majority of the whole membership of the council. [1967 ex.s. c 119 § 35A.12.120.]

**35A.12.130 Ordinances—Style—Requisites—Veto.** The enacting clause of all ordinances shall be as follows: "The city council of the city of . . . . do ordain as follows:" No ordinance shall contain more than one subject and that must be clearly expressed in its title.

No ordinance or any section or subsection thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or the amended section or subsection at full length.

No ordinance shall take effect until five days after the date of its publication unless otherwise provided by statute or charter, except that an ordinance passed by a majority plus one of the whole membership of the council, designated therein as a public emergency ordinance necessary for the protection of public health, public safety, public property or the public peace, may be made effective upon adoption, but such ordinance may not levy taxes, grant, renew, or extend a franchise, or authorize the borrowing of money.

Every ordinance which passes the council in order to become valid must be presented to the mayor; if he approves it, he shall sign it, but if not, he shall return it with his written objections to the council and the council shall cause his objections to be entered at large upon the journal and proceed to a reconsideration thereof. If upon reconsideration a majority plus one of the whole membership, voting upon a call of ayes and nays, favor its passage, the ordinance shall become valid notwithstanding the mayor's veto. If the mayor fails for ten days to either approve or veto an ordinance, it shall become valid without his approval. Ordinances shall be signed by the mayor and attested by the clerk. [1967 ex.s. c 119 § 35A.12.130.]

**35A.12.140 Adoption of codes by reference.** Ordinances may by reference adopt Washington state statutes and state, county, or city codes, regulations, or ordinances or any standard code of technical regulations, or portions thereof, including, for illustrative purposes but not limited to, fire codes and codes or ordinances relating to the construction of buildings, the installation of plumbing, the installation of electric wiring, health and sanitation, the slaughtering, processing, and selling of meats and meat products for human consumption, the production, pasteurizing, and sale of milk and milk products, or other subjects, together with amendments thereof or additions thereto, on the subject of the ordinance. Such Washington state statutes or codes or other codes or compilations so adopted need not be published in a newspaper as provided in RCW 35A.12.160, but the adopting ordinance shall be so published and a copy of any such adopted statute, ordinance, or code, or portion thereof, with amendments or additions, if any, in the form in which it was adopted, shall be filed in the office of the city clerk for use and examination by the public. While any such statute, code, or compilation is under consideration by the council prior to adoption, not less than one copy thereof shall be filed in the office of the city clerk for examination by the public. [1995 c 71 § 1; 1982 c 226 § 2; 1967 ex.s. c 119 § 35A.12.140.]

**Effective date—1982 c 226:** See note following RCW 35.21.180.

**35A.12.150 Ordinances—Authentication and recording.** The city clerk shall authenticate by his signature and record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the council. Such book, or copies of ordinances and resolutions, shall be available for inspection by the public at reasonable times and under reasonable conditions. [1967 ex.s. c 119 § 35A.12.150.]

**35A.12.160 Publication of ordinances or summary—Public notice of hearings and meeting agendas.** Promptly after adoption, the text of each ordinance or a summary of the content of each ordinance shall be published at least once in the city's official newspaper.

For purposes of this section, a summary shall mean a brief description which succinctly describes the main points of the ordinance. Publication of the title of an ordinance authorizing the issuance of bonds, notes, or other evidences of indebtedness shall constitute publication of a summary of that ordinance. When the city publishes a summary, the publication shall include a statement that the full text of the ordinance will be mailed upon request.

An inadvertent mistake or omission in publishing the text or a summary of the content of an ordinance shall not render the ordinance invalid.

In addition to the requirement that a city publish the text or a summary of the content of each adopted ordinance, every city shall establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this

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requirement. [1994 c 273 § 15; 1988 c 168 § 7; 1987 c 400 § 3; 1985 c 469 § 42; 1967 ex.s. c 119 § 35A.12.160.]

**35A.12.170 Audit and allowance of demands against city.** All demands against a code city shall be presented and audited in accordance with such regulations as may be prescribed by charter or ordinance; and upon the allowance of a demand, the clerk shall draw a warrant upon the treasurer for it, which warrant shall be countersigned by the mayor, or such person as he may designate, and shall specify the fund from which it is to be paid; or, payment may be made by a bank check when authorized by the legislative body of the code city under authority granted by RCW 35A.40.020, which check shall bear the signatures of the officers designated by the legislative body as required signatories of checks of such city, and shall specify the fund from which it is to be paid. [1967 ex.s. c 119 § 35A.12.170.]

**35A.12.180 Optional division of city into wards.** At any time not within three months previous to a municipal general election the council of a noncharter code city organized under this chapter may divide the city into wards or change the boundaries of existing wards. No change in the boundaries of wards shall affect the term of any councilmember, and councilmembers shall serve out their terms in the wards of their residences at the time of their elections: PROVIDED, That if this results in one ward being represented by more councilmembers than the number to which it is entitled those having the shortest unexpired terms shall be assigned by the council to wards where there is a vacancy, and the councilmembers so assigned shall be deemed to be residents of the wards to which they are assigned for purposes of those positions being vacant. The representation of each ward in the city council shall be in proportion to the population as nearly as is practicable.

Wards shall be redrawn as provided in \*chapter 29.70 RCW. Wards shall be used as follows: (1) Only a resident of the ward may be a candidate for, or hold office as, a councilmember of the ward; and (2) only voters of the ward may vote at a primary to nominate candidates for a councilmember of the ward. Voters of the entire city may vote at the general election to elect a councilmember of a ward, unless the city had prior to January 1, 1994, limited the voting in the general election for any or all council positions to only voters residing within the ward associated with the council positions. If a city had so limited the voting in the general election to only voters residing within the ward, then the city shall be authorized to continue to do so. [1994 c 223 § 34; 1967 ex.s. c 119 § 35A.12.180.]

**\*Reviser's note:** Chapter 29.70 RCW was recodified as chapter 29A.76 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**35A.12.190 Powers of council.** The council of any code city organized under the mayor-council plan of government provided in this chapter shall have the powers and authority granted to the legislative bodies of cities governed by this title, as more particularly described in chapter 35A.11 RCW. [1967 ex.s. c 119 § 35A.12.190.]

## Chapter 35A.13 RCW

## COUNCIL-MANAGER PLAN OF GOVERNMENT

## Sections

- 35A.13.010 City officers—Size of council.
- 35A.13.020 Election of councilmen—Eligibility—Terms—Vacancies—Forfeiture of office—Council chairman.
- 35A.13.030 Mayor—Election—Chairman to be mayor—Duties.
- 35A.13.033 Election on proposition to designate person elected to position one as chairman—Subsequent holders of position one to be chairman.
- 35A.13.035 Mayor pro tempore or deputy mayor.
- 35A.13.040 Compensation of councilmen—Expenses.
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- 35A.13.200 Authentication, recording and publication of ordinances.
- 35A.13.210 Audit and allowance of demands against city.
- 35A.13.220 Optional division of city into wards.
- 35A.13.230 Powers of council.

**35A.13.010 City officers—Size of council.** The councilmembers shall be the only elective officers of a code city electing to adopt the council-manager plan of government authorized by this chapter, except where statutes provide for an elective municipal judge. The council shall appoint an officer whose title shall be "city manager" who shall be the chief executive officer and head of the administrative branch of the city government. The city manager shall be responsible to the council for the proper administration of all affairs of the code city. The council of a noncharter code city having less than twenty-five hundred inhabitants shall consist of five members; when there are twenty-five hundred or more inhabitants the council shall consist of seven members: **PROVIDED**, That if the population of a city after having become a code city decreases from twenty-five hundred or more to less than twenty-five hundred, it shall continue to have a seven member council. If, after a city has become a council-manager code city its population increases to twenty-five hundred or more inhabitants, the number of councilmanic offices in such city may increase from five to seven members upon the affirmative vote of a majority of the existing council to increase the number of councilmanic offices in the city. When the population of a council-manager code city having five councilmanic offices increases to five thousand or more inhabitants, the number of councilmanic offices in the city shall increase from five to seven members. In the event of an increase in the number of councilmanic offices, the city council shall, by majority vote, pursuant to RCW 35A.13.020, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term. The number of inhabitants shall be determined by the most recent official state or federal census or determination by the state office of financial management.

A charter adopted under the provisions of this title, incorporating the council-manager plan of government set forth in this chapter may provide for an uneven number of councilmembers not exceeding eleven.

A noncharter code city of less than five thousand inhabitants which has elected the council-manager plan of government and which has seven councilmanic offices may establish a five-member council in accordance with the following procedure. At least six months prior to a municipal general election, the city council shall adopt an ordinance providing for reduction in the number of councilmanic offices to five. The ordinance shall specify which two councilmanic offices, the terms of which expire at the next general election, are to be terminated. The ordinance shall provide for the renumbering of council positions and shall also provide for a two-year extension of the term of office of a retained councilmanic office, if necessary, in order to comply with RCW 35A.12.040.

However, a noncharter code city that has retained its old council-manager plan of government, as provided in RCW 35A.02.130, is subject to the laws applicable to that old plan of government. [1994 c 223 § 35; 1994 c 81 § 72; 1987 c 3 § 16; 1985 c 106 § 2; 1983 c 128 § 2; 1979 ex.s. c 18 § 24; 1979 c 151 § 34; 1967 ex.s. c 119 § 35A.13.010.]

**Severability—1987 c 3:** See note following RCW 3.46.020.

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

*Population determinations, office of financial management: Chapter 43.62 RCW.*

**35A.13.020 Election of councilmen—Eligibility—Terms—Vacancies—Forfeiture of office—Council chairman.** In council-manager code cities, eligibility for election to the council, the manner of electing councilmen, the numbering of council positions, the terms of councilmen, the occurrence and the filling of vacancies, the grounds for forfeiture of office, and appointment of a mayor pro tempore or deputy mayor or councilman pro tempore shall be governed by the corresponding provisions of RCW 35A.12.030, 35A.12.040, 35A.12.050, 35A.12.060, and 35A.12.065 relating to the council of a code city organized under the mayor-council plan, except that in council-manager cities where all council positions are at-large positions, the city council may, pursuant to RCW 35A.13.033, provide that the person elected to council position one shall be the council chairman and shall carry out the duties prescribed by RCW 35A.13.030. [1994 c 223 § 36; 1975 1st ex.s. c 155 § 1; 1967 ex.s. c 119 § 35A.13.020.]

**35A.13.030 Mayor—Election—Chairman to be mayor—Duties.** Biennially at the first meeting of the new council the members thereof shall choose a chairman from among their number unless the chairman is elected pursuant to RCW 35A.13.033. The chairman of the council shall have the title of mayor and shall preside at meetings of the council. In addition to the powers conferred upon him as mayor, he shall continue to have all the rights, privileges, and immunities of a member of the council. The mayor shall be recognized as the head of the city for ceremonial purposes and by the governor for purposes of military law. He shall have no regular administrative duties, but in time of public danger or

emergency, if so authorized by ordinance, shall take command of the police, maintain law, and enforce order. [1975 1st ex.s. c 155 § 2; 1967 ex.s. c 119 § 35A.13.030.]

**35A.13.033 Election on proposition to designate person elected to position one as chairman—Subsequent holders of position one to be chairman.** The city council of a council-manager city may by resolution place before the voters of the city, a proposition to designate the person elected to council position one as the chairman of the council with the powers and duties set forth in RCW 35A.13.030. If a majority of those voting on the proposition cast a positive vote, then at all subsequent general elections at which position one is on the ballot, the person who is elected to position one shall become the chairman upon taking office. [1975 1st ex.s. c 155 § 3.]

**35A.13.035 Mayor pro tempore or deputy mayor.** Biennially at the first meeting of a new council, or periodically, the members thereof, by majority vote, may designate one of their number as mayor pro tempore or deputy mayor for such period as the council may specify, to serve in the absence or temporary disability of the mayor; or, in lieu thereof, the council may, as the need may arise, appoint any qualified person to serve as mayor pro tempore in the absence or temporary disability of the mayor. In the event of the extended excused absence or disability of a councilman, the remaining members by majority vote may appoint a councilman pro tempore to serve during the absence or disability. [1969 ex.s. c 81 § 1.]

**Effective date—1969 ex.s. c 81:** "This 1969 amendatory act shall take effect July 1, 1969." [1969 ex.s. c 81 § 7.]

**35A.13.040 Compensation of councilmen—Expenses.** The salaries of the councilmen, including the mayor, shall be fixed by ordinance and may be revised from time to time by ordinance, but any increase or reduction in the compensation attaching to an office shall not become effective until the expiration of the term then being served by the incumbent: PROVIDED, That compensation of councilmen may not be increased or diminished after their election nor may the compensation of the mayor be increased or diminished after the mayor has been chosen by the council.

Until councilmen of a newly-organized council-manager code city may lawfully be paid as provided by salary ordinance, such councilmen shall be entitled to compensation in the same manner and in the same amount as councilmen of such city prior to the adoption of this council-manager plan.

Until a salary ordinance can be passed and become effective as to elective officers of a newly incorporated code city, the first councilmen shall be entitled to compensation as follows: In cities having less than five thousand inhabitants—twenty dollars per meeting for not more than two meetings per month; in cities having more than five thousand but less than fifteen thousand inhabitants—a salary of one hundred and fifty dollars per calendar month; in cities having more than fifteen thousand inhabitants—a salary of four hundred dollars per calendar month. A councilman who is occupying the position of mayor, in addition to his salary as a councilman, shall be entitled, while serving as mayor, to an addi-

tional amount per calendar month, or portion thereof, equal to twenty-five percent of the councilmanic salary: PROVIDED, That such interim compensation shall remain in effect only until a salary ordinance is passed and becomes effective as to such officers, and the compensation provided herein shall not be construed as fixing the usual compensation of such officers. Councilmen shall receive reimbursement for their actual and necessary expenses incurred in the performance of the duties of their office, or the council by ordinance may provide for a per diem allowance. Procedure for approval of claims for expenses shall be as provided by ordinance. [1979 ex.s. c 18 § 25; 1967 ex.s. c 119 § 35A.13.040.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.13.050 City manager—Qualifications.** The city manager need not be a resident at the time of his appointment, but shall reside in the code city after his appointment unless such residence is waived by the council. He shall be chosen by the council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office. No person elected to membership on the council shall be eligible for appointment as city manager until one year has elapsed following the expiration of the term for which he was elected. [1967 ex.s. c 119 § 35A.13.050.]

**35A.13.060 City manager may serve two or more cities.** Whether the city manager shall devote his full time to the affairs of one code city shall be determined by the council. A city manager may serve two or more cities in that capacity at the same time. [1967 ex.s. c 119 § 35A.13.060.]

**35A.13.070 City manager—Bond and oath.** Before entering upon the duties of his office the city manager shall take an oath or affirmation for the faithful performance of his duties and shall execute and file with the clerk of the council a bond in favor of the code city in such sum as may be fixed by the council. The premium on such bond shall be paid by the city. [1967 ex.s. c 119 § 35A.13.070.]

**35A.13.080 City manager—Powers and duties.** The powers and duties of the city manager shall be:

(1) To have general supervision over the administrative affairs of the code city;

(2) To appoint and remove at any time all department heads, officers, and employees of the code city, except members of the council, and subject to the provisions of any applicable law, rule, or regulation relating to civil service: PROVIDED, That the council may provide for the appointment by the mayor, subject to confirmation by the council, of a city planning commission, and other advisory citizens' committees, commissions, and boards advisory to the city council: PROVIDED FURTHER, That if the municipal judge of the code city is appointed, such appointment shall be made by the city manager subject to confirmation by the council, for a four year term. The council may cause an audit to be made of any department or office of the code city government and

may select the persons to make it, without the advice or consent of the city manager;

(3) To attend all meetings of the council at which his attendance may be required by that body;

(4) To see that all laws and ordinances are faithfully executed, subject to the authority which the council may grant the mayor to maintain law and order in times of emergency;

(5) To recommend for adoption by the council such measures as he may deem necessary or expedient;

(6) To prepare and submit to the council such reports as may be required by that body or as he may deem it advisable to submit;

(7) To keep the council fully advised of the financial condition of the code city and its future needs;

(8) To prepare and submit to the council a proposed budget for the fiscal year, as required by chapter 35A.33 RCW, and to be responsible for its administration upon adoption;

(9) To perform such other duties as the council may determine by ordinance or resolution. [1987 c 3 § 17; 1967 ex.s. c 119 § 35A.13.080.]

**Severability—1987 c 3:** See note following RCW 3.46.020.

**35A.13.090 Creation of departments, offices, and employment—Compensation.** On recommendation of the city manager or upon its own action, the council may create such departments, offices, and employments as it may find necessary or advisable and may determine the powers and duties of each department or office. Compensation of appointive officers and employees may be fixed by ordinance after recommendations are made by the city manager. The appointive officers shall include a city clerk and a chief of police or other law enforcement officer. Pursuant to recommendation of the city manager, the council shall make provision for obtaining legal counsel for the city, either by appointment of a city attorney on a full time or part time basis, or by any reasonable contractual arrangement for such professional services. [1967 ex.s. c 119 § 35A.13.090.]

**35A.13.100 City manager—Department heads—Authority.** The city manager may authorize the head of a department or office responsible to him to appoint and remove subordinates in such department or office. Any officer or employee who may be appointed by the city manager, or by the head of a department or office, except one who holds his position subject to civil service, may be removed by the manager or other such appointing officer at any time subject to any applicable law, rule, or regulation relating to civil service. Subject to the provisions of RCW 35A.13.080 and any applicable civil service provisions, the decision of the manager or other appointing officer, shall be final and there shall be no appeal therefrom to any other office, body, or court whatsoever. [1967 ex.s. c 119 § 35A.13.100.]

**35A.13.110 City manager—Appointment of subordinates—Qualifications—Terms.** Appointments made by or under the authority of the city manager shall be on the basis of ability and training or experience of the appointees in the duties which they are to perform, and shall be in compliance with provisions of any merit system applicable to such city. Residence within the code city shall not be a requirement. All

such appointments shall be without definite term. [1967 ex.s. c 119 § 35A.13.110.]

**35A.13.120 City manager—Interference by council members.** Neither the council, nor any of its committees or members, shall direct the appointment of any person to, or his removal from, office by the city manager or any of his subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the manager and neither the council nor any committee or member thereof shall give orders to any subordinate of the city manager, either publicly or privately. The provisions of this section do not prohibit the council, while in open session, from fully and freely discussing with the city manager anything pertaining to appointments and removals of city officers and employees and city affairs. [1967 ex.s. c 119 § 35A.13.120.]

**35A.13.130 City manager—Removal—Resolution and notice.** The city manager shall be appointed for an indefinite term and may be removed by a majority vote of the council. At least thirty days before the effective date of his removal, the city manager must be furnished with a formal statement in the form of a resolution passed by a majority vote of the city council stating the council's intention to remove him and the reasons therefor. Upon passage of the resolution stating the council's intention to remove the manager, the council by a similar vote may suspend him from duty, but his pay shall continue until his removal becomes effective. [1967 ex.s. c 119 § 35A.13.130.]

**35A.13.140 City manager—Removal—Reply and hearing.** The city manager may, within thirty days from the date of service upon him of a copy thereof, reply in writing to the resolution stating the council's intention to remove him. In the event no reply is timely filed, the resolution shall upon the thirty-first day from the date of such service, constitute the final resolution removing the manager and his services shall terminate upon that day. If a reply shall be timely filed with the city clerk, the council shall fix a time for a public hearing upon the question of the manager's removal and a final resolution removing the manager shall not be adopted until a public hearing has been had. The action of the council in removing the manager shall be final. [1967 ex.s. c 119 § 35A.13.140.]

**35A.13.150 City manager—Substitute.** The council may designate a qualified administrative officer of the city or town to perform the duties of manager:

- (1) Upon the adoption of the council-manager plan, pending the selection and appointment of a manager; or
- (2) Upon the termination of the services of a manager, pending the selection and appointment of a new manager; or
- (3) During the absence, disability, or suspension of the manager. [1967 ex.s. c 119 § 35A.13.150.]

**35A.13.160 Oath and bond of officers.** All provisions of RCW 35A.12.080 relating to oaths and bonds of officers, shall be applicable to code cities organized under this council-manager plan. [1967 ex.s. c 119 § 35A.13.160.]

**35A.13.170 Council meetings—Quorum—Rules—Voting.** All provisions of RCW 35A.12.110, as now or hereafter amended, and 35A.12.120, relating to council meetings, a quorum for transaction of business, rules and voting at council meetings, shall be applicable to code cities organized under this council-manager plan. [1979 ex.s. c 18 § 26; 1967 ex.s. c 119 § 35A.13.170.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.13.180 Adoption of codes by reference.** Ordinances of cities organized under this chapter may adopt codes by reference as provided in RCW 35A.12.140. [1967 ex.s. c 119 § 35A.13.180.]

**35A.13.190 Ordinances—Style—Requisites—Veto.** The enacting clause of all ordinances shall be as follows: "The city council of the city of . . . . do ordain as follows:" No ordinance shall contain more than one subject and that must be clearly expressed in its title.

No ordinance or any section or subsection thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or the amended section or subsection at full length.

No ordinance shall take effect until five days after the date of its publication unless otherwise provided by statute or charter, except that an ordinance passed by a majority plus one of the whole membership of the council, designated therein as a public emergency ordinance necessary for the protection of public health, public safety, public property or the public peace, may be made effective upon adoption, but such ordinance may not levy taxes, grant, renew, or extend a franchise, or authorize the borrowing of money. [1967 ex.s. c 119 § 35A.13.190.]

**35A.13.200 Authentication, recording and publication of ordinances.** Ordinances of code cities organized under this chapter shall be authenticated, recorded and published as provided in RCW 35A.12.150 and 35A.12.160. [1967 ex.s. c 119 § 35A.13.200.]

**35A.13.210 Audit and allowance of demands against city.** RCW 35A.12.170 shall apply to the audit and allowance of demands against the city. [1967 ex.s. c 119 § 35A.13.210.]

**35A.13.220 Optional division of city into wards.** A code city organized under this chapter may be divided into wards as provided in RCW 35A.12.180. [1967 ex.s. c 119 § 35A.13.220.]

**35A.13.230 Powers of council.** The council of any code city organized under the council-manager plan provided in this chapter shall have the powers and authority granted to legislative bodies of cities governed by this title as more particularly described in chapter 35A.11 RCW, except insofar as such power and authority is vested in the city manager. [1967 ex.s. c 119 § 35A.13.230.]

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## Chapter 35A.14 RCW

### ANNEXATION BY CODE CITIES

#### Sections

35A.14.001	Actions subject to review by boundary review board.
35A.14.005	Annexations beyond urban growth areas prohibited.
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Interlocal agreement—Public hearing—Ordinance providing for annexation—Referendum—Election, when necessary.

- 35A.14.500 Outstanding indebtedness not affected.
- 35A.14.550 Providing annexation information to public.
- 35A.14.700 Determining population of annexed territory—Certificate—As basis for allocation of state funds—Revised certificate.
- 35A.14.801 Road district taxes collected in annexed territory—Disposition—Notification of annexation.
- 35A.14.900 Cancellation, acquisition of franchise or permit for operation of public service business in territory annexed—Regulation of solid waste collection.
- 35A.14.901 Application of chapter to annexations involving water or sewer service.

*Annexation of fire protection district territory: RCW 35.02.190 through 35.02.205.*

*Resolution initiating election may provide for inclusion of annexed area into community municipal corporation: RCW 35.13.015.*

*Water, sewer, or fire districts, annexation of: Chapter 35.13A RCW.*

**35A.14.001 Actions subject to review by boundary review board.** Actions taken under chapter 35A.14 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 38.]

**35A.14.005 Annexations beyond urban growth areas prohibited.** No code city located in a county in which urban growth areas have been designated under RCW 36.70A.110 may annex territory beyond an urban growth area. [1990 1st ex.s. c 17 § 31.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**35A.14.010 Authority for annexation—Consent of county commissioners for certain property.** Any portion of a county not incorporated as part of a city or town but lying contiguous to a code city may become a part of the charter code city or noncharter code city by annexation: PROVIDED, That property owned by a county, and used for the purpose of an agricultural fair as provided in chapter 15.76 RCW or chapter 36.37 RCW shall not be subject to annexation without the consent of the majority of the board of county commissioners. An area proposed to be annexed to a charter code city or noncharter code city shall be deemed contiguous thereto even though separated by water or tide or shore lands and, upon annexation of such area, any such intervening water and/or tide or shore lands shall become a part of such annexing city. [1967 ex.s. c 119 § 35A.14.010.]

**35A.14.015 Election method—Resolution for election—Contents of resolution.** When the legislative body of a charter code city or noncharter code city shall determine that the best interests and general welfare of such city would be served by the annexation of unincorporated territory contiguous to such city, such legislative body may, by resolution, call for an election to be held to submit to the voters of such territory the proposal for annexation. The resolution shall, subject to RCW 35.02.170, describe the boundaries of the area to be annexed, state the number of voters residing therein as nearly as may be, and shall provide that said city will pay the cost of the annexation election. The resolution may require that there also be submitted to the electorate of the territory sought to be annexed a proposition that all property within the area annexed shall, upon annexation, be

assessed and taxed at the same rate and on the same basis as the property of such annexing city is assessed and taxed to pay for all or any portion of the then-outstanding indebtedness of the city to which said area is annexed, which indebtedness has been approved by the voters, contracted for, or incurred prior to, or existing at, the date of annexation. Whenever such city has prepared and filed a proposed zoning regulation for the area to be annexed as provided for in RCW 35A.14.330 and 35A.14.340, the resolution initiating the election may also provide for the simultaneous adoption of the proposed zoning regulation upon approval of annexation by the electorate of the area to be annexed. A certified copy of the resolution shall be filed with the legislative authority of the county in which said territory is located. A certified copy of the resolution shall be filed with the boundary review board as provided for in chapter 36.93 RCW or the county annexation review board established by RCW 35A.14.200, unless such annexation proposal is within the provisions of RCW 35A.14.220. [1986 c 234 § 29; 1979 ex.s. c 124 § 1; 1975 1st ex.s. c 220 § 14; 1971 ex.s. c 251 § 10; 1967 ex.s. c 119 § 35A.14.015.]

**Severability—1979 ex.s. c 124:** "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 124 § 11.]

**Legislative finding, intent—1975 1st ex.s. c 220:** See note following RCW 35.02.170.

**Severability—1971 ex.s. c 251:** See RCW 35A.90.050.

**35A.14.020 Election method—Contents of petition—Certification by auditor—Approval or rejection by legislative body—Costs.** When a petition is sufficient under the rules set forth in RCW 35A.01.040, calling for an election to vote upon the annexation of unincorporated territory contiguous to a code city, describing the boundaries of the area proposed to be annexed, stating the number of voters therein as nearly as may be, and signed by qualified electors resident in such territory equal in number to ten percent of the votes cast at the last state general election therein, it shall be filed with the auditor of the county in which all, or the greatest portion, of the territory is located, and a copy of the petition shall be filed with the legislative body of the code city. If the territory is located in more than a single county, the auditor of the county with whom the petition is filed shall act as the lead auditor and transmit a copy of the petition to the auditor of each other county within which a portion of the territory is located. The auditor or auditors shall examine the petition, and the auditor or lead auditor shall certify the sufficiency of the petition to the legislative authority of the code city.

If the signatures on the petition are certified as containing sufficient valid signatures, the city legislative authority shall, by resolution entered within sixty days thereafter, notify the petitioners, either by mail or by publication in the same manner notice of hearing is required by RCW 35A.14.040 to be published, of its approval or rejection of the proposed action. In approving the proposed action, the legislative body may require that there also be submitted to the electorate of the territory to be annexed, a proposition that all property within the area to be annexed shall, upon annexation, be assessed and taxed at the same rate and on the same basis as the property of such annexing city is assessed and

taxed to pay for all or any portion of the then-outstanding indebtedness of the city to which said area is annexed, which indebtedness has been approved by the voters, contracted for, or incurred prior to, or existing at, the date of annexation. Only after the legislative body has completed preparation and filing of a proposed zoning regulation for the area to be annexed as provided for in RCW 35A.14.330 and 35A.14.340, the legislative body in approving the proposed action, may require that the proposed zoning regulation be simultaneously adopted upon the approval of annexation by the electorate of the area to be annexed. The approval of the legislative body shall be a condition precedent to further proceedings upon the petition. The costs of conducting the election called for in the petition shall be a charge against the city concerned. The proposition or questions provided for in this section may be submitted to the voter either separately or as a single proposition. [1989 c 351 § 4; 1981 c 332 § 6; 1979 ex.s. c 124 § 2; 1967 ex.s. c 119 § 35A.14.020.]

**Severability—1981 c 332:** See note following RCW 35.13.165.

**Severability—1979 ex.s. c 124:** See note following RCW 35A.14.015.

**35A.14.025 Election method—Creation of community municipal corporation.** The resolution initiating the annexation of territory under RCW 35A.14.015, and the petition initiating the annexation of territory under RCW 35A.14.020, may provide for the simultaneous creation of a community municipal corporation and election of community council members as provided for in chapter 35.14 RCW, as separate ballot measures or as part of the same ballot measure authorizing the annexation, or for the simultaneous inclusion of the annexed area into a named existing community municipal corporation operating under chapter 35.14 RCW, as separate ballot measures or as part of the same ballot measure authorizing the annexation. If the petition so provides for the creation of a community municipal corporation and election of community council members, the petition shall describe the boundaries of the proposed service area, state the number of voters residing therein as nearly as may be, and pray for the election of community council members by the voters residing in the service area.

The ballots shall contain the words "For annexation and creation of community municipal corporation" and "Against annexation and creation of community municipal corporation," or "For creation of community municipal corporation" and "Against creation of community municipal corporation," as the case may be. Approval of either optional ballot proposition shall be by simple majority vote of the voters voting on the proposition, but the annexation must be authorized before a community municipal corporation is created. [1993 c 75 § 3.]

**35A.14.030 Filing of petition as approved by city.** Upon approval of the petition for election by the legislative body of the code city to which such territory is proposed to be annexed, the petition shall be filed with the legislative authority of the county in which such territory is located, along with a statement, in the form required by the city, of the provisions, if any there be, relating to assumption of the portion of the debt that the city requires to be assumed by the owners of property of the area proposed to be annexed, and/or the

simultaneous adoption of a proposed zoning regulation for the area. A copy of the petition and the statement, if any, shall also be filed with the boundary review board as provided for in chapter 36.93 RCW or the county annexation review board established by RCW 35A.14.160, unless such proposed annexation is within the provisions of RCW 35A.14.220. [1979 ex.s. c 124 § 3; 1971 ex.s. c 251 § 6; 1967 ex.s. c 119 § 35A.14.030.]

**Severability—1979 ex.s. c 124:** See note following RCW 35A.14.015.

**Severability—1971 ex.s. c 251:** See RCW 35A.90.050.

**35A.14.040 Election method—Hearing by review board—Notice.** Within ten days after receipt of a petition or resolution calling for an election on the question of annexation, the county annexation review board shall meet and, if the proposed annexation complies with the requirements of law, shall fix a date for a hearing thereon, to be held not less than fifteen days nor more than thirty days thereafter, of which hearing the city must give notice by publication at least once a week for two weeks prior thereto in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the area proposed to be annexed. The hearing shall be held within the city to which the territory is proposed to be annexed, at a time and place to be designated by the board. Upon the day fixed, the board shall conduct a hearing upon the petition or resolution, at which hearing a representative of the city shall make a brief presentation to the board in explanation of the annexation and the benefits to be derived therefrom, and the petitioners and any resident of the city or the area proposed to be annexed shall be afforded a reasonable opportunity to be heard. The hearing may be adjourned from time to time in the board's discretion, not to exceed thirty days in all from the commencement of the hearing. [1967 ex.s. c 119 § 35A.14.040.]

**35A.14.050 Decision of the county annexation review board—Filing—Date for election.** After consideration of the proposed annexation as provided in RCW 35A.14.200, the county annexation review board, within thirty days after the final day of hearing, shall take one of the following actions:

- (1) Approval of the proposal as submitted.
- (2) Subject to RCW 35.02.170, modification of the proposal by adjusting boundaries to include or exclude territory; except that any such inclusion of territory shall not increase the total area of territory proposed for annexation by an amount exceeding the original proposal by more than five percent: PROVIDED, That the county annexation review board shall not adjust boundaries to include territory not included in the original proposal without first affording to residents and property owners of the area affected by such adjustment of boundaries an opportunity to be heard as to the proposal.
- (3) Disapproval of the proposal.

The written decision of the county annexation review board shall be filed with the board of county commissioners and with the legislative body of the city concerned. If the annexation proposal is modified by the county annexation review board, such modification shall be fully set forth in the

written decision. If the decision of the boundary review board or the county annexation review board is favorable to the annexation proposal, or the proposal as modified by the review board, the legislative body of the city at its next regular meeting if to be held within thirty days after receipt of the decision of the boundary review board or the county annexation review board, or at a special meeting to be held within that period, shall indicate to the county auditor its preference for a special election date for submission of such annexation proposal, with any modifications made by the review board, to the voters of the territory proposed to be annexed. The special election date that is so indicated shall be one of the dates for special elections provided under \*RCW 29.13.020 that is sixty or more days after the date the preference is indicated. The county legislative authority shall call the special election at the special election date so indicated by the city. If the boundary review board or the county annexation review board disapproves the annexation proposal, no further action shall be taken thereon, and no proposal for annexation of the same territory, or substantially the same as determined by the board, shall be initiated or considered for twelve months thereafter. [1989 c 351 § 5; 1986 c 234 § 30; 1975 1st ex.s. c 220 § 15; 1971 ex.s. c 251 § 7; 1967 ex.s. c 119 § 35A.14.050.]

**\*Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Legislative finding, intent—1975 1st ex.s. c 220:** See note following RCW 35.02.170.

**Severability—1971 ex.s. c 251:** See RCW 35A.90.050.

### **35A.14.070 Election method—Notice of election.**

Notice of an annexation election shall particularly describe the boundaries of the area proposed to be annexed, as the same may have been modified by the boundary review board or the county annexation review board, state the objects of the election as prayed in the petition or as stated in the resolution, and require the voters to cast ballots which shall contain the words "For Annexation" or "Against Annexation" or words equivalent thereto, or contain the words "For Annexation and Adoption of Proposed Zoning Regulation", and "Against Annexation and Adoption of Proposed Zoning Regulation", or words equivalent thereto in case the simultaneous adoption of a proposed zoning regulation is proposed, and in case the assumption of all or a portion of indebtedness is proposed, shall contain an appropriate, separate proposition for or against the portion of indebtedness that the city requires to be assumed. The notice shall be posted for at least two weeks prior to the date of election in four public places within the area proposed to be annexed and published at least once a week for two weeks prior to the date of election in a newspaper of general circulation within the limits of the territory proposed to be annexed. Such notice shall be in addition to the notice required by general election law. [1994 c 223 § 38; 1979 ex.s. c 124 § 4; 1967 ex.s. c 119 § 35A.14.070.]

**Severability—1979 ex.s. c 124:** See note following RCW 35A.14.015.

**35A.14.080 Election method—Vote required for annexation—Proposition for assumption of indebtedness—Certification.** On the Monday next succeeding the annexation election, the county canvassing board shall pro-

ceed to canvass the returns thereof and shall submit the statement of canvass to the county legislative authority.

The proposition for or against annexation or for or against annexation and adoption of the proposed zoning regulation, as the case may be, shall be deemed approved if a majority of the votes cast on that proposition are cast in favor of annexation or in favor of annexation and adoption of the proposed zoning regulation, as the case may be. If a proposition for or against assumption of all or any portion of indebtedness was submitted to the electorate, it shall be deemed approved if a majority of at least three-fifths of the electors of the territory proposed to be annexed voting on such proposition vote in favor thereof, and the number of persons voting on such proposition constitutes not less than forty percent of the total number of votes cast in such territory at the last preceding general election. If either or both propositions were approved by the electors, the county legislative authority shall enter a finding to that effect on its minutes, a certified copy of which shall be forthwith transmitted to and filed with the clerk of the city to which annexation is proposed, together with a certified abstract of the vote showing the whole number who voted at the election, the number of votes cast for annexation and the number cast against annexation or for annexation and adoption of the proposed zoning regulation and the number cast against annexation and adoption of the proposed zoning regulation, as the case may be, and if a proposition for assumption of all or any portion of indebtedness was submitted to the electorate, the abstract shall include the number of votes cast for assumption of indebtedness and the number of votes cast against assumption of indebtedness, together with a statement of the total number of votes cast in such territory at the last preceding general election. [1979 ex.s. c 124 § 5; 1967 ex.s. c 119 § 35A.14.080.]

**Severability—1979 ex.s. c 124:** See note following RCW 35A.14.015.

**35A.14.085 Election method—Vote required for annexation with assumption of indebtedness—Without assumption of indebtedness.** A code city may cause a proposition authorizing an area to be annexed to the city to be submitted to the qualified voters of the area proposed to be annexed in the same ballot proposition as the question to authorize an assumption of indebtedness. If the measures are combined, the annexation and the assumption of indebtedness shall be authorized only if the proposition is approved by at least three-fifths of the voters of the area proposed to be annexed voting on the proposition, and the number of persons voting on the proposition constitutes not less than forty percent of the total number of votes cast in the area at the last preceding general election.

However, the code city council may adopt a resolution accepting the annexation, without the assumption of indebtedness, where the combined ballot proposition is approved by a simple majority vote of the voters voting on the proposition. [1989 c 84 § 23.]

**35A.14.090 Election method—Ordinance providing for annexation, assumption of indebtedness.** Upon filing of the certified copy of the finding of the county legislative authority, the clerk shall transmit it to the legislative body of the city at the next regular meeting or as soon thereafter as

practicable. If only a proposition relating to annexation or to annexation and adoption of a proposed zoning regulation was submitted to the voters and such proposition was approved, the legislative body shall adopt an ordinance providing for the annexation or adopt ordinances providing for the annexation and adoption of a proposed zoning regulation, as the case may be. If a proposition for annexation or for annexation and adoption of a proposed zoning regulation, and a proposition for assumption of all or any portion of indebtedness were both submitted, and both were approved, the legislative body shall adopt an ordinance providing for the annexation or for annexation and adoption of the proposed zoning regulation, including the assumption of the portion of indebtedness that was approved by the voters. If both propositions were submitted and only the annexation or the annexation and adoption of the proposed zoning regulation was approved, the legislative body may adopt an ordinance providing for the annexation or adopt ordinances providing for the annexation and adoption of the proposed zoning regulation, as the case may be, or the legislative body may refuse to annex when a proposal for assumption of the portion of indebtedness has been disapproved by the voters. [1979 ex.s. c 124 § 6; 1967 ex.s. c 119 § 35A.14.090.]

**Severability—1979 ex.s. c 124:** See note following RCW 35A.14.015.

**35A.14.100 Election method—Effective date of annexation.** Upon the date fixed in the ordinance of annexation, the area annexed shall become a part of the city. Upon the date fixed in the ordinances of annexation and adoption of the proposed zoning regulation, the area annexed shall become a part of the city, and property in the annexed area shall be subject to the proposed zoning regulation, as prepared and filed as provided for in RCW 35A.14.330 and 35A.14.340. All property within the territory hereafter annexed shall, if the proposition approved by the people so provides, be assessed and taxed at the same rate and on the same basis as the property of such annexing city is assessed and taxed to pay for the portion of indebtedness of the city that was approved by the voters. [1979 ex.s. c 124 § 7; 1967 ex.s. c 119 § 35A.14.100.]

**Severability—1979 ex.s. c 124:** See note following RCW 35A.14.015.

**35A.14.110 Election method is alternative.** The method of annexation provided for in RCW 35A.14.015 through 35A.14.100 is an alternative method and is additional to the other methods provided for in this chapter. [1967 ex.s. c 119 § 35A.14.110.]

**35A.14.120 Direct petition method—Notice to legislative body—Meeting—Assumption of indebtedness—Proposed zoning regulation—Contents of petition.** Proceedings for initiating annexation of unincorporated territory to a charter code city or noncharter code city may be commenced by the filing of a petition of property owners of the territory proposed to be annexed, in the following manner. This method of annexation shall be alternative to other methods provided in this chapter. Prior to the circulation of a petition for annexation, the initiating party or parties, who shall be the owners of not less than ten percent in value, according to the assessed valuation for general taxation of the property

for which annexation is sought, shall notify the legislative body of the code city in writing of their intention to commence annexation proceedings. The legislative body shall set a date, not later than sixty days after the filing of the request, for a meeting with the initiating parties to determine whether the code city will accept, reject, or geographically modify the proposed annexation, whether it shall require the simultaneous adoption of a proposed zoning regulation, if such a proposal has been prepared and filed for the area to be annexed as provided for in RCW 35A.14.330 and 35A.14.340, and whether it shall require the assumption of all or of any portion of existing city indebtedness by the area to be annexed. If the legislative body requires the assumption of all or of any portion of indebtedness and/or the adoption of a proposed zoning regulation, it shall record this action in its minutes and the petition for annexation shall be so drawn as to clearly indicate these facts. Approval by the legislative body shall be a condition precedent to circulation of the petition. There shall be no appeal from the decision of the legislative body. A petition for annexation of an area contiguous to a code city may be filed with the legislative body of the municipality to which annexation is desired. It must be signed by the owners, as defined by RCW 35A.01.040(9) (a) through (d), of not less than sixty percent in value, according to the assessed valuation for general taxation of the property for which annexation is petitioned: PROVIDED, That a petition for annexation of an area having at least eighty percent of the boundaries of such area contiguous with a portion of the boundaries of the code city, not including that portion of the boundary of the area proposed to be annexed that is coterminous with a portion of the boundary between two counties in this state, need be signed by only the owners of not less than fifty percent in value according to the assessed valuation for general taxation of the property for which the annexation is petitioned. Such petition shall set forth a description of the property according to government legal subdivisions or legal plats and shall be accompanied by a map which outlines the boundaries of the property sought to be annexed. If the legislative body has required the assumption of all or any portion of city indebtedness by the area annexed or the adoption of a proposed zoning regulation, these facts, together with a quotation of the minute entry of such requirement, or requirements, shall also be set forth in the petition. [1989 c 351 § 6; 1979 ex.s. c 124 § 8; 1967 ex.s. c 119 § 35A.14.120.]

**Severability—1979 ex.s. c 124:** See note following RCW 35A.14.015.

*Sufficiency of petition in code city: RCW 35A.01.040.*

**35A.14.130 Direct petition method—Notice of hearing.** Whenever such a petition for annexation is filed with the legislative body of a code city, which petition meets the requirements herein specified and is sufficient according to the rules set forth in RCW 35A.01.040, the legislative body may entertain the same, fix a date for a public hearing thereon and cause notice of the hearing to be published in one or more issues of a newspaper of general circulation in the city. The notice shall also be posted in three public places within the territory proposed for annexation, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. [1967 ex.s. c 119 § 35A.14.130.]

**35A.14.140 Direct petition method—Ordinance providing for annexation.** Following the hearing, if the legislative body determines to effect the annexation, they shall do so by ordinance. Subject to RCW 35.02.170, the ordinance may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the annexation ordinance a certified copy shall be filed with the board of county commissioners of the county in which the annexed property is located. [1986 c 234 § 31; 1975 1st ex.s. c 220 § 16; 1967 ex.s. c 119 § 35A.14.140.]

**Legislative finding, intent—1975 1st ex.s. c 220:** See note following RCW 35.02.170.

**35A.14.150 Direct petition method—Effective date of annexation.** Upon the date fixed in the ordinance of annexation the area annexed shall become part of the city. All property within the territory hereafter annexed shall, if the annexation petition so provided, be assessed and taxed at the same rate and on the same basis as the property of such annexing code city is assessed and taxed to pay for the portion of any then-outstanding indebtedness of the city to which said area is annexed, which indebtedness has been approved by the voters, contracted for, or incurred prior to, or existing at, the date of annexation and that the city has required to be assumed. If the annexation petition so provided, all property in the annexed area shall be subject to and a part of the proposed zoning regulation as prepared and filed as provided for in RCW 35A.14.330 and 35A.14.340. [1979 ex.s. c 124 § 9; 1967 ex.s. c 119 § 35A.14.150.]

**Severability—1979 ex.s. c 124:** See note following RCW 35A.14.015.

**35A.14.160 Annexation review board—Composition.** There is hereby established in each county of the state, other than counties having a boundary review board as provided for in chapter 189, Laws of 1967 [chapter 36.93 RCW], a board to be known as the "annexation review board for the county of . . . . (naming the county)", which shall be charged with the duty of reviewing proposals for annexation of unincorporated territory to charter code cities and noncharter code cities within its respective county; except that proposals within the provisions of RCW 35A.14.220 shall not be subject to the jurisdiction of such board.

In all counties in which a boundary review board is established pursuant to chapter 189, Laws of 1967 [chapter 36.93 RCW] review of proposals for annexation of unincorporated territory to charter code cities and noncharter code cities within such counties shall be subject to chapter 189, Laws of 1967 [chapter 36.93 RCW]. Whenever any county establishes a boundary review board pursuant to chapter 189, Laws of 1967 [chapter 36.93 RCW] the provisions of this act relating to annexation review boards shall not be applicable.

Except as provided above in this section, whenever one or more cities of a county shall have elected to be governed by this title by becoming a charter code city or noncharter code city, the governor shall, within forty-five days thereafter, appoint an annexation review board for such county consisting of five members appointed in the following manner:

Two members shall be selected independently by the governor. Three members shall be selected by the governor from the following sources: (1) One member shall be

appointed from nominees of the individual members of the board of county commissioners; (2) one member shall be appointed from nominees of the individual mayors of charter code cities within such county; (3) one member shall be appointed from nominees of the individual mayors of non-charter code cities within such county.

Each source shall nominate at least two persons for an available position. In the event there are less than two nominees for any position, the governor may appoint the member for that position independently. If, at the time of appointment, there are within the county no cities of one of the classes named above as a nominating source, a position which would otherwise have been filled by nomination from such source shall be filled by independent appointment of the governor.

In making appointments independently and in making appointments from among nominees, the governor shall strive to appoint persons familiar with municipal government and administration by experience and/or training. [1971 ex.s. c 251 § 8; 1967 ex.s. c 119 § 35A.14.160.]

**Severability—1971 ex.s. c 251:** See RCW 35A.90.050.

**35A.14.170 Time for filing nominations—Vacancies.** Upon the initial formation of a county annexation review board the governor shall give written notice of such formation to all the nominating sources designated therein and nominations must be filed with the office of the governor within fifteen days after receipt of such notice. Nominations to fill vacancies caused by expiration of terms must be filed at least thirty days preceding the expiration of the terms. When vacancies occur in the membership of the board, the governor shall solicit nominations from the appropriate source and if none are filed within fifteen days thereafter, the governor shall fill the vacancy by an independent appointment. [1967 ex.s. c 119 § 35A.14.170.]

**35A.14.180 Terms of members.** The members of the annexation review board shall be appointed for five year terms. Upon the initial formation of a board, one member appointed by the governor independently shall be appointed for a four year term, the member appointed from among nominees of the board of county commissioners shall be appointed for a three year term, the member appointed from among nominees of the mayors of noncharter code cities shall be appointed for a three year term, and the remaining members shall be appointed for five year terms. Thereafter board members shall be appointed for five year terms as the terms of their predecessors expire. Members shall be eligible for reappointment to the board for successive terms. [1967 ex.s. c 119 § 35A.14.180.]

**35A.14.190 Organization of annexation review board—Rules—Journal—Authority.** The members of each annexation review board shall elect from among the members a chairman and a vice chairman, and may employ a nonmember as chief clerk, who shall be the secretary of the board. The board shall determine its own rules and order of business, shall provide by resolution for the time and manner of holding regular or special meetings, and shall keep a journal of its proceedings which shall be a public record. A

majority of all the members shall constitute a quorum for the transaction of business.

The chief clerk of the board, the chairman, or the vice chairman shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas to any public officer or employee ordering him to testify before the board and produce public records, papers, books or documents. The chief clerk, the chairman or the vice chairman may invoke the aid of any court of competent jurisdiction to carry out such powers.

The planning departments of the county, other counties, and any city, and any state or regional planning agency shall furnish such information to the board at its request as may be reasonably necessary for the performance of its duties.

At the request of the board, the state attorney general shall provide counsel for the board. [1967 ex.s. c 119 § 35A.14.190.]

**35A.14.200 Determination by county annexation review board—Factors considered—Filing of findings and decision.** The jurisdiction of the county annexation review board shall be invoked upon the filing with the board of a resolution for an annexation election as provided in RCW 35A.14.015, or of a petition for an annexation election as provided in RCW 35A.14.030, and the board shall proceed to hold a hearing, upon notice, all as provided in RCW 35A.14.040. A verbatim record shall be made of all testimony presented at the hearing and upon request and payment of the reasonable costs thereof, a copy of the transcript of such testimony shall be provided to any person or governmental unit. The board shall make and file its decision, all as provided in RCW 35A.14.050, insofar as said section is applicable to the matter before the board. Dissenting members of the board shall have the right to have their written dissents included as part of the decision. In reaching a decision on an annexation proposal, the county annexation review board shall consider the factors affecting such proposal, which shall include but not be limited to the following:

(1) The immediate and prospective population of the area proposed to be annexed, the configuration of the area, land use and land uses, comprehensive use plans and zoning, per capita assessed valuation, topography, natural boundaries and drainage basins, the likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years, location and coordination of community facilities and services; and

(2) The need for municipal services and the available municipal services, effect of ordinances and governmental codes, regulations and resolutions on existing uses, present cost and adequacy of governmental services and controls, the probable future needs for such services and controls, the probable effect of the annexation proposal or alternatives on cost and adequacy of services and controls in area and adjacent area, the effect on the finances, debt structure, and contractual obligations and rights of all affected governmental units; and

(3) The effect of the annexation proposal or alternatives on adjacent areas, on mutual economic and social interests, and on the local governmental structure of the county.

The county annexation review board shall determine whether the proposed annexation would be in the public

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interest and for the public welfare. The decision of the board shall be accompanied by the findings of the board. Such findings need not include specific data on all the factors listed in this section, but shall indicate that all such factors were considered. [1971 ex.s. c 251 § 11; 1967 ex.s. c 119 § 35A.14.200.]

**Severability—1971 ex.s. c 251:** See RCW 35A.90.050.

**35A.14.210 Court review of decisions of the county annexation review board.** Decisions of the county annexation review board shall be final unless within ten days from the date of said action a governmental unit affected by the decision or any person owning real property in or residing in the area proposed to be annexed files in the superior court a notice of appeal. The filing of such notice of appeal within such time limit shall stay the effective date of the decision of the board until such time as the appeal shall have been adjudicated or withdrawn. On appeal the superior court shall not take any evidence other than that contained in the record of the hearing before the board. The superior court may affirm the decision of the county annexation review board or remand the case for further proceedings; or the court may reverse the decision and remand if it finds that substantial rights have been prejudiced because the findings, conclusions, or decision of the board are:

- (1) In violation of constitutional provisions; or
- (2) In excess of the statutory authority or jurisdiction of the board; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Unsupported by material and substantial evidence in view of the entire record as submitted; or
- (6) Arbitrary or capricious. [1971 ex.s. c 251 § 12; 1967 ex.s. c 119 § 35A.14.210.]

**Severability—1971 ex.s. c 251:** See RCW 35A.90.050.

**35A.14.220 When review procedure may be dispensed with.** Annexations under the provisions of RCW 35A.14.295, 35A.14.297, 35A.14.300, and 35A.14.310 shall not be subject to review by the annexation review board: PROVIDED, That in any county in which a boundary review board is established under chapter 36.93 RCW all annexations shall be subject to review except as provided for in RCW 36.93.110. When the area proposed for annexation in a petition or resolution, initiated and filed under any of the methods of initiating annexation authorized by this chapter, is less than fifty acres or less than two million dollars in assessed valuation, review procedures shall not be required as to such annexation proposal, except as provided in chapter 36.93 RCW in those counties with a review board established pursuant to chapter 36.93 RCW: PROVIDED, That when an annexation proposal is initiated by the direct petition method authorized by RCW 35A.14.120, review procedures shall not be required without regard to acreage or assessed valuation, except as provided in chapter 36.93 RCW in those counties with a boundary review board established pursuant to chapter 36.93 RCW. [1979 ex.s. c 18 § 27; 1973 1st ex.s. c 195 § 26; 1967 ex.s. c 119 § 35A.14.220.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**35A.14.231 Territory subject to annexation proposal—When annexation by another city or incorporation allowed.** After a petition proposing an annexation by a code city has been filed with the city or the city legislative authority, or after a resolution proposing the annexation by a code city has been adopted by the city legislative authority, no territory included in the proposed annexation may be annexed by another city or town or incorporated into a city or town unless: (1) The boundary review board or county annexation review board created under RCW 35A.14.160 modifies the boundaries of the proposed annexation and removes the territory; (2) the boundary review board or county annexation review board created under RCW 35A.14.160 rejects the proposed annexation; or (3) the city legislative authority rejects the proposed annexation or voters defeat the ballot proposition authorizing the annexation. [1994 c 216 § 8.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**35A.14.295 Annexation of unincorporated island of territory within code city—Resolution—Notice of hearing.** (1) The legislative body of a code city may resolve to annex territory containing residential property owners to the city if there is within the city, unincorporated territory:

(a) Containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to the code city; or

(b) Of any size and having at least eighty percent of the boundaries of such area contiguous to the city if such area existed before June 30, 1994, and is within the same county and within the same urban growth area designated under RCW 36.70A.110, and the city was planning under chapter 36.70A RCW as of June 30, 1994.

(2) The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing therein as nearly as may be, and set a date for a public hearing on such resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks prior to the date of the hearing, in one or more newspapers of general circulation within the code city and one or more newspapers of general circulation within the area to be annexed.

(3) For purposes of subsection (1)(b) of this section, territory bounded by a river, lake, or other body of water is considered contiguous to a city that is also bounded by the same river, lake, or other body of water. [1997 c 429 § 36; 1967 ex.s. c 119 § 35A.14.295.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**35A.14.297 Ordinance providing for annexation of unincorporated island of territory—Referendum.** On the date set for hearing as provided in RCW 35A.14.295, residents or property owners of the area included in the resolution for annexation shall be afforded an opportunity to be heard. The legislative body may provide by ordinance for annexation of the territory described in the resolution, but the effective date of the ordinance shall be not less than forty-five days after the passage thereof. The legislative body shall

cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the area to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of such requirements. Such annexation ordinance shall be subject to referendum for forty-five days after the passage thereof. Upon the filing of a timely and sufficient referendum petition as provided in RCW 35A.14.299 below, a referendum election shall be held as provided in RCW 35A.14.299, and the annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto. After the expiration of the forty-fifth day from, but excluding the date of passage of the annexation ordinance, if no timely and sufficient referendum petition has been filed, as provided by RCW 35A.14.299 below, the area annexed shall become a part of the code city upon the date fixed in the ordinance of annexation. [1967 ex.s. c 119 § 35A.14.297.]

**35A.14.299 Annexation of unincorporated island of territory within code city—Referendum—Effective date if no referendum.** Such annexation ordinance as provided for in RCW 35A.14.297 shall be subject to referendum for forty-five days after the passage thereof. Upon the filing of a timely and sufficient referendum petition with the legislative body, signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation shall be submitted to the voters of such area in a general election if one is to be held within ninety days or at a special election called for that purpose not less than forty-five days nor more than ninety days after the filing of the referendum petition. Notice of such election shall be given as provided in RCW 35A.14.070 and the election shall be conducted as provided in \*RCW 35A.14.060. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation ordinance, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the code city upon the date fixed in the ordinance of annexation. From and after such date, if the ordinance so provided, property in the annexed area shall be subject to the proposed zoning regulation prepared and filed for such area as provided in RCW 35A.14.330 and 35A.14.340. If the ordinance so provided, all property within the area annexed shall be assessed and taxed at the same rate and on the same basis as the property of such annexing code city is assessed and taxed to pay for any then outstanding indebtedness of such city contracted prior to, or existing at, the date of annexation. [1967 ex.s. c 119 § 35A.14.299.]

**\*Reviser's note:** RCW 35A.14.060 was repealed by 1994 c 223 § 92. Cf. RCW 35A.29.151.

**35A.14.300 Annexation for municipal purposes.** Legislative bodies of code cities may by a majority vote

annex territory outside the limits of such city whether contiguous or noncontiguous for any municipal purpose when such territory is owned by the city. [1981 c 332 § 7; 1967 ex.s. c 119 § 35A.14.300.]

**Severability—1981 c 332:** See note following RCW 35.13.165.

**35A.14.310 Annexation of federal areas.** A code city may annex an unincorporated area contiguous to the city that is owned by the federal government by adopting an ordinance providing for the annexation and which ordinance either acknowledges an agreement of the annexation by the government of the United States, or accepts a gift, grant, or lease from the government of the United States of the right to occupy, control, improve it or sublet it for commercial, manufacturing, or industrial purposes: PROVIDED, That this right of annexation shall not apply to any territory more than four miles from the corporate limits existing before such annexation. Whenever a code city proposes to annex territory under this section, the city shall provide written notice of the proposed annexation to the legislative authority of the county within which such territory is located. The notice shall be provided at least thirty days before the city proposes to adopt the annexation ordinance. The city shall not adopt the annexation ordinance, and the annexation shall not occur under this section, if within twenty-five days of receipt of the notice, the county legislative authority adopts a resolution opposing the annexation, which resolution makes a finding that the proposed annexation will have an adverse fiscal impact on the county or road district. [1985 c 105 § 1; 1967 ex.s. c 119 § 35A.14.310.]

**35A.14.320 Annexation of federal areas—Provisions of ordinance—Authority over annexed territory.** In the ordinance annexing territory pursuant to a gift, grant, or lease from the government of the United States, a code city may include such tide and shorelands as may be necessary or convenient for the use thereof, and may include in the ordinance an acceptance of the terms and conditions attached to the gift, grant, or lease. A code city may cause territory annexed pursuant to a gift, grant, or lease of the government of the United States to be surveyed, subdivided and platted into lots, blocks, or tracts and lay out, reserve for public use, and improve streets, roads, alleys, slips, and other public places. It may grant or sublet any lot, block, or tract therein for commercial, manufacturing, or industrial purposes and reserve, receive and collect rents therefrom. It may expend the rents received therefrom in making and maintaining public improvements therein, and if any surplus remains at the end of any fiscal year, may transfer it to the city's current expense fund. [1967 ex.s. c 119 § 35A.14.320.]

**35A.14.330 Proposed zoning regulation—Purposes of regulations and restrictions.** The legislative body of any code city acting through a planning agency created pursuant to chapter 35A.63 RCW, or pursuant to its granted powers, may prepare a proposed zoning regulation to become effective upon the annexation of any area which might reasonably be expected to be annexed by the code city at any future time. Such proposed zoning regulation, to the extent deemed reasonably necessary by the legislative body to be in the interest

of health, safety, morals and the general welfare may provide, among other things, for:

(1) The regulation and restriction within the area to be annexed of the location and the use of buildings, structures and land for residence, trade, industrial and other purposes; the height, number of stories, size, construction and design of buildings and other structures; the size of yards, courts and other open spaces on the lot or tract; the density of population; the set-back of buildings and structures along highways, parks or public water frontages; and the subdivision and development of land;

(2) The division of the area to be annexed into districts or zones of any size or shape, and within such districts or zones regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land;

(3) The appointment of a board of adjustment, to make, in appropriate cases and subject to appropriate conditions and safeguards established by ordinance, special exceptions in harmony with the general purposes and intent of the proposed zoning regulation; and

(4) The time interval following an annexation during which the ordinance or resolution adopting any such proposed regulation, or any part thereof, must remain in effect before it may be amended, supplemented or modified by subsequent ordinance or resolution adopted by the annexing city or town.

All such regulations and restrictions shall be designed, among other things, to encourage the most appropriate use of land throughout the area to be annexed; to lessen traffic congestion and accidents; to secure safety from fire; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to promote a coordinated development of the unbuilt areas; to encourage the formation of neighborhood or community units; to secure an appropriate allotment of land area in new developments for all the requirements of community life; to conserve and restore natural beauty and other natural resources; to facilitate the adequate provision of transportation, water, sewerage and other public uses and requirements. [1967 ex.s. c 119 § 35A.14.330.]

**35A.14.340 Notice and hearing—Filings and recordings.** The legislative body of the code city shall hold two or more public hearings, to be held at least thirty days apart, upon the proposed zoning regulation, giving notice of the time and place thereof by publication in a newspaper of general circulation in the annexing city and the area to be annexed. A copy of the ordinance or resolution adopting or embodying such proposed zoning regulation or any part thereof or any amendment thereto, duly certified as a true copy by the clerk of the annexing city, shall be filed with the county auditor. A like certified copy of any map or plat referred to or adopted by the ordinance or resolution shall likewise be filed with the county auditor. The auditor shall record the ordinance or resolution and keep on file the map or plat. [1967 ex.s. c 119 § 35A.14.340.]

*Annexation of water, sewer, and fire districts: Chapter 35.13A RCW.*

**35A.14.380 Ownership of assets of fire protection district—Assumption of responsibility of fire protec-**

**tion—When at least sixty percent of assessed valuation is annexed or incorporated in code city.** If a portion of a fire protection district including at least sixty percent of the assessed valuation of the real property of the district is annexed to or incorporated into a code city, ownership of all of the assets of the district shall be vested in the code city, upon payment in cash, properties or contracts for fire protection services to the district within one year, of a percentage of the value of said assets equal to the percentage of the value of the real property in the entire district remaining outside the incorporated or annexed area.

The fire protection district may elect, by a vote of a majority of the persons residing outside the annexed area who vote on the proposition, to require the annexing code city to assume responsibility for the provision of fire protection, and for the operation and maintenance of the district's property, facilities, and equipment throughout the district and to pay the code city a reasonable fee for such fire protection, operation, and maintenance. [1981 c 332 § 8; 1967 ex.s. c 119 § 35A.14.380.]

**Severability—1981 c 332:** See note following RCW 35.13.165.

**35A.14.400 Ownership of assets of fire protection district—When less than sixty percent of assessed valuation is annexed or incorporated in code city.** If a portion of a fire protection district including less than sixty percent of the assessed value of the real property of the district is annexed to or incorporated into a code city, the ownership of all assets of the district shall remain in the district and the district shall pay to the code city within one year or within such period of time as the district continues to collect taxes in such incorporated or annexed areas, in cash, properties or contracts for fire protection services, a percentage of the value of said assets equal to the percentage of the value of the real property in the entire district lying within the area so incorporated or annexed: PROVIDED, That if less than five percent of the area of the district is affected, no payment shall be made to the code city except as provided in RCW 35.02.205. The fire protection district shall provide fire protection to the incorporated or annexed area for such period as the district continues to collect taxes levied in such annexed or incorporated area. [1989 c 267 § 2; 1967 ex.s. c 119 § 35A.14.400.]

**35A.14.410 When right of way may be included—Use of right of way line as corporate boundary.** The boundaries of a code city arising from an annexation of territory shall not include a portion of the right of way of any public street, road, or highway except where the boundary runs from one edge of the right of way to the other edge of the right of way. However, the right of way line of any public street, road, or highway, or any segment thereof, may be used to define a part of a corporate boundary in an annexation proceeding. [1989 c 84 § 9.]

**35A.14.420 Alternative direct petition method—Notice to legislative body—Meeting—Assumption of indebtedness—Proposed zoning regulation—Contents of petition.** (1) Proceedings for initiating annexation of unincorporated territory to a charter code city or noncharter code city may be commenced by the filing of a petition of property

owners of the territory proposed to be annexed, in the following manner which is alternative to other methods provided in this chapter:

(a) Before the circulation of a petition for annexation, the initiating party or parties, who shall be the owners of not less than ten percent of the acreage for which annexation is sought, shall notify the legislative body of the code city in writing of their intention to commence annexation proceedings;

(b) The legislative body shall set a date, not later than sixty days after the filing of the request, for a meeting with the initiating parties to determine whether the code city will accept, reject, or geographically modify the proposed annexation, whether it shall require the simultaneous adoption of a proposed zoning regulation, if such a proposal has been prepared and filed for the area to be annexed as provided for in RCW 35A.14.330 and 35A.14.340, and whether it shall require the assumption of all or any portion of existing city indebtedness by the area to be annexed;

(c) If the legislative body requires the assumption of all or any portion of indebtedness and/or the adoption of a proposed zoning regulation, it shall record this action in its minutes and the petition for annexation shall be so drawn as to clearly indicate these facts;

(d) Approval by the legislative body shall be a condition precedent to circulation of the petition; and

(e) There shall be no appeal from the decision of the legislative body.

(2) A petition for annexation of an area contiguous to a code city may be filed with the legislative body of the municipality to which annexation is desired. The petition for annexation must be signed by the owners of a majority of the acreage for which annexation is petitioned and a majority of the registered voters residing in the area for which annexation is petitioned.

(3) If no residents exist within the area proposed for annexation, the petition must be signed by the owners of a majority of the acreage for which annexation is petitioned.

(4) The petition shall set forth a legal description of the property proposed to be annexed that complies with RCW 35A.14.410, and shall be accompanied by a drawing that outlines the boundaries of the property sought to be annexed. If the legislative body has required the assumption of all or any portion of city indebtedness by the area annexed or the adoption of a proposed zoning regulation, these facts, together with a quotation of the minute entry of such requirement, or requirements, shall also be set forth in the petition. [2003 c 331 § 10.]

**Intent—Severability—Effective date—2003 c 331:** See notes following RCW 35.13.410.

**35A.14.430 Alternative direct petition method—Notice of hearing.** When a petition for annexation is filed with the legislative body of a code city, that meets the requirements of RCW 35A.01.040 and 35A.14.420, the legislative body may entertain the same, fix a date for a public hearing thereon and cause notice of the hearing to be published in one or more issues of a newspaper of general circulation in the city. The notice shall also be posted in three public places within the territory proposed for annexation, and shall specify the time and place of hearing and invite inter-

ested persons to appear and voice approval or disapproval of the annexation. [2003 c 331 § 11.]

**Intent—Severability—Effective date—2003 c 331:** See notes following RCW 35.13.410.

**35A.14.440 Alternative direct petition method—Ordinance providing for annexation.** Following the hearing, if the legislative body determines to effect the annexation, they shall do so by ordinance. Subject to RCW 35A.14.410, the ordinance may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the annexation ordinance, a certified copy shall be filed with the board of county commissioners of the county in which the annexed property is located. [2003 c 331 § 12.]

**Intent—Severability—Effective date—2003 c 331:** See notes following RCW 35.13.410.

**35A.14.450 Alternative direct petition method—Effective date of annexation.** Upon the date fixed in the ordinance of annexation, the area annexed shall become part of the city. All property within the annexed territory shall, if the annexation petition so provided, be assessed and taxed at the same rate and on the same basis as the property of the annexing code city is assessed and taxed to pay for the portion of any then-outstanding indebtedness of the city to which the area is annexed, which indebtedness has been approved by the voters, contracted for, or incurred before, or existing at, the date of annexation and that the city has required to be assumed. If the annexation petition so provided, all property in the annexed area shall be subject to and a part of the proposed zoning regulation as prepared and filed as provided for in RCW 35A.14.330 and 35A.14.340. [2003 c 331 § 13.]

**Intent—Severability—Effective date—2003 c 331:** See notes following RCW 35.13.410.

**35A.14.460 Annexation of territory within urban growth areas—Interlocal agreement—Public hearing—Ordinance providing for annexation.** (1) The legislative body of a county or code city planning under chapter 36.70A RCW and subject to the requirements of RCW 36.70A.215 may initiate an annexation process for unincorporated territory by adopting a resolution commencing negotiations for an interlocal agreement as provided in chapter 39.34 RCW between a county and any code city within the county. The territory proposed for annexation must meet the following criteria: (a) Be within the code city urban growth area designated under RCW 36.70A.110, and (b) at least sixty percent of the boundaries of the territory proposed for annexation must be contiguous to the annexing code city or one or more cities or towns.

(2) If the territory proposed for annexation has been designated in an adopted county comprehensive plan as part of an urban growth area, urban service area, or potential annexation area for a specific city, or if the urban growth area territory proposed for annexation has been designated in a written agreement between a city and a county for annexation to a specific city or town, the designation or designations shall receive full consideration before a city or county may initiate the annexation process provided for in RCW 35A.14.470.

(3) The agreement shall describe the boundaries of the territory to be annexed. A public hearing shall be held by each legislative body, separately or jointly, before the agreement is executed. Each legislative body holding a public hearing shall, separately or jointly, publish the agreement at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the territory proposed for annexation.

(4) Following adoption and execution of the agreement by both legislative bodies, the city legislative body shall adopt an ordinance providing for the annexation of the territory described in the agreement. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the territory to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of the requirements. Any territory to be annexed through an ordinance adopted under this section is annexed and becomes a part of the city upon the date fixed in the ordinance of annexation, which date may not be fewer than forty-five days after adoption of the ordinance. [2003 c 299 § 3.]

**35A.14.470 Annexation of territory within urban growth areas—County may initiate process with other cities or towns, when—Interlocal agreement—Public hearing—Ordinance providing for annexation—Referendum—Election, when necessary.** (1) The legislative body of any county planning under chapter 36.70A RCW and subject to the requirements of RCW 36.70A.215 may initiate an annexation process with the legislative body of any other cities or towns that are contiguous to the territory proposed for annexation in RCW 35A.14.460 if:

(a) The county legislative body initiated an annexation process as provided in RCW 35A.14.460; and

(b) The affected city legislative body adopted a responsive resolution rejecting the proposed annexation or declined to create the requested interlocal agreement with the county; or

(c) More than one hundred eighty days have passed since adoption of a county resolution as provided for in RCW 35A.14.460 and the parties have not adopted or executed an interlocal agreement providing for the annexation of unincorporated territory. The legislative body for either the county or an affected city may, however, pass a resolution extending the negotiation period for one or more six-month periods if a public hearing is held and findings of fact are made prior to each extension.

(2) Any county initiating the process provided for in subsection (1) of this section must do so by adopting a resolution commencing negotiations for an interlocal agreement as provided in chapter 39.34 RCW between the county and any city or town within the county. The annexation area must be within an urban growth area designated under RCW 36.70A.110 and at least sixty percent of the boundaries of the territory to be annexed must be contiguous to one or more cities or towns.

(3) The agreement shall describe the boundaries of the territory to be annexed. A public hearing shall be held by each legislative body, separately or jointly, before the agreement is executed. Each legislative body holding a public hearing shall, separately or jointly, publish the agreement at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the territory proposed for annexation.

(4) Following adoption and execution of the agreement by both legislative bodies, the city or town legislative body shall adopt an ordinance providing for the annexation. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the territory to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of the requirements. Any area to be annexed through an ordinance adopted under this section is annexed and becomes a part of the city or town upon the date fixed in the ordinance of annexation, which date may not be less than forty-five days after adoption of the ordinance.

(5) The annexation ordinances provided for in RCW 35A.14.460(4) and subsection (4) of this section are subject to referendum for forty-five days after passage. Upon the filing of a timely and sufficient referendum petition with the legislative body, signed by registered voters in number equal to not less than fifteen percent of the votes cast in the last general state election in the area to be annexed, the question of annexation shall be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose not less than forty-five days nor more than ninety days after the filing of the referendum petition. Notice of the election shall be given as provided in RCW 35A.14.070 and the election shall be conducted as provided in the general election law. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation ordinance, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the city or town upon the date fixed in the ordinance of annexation.

(6) If more than one city or town adopts interlocal agreements providing for annexation of the same unincorporated territory as provided by this section, an election shall be held in the area to be annexed pursuant to RCW 35A.14.070. In addition to the provisions of RCW 35A.14.070, the ballot shall also contain a separate proposition allowing voters to cast votes in favor of annexation to any one city or town participating in an interlocal agreement as provided by this section. If a majority of voters voting on the proposition vote against annexation, the proposition is defeated. If, however, a majority of voters voting in the election approve annexation, the area shall be annexed to the city or town receiving the highest number of votes among those cast in favor of annexation.

(7) Costs for an election required under subsection (6) of this section shall be borne by the county. [2003 c 299 § 4.]

**35A.14.500 Outstanding indebtedness not affected.**

When any portion of a fire protection district is annexed by or incorporated into a code city, any outstanding indebtedness, bonded or otherwise, shall remain an obligation of the taxable property annexed or incorporated as if the annexation or incorporation had not occurred. [1967 ex.s. c 119 § 35A.14.500.]

**35A.14.550 Providing annexation information to public.** A code city can provide factual public information on the effects of pending annexation proposed for the code city. [1989 c 351 § 9.]

**35A.14.700 Determining population of annexed territory—Certificate—As basis for allocation of state funds—Revised certificate.**

Whenever any territory is annexed to a code city, a certificate as hereinafter provided shall be submitted in triplicate to the office of financial management within thirty days of the effective date of annexation specified in the relevant ordinance. After approval of the certificate, the office of financial management shall retain the original copy in its files, and transmit the second copy to the department of transportation and return the third copy to the code city. Such certificates shall be in such form and contain such information as shall be prescribed by the office of financial management. A copy of the complete ordinance containing a legal description and a map showing specifically the boundaries of the annexed territory shall be attached to each of the three copies of the certificate. The certificate shall be signed by the mayor and attested by the city clerk. Upon request, the office of financial management shall furnish certification forms to any code city.

Upon approval of the annexation certificate, the office of financial management shall forward to each state official or department responsible for making allocations or payments to cities or towns, a revised certificate reflecting the increase in population due to such annexation. Upon and after the date of the commencement of the next quarterly period, the population determination indicated in such revised certificate shall be used as the basis for the allocation and payment of state funds to such city or town.

For the purposes of this section, each quarterly period shall commence on the first day of the months of January, April, July, and October. Whenever a revised certificate is forwarded by the office of financial management thirty days or less prior to the commencement of the next quarterly period, the population of the annexed territory shall not be considered until the commencement of the following quarterly period.

The resident population of the annexed territory shall be determined by, or under the direction of, the mayor of the code city. Such population determination shall consist of an actual enumeration of the population which shall be made in accordance with practices and policies, and subject to the approval of the office of financial management. The population shall be determined as of the effective date of annexation as specified in the relevant ordinance.

Until an annexation certificate is filed and approved as provided herein, such annexed territory shall not be considered by the office of financial management in determining the population of such code city. [1979 ex.s. c 18 § 28; 1979 c 151 § 35; 1975 1st ex.s. c 31 § 2; 1967 ex.s. c 119 § 35A.14.700.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

*Population determinations, office of financial management: Chapter 43.62 RCW.*

**35A.14.801 Road district taxes collected in annexed territory—Disposition—Notification of annexation.**

Whenever any territory is annexed to a code city which is part of a road district of the county and road district taxes have been levied but not collected on any property within the annexed territory, the same shall when collected by the county treasurer be paid to the code city and by the city placed in the city street fund; except that road district taxes that are delinquent before the date of annexation shall be paid to the county and placed in the county road fund. This section shall not apply to any special assessments due in behalf of such property. The code city is required to provide notification, by certified mail, that includes a list of annexed parcel numbers, to the county treasurer and assessor at least thirty days before the effective date of the annexation. The county treasurer is only required to remit to the code city those road taxes collected thirty or more days after receipt of the notification. [2001 c 299 § 3; 1998 c 106 § 2; 1971 ex.s. c 251 § 14.]

**Severability—1971 ex.s. c 251:** See RCW 35A.90.050.

**35A.14.900 Cancellation, acquisition of franchise or permit for operation of public service business in territory annexed—Regulation of solid waste collection.**

The annexation by any code city of any territory pursuant to this chapter shall cancel, as of the effective date of such annexation, any franchise or permit theretofore granted to any person, firm or corporation by the state of Washington, or by the governing body of such annexed territory, authorizing or otherwise permitting the operation of any public utility, including but not limited to, public electric, water, transportation, garbage disposal or other similar public service business or facility within the limits of the annexed territory, but the holder of any such franchise or permit canceled pursuant to this section shall be forthwith granted by the annexing code city a franchise to continue such business within the annexed territory for a term of not less than seven years from the date of issuance thereof, and the annexing code city, by franchise, permit or public operation, shall not extend similar or competing services to the annexed territory except upon a proper showing of the inability or refusal of such person, firm or corporation to adequately service said annexed territory at a reasonable price: PROVIDED, That the provisions of this section shall not preclude the purchase by the annexing code city of said franchise, business, or facilities at an agreed or negotiated price, or from acquiring the same by condemnation upon payment of damages, including a reasonable amount for the loss of the franchise or permit. In the event that any person, firm or corporation whose franchise or permit has been canceled by the terms of this section shall suffer any measur-

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able damages as a result of any annexation pursuant to the provisions of the laws above-mentioned, such person, firm or corporation shall have a right of action against any code city causing such damages.

After an annexation by a code city, the utilities and transportation commission shall continue to regulate solid waste collection within the limits of the annexed territory until such time as the city notifies the commission, in writing, of its decision to contract for solid waste collection or provide solid waste collection itself pursuant to RCW 81.77.020. In the event the annexing city at any time decides to contract for solid waste collection or decides to undertake solid waste collection itself, the holder of any such franchise or permit that is so canceled in whole or in part shall be forthwith granted by the annexing city a franchise to continue such business within the annexed territory for a term of not less than the remaining term of the original franchise or permit, or not less than seven years, whichever is the shorter period, and the city, by franchise, permit, or public operation, shall not extend similar or competing services to the annexed territory except upon a proper showing of the inability or refusal of such person, firm, or corporation to adequately service the annexed territory at a reasonable price. Upon the effective date specified by the code city council's ordinance or resolution to have the code city contract for solid waste collection or undertake solid waste collection itself, the transition period specified in this section begins to run. This section does not preclude the purchase by the annexing city of the franchise, business, or facilities at an agreed or negotiated price, or from acquiring the same by condemnation upon payment of damages, including a reasonable amount for the loss of the franchise or permit. In the event that any person, firm, or corporation whose franchise or permit has been canceled by the terms of this section suffers any measurable damages as a result of any annexation pursuant to this chapter, such person, firm, or corporation has a right of action against any city causing such damages. [1997 c 171 § 3; 1967 ex.s. c 119 § 35A.14.900.]

**Severability—1997 c 171:** See note following RCW 35.02.160.

**35A.14.901 Application of chapter to annexations involving water or sewer service.**

Nothing in this chapter precludes or otherwise applies to an annexation by a code city of unincorporated territory as authorized by RCW 57.24.170, 57.24.190, and 57.24.210. [1996 c 230 § 1604; 1995 c 279 § 4.]

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**Chapter 35A.15 RCW  
DISINCORPORATION**

Sections

- 35A.15.001 Actions subject to review by boundary review board.
- 35A.15.010 Authority for disincorporation—Petition—Resolution.
- 35A.15.020 Election on disincorporation—Receiver.
- 35A.15.040 Ballots—Election results.
- 35A.15.050 Effect of disincorporation—Powers—Offices.
- 35A.15.060 Receiver—Qualification—Bond—When receiver may be appointed.
- 35A.15.070 Duties and authority of receiver—Claims—Priority.
- 35A.15.080 Compensation of receiver.
- 35A.15.090 Receiver—Removal for cause—Successive appointments.

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35A.15.100 Receiver—Final account and discharge.  
 35A.15.105 Applicability of general receivership law.  
 35A.15.110 Involuntary dissolution.

**35A.15.001 Actions subject to review by boundary review board.** Actions taken under chapter 35A.15 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 39.]

**35A.15.010 Authority for disincorporation—Petition—Resolution.** Any noncharter code city may be disincorporated. Proceedings may be initiated by the filing with the county auditor of a petition for disincorporation signed by a majority of the registered voters resident in such city, or the legislative body of the city may provide by resolution for an election on the proposition of disincorporation. [1990 c 259 § 11; 1967 ex.s. c 119 § 35A.15.010.]

*Sufficiency of petition in code city: RCW 35A.01.040.*

**35A.15.020 Election on disincorporation—Receiver.** The legislative body shall cause the proposition of disincorporation to be submitted to the voters at the next general municipal election if one is to be held within one hundred and eighty days, or at a special election called for that purpose not less than ninety days, nor more than one hundred and eighty days, after the certification of sufficiency of the petition, or the passage of the resolution, as the case may be. If the code city has any indebtedness or outstanding liabilities, the legislative body shall provide for election of a receiver at the same election. [1967 ex.s. c 119 § 35A.15.020.]

**35A.15.040 Ballots—Election results.** Ballot titles shall be prepared by the city as provided in RCW 35A.29.120 and shall contain the words "For Dissolution" and "Against Dissolution", and shall contain on separate lines, alphabetically, the names of candidates for receiver. If a majority of the votes cast on the proposition are for dissolution, the municipal corporation shall be dissolved upon certification of the election results to the office of the secretary of state. [1994 c 223 § 39; 1967 ex.s. c 119 § 35A.15.040.]

**35A.15.050 Effect of disincorporation—Powers—Offices.** The effect of disincorporation of a noncharter code city shall be as provided in RCW 35.07.090, 35.07.100, and 35.07.110. [1967 ex.s. c 119 § 35A.15.050.]

**35A.15.060 Receiver—Qualification—Bond—When receiver may be appointed.** The receiver shall qualify and post a bond as provided in RCW 35.07.120. If an elected receiver fails to qualify within the time prescribed, or if no receiver has been elected and the code city does have indebtedness or an outstanding liability, a receiver shall be appointed in the manner provided in RCW 35.07.130 or as provided in RCW 35.07.140. [1967 ex.s. c 119 § 35A.15.060.]

**35A.15.070 Duties and authority of receiver—Claims—Priority.** The duties and authority of the receiver and the disposition and priority of claims against the former municipality shall be as provided in RCW 35.07.150, and the receiver shall have the rights, powers, and limitations pro-

vided for such a receiver in RCW 35.07.160, 35.07.170, and 35.07.180. [1967 ex.s. c 119 § 35A.15.070.]

**35A.15.080 Compensation of receiver.** The compensation of the receiver shall be as provided in RCW 35.07.190. [1967 ex.s. c 119 § 35A.15.080.]

**35A.15.090 Receiver—Removal for cause—Successive appointments.** The receiver may be removed for cause as provided in RCW 35.07.200 and a successor to the receiver may be appointed as provided in RCW 35.07.210. [1967 ex.s. c 119 § 35A.15.090.]

**35A.15.100 Receiver—Final account and discharge.** The receiver shall file a final account, pay remaining funds to the county treasurer, and be discharged, all as provided in RCW 35.07.220. [1967 ex.s. c 119 § 35A.15.100.]

**35A.15.105 Applicability of general receivership law.** The provisions of Title 7 RCW generally applicable to receivers and receiverships do not apply to receivers elected or appointed under this chapter. [2004 c 165 § 44.]

**Purpose—Captions not law—2004 c 165:** See notes following RCW 7.60.005.

**35A.15.110 Involuntary dissolution.** A noncharter code city may be involuntarily dissolved in the manner provided in RCW 35.07.230, 35.07.240, 35.07.250, and 35.07.260 upon the existence of the conditions stated in RCW 35.07.230. [1967 ex.s. c 119 § 35A.15.110.]

## Chapter 35A.16 RCW

### REDUCTION OF CITY LIMITS

#### Sections

35A.16.001 Actions subject to review by boundary review board.  
 35A.16.010 Petition or resolution for election.  
 35A.16.030 Abstract of vote.  
 35A.16.040 Effective date of reduction.  
 35A.16.050 Recording of ordinance and plat on effective date of reduction.  
 35A.16.060 Effect of exclusion as to liability for indebtedness.  
 35A.16.070 Franchises within territory excluded.

**35A.16.001 Actions subject to review by boundary review board.** Actions taken under chapter 35A.16 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 40.]

**35A.16.010 Petition or resolution for election.** Upon the filing of a petition which is sufficient as determined by RCW 35A.01.040 praying for the exclusion from the boundaries of a code city of an area described by metes and bounds or by reference to a recorded plat or government survey, signed by qualified voters of the city in number equal to not less than ten percent of the number of votes cast at the last general municipal election, the legislative body of the code city shall cause the question to be submitted to the voters. As an alternate method, such a proposal for exclusion from the code city of a described area may be submitted to the voters by resolution of the legislative body. The question shall be submitted at the next general municipal election if one is to

be held within one hundred and eighty days or at a special election called for that purpose not less than ninety days nor more than one hundred and eighty days after the certification of sufficiency of the petition or the passage of the resolution. The petition or resolution shall set out and describe the territory to be excluded from the code city, together with the boundaries of the code city as it will exist after such change is made. [1967 ex.s. c 119 § 35A.16.010.]

**35A.16.030 Abstract of vote.** If three-fifths of the votes cast on the proposition favor the reduction of the corporate limits, the county auditor shall make and transmit to the office of the secretary of state a certified abstract of the vote. [1994 c 223 § 40; 1967 ex.s. c 119 § 35A.16.030.]

**35A.16.040 Effective date of reduction.** Promptly after the filing of the abstract of votes with the secretary of state the legislative body shall adopt an ordinance defining and fixing the corporate limits after excluding the area as determined by the election. The ordinance shall also describe the excluded territory by metes and bounds or by reference to a recorded plat or government survey and declare it no longer a part of the code city. [1967 ex.s. c 119 § 35A.16.040.]

**35A.16.050 Recording of ordinance and plat on effective date of reduction.** Upon the effective date of the ordinance a certified copy thereof together with a map showing the corporate limits as altered shall be filed and recorded in the office of the county auditor of the county in which the code city is situated, and thereupon the boundaries shall be as set forth therein. [1967 ex.s. c 119 § 35A.16.050.]

**35A.16.060 Effect of exclusion as to liability for indebtedness.** The exclusion of an area from the boundaries of the code city shall not exempt any real property therein from taxation for the purpose of paying any indebtedness of the code city existing at the time of its exclusion and the interest thereon. [1967 ex.s. c 119 § 35A.16.060.]

**35A.16.070 Franchises within territory excluded.** In regard to franchises previously granted for operation of any public service business or facility within the territory excluded from a code city by proceedings under this chapter, the rights, obligations, and duties of the legislative body of the county or other political subdivision having jurisdiction over such territory and of the franchise holder shall be as provided in RCW 35.02.160, relating to inclusion of territory by an incorporation, and such a franchise shall be canceled and a new franchise issued by the legislative body having jurisdiction, as therein provided. [1967 ex.s. c 119 § 35A.16.070.]

### Chapter 35A.21 RCW

#### PROVISIONS AFFECTING ALL CODE CITIES

##### Sections

35A.21.010	Validity of ordinances and resolutions—Deficiencies of form.
35A.21.020	Conflict between charter and optional code.
35A.21.030	Mandatory duties of code city officers.
35A.21.040	Merit systems.
35A.21.050	Pension and retirement systems.
35A.21.060	Garbage ordinance—Lien—Foreclosure.

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35A.21.070	Office hours prescribed by ordinance.
35A.21.080	Computation of time.
35A.21.090	Jurisdiction over adjacent waters—Control of street over tide-lands.
35A.21.100	Lien for utility services.
35A.21.110	Warrants—Interest rate—Payment.
35A.21.120	Utilities—Facilities for generation of electricity.
35A.21.125	Locally regulated utilities—Attachments to poles.
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35A.21.140	Change of name.
35A.21.150	Sewerage and refuse collection and disposal systems.
35A.21.152	Solid waste collection—Rate increase notice.
35A.21.153	Solid waste collection curbside recycling—Reduced rate.
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35A.21.162	Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.
35A.21.164	Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts.
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35A.21.180	Flags to be displayed.
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35A.21.230	Designation of official newspaper.
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35A.21.250	Building construction projects—Code city prohibited from requiring state agencies or local governments to provide bond or other security as a condition for issuance of permit.
35A.21.260	Amateur radio antennas—Local regulation to conform with federal law.
35A.21.270	Assumption of substandard water system—Limited immunity from liability.
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35A.21.290	Fish enhancement project—Code city's liability.
35A.21.300	Rail fixed guideway system—Safety and security program plan.
35A.21.310	Mobile home, manufactured home, or park model moving or installing—Copies of permits—Definitions.
35A.21.312	Authority to regulate placement or use of homes—Regulation of manufactured homes—Issuance of permits.
35A.21.320	Abandoned or derelict vessels.

*Demonstration Cities and Metropolitan Development Act—Authority of cities to contract with federal government: RCW 35.21.660.*

*Disturbances at state penal facilities—Local participation and reimbursement: Chapter 72.02 RCW.*

*Fire protection, ambulance or other emergency services provided by municipal corporation within county—Financial and other assistance by county authorized: RCW 36.32.470.*

*Limitation on penalty for act constituting a crime under state law: RCW 35.21.163.*

*Local adopt-a-highway programs: RCW 47.40.105.*

*Transfer of real property or contract for use for park and recreational purposes: RCW 39.33.060.*

**35A.21.010 Validity of ordinances and resolutions—Deficiencies of form.** Deficiencies in the form of an ordinance or resolution shall not affect the validity thereof if the following requirements are met:

- (1) The purpose and intent of the ordinance or resolution are clear.
- (2) Any regulatory or procedural provisions thereof are expressed in clear and unambiguous terms, or the legislative

intent can be determined by usual methods of judicial construction.

(3) The legislative action was taken at an authorized public meeting held within the code city limits at a time and place made known to residents of the city, as provided by law.

(4) The legislative body of the code city followed the prescribed procedures, if any, for passage of such an ordinance or resolution, as provided in the law or charter provision delegating to the legislative body the authority to so legislate; or, if prescribed procedures were not strictly complied with, no substantial detriment was incurred by any affected person, by reason of such irregularity.

If the foregoing requirements have been met, brevity or awkwardness of language, or defects of form not going to the substance, or inadvertent use of an incorrect or inaccurate proper name or term shall not render an ordinance or resolution invalid, if otherwise in compliance with law. [1967 ex.s. c 119 § 35A.21.010.]

**35A.21.020 Conflict between charter and optional code.** This optional municipal code is intended to be a general law, available to all cities and towns within the state, and to all legal intents and purposes a "general law" within the meaning of Article 11, section 10 of the state Constitution, as amended.

If any provision of this title is in conflict with any provision of the charter or amendments thereto of any charter code city, the provisions of this title shall govern and control, except where the legislative body of such charter code city, by ordinance, elects to retain such charter provision or amendment, in which event such charter provision shall prevail notwithstanding a conflict with provisions of this optional code: PROVIDED, That such ordinance shall be subject to referendum as provided in RCW 35A.29.170. [1967 ex.s. c 119 § 35A.21.020.]

**35A.21.030 Mandatory duties of code city officers.** Except as otherwise provided in this title, every officer of a code city shall perform, in the manner provided, all duties of his office which are imposed by state law on officers of every other class of city who occupy a like position and perform like functions. [1967 ex.s. c 119 § 35A.21.030.]

**35A.21.040 Merit systems.** Provisions for a merit system, made by charter or ordinance of a code city, shall be in compliance with any applicable statutes relating to civil service for employees of such city: PROVIDED, That nothing herein shall impair the validity of charter provisions adopted prior to the effective date of this title and relating to a merit system. [1967 ex.s. c 119 § 35A.21.040.]

**35A.21.050 Pension and retirement systems.** Nothing in this title shall be construed to alter or affect vested rights of city employees under pension and retirement systems in effect at the time this title becomes effective. [1967 ex.s. c 119 § 35A.21.050.]

**35A.21.060 Garbage ordinance—Lien—Foreclosure.** A garbage ordinance of a code city may contain the provisions authorized by RCW 35.21.130. Notice shall be

given of a lien for garbage collection and disposal service, the lien shall have priority and be foreclosed all as provided in RCW 35.21.140 and 35.21.150. [1967 ex.s. c 119 § 35A.21.060.]

**35A.21.070 Office hours prescribed by ordinance.** All code city offices shall be kept open for the transaction of business during such days and hours as the legislative body of such city shall by ordinance prescribe. [1967 ex.s. c 119 § 35A.21.070.]

**35A.21.080 Computation of time.** When, under the provisions of this title, an act is to be done within a certain time period, the time shall be computed by excluding the first day and including the last, except that when the last day is a Saturday, Sunday, or a day designated by RCW 1.16.050 or by the city's ordinances as a holiday, then it also is excluded and the act must be completed on the next business day. [1967 ex.s. c 119 § 35A.21.080.]

**35A.21.090 Jurisdiction over adjacent waters—Control of street over tidelands.** The legislative body of a code city shall have supervision and control within its corporate limits of streets over tidelands or upon or across tide and shore lands of the first class as provided in RCW 35.21.230, 35.21.240 and 35.21.250; and shall have jurisdiction over adjacent waters as provided in RCW 35.21.160. [1967 ex.s. c 119 § 35A.21.090.]

**35A.21.100 Lien for utility services.** Code cities owning or operating waterworks or electric light distribution or power plants shall have a lien for such utility services as provided by RCW 35.21.290 for cities owning such plants and as limited therein, which lien may be enforced only as provided in RCW 35.21.300. [1967 ex.s. c 119 § 35A.21.100.]

**35A.21.110 Warrants—Interest rate—Payment.** Code city warrants shall draw interest, be paid, and called for all as provided in RCW 35.21.320 and the duty and liability of the treasurer of a code city in calling and paying warrants of the city shall be as provided in RCW 35.21.320. [1967 ex.s. c 119 § 35A.21.110.]

**35A.21.120 Utilities—Facilities for generation of electricity.** Any code city owning and operating a public utility and having facilities and/or land for the generation of electricity shall be governed by the provisions of RCW 35.21.420 through 35.21.450. [1967 ex.s. c 119 § 35A.21.120.]

**35A.21.125 Locally regulated utilities—Attachments to poles.** (1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities

where the installation has been made with the necessary consent.

(b) "Locally regulated utility" means a code city owning and operating an electric utility not subject to rate or service regulation by the utilities and transportation commission.

(c) "Nondiscriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of persons approved for attachments.

(2) All rates, terms, and conditions made, demanded or received by a locally regulated utility for attachments to its poles must be just, reasonable, nondiscriminatory and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities. [1996 c 32 § 4.]

**35A.21.130 Codification of ordinances.** Compilation, codification, and revision of code city ordinances shall be as provided by and be governed by the provisions of RCW 35.21.500 through 35.21.570. [1967 ex.s. c 119 § 35A.21.130.]

**35A.21.140 Change of name.** Any code city may change its name in accordance with the procedure provided in chapter 35.62 RCW. [1967 ex.s. c 119 § 35A.21.140.]

**35A.21.150 Sewerage and refuse collection and disposal systems.** The general law as contained in, but not limited to, chapter 35.67 RCW, relating to sewerage systems and the collection and disposal of refuse, the manner of providing therefor, and the issuance of general obligation or revenue bonds therefor, the establishment of a revenue bond fund in connection therewith, compulsory connection with a city sewer system, setting and collection of rates, fees, and charges therefor, and the existence, enforcement, and foreclosure of a lien for sewer services is hereby recognized as applicable to code cities operating systems of sewerage and systems and plants for refuse collection and disposal. A code city may exercise the powers, in the manner provided, perform the duties, and shall have the rights and obligations provided in chapter 35.67 RCW, subject to the conditions and limitations therein provided. [1967 ex.s. c 119 § 35A.21.150.]

**35A.21.152 Solid waste collection—Rate increase notice.** (1) A city that contracts for the collection of solid waste, or provides for the collection of solid waste directly, shall notify the public of each proposed rate increase for a solid waste handling service. The notice may be mailed to each affected ratepayer or published once a week for two consecutive weeks in a newspaper of general circulation in the collection area. The notice shall be available to affected ratepayers at least forty-five days prior to the proposed effective date of the rate increase.

(2) For purposes of this section, "solid waste handling" has the same meaning as provided in RCW 70.95.030. [1994 c 161 § 3.]

(2004 Ed.)

**Findings—Declaration—1994 c 161:** See note following RCW 35.21.157.

**35A.21.153 Solid waste collection curbside recycling—Reduced rate.** (1) Each city or town providing by ordinance or resolution a reduced solid waste collection rate to residents participating in a residential curbside recycling program implemented under RCW 70.95.090, may provide a similar reduced rate to residents participating in any other recycling program, if such program is approved by the jurisdiction. Nothing in this section shall be interpreted to reduce the authority of a city to adopt ordinances under RCW 35.21.130(1).

(2) For the purposes of this section, "reduced rate" means a residential solid waste collection rate incorporating a rebate, refund, or discount. Reduced rate shall not include residential solid waste collection rate based on the volume or weight of solid waste set out for collection. [1991 c 319 § 405.]

**Severability—Part headings not law—1991 c 319:** See RCW 70.95F.900 and 70.95F.901.

**35A.21.155 Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation—Application of chapter.** Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 35.]

**Severability—1989 c 431:** See RCW 70.95.901.

**35A.21.160 General application of laws to code cities.** A code city organized or reorganized under this title shall have all of the powers which any city of any class may have and shall be governed in matters of state concern by statutes applicable to such cities in connection with such powers to the extent to which such laws are appropriate and are not in conflict with the provisions specifically applicable to code cities. [1967 ex.s. c 119 § 35A.21.160.]

**35A.21.161 Regulation of activities and enforcement of penal laws.** All code cities shall observe and enforce, in addition to its local regulations, the provisions of state laws relating to the conduct, location and limitation on activities as regulated by state law and shall supply police information to the section on identification of the state patrol as required by chapter 43.43 RCW. [1983 c 3 § 59; 1967 ex.s. c 119 § 35A.21.161.]

**35A.21.162 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.** See chapter 80.58 RCW.

**35A.21.164 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities,**

**towns, or public utility districts.** See RCW 87.03.825 through 87.03.840.

**35A.21.170 Fiscal year.** The fiscal year of a code city shall commence on the first day of January and end on the thirty-first day of December of each calendar year unless a different fiscal period is authorized by RCW 1.16.030, as amended. [1967 ex.s. c 119 § 35A.21.170.]

**35A.21.180 Flags to be displayed.** The flag of the United States and the flag of the state shall be prominently installed and displayed and maintained in code city buildings and shall be as provided in RCW 1.20.010. [1967 ex.s. c 119 § 35A.21.180.]

**35A.21.190 Daylight saving time.** No code city shall adopt any provision for the observance of daylight saving time other than as authorized by RCW 1.20.050 and 1.20.051. [1967 ex.s. c 119 § 35A.21.190.]

**35A.21.195 Actions by and against code cities.** A code city may exercise the power to bring an action or special proceeding at law as authorized by Title 4 RCW, chapters 7.24, 7.25, and 6.27 RCW, and shall be subject to actions and process of law in accordance with procedures prescribed by law and rules of court. [1987 c 442 § 1117; 1983 c 3 § 58; 1967 ex.s. c 119 § 35A.20.150. Formerly RCW 35A.20.150.]

**35A.21.200 Limitation of actions.** The limitations prescribed in chapter 4.16 RCW shall apply to actions brought in the name or for the benefit of, or against, a code city, except as otherwise provided by general law or by this title. [1967 ex.s. c 119 § 35A.21.200.]

**35A.21.210 Revision of corporate boundary within street, road, or highway right of way by substituting right of way line—Not subject to review.** (1) The governing bodies of a county and any code city located therein may by agreement revise any part of the corporate boundary of the city which coincides with the centerline, edge, or any portion of a public street, road or highway right of way by substituting therefor a right of way line of the same public street, road or highway so as fully to include or fully to exclude that segment of the public street, road or highway from the corporate limits of the city.

(2) The revision of a corporate boundary as authorized by this section shall become effective when approved by ordinance of the city council and by ordinance or resolution of the county legislative authority. Such a boundary revision is not subject to potential review by a boundary review board. [1989 c 84 § 11; 1975 1st ex.s. c 220 § 18.]

**Legislative finding, intent—1975 1st ex.s. c 220:** See note following RCW 35.02.170.

*Boundary line adjustment:* RCW 35.13.300 through 35.13.330.

*Use of right of way line as corporate boundary in incorporation proceeding—When right of way may be included in territory to be incorporated:* RCW 35.02.170.

*When right of way may be included in territory to be annexed—Use of right of way line as corporate boundary in annexation:* RCW 35A.14.410.

**35A.21.220 Insurance and workers' compensation for offenders performing community restitution.** The legislative authority of a code city may purchase liability insurance in an amount it deems reasonable to protect the code city, its officers, and employees against liability for the wrongful acts of offenders or injury or damage incurred by offenders in the course of court-ordered community restitution, and may elect to treat offenders as employees and/or workers under Title 51 RCW. [2002 c 175 § 31; 1984 c 24 § 2.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

*Workers' compensation coverage of offenders performing community restitution:* RCW 51.12.045.

**35A.21.230 Designation of official newspaper.** Each code city shall designate an official newspaper by resolution. The newspaper shall be of general circulation in the city and have the qualifications prescribed by chapter 65.16 RCW. [1985 c 469 § 102.]

**35A.21.240 Right of way donations—Credit against required improvements.** Where the zoning and planning provisions of a city or town require landscaping, parking, or other improvements as a condition to granting permits for commercial or industrial developments, the city or town may credit donations of right of way in excess of that required for traffic improvement against such landscaping, parking, or other requirements. [1987 c 267 § 8.]

**Severability—1987 c 267:** See RCW 47.14.910.

*Right of way donations:* Chapter 47.14 RCW.

**35A.21.245 Facilities and rights of way—Requirements and restrictions—Application to code cities.** Each code city is subject to the requirements and restrictions regarding facilities and rights of way under \*this chapter. [2000 c 83 § 10.]

**\*Reviser's note:** A reference to chapter 35.99 RCW was apparently intended.

*"Facilities," "right of way" defined:* RCW 35.99.010.

**35A.21.250 Building construction projects—Code city prohibited from requiring state agencies or local governments to provide bond or other security as a condition for issuance of permit.** A code city may not require any state agency or unit of local government to secure the performance of a permit requirement with a surety bond or other financial security device, including cash or assigned account, as a condition of issuing a permit to that unit of local government for a building construction project.

As used in this section, "building construction project" includes, in addition to its usual meaning, associated landscaping, street alteration, pedestrian or vehicular access alteration, or other amenities or alterations necessarily associated with the project. [1993 c 439 § 2.]

**35A.21.260 Amateur radio antennas—Local regulation to conform with federal law.** No code city shall enact or enforce an ordinance or regulation that fails to conform to the limited preemption entitled "Amateur Radio Preemption, 101 FCC 2nd 952 (1985)" issued by the federal communica-

tions commission. An ordinance or regulation adopted by a code city with respect to amateur radio antennas shall conform to the limited federal preemption, that states local regulations that involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and to represent the minimal practicable regulation to accomplish the local authority's legitimate purpose. [1994 c 50 § 2.]

**Effective date—1994 c 50:** See note following RCW 35.21.315.

**35A.21.270 Assumption of substandard water system—Limited immunity from liability.** A code city assuming responsibility for a water system that is not in compliance with state or federal requirements for public drinking water systems, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements for public drinking water systems, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the city has submitted and is complying with a plan and schedule of improvements approved by the department of health. This immunity shall expire on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith. [1994 c 292 § 6.]

**Findings—Intent—1994 c 292:** See note following RCW 57.04.050.

**35A.21.275 Regulation of automatic number or location identification—Prohibited.** No code city may enact or enforce an ordinance or regulation mandating automatic number identification or automatic location identification for a private telecommunications system or for a provider of private shared telecommunications services. [1995 c 243 § 7.]

**Findings—Severability—1995 c 243:** See notes following RCW 80.36.555.

**35A.21.280 Statement of restrictions applicable to real property.** (1) A property owner may make a written request for a statement of restrictions applicable to a single parcel, tract, lot, or block of real property to the code city in which the real property is located.

(2) Within thirty days of the receipt of the request, the code city shall provide the owner, by registered mail, with a statement of restrictions as described in subsection (3) of this section.

(3) The statement of restrictions shall include the following:

(a) The zoning currently applicable to the real property;

(b) Pending zoning changes currently advertised for public hearing that would be applicable to the real property;

(c) Any designations made by the code city pursuant to chapter 36.70A RCW of any portion of the real property as agricultural land, forest land, mineral resource land, wetland, an area with a critical recharging effect on aquifers used for potable water, a fish and wildlife habitat conservation area, a frequently flooded area, and as a geological hazardous area; and

(d) If information regarding the designations listed in (c) of this subsection are not readily available, inform the owner of the procedure by which the owner can obtain that site-specific information from the code city.

(4) If a code city fails to provide the statement of restrictions within thirty days after receipt of the written request, the owner shall be awarded recovery of all attorneys' fees and costs incurred in any successful application for a writ of mandamus to compel production of a statement.

(5) For purposes of this section:

(a) "Owner" means any vested owner or any person holding the buyer's interest under a recorded real estate contract in which the seller is the vested owner; and

(b) "Real property" means a parcel, tract, lot or block: (i) Containing a single-family residence that is occupied by the owner or a member of his or her family, or rented to another by the owner; or (ii) five acres or less in size.

(6) This section does not affect the vesting of permits or development rights.

Nothing in this section shall be deemed to create any liability on the part of a code city. [1996 c 206 § 7.]

**Effective date—1996 c 206 §§ 6-8:** See note following RCW 35.21.475.

**Findings—1996 c 206:** See note following RCW 43.05.030.

**35A.21.290 Fish enhancement project—Code city's liability.** A code city is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of RCW 77.55.290 and has been permitted by the department of fish and wildlife. [2003 c 39 § 16; 1998 c 249 § 10.]

**Findings—Purpose—Report—Effective date—1998 c 249:** See notes following RCW 77.55.290.

**35A.21.300 Rail fixed guideway system—Safety and security program plan.** (1) Each code city that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the code city's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the code city shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each code city shall implement and comply with its system safety and security program plan. The code city shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The code city shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits

were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each code city shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The code city shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.17 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption. [1999 c 202 § 2.]

**Effective date—1999 c 202:** See note following RCW 35.21.228.

**35A.21.310 Mobile home, manufactured home, or park model moving or installing—Copies of permits—Definitions.** (1) A code city shall transmit a copy of any permit issued to a tenant or the tenant's agent for a mobile home, manufactured home, or park model installation in a mobile home park to the landlord.

(2) A code city shall transmit a copy of any permit issued to a person engaged in the business of moving or installing a mobile home, manufactured home, or park model in a mobile home park to the tenant and the landlord.

(3) As used in this section:

(a) "Landlord" has the same meaning as in RCW 59.20.030;

(b) "Mobile home park" has the same meaning as in RCW 59.20.030;

(c) "Mobile or manufactured home installation" has the same meaning as in RCW 43.63B.010; and

(d) "Tenant" has the same meaning as in RCW 59.20.030. [1999 c 359 § 19.]

**Effective date—1999 c 359:** See RCW 59.20.901.

**35A.21.312 Authority to regulate placement or use of homes—Regulation of manufactured homes—Issuance of permits.** (*Effective July 1, 2005.*) (1) A code city may not enact any statute or ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site built homes, factory built homes, or homes built to any other state construction or local design standard. However, any code city may require that (a) a manufactured home be a new manufactured home; (b) the manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground

be enclosed by concrete or an approved concrete product which can be either load bearing or decorative; (c) the manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located; (d) the home is thermally equivalent to the state energy code; and (e) the manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160. A code city with a population of one hundred thirty-five thousand or more may choose to designate its building official as the person responsible for issuing all permits, including department of labor and industries permits issued under chapter 43.22 RCW in accordance with an interlocal agreement under chapter 39.34 RCW, for alterations, remodeling, or expansion of manufactured housing located within the city limits under this section.

(2) This section does not override any legally recorded covenants or deed restrictions of record.

(3) This section does not affect the authority granted under chapter 43.22 RCW. [2004 c 256 § 3.]

**Findings—Intent—Effective date—2004 c 256:** See notes following RCW 35.21.684.

**35A.21.320 Abandoned or derelict vessels.** A code city has the authority, subject to the processes and limitation outlined in chapter 79.100 RCW, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above publicly or privately owned aquatic lands within the jurisdiction of the code city. [2002 c 286 § 16.]

**Severability—Effective date—2002 c 286:** See RCW 79.100.900 and 79.100.901.

## Chapter 35A.24 RCW AERONAUTICS

### Sections

35A.24.010 Airport operation, planning and zoning.

**35A.24.010 Airport operation, planning and zoning.** A code city may exercise the powers relating to airport planning and zoning, improvement and operation as authorized by chapters 14.07, 14.08, and 14.12 RCW and chapter 35A.63 RCW of this title in accordance with the procedures therein prescribed. [1967 ex.s. c 119 § 35A.24.010.]

## Chapter 35A.27 RCW LIBRARIES, MUSEUMS AND HISTORICAL ACTIVITIES

### Sections

35A.27.010 General laws applicable.

**35A.27.010 General laws applicable.** Every code city may exercise the powers relating to the acquisition, development, improvement and operation of libraries and museums and the preservation of historical materials to the same extent authorized by general law for cities of any class, including, but not limited to, the authority for city libraries granted by RCW 35.22.280, the power to acquire and operate art muse-

ums, auditoriums, and other facilities as authorized by RCW 35.21.020, to participate in the establishment of regional libraries, and to contract for library service for public libraries with county, intercounty, and rural library districts, and for regional libraries as authorized by chapter 27.12 RCW, to have a county law library or branch thereof generally under the provisions of chapter 27.24 RCW, to preserve historical materials, markers, graves and records as provided in chapters 27.48 and 27.34 RCW, and to expend municipal funds thereon. [1985 c 7 § 101; 1983 c 3 § 60; 1967 ex.s. c 119 § 35A.27.010.]

### Chapter 35A.28 RCW SCHOOLS

#### Sections

35A.28.010 General laws applicable.

**35A.28.010 General laws applicable.** Code cities shall have the authority to enter into contracts for joint acquisition of land and improvement thereof with school districts. Code cities and their relationship with public schools, colleges and school districts shall be governed by the provisions of general law, including Titles 28A and 28B RCW. Each code city shall be contained within one school district except as may be otherwise provided in \*RCW 28A.315.250. [1983 c 3 § 61; 1967 ex.s. c 119 § 35A.28.010.]

\*Reviser's note: RCW 28A.315.250 was repealed by 1999 c 315 § 801.

### Chapter 35A.29 RCW MUNICIPAL ELECTIONS IN CODE CITIES

#### Sections

35A.29.120 Ballot titles.  
35A.29.130 Notice of ballot title—Appeal.  
35A.29.151 Conduct of elections.  
35A.29.170 Initiative and referendum petitions—Suspension of effectiveness of legislative action.  
35A.29.180 Recall.

**35A.29.120 Ballot titles.** When any question is to be submitted to the voters of a code city, or when a proposition is to be submitted to the voters of an area under provisions of this title, the question or proposition shall be advertised as provided for nominees for office, and in such cases there shall also be printed on the ballot a ballot title for the question or proposition in the form applicable under RCW \*29.79.055, \*\*29.27.060, 82.14.036, 82.46.021, or 82.80.090 or as otherwise expressly required by state law. The ballot title shall be prepared by the attorney for the code city, or as specified in \*\*RCW 29.27.060 for elections held outside of a code city. [1993 c 256 § 13; 1979 ex.s. c 18 § 31; 1967 ex.s. c 119 § 35A.29.120.]

**Reviser's note:** \*(1) RCW 29.79.055 was recodified as RCW 29.27.066 pursuant to 2000 c 197 § 16. RCW 29.27.066 was subsequently recodified as RCW 29A.36.070 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.36.070 was subsequently repealed by 2004 c 271 § 193.  
\*\*(2) RCW 29.27.060 was repealed by 2000 c 197 § 15.

**Severability—Effective date—1993 c 256:** See notes following RCW 29A.84.280.

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

(2004 Ed.)

**35A.29.130 Notice of ballot title—Appeal.** Upon the filing of a ballot title as defined in RCW 35A.29.120, the county auditor shall forthwith notify the persons proposing the measure of the exact language of the ballot title. If the persons filing any local question covered by RCW 35A.29.120 are dissatisfied with the ballot title formulated by the attorney for the code city or by the county prosecuting attorney, they may appeal to the superior court of the county where the question is to appear on the ballot, as provided in \*RCW 29.27.067. [1967 ex.s. c 119 § 35A.29.130.]

\*Reviser's note: RCW 29.27.067 was recodified as RCW 29A.36.090 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**35A.29.151 Conduct of elections.** Elections for code cities shall comply with general election law. [1994 c 223 § 41.]

**35A.29.170 Initiative and referendum petitions—Suspension of effectiveness of legislative action.** Initiative and referendum petitions authorized to be filed under provisions of this title, or authorized by charter, or authorized for code cities having the commission form of government as provided by chapter 35.17 RCW, shall be in substantial compliance with the provisions of RCW 35A.01.040 as to form and content of the petition, insofar as such provisions are applicable; shall contain a true copy of a resolution or ordinance sought to be referred to the voters; and must contain valid signatures of registered voters of the code city in the number required by the applicable provision of this title. Except when otherwise provided by statute, referendum petitions must be filed with the clerk of the legislative body of the code city within ninety days after the passage of the resolution or ordinance sought to be referred to the voters, or within such lesser number of days as may be authorized by statute or charter in order to precede the effective date of an ordinance: PROVIDED, That nothing herein shall be construed to abrogate or affect an exemption from initiative and/or referendum provided by a code city charter. The clerk shall transmit the petition to the county auditor who shall determine the sufficiency of the petition under the rules set forth in RCW 35A.01.040. When a referendum petition is filed with the clerk, the legislative action sought to be referred to the voters shall be suspended from taking effect. Such suspension shall terminate when: (1) There is a final determination of insufficiency or untimeliness of the referendum petition; or (2) the legislative action so referred is approved by the voters at a referendum election. [1996 c 286 § 8; 1967 ex.s. c 119 § 35A.29.170.]

**35A.29.180 Recall.** Elective officers of code cities may be recalled in the manner provided in \*chapter 29.82 RCW. [1967 ex.s. c 119 § 35A.29.180.]

\*Reviser's note: Chapter 29.82 RCW was recodified as chapter 29A.56 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

### Chapter 35A.31 RCW ACCIDENT CLAIMS AND FUNDS

#### Sections

35A.31.010 Claims—Statement of residence required—Time for filing—Verification.

- 35A.31.020 Liberal construction.
- 35A.31.030 Report—Manner of filing.
- 35A.31.050 Charter code cities—Provisions cumulative.
- 35A.31.060 Accident fund—Warrants for judgments.
- 35A.31.070 Tax levy for fund.
- 35A.31.080 Surplus to general fund.

**35A.31.010 Claims—Statement of residence required—Time for filing—Verification.** Claims for damages sounding in tort against any code city shall be presented and filed within the time, in the manner and by the person prescribed in RCW 4.96.020. [1967 ex.s. c 119 § 35A.31.010.]

**35A.31.020 Liberal construction.** With respect to the content of such claims the provisions of RCW 4.96.020 shall be liberally construed so that substantial compliance will be deemed satisfactory. [1967 ex.s. c 119 § 35A.31.020.]

**35A.31.030 Report—Manner of filing.** No ordinance or resolution shall be passed allowing such claim or any part thereof, or appropriating any money or other property to pay or satisfy the same or any part thereof, until the claim has first been referred to the proper department or committee, nor until such department or committee has made its report thereon to the legislative body of the code city pursuant to such reference.

No action shall be maintained against any code city for any claim for damages until the claim has been filed in the manner set forth in chapter 4.96 RCW. [1993 c 449 § 9; 1967 ex.s. c 119 § 35A.31.030.]

**Purpose—Severability—1993 c 449:** See notes following RCW 4.96.010.

**35A.31.050 Charter code cities—Provisions cumulative.** Nothing herein shall be construed as in anywise modifying, limiting, or repealing any valid provision of the charter of any charter code city relating to such claims for damages, except when in conflict herewith, but the provisions hereof shall be in addition to such charter provisions, and such claims for damages, in all other respects, shall conform to and comply with such charter provisions. [1967 ex.s. c 119 § 35A.31.050.]

**35A.31.060 Accident fund—Warrants for judgments.** Every code city may create an accident fund upon which the clerk shall draw warrants for the full amount of any judgment including interest and costs against the city on account of personal injuries suffered by any person as shown by a transcript of the judgment duly certified to the clerk. Warrants issued for such purpose shall be in denominations not less than one hundred dollars nor more than five hundred dollars; they shall draw interest at the rate of six percent per annum, shall be numbered consecutively and be paid in the order of their issue. [1967 ex.s. c 119 § 35A.31.060.]

**35A.31.070 Tax levy for fund.** The legislative body of the code city, after the drawing of warrants against the accident fund, shall estimate the amount necessary to pay the warrant with accrued interest thereon and may appropriate and transfer money from the contingency fund sufficient therefor, or if there is not sufficient money in the contingency

fund the legislative body shall levy a tax sufficient to pay all or such unpaid portion of any judgment not exceeding seventy-five cents per thousand dollars of assessed value. If a single levy of seventy-five cents per thousand dollars of assessed value is not sufficient, and if other moneys are not available therefor, an annual levy of seventy-five cents per thousand dollars of assessed value shall be made until the warrants and interest are fully paid. [1973 1st ex.s. c 195 § 27; 1967 ex.s. c 119 § 35A.31.070.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**35A.31.080 Surplus to general fund.** If there is no judgment outstanding against the city for personal injuries, the money remaining in the accident fund after the payment of the warrants drawn on that fund and interest in full shall be transferred to the general fund. [1967 ex.s. c 119 § 35A.31.080.]

## Chapter 35A.33 RCW BUDGETS IN CODE CITIES

### Sections

- 35A.33.010 Definitions.
- 35A.33.020 Applicability of chapter.
- 35A.33.030 Budget estimates.
- 35A.33.040 Classification and segregation of budget estimates.
- 35A.33.050 Proposed preliminary budget.
- 35A.33.052 Preliminary budget.
- 35A.33.055 Budget message—Preliminary hearings.
- 35A.33.060 Budget—Notice of hearing on final.
- 35A.33.070 Budget—Hearing.
- 35A.33.075 Budget adoption.
- 35A.33.080 Emergency expenditures—Nondebatable emergencies.
- 35A.33.090 Emergency expenditures—Other emergencies—Hearing.
- 35A.33.100 Emergency expenditures—Warrants—Payments.
- 35A.33.102 Registered warrants—Appropriations.
- 35A.33.105 Adjustment of wages, etc., of employees permissible budget notwithstanding.
- 35A.33.110 Forms—Accounting—Supervision by state.
- 35A.33.120 Funds—Limitations on expenditures—Transfers and adjustments.
- 35A.33.122 Administration, oversight, or supervision of utility—Reimbursement from utility budget authorized.
- 35A.33.125 Limitation on expenditures—Void.
- 35A.33.130 Funds received from sales of bonds and warrants—Expenditures.
- 35A.33.135 Levy for ad valorem tax.
- 35A.33.140 Funds—Quarterly report of status.
- 35A.33.145 Contingency fund—Creation.
- 35A.33.146 Contingency fund—Withdrawals.
- 35A.33.150 Unexpended appropriations.
- 35A.33.160 Violations and penalties.

**35A.33.010 Definitions.** Unless the context clearly indicates otherwise, the following words as used in this chapter shall have the meaning herein prescribed:

(1) "Clerk" as used in this chapter includes the officer performing the functions of a finance or budget director, comptroller, auditor, or by whatever title he may be known in any code city.

(2) "Department" as used in this chapter includes each office, division, service, system or institution of the city for which no other statutory or charter provision is made for budgeting and accounting procedures or controls.

(3) "Council" as used in this chapter includes the commissioners in cities having a commission form of government

and any other group of city officials serving as the legislative body of a code city.

(4) "Chief administrative officer" as used in this chapter includes the mayor of cities having a mayor-council form of government, the commissioners in cities having a commissioner form of government, the city manager, or any other city official designated by the charter or ordinances of such city under the plan of government governing the same, or the budget or finance officer designated by the mayor, manager or commissioners, to perform the functions, or portions thereof, contemplated by this chapter.

(5) "Fiscal year" as used in this chapter means that fiscal period set by the code city pursuant to authority given under RCW 1.16.030.

(6) "Fund", as used in this chapter and "funds" where clearly used to indicate the plural of "fund", shall mean the budgeting or accounting entity authorized to provide a sum of money for specified activities or purposes.

(7) "Funds" as used in this chapter where not used to indicate the plural of "fund" shall mean money in hand or available for expenditure or payment of a debt or obligation.

(8) Except as otherwise defined herein, municipal accounting terms used in this chapter have the meaning prescribed in "Governmental Accounting, Auditing and Financial Reporting" prepared by the National Committee on Governmental Accounting, 1968. [1969 ex.s. c 81 § 2; 1967 ex.s. c 119 § 35A.33.010.]

**Effective date—1969 ex.s. c 81:** See note following RCW 35A.13.035.

**35A.33.020 Applicability of chapter.** The provisions of this chapter apply to all code cities except those which have adopted an ordinance under RCW 35A.34.040 providing for a biennial budget. In addition, this chapter shall not apply to any municipal utility or enterprise for which separate budgeting provisions are made by general state law. [1985 c 175 § 33; 1967 ex.s. c 119 § 35A.33.020.]

**35A.33.030 Budget estimates.** On or before the second Monday of the fourth month prior to the beginning of the city's next fiscal year, or at such other time as the city may provide by ordinance or charter, the clerk shall notify in writing the head of each department of a code city to file with the clerk within fourteen days of the receipt of such notification, detailed estimates of the probable revenue from sources other than ad valorem taxation and of all expenditures required by his or her department for the ensuing fiscal year. The notice shall be accompanied by the proper forms provided by the clerk, prepared in accordance with the requirements and classification established by the state auditor. The clerk shall prepare the estimates for interest and debt redemption requirements and all other estimates, the preparation of which falls properly within the duties of his or her office. The chief administrative officers of the city shall submit to the clerk detailed estimates of all expenditures proposed to be financed from the proceeds of bonds or warrants not yet authorized, together with a statement of the proposed method of financing them. In the absence or disability of the official or person regularly in charge of a department, the duties herein required shall devolve upon the person next in charge of such department. [1995 c 301 § 51; 1967 ex.s. c 119 § 35A.33.030.]

(2004 Ed.)

**35A.33.040 Classification and segregation of budget estimates.** All estimates of receipts and expenditures for the ensuing year shall be fully detailed in the annual budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor after consultation with the Washington finance officers association, the association of Washington cities and the association of Washington city managers. [1995 c 301 § 52; 1967 ex.s. c 119 § 35A.33.040.]

**35A.33.050 Proposed preliminary budget.** On or before the first business day in the third month prior to the beginning of the fiscal year of a code city or at such other time as the city may provide by ordinance or charter, the clerk or other person designated by the charter, by ordinances, or by the chief administrative officer of the city shall submit to the chief administrative officer a proposed preliminary budget which shall set forth the complete financial program of the city for the ensuing fiscal year, showing the expenditure program requested by each department and the sources of revenue by which each such program is proposed to be financed.

The revenue section shall set forth in comparative and tabular form for each fund the actual receipts for the last completed fiscal year, the estimated receipts for the current fiscal year and the estimated receipts for the ensuing fiscal year, which shall include the amount to be raised from ad valorem taxes and unencumbered fund balances estimated to be available at the close of the current fiscal year.

The expenditure section shall set forth in comparative and tabular form for each fund and every department operating within each fund the actual expenditures for the last completed fiscal year, the appropriations for the current fiscal year and the estimated expenditures for the ensuing fiscal year. The salary or salary range for each office, position or job classification shall be set forth separately together with the title or position designation thereof: PROVIDED, That salaries may be set out in total amounts under each department if a detailed schedule of such salaries and positions be attached to and made a part of the budget document. [1967 ex.s. c 119 § 35A.33.050.]

**35A.33.052 Preliminary budget.** The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or addition to the reports of the department heads deemed advisable by such chief administrative officer and at least sixty days before the beginning of the city's next fiscal year he shall file it with the city clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later than six weeks before the beginning of the city's next fiscal year. [1967 ex.s. c 119 § 35A.33.052.]

**35A.33.055 Budget message—Preliminary hearings.** In every code city a budget message prepared by or under the direction of the city's chief administrative officer shall be submitted as a part of the preliminary budget to the city's leg-

islative body at least sixty days before the beginning of the city's next fiscal year and shall contain the following:

- (1) An explanation of the budget document;
- (2) An outline of the recommended financial policies and programs of the city for the ensuing fiscal year;
- (3) A statement of the relation of the recommended appropriation to such policies and programs;
- (4) A statement of the reason for salient changes from the previous year in appropriation and revenue items;
- (5) An explanation for any recommended major changes in financial policy.

Prior to the final hearing on the budget, the legislative body or a committee thereof, shall schedule hearings on the budget or parts thereof, and may require the presence of department heads to give information regarding estimates and programs. [1967 ex.s. c 119 § 35A.33.055.]

#### **35A.33.060 Budget—Notice of hearing on final.**

Immediately following the filing of the preliminary budget with the clerk, the clerk shall publish a notice once each week for two consecutive weeks stating that the preliminary budget for the ensuing fiscal year has been filed with the clerk, that a copy thereof will be furnished to any taxpayer who will call at the clerk's office therefor and that the legislative body of the city will meet on or before the first Monday of the month next preceding the beginning of the ensuing fiscal year for the purpose of fixing the final budget, designating the date, time and place of the legislative budget meeting and that any taxpayer may appear thereat and be heard for or against any part of the budget. The publication of the notice shall be made in the official newspaper of the city. [1985 c 469 § 43; 1973 c 67 § 1; 1967 ex.s. c 119 § 35A.33.060.]

**35A.33.070 Budget—Hearing.** The council shall meet on the day fixed by RCW 35A.33.060 for the purpose of fixing the final budget of the city at the time and place designated in the notice thereof. Any taxpayer may appear and be heard for or against any part of the budget. The hearing may be continued from day to day but not later than the twenty-fifth day prior to commencement of the city's fiscal year. [1967 ex.s. c 119 § 35A.33.070.]

**35A.33.075 Budget adoption.** Following conclusion of the hearing, and prior to the beginning of the fiscal year, the legislative body shall make such adjustments and changes as it deems necessary or proper and after determining the allowance in each item, department, classification and fund, and shall by ordinance, adopt the budget in its final form and content. Appropriations shall be limited to the total estimated revenues contained therein including the amount to be raised by ad valorem taxes and the unencumbered fund balances estimated to be available at the close of the current fiscal year. Such ordinances may adopt the final budget by reference: PROVIDED, That the ordinance adopting such budget shall set forth in summary form the totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined.

A complete copy of the final budget as adopted shall be transmitted to the state auditor, and to the association of

Washington cities. [1995 c 301 § 53; 1969 ex.s. c 81 § 3; 1967 ex.s. c 119 § 35A.33.075.]

**Effective date—1969 ex.s. c 81:** See note following RCW 35A.13.035.

**35A.33.080 Emergency expenditures—Nondebatable emergencies.** Upon the happening of any emergency caused by violence of nature, casualty, riot, insurrection, war, or other unanticipated occurrence requiring the immediate preservation of order or public health, or for the restoration to a condition of usefulness of any public property which has been damaged or destroyed by accident, or for public relief from calamity, or in settlement of approved claims for personal injuries or property damage, or to meet mandatory expenditures required by laws enacted since the last annual budget was adopted, or to cover expenses incident to preparing for or establishing a new form of government authorized or assumed after adoption of the current budget, including any expenses incident to selection of additional or new officials required thereby, or incident to employee recruitment at any time, the city council, upon the adoption of an ordinance, by the vote of one more than the majority of all members of the legislative body, stating the facts constituting the emergency and the estimated amount required to meet it, may make the expenditures therefor without notice or hearing. [1967 ex.s. c 119 § 35A.33.080.]

**35A.33.090 Emergency expenditures—Other emergencies—Hearing.** If a public emergency which could not reasonably have been foreseen at the time of filing the preliminary budget requires the expenditure of money not provided for in the annual budget, and if it is not one of the emergencies specifically enumerated in RCW 35A.33.080, the city council before allowing any expenditure therefor shall adopt an ordinance stating the facts constituting the emergency and the estimated amount required to meet it and declaring that an emergency exists.

Such ordinance shall not be voted on until five days have elapsed after its introduction, and for passage shall require the vote of one more than the majority of all members of the legislative body of the code city.

Any taxpayer may appear at the meeting at which the emergency ordinance is to be voted on and be heard for or against the adoption thereof. [1967 ex.s. c 119 § 35A.33.090.]

**35A.33.100 Emergency expenditures—Warrants—Payments.** All expenditures for emergency purposes as provided in this chapter shall be paid by warrants from any available money in the fund properly chargeable with such expenditures. If, at any time, there is insufficient money on hand in a fund with which to pay such warrants as presented, the warrants shall be registered, bear interest and be called in the same manner as other registered warrants as prescribed in RCW 35A.21.110. [1967 ex.s. c 119 § 35A.33.100.]

**35A.33.102 Registered warrants—Appropriations.** In adopting the final budget for any fiscal year, the council shall appropriate from estimated revenue sources available, a sufficient amount to pay the principal and interest on all outstanding registered warrants issued since the adoption of the

last preceding budget except those issued and identified as revenue warrants and except those for which an appropriation previously has been made: PROVIDED, That no portion of the revenues which are restricted in use by law may be appropriated for the redemption of warrants issued against a utility or other special purpose fund of a self-supporting nature: PROVIDED FURTHER, That all or any portion of the city's outstanding registered warrants may be funded into bonds in any manner authorized by law. [1967 ex.s. c 119 § 35A.33.102.]

**35A.33.105 Adjustment of wages, etc., of employees permissible budget notwithstanding.** Notwithstanding the appropriations for any salary, or salary range of any employee or employees adopted in a final budget, the legislative body of any code city may, by ordinance, change the wages, hours, and conditions of employment of any or all of its appointive employees if sufficient funds are available for appropriation to such purposes. [1967 ex.s. c 119 § 35A.33.105.]

**35A.33.110 Forms—Accounting—Supervision by state.** The state auditor is empowered to make and install the forms and classifications required by this chapter to define what expenditures are chargeable to each budget class and to establish the accounting and cost systems necessary to secure accurate budget information. [1995 c 301 § 54; 1967 ex.s. c 119 § 35A.33.110.]

**35A.33.120 Funds—Limitations on expenditures—Transfers and adjustments.** The expenditures as classified and itemized in the final budget shall constitute the city's appropriations for the ensuing fiscal year. Unless otherwise ordered by a court of competent jurisdiction, and subject to further limitations imposed by ordinance of the code city, the expenditure of city funds or the incurring of current liabilities on behalf of the city shall be limited to the following:

(1) The total amount appropriated for each fund in the budget for the current fiscal year, without regard to the individual items contained therein, except that this limitation shall not apply to wage adjustments authorized by RCW 35A.33.105; and

(2) The unexpended appropriation balances of a preceding budget which may be carried forward from prior fiscal years pursuant to RCW 35A.33.150; and

(3) Funds received from the sale of bonds or warrants which have been duly authorized according to law; and

(4) Funds received in excess of estimated revenues during the current fiscal year, when authorized by an ordinance amending the original budget; and

(5) Expenditures required for emergencies, as authorized in RCW 35A.33.080 and 35A.33.090.

Transfers between individual appropriations within any one fund may be made during the current fiscal year by order of the city's chief administrative officer subject to such regulations, if any, as may be imposed by the city council. Notwithstanding the provisions of RCW 43.09.210 or of any statute to the contrary, transfers, as herein authorized, may be made within the same fund regardless of the various offices, departments or divisions of the city which may be affected.

(2004 Ed.)

The city council, upon a finding that it is to the best interests of the code city to decrease, revoke or recall all or any portion of the total appropriations provided for any one fund, may, by ordinance, approved by the vote of one more than the majority of all members thereof, stating the facts and findings for doing so, decrease, revoke or recall all or any portion of an unexpended fund balance, and by said ordinance, or a subsequent ordinance adopted by a like majority, the moneys thus released may be reappropriated for another purpose or purposes, without limitation to department, division or fund, unless the use of such moneys is otherwise restricted by law, charter, or ordinance. [1967 ex.s. c 119 § 35A.33.120.]

**35A.33.122 Administration, oversight, or supervision of utility—Reimbursement from utility budget authorized.** Whenever any code city apportions a percentage of the city manager's, administrator's, or supervisor's time, or the time of other management or general government staff, for administration, oversight, or supervision of a utility operated by the city, or to provide services to the utility, the utility budget may identify such services and budget for reimbursement of the city's current expense fund for the value of such services. [1991 c 152 § 3.]

**35A.33.125 Limitation on expenditures—Void.** Liabilities incurred by any officer or employee of the city in excess of any budget appropriations shall not be a liability of the city. The clerk shall issue no warrant and the city council or other authorized person shall approve no claim for an expenditure in excess of the total amount appropriated for any individual fund, except upon an order of a court of competent jurisdiction or for emergencies as provided in this chapter. [1969 ex.s. c 81 § 4; 1967 ex.s. c 119 § 35A.33.125.]

**Effective date—1969 ex.s. c 81:** See note following RCW 35A.13.035.

**35A.33.130 Funds received from sales of bonds and warrants—Expenditures.** Moneys received from the sale of bonds or warrants shall be used for no other purpose than that for which they were issued and no expenditure shall be made for that purpose until the bonds have been duly authorized. If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued it shall be used for the redemption of such bond or warrant indebtedness. Where a budget contains an expenditure program to be financed from a bond issue to be authorized thereafter, no such expenditure shall be made or incurred until after the bonds have been duly authorized. [1967 ex.s. c 119 § 35A.33.130.]

**35A.33.135 Levy for ad valorem tax.** At a time fixed by the city's ordinance or charter, not later than the first Monday in October of each year, the chief administrative officer shall provide the city's legislative body with current information on estimates of revenues from all sources as adopted in the budget for the current year, together with estimates submitted by the clerk under RCW 35A.33.050. The city's legislative body and the city's administrative officer or his designated representative shall consider the city's total anticipated financial requirements for the ensuing fiscal year, and the

legislative body shall determine and fix by ordinance the amount to be raised by ad valorem taxes. Upon adoption of the ordinance fixing the amount of ad valorem taxes to be levied, the clerk shall certify the same to the board of county commissioners as required by RCW 84.52.020. [1967 ex.s. c 119 § 35A.33.135.]

**35A.33.140 Funds—Quarterly report of status.** At such intervals as may be required by city charter or ordinance, however, being not less than quarterly, the clerk shall submit to the city's legislative body and chief administrative officer a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding reporting period and like information for the whole of the current fiscal year to the first day of the current reporting period together with the unexpended balance of each appropriation. The report shall also show the receipts from all sources. [1967 ex.s. c 119 § 35A.33.140.]

**35A.33.145 Contingency fund—Creation.** Every code city may create and maintain a contingency fund to provide moneys with which to meet any municipal expense, the necessity or extent of which could not have been foreseen or reasonably evaluated at the time of adopting the annual budget, or from which to provide moneys for those emergencies described in RCW 35A.33.080 and 35A.33.090. Such fund may be supported by a budget appropriation from any tax or other revenue source not restricted in use by law, or also may be supported by a transfer from other unexpended or decreased funds made available by ordinance as set forth in RCW 35A.33.120: PROVIDED, That the total amount accumulated in such fund at any time shall not exceed the equivalent of thirty-seven and one-half cents per thousand dollars of assessed valuation of property within the city at such time. Any moneys in the contingency fund at the end of the fiscal year shall not lapse except upon reappropriation by the council to another fund in the adoption of a subsequent budget. [1973 1st ex.s. c 195 § 28; 1967 ex.s. c 119 § 35A.33.145.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**35A.33.146 Contingency fund—Withdrawals.** No money shall be withdrawn from the contingency fund except by transfer to the appropriate operating fund authorized by a resolution or ordinance of the council, adopted by a vote of the majority of the entire council, clearly stating the facts constituting the reason for the withdrawal or the emergency as the case may be, specifying the fund to which the withdrawn money shall be transferred. [1967 ex.s. c 119 § 35A.33.146.]

**35A.33.150 Unexpended appropriations.** All appropriations in any current operating fund shall lapse at the end of each fiscal year: PROVIDED, That this shall not prevent payments in the following year upon uncompleted programs or improvements in progress or on orders subsequently filled or claims subsequently billed for the purchase of material, equipment and supplies or for personal or contractual services not completed or furnished by the end of the fiscal year, all of which have been properly budgeted and contracted for

prior to the close of such fiscal year but furnished or completed in due course thereafter.

All appropriations in a special fund authorized by ordinance or by state law to be used only for the purpose or purposes therein specified, including any cumulative reserve funds lawfully established in specific or general terms for any municipal purpose or purposes, or a contingency fund as authorized by RCW 35A.33.145, shall not lapse, but shall be carried forward from year to year until fully expended or the purpose has been accomplished or abandoned, without necessity of reappropriation.

The accounts for budgetary control for each fiscal year shall be kept open for twenty days after the close of such fiscal year for the purpose of paying and recording claims for indebtedness incurred during such fiscal year; any claim presented after the twentieth day following the close of the fiscal year shall be paid from appropriations lawfully provided for the ensuing period, including those made available by provisions of this section, and shall be recorded in the accounts for the ensuing fiscal year. [1967 ex.s. c 119 § 35A.33.150.]

**35A.33.160 Violations and penalties.** Upon the conviction of any city official, department head or other city employee of knowingly failing, or refusing, without just cause, to perform any duty imposed upon such officer or employee by this chapter, or city ordinance or charter, in connection with the giving of notice, the preparing and filing of estimates of revenues or expenditures or other information required for preparing a budget report in the time and manner required, or of knowingly making expenditures in excess of budget appropriations, he shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars for each separate violation. [1967 ex.s. c 119 § 35A.33.160.]

## Chapter 35A.34 RCW BIENNIAL BUDGETS

### Sections

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35A.34.280 Violations and penalties.

**35A.34.010 Legislative intent.** See RCW 35.34.010.

**35A.34.020 Application of chapter.** This chapter applies to all code cities which have by ordinance adopted this chapter authorizing the adoption of a fiscal biennium budget. [1985 c 175 § 34.]

**35A.34.030 Definitions.** Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Clerk" includes the officer performing the functions of a finance or budget director, comptroller, auditor, or by whatever title the officer may be known in any code city.

(2) "Department" includes each office, division, service, system, or institution of the city for which no other statutory or charter provision is made for budgeting and accounting procedures or controls.

(3) "Legislative body" includes the council, commission, or any other group of officials serving as the legislative body of a code city.

(4) "Chief administrative officer" includes the mayor of cities having a mayor-council plan of government, the commissioners in cities having a commission plan of government, the manager, or any other city official designated by the charter or ordinances of such city under the plan of government governing the same, or the budget or finance officer designated by the mayor, manager, or commissioners, to perform the functions, or portions thereof, contemplated by this chapter.

(5) "Fiscal biennium" means the period from January 1 of each odd-numbered year through December 31 of the next succeeding even-numbered year.

(6) "Fund" and "funds" where clearly used to indicate the plural of "fund" means the budgeting or accounting entity authorized to provide a sum of money for specified activities or purposes.

(7) "Funds" where not used to indicate the plural of "fund" means money in hand or available for expenditure or payment of a debt or obligation.

(8) Except as otherwise defined in this chapter, municipal accounting terms used in this chapter have the meaning prescribed by the state auditor pursuant to RCW 43.09.200. [1985 c 175 § 35.]

*"Fiscal biennium" defined: RCW 1.16.020.*

**35A.34.040 Biennial budget authorized—Limitations.** All code cities are authorized to establish by ordinance a two-year fiscal biennium budget. The ordinance shall be enacted at least six months prior to commencement of the fiscal biennium and this chapter applies to all code cities which utilize a fiscal biennium budget. Code cities which establish a fiscal biennium budget are authorized to repeal such ordinance and provide for reversion to a fiscal year budget. The ordinance may only be repealed effective as of the conclusion of a fiscal biennium. However, the city shall comply with chapter 35A.33 RCW in developing and adopting the budget for the first fiscal year following repeal of the ordinance. [1985 c 175 § 36.]

(2004 Ed.)

**35A.34.050 Budget estimates—Submittal.** On or before the second Monday of the fourth month prior to the beginning of the city's next fiscal biennium, or at such other time as the city may provide by ordinance or charter, the clerk shall notify in writing the head of each department of a city to file with the clerk within fourteen days of the receipt of such notification, detailed estimates of the probable revenue from sources other than ad valorem taxation and of all expenditures required by the department for the ensuing fiscal biennium. The notice shall be accompanied by the proper forms provided by the clerk, prepared in accordance with the requirements and classification established by the state auditor. The clerk shall prepare the estimates for interest and debt redemption requirements and all other estimates, the preparation of which falls properly within the duties of the clerk's office. The chief administrative officers of the city shall submit to the clerk detailed estimates of all expenditures proposed to be financed from the proceeds of bonds or warrants not yet authorized, together with a statement of the proposed method of financing them. In the absence or disability of the official or person regularly in charge of a department, the duties required by this section shall devolve upon the person next in charge of such department. [1995 c 301 § 55; 1985 c 175 § 37.]

**35A.34.060 Budget estimates—Classification and segregation.** All estimates of receipts and expenditures for the ensuing fiscal biennium shall be fully detailed in the biennial budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor after consultation with the Washington finance officers association, the association of Washington cities, and the association of Washington city managers. [1995 c 301 § 56; 1985 c 175 § 38.]

**35A.34.070 Proposed preliminary budget.** On or before the first business day in the third month prior to the beginning of the biennium of a city or at such other time as the city may provide by ordinance or charter, the clerk or other person designated by the charter, by ordinances, or by the chief administrative officer of the city shall submit to the chief administrative officer a proposed preliminary budget which shall set forth the complete financial program of the city for the ensuing fiscal biennium, showing the expenditure program requested by each department and the sources of revenue by which each such program is proposed to be financed.

The revenue section shall set forth in comparative and tabular form for each fund the actual receipts for the last completed fiscal biennium, the estimated receipts for the current fiscal biennium, and the estimated receipts for the ensuing fiscal biennium, which shall include the amount to be raised from ad valorem taxes and unencumbered fund balances estimated to be available at the close of the current fiscal biennium. However, if the city was not utilizing a fiscal biennium budget for the previous three years, it shall set forth its fiscal years' revenues to reflect actual and estimated receipts as if it had previously utilized a biennial budgetary process.

The expenditure section shall set forth in comparative and tabular form for each fund and every department operating within each fund the actual expenditures for the last com-

pleted fiscal biennium, the appropriations for the current fiscal biennium, and the estimated expenditures for the ensuing fiscal biennium. However, if the city was not utilizing a fiscal biennium budget for the previous three years, it shall set forth its fiscal years' expenditures to reflect actual and estimated levels as if it had previously utilized a biennial budgetary process. The expenditure section shall further set forth separately the salary or salary range for each office, position, or job classification together with the title or position designation thereof. However, salaries may be set out in total amounts under each department if a detailed schedule of such salaries and positions be attached and made a part of the budget document. [1985 c 175 § 39.]

**35A.34.080 Preliminary budget.** The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or additions to the reports of the department heads deemed advisable by such chief administrative officer. At least sixty days before the beginning of the city's next fiscal biennium the chief administrative officer shall file it with the clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later than six weeks before the beginning of the city's next fiscal biennium. [1985 c 175 § 40.]

**35A.34.090 Budget message—Hearings.** (1) In every city, a budget message prepared by or under the direction of the city's chief administrative officer shall be submitted as a part of the preliminary budget to the city's legislative body at least sixty days before the beginning of the city's next fiscal biennium and shall contain the following:

- (a) An explanation of the budget document;
- (b) An outline of the recommended financial policies and programs of the city for the ensuing fiscal biennium;
- (c) A statement of the relation of the recommended appropriation to such policies and programs;
- (d) A statement of the reason for salient changes from the previous biennium in appropriation and revenue items; and
- (e) An explanation for any recommended major changes in financial policy.

(2) Prior to the final hearing on the budget, the legislative body or a committee thereof shall schedule hearings on the budget or parts thereof, and may require the presence of department heads to give information regarding estimates and programs. [1985 c 175 § 41.]

**35A.34.100 Budget—Notice of hearing.** Immediately following the filing of the preliminary budget with the clerk, the clerk shall publish a notice once a week for two consecutive weeks stating that the preliminary budget for the ensuing fiscal biennium has been filed with the clerk, that a copy thereof will be made available to any taxpayer who will call at the clerk's office therefor, that the legislative body of the city will meet on or before the first Monday of the month next preceding the beginning of the ensuing fiscal biennium for the purpose of fixing the final budget, designating the date,

time, and place of the legislative budget meeting, and that any taxpayer may appear thereat and be heard for or against any part of the budget. The publication of the notice shall be made in the official newspaper of the city if there is one, otherwise in a newspaper of general circulation in the city. If there is no newspaper of general circulation in the city, then notice may be made by posting in three public places fixed by ordinance as the official places for posting the city's official notices. [1985 c 175 § 42.]

**35A.34.110 Budget—Hearing.** The legislative body shall meet on the day fixed by RCW 35A.34.100 for the purpose of fixing the final budget of the city at the time and place designated in the notice thereof. Any taxpayer may appear and be heard for or against any part of the budget. The hearing may be continued from day to day but not later than the twenty-fifth day prior to commencement of the city's fiscal biennium. [1985 c 175 § 43.]

**35A.34.120 Budget—Adoption.** Following conclusion of the hearing, and prior to the beginning of the fiscal biennium, the legislative body shall make such adjustments and changes as it deems necessary or proper and, after determining the allowance in each item, department, classification, and fund, shall by ordinance adopt the budget in its final form and content. Appropriations shall be limited to the total estimated revenues contained therein including the amount to be raised by ad valorem taxes and the unencumbered fund balances estimated to be available at the close of the current fiscal biennium. Such ordinances may adopt the final budget by reference. However, the ordinance adopting the budget shall set forth in summary form the totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined.

A complete copy of the final budget as adopted shall be transmitted to the state auditor and to the association of Washington cities. [1995 c 301 § 57; 1985 c 175 § 44.]

**35A.34.130 Budget—Mid-biennial review and modification.** The legislative authority of a city having adopted the provisions of this chapter shall provide by ordinance for a mid-biennial review and modification of the biennial budget. The ordinance shall provide that such review and modification shall occur no sooner than eight months after the start nor later than conclusion of the first year of the fiscal biennium. The chief administrative officer shall prepare the proposed budget modification and shall provide for publication of notice of hearings consistent with publication of notices for adoption of other city ordinances. City ordinances providing for a mid-biennial review and modification shall establish procedures for distribution of the proposed modification to members of the city legislative authority, procedures for making copies available to the public, and shall provide for public hearings on the proposed budget modification. The budget modification shall be by ordinance approved in the same manner as are other ordinances of the city.

A complete copy of the budget modification as adopted shall be transmitted to the state auditor and to the association of Washington cities. [1995 c 301 § 58; 1985 c 175 § 45.]

**35A.34.140 Emergency expenditures—Nondebatable emergencies.** Upon the happening of any emergency caused by violence of nature, casualty, riot, insurrection, war, or other unanticipated occurrence requiring the immediate preservation of order or public health, or for the property which has been damaged or destroyed by accident, or for public relief from calamity, or in settlement of approved claims for personal injuries or property damages, or to meet mandatory expenditures required by law enacted since the last budget was adopted, or to cover expenses incident to preparing for or establishing a new form of government authorized or assumed after adoption of the current budget, including any expenses incident to selection of additional or new officials required thereby, or incident to employee recruitment at any time, the city legislative body, upon the adoption of an ordinance, by the vote of one more than the majority of all members of the legislative body, stating the facts constituting the emergency and the estimated amount required to meet it, may make the expenditures therefor without notice or hearing. [1985 c 175 § 46.]

**35A.34.150 Emergency expenditures—Other emergencies—Hearing.** If a public emergency which could not reasonably have been foreseen at the time of filing the preliminary budget requires the expenditure of money not provided for in the budget, and if it is not one of the emergencies specifically enumerated in RCW 35A.34.140, the city legislative body before allowing any expenditure therefor shall adopt an ordinance stating the facts constituting the emergency and the estimated amount required to meet it and declaring that an emergency exists.

The ordinance shall not be voted on until five days have elapsed after its introduction, and for passage shall require the vote of one more than the majority of all members of the legislative body of the city.

Any taxpayer may appear at the meeting at which the emergency ordinance is to be voted on and be heard for or against the adoption thereof. [1985 c 175 § 47.]

**35A.34.160 Emergency expenditures—Warrants—Payment.** All expenditures for emergency purposes as provided in this chapter shall be paid by warrants from any available money in the fund properly chargeable with such expenditures. If, at any time, there is insufficient money on hand in a fund with which to pay such warrants as presented, the warrants shall be registered, bear interest, and be called in the same manner as other registered warrants as prescribed in RCW 35A.21.110. [1985 c 175 § 48.]

**35A.34.170 Registered warrants—Payment.** In adopting the final budget for any fiscal biennium, the legislative body shall appropriate from estimated revenue sources available, a sufficient amount to pay the principal and interest on all outstanding registered warrants issued since the adoption of the last preceding budget except those issued and identified as revenue warrants and except those for which an appropriation previously has been made. However, no portion of the revenues which are restricted in use by law may be appropriated for the redemption of warrants issued against a utility or other special purpose fund of a self-supporting nature. In addition, all or any portion of the city's outstanding

registered warrants may be funded into bonds in any manner authorized by law. [1985 c 175 § 49.]

**35A.34.180 Adjustment of wages, hours and conditions of employment.** Notwithstanding the appropriations for any salary or salary range of any employee or employees adopted in a final budget, the legislative body of any city may, by ordinance, change the wages, hours, and conditions of employment of any or all of its appointive employees if sufficient funds are available for appropriation to such purposes. [1985 c 175 § 50.]

**35A.34.190 Forms—Accounting—Supervision by state.** The state auditor is empowered to make and install the forms and classifications required by this chapter to define what expenditures are chargeable to each budget class and to establish the accounting and cost systems necessary to secure accurate budget information. [1995 c 301 § 59; 1985 c 175 § 51.]

**35A.34.200 Funds—Limitations on expenditures—Transfers and adjustments.** (1) The expenditures as classified and itemized in the final budget shall constitute the city's appropriations for the ensuing fiscal biennium. Unless otherwise ordered by a court of competent jurisdiction, and subject to further limitations imposed by ordinance of the city, the expenditure of city funds or the incurring of current liabilities on behalf of the city shall be limited to the following:

(a) The total amount appropriated for each fund in the budget for the current fiscal biennium, without regard to the individual items contained therein, except that this limitation does not apply to wage adjustments authorized by RCW 35A.34.180;

(b) The unexpended appropriation balances of a preceding budget which may be carried forward from prior fiscal periods pursuant to RCW 35A.34.270;

(c) Funds received from the sale of bonds or warrants which have been duly authorized according to law;

(d) Funds received in excess of estimated revenues during the current fiscal biennium, when authorized by an ordinance amending the original budget; and

(e) Expenditures authorized by budget modification as provided by RCW 35A.34.130 and those required for emergencies, as authorized by RCW 35A.34.140 and 35A.34.150.

(2) Transfers between individual appropriations within any one fund may be made during the current fiscal biennium by order of the city's chief administrative officer subject to such regulations, if any, as may be imposed by the city legislative body. Notwithstanding the provisions of RCW 43.09.210 or of any statute to the contrary, transfers, as authorized in this section, may be made within the same fund regardless of the various offices, departments, or divisions of the city which may be affected.

(3) The city legislative body, upon a finding that it is to the best interests of the city to decrease, revoke, or recall all or any portion of the total appropriations provided for any one fund, may, by ordinance, approved by the vote of one more than the majority of all members thereof, stating the facts and findings for doing so, decrease, revoke, or recall all or any portion of an unexpended fund balance, and by said

ordinance, or a subsequent ordinance adopted by a like majority, the moneys thus released may be reappropriated for another purpose or purposes, without limitation to department, division, or fund, unless the use of such moneys is otherwise restricted by law, charter, or ordinance. [1985 c 175 § 52.]

**35A.34.205 Administration, oversight, or supervision of utility—Reimbursement from utility budget authorized.** Whenever any code city apportions a percentage of the city manager's, administrator's, or supervisor's time, or the time of other management or general government staff, for administration, oversight, or supervision of a utility operated by the city, or to provide services to the utility, the utility budget may identify such services and budget for reimbursement of the city's current expense fund for the value of such services. [1991 c 152 § 4.]

**35A.34.210 Liabilities incurred in excess of budget.** Liabilities incurred by any officer or employee of the city in excess of any budget appropriations shall not be a liability of the city. The clerk shall issue no warrant and the city legislative body or other authorized person shall approve no claim for an expenditure in excess of the total amount appropriated for any individual fund, except upon an order of a court of competent jurisdiction or for emergencies as provided in this chapter. [1985 c 175 § 53.]

**35A.34.220 Funds received from sales of bonds and warrants—Expenditures.** Moneys received from the sale of bonds or warrants shall be used for no other purpose than that for which they were issued and no expenditure shall be made for that purpose until the bonds have been duly authorized. If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued, it shall be used for the redemption of such bond or warrant indebtedness. Where a budget contains an expenditure program to be financed from a bond issue to be authorized thereafter, no such expenditure shall be made or incurred until after the bonds have been duly authorized. [1985 c 175 § 54.]

**35A.34.230 Revenue estimates—Amount to be raised by ad valorem taxes.** At a time fixed by the city's ordinance or city charter, not later than the first Monday in October of the second year of each fiscal biennium, the chief administrative officer shall provide the city's legislative body with current information on estimates of revenues from all sources as adopted in the budget for the current biennium, together with estimates submitted by the clerk under RCW 35A.34.070. The city's legislative body and the city's administrative officer or the officer's designated representative shall consider the city's total anticipated financial requirements for the ensuing fiscal biennium, and the legislative body shall determine and fix by ordinance the amount to be raised the first year of the biennium by ad valorem taxes. The legislative body shall review such information as is provided by the chief administrative officer and shall adopt an ordinance establishing the amount to be raised by ad valorem taxes during the second year of the biennium. Upon adoption of the

ordinance fixing the amount of ad valorem taxes to be levied, the clerk shall certify the same to the county legislative authority as required by RCW 84.52.020. [1985 c 175 § 55.]

**35A.34.240 Funds—Quarterly report of status.** At such intervals as may be required by city charter or city ordinance, however, being not less than quarterly, the clerk shall submit to the city's legislative body and chief administrative officer a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding reporting period and like information for the whole of the current fiscal biennium to the first day of the current reporting period together with the unexpended balance of each appropriation. The report shall also show the receipts from all sources. [1985 c 175 § 56.]

**35A.34.250 Contingency fund—Creation.** Every city may create and maintain a contingency fund to provide moneys with which to meet any municipal expense, the necessity or extent of which could not have been foreseen or reasonably evaluated at the time of adopting the annual budget, or from which to provide moneys for those emergencies described in RCW 35A.34.140 and 35A.34.150. Such fund may be supported by a budget appropriation from any tax or other revenue source not restricted in use by law, or also may be supported by a transfer from other unexpended or decreased funds made available by ordinance as set forth in RCW 35A.34.200. However, the total amount accumulated in such fund at any time shall not exceed the equivalent of thirty-seven and one-half cents per thousand dollars of assessed valuation of property within the city at such time. Any moneys in the emergency fund at the end of the fiscal biennium shall not lapse except upon reappropriation by the council to another fund in the adoption of a subsequent budget. [1985 c 175 § 57.]

**35A.34.260 Contingency fund—Withdrawals.** No money shall be withdrawn from the contingency fund except by transfer to the appropriate operating fund authorized by a resolution or ordinance of the legislative body of the city, adopted by a majority vote of the entire legislative body, clearly stating the facts constituting the reason for the withdrawal or the emergency as the case may be, specifying the fund to which the withdrawn money shall be transferred. [1985 c 175 § 58.]

**35A.34.270 Unexpended appropriations.** All appropriations in any current operating fund shall lapse at the end of each fiscal biennium. However, this shall not prevent payments in the following biennium upon uncompleted programs or improvements in progress or on orders subsequently filled or claims subsequently billed for the purchase of material, equipment, and supplies or for personal or contractual services not completed or furnished by the end of the fiscal biennium, all of which have been properly budgeted and contracted for prior to the close of such fiscal biennium, but furnished or completed in due course thereafter.

All appropriations in a special fund authorized by ordinance or by state law to be used only for the purpose or purposes therein specified, including any cumulative reserve

funds lawfully established in specific or general terms for any municipal purpose or purposes, or a contingency fund as authorized by RCW 35A.34.250, shall not lapse, but shall be carried forward from biennium to biennium until fully expended or the purpose has been accomplished or abandoned, without necessity of reappropriation.

The accounts for budgetary control for each fiscal biennium shall be kept open for twenty days after the close of such fiscal biennium for the purpose of paying and recording claims for indebtedness incurred during such fiscal biennium; any claim presented after the twentieth day following the close of the fiscal biennium shall be paid from appropriations lawfully provided for the ensuing period, including those made available by provisions of this section, and shall be recorded in the accounts for the ensuing fiscal biennium. [1985 c 175 § 59.]

**35A.34.280 Violations and penalties.** Upon the conviction of any city official, department head, or other city employee of knowingly failing, or refusing, without just cause, to perform any duty imposed upon such officer or employee by this chapter, or city charter or city ordinance, in connection with the giving of notice, the preparing and filing of estimates of revenues or expenditures or other information required for preparing a budget report in the time and manner required, or of knowingly making expenditures in excess of budget appropriations, the official or employee shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars for each separate violation. [1985 c 175 § 60.]

### Chapter 35A.35 RCW

#### INTERGOVERNMENTAL RELATIONS

##### Sections

- 35A.35.010 Joint facilities and agreements.  
35A.35.020 Demonstration Cities and Metropolitan Development Act—  
Authority to contract with federal government.

**35A.35.010 Joint facilities and agreements.** In addition to exercising all authority granted to cities of any class for joint or intergovernmental cooperation and activity and agreements for the acquisition, ownership, leasing, control, improvement, occupation and use of land or other property with a county, another city, or governmental agency, and in addition to authority granted to code cities by RCW 35A.11.040, every code city may exercise the powers relating to jails, places of detention, civic centers, civic halls and armories as is authorized by chapters 36.64 and 38.20 RCW. [1967 ex.s. c 119 § 35A.35.010.]

**35A.35.020 Demonstration Cities and Metropolitan Development Act—Authority to contract with federal government.** See RCW 35.21.660.

### Chapter 35A.36 RCW

#### EXECUTION OF BONDS BY PROXY IN CODE CITIES

##### Sections

- 35A.36.010 Appointment of proxies.  
35A.36.020 Coupons—Printing facsimile signatures.

(2004 Ed.)

- 35A.36.030 Deputies—Exemptions.  
35A.36.040 Designation of bonds to be signed.  
35A.36.050 Liability of officer.  
35A.36.060 Notice to council.  
35A.36.070 Revocation of proxy.

**35A.36.010 Appointment of proxies.** The mayor, finance officer, city clerk, or other officer of a code city who is authorized or required by law, charter, or ordinance to execute bonds of the city or any subdivision or district thereof may designate one or more bonded persons to affix such officer's signature to any bond or bonds requiring his signature. If the signature of one of these officers is affixed to a bond during his continuance in office by a proxy designated by him whose authority has not been revoked, the bond shall be as binding upon the city and all concerned as though the officer had signed the bond in person. This chapter shall apply to all bonds, whether they constitute obligations of the city as a whole or of any local improvement or other district or subdivision thereof, whether they call for payment from the general funds of the city or from a local, special or other fund, and whether negotiable or otherwise. [1967 ex.s. c 119 § 35A.36.010.]

**35A.36.020 Coupons—Printing facsimile signatures.** A facsimile reproduction of the signature of any of the code city officers referred to in RCW 35A.36.010 may be printed, engraved, or lithographed upon bond coupons with the same effect as though the particular officer had signed the coupon in person. [1967 ex.s. c 119 § 35A.36.020.]

**35A.36.030 Deputies—Exemptions.** This chapter shall not be construed to require the appointment of deputy finance officers or deputy city clerks of code cities to be made in accordance with this chapter insofar as concerns signatures or other acts which may lawfully be made or done by such deputy officer under the provisions of any other law. [1967 ex.s. c 119 § 35A.36.030.]

**35A.36.040 Designation of bonds to be signed.** (1) The officer of a code city whose duty it is to cause any bonds to be printed, engraved, or lithographed, shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds to be printed, engraved or lithographed and the manner of numbering them.

(2) Every printer, engraver, or lithographer who knowingly prints, engraves, or lithographs a greater number of bonds than that specified or who knowingly prints, engraves, or lithographs more than one bond bearing the same number is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 200; 1967 ex.s. c 119 § 35A.36.040.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**35A.36.050 Liability of officer.** A code city officer authorizing the affixing of his signature to a bond by a proxy shall be subject to the same liability personally and on his bond for any signature so affixed and to the same extent as if he had affixed his signature in person. [1967 ex.s. c 119 § 35A.36.050.]

**35A.36.060 Notice to council.** In order to designate a proxy to affix his signature to bonds, a code city officer shall address a written notice to the legislative body of the city giving the name of the person whom he has selected therefor and stating generally or specifically what bonds are to be so signed.

Attached to or included in the notice shall be a written signature of the officer making the designation executed by the proposed proxy followed by the word "by" and his own signature; or, if the notice so states, the specimen signatures may consist of a facsimile reproduction of the officer's signature impressed by some mechanical process followed by the word "by" and the proxy's own signature.

If the authority is intended to include the signature upon bonds bearing an earlier date than the effective date of the notice, the prior dated bonds must be specifically described by reasonable reference thereto.

The notice designating a proxy shall be filed with the city finance officer or city clerk, together with the specimen signatures attached thereto and a record of the filing shall be made in the journal of the legislative body. This record shall note the date and hour of filing and may be made by the official who keeps the journal at any time after the filing of the notice, even during a period of recess or adjournment of the legislative body. The notice shall be effective from the time of its recording. [1967 ex.s. c 119 § 35A.36.060.]

**35A.36.070 Revocation of proxy.** Any designation of a proxy may be revoked by written notice addressed to the legislative body of the code city signed by the officer who made the designation and filed and recorded in the same manner as the notice of designation. It shall be effective from the time of its recording but shall not affect the validity of any signatures theretofore made. [1967 ex.s. c 119 § 35A.36.070.]

### Chapter 35A.37 RCW

#### FUNDS, SPECIAL PURPOSE

##### Sections

35A.37.010 Segregating and accounting.

**35A.37.010 Segregating and accounting.** Code cities shall establish such funds for the segregation, budgeting, expenditure and accounting for moneys received for special purposes as are required by general law applicable to such cities' activities and the officers thereof shall pay into, expend from, and account for such moneys in the manner provided therefor including but not limited to the requirements of the following:

- (1) Accounting funds as required by RCW 35.37.010;
- (2) Annexation and consolidation fund as required by chapters 35.10 and 35.13 RCW;
- (3) Assessment fund as required by RCW 8.12.480;
- (4) Equipment rental fund as authorized by RCW 35.21.088;
- (5) Current expense fund as required by RCW 35.37.010, usually referred to as the general fund;
- (6) Local improvement guaranty fund as required by RCW 35.54.010;

(7) An indebtedness and sinking fund, together with separate funds for utilities and institutions as required by RCW 35.37.020;

(8) Local improvement district fund and revolving fund as required by RCW 35.45.130 and 35.48.010;

(9) City street fund as required by chapter 35.76 RCW and RCW 47.24.040;

(10) Firemen's relief and pension fund as required by chapters 41.16 and 41.18 RCW;

(11) Policemen's relief and pension fund as required by RCW 41.20.130 and 63.32.030;

(12) First class cities' employees retirement and pension system as authorized by chapter 41.28 RCW;

(13) Applicable rules of the state auditor. [1995 c 301 § 60; 1983 c 3 § 62; 1967 ex.s. c 119 § 35A.37.010.]

### Chapter 35A.38 RCW

#### EMERGENCY SERVICES

##### Sections

35A.38.010 Local organization.

**35A.38.010 Local organization.** A code city may participate in the creation of local organizations for emergency services, provide for mutual aid, and exercise all of the powers and privileges and perform all of the functions and duties, and the officers and employees thereof shall have the same powers, duties, rights, privileges and immunities as any city of any class, and the employees thereof, have in connection with emergency services as provided in chapter 38.52 RCW in the manner provided by said chapters or by general law. [1974 ex.s. c 171 § 2; 1967 ex.s. c 119 § 35A.38.010.]

### Chapter 35A.39 RCW

#### PUBLIC DOCUMENTS AND RECORDS

##### Sections

35A.39.010 Legislative and administrative records.

**35A.39.010 Legislative and administrative records.** Every code city shall keep a journal of minutes of its legislative meetings with orders, resolutions and ordinances passed, and records of the proceedings of any city department, division or commission performing quasi judicial functions as required by ordinances of the city and general laws of the state and shall keep such records open to the public as required by RCW 42.32.030 and shall keep and preserve all public records and publications or reproduce and destroy the same as provided by Title 40 RCW. Each code city may duplicate and sell copies of its ordinances at fees reasonably calculated to defray the cost of such duplication and handling. [1995 c 21 § 2; 1967 ex.s. c 119 § 35A.39.010.]

### Chapter 35A.40 RCW

#### FISCAL PROVISIONS APPLICABLE TO CODE CITIES

##### Sections

35A.40.010 Accounting—Funds—Indebtedness—Bonds.

35A.40.020 Code city may elect to use checks when funds are solvent.

35A.40.030	Fiscal—Depositaries.
35A.40.050	Fiscal—Investment of funds.
35A.40.060	Fiscal—Validation and funding of debts.
35A.40.070	Fiscal—Municipal Revenue Bond Act.
35A.40.080	Bonds—Form, terms, and maturity.
35A.40.090	Indebtedness.
35A.40.100	Bankruptcy, readjustment and relief from debts.
35A.40.110	Employee checks, drafts, warrants—City may cash.
35A.40.200	General law relating to public works and contracts.
35A.40.210	Public work contracts or purchases—Procedures.

**35A.40.010 Accounting—Funds—Indebtedness—Bonds.** Municipal accounts and funds, the contracting of indebtedness for municipal purposes and the issuance and payment of bonds therefor, the validation of preexisting obligations by the voters of a consolidated city, debt limitations, elections for authorization of the incurring of indebtedness, and provisions pertaining to the issuance, sale, funding and redemption of general obligation bonds and remedies for nonpayment thereof are governed and controlled by the general law as contained in, but not limited to chapters 35.37, 39.40, 39.46, 39.52, 39.56, and 43.80 RCW, and are hereby recognized as applicable to code cities. [1984 c 186 § 24; 1967 ex.s. c 119 § 35A.40.010.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**35A.40.020 Code city may elect to use checks when funds are solvent.** A code city, by ordinance, may adopt a policy for the payment of claims or other obligations of the city, which are payable out of solvent funds, electing either to pay such obligations by warrant, or to pay such obligations by check: PROVIDED, That no check shall be issued when the applicable fund is not solvent at the time payment is ordered, but a warrant shall be issued therefor. When checks are to be used, the legislative body shall designate the qualified public depository whereon such checks are to be drawn, and the officers authorized or required to sign such checks. Wherever in this title, reference is made to warrants, such term shall include checks where authorized by this section. [1984 c 177 § 5; 1967 ex.s. c 119 § 35A.40.020.]

**35A.40.030 Fiscal—Depositaries.** The legislative body of a code city, at the end of each fiscal year, or at such other times as the legislative body may direct, shall designate one or more financial institutions which are qualified public depositories as set forth by the public deposit protection commission as depository or depositories of the moneys required to be kept by the code city treasurer or other officer performing the duties commonly performed by the treasurer of a code city: PROVIDED, That where any bank has been designated as a depository hereunder such designation shall continue in force until revoked by a majority vote of the legislative body of such code city. The provisions relating to depositories, contained in chapter 39.58 RCW, as now or hereafter amended, are hereby recognized as applicable to code cities and to the depositories designated by them. [1984 c 177 § 6; 1973 c 126 § 4; 1967 ex.s. c 119 § 35A.40.030.]

**35A.40.050 Fiscal—Investment of funds.** Excess and inactive funds on hand in the treasury of any code city may be invested in the same manner and subject to the same limitations as provided for city and town funds in all applicable statutes, including, but not limited to the following: RCW

35.39.030, 35.58.510, 35.81.070, 35.82.070, 36.29.020, 39.58.020, 39.58.080, 39.58.130, 39.60.010, 39.60.020, 41.16.040, 68.52.060, 68.52.065, and 72.19.120.

The responsibility for determining the amount of money available in each fund for investment purposes shall be placed upon the department, division or board responsible for the administration of such fund.

Moneys thus determined available for this purpose may be invested on an individual fund basis or may, unless otherwise restricted by law be commingled within one common investment portfolio for the mutual benefit of all participating funds: PROVIDED, That if such moneys are commingled in a common investment portfolio, all income derived therefrom shall be apportioned among the various participating funds in direct proportion to the amount of money invested by each.

Any excess or inactive funds on hand in the city treasury not otherwise invested for the specific benefit of any particular fund, may be invested by the city treasurer in United States government bonds, notes, bills or certificates of indebtedness for the benefit of the general or current expense fund. [1987 c 331 § 77; 1983 c 66 § 2; 1983 c 3 § 64; 1967 ex.s. c 119 § 35A.40.050.]

**Effective date—1987 c 331:** See RCW 68.05.900.

**Severability—1983 c 66:** See note following RCW 39.58.010.

**35A.40.060 Fiscal—Validation and funding of debts.** The provisions of general law contained in chapters 35.40 and 39.90 RCW, relating to the validation and funding of debts and elections pertaining thereto is hereby recognized as applicable to code cities. [1967 ex.s. c 119 § 35A.40.060.]

**35A.40.070 Fiscal—Municipal Revenue Bond Act.** All provisions of chapter 35.41 RCW, the Municipal Revenue Bond Act, shall be applicable and/or available to code cities. [1967 ex.s. c 119 § 35A.40.070.]

**35A.40.080 Bonds—Form, terms, and maturity.** In addition to any other authority granted by law, a code city shall have authority to ratify and fund indebtedness as provided by chapter 35.40 RCW; to issue revenue bonds, coupons and warrants as authorized by chapter 35.41 RCW; to authorize and issue local improvement bonds and warrants, installment notes and interest certificates as authorized by chapter 35.45 RCW; to fund indebtedness and to issue other bonds as authorized by chapters 39.44, 39.48, 39.52 RCW, RCW 39.56.020, and 39.56.030 in accordance with the procedures and subject to the limitations therein provided. [1967 ex.s. c 119 § 35A.40.080.]

**35A.40.090 Indebtedness.** The provisions of general law contained in chapter 39.36 RCW relating to municipal indebtedness shall be applicable to code cities. [2001 c 200 § 2; 1973 1st ex.s. c 195 § 29; 1970 ex.s. c 42 § 16; 1967 ex.s. c 119 § 35A.40.090. Cf. 1973 1st ex.s. c 195 § 141.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

**35A.40.100 Bankruptcy, readjustment and relief from debts.** A code city may exercise the powers and obtain the benefits relating to bankruptcy, readjustment and relief from debts as authorized by chapter 39.64 RCW in accordance with the procedures therein prescribed. [1967 ex.s. c 119 § 35A.40.100.]

**35A.40.110 Employee checks, drafts, warrants—City may cash.** Any code city is hereby authorized, at its option and after the adoption of the appropriate ordinance, to accept in exchange for cash a payroll check, draft, or warrant; expense check, draft, or warrant; or personal check from a city employee in accordance with the following conditions:

(1) The check, warrant, or draft must be drawn to the order of cash or bearer and be immediately payable by a drawee financial institution;

(2) The person presenting the check, draft, or warrant to the city must produce identification as outlined by the city in the authorizing ordinance;

(3) The payroll check, draft, or warrant or expense check, draft, or warrant must have been issued by the city; and

(4) Personal checks cashed pursuant to this authorization cannot exceed two hundred dollars.

In the event that any personal check cashed for a city employee by the city under this section is dishonored by the drawee financial institution when presented for payment, the city is authorized, after notice to the drawer or endorser of the dishonor, to withhold from the drawer's or endorser's next payroll check, draft, or warrant the full amount of the dishonored check. [1991 c 185 § 2.]

**35A.40.200 General law relating to public works and contracts.** Every code city shall have the authority to make public improvements and to perform public works under authority provided by general law for any class of city and to make contracts in accordance with procedure and subject to the conditions provided therefor, including but not limited to the provisions of: (1) Chapter 39.04 RCW, relating to public works; (2) RCW 35.23.352 relating to competitive bidding for public works, materials and supplies; (3) RCW 9.18.120 and 9.18.150 relating to suppression of competitive bidding; (4) chapter 60.28 RCW relating to liens for materials and labor performed; (5) chapter 39.08 RCW relating to contractor's bonds; (6) chapters 39.12 and 43.03 RCW relating to prevailing wages; (7) chapter 49.12 RCW relating to hours of labor; (8) chapter 51.12 RCW relating to workers' compensation; (9) chapter 49.60 RCW relating to antidiscrimination in employment; (10) chapter 39.24 RCW relating to the use of Washington commodities; and (11) chapter 39.28 RCW relating to emergency public works. [1995 c 164 § 2; 1987 c 185 § 4; 1983 c 3 § 65; 1967 ex.s. c 119 § 35A.40.200.]

**Intent—Severability—1987 c 185:** See notes following RCW 51.12.130.

**35A.40.210 Public work contracts or purchases—Procedures.** Procedures for any public work or improvement contracts or purchases for code cities shall be governed by the following statutes, as indicated:

(1) For code cities of twenty thousand population or over, RCW 35.22.620; and

(2) For code cities under twenty thousand population; RCW 35.23.352. [1989 c 11 § 8; 1979 ex.s. c 89 § 3.]

**Severability—1989 c 11:** See note following RCW 9A.56.220.

## Chapter 35A.41 RCW PUBLIC EMPLOYMENT

### Sections

- 35A.41.010 Retirement and pension systems for code cities having a population of more than twenty thousand.  
35A.41.020 Public employment and civil service.  
35A.41.030 City contracts to obtain sheriff's office law enforcement services.

**35A.41.010 Retirement and pension systems for code cities having a population of more than twenty thousand.** A code city having a population of more than twenty thousand inhabitants, or having been classed theretofore as a city of the first class may exercise all of the powers relating to retirement and pension systems for employees as authorized by RCW 35A.11.020 and by chapter 41.28 RCW in accordance with the procedures prescribed therein and subject to the limitations and penalties thereof. [1967 ex.s. c 119 § 35A.41.010.]

**35A.41.020 Public employment and civil service.** Except as otherwise provided in this title, the general provisions relating to public employment, including hospitalization and medical aid as provided in chapter 41.04 RCW, and the application of federal social security for public employees, the acceptance of old age and survivors insurance as provided in chapters 41.47 and 41.48 RCW, military leave as provided in RCW 38.40.060, self-insurance as provided in chapter 48.62 RCW, the application of industrial insurance as provided in Title 51 RCW, and chapter 43.101 RCW relating to training of law enforcement officers, shall apply to code cities. Any code city may retain any civil service system theretofore in effect in such city and may adopt any system of civil service which would be available to any class of city under general law. [1991 sp.s. c 30 § 20; 1983 c 3 § 66; 1967 ex.s. c 119 § 35A.41.020.]

**Effective date, implementation, application—Severability—1991 sp.s. c 30:** See RCW 48.62.900 and 48.62.901.

*Political activities of public employees:* RCW 41.06.250.

**35A.41.030 City contracts to obtain sheriff's office law enforcement services.** See RCW 41.14.250 through 41.14.280.

## Chapter 35A.42 RCW PUBLIC OFFICERS AND AGENCIES, MEETINGS, DUTIES AND POWERS

### Sections

- 35A.42.010 City treasurer—Miscellaneous authority and duties.  
35A.42.020 Qualification, removal, code of ethics, duties.  
35A.42.030 Continuity of government—Enemy attack.  
35A.42.040 City clerks and controllers.  
35A.42.050 Public officers and employees—Conduct.

*Dog handler using dog in line of duty—Immunity:* RCW 4.24.410.

**35A.42.010 City treasurer—Miscellaneous authority and duties.** In addition to authority granted and duties imposed upon code city treasurers by this title, code city treasurers, or the officers designated by charter or ordinance to perform the duties of a treasurer, shall have the duties and the authority to perform the following: (1) As provided in RCW 8.12.500 relating to bonds and compensation payments in eminent domain proceedings; (2) as provided in RCW 68.52.050 relating to cemetery improvement funds; (3) as provided in RCW 41.28.080 relating to custody of employees' retirement funds; (4) as provided in RCW 47.08.100 relating to the use of city street funds; (5) as provided in RCW 46.68.080 relating to motor vehicle funds; (6) as provided in RCW 41.16.020 and chapter 41.20 RCW relating to police and firemen's relief and pension boards; (7) as provided in chapter 42.20 RCW relating to misappropriation of funds; and (8) as provided in chapter 39.60 RCW relating to investment of municipal funds. The treasurer shall be subject to the penalties imposed for the violation of any of such provisions. Where a provision of this title, or the general law, names the city treasurer as an officer of a board or other body, or assigns duties to a city treasurer, such position shall be filled, or such duties performed, by the officer of a code city who is performing the duties usually performed by a city treasurer, although he may not have that designation. [1987 c 331 § 78; 1984 c 258 § 320; 1967 ex.s. c 119 § 35A.42.010.]

**Effective date—1987 c 331:** See RCW 68.05.900.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.46.120.

**35A.42.020 Qualification, removal, code of ethics, duties.** Except as otherwise provided in this title, every elective and appointive officer and all employees of code cities shall: (1) Be possessed of the qualifications and be subject to forfeiture of office, impeachment or removal and recall as provided in chapter 42.04 RCW and RCW 9.81.040; and (2) provide official bonds in accordance with the requirements of this title, and as required in compliance with chapters 42.08 and 48.28 RCW.

When vacancies in public offices in code cities shall occur the term of a replacement officer shall be fixed as provided in chapter 42.12 RCW. A public officer charged with misconduct as defined in chapter 42.20 RCW, shall be charged and, upon conviction, punished as provided for such misconduct in chapter 42.20 RCW. The officers and employees of code cities shall be guided and governed by the code of ethics as provided in chapter 42.23 RCW. Vouchers for the payment of public funds and the provisions for certifying the same shall be as provided in chapter 42.24 RCW. The meetings of any board, agency, or commission of a code city shall be open to the public to the extent and notice given in the manner required by chapter 42.32 RCW. [1967 ex.s. c 119 § 35A.42.020.]

**Reviser's note:** RCW 42.32.010 and 42.32.020 were repealed by 1971 ex.s. c 250 § 15; later enactment, see chapter 42.30 RCW.

*Recall of elective officers: State Constitution Art. I §§ 33, 34 (Amendment 8); chapter 29A.56 RCW.*

*Residence qualifications of officials and employees: RCW 35.21.200.*

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**35A.42.030 Continuity of government—Enemy attack.** In the event that the mayor, manager or other chief executive officer of any code city is unavailable by reason of enemy attack to exercise the powers and to discharge the duties of his office, his successor or substitute shall be selected in the manner provided by RCW 42.14.050 subject to rules and regulations providing for the appointment of temporary interim successors adopted under RCW 42.14.070. [1967 ex.s. c 119 § 35A.42.030.]

**35A.42.040 City clerks and controllers.** In addition to any specific enumeration of duties of city clerks in a code city's charter or ordinances, and without limiting the generality of RCW 35A.21.030 of this title, the clerks of all code cities shall perform the following duties in the manner prescribed, to wit: (1) Certification of city streets as part of the highway system in accordance with the provisions of RCW 47.24.010; (2) perform the functions of a member of a firemen's pension board as provided by RCW 41.16.020; (3) keep a record of ordinances of the city and provide copies thereof as authorized by RCW 5.44.080; (4) serve as applicable the trustees of any police relief and pension board as authorized by RCW 41.20.010; and (5) serve as secretary-treasurer of volunteer fire fighters' relief and pension boards as provided in RCW 41.24.060. [1991 c 81 § 39; 1967 ex.s. c 119 § 35A.42.040.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**35A.42.050 Public officers and employees—Conduct.** In addition to provisions of general law relating to public officials and others in public administration, employment or public works, the duties and conduct of such officers and other persons shall be governed by: (1) Chapter 9A.68 RCW relating to bribery of a public officer; (2) Article II, section 30 of the Constitution of the state of Washington relating to bribery or corrupt solicitation; (3) RCW 35.17.150 relating to misconduct in code cities having a commission form of government; (4) chapter 42.23 RCW in regard to interest in contracts; (5) \*chapter 29.85 RCW relating to misconduct in connection with elections; (6) RCW 49.44.060 and \*\*49.44.070 relating to grafting by employees; (7) RCW 49.44.020 and 49.44.030 relating to the giving or solicitation of a bribe to a labor representative; (8) chapter 42.20 RCW relating to misconduct of a public officer; (9) RCW 49.52.050 and 49.52.090 relating to rebating by employees; and (10) chapter 9.18 RCW relating to bribery and grafting. [1983 c 3 § 67; 1967 ex.s. c 119 § 35A.42.050.]

**Reviser's note:** \*(1) Chapter 29.85 RCW was recodified as chapter 29A.84 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

\*\* (2) RCW 49.44.070 was repealed by 1995 c 285 § 37, effective July 1, 1995.

## Chapter 35A.43 RCW

### LOCAL IMPROVEMENTS IN CODE CITIES

#### Sections

35A.43.010 General law applicable to code cities.

35A.43.020 Public lands subject to local assessments.

**35A.43.010 General law applicable to code cities.** Chapters 35.43, 35.44, 35.45, 35.47, 35.48, 35.49, 35.50,

35.53, 35.54, 35.55, and 35.56 RCW all relating to municipal local improvements and made applicable to all incorporated cities and towns by RCW 35.43.030 are hereby recognized as applicable to all code cities, and the provisions thereof shall supersede the provisions of any charter of a charter code city inconsistent therewith. The provisions of the chapters named in this section shall be effective as to charter code cities to the same extent as such provisions are effective as to cities of the first class, and all code cities may exercise, in the manner provided, any authority therein granted to any class of city. [1967 ex.s. c 119 § 35A.43.010.]

*Local improvements, supplemental authority: Chapter 35.51 RCW.*

### **35A.43.020 Public lands subject to local assessments.**

In addition to the authority provided by chapter 35.44 RCW, and chapter 79.44 RCW, a code city may assess public lands for the cost of local improvements specially benefiting such lands. [1967 ex.s. c 119 § 35A.43.020.]

## **Chapter 35A.44 RCW CENSUS**

### Sections

35A.44.010 Population determination.

**35A.44.010 Population determination.** The population of code cities shall be determined for specific purposes in accordance with any express provision of state law relating thereto. Where no express provision is made, the provisions of RCW 43.41.110(7) relating to the office of financial management and the provisions of RCW 35.13.260 shall govern. [1979 ex.s. c 18 § 32; 1979 c 151 § 36; 1967 ex.s. c 119 § 35A.44.010.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

## **Chapter 35A.46 RCW MOTOR VEHICLES**

### Sections

35A.46.010 State law applicable.

**35A.46.010 State law applicable.** The provisions of Title 46 of the Revised Code of Washington relating to regulation of motor vehicles shall be applicable to code cities, its officers and employees to the same extent as such provisions grant powers and impose duties upon cities of any class, their officers and agents, including without limitation the following: (1) Authority to provide for angle parking on certain city streets designated as forming a route of a primary state highway as authorized in RCW 46.61.575; (2) application of city police regulations to port districts as authorized by RCW 53.08.230; (3) authority to establish local regulations relating to city streets forming a part of the state highway system as authorized by RCW 46.44.080; (4) authority to install and operate a station for the inspection of vehicle equipment in conformity with rules, regulations, procedure and standards prescribed by the Washington state patrol as authorized under \*RCW 46.32.030; (5) exemption from the payment of license fees for city owned vehicles as authorized by RCW 46.16.020 and 46.16.290; (6) authority to establish traffic

schools as provided by chapter 46.83 RCW; and (7) authority to enforce the provisions of RCW 81.48.050 relating to railroad crossings. [1967 ex.s. c 119 § 35A.46.010.]

**\*Reviser's note:** RCW 46.32.030 was repealed by 1986 c 123 § 7.

## **Chapter 35A.47 RCW HIGHWAYS AND STREETS**

### Sections

35A.47.010 Highways, granting land for.

35A.47.020 Streets—Acquisition, standards of design, use, vacation and abandonment—Funds.

35A.47.030 Public highways—Acquisition, agreements, transfers, regulations.

35A.47.040 Franchises and permits—Streets and public ways.

*Contracts for street improvements: Chapter 35.72 RCW.*

*Local adopt-a-highway programs: RCW 47.40.105.*

**35A.47.010 Highways, granting land for.** A code city may exercise the powers relating to granting of property for state highway purposes as authorized by RCW 47.12.040 in accordance with the procedures therein prescribed. [1967 ex.s. c 119 § 35A.47.010.]

**35A.47.020 Streets—Acquisition, standards of design, use, vacation and abandonment—Funds.** The designation of code city streets as a part of the state highway system, the jurisdiction and control of such streets, the procedure for acquisition or abandonment of rights of way for city streets and state highways, and the sale or lease of state highway land or toll facility to a code city, the requirements for accounting and expenditure of street funds, and the authority for contracting for the construction, repair and maintenance of streets by the state or county shall be the same as is provided in RCW 36.75.090, chapters 47.08, 47.12, 47.24 and 47.56 RCW, and the regulation of signs thereon as provided in chapter 47.42 RCW. Code cities shall be regulated in the acquisition, construction, maintenance, use and vacation of alleys, city streets, parkways, boulevards and sidewalks and in the design standards therefor as provided in chapters 35.68 through 35.79, 35.85, and 35.86 RCW and RCW 79.93.010 relating to dedication of tidelands and shorelands to public use and in the use of state shared funds as provided by general law. [1983 c 3 § 68; 1967 ex.s. c 119 § 35A.47.020.]

**35A.47.030 Public highways—Acquisition, agreements, transfers, regulations.** The provisions of Title 47 RCW shall apply to code cities, its officers and employees to the same extent as such provisions are applicable to any other class of city within the state, including, without limitation, the following: (1) The acquisition by the state of municipal lands and the exchange of state highway and municipal lands, as provided in chapter 47.12 RCW; (2) the dedication of public land for city streets as provided by RCW 36.34.290 and 36.34.300; (3) city contributions to finance toll facilities as provided in RCW 47.56.250; (4) contracts with the department of transportation, as provided in RCW 47.01.210; (5) the construction, maintenance, jurisdiction, and control of city streets, as provided in chapter 47.24 RCW; (6) agreements between the department of transportation and a city for the benefit or improvement of highways, roads, or streets, as

provided in RCW 47.28.140; (7) sales, leases, or transfers as authorized by RCW 47.12.063, 47.12.066, and 47.12.080; (8) the erection of information signs as regulated by RCW 47.42.050 and 47.42.060; (9) provisions relating to limited access highways under chapter 47.52 RCW; (10) the acquisition and abandonment for state highways as provided by RCW 36.75.090 and 90.28.020; and (11) the sharing of maintenance of streets and alleys as an extension of county roads as provided by RCW 35.77.020. [1984 c 258 § 321; 1983 c 3 § 69; 1967 ex.s. c 119 § 35A.47.030.]

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.46.120.

**35A.47.040 Franchises and permits—Streets and public ways.** Every code city shall have authority to permit and regulate under such restrictions and conditions as it may set by charter or ordinance and to grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for railroads and other routes and facilities for public conveyances, for poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy, signals and other methods of communication, for gas, steam and liquid fuels, for water, sewer and other private and publicly owned and operated facilities for public service. The power hereby granted shall be in addition to the franchise authority granted by general law to cities.

No ordinance or resolution granting any franchise in a code city for any purpose shall be adopted or passed by the city's legislative body on the day of its introduction nor for five days thereafter, nor at any other than a regular meeting nor without first being submitted to the city attorney, nor without having been granted by the approving vote of at least a majority of the entire legislative body, nor without being published at least once in a newspaper of general circulation in the city before becoming effective.

The city council may require a bond in a reasonable amount for any person or corporation obtaining a franchise from the city conditioned upon the faithful performance of the conditions and terms of the franchise and providing a recovery on the bond in case of failure to perform the terms and conditions of the franchise.

A code city may exercise the authority hereby granted, notwithstanding a contrary limitation of any preexisting charter provision. [1967 ex.s. c 119 § 35A.47.040.]

### Chapter 35A.49 RCW

#### LABOR AND SAFETY REGULATIONS

##### Sections

35A.49.010 Labor regulations—Safety regulations, discrimination in employment, hours, wages.

**35A.49.010 Labor regulations—Safety regulations, discrimination in employment, hours, wages.** Provisions of state laws relating to labor and safety regulations as provided in Title 49 RCW shall apply to code cities to the same

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extent as such laws apply to other classes of cities. [1967 ex.s. c 119 § 35A.49.010.]

### Chapter 35A.56 RCW

#### LOCAL SERVICE DISTRICTS

##### Sections

35A.56.010 Laws relating to special service districts, application to code cities.

**35A.56.010 Laws relating to special service districts, application to code cities.** Except as otherwise provided in this title, state laws relating to special service or taxing districts shall apply to, grant powers, and impose duties upon code cities and their officers to the same extent as such laws apply to and affect other classes of cities and towns and their employees, including, without limitation, the following: (1) Chapter 70.94 RCW, relating to air pollution control; (2) chapter 68.52 RCW, relating to cemetery districts; (3) \*chapter 29.68 RCW, relating to congressional districts; (4) chapters 14.07 and 14.08 RCW, relating to municipal airport districts; (5) chapter 36.88 RCW, relating to county road improvement districts; (6) Title 85 RCW, relating to diking districts, drainage districts, and drainage improvement districts; (7) \*\*chapter 36.54 RCW, relating to ferry districts; (8) Title 52 RCW, relating to fire protection districts; (9) Title 86 RCW, relating to flood control districts and flood control; (10) chapter 70.46 RCW, relating to health districts; (11) chapters 87.03 through 87.84 and 89.12 RCW, relating to irrigation districts; (12) chapter 35.61 RCW, relating to metropolitan park districts; (13) chapter 35.58 RCW, relating to metropolitan municipalities; (14) chapter 17.28 RCW, relating to mosquito control districts; (15) chapter 17.12 RCW, relating to agricultural pest districts; (16) Title 53 RCW, relating to port districts; (17) chapter 70.44 RCW, relating to public hospital districts; (18) Title 54 RCW, relating to public utility districts; (19) chapter 91.08 RCW, relating to public waterway districts; (20) chapter 89.12 RCW, relating to reclamation districts; (21) chapters 57.02 through 57.36 RCW, relating to water-sewer districts; and (22) chapter 17.04 RCW, relating to weed districts. [1996 c 230 § 1605; 1987 c 331 § 79; 1979 ex.s. c 30 § 2; 1967 ex.s. c 119 § 35A.56.010.]

**Reviser's note:** \*(1) Chapter 29.68 RCW was recodified as chapter 29A.28 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

\*\* (2) Chapter 36.54 RCW relates to county-owned ferries.

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**Effective date—1987 c 331:** See RCW 68.05.900.

### Chapter 35A.57 RCW

#### INCLUSION OF CODE CITIES IN METROPOLITAN MUNICIPAL CORPORATIONS

##### Sections

35A.57.020 Metropolitan municipal corporations—May be formed around charter code city.

**35A.57.020 Metropolitan municipal corporations—May be formed around charter code city.** Any area of the state containing two or more cities, at least one of which is a

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code city having at least ten thousand population, may organize as a metropolitan municipal corporation. The presence in such area of a code city having at least ten thousand population, shall fulfill the requirement of RCW 35.58.030 as to the class of city required to be included in an area incorporating as a metropolitan municipal corporation. [1967 ex.s. c 119 § 35A.57.020.]

### Chapter 35A.58 RCW BOUNDARIES AND PLATS

#### Sections

- 35A.58.010 Locating corners and boundaries.  
35A.58.020 Alteration and vacation of plats.  
35A.58.030 Platting and subdivision of land.

**35A.58.010 Locating corners and boundaries.** General laws shall govern the methods, procedures, and standards for surveying, establishing corners and boundaries, describing and perpetuating and recording information and descriptions relating thereto. The boundaries and corners of sections, parcels, plats, and subdivisions of land within a code city, may be surveyed, established, relocated, and perpetuated whenever a majority of the resident owners of any section or part or parts of any section of land within the city makes application in accordance with the provisions of chapter 58.04 RCW. [1967 ex.s. c 119 § 35A.58.010.]

**35A.58.020 Alteration and vacation of plats.** The provisions of \*chapters 58.11 and 58.12 RCW shall apply in appropriate cases to the alteration or vacation of plats including land or lots within a code city or the vacation of streets therein as provided in chapter 35.79 RCW. The vacation of waterways within a code city shall be governed by the provisions of \*\*chapter 79.16 RCW. [1967 ex.s. c 119 § 35A.58.020.]

**Reviser's note:** \*(1) Chapters 58.11 and 58.12 RCW were repealed by 1987 c 354 § 8.

\*\*\*(2) Chapter 79.16 RCW was repealed by 1982 1st ex.s. c 21 § 183. For later enactment, see chapters 79.90 through 79.96 RCW.

**35A.58.030 Platting and subdivision of land.** The provisions of chapter 58.17 RCW together with the provisions of a code city's subdivision regulations as adopted by ordinance not inconsistent with the provisions of chapter 58.17 RCW shall control the platting and subdividing of land into lots or tracts comprising five or more of such lots or tracts or containing a dedication of any part thereof as a public street or highway, or other public place or use: PROVIDED, That nothing herein shall prohibit the legislative body of a code city from adopting reasonable ordinances regulating the subdivision of land into two or more parcels without requiring compliance with all of the requirements of the platting law. [1983 c 3 § 70; 1971 ex.s. c 251 § 9; 1967 ex.s. c 119 § 35A.58.030.]

**Severability—1971 ex.s. c 251:** See RCW 35A.90.050.

### Chapter 35A.60 RCW LIENS

#### Sections

- 35A.60.010 General law applicable.

**35A.60.010 General law applicable.** The general law relating to liens including but not limited to the provisions of Title 60 RCW, as the same relates to cities of any class shall apply to code cities. Every code city may exercise the authority to perform services to property within the city and to claim and foreclose liens allowed therefor by general laws for any class of city including but not limited to the following provisions: (1) Chapter 35.80 RCW, relating to unfit dwellings, buildings and structures; (2) RCW 35.22.320, relating to the cost of filling cesspools; (3) RCW 35.85.030, relating to assessment liens for viaducts, elevated roadways, tunnels, and subways; (4) RCW 35.21.130, 35.21.140, 35.21.150, and 35.22.320 for garbage collection; (5) chapters 35.50, 35.55 and 35.56 RCW relating to enforcement of local improvement liens; (6) RCW 35.73.050 relating to the expense of sanitary fills; (7) RCW 35.67.200 through 35.67.290, relating to sewerage systems and service; (8) RCW 35.68.070, 35.69.030, 35.70.090, relating to sidewalks; (9) RCW \*35.49.120 through 35.49.160, relating to priority of tax liens; (10) RCW 35.21.290 and 35.21.300, providing for liens for utility services; (11) chapter 84.60 RCW relating to lien of taxes upon property; (12) RCW 4.16.030, relating to foreclosure of local improvement liens; (13) chapter 60.76 RCW, relating to lien of employees for contribution to benefit plans; and (14) chapter 60.28 RCW, relating to lien for labor and materials on public works. [1967 ex.s. c 119 § 35A.60.010.]

**\*Reviser's note:** RCW 35.49.120 was repealed by 1994 c 301 § 57.

### Chapter 35A.63 RCW PLANNING AND ZONING IN CODE CITIES

#### Sections

- 35A.63.010 Definitions.  
35A.63.015 "Solar energy system" defined.  
35A.63.020 Planning agency—Creation—Powers and duties—Conflicts of interest.  
35A.63.030 Joint meetings and cooperative action.  
35A.63.040 Regional planning.  
35A.63.050 Receipt and expenditure of funds.  
35A.63.060 Comprehensive plan—General.  
35A.63.061 Comprehensive plan—Required elements.  
35A.63.062 Comprehensive plan—Optional elements.  
35A.63.070 Comprehensive plan—Notice and hearing.  
35A.63.071 Comprehensive plan—Forwarding to legislative body.  
35A.63.072 Comprehensive plan—Approval by legislative body.  
35A.63.073 Comprehensive plan—Amendments and modifications.  
35A.63.080 Comprehensive plan—Effect.  
35A.63.100 Municipal authority.  
35A.63.105 Development regulations—Consistency with comprehensive plan.  
35A.63.110 Board of adjustment—Creation—Powers and duties.  
35A.63.120 Administration and enforcement.  
35A.63.130 Provisions inconsistent with charters.  
35A.63.140 Duties and responsibilities imposed by other acts.  
35A.63.145 Prohibitions on manufactured homes—Review required—"Designated manufactured home" defined.  
35A.63.146 Manufactured housing communities—Elimination of existing community by code city prohibited.  
35A.63.149 Residential care facilities—Review of need and demand—Adoption of ordinances.  
35A.63.150 Public hearings.  
35A.63.152 Public notice—Identification of affected property.  
35A.63.160 Construction—1967 ex.s. c 119.

- 35A.63.170 Hearing examiner system—Adoption authorized—Alternative—Functions—Procedures.
- 35A.63.200 Conformance with chapter 43.97 RCW required.
- 35A.63.210 Child care facilities—Review of need and demand—Adoption of ordinances.
- 35A.63.215 Family day-care provider's home facility—City may not prohibit in residential or commercial area—Conditions.
- 35A.63.220 Moratoria, interim zoning controls—Public hearing—Limitation on length.
- 35A.63.230 Accessory apartments.
- 35A.63.240 Treatment of residential structures occupied by persons with handicaps.
- 35A.63.250 Watershed restoration projects—Permit processing—Fish habitat enhancement project.
- 35A.63.260 Planning regulations—Copies provided to county assessor.
- 35A.63.270 General aviation airports.
- 35A.63.280 Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections—Mediation prior to appeal required.

*Acquisition of interests in land for conservation, protection, preservation, or open space purposes by cities: RCW 64.04.130.*

*Adult family homes—Permitted use in residential and commercial zones: RCW 70.128.175.*

*Appearance of fairness doctrine—Application to local land use decisions: RCW 42.36.010.*

*Associations of municipal corporations or municipal officers to furnish information to legislature and governor: RCW 44.04.170.*

**35A.63.010 Definitions.** The following words or terms as used in this chapter shall have the meanings set forth below unless different meanings are clearly indicated by the context:

(1) "Chief administrative officer" means the mayor in code cities operating under the mayor-council and commission forms, the city manager in code cities operating under the council-manager forms, or such other officer as the charter of a charter code city designates as the chief administrative officer.

(2) "City" means an incorporated city or town.

(3) "Code city" is used where the application of this chapter is limited to a code city; where joint, regional, or cooperative action is intended, a code city may be included in the unrestricted terms "city" or "municipality".

(4) "Comprehensive plan" means the policies and proposals approved by the legislative body as set forth in RCW 35A.63.060 through 35A.63.072 of this chapter and containing, at least, the elements set forth in RCW 35A.63.061.

(5) "Legislative body" means a code city council, a code city commission, and, in cases involving regional or cooperative planning or action, the governing body of a municipality.

(6) "Municipality" includes any code city and, in cases of regional or cooperative planning or action, any city, town, township, county, or special district.

(7) "Ordinance" means a legislative enactment by the legislative body of a municipality; in this chapter "ordinance" is synonymous with the term "resolution" when "resolution" is used as representing a legislative enactment.

(8) "Planning agency" means any person, body, or organization designated by the legislative body to perform a planning function or portion thereof for a municipality, and includes, without limitation, any commission, committee, department, or board together with its staff members, employees, agents, and consultants.

(9) "Special district" means that portion of the state, county, or other political subdivision created under general

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law for rendering of one or more local public services or for administrative, educational, judicial, or political purposes. [1967 ex.s. c 119 § 35A.63.010.]

**35A.63.015 "Solar energy system" defined.** As used in this chapter, "solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (1) The heating or cooling of a structure or building;
- (2) The heating or pumping of water;
- (3) Industrial, commercial, or agricultural processes; or
- (4) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall. [1979 ex.s. c 170 § 6.]

**Severability—1979 ex.s. c 170:** See note following RCW 64.04.140.

*Local governments authorized to encourage and protect solar energy systems: RCW 64.04.140.*

**35A.63.020 Planning agency—Creation—Powers and duties—Conflicts of interest.** By ordinance a code city may create a planning agency and provide for its membership, organization, and expenses. The planning agency shall serve in an advisory capacity to the chief administrative officer or the legislative body, or both, as may be provided by ordinance and shall have such other powers and duties as shall be provided by ordinance. If any person or persons on a planning agency concludes that he has a conflict of interest or an appearance of fairness problem with respect to a matter pending before the agency so that he cannot discharge his duties on such an agency, he shall disqualify himself from participating in the deliberations and the decision-making process with respect to the matter. If this occurs, the appointing authority that appoints such a person may appoint a person to serve as an alternate on the agency to serve in his stead in regard to such a matter. [1979 ex.s. c 18 § 33; 1967 ex.s. c 119 § 35A.63.020.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.63.030 Joint meetings and cooperative action.** Pursuant to the authorization of the legislative body, a code city planning agency may hold joint meetings with one or more city or county planning agencies (including city or county planning agencies in adjoining states) in any combination and may contract with another municipality for planning services. A code city may enter into cooperative arrangements with one or more municipalities and with any regional planning council organized under this chapter for jointly engaging a planning director and such other employees as may be required to operate a joint planning staff. [1969 ex.s. c 81 § 5; 1967 ex.s. c 119 § 35A.63.030.]

**Effective date—1969 ex.s. c 81:** See note following RCW 35A.13.035.

**35A.63.040 Regional planning.** A code city with one or more municipalities within a region, otherwise authorized by law to plan, including municipalities of adjoining states, when empowered by ordinances of their respective legisla-

tive bodies, may cooperate to form, organize, and administer a regional planning commission to prepare a comprehensive plan and perform other planning functions for the region defined by agreement of the respective municipalities. The various agencies may cooperate in all phases of planning, and professional staff may be engaged to assist in such planning. All costs shall be shared on a pro rata basis as agreed among the various entities. A code city may also cooperate with any department or agency of a state government having planning functions. [1969 ex.s. c 81 § 6; 1967 ex.s. c 119 § 35A.63.040.]

**Effective date—1969 ex.s. c 81:** See note following RCW 35A.13.035.

**35A.63.050 Receipt and expenditure of funds.** Any code city or any regional planning commission that includes a code city, when authorized by the legislative bodies of the municipalities represented by the regional planning commission, may enter into an agreement with any department or agency of the government of the United States or the state of Washington, or its agencies or political subdivisions, or any other public or private agency, to arrange for the receipt and expenditure of funds for planning in the interest of furthering the planning program. [1967 ex.s. c 119 § 35A.63.050.]

**35A.63.060 Comprehensive plan—General.** Every code city, by ordinance, shall direct the planning agency to prepare a comprehensive plan for anticipating and influencing the orderly and coordinated development of land and building uses of the code city and its environs. The comprehensive plan may be prepared as a whole or in successive parts. The plan should integrate transportation and land use planning. [2002 c 189 § 2; 1967 ex.s. c 119 § 35A.63.060.]

**35A.63.061 Comprehensive plan—Required elements.** The comprehensive plan shall be in such form and of such scope as the code city's ordinance or charter may require. It may consist of a map or maps, diagrams, charts, reports and descriptive and explanatory text or other devices and materials to express, explain, or depict the elements of the plan; and it shall include a recommended plan, scheme, or design for each of the following elements:

(1) A land-use element that designates the proposed general distribution, general location, and extent of the uses of land. These uses may include, but are not limited to, agricultural, residential, commercial, industrial, recreational, educational, public, and other categories of public and private uses of land. The land-use element shall also include estimates of future population growth in, and statements of recommended standards of population density and building intensity for, the area covered by the comprehensive plan. The land use element shall also provide for protection of the quality and quantity of ground water used for public water supplies and shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute Puget Sound or waters entering Puget Sound.

(2) A circulation element consisting of the general location, alignment, and extent of existing and proposed major thoroughfares, major transportation routes, and major terminal facilities, all of which shall be correlated with the land-

use element of the comprehensive plan. [1985 c 126 § 2; 1984 c 253 § 2; 1967 ex.s. c 119 § 35A.63.061.]

**35A.63.062 Comprehensive plan—Optional elements.** The comprehensive plan may include also any or all of the following optional elements:

(1) A conservation element for the conservation, development, and utilization of natural resources.

(2) An open space, park, and recreation element.

(3) A transportation element showing a comprehensive system of surface, air, and water transportation routes and facilities.

(4) A public-use element showing general locations, designs, and arrangements of public buildings and uses.

(5) A public utilities element showing general plans for public and franchised services and facilities.

(6) A redevelopment or renewal element showing plans for the redevelopment or renewal of slum and blighted areas.

(7) An urban design element for general organization of the physical parts of the urban landscape.

(8) Other elements dealing with subjects that, in the opinion of the legislative body, relate to the development of the municipality, or are essential or desirable to coordinate public services and programs with such development.

(9) A solar energy element for encouragement and protection of access to direct sunlight for solar energy systems. [1979 ex.s. c 170 § 7; 1967 ex.s. c 119 § 35A.63.062.]

**Severability—1979 ex.s. c 170:** See note following RCW 64.04.140.

**35A.63.070 Comprehensive plan—Notice and hearing.** After preparing the comprehensive plan, or successive parts thereof, as the case may be, the planning agency shall hold at least one public hearing on the comprehensive plan or successive part. Notice of the time, place, and purpose of such public hearing shall be given as provided by ordinance and including at least one publication in a newspaper of general circulation delivered in the code city and in the official gazette, if any, of the code city, at least ten days prior to the date of the hearing. Continued hearings may be held at the discretion of the planning agency but no additional notices need be published. [1967 ex.s. c 119 § 35A.63.070.]

**35A.63.071 Comprehensive plan—Forwarding to legislative body.** Upon completion of the hearing or hearings on the comprehensive plan or successive parts thereof, the planning agency, after making such changes as it deems necessary following such hearing, shall transmit a copy of its recommendations for the comprehensive plan, or successive parts thereof, to the legislative body through the chief administrative officer, who shall acknowledge receipt thereof and direct the clerk to certify thereon the date of receipt. [1967 ex.s. c 119 § 35A.63.071.]

**35A.63.072 Comprehensive plan—Approval by legislative body.** Within sixty days from its receipt of the recommendation for the comprehensive plan, as above set forth, the legislative body at a public meeting shall consider the same. The legislative body within such period as it may by ordinance provide, shall vote to approve or disapprove or to modify and approve, as modified, the comprehensive plan or

to refer it back to the planning agency for further proceedings, in which case the legislative body shall specify the time within which the planning agency shall report back to the legislative body its findings and recommendations on the matters referred to it. The final form and content of the comprehensive plan shall be determined by the legislative body. An affirmative vote of not less than a majority of total members of the legislative body shall be required for adoption of a resolution to approve the plan or its parts. The comprehensive plan, or its successive parts, as approved by the legislative body, shall be filed with an appropriate official of the code city and shall be available for public inspection. [1967 ex.s. c 119 § 35A.63.072.]

**35A.63.073 Comprehensive plan—Amendments and modifications.** All amendments, modifications, or alterations in the comprehensive plan or any part thereof shall be processed in the same manner as set forth in RCW 35A.63.070 through 35A.63.072. [1967 ex.s. c 119 § 35A.63.073.]

**35A.63.080 Comprehensive plan—Effect.** From the date of approval by the legislative body the comprehensive plan, its parts and modifications thereof, shall serve as a basic source of reference for future legislative and administrative action: PROVIDED, That the comprehensive plan shall not be construed as a regulation of property rights or land uses: PROVIDED, FURTHER, That no procedural irregularity or informality in the consideration, hearing, and development of the comprehensive plan or a part thereof, or any of its elements, shall affect the validity of any zoning ordinance or amendment thereto enacted by the code city after the approval of the comprehensive plan.

The comprehensive plan shall be consulted as a preliminary to the establishment, improvement, abandonment, or vacation of any street, park, public way, public building, or public structure, and no dedication of any street or other area for public use shall be accepted by the legislative body until the location, character, extent, and effect thereof shall have been considered by the planning agency with reference to the comprehensive plan. The legislative body shall specify the time within which the planning agency shall report and make a recommendation with respect thereto. Recommendations of the planning agency shall be advisory only. [1967 ex.s. c 119 § 35A.63.080.]

**35A.63.100 Municipal authority.** After approval of the comprehensive plan, as set forth above, the legislative body, in developing the municipality and in regulating the use of land, may implement or give effect to the comprehensive plan or parts thereof by ordinance or other action to such extent as the legislative body deems necessary or appropriate. Such ordinances or other action may provide for:

(1) Adoption of an official map and regulations relating thereto designating locations and requirements for one or more of the following: Streets, parks, public buildings, and other public facilities, and protecting such sites against encroachment by buildings and other physical structures.

(2) Dividing the municipality, or portions thereof, into appropriate zones within which specific standards, require-

ments, and conditions may be provided for regulating the use of public and private land, buildings, and structures, and the location, height, bulk, number of stories, and size of buildings and structures, size of yards, courts, open spaces, density of population, ratio of land area to the area of buildings and structures, setbacks, area required for off-street parking, protection of access to direct sunlight for solar energy systems, and such other standards, requirements, regulations, and procedures as are appropriately related thereto. The ordinance encompassing the matters of this subsection is hereinafter called the "zoning ordinance". No zoning ordinance, or amendment thereto, shall be enacted by the legislative body without at least one public hearing, notice of which shall be given as set forth in RCW 35A.63.070. Such hearing may be held before the planning agency or the board of adjustment or such other body as the legislative body shall designate.

(3) Adoption of design standards, requirements, regulations, and procedures for the subdivision of land into two or more parcels, including, but not limited to, the approval of plats, dedications, acquisitions, improvements, and reservation of sites for public use.

(4) Scheduling public improvements on the basis of recommended priorities over a period of years, subject to periodic review.

(5) Such other matters as may be otherwise authorized by law or as the legislative body deems necessary or appropriate to effectuate the goals and objectives of the comprehensive plan or parts thereof and the purposes of this chapter. [1979 ex.s. c 170 § 8; 1967 ex.s. c 119 § 35A.63.100.]

**Severability—1979 ex.s. c 170:** See note following RCW 64.04.140.

**35A.63.105 Development regulations—Consistency with comprehensive plan.** Beginning July 1, 1992, the development regulations of each code city that does not plan under RCW 36.70A.040 shall not be inconsistent with the city's comprehensive plan. For the purposes of this section, "development regulations" has the same meaning as set forth in RCW 36.70A.030. [1990 1st ex.s. c 17 § 23.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**35A.63.110 Board of adjustment—Creation—Powers and duties.** A code city which pursuant to this chapter creates a planning agency and which has twenty-five hundred or more inhabitants, by ordinance, shall create a board of adjustment and provide for its membership, terms of office, organization, jurisdiction. A code city which pursuant to this chapter creates a planning agency and which has a population of less than twenty-five hundred may, by ordinance, similarly create a board of adjustment. In the event a code city with a population of less than twenty-five hundred creates a planning agency, but does not create a board of adjustment, the code city shall provide that the city legislative authority shall itself hear and decide the items listed in subdivisions (1), (2), and (3) of this section. The action of the board of adjustment shall be final and conclusive, unless, within twenty-one days from the date of the action, the original applicant or an adverse party makes application to the superior court for the county in which that city is located for a writ of certiorari, a writ of prohibition, or a writ of mandamus. No member of the board of adjustment shall be a member of the planning

agency or the legislative body. Subject to conditions, safeguards, and procedures provided by ordinance, the board of adjustment may be empowered to hear and decide:

(1) Appeals from orders, recommendations, permits, decisions, or determinations made by a code city official in the administration or enforcement of the provisions of this chapter or any ordinances adopted pursuant to it.

(2) Applications for variances from the terms of the zoning ordinance, the official map ordinance or other land-use regulatory ordinances under procedures and conditions prescribed by city ordinance, which among other things shall provide that no application for a variance shall be granted unless the board of adjustment finds:

(a) the variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located; and

(b) that such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

(c) that the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

(3) Applications for conditional-use permits, unless such applications are to be heard and decided by the planning agency. A conditional use means a use listed among those classified in any given zone but permitted to locate only after review as herein provided in accordance with standards and criteria set forth in the zoning ordinance.

(4) Such other quasi judicial and administrative determinations as may be delegated by ordinance.

In deciding any of the matters referred to in subsections (1), (2), (3), and (4) of this section, the board of adjustment shall issue a written report giving the reasons for its decision. If a code city provides for a hearing examiner and vests in him the authority to hear and decide the items listed in subdivisions (1), (2), and (3) of this section pursuant to RCW 35A.63.170, then the provisions of this section shall not apply to such a city. [2001 c 200 § 1; 1979 ex.s. c 18 § 34; 1967 ex.s. c 119 § 35A.63.110.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.63.120 Administration and enforcement.** In order to carry into effect the purposes of this chapter, administrative and enforcement responsibilities, other than those set forth in RCW 35A.63.110, may be assigned by ordinance to such departments, boards, officials, employees, or agents as the legislative body deems appropriate. [1967 ex.s. c 119 § 35A.63.120.]

**35A.63.130 Provisions inconsistent with charters.** Insofar as the provisions of an existing charter of a municipality are inconsistent with this chapter, a municipality may exercise the authority, or any part thereof, granted by this chapter notwithstanding the inconsistent provision of an existing charter. [1967 ex.s. c 119 § 35A.63.130.]

**35A.63.140 Duties and responsibilities imposed by other acts.** Any duties and responsibilities which by other statutes are imposed upon a planning commission may, in a code city, be performed by a planning agency, as provided in this chapter. [1967 ex.s. c 119 § 35A.63.140.]

**35A.63.145 Prohibitions on manufactured homes—Review required—"Designated manufactured home" defined.** (1) Each comprehensive plan which does not allow for the siting of manufactured homes on individual lots shall be subject to a review by the city of the need and demand for such homes. The review shall be completed by December 31, 1990.

(2) For the purpose of providing an optional reference for cities which choose to allow manufactured homes on individual lots, a "designated manufactured home" is a manufactured home constructed after June 15, 1976, in accordance with state and federal requirements for manufactured homes, which:

(a) Is comprised of at least two fully enclosed parallel sections each of not less than twelve feet wide by thirty-six feet long;

(b) Was originally constructed with and now has a composition or wood shake or shingle, coated metal, or similar roof of not less than 3:12 pitch; and

(c) Has exterior siding similar in appearance to siding materials commonly used on conventional site-built uniform building code single-family residences.

(3) Nothing in this section precludes cities from allowing any manufactured home from being sited on individual lots through local standards which differ from the designated manufactured home as described in this section, except that the term "designated manufactured home" shall not be used except as defined in subsection (2) of this section. [1988 c 239 § 2.]

**35A.63.146 Manufactured housing communities—Elimination of existing community by code city prohibited.** After June 10, 2004, a code city may designate a manufactured housing community as a nonconforming use, but may not order the removal or phased elimination of an existing manufactured housing community because of its status as a nonconforming use. [2004 c 210 § 2.]

**35A.63.149 Residential care facilities—Review of need and demand—Adoption of ordinances.** Each municipality that does not provide for the siting of residential care facilities in zones or areas that are designated for single family or other residential uses, shall conduct a review of the need and demand for the facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 31, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the \*department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the \*department of community devel-

opment as to why such implementing ordinances were not adopted. [1989 c 427 § 37.]

**\*Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994.

**Severability—1989 c 427:** See RCW 74.39.900.

**35A.63.150 Public hearings.** The legislative body may provide by ordinance for such additional public hearings and notice thereof as it deems to be appropriate in connection with any action contemplated under this chapter. [1967 ex.s. c 119 § 35A.63.150.]

**35A.63.152 Public notice—Identification of affected property.** Any notice made under chapter 35A.63 RCW that identifies affected property may identify this affected property without using a legal description of the property including, but not limited to, identification by an address, written description, vicinity sketch, or other reasonable means. [1988 c 168 § 10.]

**35A.63.160 Construction—1967 ex.s. c 119.** This title is intended to implement and preserve to code cities all powers authorized by Article XI, section 11 of the Constitution of the state of Washington and the provision of this title shall not limit any code city from exercising its constitutionally granted power to plan for and to make and enforce within its limits all such local police, sanitary, and other regulations in the manner that its charter or ordinances may provide. [1967 ex.s. c 119 § 35A.63.160.]

**35A.63.170 Hearing examiner system—Adoption authorized—Alternative—Functions—Procedures.** (1) As an alternative to those provisions of this chapter relating to powers or duties of the planning commission to hear and report on any proposal to amend a zoning ordinance, the legislative body of a city may adopt a hearing examiner system under which a hearing examiner or hearing examiners may hear and decide applications for amending the zoning ordinance when the amendment which is applied for is not of general applicability. In addition, the legislative body may vest in a hearing examiner the power to hear and decide those issues it believes should be reviewed and decided by a hearing examiner, including but not limited to:

(a) Applications for conditional uses, variances, subdivisions, shoreline permits, or any other class of applications for or pertaining to development of land or land use;

(b) Appeals of administrative decisions or determinations; and

(c) Appeals of administrative decisions or determinations pursuant to chapter 43.21C RCW.

The legislative body shall prescribe procedures to be followed by a hearing examiner. If the legislative authority vests in a hearing examiner the authority to hear and decide variances, then the provisions of RCW 35A.63.110 shall not apply to the city.

(2) Each city legislative body electing to use a hearing examiner pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. The legal effect of such decisions may vary for the different

classes of applications decided by the examiner but shall include one of the following:

(a) The decision may be given the effect of a recommendation to the legislative body;

(b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or

(c) Except in the case of a rezone, the decision may be given the effect of a final decision of the legislative body.

(3) Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the city's comprehensive plan and the city's development regulations. Each final decision of a hearing examiner, unless a longer period is mutually agreed to in writing by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings. [1995 c 347 § 424; 1994 c 257 § 7; 1977 ex.s. c 213 § 2.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**Severability—1977 ex.s. c 213:** See note following RCW 35.63.130.

**35A.63.200 Conformance with chapter 43.97 RCW required.** With respect to the National Scenic Area, as defined in the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a city pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the Interstate Compact adopted by RCW 43.97.015, and with the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact. [1987 c 499 § 7.]

**35A.63.210 Child care facilities—Review of need and demand—Adoption of ordinances.** Each municipality that does not provide for the siting of family day care homes in zones or areas that are designated for single family or other residential uses, and for the siting of mini-day care centers and day care centers in zones or areas that are designated for any residential or commercial uses, shall conduct a review of the need and demand for child care facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 31, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the \*department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the \*department of community development as to why such implementing ordinances were not adopted. [1989 c 335 § 5.]

**\*Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994.

**Findings—Purpose—Severability—1989 c 335:** See notes following RCW 35.63.170.

**Definitions for RCW 35A.63.210:** See RCW 35.63.170.

**35A.63.215 Family day-care provider's home facility—City may not prohibit in residential or commercial area—Conditions.** (1) Except as provided in subsections (2) and (3) of this section, no city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

(2) A city may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the office of child care policy licensor as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(3) A city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

(4) Nothing in this section shall be construed to prohibit a city from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 74.15.020. [2003 c 286 § 4; 1995 c 49 § 2; 1994 c 273 § 16.]

**35A.63.220 Moratoria, interim zoning controls—Public hearing—Limitation on length.** A legislative body that adopts a moratorium or interim zoning ordinance, without holding a public hearing on the proposed moratorium or interim zoning ordinance, shall hold a public hearing on the adopted moratorium or interim zoning ordinance within at least sixty days of its adoption, whether or not the legislative body received a recommendation on the matter from the planning agency. If the legislative body does not adopt findings of fact justifying its action before this hearing, then the legislative body shall do so immediately after this public hearing. A moratorium or interim zoning ordinance adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium of interim zoning ordinance may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. [1992 c 207 § 3.]

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**35A.63.230 Accessory apartments.** Any local government, as defined in RCW 43.63A.215, that is planning under this chapter shall comply with RCW 43.63A.215(3). [1993 c 478 § 9.]

**35A.63.240 Treatment of residential structures occupied by persons with handicaps.** No city may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602). [1993 c 478 § 21.]

**35A.63.250 Watershed restoration projects—Permit processing—Fish habitat enhancement project.** A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of RCW 77.55.290(1) shall be reviewed and approved according to the provisions of RCW 77.55.290. [2003 c 39 § 17; 1998 c 249 § 6; 1995 c 378 § 9.]

**Findings—Purpose—Report—Effective date—1998 c 249:** See notes following RCW 77.55.290.

**35A.63.260 Planning regulations—Copies provided to county assessor.** By July 31, 1997, a code city planning under RCW 36.70A.040 shall provide to the county assessor a copy of the code city's comprehensive plan and development regulations in effect on July 1st of that year and shall thereafter provide any amendments to the plan and regulations that were adopted before July 31st of each following year. [1996 c 254 § 4.]

**35A.63.270 General aviation airports.** Adoption and amendment of comprehensive plan provisions and development regulations under this chapter affecting a general aviation airport are subject to RCW 36.70.547. [1996 c 239 § 4.]

**35A.63.280 Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections—Mediation prior to appeal required.** A final decision by a hearing examiner involving a conditional or special use permit application under this chapter that is requested by a party that is licensed or certified by the department of social and health services or the department of corrections is subject to mediation under RCW 35.63.260 before an appeal may be filed. [1998 c 119 § 2.]

## Chapter 35A.64 RCW

### PUBLIC PROPERTY, REAL AND PERSONAL

#### Sections

- 35A.64.010 Acquisition of by conditional sales contracts.
- 35A.64.020 Purchase of products made by blind.
- 35A.64.180 Disinfection of property.
- 35A.64.200 Eminent domain by cities.

**35A.64.010 Acquisition of by conditional sales contracts.** A code city may exercise the powers relating to acquisition of real or personal property under executory conditional sales contracts as authorized by RCW 39.30.010. [1967 ex.s. c 119 § 35A.64.010.]

**35A.64.020 Purchase of products made by blind.** A code city may exercise the powers relating to the acquisition of products made by the blind as authorized by RCW 19.06.020. [1967 ex.s. c 119 § 35A.64.020.]

**35A.64.180 Disinfection of property.** Every code city shall disinfect or destroy all infected trees or shrubs growing upon public property within the city's jurisdiction and may expend city funds in carrying out the provisions of this section, and shall otherwise be governed by the provisions of chapter 15.08 RCW relating to horticultural pests and diseases. [1967 ex.s. c 119 § 35A.64.180.]

**35A.64.200 Eminent domain by cities.** A code city may exercise all powers relating to eminent domain as authorized by chapters 8.12 and 8.28 RCW in accordance with the procedures therein prescribed and subject to any limitations therein provided. [1967 ex.s. c 119 § 35A.64.200.]

### Chapter 35A.65 RCW

#### PUBLICATION AND PRINTING

##### Sections

- 35A.65.010 Public printing.  
35A.65.020 Publication of legal notice.

**35A.65.010 Public printing.** All printing, binding and stationery work done for any code city shall be done within the state and all proposals, requests and invitations to submit bids, prices or contracts thereon and all contracts for such work shall so stipulate subject to the limitations contained in RCW 43.78.130 and 35.23.352. [1967 ex.s. c 119 § 35A.65.010.]

**35A.65.020 Publication of legal notice.** The publication of a legal notice required by general law or by a code city ordinance shall be in a newspaper of general circulation within the city having the qualifications prescribed by chapter 65.16 RCW and shall be governed by the provisions thereof as the same relate to a city of any class. [1967 ex.s. c 119 § 35A.65.020.]

### Chapter 35A.66 RCW

#### HEALTH AND SAFETY—ALCOHOL

##### Sections

- 35A.66.010 Alcoholism—Standards for institutions.  
35A.66.020 Liquors, local option on sale of—Enforcement of state laws, sharing proceeds of liquor profits and excise tax.

**35A.66.010 Alcoholism—Standards for institutions.** In addition to regulating the use of alcoholic beverages, a code city may exercise the powers relating to prescribing (2004 Ed.)

standards for institutions for treating alcoholism as authorized by RCW 71.12.550. [1967 ex.s. c 119 § 35A.66.010.]

**35A.66.020 Liquors, local option on sale of—Enforcement of state laws, sharing proceeds of liquor profits and excise tax.** The qualified electors of any code city may petition for an election upon the question of whether the sale of liquor shall be permitted within the boundaries of such city as provided by chapter 66.40 RCW, and shall be governed by the procedure therein, and may regulate music, dancing and entertainment as authorized by RCW 66.28.080: PROVIDED, That every code city shall enforce state laws relating to the investigation and prosecution of all violations of Title 66 RCW relating to control of alcoholic beverages and shall be entitled to retain the fines collected therefrom as therein provided. Every code city shall also share in the allocation and distribution of liquor profits and excise as provided in RCW 82.08.170, 66.08.190, and 66.08.210, and make reports of seizure as required by RCW 66.32.090, and otherwise regulate by ordinances not in conflict with state law or liquor board regulations. [1967 ex.s. c 119 § 35A.66.020.]

*State liquor control board: Chapter 66.08 RCW.*

### Chapter 35A.67 RCW

#### RECREATION AND PARKS

##### Sections

- 35A.67.010 Parks, beaches and camps.

**35A.67.010 Parks, beaches and camps.** In addition to exercising all powers relating to the acquisition of land, the improvement and operation thereof, or cooperation with other taxing districts in connection with park or recreation facilities, any code city may exercise the powers relating to acquisition and operation of recreational facilities, establishment and operation of public camps, and contracting with other taxing or governmental agencies for the acquisition or operation of public parks, camps and recreational facilities as authorized by chapter 67.20 RCW, in accordance with the procedures prescribed in and authorized by \*RCW 79.08.080 and 79.08.090 in the application for use of state-owned tide or shorelands for a municipal park or playground purposes. [1967 ex.s. c 119 § 35A.67.010.]

*\*Reviser's note:* RCW 79.08.080 and 79.08.090 were recodified as RCW 79.94.175 and 79.94.181 pursuant to 2003 c 334 § 570.

*Acquisition of interests in land for conservation, protection, preservation, or open space purposes by cities: RCW 64.04.130.*

### Chapter 35A.68 RCW

#### CEMETERIES AND MORGUES

##### Sections

- 35A.68.010 Acquisition—Care and investment of funds.

**35A.68.010 Acquisition—Care and investment of funds.** A code city may exercise the powers to acquire, own, improve, manage, operate and regulate real and personal property for the operation of the city morgue, cemetery or other place for the burial of the dead, to create cemetery

boards or commissions, to establish and manage funds for cemetery improvement and care and to make all necessary or desirable rules and regulations concerning the control and management of burial places and the investment of funds relating thereto and accounting therefor as is authorized by chapter 68.52 RCW, RCW 35.22.280, 35.23.440, \*35.24.300 and 35.27.370(2) in accordance with the procedures and requirements prescribed by said laws and authority to be included within a cemetery district as authorized and conformed to the requirements of Title 68 RCW. [1987 c 331 § 80; 1967 ex.s. c 119 § 35A.68.010.]

**\*Reviser's note:** RCW 35.24.300 was recodified as RCW 35.23.452 pursuant to 1994 c 81 § 90.

**Effective date—1987 c 331:** See RCW 68.05.900.

## Chapter 35A.69 RCW FOOD AND DRUG

### Sections

35A.69.010 Powers and duties prescribed.

**35A.69.010 Powers and duties prescribed.** Every code city shall have the powers, perform the functions and duties and enforce the regulations prescribed by general laws relating to food and drugs for any class of city as provided by Title 69 RCW; relating to water pollution control as provided by chapter 90.48 RCW; and relating to food fish and shellfish as provided by Title 77 RCW. [2003 c 39 § 18; 1999 c 291 § 31; 1994 c 143 § 512. Prior: 1983 1st ex.s. c 46 § 177; 1983 c 3 § 71; 1967 ex.s. c 119 § 35A.69.010.]

## Chapter 35A.70 RCW HEALTH AND SAFETY

### Sections

35A.70.010 Waters within city—City's water supply.  
35A.70.020 Regulating boarding homes.  
35A.70.040 Buildings, construction standards.  
35A.70.050 City electrical code—State safety regulations.  
35A.70.060 Elevators, moving walks.  
35A.70.070 Public health and safety, general laws applicable.

**35A.70.010 Waters within city—City's water supply.** Every code city shall have authority to protect waters within the city or comprising part of the city's water supply pursuant to the authority provided therefor by RCW 9.66.050, 54.16.050, 69.30.130, \*57.08.010, 8.12.030, 70.54.010 and 70.54.030. [1996 c 230 § 1606; 1967 ex.s. c 119 § 35A.70.010.]

**\*Reviser's note:** RCW 57.08.010 was repealed by 1996 c 230 § 1703, effective July 1, 1997. For later enactment, see RCW 57.08.005.

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**35A.70.020 Regulating boarding homes.** A code city may exercise the powers relating to enforcement of regulations for boarding homes as authorized by \*RCW 18.20.100, in accordance with the procedures therein prescribed and subject to any limitations therein provided. [1967 ex.s. c 119 § 35A.70.020.]

**\*Reviser's note:** RCW 18.20.100 was repealed by 2000 c 47 § 10, effective July 1, 2000.

**35A.70.040 Buildings, construction standards.** In addition to other provisions of the law granting authority and imposing duties, a code city may exercise the powers relating to providing standards for the construction of buildings as provided in chapter 70.86 RCW and shall report the issuance of building permits for new construction as required by \*RCW 36.21.040 through 36.21.060. [1967 ex.s. c 119 § 35A.70.040.]

**\*Reviser's note:** RCW 36.21.040 through 36.21.060 were repealed by 1989 c 246 § 8.

**35A.70.050 City electrical code—State safety regulations.** Every code city may adopt ordinances regulating or otherwise controlling the installation of electrical wiring, equipment, apparatus or appliances as authorized by \*RCW 19.28.360 and by other general law and shall obey, observe and comply with every order, approval, direction or requirement made by the director or the commission under authority of chapter 19.29 RCW. [1967 ex.s. c 119 § 35A.70.050.]

**\*Reviser's note:** RCW 19.28.360 was recodified as RCW 19.28.141 pursuant to 2000 c 238 § 102.

**35A.70.060 Elevators, moving walks.** All conveyances owned or operated by code cities as defined by the provisions of chapter 70.87 RCW, shall be subject to the provisions of that chapter to the extent specifically provided for therein. [1967 ex.s. c 119 § 35A.70.060.]

**35A.70.070 Public health and safety, general laws applicable.** Every code city may exercise the powers authorized and shall perform the duties imposed upon cities of like population relating to the public health and safety as provided by Title 70 RCW and, without limiting the generality of the foregoing, shall: (1) Organize boards of health and appoint a health officer with the authority, duties and functions as provided in chapter 70.05 RCW, or provide for combined city-county health departments as provided and in accordance with the provisions of chapter 70.08 RCW; (2) contribute and participate in public health pooling funds as authorized by chapter 70.12 RCW; (3) control and provide for treatment of \*venereal diseases as authorized by chapter 70.24 RCW; (4) provide for the care and control of tuberculosis as provided in chapters 70.28, 70.30, \*\*70.32, and 70.54 RCW; (5) participate in health districts as authorized by chapter 70.46 RCW; (6) exercise control over water pollution as provided in chapter 35.88 RCW; (7) for all code cities having a population of more than twenty thousand serve as a primary district for registration of vital statistics in accordance with the provisions of chapter 70.58 RCW; (8) observe and enforce the provisions relating to fireworks as provided in chapter 70.77 RCW; (9) enforce the provisions relating to swimming pools provided in chapter 70.90 RCW; (10) enforce the provisions of chapter 18.20 RCW when applicable; (11) perform the functions relating to mentally ill prescribed in chapters 72.06 and 71.12 RCW; (12) cooperate with the state department of social and health services in mosquito control as authorized by RCW 70.22.060; and (13) inspect nursing homes as authorized by RCW 18.51.145. [1987 c 223 § 4; 1985 c 213 § 12;

1981 1st ex.s. c 2 § 25; 1979 c 141 § 42; 1967 ex.s. c 119 § 35A.70.070.]

**Reviser's note:** \*(1) The term "venereal diseases" was changed to "sexually transmitted diseases" by 1988 c 206.

\*\*\*(2) Chapter 70.32 RCW was repealed and/or recodified in its entirety pursuant to 1999 c 172.

**Savings—Effective date—1985 c 213:** See notes following RCW 43.20.050.

**Severability—Effective date—1981 1st ex.s. c 2:** See notes following RCW 18.51.010.

## Chapter 35A.74 RCW

### WELFARE

#### Sections

35A.74.010 General law applicable.

**35A.74.010 General law applicable.** Code cities may exercise authority granted by general law and available to any class of city for the relief of the poor and destitute, including, but not limited to the provisions of \*RCW 74.04.390 through 74.04.470. [1967 ex.s. c 119 § 35A.74.010.]

**\*Reviser's note:** RCW 74.04.390 through 74.04.470 were repealed by 1991 c 126 § 11.

## Chapter 35A.79 RCW

### PROPERTY AND MATERIALS

#### Sections

35A.79.010 Powers to acquire, use and manage.

**35A.79.010 Powers to acquire, use and manage.** A code city shall have all powers provided by general law to cities of any class relating to the receipt of donations of money and property, the acquisition, leasing and disposition of municipal property, both real and personal, including, but not limited to, the following: (1) Intergovernmental leasing, transfer or disposition of property as provided by chapter 39.33 RCW; (2) disposition of unclaimed property as provided by chapters 63.32 and 63.21 RCW; (3) disposition of local improvement district foreclosures as provided by chapter 35.53 RCW; (4) materials removed from public lands as provided by RCW 79.90.150; (5) purchase of federal surplus property as provided by chapter 39.32 RCW; and (6) land for recreation as provided by \*chapter 43.99 RCW. A code city in connection with the acquisition of property shall be subject to provisions relating to tax liens as provided by RCW 84.60.050 and 84.60.070. The general law relating to the damage or destruction of public property of a code city or interferences with the duties of a police or other officer shall relate to code city's properties and officers to the same extent as such laws apply to any class of city, its property or officers. [1983 c 3 § 72; 1979 ex.s. c 30 § 3; 1967 ex.s. c 119 § 35A.79.010.]

**\*Reviser's note:** Chapter 43.99 RCW was recodified as chapter 79A.25 RCW pursuant to 1999 c 249 § 1601.

(2004 Ed.)

## Chapter 35A.80 RCW PUBLIC UTILITIES

#### Sections

35A.80.010 General laws applicable.

35A.80.020 Electric energy.

35A.80.030 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts.

35A.80.040 Code cities encouraged to provide utility customers with landscaping information and to request voluntary donations for urban forestry.

35A.80.050 Purchase of electric power and energy from joint operating agency.

**35A.80.010 General laws applicable.** A code city may provide utility service within and without its limits and exercise all powers to the extent authorized by general law for any class of city or town. The cost of such improvements may be financed by procedures provided for financing local improvement districts in chapters 35.43 through 35.54 RCW and by revenue and refunding bonds as authorized by chapters 35.41, 35.67 and 35.89 RCW and Title 85 RCW. A code city may protect and operate utility services as authorized by chapters 35.88, 35.91, 35.92, and 35.94 RCW and may acquire and damage property in connection therewith as provided by chapter 8.12 RCW and shall be governed by the regulations of the department of ecology as provided in RCW 90.48.110. [1988 c 127 § 2; 1967 ex.s. c 119 § 35A.80.010.]

**35A.80.020 Electric energy.** Any code city is authorized to enter into contracts or compacts with any commission or any operating agency or publicly or privately owned utility for the purchase and sale of electric energy or falling waters as provided in RCW 43.52.410 and chapter 35.84 RCW and to exercise any other authority granted to cities as provided in chapter 43.52 RCW. [1967 ex.s. c 119 § 35A.80.020.]

**35A.80.030 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts.** See RCW 87.03.825 through 87.03.840.

**35A.80.040 Code cities encouraged to provide utility customers with landscaping information and to request voluntary donations for urban forestry.** (1) Code cities providing utility services under this chapter are encouraged to provide information to their customers regarding landscaping that includes tree planting for energy conservation.

(2) Code cities providing utility services under this chapter are encouraged to request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of a request for a voluntary donation. [1993 c 204 § 3.]

**Findings—1993 c 204:** See note following RCW 35.92.390.

**35A.80.050 Purchase of electric power and energy from joint operating agency.** A code city may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative

energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the code city must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or public utility district under the contract or other instrument. [2003 c 138 § 7.]

### Chapter 35A.81 RCW PUBLIC TRANSPORTATION

#### Sections

35A.81.010 Application of general law.

**35A.81.010 Application of general law.** Motor vehicles owned and operated by any code city shall be exempt from the provisions of chapter 81.80 RCW, except where specifically otherwise provided. Urban passenger transportation systems shall receive a refund of the amount of the motor vehicle fuel tax paid on each gallon of motor vehicle fuel used in such systems to the extent authorized by chapter 82.36 RCW. Notwithstanding any provision of the law to the contrary, every urban passenger transportation system as defined in RCW 82.38.080 shall be exempt from the provisions of chapter 82.38 RCW which requires the payment of use fuel taxes. [1983 c 3 § 73; 1967 ex.s. c 119 § 35A.81.010.]

### Chapter 35A.82 RCW TAXATION—EXCISES

#### Sections

35A.82.010 State shared excises.  
 35A.82.020 Licenses and permits—Excises for regulation.  
 35A.82.025 Authority to regulate massage practitioners—Limitations.  
 35A.82.030 City and county retail sales excise tax and use tax.  
 35A.82.040 City and town license fees and taxes on financial institutions.  
 35A.82.042 City license fees or taxes on certain business activities to be at a single uniform rate.  
 35A.82.050 License fees or taxes upon certain business activities to be at single uniform rate.  
 35A.82.055 License fees or taxes on telephone business to be at uniform rate.  
 35A.82.060 License fees or taxes on telephone business—Imposition on certain gross revenues authorized—Limitations.  
 35A.82.065 Taxes on network telephone services.  
 35A.82.070 Taxes on telephone business—Deferral of rate reduction.

**35A.82.010 State shared excises.** A code city shall collect, receive and share in the distribution of state collected and distributed excise taxes to the same extent and manner as general laws relating thereto apply to any class of city or town including, but not limited to, funds distributed to cities under RCW 82.36.020 relating to motor vehicle fuel tax, RCW 82.38.290 relating to use fuel tax, and RCW 82.36.275 and 82.38.080(3). [1998 c 176 § 2; 1995 c 274 § 4; 1985 c 7 § 102; 1983 c 3 § 74; 1967 ex.s. c 119 § 35A.82.010.]

**Rules—Findings—Effective date—1998 c 176:** See RCW 82.36.800, 82.36.900, and 82.36.901.

**35A.82.020 Licenses and permits—Excises for regulation.** A code city may exercise the authority authorized by general law for any class of city to license and revoke the same for cause, to regulate, make inspections and to impose excises for regulation or revenue in regard to all places and kinds of business, production, commerce, entertainment, exhibition, and upon all occupations, trades and professions and any other lawful activity: PROVIDED, That no license or permit to engage in any such activity or place shall be granted to any who shall not first comply with the general laws of the state.

No such license shall be granted to continue for longer than a period of one year from the date thereof and no license or excise shall be required where the same shall have been preempted by the state, nor where exempted by the state, including, but not limited to, the provisions of RCW 36.71.090 and chapter 73.04 RCW relating to veterans. [1967 ex.s. c 119 § 35A.82.020.]

**35A.82.025 Authority to regulate massage practitioners—Limitations.** (1) A state licensed massage practitioner seeking a city license to operate a massage business must provide verification of his or her state massage license as provided for in RCW 18.108.030.

(2) The city may charge a licensing or operating fee, but the fee charged a state licensed massage practitioner shall not exceed the licensing or operating fee imposed on similar health care providers, such as physical therapists or occupational therapists, operating within the same city.

(3) A state licensed massage practitioner is not subject to additional licensing requirements not currently imposed on similar health care providers, such as physical therapists or occupational therapists. [1991 c 182 § 2.]

**Reviser's note:** 1991 c 182 directed that this section be added to chapter 35A.11 RCW. This section has been codified as a part of chapter 35A.82 RCW, which relates more directly to code city licensing authority.

**35A.82.030 City and county retail sales excise tax and use tax.** See chapter 82.14 RCW.

**35A.82.040 City and town license fees and taxes on financial institutions.** See chapter 82.14A RCW.

**35A.82.042 City license fees or taxes on certain business activities to be at a single uniform rate.** See RCW 35.21.710.

**35A.82.050 License fees or taxes upon certain business activities to be at single uniform rate.** Any code city which imposes a license fee or tax upon business activities consisting of the making of retail sales of tangible personal property which are measured by gross receipts or gross income from such sales, shall impose such tax at a single uniform rate upon all such business activities. This section shall not apply to any business activities subject to the tax imposed by chapter 82.16 RCW. For purposes of this section, the providing to consumers of competitive telephone service, as defined in RCW 82.04.065, or the providing of payphone ser-

vice as defined in RCW 35.21.710, shall be subject to tax at the same rate as business activities consisting of the making of retail sales of tangible personal property. [2002 c 179 § 3; 1983 2nd ex.s. c 3 § 34; 1981 c 144 § 7; 1972 ex.s. c 134 § 7.]

**Effective date—2002 c 179:** See note following RCW 35.21.710.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

**35A.82.055 License fees or taxes on telephone business to be at uniform rate.** Any code city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.04.065, which is measured by gross receipts or gross income from the business shall impose the tax at a uniform rate on all persons engaged in the telephone business in the code city.

This section does not apply to the providing of competitive telephone service as defined in RCW 82.04.065 or to the providing of payphone service as defined in RCW 35.21.710. [2002 c 179 § 4; 1983 2nd ex.s. c 3 § 36; 1981 c 144 § 9.]

**Effective date—2002 c 179:** See note following RCW 35.21.710.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

**35A.82.060 License fees or taxes on telephone business—Imposition on certain gross revenues authorized—Limitations. (Contingent expiration date.)** (1) Any code city which imposes a license fee or tax upon the business activity of engaging in the telephone business which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax: PROVIDED, That the city shall not impose the fee or tax on that portion of network telephone service which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale, or charges for mobile telecommunications services provided to customers whose place of primary use is not within the city.

(2) Any city that imposes a license tax or fee under subsection (1) of this section has the authority, rights, and obligations of a taxing jurisdiction as provided in RCW 82.32.490 through 82.32.510.

(3) The definitions in RCW 82.04.065 apply to this section. [2002 c 67 § 10; 1989 c 103 § 3; 1986 c 70 § 4; 1983 2nd ex.s. c 3 § 38; 1981 c 144 § 11.]

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See notes following RCW 82.04.530.

**Severability—1989 c 103:** See note following RCW 35.21.714.

**Effective date—1986 c 70 §§ 1, 2, 4, 5:** See note following RCW 35.21.714.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

(2004 Ed.)

**35A.82.060 License fees or taxes on telephone business—Imposition on certain gross revenues authorized—Limitations. (Contingent effective date.)** Any code city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.04.065, which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax: PROVIDED, That the city shall not impose the fee or tax on that portion of network telephone service, as defined in RCW 82.04.065, which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale. [1989 c 103 § 3; 1986 c 70 § 4; 1983 2nd ex.s. c 3 § 38; 1981 c 144 § 11.]

**Severability—1989 c 103:** See note following RCW 35.21.714.

**Effective date—1986 c 70 §§ 1, 2, 4, 5:** See note following RCW 35.21.714.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

**35A.82.065 Taxes on network telephone services.** Notwithstanding RCW 35.21.714 or 35A.82.060, any city or town which imposes a tax upon business activities measured by gross receipts or gross income from sales, may impose such tax on that portion of network telephone service, as defined in RCW 82.04.065, which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll services, or charges for network telephone service that is purchased for the purpose of resale. Such tax shall be levied at the same rate as is applicable to other competitive telephone service as defined in RCW 82.04.065. [1989 c 103 § 4; 1986 c 70 § 5.]

**Severability—1989 c 103:** See note following RCW 35.21.714.

**Effective date—1986 c 70 §§ 1, 2, 4, 5:** See note following RCW 35.21.714.

**35A.82.070 Taxes on telephone business—Deferral of rate reduction.** A city or town required by RCW 35.21.870(2) to reduce its rate of taxation on telephone business may defer for one year the required reduction in rates for the year 1987. If the delay in rate reductions authorized by the preceding sentence is inadequate for a code city to offset the impact of revenue reductions arising from the removal of revenues from connecting fees, switching charges, or carrier access charges under the provisions of RCW 35A.82.060, then the legislative body of such code city may reimpose for 1987 the rates that such code city had in effect upon telephone business during 1985. In each succeeding year, the city or town shall reduce the rate by one-tenth of the difference between the tax rate on April 20, 1982, and six percent. [1986 c 70 § 6.]

**Chapter 35A.84 RCW**  
**TAXATION—PROPERTY**

## Sections

- 35A.84.010 Procedure and rules relating to ad valorem taxes.  
35A.84.020 Assessment for and collection of ad valorem taxes.  
35A.84.030 Ex officio collector of code city taxes.

**35A.84.010 Procedure and rules relating to ad valorem taxes.** The taxation of property in code cities shall be governed by general provisions of the law including, but not limited to, the provisions of: (1) Chapter 84.09 RCW, relating to the time for establishment of official boundaries of taxing districts on the first day of March of each year; (2) chapter 84.12 RCW relating to the assessment and taxation of public utilities; (3) chapter 84.16 RCW, relating to the apportionment of taxation on private car companies; (4) chapter 84.20 RCW, relating to the taxation of easements of public utilities; (5) \*chapter 84.24 RCW, relating to the reassessment of property; (6) chapter 84.36 RCW, relating to property subject to taxation and exemption therefrom; (7) chapter 84.40 RCW relating to the listing of property for assessment; (8) chapter 84.41 RCW, relating to reevaluation of property; (9) chapter 84.44 RCW, relating to the taxable situs of personalty; (10) chapter 84.48 RCW, relating to the equalization of assessments; (11) chapter 84.52 RCW, relating to the levy of taxes, both regular and excess; (12) chapter 84.56 RCW, relating to the collection of taxes; (13) chapter 84.60 RCW, relating to the lien of taxes and the priority thereof; (14) chapter 84.69 RCW, relating to refunds and claims therefor against the code city; and (15) RCW 41.16.060, relating to taxation for firemen's pension fund. [1967 ex.s. c 119 § 35A.84.010.]

\*Reviser's note: Chapter 84.24 RCW was repealed by 1994 c 124 § 42.

**35A.84.020 Assessment for and collection of ad valorem taxes.** For the purpose of assessment of all property in all code cities, other than code cities having a population of more than twenty thousand inhabitants, the county assessor of the county wherein such code city is situated shall be the ex officio assessor, and as to the code cities having a population of more than twenty thousand inhabitants such county assessor shall perform the duties as provided in \*RCW 36.21.020. [1967 ex.s. c 119 § 35A.84.020.]

\*Reviser's note: RCW 36.21.020 was repealed by 1994 c 301 § 57.

**35A.84.030 Ex officio collector of code city taxes.** The treasurer of the county wherein a code city is situated shall be the ex officio collector of such code city's taxes and give bond, and account for the city's funds as provided in chapter 36.29 RCW. [1967 ex.s. c 119 § 35A.84.030.]

**Chapter 35A.88 RCW**  
**HARBORS AND NAVIGATION**

## Sections

- 35A.88.010 Discharge of ballast.  
35A.88.020 Wharves and landings.  
35A.88.030 General laws applicable.

**35A.88.010 Discharge of ballast.** A code city may exercise the powers relating to regulation of discharge of bal-

last in harbors within or in front of such city as authorized by RCW 88.28.060. [1967 ex.s. c 119 § 35A.88.010.]

**35A.88.020 Wharves and landings.** A code city shall have and exercise all powers granted by general laws to cities and towns of any class relative to docks and other appurtenances to harbor and shipping, including but not limited to, the provisions of RCW 35.22.280, 35.23.440, \*35.24.290, and 88.24.030. [1967 ex.s. c 119 § 35A.88.020.]

\*Reviser's note: RCW 35.24.290 was repealed by 1994 c 81 § 89.

**35A.88.030 General laws applicable.** General laws relating to harbor areas within cities, including but not limited to, chapter 36.08 RCW relating to transfer of territory lying in two or more counties; RCW 79.92.110 relating to disposition of rental from leasehold in the harbor areas; and RCW 88.32.240 and 88.32.250 relating to joint planning by cities and counties shall apply to, benefit and obligate code cities to the same extent as such general laws apply to any class of city. [1985 c 7 § 103; 1983 c 3 § 75; 1967 ex.s. c 119 § 35A.88.030.]

**Chapter 35A.90 RCW**  
**CONSTRUCTION**

## Sections

- 35A.90.010 Becoming code city—Rights, actions saved—Continuation of ordinances.  
35A.90.020 Invalidity of part of title not to affect remainder.  
35A.90.030 Title, chapter, section headings not part of law.  
35A.90.040 Effective date—1967 ex.s. c 119.  
35A.90.050 Severability—1971 ex.s. c 251.

**35A.90.010 Becoming code city—Rights, actions saved—Continuation of ordinances.** Unless otherwise provided by this title, the election by a city or town to become a code city and to be governed by this title shall not affect any right or liability either in favor of or against such city or town existing at the time, nor any civil or criminal proceeding involving or relating to such city or town; and all rights and property of every description which were vested in such city or town immediately prior to becoming a code city shall continue to be vested in such code city; and all charter provisions, ordinances, resolutions, rules, regulations, or orders lawfully in force in such city or town at the time of becoming a code city, and not inconsistent with or repugnant to this title, shall continue in force in such code city until amended or repealed as provided by law. [1967 ex.s. c 119 § 35A.90.010.]

**35A.90.020 Invalidity of part of title not to affect remainder.** If any provision, section, or chapter of this title or its application to any person or circumstance is held invalid, the remainder of the provision, section, chapter, or title, or the application thereof to other persons or circumstances is not affected. [1967 ex.s. c 119 § 35A.90.020.]

**35A.90.030 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title, do not constitute any part of the law. [1967 ex.s. c 119 § 35A.90.030.]

**35A.90.040 Effective date—1967 ex.s. c 119.** The effective date of this act shall be July 1, 1969. [1967 ex.s. c 119 § 35A.90.040.]

**35A.90.050 Severability—1971 ex.s. c 251.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 251 § 17.]

# Title 36

## COUNTIES

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*counties duty to maintain:* RCW 81.53.090.  
*county participation in grants for:* Chapter 81.53 RCW.
- Railroad signals, warning devices on county roads:* RCW 81.53.261 through 81.53.291.
- Reclamation and irrigation districts in United States reclamation areas, contract to bring county lands into:* RCW 89.12.110.
- Reclamation districts of one million acres, lands in more than one county:* RCW 89.30.004.
- Reforestation*  
*county exchange of land to block up holdings:* RCW 79.17.020, 79.17.060, and 79.17.070.  
*grants of county lands for:* RCW 79.22.040.
- Regional jail camps, county prisoners may be committed to:* RCW 72.64.100, 72.64.110.
- River and harbor improvements by counties jointly:* RCW 88.32.180 through 88.32.220.
- Rural housing projects:* Chapter 35.82 RCW.
- Savings and loan associations, counties as member:* RCW 33.20.060.
- Soft tree fruits commission law, counties constituting districts under:* RCW 15.28.010.
- Soil and water conservation districts, county may cooperate with:* RCW 89.08.341.
- State patrol retirement allowances exempt from county taxation:* RCW 43.43.310.
- State vehicle regulations precedence over local:* RCW 46.08.020.
- State's title to abandoned channels granted to counties:* RCW 86.13.110.
- Steamboat companies, county right to operate ferries, boats and wharves preserved:* RCW 81.84.010.
- Stock restricted areas in:* Chapter 16.24 RCW.
- Street railroads in counties:* Chapter 81.64 RCW.
- Superior court judges, each county entitled to:* State Constitution Art. 4 § 5, chapter 2.08 RCW.
- Surplus federal property, county may purchase:* RCW 39.32.010 through 39.32.060.
- Tax liens, foreclosure by county when city or town L.I.D. assessments on, rights of city or town:* RCW 35.49.130 through 35.49.160.
- Taxes*  
B & O, counties defined as person for purposes of: RCW 82.04.030.

*excise, state preempts field, which: RCW 82.02.020.*  
*federal payments in lieu of ad valorem property taxes to counties, distribution: Chapter 84.72 RCW.*

*for city and town purposes: State Constitution Art. 11 § 12.*  
*local, legislature not to impose: State Constitution Art. 11 § 12.*  
*motor vehicle fuel*

*counties as subject to: RCW 82.36.240.*  
*state preempts field: RCW 82.36.440.*

*property*

*acquisitions of county subject to lien of: RCW 84.60.050.*  
*county by, generally: Title 84 RCW.*  
*county held tax-title property as exempt: RCW 36.35.100.*  
*county-interstate bridge as exempt from: RCW 84.36.230.*  
*county lands sold on contract as taxable: RCW 84.40.230.*  
*county property as exempt from: RCW 84.36.010.*  
*county revaluation program: Chapter 84.41 RCW.*  
*county right of way easements as exempt from: RCW 84.36.210.*  
*excess levies authorized, county application: RCW 84.52.050 through 84.52.056.*  
*limitation on levies, county application: State Constitution Art. 7 § 2 (Amendments 55, 59); RCW 84.52.050.*  
*state, county liability for share of: State Constitution Art. 11 § 9.*

*Taxing district*

*county as: RCW 84.04.120.*  
*relief act, county application: Chapter 39.64 RCW.*

*Teletypewriter communications network, county participation: Chapter 43.89 RCW.*

*Toll roads, bridges and ferries (state), county participation and liability: Chapter 47.56 RCW.*

*Township organization in: State Constitution Art. 11 § 4 (Amendment 21).*

*Traffic*

*enforcement agencies, duty: Chapter 46.64 RCW.*  
*schools, county participation: Chapter 46.83 RCW.*

*Unfit dwellings, buildings and structures: Chapter 35.80 RCW.*

*Uniform system of accounting: Chapter 43.09 RCW.*

*Validation of bonds and financing proceedings: Chapter 39.90 RCW.*

*Vehicle wreckers' licensing, county to comply with: RCW 46.80.160.*

*Veterans*

*in business, peddling, county licensing limitations: RCW 73.04.050 through 73.04.060.*  
*indigent and deceased, burial as county responsibility: RCW 73.08.070.*  
*public officials duty as considered leave of absence: RCW 73.16.041.*  
*scoring criteria status in county employment reemployment: RCW 41.04.010, Chapter 73.16 RCW.*

*Veterans'*

*meeting hall, county may furnish free of charge: RCW 73.04.070.*  
*meeting place, rent from county funds: RCW 73.04.080.*  
*relief as county responsibility: Chapter 73.08 RCW.*

*Vital statistics, county as a primary registration area: RCW 70.58.010.*

*Wages*

*deductions and rebates, application to counties: Chapter 49.52 RCW.*  
*payment and collection of, county employee exclusion: RCW 49.48.080.*  
*rebates of on public works, penalty: RCW 49.52.090.*

*Warrants, interest rate on: RCW 39.56.020, 39.56.030.*

*Water pollution control, county application: Chapter 90.48 RCW.*

*Water rights*

*appropriation of by counties; procedure: Chapter 90.03 RCW.*  
*United States, county application: Chapter 90.40 RCW.*

*Wharves, counties may authorize and prescribe rates: RCW 88.24.020.*

*Workers' compensation, county coverage: RCW 51.12.050.*

*World fair or exposition, county participation: Chapter 35.60 RCW.*

acts in relation to all the property of the county. [1986 c 278 § 1; 1963 c 4 § 36.01.010. Prior: Code 1881 § 2653; 1863 p 538 § 1; 1854 p 329 § 1; RRS § 3982.]

**Severability—1986 c 278:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 278 § 65.]

**36.01.020 Corporate name.** The name of a county, designated by law, is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties. [1963 c 4 § 36.01.020. Prior: Code 1881 § 2654; RRS § 3983.]

**36.01.030 Powers—How exercised.** Its powers can only be exercised by the county commissioners, or by agents or officers acting under their authority or authority of law. [1963 c 4 § 36.01.030. Prior: Code 1881 § 2655; RRS § 3984.]

**36.01.040 Conveyances for use of county.** Every conveyance of lands, or transfer of other property, made in any manner for the use of any county, shall have the same force and effect as if made to the county in its proper and corporate name. [1963 c 4 § 36.01.040. Prior: Code 1881 § 2656; 1863 p 538 § 2; 1854 p 329 § 2; RRS § 3985.]

**36.01.050 Venue of actions by or against counties. (1)** All actions against any county may be commenced in the superior court of such county, or in the superior court of either of the two nearest judicial districts. All actions by any county shall be commenced in the superior court of the county in which the defendant resides, or in either of the two judicial districts nearest to the county bringing the action.

(2) The determination of the nearest judicial districts is measured by the travel time between county seats using major surface routes, as determined by the office of the administrator for the courts. [2000 c 244 § 1; 1997 c 401 § 1; 1963 c 4 § 36.01.050. Prior: 1854 p 329 § 6; No RRS.]

**36.01.060 County liable for certain court costs.** Each county shall be liable to pay the per diem and mileage, or other compensation in lieu thereof, to jurors of the county attending the superior court; the fees of the sheriff for maintaining prisoners charged with crimes, and the sheriff's costs in conveying them to and from the court, as well as their board while there; the per diem and mileage, or such other compensation as is allowed in lieu thereof, of the sheriff of the county, when in criminal cases the sheriff is required to attend or travel to the superior court out of the limits of the sheriff's county; the costs in criminal cases taken from the courts of limited jurisdiction to the superior court; but no such claims shall be paid by the treasurer unless the particular items are approved by the judge and certified by the clerk under the seal of the court. For the time or travel which may be paid by the parties or United States, no payment from the county shall be allowed, and no officer, juror, or witness shall receive from the county double pay as a per diem for the same time, or as traveling expenses or mileage for the same travel, in however many different capacities or in however many different causes they may be summoned, notified, or called

**36.01.010 Corporate powers.** The several counties in this state shall have capacity as bodies corporate, to sue and be sued in the manner prescribed by law; to purchase and hold lands; to make such contracts, and to purchase and hold such personal property, as may be necessary to their corporate or administrative powers, and to do all other necessary

upon to testify or attend in. [1987 c 202 § 200; 1963 c 4 § 36.01.060. Prior: Code 1881 § 2110; 1869 p 420 § 9; 1863 p 425 § 10; 1857 p 22 § 10; RRS § 508.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**36.01.070 Probation and parole services.** Notwithstanding the provisions of chapter 72.01 RCW or any other provision of law, counties may engage in probation and parole services and employ personnel therefor under such terms and conditions as any such county shall so determine. If a county elects to assume responsibility for the supervision of superior court misdemeanor offenders placed on probation under RCW 9.92.060 or 9.95.210, the county may contract with other counties to receive or provide such probation services. A county may also enter into partnership agreements with the department of corrections under RCW 72.09.300. [1996 c 298 § 7; 1967 c 200 § 9.]

**Severability—1967 c 200:** See note following RCW 9.45.122.

*Indeterminate sentences: Chapter 9.95 RCW.*

**36.01.080 Parking facilities—Construction, operation and rental charges.** Counties may construct, maintain, operate and collect rentals for parking facilities as a part of a courthouse or combined county-city building facility. [1969 ex.s. c 8 § 1.]

*Revenue bonds for parking facilities: RCW 36.67.520.*

**36.01.085 Economic development programs.** It shall be in the public purpose for all counties to engage in economic development programs. In addition, counties may contract with nonprofit corporations in furtherance of this and other acts relating to economic development. [1985 c 92 § 2.]

**36.01.090 Tourist promotion.** See RCW 36.32.450.

**36.01.095 Emergency medical services—Authorized—Fees.** Any county may establish a system of emergency medical service as defined by \*RCW 18.73.030(11). The county legislative authority may adopt by resolution procedures to collect reasonable fees in order to reimburse the county in whole or in part for its costs of providing such service: PROVIDED, That any county which provides emergency medical services supported by an excess levy may waive such charges for service: PROVIDED FURTHER, That whenever the county legislative authority determines that the county or a substantial portion of the county is not adequately served by existing private ambulance service, and existing private ambulance service cannot be encouraged to expand service on a contract basis, the emergency medical service that is established by the county shall not be deemed to compete with any existing private ambulance service as provided for in RCW 36.01.100. [1975 1st ex.s. c 147 § 1.]

**\*Reviser's note:** RCW 18.73.030 was amended by 2000 c 93 § 16, changing subsection (11) to subsection (9).

**36.01.100 Ambulance service authorized—Restriction.** The legislative authority of any county may by appropriate legislation provide for the establishment of a system of ambulance service for the entire county or for portions thereof, and award contracts for ambulance service: PRO-

VIDED, That such legislation may not provide for the establishment of any system which would compete with any existing private system. [1972 ex.s. c 89 § 1.]

**36.01.104 Levy for emergency medical care and services.** See RCW 84.52.069.

**36.01.105 Fire protection, ambulance or other emergency services provided by municipal corporation within county—Financial and other assistance authorized.** See RCW 36.32.470.

**36.01.110 Federal grants and programs—Powers and authority of counties to participate in—Public corporations, commissions or authorities.** See RCW 35.21.730 through 35.21.755.

**36.01.115 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.** See chapter 80.58 RCW.

**36.01.120 Foreign trade zones—Legislative finding, intent.** It is the finding of the legislature that foreign trade zones serve an important public purpose by the creation of employment opportunities within the state and that the establishment of zones designed to accomplish this purpose is to be encouraged. It is the further intent of the legislature that the department of community, trade, and economic development provide assistance to entities planning to apply to the United States for permission to establish such zones. [1995 c 399 § 40; 1985 c 466 § 44; 1977 ex.s. c 196 § 5.]

**Effective date—Severability—1985 c 466:** See notes following RCW 43.31.125.

**Effective date—1977 ex.s. c 196:** See note following RCW 24.46.010.

**36.01.125 Foreign trade zones—Authority to apply for permission to establish, operate and maintain.** A county, as zone sponsor, may apply to the United States for permission to establish, operate, and maintain foreign trade zones: PROVIDED, That nothing herein shall be construed to prevent these zones from being operated and financed by a private corporation(s) on behalf of such county acting as zone sponsor. [1977 ex.s. c 196 § 6.]

**Effective date—1977 ex.s. c 196:** See note following RCW 24.46.010.

**36.01.130 Controls on rent for residential structures—Prohibited—Exceptions.** The imposition of controls on rent is of statewide significance and is preempted by the state. No county may enact, maintain or enforce ordinances or other provisions which regulate the amount of rent to be charged for single family or multiple unit residential rental structures or sites other than properties in public ownership, under public management, or properties providing low-income rental housing under joint public-private agreements for the financing or provision of such low-income rental housing. This section shall not be construed as prohibiting any county from entering into agreements with private persons which regulate or control the amount of rent to be charged for rental properties. [1991 c 363 § 43; 1981 c 75 § 2.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Applicability to floating home moorage sites—Severability—1981 c 75:** See notes following RCW 35.21.830.

**36.01.150 Facilitating recovery from Mt. St. Helens eruption—Scope of local government action.** All entities of local government and agencies thereof are authorized to take action as follows to facilitate recovery from the devastation of the eruption of Mt. St. Helens:

(1) Cooperate with the state, state agencies, and the United States Army Corps of Engineers and other agencies of the federal government in planning dredge site selection and dredge spoils removal;

(2) Counties and cities may re-zone areas and sites as necessary to facilitate recovery operations;

(3) Counties may manage and maintain lands involved and the deposited dredge spoils; and

(4) Local governments may assist the Army Corps of Engineers in the dredging and dredge spoils deposit operations. [1982 c 7 § 3.]

**Severability—1982 c 7:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 7 § 11.]

*Facilitating recovery from Mt. St. Helens eruption—Legislative findings—Purpose: RCW 43.01.200.*

*Scope of state agency action: RCW 43.01.210.*

**36.01.160 Penalty for act constituting a crime under state law—Limitation.** Except as limited by the maximum penalty authorized by law, no county may establish a penalty for an act that constitutes a crime under state law that is different from the penalty prescribed for that crime by state statute. [1993 c 83 § 2.]

**Effective date—1993 c 83:** See note following RCW 35.21.163.

**36.01.170 Administration of trusts benefiting school districts.** Any county authorized by territorial law to administer moneys held in trust for the benefit of school districts within the county, which moneys were bequeathed for such purposes by testamentary provision, may dissolve any trust, the corpus of which does not exceed fifty thousand dollars, and distribute any moneys remaining in the trust to school districts within the county. Before dissolving the trust, the county must adopt a resolution finding that conditions have changed and it is no longer feasible for the county to administer the trust. [1998 c 65 § 1.]

**36.01.180 Zoo and aquarium advisory authority—Constitution—Terms.** (1) For any county in which a proposition authorized by RCW 82.14.400 has been passed, there shall be created a zoo and aquarium advisory authority.

(2) The initial board of the authority shall be constituted as follows:

(a) Three members appointed by the county legislative authority to represent unincorporated areas;

(b) Two members appointed by the legislative authority of the city with the largest population within the county; and

(c) Two members jointly appointed by the legislative authorities of the remaining cities within the county repre-

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senting at least sixty percent of the combined populations of those cities.

(3) Board members shall hold office for whatever terms are determined by their appointing authorities, except that no term may be less than one year nor more than three years, in duration. However, a vacancy may be filled by an appointment for a term less than twelve months in duration. [1999 c 104 § 4.]

**36.01.190 Initial meeting of zoo and aquarium advisory authority—Expenditure of funds—Powers.** (1) Upon certification by the county auditor or, in the case of a home rule county, upon certification by the chief elections officer, that a proposition authorized under the terms of RCW 82.14.400 has received a majority of votes cast on the proposition, the county legislative authority shall convene an initial meeting of the zoo and aquarium advisory authority.

(2) Consistent with any agreement between the local governments specified in RCW 82.14.400(1) in requesting an election, the zoo and aquarium advisory authority has authority to expend such funds as it may receive on those purposes set out in RCW 82.14.400(4). In addition, and consistent with any limitation placed on the powers of the authority in such an agreement, the zoo and aquarium advisory authority may exercise the following powers:

(a) Acquire by purchase, gift, or grant and lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of any zoo, aquarium, and wildlife preservation and display facilities and properties, together with all lands, rights-of-way, property, equipment, and accessories necessary for those facilities;

(b) Contract with the United States or any agency thereof, any state or agency thereof, any metropolitan municipal corporation, any other county, city, special district, or governmental agency, and any private person, firm, or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction, operation, or maintenance of zoo, aquarium, and wildlife preservation and display facilities;

(c) Contract with any governmental agency or with a private person, firm, or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands, and rights-of-way of all kinds which are owned, leased, or held by the other party, and for the purpose of planning, constructing, or operating any facility or performing any service related to zoos, aquariums, and wildlife preservation and display facilities;

(d) Fix rates and charges for the use of those facilities;

(e) Sue and be sued in its corporate capacity in all courts and in all proceedings. [1999 c 104 § 3.]

**36.01.200 Federal funds designated for state schools—Use limited to reduction of outstanding debt obligations of school districts.** The county legislative authority of any county that receives payment in lieu of taxes and payment equal to tax funds from the United States department of energy under section 168 of the federal atomic energy act of 1954 and nuclear waste policy act of 1982 and that has an agreed settlement or a joint stipulation dated

before January 1, 1998, which agreed settlement or joint stipulation includes funds designated for state schools, may direct the county treasurer to distribute those designated funds to reduce the outstanding debt of the school districts within the county. Any such funds shall be divided among the school districts based upon the same percentages that each district's current assessed valuation is of the total assessed value for all eligible school districts if the district has outstanding debt that equals or exceeds the amount of its distribution. If the district does not have outstanding debt that equals or exceeds the amount of its distribution, any amount above the outstanding debt shall be reallocated to the remaining eligible districts. Any funds received before January 1, 1999, shall be distributed using the percentages calculated for 1998. The county treasurer shall apply the funds to any outstanding debt obligation selected by the respective school districts. [1999 c 19 § 1.]

**36.01.210 Rail fixed guideway system—Safety and security program plan.** (1) Each county functioning under chapter 36.56 RCW that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the county's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the county shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each county functioning under chapter 36.56 RCW shall implement and comply with its system safety and security program plan. The county shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The county shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each county shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The county shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the report-

able accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.17 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption. [1999 c 202 § 3.]

**Effective date—1999 c 202:** See note following RCW 35.21.228.

**36.01.220 Mobile home, manufactured home, or park model moving or installing—Copies of permits—Definitions.**

(1) A county shall transmit a copy of any permit issued to a tenant or the tenant's agent for a mobile home, manufactured home, or park model installation in a mobile home park to the landlord.

(2) A county shall transmit a copy of any permit issued to a person engaged in the business of moving or installing a mobile home, manufactured home, or park model in a mobile home park to the tenant and the landlord.

(3) As used in this section:

(a) "Landlord" has the same meaning as in RCW 59.20.030;

(b) "Mobile home park" has the same meaning as in RCW 59.20.030;

(c) "Mobile or manufactured home installation" has the same meaning as in RCW 43.63B.010; and

(d) "Tenant" has the same meaning as in RCW 59.20.030. [1999 c 359 § 20.]

**Effective date—1999 c 359:** See RCW 59.20.901.

**36.01.225 Authority to regulate placement or use of homes—Regulation of manufactured homes.** (*Effective July 1, 2005.*)

(1) A county may not enact any statute or ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site built homes, factory built homes, or homes built to any other state construction or local design standard. However, any county may require that (a) a manufactured home be a new manufactured home; (b) the manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative; (c) the manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located; (d) the home is thermally equivalent to the state energy code; and (e) the manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160.

(2) This section does not override any legally recorded covenants or deed restrictions of record.

(3) This section does not affect the authority granted under chapter 43.22 RCW. [2004 c 256 § 4.]

**Findings—Intent—Effective date—2004 c 256:** See notes following RCW 35.21.684.

**36.01.230 Cooperative watershed management.** A county may, acting through the county legislative authority, participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 8.]

**Finding—Intent—2003 c 327:** See note following RCW 39.34.190.

**Chapter 36.04 RCW  
COUNTY BOUNDARIES**

Sections

- 36.04.010 Adams county.
- 36.04.020 Asotin county.
- 36.04.030 Benton county.
- 36.04.040 Chelan county.
- 36.04.050 Clallam county.
- 36.04.060 Clark county.
- 36.04.070 Columbia county.
- 36.04.080 Cowlitz county.
- 36.04.090 Douglas county.
- 36.04.100 Ferry county.
- 36.04.110 Franklin county.
- 36.04.120 Garfield county.
- 36.04.130 Grant county.
- 36.04.140 Grays Harbor county.
- 36.04.150 Island county.
- 36.04.160 Jefferson county.
- 36.04.170 King county.
- 36.04.180 Kitsap county.
- 36.04.190 Kittitas county.
- 36.04.200 Klickitat county.
- 36.04.210 Lewis county.
- 36.04.220 Lincoln county.
- 36.04.230 Mason county.
- 36.04.240 Okanogan county.
- 36.04.250 Pacific county.
- 36.04.260 Pend Oreille county.
- 36.04.270 Pierce county.
- 36.04.280 San Juan county.
- 36.04.290 Skagit county.
- 36.04.300 Skamania county.
- 36.04.310 Snohomish county.
- 36.04.320 Spokane county.
- 36.04.330 Stevens county.
- 36.04.340 Thurston county.
- 36.04.350 Wahkiakum county.
- 36.04.360 Walla Walla county.
- 36.04.370 Whatcom county.
- 36.04.380 Whitman county.
- 36.04.390 Yakima county.
- 36.04.400 Survey of county boundaries.

**Reviser's note:** For the reasons set out in the second paragraph of the explanatory note appended to chapter 4, Laws of 1963, the session laws comprising chapter 36.04 RCW were neither repealed nor reenacted in the 1963 reenactment of Title 36 RCW. Pending reenactment of this chapter, it is herein republished as revised by the 1941 code committee; for rules of construction concerning such revision, see RCW 1.04.020 and 1.04.021.

**36.04.010 Adams county.** Adams county shall consist of the territory bounded as follows, to wit: Beginning at the northwest corner of township fourteen north, range twenty-eight east of the Willamette Meridian; running thence north to the fourth standard parallel; thence east to the Columbia River Guide Meridian; thence north to the fifth standard parallel; thence east on said parallel to the line between the ranges thirty-eight and thirty-nine; thence south on said line to where it intersects the Palouse river in township sixteen; thence down said river to where the line between townships

fourteen and fifteen crosses said river; thence west on said line to place of beginning. [1883 p 93 § 1; RRS § 3924.]

**36.04.020 Asotin county.** Asotin county shall consist of the territory bounded as follows, to wit: Commencing at a point in the channel of Snake river on the township line between ranges forty-four and forty-five east, Willamette Meridian; thence running south to the northwest corner of section thirty, township eleven north, range forty-five east, Willamette Meridian; thence west six miles; south one mile; west two miles; south one mile; west one mile to the northwest corner of section three in township ten north, of range forty-three east, Willamette Meridian; thence south eighteen miles; thence west three miles; thence south to the Oregon line; thence east on said line to the midchannel of Snake river; thence down the midchannel of Snake river to the place of beginning. [1883 p 96 § 1; RRS § 3925.]

**36.04.030 Benton county.** Benton county shall consist of the territory bounded as follows, to wit: Beginning at the point of intersection of the middle of the main channel of the Columbia river with the township line between township thirteen north, range twenty-three east, and township thirteen north, range twenty-four east, Willamette Meridian; thence running south along the township line, being the line between range twenty-three east and range twenty-four east to the line between Yakima county and Klickitat county; thence south along the township lines, being the lines between ranges twenty-three east and twenty-four east, to the point of intersection with the middle of the main channel of the Columbia river, or to its intersection with the line between the states of Washington and Oregon; thence northeasterly, northerly and northwesterly and westerly along the middle of the main channel of the Columbia river and up said stream to the place of beginning. [1905 c 89 § 1; RRS § 3926.]

**36.04.040 Chelan county.** Chelan county shall consist of the territory bounded as follows, to wit: Beginning at the point of intersection of the middle of the main channel of the Columbia river with the fifth standard parallel north, thence running west along said fifth standard parallel north to the point where said fifth standard parallel north intersects the summit of the main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers, and the waters flowing southerly and westerly into the Yakima river, thence in a general northwesterly direction along the summit of said main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the waters flowing southerly and westerly into the Yakima river, following the course of the center of the summit of the watershed dividing the said respective waters, to the center of the summit of the Cascade mountains, at the eastern boundary line of King county; thence north along the east boundary lines of King, Snohomish and Skagit counties to the point upon the said east boundary of Skagit county, where said boundary is intersected by the watershed between the waters flowing northerly and easterly into the Methow river and the waters flowing southerly and westerly into Lake Chelan, thence in a general southeasterly direction along the summit of the main divide between the waters flow-

ing northerly and easterly into the Methow river and the waters flowing westerly and southerly into Lake Chelan and its tributaries; following the course of the center of the summit of the watershed dividing said respective waters, to the point where the seventh standard parallel north intersects said center of the summit of said watershed; thence east along the said seventh standard parallel north to the point of intersection of the middle of the main channel of the Columbia river with said seventh standard parallel north; thence down the middle of the main channel of the Columbia river to the point of beginning. [1899 c 95 § 1; RRS § 3928.]

**36.04.050 Clallam county.** Clallam county shall consist of the territory bounded as follows, to wit: Commencing at the northwest corner of Jefferson county at a point opposite the middle of the channel between Protection Island and Diamond Point on the west of Port Discovery Bay; thence following up the middle of said channel to a point directly east of the mouth of Eagle creek; thence west to the mouth of Eagle creek; thence one mile west from the mouth of said creek; thence south to the north boundary line of township twenty-seven north, range two west; thence west to the west boundary of the state in the Pacific Ocean; thence northerly along said boundary to a point marking the north terminus of the west boundary of the state in the Pacific Ocean opposite the Strait of Juan de Fuca; thence easterly along said Strait of Juan de Fuca, where it forms the boundary between the state and British possessions, to the place of beginning. [(i) 1869 p 292 § 1; 1867 p 45 § 1; 1854 p 472 § 1; RRS § 3929. (ii) 1925 ex.s. c 40 § 1; RRS § 3963-1.]

**36.04.060 Clark county.** Clark county shall consist of the territory bounded as follows, to wit: Commencing at the Columbia river opposite the mouth of Lewis river; thence up Lewis river to the forks of said river; thence up the north fork of Lewis river to where said north fork of Lewis river intersects the range line between ranges four and five east; thence due south to the Columbia river; thence with the main channel of said river to the place of beginning. [(i) 1873 p 561 § 1; 1871 p 153 § 1; 1869 p 295 § 1; RRS § 3930. (ii) 1925 ex.s. c 51 § 1; RRS § 3930-1.]

**36.04.070 Columbia county.** Columbia county shall consist of the territory bounded as follows, to wit: Commencing at a point in the middle of the channel of Snake river, where the range line between ranges thirty-six and thirty-seven east of the Willamette Meridian intersects said point; thence south on said range line to the northwest corner of township nine north, range thirty-seven east; thence east on the north boundary line of township nine north, range thirty-seven east, to the northeast corner of said township; thence south on the line between ranges thirty-seven and thirty-eight east of the Willamette Meridian, to the northwest corner of township eight north, range thirty-eight east; thence along the north boundary line of township eight north, range thirty-eight east, to the northeast corner of said township; thence due south to the line dividing the state of Washington from the state of Oregon; thence due east on said dividing line to the range line between ranges forty-one and forty-two east; thence north on said range line to the corner of sections

thirteen, eighteen, nineteen and twenty-four, township ten north, ranges forty-one and forty-two east; thence west three miles; thence north three miles; thence west one mile; thence north one mile; thence west one mile; thence north three miles; thence west one mile; thence north to the southwest corner of township twelve north, range forty-one east; thence west on township line six miles; thence north on range line between ranges thirty-nine and forty to a point in the mid-channel of Snake river; thence down the midchannel of said river to the place of beginning. [(i) 1 H.C. §6; 1875 p 133 § 1; RRS § 3931. (ii) 1879 p 226 § 1; RRS § 3960-1. (iii) 1881 p 175 § 1; RRS § 3936.]

**36.04.080 Cowlitz county.** Cowlitz county shall consist of the territory bounded as follows, to wit: Commencing at the Columbia river opposite the mouth of Lewis river; thence up Lewis river to the forks of said river; thence up the north fork of Lewis river to where said north fork of Lewis river intersects the range line between ranges four and five east; thence north to the line between townships ten and eleven north; thence west to the first section line east of the range line between ranges four and five west; thence south on said line to the Columbia river, and up the Columbia river to the place of beginning. [1873 p 561 § 1; 1871 p 153 § 1; 1869 p 295 § 1; 1867 p 48 § 1; 1855 p 39; 1854 p 471 § 1; RRS § 3932.]

**36.04.090 Douglas county.** Douglas county shall consist of the territory bounded as follows, to wit: Beginning at the point where the Columbia Guide Meridian intersects the Columbia river on the northern boundary of Lincoln county; thence running south on said Columbia Guide Meridian to the township line between townships sixteen and seventeen north; thence running west on said township line to the range line between ranges twenty-seven and twenty-eight east; thence south on said range line to the section line between sections twenty-four and twenty-five in township fourteen north, range twenty-seven east; thence west on said section line to the midchannel of the Columbia river; thence up said channel of said river to the place of beginning, excepting therefrom the territory hereinafter constituted as Grant county. [1883 p 95 § 1; RRS § 3933. (Grant county, 1909 c 17 § 1; RRS § 3937.)]

**36.04.100 Ferry county.** Ferry county shall consist of the territory bounded as follows, to wit: Commencing at the point where the east boundary line of Okanogan county intersects the Columbia river; thence up the midchannel of the Columbia river to the mouth of Kettle river; thence up the midchannel of Kettle river to the boundary line between the United States and British Columbia; thence westerly along the said boundary line to the intersection thereof with the said east boundary line of Okanogan county; thence southerly along the said boundary line to the place of beginning. [1899 c 18 § 1; RRS § 3934.]

**36.04.110 Franklin county.** Franklin county shall consist of the territory bounded as follows, to wit: Beginning at a point where the midchannel of the Snake river intersects that of the Columbia river, and running thence up the Colum-

bia river to a point where the section line between sections twenty-one and twenty-eight, township fourteen north, range twenty-seven east, Willamette Meridian, strikes the main body of the Columbia river, on the east side of the island; thence east on said section line to range line between ranges twenty-seven and twenty-eight east; thence north on said range line to the north boundary of township fourteen; thence east on said north boundary of township fourteen to the Palouse river; thence down said river to midchannel of Snake river; thence down Snake river to place of beginning. [1883 p 87 § 1; RRS § 3935.]

**36.04.120 Garfield county.** Garfield county shall consist of the territory bounded as follows, to wit: Commencing at a point in the midchannel of Snake river on range line between ranges thirty-nine and forty east, W.M.; thence on said line south to the southwest corner of township twelve north, range forty; thence east on township line six miles; thence south to the southwest corner of section seven, township eleven north, range forty-one east; thence east one mile; thence south three miles; thence east one mile; thence south one mile; thence east one mile; thence south three miles; thence east three miles; thence south on township line to the Oregon line; thence due east on said line six miles to the southwest corner of Asotin county; thence northerly following the westerly boundary of Asotin county to a point where the same intersects the midchannel of Snake river; thence down the said midchannel of Snake river to the point of beginning. [1883 p 96 § 1; 1881 p 175 § 1; RRS § 3936.]

**36.04.130 Grant county.** Grant county shall consist of the territory bounded as follows, to wit: Beginning at the southeast corner of township seventeen north, range thirty east of the Willamette Meridian, thence running west on the township line between townships sixteen and seventeen to the range line between ranges twenty-seven and twenty-eight; thence south on said range line to the section line between sections twenty-four and twenty-five in township fourteen north, range twenty-seven east; thence west on said section line to the midchannel of the Columbia river; thence up the channel of the river to a point, thence at right angles to the course of said channel to the meander corner of section thirteen, township twenty north, range twenty-two east Willamette Meridian, and section eighteen, township twenty north, range twenty-three east Willamette Meridian; thence north along the range line between ranges twenty-two and twenty-three to the northwest corner of section eighteen, township twenty-one north, range twenty-three east Willamette Meridian; thence east one mile to the southeast corner section seven, township twenty-one, range twenty-three east; north one mile to the northwest corner section eight, township twenty-one, range twenty-three east; east one mile to the southeast corner of section five, township twenty-one, range twenty-three east; north one mile to the northeast corner section five, township twenty-one, range twenty-three east; east one mile to the northeast corner of section four, township twenty-one, range twenty-three east; north one mile to the southeast corner section twenty-eight, township twenty-two, range twenty-three east; east one mile to the southeast corner section twenty-seven, township twenty-two,

range twenty-three east; north two miles to the northeast corner of section twenty-two, township twenty-two, range twenty-three east; east one mile to the southeast corner of section fourteen, township twenty-two, range twenty-three east; north one mile to the southeast corner section eleven, township twenty-two, range twenty-three east; east one mile to the southeast corner of section twelve, township twenty-two, range twenty-three east; north two miles to the northwest corner of section six, township twenty-two north, range twenty-four east; east sixteen miles to the northeast corner of section three, township twenty-two north, range twenty-six east; north six miles to the northeast corner of section three, township twenty-three north, range twenty-six east; east one mile to the northeast corner of section two, township twenty-three north, range twenty-six east; north one mile to the northeast corner of section thirty-five, township twenty-four north, range twenty-six east; east one mile to the southeast corner of section twenty-five, township twenty-four north, range twenty-six east; north one mile to the southeast corner of section twenty-four, township twenty-four north, range twenty-six east; east one mile to the southeast corner of section nineteen, township twenty-four north, range twenty-seven east; north one mile to the southeast corner of section eighteen, township twenty-four north, range twenty-seven east; east one mile to the southeast corner of section seventeen, township twenty-four north, range twenty-seven east; north one mile to the southeast corner of section eight, township twenty-four north, range twenty-seven east; east one mile to the southeast corner of section nine, township twenty-four north, range twenty-seven east; north one mile to the southeast corner of section four, township twenty-four north, range twenty-seven east; east one mile to the southeast corner of section three, township twenty-four, range twenty-seven east; north one mile to the northeast corner of section three, township twenty-four, range twenty-seven east; east three miles to the southeast corner of section thirty-one, township twenty-five north, range twenty-eight east; north one mile to the southeast corner of section thirty, township twenty-five north, range twenty-eight east; east one mile to the southeast corner of section twenty-nine, township twenty-five north, range twenty-eight east; north three miles to the southeast corner of section eight, township twenty-five north, range twenty-eight east; east one mile to the southeast corner of section nine, township twenty-five north, range twenty-eight east; north four miles to the southeast corner of section twenty-one, township twenty-six north, range twenty-eight east; east one mile to the southeast corner of section twenty-two, township twenty-six north, range twenty-eight east; north one mile to the southeast corner of section fifteen, township twenty-six north, range twenty-eight east; east one mile to the southeast corner of section fourteen, township twenty-six north, range twenty-eight east; north two miles to the southeast corner of section two, township twenty-six north, range twenty-eight east; east one mile to the southeast corner of section one, township twenty-six north, range twenty-eight east; north two miles to the southeast corner of section twenty-five, township twenty-seven north, range twenty-eight east; east one mile to the southeast corner of section thirty, township twenty-seven north, range twenty-nine east; north six miles to the southeast corner of section thirty, township twenty-eight north, range twenty-nine east;

east one mile to the southeast corner of section twenty-nine, township twenty-eight north, range twenty-nine east; north one mile to the southeast corner of section twenty, township twenty-eight north, range twenty-nine east; east two miles to the southeast corner of section twenty-two, township twenty-eight north, range twenty-nine east; north one mile to the southeast corner of section fifteen, township twenty-eight north, range twenty-nine east; east one mile to the southeast corner of section fourteen, township twenty-eight north, range twenty-nine east; north two miles to the southeast corner of section two, township twenty-eight north, range twenty-nine east; east one mile to the southeast corner of section one, township twenty-eight north, range twenty-nine east; north one mile to the northeast corner of section one, township twenty-eight north, range twenty-nine east; thence east along township line between townships twenty-eight and twenty-nine to the midchannel of the Columbia river; thence up said channel of said river to the point where the Columbia Guide Meridian intersects said channel; thence running south on said Columbia Guide Meridian to the place of beginning. [1909 c 17 § 1; RRS § 3937.]

**36.04.140 Grays Harbor county.** Grays Harbor county shall consist of the territory bounded as follows, to wit: Commencing at the northeast corner of Pacific county; thence west to the west boundary of the state in the Pacific Ocean; thence northerly along said boundary, including Gray's Harbor, to a point opposite the mouth of Queets river; thence east to the west boundary line of Mason county; thence south to the northeast corner of township eighteen north, range seven west; thence east fourteen miles to the southeast corner of section thirty-two, township nineteen north, range four west; thence south six miles to the southeast corner of section thirty-two in township eighteen north, range four west; thence east two miles to the southeast corner of section thirty-four in the same township; thence south to a point due east of the northeast corner of Pacific county; thence west to the place of beginning. [(i) 1 H.C. §3; 1873 p 482 § 1; 1869 p 296 § 1; RRS § 3927. (ii) 1915 c 77 § 1; RRS § 3938. (iii) 1925 ex.s. c 40 § 1; RRS § 3963-1.]

**36.04.150 Island county.** Island county shall consist of all of the islands known as Whidbey, Camano, Smith's Deception and Ure's and shall extend into the adjacent channels to connect with the boundaries of adjoining counties as defined by statute. [1891 c 119 p 217 § 1; 1877 p 425 §§ 1, 2; 1869 p 292 § 1; 1868 p 68 § 1; 1867 p 46 § 1; RRS § 3939.]

**36.04.160 Jefferson county.** Jefferson county shall consist of the territory bounded as follows, to wit: Commencing at the middle of the channel of Admiralty Inlet due north of Point Wilson; thence westerly along the Strait of Juan de Fuca to the north of Protection Island, to a point opposite the middle of the channel between Protection Island and Diamond Point on the west of Port Discovery Bay; thence following up the middle of said channel to a point direct east of the mouth of Eagle creek; thence west to the mouth of Eagle creek; thence one mile west from the mouth of said creek; thence south to the summit of the Olympic range of mountains, it being the southeast corner of Clallam

county, on the north boundary line of township twenty-seven north, range two west; thence west to the west boundary of the state in the Pacific Ocean; thence southerly along said west boundary to a point opposite the mouth of the Queets river; thence east to the range line dividing ranges six and seven west; thence north on said range line to the sixth standard parallel; thence east to the middle of the channel of Hood Canal; thence northerly along said channel to the middle of the channel of Admiralty Inlet; thence northerly following the channel of said inlet to a point due north of Point Wilson and place of beginning. [(i) 1 H.C. §12; 1877 p 406 § 1; 1869 p 292 § 1; RRS § 3940. (ii) 1925 ex.s. c 40 § 1; RRS § 3963-1.]

**36.04.170 King county.** King county shall consist of the territory bounded as follows, to wit: Beginning at the point of intersection of the center of East Passage (also known as Admiralty Inlet) on Puget Sound and the northerly line of the Puyallup Indian Reservation (projected northwesterly); thence southeasterly in a straight line along said northerly line of Puyallup Indian Reservation and same extended to a point on the east line of section thirty-one, township twenty-one, north, range four east, Willamette Meridian; thence south along said east line of section thirty-one, township twenty-one, range four east, Willamette Meridian, to the township line between township twenty north and township twenty-one north (being the fifth standard parallel north); thence east along said township line between township twenty north and township twenty-one north to the middle of the main channel of White river, near the northeast corner of section three, township twenty north, range five east, Willamette Meridian; thence upstream along the middle of the main channel of White river to the forks of White river and Greenwater river; thence upstream along the middle of the main channel of the Greenwater river to the forks of the Greenwater river and Meadow creek; thence upstream along the middle of the main channel of Meadow creek to the summit of the Cascade mountains, at a point known as Naches Pass, said point lying in the southwest quarter of section thirty-five, township nineteen north, range eleven east, Willamette Meridian; thence northerly along the summit of the Cascade mountains to a point on the township line between township twenty-six north and township twenty-seven north, said point lying near the north quarter-corner of section three, township twenty-six north, range thirteen east, Willamette Meridian; thence west along said township line between township twenty-six north and twenty-seven north to the middle of the channel known as Admiralty Inlet on Puget Sound; thence southerly along said middle of channel known as Admiralty Inlet through Colvo's Passage (West Passage) on the west side of Vashon Island to a point due north of Point Defiance; thence southeasterly along middle of channel between Vashon Island and Point Defiance (Dalcos Passage) to a point due south of Quartermaster Harbor; thence northeasterly along middle of channel known as Admiralty Inlet to point of beginning. [1 H.C. §13; 1869 p 293 § 1; 1867 p 46 § 1; 1854 p 470 § 1; RRS § 3941.]

**Reviser's note:** Change in boundary by virtue of election in 1901 under chapter 36.08 RCW incorporated herein.

**36.04.180 Kitsap county.** Kitsap county shall consist of the territory bounded as follows, to wit: Commencing in the middle of Colvo's Passage at a point due east of the meander post between sections nine and sixteen, on west side of Colvo's Passage, in township twenty-two north, range two east; thence west on the north boundary line of sections sixteen, seventeen and eighteen, to the head of Case's Inlet; thence north along the east boundary of Mason county through the center of townships twenty-two and twenty-three, range one west, to the north line of said township twenty-three; thence due west to the middle of the channel of Hood Canal; thence along said channel to the middle of the main channel of Admiralty Inlet; thence following the main channels of said inlet and Puget Sound up to the middle of Colvo's Passage; thence following the channel of said passage to the place of beginning. [1877 p 406 § 1; 1869 p 293 § 1; 1867 p 46 § 1; 1858 p 51 § 1; RRS § 3942.]

**36.04.190 Kittitas county.** Kittitas county shall consist of the territory bounded as follows, to wit: Commencing at a point where the main channel of the Columbia river crosses the township line between township fourteen and fifteen north, range twenty-three east of the Willamette Meridian, and running thence west on said township line to the range line between ranges eighteen and nineteen east; thence north on said range line six miles, or to the township line between the townships fifteen and sixteen north; thence west on said township line to the range line between ranges seventeen and eighteen east; thence north to the township line between townships sixteen and seventeen north; thence west along said township line and a line prolonged due west to the Naches river; and thence northerly along the main channel of the Naches river to the summit of the Cascade mountains, or to the eastern boundary of King county; thence north along the eastern boundary of King county to the point where such boundary intersects the summit of the main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the water flowing southerly and westerly into the Yakima river; thence in a general southeasterly direction along the summit of such main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the waters flowing southerly and westerly into the Yakima river, following the course of the center of the summit of the watershed dividing such respective waters, to the fifth standard parallel north; thence east along the fifth standard parallel north to the middle of the main channel of the Columbia river; thence down the main channel of the Columbia to the place of beginning. [1899 c 95 § 1; 1886 p 168 § 1; 1883 p 90 § 1; RRS § 3943.]

**36.04.200 Klickitat county.** Klickitat county shall consist of the territory bounded as follows, to wit: Commencing at a point in the midchannel of the Columbia river opposite the mouth of the White Salmon river; thence up the channel of the White Salmon river as far north as the southern boundary of township four north, range ten east of Willamette Meridian; thence due west on the township line to range nine east of Willamette Meridian; thence north following said range line to where it intersects the south boundary of Yakima county projected; thence east along the north boundary of township six north until that line intersects the range

line between range twenty-three east and range twenty-four east; thence south along such range line to the Columbia river; thence down the Columbia river, midchannel, to the place of beginning. [1905 c 89 § 1; 1 H.C. §17; 1881 p 187 § 1; 1873 p 571 § 1; 1869 p 296 § 1; 1868 p 60 § 1; 1867 p 49 § 1; 1861 p 59 § 1; 1859 p 420 § 1; RRS § 3944.]

**36.04.210 Lewis county.** Lewis county shall consist of the territory bounded as follows, to wit: Beginning at the northwest corner of section eighteen, township fifteen north, range five west; thence south along the west boundary of range five west to the southwest corner of township eleven north, range five west; thence east along the south boundary of township eleven north to the summit of the Cascade mountains; thence northerly along said summit to a point due east of the head of Nisqually river; thence west to the head of the Nisqually river; thence westerly down the channel of the river to a point two miles north of the line between townships fourteen and fifteen north; thence west to the northwest corner of section twenty-six, township fifteen north, range four west; thence north two miles to the northwest corner of section fourteen, township fifteen north, range four west; thence west to place of beginning. [1 H.C. §§18, 19; 1888 p 73 § 1; 1879 p 213 § 1; 1869 p 295 § 1; 1867 p 48 § 1; 1861 p 33 § 1; RRS § 3945.]

**36.04.220 Lincoln county.** Lincoln county shall consist of the territory bounded as follows, to wit: Beginning at the point in township twenty-seven north, where the Colville Guide Meridian between ranges thirty-nine and forty east, Willamette Meridian, intersects the Spokane river, and running thence south along said meridian line to the township line between townships twenty and twenty-one north; thence west along said township line to its intersection with the Columbia Guide Meridian between ranges thirty and thirty-one east, Willamette Meridian; thence north along said meridian line to a point where it intersects the midchannel of the Columbia river; thence up said river in the middle of the channel thereof to the mouth of the Spokane river; thence up the Spokane river, in the middle of the channel thereof, to the place of beginning. [1883 p 89 § 1; 1883 p 95 § 1; RRS § 3946.]

**36.04.230 Mason county.** Mason county shall consist of the territory bounded as follows, to wit: Commencing in middle of the main channel of Puget Sound where it is intersected in the midchannel of Case's Inlet; thence westerly along the midchannel of Puget Sound, via Dana's Passage, into Totten's Inlet, and up said inlet to its intersection by section line between sections twenty-eight and twenty-nine, township nineteen north, range three west of the Willamette Meridian; thence south to the southwest corner of section thirty-three in township nineteen north, range three west; thence west along the township line dividing townships eighteen and nineteen, twenty miles, to the township line dividing ranges six and seven west, of the Willamette Meridian, which constitutes a part of the east boundary line of Grays Harbor county; thence north along said township line to the sixth standard parallel; thence east along said parallel line to the middle of the channel of Hood Canal; thence southerly along

said midchannel to a point due west of the intersection of the shore line of said Hood Canal by the township line between townships twenty-three and twenty-four; thence east along said township line to the line dividing sections three and four in said township twenty-three north, range one west of the Willamette Meridian; thence south along said section line to the head of Case's Inlet; thence south by the midchannel of said inlet to the place of beginning. [1877 p 406 § 1; 1869 p 293 § 1; 1867 p 45 § 1; 1864 p 71 § 1; 1863 p 7 (local laws portion) § 1; 1861 p 56 § 1; 1861 p 30 § 1; 1860 p 458 § 1; 1854 p 474 § 1; 1854 p 470 § 1; RRS § 3947.]

**36.04.240 Okanogan county.** Okanogan county shall consist of the territory bounded as follows, to wit: Beginning at the intersection of the forty-ninth parallel with the range line between ranges thirty-one and thirty-two east, and from thence running in a southerly direction on said range line to the intersection of the said range line with the Columbia river, and thence down the river to the seventh standard parallel north; thence west along the seventh standard parallel north to the watershed between the waters flowing northerly and easterly into the Methow river and the waters flowing southerly and westerly into Lake Chelan; thence in a general northwesterly direction along the summit of the main divide between the waters flowing northerly and easterly into the Methow river and the waters flowing westerly and southerly into Lake Chelan and its tributaries; following the course of the center of the summit of the watershed dividing said respective waters to the point where the same intersects the east boundary of Skagit county and the summit of the Cascade mountains; thence northerly with said summit to the forty-ninth parallel, and thence on the said parallel to the place of beginning. [1899 c 95 § 1; 1888 p 70 § 1; RRS § 3948.]

**36.04.250 Pacific county.** Pacific county shall consist of the territory bounded as follows, to wit: Commencing at the midchannel of the Columbia river at the point of intersection of the line between ranges eight and nine west; thence north along said line to the north boundary of township ten north; thence east along said boundary to the line between ranges five and six west; thence north along the west boundary of range five west to the northwest corner of section eighteen in township fifteen north, range five west; thence west to the west boundary of the state in the Pacific Ocean; thence southerly along said boundary, including Shoalwater Bay, to a point opposite Cape Disappointment; thence up midchannel of the Columbia river to the place of beginning. [(i) 1879 p 213 § 1; 1873 p 538 § 1; 1867 p 49 § 1; 1860 p 429 § 1; 1854 p 471 § 1; RRS § 3949. (ii) 1925 ex.s. c 40 § 1; RRS § 3963-1.]

**36.04.260 Pend Oreille county.** Pend Oreille county shall consist of the territory bounded and described as follows, to wit: Beginning at the southeast corner of section thirty-six in township thirty north, range forty-two east of the Willamette Meridian; thence running north, along the east line of said township thirty north, range forty-two east of the Willamette Meridian, to the northeast corner of section one, in said township thirty; thence west to the southwest corner of

section thirty-four in township thirty-one north, range forty-two east of Willamette Meridian; thence north, along the west line of sections thirty-four, twenty-seven and twenty-two of said township thirty-one north, range forty-two east of Willamette Meridian; thence north on a line from the northwest corner of section twenty-two in township thirty-one to a point on the north line of township thirty-one, midway between the northeast corner and the northwest corner of said township thirty-one, which line will be the west line of sections fifteen, ten and three of said township thirty-one, when the same are surveyed; thence to the center point on the south line of township thirty-two north, range forty-two east of Willamette Meridian; thence north on the north and south center line of said township thirty-two, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten, and three of township thirty-two when the same is surveyed, to the north line of said township thirty-two; thence to the center point on the south line of township thirty-three north, range forty-two east of Willamette Meridian; thence north, on the north and south center line of township thirty-three north of range forty-two east of Willamette Meridian, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three of said township thirty-three, when the same is surveyed, to the north line of said township thirty-three; thence to the center point on the south line of township thirty-four north, range forty-two east of Willamette Meridian; thence north on the north and south center line of said township thirty-four, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three of said township thirty-four when the same are surveyed, to the north line of said township; thence to the center point on the south line of township thirty-five north, range forty-two east of Willamette Meridian; thence north, on the north and south center line of township thirty-five north, range forty-two east of Willamette Meridian, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three of said township thirty-five when the same are surveyed to the north line of said township thirty-five; thence to the southwest corner of section thirty-four in township thirty-six north, range forty-two east of Willamette Meridian; thence north, along the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three to the northwest corner of section three of said township thirty-six; thence west along the south line of township thirty-seven north, range forty-two, and township thirty-seven north, range forty-one east of the Willamette Meridian, to the center point on the south line of said township thirty-seven north, range forty-one east of the Willamette Meridian, which point will be the southwest corner of section thirty-four in said township thirty-seven north, range forty-one east of the Willamette Meridian, when the same are surveyed; thence north along the north and south center line of said township thirty-seven north, range forty-one east of the Willamette Meridian, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three of said township when the same are surveyed, to the north line of said township thirty-seven; thence east, along the south line of township thirty-eight north, range forty-one east of Willamette Meridian to the southeast corner of said township thirty-eight north, range forty-one east of the Willamette Meridian; thence to the southwest corner of section

thirty-one in township thirty-eight north, range forty-two east of Willamette Meridian; thence north, along the west line of said township thirty-eight, to the northwest corner of said township thirty-eight; thence east along the north line of township thirty-eight, to the center point on the south line of township thirty-nine north, range forty-two east of Willamette Meridian, which point will be the southwest corner of section thirty-four of said township thirty-nine when the same are surveyed; thence north along the north and south center line of said township thirty-nine, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three of said township thirty-nine, when the same are surveyed, to the north line of said township thirty-nine; thence east along the south line of township forty north, range forty-two east, of Willamette Meridian to the southeast corner of said township forty; thence north, along the east line of said township forty, to the international boundary line; thence east along the international boundary line, to the intersection of the state line between the states of Washington and Idaho with said international boundary line; thence south along said state line, to the southeast corner of section thirty-one, township thirty north, range forty-six east of Willamette Meridian; thence due west to the southeast corner of section thirty-six, township thirty north, range forty-two east of Willamette Meridian, to the place of beginning. [1911 c 28 § 1; RRS § 3950.]

**36.04.270 Pierce county.** Pierce county shall consist of the territory bounded as follows, to wit: Commencing at the mouth, midchannel, of the Nisqually river; thence following the main channel of said river to its head; thence due east to the summit of the Cascade mountains; thence northerly along the summit to the head of the Green Water; thence westerly down said river to its confluence with White river; thence down the main channel of White river to the intersection of the fifth standard parallel; thence west along said line to the southeast corner of section thirty-one, township twenty-one north, range four east of Willamette Meridian; thence north along the east line of said section thirty-one to its intersection with the northerly line of the Puyallup Indian reservation; thence northwesterly on said line of the Puyallup Indian reservation, projected northwesterly in a straight line, to its intersection with the center line of Puget Sound; thence southwestly and westerly following the channel of Dalco Passage to the south entrance of Colvo's Passage; thence down the channel of said passage to the northeast corner of section sixteen, in township twenty-two north, range two east; thence west to the northeast corner of section sixteen, in township twenty-two north, range one west; thence southerly along the channels of Case's Inlet and Puget Sound, to the middle of the mouth of the Nisqually river and place of beginning. [1869 p 294 § 1; 1867 p 47 § 1; 1859 p 59 § 1; 1855 p 43 § 1; RRS § 3951.]

**36.04.280 San Juan county.** San Juan county shall consist of the territory bounded as follows, to wit: Commencing in the Gulf of Georgia at the place where the boundary line between the United States and the British possessions deflects from the forty-ninth parallel of north latitude; thence following said boundary line through the Gulf of Georgia and

Haro Strait to the middle of the Strait of Fuca; thence easterly through Fuca Straits along the center of the main channel between Blunt's Island and San Juan and Lopez Islands to a point easterly from the west entrance of Deception Pass, until opposite the middle of the entrance to the Rosario Straits; thence northerly through the middle of Rosario Straits and through the Gulf of Georgia to the place of beginning. [1877 p 425 § 1; 1873 p 461 § 1; RRS § 3952.]

**36.04.290 Skagit county.** Skagit county shall consist of the territory bounded as follows, to wit: Commencing at midchannel of Rosario Strait where the dividing line between townships thirty-six and thirty-seven intersects the same; thence east on said township line to the summit of the Cascade mountains; thence south along the summit of said mountain range to the eighth standard parallel; thence west along the parallel to the center of the channel or deepest channel of the nearest arm of Puget Sound and extending along said channel to the east entrance of Deception Pass; thence through said pass to the center of the channel of Rosario Strait; thence northerly along said channel to the place of beginning. [1883 p 97 § 1; RRS § 3953.]

**36.04.300 Skamania county.** Skamania county shall consist of the territory bounded as follows, to wit: Commencing on the Columbia river at a point where range line four east strikes said river; thence north to the north boundary of township ten north; thence east to a point due north of the mouth of White Salmon; thence south to the township line dividing townships six and seven; thence west to the northwest corner of Klickitat county; thence south along the west boundary of said county to the Columbia river; thence along the midchannel of said river to the place of beginning. [1881 p 187 § 1; 1879 p 213 § 1; 1867 p 49 § 1; 1854 p 472 § 1; RRS § 3954.]

**36.04.310 Snohomish county.** Snohomish county shall consist of the territory bounded as follows, to wit: Commencing at the southwest corner of Skagit county; thence east along the eighth standard parallel to the summit of the Cascade mountains; thence southerly along the summit of the Cascade mountains to the northeast corner of King county, it being a point due east of the northeast corner of township twenty-six north, range four east; thence due west along the north boundary of King county to Puget Sound; thence northerly along the channel of Puget Sound and Possession Sound to the entrance of Port Susan, including Gedney Island; thence up the main channel of Port Susan to the mouth of the Stillaguamish river; thence northwesterly through the channel of the slough at the head of Camano Island, known as Davis Slough; thence northerly to the place of beginning. [1877 p 426 § 3; 1869 p 291 § 1; 1867 p 44 § 1; 1862 p 107 § 1; 1861 p 19 § 1; RRS § 3955.]

**36.04.320 Spokane county.** Spokane county shall consist of the territory bounded as follows, to wit: Commencing at the northeast corner of Lincoln county; thence up the midchannel of the Spokane river to the Little Spokane river; thence north to the township line between townships twenty-nine and thirty; thence east to the boundary line between

Washington and Idaho; thence south on said boundary line to the fifth standard parallel; thence west on said parallel to the Colville Guide Meridian; thence north on said meridian to the place of beginning. [1879 p 203; 1864 p 70; 1860 p 436; 1858 p 51; RRS § 3956.]

**36.04.330 Stevens county.** Stevens county shall consist of the territory bounded as follows, to wit: Commencing at the southeast corner of township thirty north, range forty-two east of the Willamette Meridian; thence north to the northeast corner of said township; thence west to the southwest corner of section thirty-four, township thirty-one north, range forty-two east; thence north along the center line of townships thirty-one, thirty-two, thirty-three, thirty-four, thirty-five and thirty-six in said range forty-two east to the northwest corner of section three in township thirty-six north; thence west to the northwest corner of section three, township thirty-six north, range forty-one east; thence north along the center line of township thirty-seven to the northwest corner of section three in said township; thence east to the northeast corner of said township; thence north to the northwest corner of township thirty-eight, range forty-two east; thence east to the northwest corner of section three of said township; thence north along the center line of township thirty-nine to the northwest corner of section three in said township; thence east to the northeast corner of said township; thence north to the northern boundary line of the state; thence west to where said boundary line intersects the middle of the channel of the Kettle river; thence south along said channel to its confluence with the Columbia river; thence continuing south along the middle of the channel of the Columbia river to its confluence with the Spokane river; thence easterly along the channel of the Spokane to the Little Spokane river; thence north to the township line separating townships twenty-nine and thirty; thence east to the place of beginning. [(i) 1 H.C. §30; 1888 p 70; 1879 p 203; 1869 p 297; 1867 p 50; 1864 p 70; 1863 p 6; RRS § 3957. (ii) 1899 c 18 § 1; RRS § 3934.]

**36.04.340 Thurston county.** Thurston county shall consist of the territory bounded as follows, to wit: Commencing at the southeast corner of section thirty-two in township nineteen north, range four west; thence east on the township line to the southeast corner of section thirty-two in township nineteen north, range three west; thence north to the middle of the channel of Totten's Inlet; thence along said channel to the waters of Puget Sound, intersecting the line in the channel of Puget Sound west of the southern portion of Squaxen Reservation; thence following said channel to the mouth of the Nisqually river; thence up midchannel of said river to a point where it strikes the north boundary of Lewis county; thence due west to the northwest corner of section twenty-six, township fifteen north, range four west; thence north to the southeast corner of section thirty-four in township eighteen north, range four west; thence west on the township line to the southeast corner of section thirty-two; thence north on the section line to the place of beginning. [1 H.C. §31; 1873 p 482; 1869 p 294; 1867 p 47; 1863 p 7; 1860 p 458; RRS § 3958.]

**36.04.350 Wahkiakum county.** Wahkiakum county shall consist of the territory bounded as follows, to wit: Commencing at the southeast corner of Pacific county, on the Columbia river; thence up midchannel of said river to the southwest corner of Cowlitz county; thence north to the northwest corner of Cowlitz county; thence west on the northern boundary of township ten north to the line between ranges eight and nine west; thence south to the place of beginning. [1879 p 213; 1869 p 295; 1867 p 48; 1854 p 474; RRS § 3959.]

**36.04.360 Walla Walla county.** Walla Walla county shall consist of the territory bounded as follows, to wit: Commencing at a point where the boundary line between Washington and Oregon intersects the Columbia river; thence up the main channel of the Columbia to the mouth of the Snake river; thence up the main channel of said river to where the range line between ranges thirty-six and thirty-seven intersects said point; thence south on said range line to the northwest corner of township nine north, range thirty-seven east; thence east on the north boundary line of township nine north, range thirty-seven east, to the northeast corner of said township; thence south on the line between ranges thirty-seven and thirty-eight east, of the Willamette Meridian, to the northwest corner of township eight north, range thirty-eight east; thence along the north boundary line of township eight north, range thirty-eight east, to the northeast corner of said township; thence due south to the line dividing the state of Washington from the state of Oregon; thence due west on said dividing line to the place of beginning. [(i) 1 H.C. §33; 1879 p 226; 1875 p 133; 1869 p 397; 1868 p 60; 1867 p 50; 1858 p 51; 1854 p 472; RRS § 3960. (ii) 1879 p 226; RRS § 3960-1.]

**36.04.370 Whatcom county.** Whatcom county shall consist of the territory bounded as follows, to wit: Commencing on the forty-ninth parallel at the point dividing the American and British possessions in the Gulf of Georgia; thence along said boundary line to where it deflects at the north entrance to the Haro Strait; thence along the northeasterly boundary of San Juan county to the ninth standard parallel, or the northwest corner of Skagit county; thence due east along said parallel to the summit of the Cascade mountains; thence northerly along the summit of said mountains to the forty-ninth parallel of north latitude; thence west along said parallel to the place of beginning. [1 H.C. §34; 1877 p 426; 1869 p 291; 1867 p 44; 1859 p 60; 1854 p 475; RRS § 3961.]

**36.04.380 Whitman county.** Whitman county shall consist of the territory bounded as follows, to wit: Commencing at a point where the range line between ranges thirty-eight and thirty-nine east intersects the fifth standard parallel, being the northeast corner of Adams county; thence east on said parallel to the boundary line between Idaho and Washington; thence south on said boundary line to the midchannel of the Snake river; thence down the midchannel of the Snake river to its intersection with the midchannel of the Palouse river; thence north along the midchannel of the Palouse river to the point where the same intersects the range line between ranges thirty-eight and thirty-nine east; thence north along said range line to the place of beginning. [(i) 1

H.C. §35; 1875 p 189; 1871 p 134; RRS § 3962. (ii) 1883 p 87; RRS § 3935. (iii) 1883 p 93; RRS § 3924.]

**36.04.390 Yakima county.** Yakima county shall consist of the territory bounded as follows, to wit: Commencing at the northwest corner of township six north of range twelve east; thence east along the north boundary of township six north until said line intersects the range line between range twenty-three east and range twenty-four east; thence north along said range line to the Columbia river; thence north up the midchannel of said river to the southeast corner of Kittitas county; thence along the southern boundary of Kittitas county to the summit of the Cascade mountains; thence southerly to the southeast corner of Lewis county; thence west along the line of said county to the northeast corner of Skamania county; thence along the east line of Skamania county to the line between townships six and seven north; thence east along said line to the place of beginning. [1905 c 89 § 1; 1886 p 168; 1873 p 571; 1869 p 296; 1868 p 60; 1867 p 50; RRS § 3963.]

**36.04.400 Survey of county boundaries.** All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by all the counties affected thereby, and approved by the board of county commissioners of such counties. The cost of making such surveys shall be apportioned equally among the counties interested, and the board of county commissioners shall audit the same, and the amounts shall be paid out of the county current expense fund. [Code 1881 § 2661; RRS § 3990.]

**Chapter 36.05 RCW**

**ACTIONS TO ESTABLISH BOUNDARIES**

Sections

- 36.05.010 Suit in equity authorized—Grounds.
- 36.05.020 Noninterested judge to sit.
- 36.05.030 Residents of area may intervene.
- 36.05.040 Questions of fact to be determined.
- 36.05.050 Court may establish boundary line.
- 36.05.060 Practice in civil actions to prevail.
- 36.05.070 Copies of decree to be filed and recorded.
- 36.05.080 "Territory" defined.

*Lines not to be changed by special act: State Constitution Art. 2 § 28(18).*

**36.05.010 Suit in equity authorized—Grounds.** Whenever the boundary line between two or more adjoining counties in this state are in dispute, or have been lost by time, accident or any other cause, or have become obscure or uncertain, one or more of the counties, in its corporate name, may bring and maintain suit against such other adjoining county or counties, in equity, in the superior court, to establish the location of the boundary line or lines. [1963 c 4 § 36.05.010. Prior: 1897 c 76 § 1; RRS § 3964.]

**36.05.020 Noninterested judge to sit.** A suit to establish county boundary lines shall be tried before a judge of the superior court who is not a resident of a county which is a party to such suit, or of a judicial district embracing any such

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county. [1963 c 4 § 36.05.020. Prior: 1897 c 76 § 2; RRS § 3965.]

**36.05.030 Residents of area may intervene.** A majority of the voters living in the territory embracing such disputed, lost, obscure, or uncertain boundary line may, by petition, duly verified by one or more of them, intervene in the suit, and thereupon the court shall have jurisdiction and power, in locating and establishing the boundary line or lines, to strike or transfer from one county to another a strip or portion of such territory not exceeding two miles in width. [1963 c 4 § 36.05.030. Prior: 1897 c 76 § 3; RRS § 3966.]

**36.05.040 Questions of fact to be determined.** The boundaries of such territory, the number of voters living therein, and the sufficiency of such petition are questions of fact to be determined by the court. [1963 c 4 § 36.05.040. Prior: 1897 c 76 § 5; RRS § 3968.]

**36.05.050 Court may establish boundary line.** The court shall have power to move or establish such boundary line on any government section line or subdivisional line thereof, of the section in or through which said disputed, lost, obscure or uncertain boundary line may be located, or if such boundary line is in unsurveyed territory, then the court shall have power to move or establish such boundary line so it will conform to extensions of government section lines already surveyed in that vicinity. [1963 c 4 § 36.05.050. Prior: 1897 c 76 § 6; RRS § 3969.]

**36.05.060 Practice in civil actions to prevail.** The practice, procedure, rules of evidence, and appeals to the supreme court or the court of appeals applicable to civil actions, are preserved under this chapter. [1971 c 81 § 96; 1963 c 4 § 36.05.060. Prior: 1897 c 76 § 7; RRS § 3970.]

**36.05.070 Copies of decree to be filed and recorded.** The clerk of the court in whose office a decree is entered under the provisions of this chapter, shall forthwith furnish certified copies thereof to the secretary of state, and to the auditors of the counties, which are parties to said suit. The secretary of state, and the county auditors, shall file and record said copies of the decree in their respective offices. [1963 c 4 § 36.05.070. Prior: 1897 c 76 § 8; RRS § 3971.]

**36.05.080 "Territory" defined.** The term "territory," as used in this chapter, means that portion of counties lying along the boundary line and within one mile on either side thereof. [1963 c 4 § 36.05.080. Prior: 1897 c 76 § 4; RRS § 3967.]

**Chapter 36.08 RCW**

**TRANSFER OF TERRITORY WHERE CITY'S HARBOR LIES IN TWO COUNTIES**

Sections

- 36.08.010 Petition and notice of election.
- 36.08.020 Conduct of election—Proclamation of change.
- 36.08.030 Official proceedings not disturbed by transfer.
- 36.08.040 Local officers to serve out terms.
- 36.08.050 Transferee county liable for existing debts—Exception.

36.08.060	Adjustment of indebtedness.
36.08.070	Arbitration of differences.
36.08.080	Expense of proceedings.
36.08.090	Transcript of records by county auditor.
36.08.100	Construction—Limitations.

**36.08.010 Petition and notice of election.** If a harbor, inlet, bay, or mouth of river is embraced within two adjoining counties, and an incorporated city is located upon the shore of such harbor, bay, inlet, or mouth of river and it is desired to embrace within the limits of one county, the full extent of the shore line of the harbor, port, or bay, and the waters thereof, together with a strip of the adjacent and contiguous upland territory not exceeding three miles in width, to be measured back from highwater mark, and six miles in length, and not being at a greater distance in any part of said strip from the courthouse in the county seat of the county to which the territory is proposed to be annexed, as such county seat and courthouse are now situated, than ten miles, a majority of the qualified electors living in such territory may petition to have the territory stricken from the county of which it shall then be a part, and added to and made a part of the county contiguous thereto.

The petition shall describe with certainty the bounds and area of the territory, with the reasons for making the change and shall be presented to the board of county commissioners of the county in which the territory is located, which shall proceed to ascertain if the petition contains the requisite number of petitioners, who must be bona fide residents of the territory sought to be stricken off and transferred to the contiguous county.

If satisfied that the petition is signed by a majority of the bona fide electors of the territory, and that there will remain in the county from which it is taken more than four thousand inhabitants, the board shall make an order that a special election be held within the limits of the territory described in the petition, on a date to be named in the order.

Notices of the election shall contain a description of the territory proposed to be transferred and the names of the counties from and to which the transfer is intended to be made, and shall be posted and published as required for general elections. [1963 c 4 § 36.08.010. Prior: 1891 c 144 § 1; RRS § 3972.]

**36.08.020 Conduct of election—Proclamation of change.** The election shall be conducted in all respects as general elections are conducted under the laws governing general elections, in so far as they may be applicable, except that there shall be triplicate returns made, one to each of the respective county auditors and another to the office of the secretary of state. The ballots used at such election shall contain the words "for transferring territory," or "against transferring territory." The votes shall be canvassed, as by law required, within twenty days, and if three-fifths of the votes cast in the territory at such election are "for transferring territory," the territory described in the petition shall become a part of and be added to and made a part of the county contiguous thereto, and within thirty days after the canvass of the returns of the election, the governor shall issue his proclamation of the change of county lines. [1963 c 4 § 36.08.020. Prior: 1891 c 144 § 2; RRS § 3973.]

**36.08.030 Official proceedings not disturbed by transfer.** All assessments and collection of taxes, and all judicial or other official proceedings commenced prior to the governor's proclamation transferring territory to a contiguous county, shall be continued, prosecuted, and completed in the same manner as if no such transfer had been made. [1963 c 4 § 36.08.030. Prior: 1891 c 144 § 3; RRS § 3974.]

**36.08.040 Local officers to serve out terms.** All township, precinct, school, and road district officers within the transferred territory shall continue to hold their respective offices within the county to which they may be transferred until their respective terms of office expire, and until their successors are elected and qualified. [1963 c 4 § 36.08.040. Prior: 1891 c 144 § 4; RRS § 3975.]

**36.08.050 Transferee county liable for existing debts—Exception.** Every county which is thus enlarged by territory taken from another county shall be liable for a just proportion of the existing debts of the county from which such territory is stricken, which proportion shall be paid by the county to which such territory is transferred at such time and in such manner as may be agreed upon by the boards of county commissioners of both counties: PROVIDED, That the county to which the territory is transferred shall not be liable for any portion of the debt of the county from which the territory is taken, incurred in the purchase of any county property, or the construction of any county building then in use or under construction, which shall fall within and be retained by the county from which the territory is taken. [1963 c 4 § 36.08.050. Prior: 1891 c 144 § 5; RRS § 3976.]

**36.08.060 Adjustment of indebtedness.** The county auditors of the respective counties interested in the transfer of territory, as in this chapter provided, are constituted a board of appraisers and adjusters, to appraise the property, both real and personal, owned by the county from which the territory is taken, and to adjust the indebtedness of such county with the county to which such territory is transferred, in proportion to the amount of taxable property within the territory taken from the one county and transferred to the other. [1963 c 4 § 36.08.060. Prior: 1891 c 144 § 6; RRS § 3977.]

**36.08.070 Arbitration of differences.** If the board of appraisers and adjusters do not agree on any subject, value, or settlement, they shall choose a third man from an adjoining county to settle their differences, and the decision thus arrived at shall be final. [1963 c 4 § 36.08.070. Prior: 1891 c 144 § 7; RRS § 3978.]

**36.08.080 Expense of proceedings.** The expense of the proceedings and election provided for in this chapter shall be paid by the county to which the territory is attached. [1963 c 4 § 36.08.080. Prior: 1891 c 144 § 8; RRS § 3979.]

**36.08.090 Transcript of records by county auditor.** The county auditor of the county to which any territory may be transferred may take transcripts of all records, books, papers, etc., on file in the office of the county auditor of the county from which the territory has been transferred, which

may be necessary to perfect the records of his county, and for this purpose he shall have access to the records of the county from which such territory is stricken, free of cost. [1963 c 4 § 36.08.090. Prior: 1891 c 144 § 9; RRS § 3980.]

**36.08.100 Construction—Limitations.** Nothing in this chapter shall be construed to authorize the annexing of territory of one county to a neighboring county, where the territory proposed to be annexed, or any part thereof, is at a greater distance than ten miles from the courthouse in the county seat of the county to which said territory is proposed to be annexed, as said courthouse is now located, nor to authorize the annexation of any territory at a greater distance than three miles from high water mark of tide water, but such annexation shall be strictly confined within said limits. [1963 c 4 § 36.08.100. Prior: 1891 c 144 § 10; RRS § 3981.]

### Chapter 36.09 RCW

#### NEW COUNTY—LIABILITY FOR DEBTS

(Formerly: Division of county)

##### Sections

36.09.010	Debts and property to be apportioned.
36.09.020	Procedure to settle amount charged new county—Basis of apportionment.
36.09.035	Procedure to settle amount charged new county—Disagreement between auditors—Determination by third person.
36.09.040	Payment of indebtedness—Transfer of property.
36.09.050	Collection of taxes levied—Apportionment.

*Combined city and county municipal corporations: State Constitution Art. 11 § 16 (Amendment 58).*

##### *New county*

*formation by special act allowed: State Constitution Art. 2 § 28(18).*

*restrictions on formation: State Constitution Art. 11 § 3.*

**36.09.010 Debts and property to be apportioned.** Whenever a new county shall be or shall have been organized out of the territory which was included within the limits of any other county or counties, the new county shall be liable for a reasonable proportion of the debts of the county from which it was taken, and entitled to its proportion of the property of the county. [1963 c 4 § 36.09.010. Prior: Code 1881 § 2657; 1863 p 538 § 3; 1854 p 330 § 1; RRS § 3986.]

**36.09.020 Procedure to settle amount charged new county—Basis of apportionment.** The auditor of the old county shall give the auditor of the new county reasonable notice to meet him on a certain day at the county seat of the old county, or at some other convenient place, to settle upon and fix the amount which the new county shall pay. In doing so, they shall not charge either county with any share of debts arising from the erection of public buildings, or out of the construction of roads or bridges which shall be and remain, after the division, within the limits of the other county, and of the other debts they shall apportion to each county such a share of the indebtedness as may be just and equitable, taking into consideration the population of such portion of territory so forming a part of the said counties while so united, and also the relative advantages, derived from the old county organization. [1963 c 4 § 36.09.020. Prior: (i) Code 1881 § 2658; 1863 p 538 § 4; 1854 p 330 § 2; RRS § 3987. FORMER PART OF SECTION: 1909 c 79 § 1, part; Code

(2004 Ed.)

1881 § 2662, part; RRS § 3991, part. Now codified in RCW 36.09.050.]

**36.09.035 Procedure to settle amount charged new county—Disagreement between auditors—Determination by third person.** In case the two auditors cannot agree, they shall call a third person, not a citizen of either county, or in any other manner interested, whose decision shall be binding. In case they cannot agree upon such third person, they shall each name one and decide by lot which it shall be. [1963 c 4 § 36.09.035. Prior: Code 1881 § 2659; 1863 p 539 § 5; 1854 p 330 § 3; RRS § 3988.]

**36.09.040 Payment of indebtedness—Transfer of property.** The auditor of the county indebted upon such decision shall give to the auditor of the other county his order upon the treasurer for the amount to be paid out of the proper fund, as in other cases, and also make out a transfer of such property as shall be assigned to either county. [1963 c 4 § 36.09.040. Prior: Code 1881 § 2660; 1863 p 539 § 6; 1854 p 330 § 4; RRS § 3989.]

**36.09.050 Collection of taxes levied—Apportionment.** When a county is divided or the boundary is altered, all taxes levied before the division was made or boundaries changed, must be collected by the officers of the county in which the territory was situated before the division or change. And the auditor or auditors of the county or counties so divided or having boundaries changed, shall apportion the amount of the real property taxes so collected after division or change of boundary to the old county or counties and the new county or counties, in the ratio of the assessed value of such property situated in the territory of each county or counties respectively, and the old county that may have been divided or whose boundaries may have been changed, shall retain all of the personal property taxes on the said tax rolls, as compensation for cost of collection of the entire taxes: PROVIDED, That in such accounting neither county shall be charged with any debt or liability then existing incurred in the purchase of any county property, or in the purchase or construction of any county buildings then in use or under construction, which shall fall within and be retained by the county: PROVIDED FURTHER, That this shall not be construed to affect the rights of creditors: AND PROVIDED FURTHER, That any such county property or buildings shall be the property of and owned by the county wherein the same is situated. In case the auditors of the interested counties are not able to agree upon the proportion to be awarded to each county, the same shall be determined by the judge of the superior court of the district in which all of the interested counties are situated, if they be in one district, and have one common judge, and if not, by the judges sitting en banc of the superior courts of the counties involved. Said auditors shall make said apportionment within sixty days after the creation of any new county or the changing of boundaries of any old county, and if they do not, within said time, agree upon said apportionment, thereafter either or any county affected may petition the judge or judges of any court given jurisdiction by this section, and upon ten days' notice to any other county affected, the same may be brought on for hearing and sum-

marily disposed of by said judge or judges, after allowing each side an opportunity to be heard. [1963 c 4 § 36.09.050. Prior: 1909 c 79 § 1; Code 1881 § 2662; RRS § 3991. Formerly RCW 36.09.020, part, 36.09.030 and 36.09.050.]

### Chapter 36.12 RCW REMOVAL OF COUNTY SEATS

#### Sections

36.12.010	Petition for removal—Financial impact statement.
36.12.020	Requisites of petition—Submission to electors.
36.12.030	Notice of election—Election, how held.
36.12.040	Manner of voting.
36.12.050	Vote required—Notice of result.
36.12.060	Time of removal.
36.12.070	Notice to county clerk and secretary of state.
36.12.080	Failure of election—Limitation on subsequent removal election.
36.12.090	Limitation on successive removal elections.

#### County seats

*location and removal: State Constitution Art. 11 § 2.  
not to be changed by special act: State Constitution Art. 2 § 28(18).*

**36.12.010 Petition for removal—Financial impact statement.** Whenever the inhabitants of any county desire to remove the county seat of the county from the place where it is fixed by law or otherwise, they shall present a petition to the board of county commissioners of their county praying such removal, and that an election be held to determine to what place such removal must be made. The petition shall set forth the names of the towns or cities to which the county seat is proposed to be removed and shall be filed at least six months before the election. The county shall issue a statement analyzing the financial impact of the proposed removal at least sixty days before the election. The financial impact statement shall include, but not be limited to, an analysis of the: (1) Probable costs to the county government involved in relocating the county seat; (2) probable costs to county employees as a result of relocating the county seat; and (3) probable impact on the city or town from which the county seat is proposed to be removed, and on the city or town where the county seat is proposed to be relocated. [1985 c 145 § 1; 1963 c 4 § 36.12.010. Prior: 1890 p 318 § 1; RRS § 3998.]

**36.12.020 Requisites of petition—Submission to electors.** If the petition is signed by qualified voters of the county equal in number to at least one-third of all the votes cast in the county at the last preceding general election the board must, at the next general election of county officers, submit the question of removal to the electors of the county. [1963 c 4 § 36.12.020. Prior: 1890 p 318 § 2; RRS § 3999.]

**36.12.030 Notice of election—Election, how held.** Notice of the election, clearly stating the object, shall be given, and the election must be held and conducted, and the returns made, in all respects in the manner prescribed by law in regard to elections for county officers. [1963 c 4 § 36.12.030. Prior: 1890 p 318 § 3; RRS § 4000.]

**36.12.040 Manner of voting.** In voting on the question, each voter must vote for or against the place named in the petition. [1963 c 4 § 36.12.040. Prior: 1890 p 318 § 4; RRS § 4001.]

**36.12.050 Vote required—Notice of result.** When the returns have been received and compared, and the results ascertained by the board, if three-fifths of the legal votes cast by those voting on the proposition are in favor of any particular place the proposition has been adopted. The board of county commissioners must give notice of the result by posting notices thereof in all the election precincts in the county. [1963 c 4 § 36.12.050. Prior: 1890 p 318 § 5; RRS § 4002.]

**36.12.060 Time of removal.** In the notice provided for in RCW 36.12.050, the place selected to be the county seat of the county must be so declared upon a day not more than ninety days after the election. After the day named the place chosen is the seat of the county; and the several county officers, whose offices are required by law to be kept at the county seat, shall remove their respective offices, files, records, office fixtures, furniture, and all public property pertaining to their respective offices to the new county seat. [1963 c 4 § 36.12.060. Prior: 1890 p 318 § 6; RRS § 4003.]

**36.12.070 Notice to county clerk and secretary of state.** Whenever any election has been held for change of county seat, the notice given by the board of county commissioners showing the result thereof must be deposited in the office of the county clerk, and a certified copy thereof transmitted to the secretary of state. [1963 c 4 § 36.12.070. Prior: 1890 p 319 § 7; RRS § 4004.]

**36.12.080 Failure of election—Limitation on subsequent removal election.** When an election has been held and no one place receives three-fifths of all the votes cast, the former county seat shall remain the county seat, and no second election may be held within eight years thereafter. [1985 c 145 § 2; 1963 c 4 § 36.12.080. Prior: 1890 p 319 § 8; RRS § 4005.]

**36.12.090 Limitation on successive removal elections.** When the county seat of a county has been removed by a popular vote of the people of the county, it may be again removed, from time to time, in the manner provided by this chapter, but no two elections to effect such removal may be held within eight years. [1985 c 145 § 3; 1963 c 4 § 36.12.090. Prior: 1890 p 319 § 9; RRS § 4006.]

### Chapter 36.13 RCW CLASSIFICATION OF COUNTIES

#### Sections

36.13.020	County census authorized.
36.13.030	County census authorized—Personnel—How conducted.
36.13.040	County census authorized—Information to be given enumerators.
36.13.050	County census authorized—Classification to be based on census.
36.13.070	County census authorized—Penalty.
36.13.100	Determination of population.

*Combined city and county municipal corporations: State Constitution Art. 11 § 16 (Amendment 58).*

**36.13.020 County census authorized.** The legislative authority of any county may order a county census to be taken of all the inhabitants of the county. The expense of such

census enumeration shall be paid from the county current expense fund. [1991 c 363 § 44; 1977 ex.s. c 110 § 6; 1963 c 4 § 36.13.020. Prior: (i) 1923 c 177 § 1; RRS § 4200-6. (ii) 1923 c 177 § 5; RRS § 4200-10.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

### 36.13.030 County census authorized—Personnel—

**How conducted.** For the purpose of making a county census, the legislative authority of any county may employ one or more suitable persons. The census shall be conducted in accordance with standard census definitions and procedures as specified by the office of financial management. [1979 c 151 § 37; 1977 ex.s. c 110 § 1; 1963 c 4 § 36.13.030. Prior: 1923 c 177 § 2; RRS § 4200-7.]

*Population determinations, office of financial management: Chapter 43.62 RCW.*

**36.13.040 County census authorized—Information to be given enumerators.** All persons resident in the county, having knowledge of the facts, shall give the information required herein to any duly authorized census enumerator when requested by him. [1963 c 4 § 36.13.040. Prior: 1923 c 177 § 4; RRS § 4200-9.]

**36.13.050 County census authorized—Classification to be based on census.** The board of county commissioners shall determine the population of the county based upon such special county census. Based upon such census, it shall enter an order declaring and fixing the population of the county in accordance with such determination, and from and after the entry of the order the county shall be considered and classified for all purposes according to the population thus determined. [1963 c 4 § 36.13.050. Prior: 1923 c 177 § 3; RRS § 4200-8.]

**36.13.070 County census authorized—Penalty.** Any person violating any of the provisions of RCW 36.13.020, 36.13.030, 36.13.040, and 36.13.050, or any officer or enumerator making, assisting, or permitting any duplication of names or making, permitting, or assisting in the enumeration of any fictitious names or persons in taking the census, shall be guilty of a gross misdemeanor. [1963 c 4 § 36.13.070. Prior: 1923 c 177 § 6; RRS § 4200-11.]

**36.13.100 Determination of population.** Whenever any provision of law refers to the population of a county for purposes of distributing funds or for any other purpose, the population of the respective counties shall be determined by the most recent census, population estimate by the office of financial management, or special county census as certified by the office of financial management. [1991 c 363 § 45; 1963 c 4 § 36.13.100. Prior: 1949 c 92 § 1; Rem. Supp. 1949 § 4200-6a.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

*Population determinations, office of financial management: Chapter 43.62 RCW.*

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## Chapter 36.16 RCW

### COUNTY OFFICERS—GENERAL

#### Sections

- 36.16.010 Time of election.
- 36.16.020 Term of county and precinct officers.
- 36.16.030 Elective county officers enumerated.
- 36.16.032 Offices of auditor and clerk may be combined in counties with populations of less than five thousand—Salary.
- 36.16.040 Oath of office.
- 36.16.050 Official bonds.
- 36.16.060 Place of filing oaths and bonds.
- 36.16.070 Deputies and employees.
- 36.16.087 Deputies and employees—County treasurer—Prior deeds validated.
- 36.16.090 Office space.
- 36.16.100 Offices to be open certain days and hours.
- 36.16.110 Vacancies in office.
- 36.16.115 Vacancy in partisan elective office—Appointment of acting official.
- 36.16.120 Officers must complete business.
- 36.16.125 Elected officials—Abandonment of responsibilities—Declaratory judgment—Compensation denied during abandonment.
- 36.16.130 Group false arrest insurance for law enforcement personnel.
- 36.16.136 Liability insurance for officers and employees.
- 36.16.138 Liability insurance for officers and employees of municipal corporations and political subdivisions authorized.
- 36.16.139 Insurance and workers' compensation for offenders performing community restitution.
- 36.16.140 Public auction sales, where held.

*Accounts, reports of to state auditor: RCW 43.09.230 through 43.09.240.*

#### Agricultural

*agents, assistants, as college employees for retirement benefit purposes: RCW 28B.10.400.*

*expert, pest extermination by: RCW 17.12.060.*

*Air pollution control officer: RCW 70.94.170.*

*Assistant superintendents of schools: RCW 28A.310.020, 28A.310.230.*

*Board of adjustment for airport zoning: Chapter 14.12 RCW.*

*Board of managers, county and city tuberculosis hospital: Chapter 70.30 RCW.*

*Civil service for sheriff's office, county officers to aid in carrying out: RCW 41.14.200.*

#### Clerks, election

*duties relating to*

*polling place regulations after closing: Chapters 29A.44 and 29A.60 RCW.*

*polling place regulations during voting hours: Chapter 29A.44 RCW.*

*generally: Chapter 29A.44 RCW.*

*violations by, penalties: Chapter 29A.84 RCW.*

*Code of ethics for municipal officers—Contract interests: Chapter 42.23 RCW.*

*Compensation, constitutional provision: State Constitution Art. 11 § 5 (Amendment 57).*

*Continuity of government act, effect as to: RCW 42.14.040, 42.14.070.*

*County administrator (public assistance): RCW 74.04.070 through 74.04.080.*

#### County superintendent of schools

*community center board of supervisors, superintendent as member: RCW 28A.335.270.*

*penalties applicable to: Chapter 28A.635 RCW.*

*powers and duties prescribed: Chapter 28A.310 RCW.*

*Dental hygienists, licensed, county may employ: RCW 18.29.050.*

*Department of revenue, to advise: Chapter 84.08 RCW.*

*Detention home personnel: Chapter 13.04 RCW.*

*Director of public health, generally: Chapter 70.08 RCW.*

#### District health officer

*generally: Chapter 70.46 RCW.*

*vital statistics, officer as registrar: Chapter 70.58 RCW.*

*Electrical construction violations, county officers liable—Penalty: RCW 19.29.060.*

Eligibility to hold office: RCW 42.04.020.  
 Employee safety award programs: RCW 36.32.460.  
 Examiner of titles: RCW 65.12.090.  
 Flood control activities, immunity of from liability: RCW 86.12.037.  
 Free transportation for public officers prohibited: State Constitution Art. 12 § 20.  
 Health officer  
   *boarding homes, officer to aid in administration of licensing laws: Chapter 18.20 RCW.*  
   *children with disabilities, education of, officer to get cooperation: RCW 28A.155.030.*  
   *convention of: RCW 43.70.140.*  
   *duties relating to*  
     *certified copies of birth or death certificates: RCW 70.58.107.*  
     *child welfare agencies: Chapter 74.15 RCW.*  
     *embalmers, licensing of: Chapter 18.39 RCW.*  
     *sexually transmitted disease: Chapter 70.24 RCW.*  
     *hearing tests for pupils, officer may give: RCW 28A.210.020.*  
     *vital statistics, officer as registrar: Chapter 70.58 RCW.*  
     *water recreational facilities: Chapter 70.90 RCW.*  
 Hospitalization and medical aid insurance for: RCW 41.04.180, 41.04.190.  
 Interchange of personnel with federal agency, rights preserved: RCW 41.04.140 through 41.04.170.  
 Juvenile probation officer, psychopathic delinquents, officer's duties: Chapter 71.06 RCW.  
 Local authorities, county officer as for motor vehicle purposes: RCW 46.04.280.  
 Lost or uncertain boundary lines, commissioners appointed to ascertain: RCW 58.04.030.  
 Military  
   *leaves for public employees: RCW 38.40.060.*  
   *personnel, apprehension and restraint: Chapter 38.38 RCW.*  
 Misconduct of public officers: Chapter 42.20 RCW.  
 Moneys, use by, of official, a felony: State Constitution Art. 11 § 14.  
 Moneys to be deposited with treasurer: State Constitution Art. 11 § 15.  
 Oaths, who may administer: RCW 5.28.010.  
 Officers, elections, duties, terms, compensation: State Constitution Art. 11 § 5 (Amendment 57).  
 Payroll deductions for: RCW 41.04.020 through 41.04.036.  
 Probation counselors: Chapter 13.04 RCW.  
 Probation officer, family court, officer's duties: RCW 26.12.070.  
 Property tax advisor: RCW 84.48.140.  
 Public bodies, meetings: Chapter 42.30 RCW.  
 Public hospital district superintendent: Chapter 70.44 RCW.  
 Public officers, terms when vacancies filled: RCW 42.12.030.  
 P.U.D. taxes certified to and collected by county officials: RCW 54.16.080.  
 Recall of: State Constitution Art. 1 §§ 33, 34 (Amendment 8).  
 Registration of public officer, how effectuated: RCW 42.12.020.  
 Retirement systems, retention of rights: Chapter 41.04 RCW.  
 Review board, county officers to assist: RCW 35.13.173.  
 Salaried officers not to receive witness fees: RCW 42.16.020, 42.16.030.  
 Sanitary officers: Chapter 70.05 RCW.  
 Social security, federal, coverage includes county employees: Chapter 41.48 RCW.  
 Special commissioner (flood control by counties jointly): RCW 86.13.060.  
 State board of health measures, officers to enforce: RCW 43.20.050.  
 Supervisor of elections, duties relating to  
   *hospital district elections: Chapter 70.44 RCW.*  
   *P.U.D. elections: RCW 54.04.060.*  
 Support of dependent children, officials to charge no fees in connection with: RCW 74.20.300.  
 Surveyor to determine town boundaries: RCW 35.27.040.

Unclaimed money and property in hands of public authority, disposition: RCW 63.29.130.

Vacancies in county offices, how filled: State Constitution Art. 11 § 6 (Amendment 52).

Voter registration assistants: RCW 29A.08.105.

**36.16.010 Time of election.** The election of county and precinct officers shall be held on the Tuesday next following the first Monday in November, 1922; and every four years thereafter on the Tuesday next following the first Monday in November, and all such elective county and precinct officers shall after midnight, June 11, 1919, be elected at the time herein specified: PROVIDED, That if a vacancy occur during the first biennium after any such election, an election to fill such vacancy for the unexpired term shall be held at the next succeeding general election. [1963 c 4 § 36.16.010. Prior: 1919 c 175 § 2; RRS § 4030.]

**36.16.020 Term of county and precinct officers.** The term of office of all county and precinct officers shall be four years and until their successors are elected and qualified and assume office in accordance with \*RCW 29.04.170: PROVIDED, That this section and RCW 36.16.010 shall not apply to county commissioners. [1979 ex.s. c 126 § 26; 1963 c 4 § 36.16.020. Prior: 1959 c 216 § 2; 1919 c 175 § 1; 1886 p 101 § 2; Code 1881 § 3153; 1877 p 330 § 2; 1871 p 35 § 3; 1867 p 7 § 4; RRS § 4029.]

\*Reviser's note: RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**36.16.030 Elective county officers enumerated.** Except as provided elsewhere in this section, in every county there shall be elected from among the qualified voters of the county a county assessor, a county auditor, a county clerk, a county coroner, three county commissioners, a county prosecuting attorney, a county sheriff and a county treasurer, except that in each county with a population of less than forty thousand no coroner shall be elected and the prosecuting attorney shall be ex officio coroner. Whenever the population of a county increases to forty thousand or more, the prosecuting attorney shall continue as ex officio coroner until a coroner is elected, at the next general election at which the office of prosecuting attorney normally would be elected, and assumes office as provided in \*RCW 29.04.170. In any county where the population has once attained forty thousand people and a current coroner is in office and a subsequent census indicates less than forty thousand people, the county legislative authority may maintain the office of coroner by resolution or ordinance. If the county legislative authority has not passed a resolution or enacted an ordinance to maintain the office of coroner, the elected coroner shall remain in office for the remainder of the term for which he or she was elected, but no coroner shall be elected at the next election at which that office would otherwise be filled and the prosecuting attorney shall be the ex officio coroner. In a county with a population of two hundred fifty thousand or more, the county legislative authority may replace the office of coroner with a medical examiner system and appoint a medical examiner as specified in RCW 36.24.190. A noncharter county may have five county commissioners as provided in RCW

36.32.010 and 36.32.055 through 36.32.0558. [1996 c 108 § 1; 1991 c 363 §§ 46, 47; 1990 c 252 § 8; 1963 c 4 § 36.16.030. Prior: 1955 c 157 § 5; prior: (i) Code 1881 § 2707; 1869 p 310 §§ 1-3; 1863 p 549 §§ 1-3; 1854 p 424 §§ 1-3; RRS § 4083. (ii) Code 1881 § 2738; 1863 p 552 § 1; 1854 p 426 § 1; RRS § 4106. (iii) 1891 c 5 § 1; RRS § 4127. (iv) 1890 p 478 § 1; 1886 p 164 § 1; 1883 p 39 § 1; Code 1881 § 2752; 1869 p 402 § 1; 1854 p 428 § 1; RRS § 4140. (v) 1943 c 139 § 1; Code 1881 § 2766; 1863 p 557 § 1; 1854 p 434 § 1; Rem. Supp. 1949 § 4155. (vi) Code 1881 § 2775, part; 1863 p 559 § 1, part; 1854 p 436 § 1, part; RRS § 4176, part. (vii) 1933 c 136 § 2; 1925 ex.s. c 148 § 2; RRS § 4200-2a. (viii) 1937 c 197 § 1; 1933 c 136 § 3; 1925 ex.s. c 148 § 3; RRS § 4200-3a. (ix) 1937 c 197 § 2; 1933 c 136 § 4; 1925 ex.s. c 148 § 4; RRS § 4200-4a. (x) 1927 c 37 § 1; 1890 p 304 § 2; RRS § 4205-1.]

**\*Reviser's note:** RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Effective dates—1991 c 363 §§ 28, 29, 33, 47, 131:** See note following RCW 28A.343.660.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.16.032 Offices of auditor and clerk may be combined in counties with populations of less than five thousand—Salary.** The office of county auditor may be combined with the office of county clerk in each county with a population of less than five thousand by unanimous resolution of the county legislative authority passed thirty days or more prior to the first day of filing for the primary election for county offices. The salary of such office of county clerk combined with the office of county auditor, and the salary of the office of county auditor that is not combined with the office of county clerk, shall be not less than ten thousand three hundred dollars. The county legislative authority of such county is authorized to increase or decrease the salary of such office: PROVIDED, That the legislative authority of the county shall not reduce the salary of any official below the amount which such official was receiving on January 1, 1973. [1991 c 363 § 48; 1973 1st ex.s. c 88 § 1; 1972 ex.s. c 97 § 1; 1967 ex.s. c 77 § 1; 1963 c 164 § 2; 1963 c 4 § 36.16.032. Prior: 1957 c 219 § 4.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.16.040 Oath of office.** Every person elected to county office shall before he enters upon the duties of his office take and subscribe an oath or affirmation that he will faithfully and impartially discharge the duties of his office to the best of his ability. This oath, or affirmation, shall be administered and certified by an officer authorized to administer oaths, without charge therefor. [1963 c 4 § 36.16.040. Prior: 1955 c 157 § 6; prior: (i) Code 1881 § 2666; 1869 p 303 § 4; 1863 p 541 § 4; 1854 p 420 § 4; RRS § 4045. (ii) Code 1881 § 2708, part; 1869 p 310 § 4, part; 1863 p 549 § 4, part; 1854 p 424 § 4, part; RRS § 4084, part. (iii) 1943 c 249 § 1; Code 1881 § 2739; 1863 p 553 § 2, part; 1854 p 426 § 2; Rem. Supp. 1943 § 4107. (iv) 1886 p 61 § 4, part; 1883 p 73 § 9, part; Code 1881 § 2163, part; 1877 p 246 § 5, part; 1863 p 408 § 3, part; 1860 p 334 § 3, part; 1858 p 12 § 3, part; 1854 p 417 § 3, part; RRS § 4129, part. (v) 1897 c 71 § 44; 1893 c

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124 § 46; Code 1881 § 2753; 1854 p 428 § 2; RRS § 4141. (vi) Code 1881 § 2774; 1863 p 558 § 9; 1854 p 435 § 9; RRS § 4156. (vii) Code 1881 § 2775, part; 1863 p 559 § 1, part; 1854 p 436 § 1, part; RRS § 4176, part. (viii) Code 1881 § 2096; 1869 p 374 § 18; RRS § 4231. (ix) 1909 c 97 p 280 § 1, part; 1903 c 104 § 13, part; 1899 c 142 § 5, part; 1897 c 118 § 30, part; 1890 p 355 § 10, part; Code 1881 § 3170, part; RRS § 4767, part. (x) 1925 ex.s. c 130 § 55; 1891 c 140 § 46; 1890 p 548 § 50; RRS § 11138.]

*Election officials, oaths of office:* RCW 29A.44.490 through 29A.44.520.

*Examiner of titles, oath of:* RCW 65.12.090.

**36.16.050 Official bonds.** Every county official before he or she enters upon the duties of his or her office shall furnish a bond conditioned that he or she will faithfully perform the duties of his or her office and account for and pay over all money which may come into his or her hands by virtue of his or her office, and that he or she, or his or her executors or administrators, will deliver to his or her successor safe and undefaced all books, records, papers, seals, equipment, and furniture belonging to his or her office. Bonds of elective county officers shall be as follows:

(1) Assessor: Amount to be fixed and sureties to be approved by proper county legislative authority;

(2) Auditor: Amount to be fixed at not less than ten thousand dollars and sureties to be approved by the proper county legislative authority;

(3) Clerk: Amount to be fixed in a penal sum not less than double the amount of money liable to come into his or her hands and sureties to be approved by the judge or a majority of the judges presiding over the court of which he or she is clerk: PROVIDED, That the maximum bond fixed for the clerk shall not exceed in amount that required for the treasurer in a county of that class;

(4) Coroner: Amount to be fixed at not less than five thousand dollars with sureties to be approved by the proper county legislative authority;

(5) Members of the proper county legislative authority: Sureties to be approved by the county clerk and the amounts to be:

(a) In each county with a population of one hundred twenty-five thousand or more, twenty-five thousand dollars;

(b) In each county with a population of from seventy thousand to less than one hundred twenty-five thousand, twenty-two thousand five hundred dollars;

(c) In each county with a population of from forty [thousand] to less than seventy thousand, twenty thousand dollars;

(d) In each county with a population of from eighteen thousand to less than forty thousand, fifteen thousand dollars;

(e) In each county with a population of from twelve thousand to less than eighteen thousand, ten thousand dollars;

(f) In each county with a population of from eight thousand to less than twelve thousand, seven thousand five hundred dollars;

(g) In all other counties, five thousand dollars;

(6) Prosecuting attorney: In the amount of five thousand dollars with sureties to be approved by the proper county legislative authority;

(7) Sheriff: Amount to be fixed and bond approved by the proper county legislative authority at not less than five

thousand nor more than fifty thousand dollars; surety to be a surety company authorized to do business in this state;

(8) Treasurer: Sureties to be approved by the proper county legislative authority and the amounts to be fixed by the proper county legislative authority at double the amount liable to come into the treasurer's hands during his or her term, the maximum amount of the bond, however, not to exceed:

(a) In each county with a population of two hundred ten thousand or more, two hundred fifty thousand dollars;

(b) In each county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand, two hundred thousand dollars;

(c) In each county with a population of from eighteen thousand to less than one hundred twenty-five thousand, one hundred fifty thousand dollars;

(d) In all other counties, one hundred thousand dollars.

The treasurer's bond shall be conditioned that all moneys received by him or her for the use of the county shall be paid as the proper county legislative authority shall from time to time direct, except where special provision is made by law for the payment of such moneys, by order of any court, or otherwise, and for the faithful discharge of his or her duties.

Bonds for other than elective officials, if deemed necessary by the proper county legislative authority, shall be in such amount and form as such legislative authority shall determine.

In the approval of official bonds, the chair may act for the county legislative authority if it is not in session. [1991 c 363 § 49; 1971 c 71 § 1; 1969 ex.s. c 176 § 91; 1963 c 4 § 36.16.050. Prior: 1955 c 157 § 7; prior: (i) 1895 c 53 § 1; RRS § 70. (ii) 1895 c 53 § 2, part; RRS § 71, part. (iii) 1921 c 132 § 1, part; 1893 c 75 § 7, part; RRS § 4046, part. (iv) Code 1881 § 2708, part; 1869 p 310 § 4, part; 1863 p 549 § 4, part; 1854 p 424 § 4, part; RRS § 4084, part. (v) 1943 c 249 § 1, part; Code 1881 § 2739, part; 1863 p 553 § 2, part; 1854 p 426 § 2, part; Rem. Supp. 1943 § 4107, part. (vi) 1886 p 61 § 4, part; 1883 p 73 § 9, part; Code 1881 § 2163, part; 1877 p 246 § 5, part; 1863 p 408 § 3, part; 1860 p 334 § 3, part; 1858 p 12 § 3, part; 1854 p 417 § 3, part; RRS 4129, part. (vii) 1897 c 71 § 44, part; 1893 p 124 § 46, part; Code 1881 § 2753, part; 1854 p 428 § 2, part; RRS § 4141, part. (viii) 1943 c 139 § 1, part; Code 1881 § 2766, part; 1863 p 557 § 1, part; 1854 p 434 § 1, part; Rem. Supp. 1943 § 4155, part. (ix) Code 1881 § 2775, part; 1863 p 559 § 1, part; 1854 p 436 § 1, part; RRS § 4176, part. (x) 1909 c 97 p 280 § 1, part; 1903 c 104 § 13, part; 1899 c 142 § 5, part; 1897 c 118 § 30, part; 1890 p 355 § 10, part; Code 1881 § 3170, part; RRS § 4767, part. (xi) 1890 p 35 § 5, part; RRS § 9934, part. (xii) 1925 ex.s. c 130 § 55, part; 1891 c 140 § 46, part; 1890 p 548 § 50, part; RRS § 11138, part.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

*Auditor as registrar of titles, bond for:* RCW 65.12.055.

*Examiner of titles, bond:* RCW 65.12.090.

*Public officers, official bonds*

*Code of 1881, county application:* RCW 42.08.010 through 42.08.050.

*1890 act, county application:* RCW 42.08.060 through 42.08.170.

**36.16.060 Place of filing oaths and bonds.** Every county officer, before entering upon the duties of his office,

shall file his oath of office in the office of the county auditor and his official bond in the office of the county clerk: **PROVIDED**, That the official bond of the county clerk, after first being recorded by the county auditor, shall be filed in the office of the county treasurer.

Oaths and bonds of deputies shall be filed in the offices in which the oaths and bonds of their principals are required to be filed. [1963 c 4 § 36.16.060. Prior: 1955 c 157 § 8; prior: (i) 1895 c 53 § 2, part; RRS § 71, part. (ii) 1890 p 35 § 5, part; RRS § 9934, part.]

**36.16.070 Deputies and employees.** In all cases where the duties of any county office are greater than can be performed by the person elected to fill it, the officer may employ deputies and other necessary employees with the consent of the board of county commissioners. The board shall fix their compensation and shall require what deputies shall give bond and the amount of bond required from each. The sureties on deputies' bonds must be approved by the board and the premium therefor is a county expense.

A deputy may perform any act which his principal is authorized to perform. The officer appointing a deputy or other employee shall be responsible for the acts of his appointees upon his official bond and may revoke each appointment at pleasure. [1969 ex.s. c 176 § 92; 1963 c 4 § 36.16.070. Prior: 1959 c 216 § 3; 1957 c 219 § 2; prior: (i) Code 1881 § 2716; 1869 p 312 § 10; 1863 p 550 § 7; 1854 p 425 § 7; RRS § 4093. (ii) Code 1881 § 2741; 1863 p 553 § 4; 1854 p 427 § 4; RRS § 4108. (iii) Code 1881 § 2767, part; 1871 p 110 § 1, part; 1863 p 557 § 2, part; 1854 p 434 § 2, part; RRS § 4160, part. (iv) 1905 c 60 § 1; RRS § 4177. (v) 1905 c 60 § 2; RRS § 4178. (vi) 1905 c 60 § 3; RRS § 4179. (vii) 1949 c 200 § 1, part; 1945 c 87 § 1, part; 1937 c 197 § 3, part; 1925 ex.s. c 148 § 6, part; Rem. Supp. 1949 § 4200-5a, part. (viii) 1943 c 260 § 1; Rem. Supp. 1943 § 4200-5b.]

*County clerk, deputies of:* Chapter 2.32 RCW.

**36.16.087 Deputies and employees—County treasurer—Prior deeds validated.** In all cases in which the county treasurer of any county in the state of Washington shall have executed a tax deed or deeds prior to February 21, 1903, either to his county or to any private person or persons or corporation whomsoever, said deed or deeds shall not be deemed invalid by reason of the county treasurer who executed the same not having affixed a seal of office to the same, or having affixed a seal not an official seal; nor shall said deed or deeds be deemed invalid by reason of the fact that at the date of the execution of said deed or deeds there was in the state of Washington no statute providing for an official seal for the office of county treasurer. [1963 c 4 § 36.16.087. Prior: 1903 c 15 § 2; RRS § 4126. Formerly RCW 36.16.080.]

**36.16.090 Office space.** The boards of county commissioners of the several counties of the state shall provide a suitable furnished office for each of the county officers in their respective courthouses. [1963 c 4 § 36.16.090. Prior: 1893 c 82 § 1; Code 1881 § 2677; 1869 p 306 § 15; 1854 p 422 § 15; RRS § 4032. SLC-RO-14.]

**36.16.100 Offices to be open certain days and hours.**

All county and precinct offices shall be kept open for the transaction of business during such days and hours as the board of county commissioners shall by resolution prescribe. [1963 c 4 § 36.16.100. Prior: 1955 ex.s. c 9 § 2; prior: 1951 c 100 § 1; 1941 c 113 § 1, part; Rem. Supp. 1941 § 9963-1, part.]

**36.16.110 Vacancies in office.** The county legislative authority in each county shall, at its next regular or special meeting after being appraised of any vacancy in any county, township, precinct, or road district office of the county, fill the vacancy by the appointment of some person qualified to hold such office, and the officers thus appointed shall hold office until the next general election, and until their successors are elected and qualified.

If a vacancy occurs in a partisan county office after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in \*RCW 29.01.135 and shall continue through the term for which he or she was elected. [2003 c 238 § 1; 1963 c 4 § 36.16.110. Prior: 1927 c 163 § 1; RRS § 4059; prior: Code 1881 § 2689; 1867 p 57 § 28.]

**\*Reviser's note:** RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Contingent effective date—2003 c 238:** "This act takes effect January 1, 2004, if the proposed amendment to Article II, section 15 of the state Constitution (HJR 4206) is validly submitted to and is approved and ratified by the voters at a general election held in November 2003. If the proposed amendment is not approved and ratified, this act is void in its entirety." [2003 c 238 § 5.] House Joint Resolution No. 4206 was approved by the voters on November 4, 2003.

**36.16.115 Vacancy in partisan elective office—Appointment of acting official.** Where a vacancy occurs in any partisan county elective office, other than a member of the county legislative authority, the county legislative authority may appoint an employee that was serving as a deputy or assistant in such office at the time the vacancy occurred as an acting official to perform all necessary duties to continue normal office operations. The acting official will serve until a successor is either elected or appointed as required by law. This section does not apply to any vacancy occurring in a charter county which has charter provisions inconsistent with this section. [1981 c 180 § 3.]

**Reviser's note:** 1981 c 180 § 3 directed that this section be added to chapter 29.18 RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 36.16 RCW.

**Severability—1981 c 180:** See note following RCW 42.12.040.

*Election of successor:* RCW 42.12.040.

*Filing period, special:* RCW 29A.24.210.

**36.16.120 Officers must complete business.** All county officers shall complete the business of their offices, to the time of the expiration of their respective terms, and in case any officer, at the close of his term, leaves to his successor official labor to be performed, which it was his duty to perform, he shall be liable to his successor for the full value of such services. [1963 c 4 § 36.16.120. Prior: 1890 p 315 § 43; RRS § 4031.]

**36.16.125 Elected officials—Abandonment of responsibilities—Declaratory judgment—Compensation denied during abandonment.** The county legislative authority of a county may cause an action to be filed in the superior court of that county for a declaratory judgment finding that a county elected official has abandoned his or her responsibilities by being absent from the county and failing to perform his or her official duties for a period of at least thirty consecutive days, but not including: (1) Absences approved by the county legislative authority; or (2) absences arising from leave taken for legitimate medical or disability purposes. If such a declaratory judgment is issued, the county official is no longer eligible to receive compensation from the date the declaratory judgment is issued until the court issues a subsequent declaratory judgment finding that the county official has commenced performing his or her responsibilities. [1999 c 71 § 1.]

**36.16.130 Group false arrest insurance for law enforcement personnel.** Any county may contract with an insurance company authorized to do business in this state to provide group false arrest insurance for its law enforcement personnel and pursuant thereto may use such portion of its revenues to pay the premiums therefor as the county may determine. [1963 c 127 § 2.]

**36.16.136 Liability insurance for officers and employees.** The board of county commissioners of each county may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1969 ex.s. c 59 § 1.]

**36.16.138 Liability insurance for officers and employees of municipal corporations and political subdivisions authorized.** Any board of commissioners, council, or board of directors or other governing board of any county, city, town, school district, port district, public utility district, water-sewer district, irrigation district, or other municipal corporation or political subdivision is authorized to purchase insurance to protect and hold personally harmless any of its commissioners, council members, directors, or other governing board members, and any of its other officers, employees, and agents from any action, claim, or proceeding instituted against the foregoing individuals arising out of the performance, purported performance, or failure of performance, in good faith of duties for, or employment with, such institutions and to hold these individuals harmless from any expenses connected with the defense, settlement, or monetary judgments from such actions, claims, or proceedings. The purchase of such insurance for any of the foregoing individuals and the policy limits shall be discretionary with the municipal corporation or political subdivision, and such insurance shall not be considered to be compensation for these individuals.

The provisions of this section are cumulative and in addition to any other provision of law authorizing any municipal corporation or political subdivision to purchase liability insurance. [1999 c 153 § 43; 1975 c 16 § 1.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

*Liability insurance for officers and employees authorized: RCW 28A.400.360, 28B.10.660, 35.21.205, 52.12.071, 53.08.205, 54.16.095, 57.08.105, and 87.03.162.*

**36.16.139 Insurance and workers' compensation for offenders performing community restitution.** The legislative authority of a county may purchase liability insurance in an amount it deems reasonable to protect the county, its officers, and employees against liability for the wrongful acts of offenders or injury or damage incurred by offenders in the course of community restitution imposed by court order or pursuant to RCW 13.40.080. The legislative authority of a county may elect to treat offenders as employees and/or workers under Title 51 RCW. [2002 c 175 § 32; 1984 c 24 § 3.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

*Workers' compensation coverage of offenders performing community restitution: RCW 51.12.045.*

**36.16.140 Public auction sales, where held.** Public auction sales of property conducted by or for the county shall be held at such places as the county legislative authority may direct. [1991 c 363 § 50; 1991 c 245 § 3; 1965 ex.s. c 23 § 6.]

**Reviser's note:** This section was amended by 1991 c 245 § 3 and by 1991 c 363 § 50, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

*Building permit—County must require payroll estimate under industrial insurance act: RCW 51.12.070.*

*Public lands—Advertisement—Hours: RCW 79.11.165.*

*Sales of county property, where held: RCW 36.34.080.*

*Tax sales, where held: RCW 84.64.080, 36.35.120.*

## Chapter 36.17 RCW

### SALARIES OF COUNTY OFFICERS

#### Sections

36.17.010	Salary full compensation—Compensation denied, when.
36.17.020	Schedule of salaries.
36.17.024	County commissioner and councilmember salary commissions.
36.17.031	Reimbursement for travel allowances and allowances in lieu of actual expenses.
36.17.040	Payment of salaries of officers and employees.
36.17.042	Biweekly pay periods.
36.17.045	Deductions for contributions, payments and dues, authorized.
36.17.050	Salary warrant may be withheld.
36.17.055	Salary adjustment for county legislative authority office—Ratification and validation of preselection action.

*Cemetery and morgue employees, salary of: RCW 68.52.020.*

*Compensation of county officials: State Constitution Art. 11 § 5 (Amendment 57).*

*County commissioners, compensation and/or expenses determining towns boundaries: RCW 35.27.060.*

*flood control by counties jointly, duties: RCW 86.13.060.*

*metropolitan council member: RCW 35.58.160.*

*pest exterminator: RCW 17.12.060.*

*State committee on agency officials' salaries to study salaries of elective county officials: RCW 43.03.028.*

**36.17.010 Salary full compensation—Compensation denied, when.** The county officers of the counties of this state shall receive a salary for the services required of them by law, or by virtue of their office, which salary shall be full compensation for all services of every kind and description rendered by them. However, if the superior court issues a declaratory judgment under RCW 36.16.125 finding that a county officer has abandoned his or her duties, the county officer may not be paid compensation. [1999 c 71 § 2; 1991 c 363 § 51; 1963 c 4 § 36.17.010. Prior: 1890 p 312 § 32; RRS § 4210.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.17.020 Schedule of salaries.** The county legislative authority of each county or a county commissioner or councilmember salary commission which conforms with RCW 36.17.024 is authorized to establish the salaries of the elected officials of the county. One-half of the salary of each prosecuting attorney shall be paid by the state. The annual salary of a county elected official shall not be less than the following:

(1) In each county with a population of one million or more: Auditor, clerk, treasurer, sheriff, members of the county legislative authority, and coroner, eighteen thousand dollars; assessor, nineteen thousand dollars; and prosecuting attorney, thirty thousand three hundred dollars;

(2) In each county with a population of from two hundred ten thousand to less than one million: Auditor, seventeen thousand six hundred dollars; clerk, seventeen thousand six hundred dollars; treasurer, seventeen thousand six hundred dollars; sheriff, nineteen thousand five hundred dollars; assessor, seventeen thousand six hundred dollars; prosecuting attorney, twenty-four thousand eight hundred dollars; members of the county legislative authority, nineteen thousand five hundred dollars; and coroner, seventeen thousand six hundred dollars;

(3) In each county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand: Auditor, sixteen thousand dollars; clerk, sixteen thousand dollars; treasurer, sixteen thousand dollars; sheriff, seventeen thousand six hundred dollars; assessor, sixteen thousand dollars; prosecuting attorney, twenty-four thousand eight hundred dollars; members of the county legislative authority, seventeen thousand six hundred dollars; and coroner, sixteen thousand dollars;

(4) In each county with a population of from seventy thousand to less than one hundred twenty-five thousand: Auditor, fourteen thousand nine hundred dollars; clerk, fourteen thousand nine hundred dollars; treasurer, fourteen thousand nine hundred dollars; assessor, fourteen thousand nine hundred dollars; sheriff, fourteen thousand nine hundred dollars; prosecuting attorney, twenty-three thousand seven hundred dollars; members of the county legislative authority, fourteen thousand nine hundred dollars; and coroner, fourteen thousand nine hundred dollars;

(5) In each county with a population of from forty thousand to less than seventy thousand: Auditor, thirteen thousand eight hundred dollars; clerk, thirteen thousand eight hundred dollars; treasurer, thirteen thousand eight hundred dollars; assessor, thirteen thousand eight hundred dollars; sheriff, thirteen thousand eight hundred dollars; prosecuting

attorney, twenty-three thousand seven hundred dollars; members of the county legislative authority, thirteen thousand eight hundred dollars; and coroner, thirteen thousand eight hundred dollars;

(6) In each county with a population of from eighteen thousand to less than forty thousand: Auditor, twelve thousand one hundred dollars; clerk, twelve thousand one hundred dollars; treasurer, twelve thousand one hundred dollars; sheriff, twelve thousand one hundred dollars; assessor, twelve thousand one hundred dollars; prosecuting attorney in such a county in which there is no state university or college, fourteen thousand three hundred dollars; in such a county in which there is a state university or college, sixteen thousand five hundred dollars; and members of the county legislative authority, eleven thousand dollars;

(7) In each county with a population of from twelve thousand to less than eighteen thousand: Auditor, ten thousand one hundred dollars; clerk, ten thousand one hundred dollars; treasurer, ten thousand one hundred dollars; assessor, ten thousand one hundred dollars; sheriff, eleven thousand two hundred dollars; prosecuting attorney, thirteen thousand two hundred dollars; and members of the county legislative authority, nine thousand four hundred dollars;

(8) In each county with a population of from eight thousand to less than twelve thousand: Auditor, ten thousand one hundred dollars; clerk, ten thousand one hundred dollars; treasurer, ten thousand one hundred dollars; assessor, ten thousand one hundred dollars; sheriff, eleven thousand two hundred dollars; prosecuting attorney, nine thousand nine hundred dollars; and members of the county legislative authority, seven thousand dollars;

(9) In each county with a population of from five thousand to less than eight thousand: Auditor, nine thousand one hundred dollars; clerk, nine thousand one hundred dollars; treasurer, nine thousand one hundred dollars; assessor, nine thousand one hundred dollars; sheriff, ten thousand five hundred dollars; prosecuting attorney, nine thousand nine hundred dollars; and members of the county legislative authority, six thousand five hundred dollars;

(10) In each other county: Auditor, nine thousand one hundred dollars; clerk, nine thousand one hundred dollars; treasurer, nine thousand one hundred dollars; sheriff, ten thousand five hundred dollars; assessor, nine thousand one hundred dollars; prosecuting attorney, nine thousand nine hundred dollars; and members of the county legislative authority, six thousand five hundred dollars. [2001 c 73 § 3; 1994 sp.s. c 4 § 1; 1991 c 363 § 52; 1973 1st ex.s. c 88 § 2; 1971 ex.s. c 237 § 1; 1969 ex.s. c 226 § 1; 1967 ex.s. c 77 § 2; 1967 c 218 § 3; 1963 c 164 § 1; 1963 c 4 § 36.17.020. Prior: 1957 c 219 § 3; prior: (i) 1953 c 264 § 1; 1949 c 200 § 1, part; 1945 c 87 § 1, part; 1937 c 197 § 3, part; 1933 c 136 § 6, part; 1925 ex.s. c 148 § 6, part; 1919 c 168 § 2, part; Rem. Supp. 1949 § 4200-5a, part. (ii) 1921 c 184 § 2; RRS § 4203.]

**Findings—Intent—Severability—2001 c 73:** See notes following RCW 35.21.015.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1971 ex.s. c 237:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 237 § 4.]

(2004 Ed.)

**Effective date—1971 ex.s. c 237:** "This act shall take effect on January 1, 1972." [1971 ex.s. c 237 § 5.]

*Counties with populations of less than five thousand, combined office of auditor and clerk, salary: RCW 36.16.032.*

**36.17.024 County commissioner and councilmember salary commissions.** (1) Salaries for county commissioners and councilmembers may be set by county commissioner and councilmember salary commissions established by ordinance or resolution of the county legislative authority and in conformity with this section.

(2) Commissions established under subsection (1) of this section shall be known as the (Insert name of county) county citizens' commission on salaries for elected officials. Each commission shall consist of ten members appointed by the county commissioner or executive with the approval of the county legislative authority, or by a majority vote of the county legislative authority if there is no single county commissioner or executive, as provided in this section.

(a) Six of the ten commission members shall be selected by lot by the county auditor from among those registered voters eligible to vote at the time persons are selected for appointment to full terms on the commission under (c) of this subsection. In noncharter counties, the county auditor shall select two commission members living in each commissioner's district. The county auditor shall establish policies and procedures for conducting the selection by lot. The policies and procedures shall include, but not be limited to, those for notifying persons selected and for providing a new selection from a commissioner's district if a person selected from the district declines appointment to the commission or if, following the person's appointment, the person's position on the commission becomes vacant before the end of the person's term of office.

(b) The remaining four of the ten commission members must be residents of the county and shall be appointed by the county commissioner or executive with approval of the county legislative authority, or by a majority vote of the county legislative authority if there is no single county commissioner or executive. The persons selected under this subsection shall have had experience in the field of personnel management. Of these four members, one shall be selected from each of the following four sectors in the county: Business, professional personnel management, legal profession, and organized labor.

(c) If there is a single county commissioner or executive, the county auditor shall forward the names of persons selected under (a) of this subsection to the county commissioner or executive who shall appoint these persons to the commission.

(d) No person may be appointed to more than two terms. No member of the commission may be removed by the county commissioner or executive, or county legislative authority if there is no single county commissioner or executive, during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office, or for a disqualifying change of residence.

(e) The members of the commission may not include any officer, official, or employee of the county or any of their immediate family members. "Immediate family member" as used in this subsection means the parents, spouse, siblings,

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children, or dependent relatives of the officer, official, or employee, whether or not living in the household of the officer, official, or employee.

(f) Upon a vacancy in any position on the commission, a successor shall be selected and appointed to fill the unexpired term. The selection and appointment shall be concluded within thirty days of the date the position becomes vacant and shall be conducted in the same manner as for the original appointment.

(3) Any change in salary shall be filed by the commission with the county auditor and shall become effective and incorporated into the county budget without further action of the county legislative authority or salary commission.

(4) Salary increases established by the commission shall be effective as to county commissioners and all members of the county legislative authority, regardless of their terms of office.

(5) Salary decreases established by the commission shall become effective as to incumbent county commissioners and councilmembers at the commencement of their next subsequent terms of office.

(6) Salary increases and decreases shall be subject to referendum petition by the people of the county in the same manner as a county ordinance upon filing of such petition with the county auditor within thirty days after filing of the salary schedule. In the event of the filing of a valid referendum petition, the salary increase or decrease shall not go into effect until approved by vote of the people.

(7) Referendum measures under this section shall be submitted to the voters of the county at the next following general or municipal election occurring thirty days or more after the petition is filed, and shall be otherwise governed by the provisions of the state Constitution and laws generally applicable to referendum measures.

(8) The action fixing the salary of a county commissioner or councilmember by a commission established in conformity with this section shall supersede any other provision of state statute or county ordinance related to municipal budgets or to the fixing of salaries of county commissioners and councilmembers.

(9) Salaries for county commissioners and councilmembers established under an ordinance or resolution of the county legislative authority in existence on July 22, 2001, that substantially complies with this section shall remain in effect unless and until changed in accordance with such charter provision or ordinance. [2001 c 73 § 5.]

**Findings—Intent—Severability—2001 c 73:** See notes following RCW 35.21.015.

**36.17.031 Reimbursement for travel allowances and allowances in lieu of actual expenses.** See RCW 42.24.090.

**36.17.040 Payment of salaries of officers and employees.** The salaries of county officers and employees of counties other than counties with a population of less than five thousand may be paid twice monthly out of the county treasury, and the county auditor, for services rendered from the first to the fifteenth day, inclusive, may, not later than the last day of the month, draw a warrant upon the county treasurer in favor of each of such officers and employees for the amount

of salary due him or her, and such auditor, for services rendered from the sixteenth to the last day, inclusive, may similarly draw a warrant, not later than the fifteenth day of the following month, and the county legislative authority, with the concurrence of the county auditor, may enter an order on the record journal empowering him or her so to do: **PROVIDED,** That if the county legislative authority does not adopt the semimonthly pay plan, it, by resolution, shall designate the first pay period as a draw day. Not more than forty percent of said earned monthly salary of each such county officer or employee shall be paid to him or her on the draw day and the payroll deductions of such officer or employee shall not be deducted from the salary to be paid on the draw day. If officers and employees are paid once a month, the draw day shall not be later than the last day of each month. The balance of the earned monthly salary of each such officer or employee shall be paid not later than the fifteenth day of the following month.

In counties with a population of less than five thousand salaries shall be paid monthly unless the county legislative authority by resolution adopts the foregoing draw day procedure. [1991 c 363 § 53; 1988 c 281 § 9; 1963 c 4 § 36.17.040. Prior: 1959 c 300 § 1; 1953 c 37 § 1; 1890 p 314 § 37; RRS § 4220.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1988 c 281:** See RCW 39.59.900.

**36.17.042 Biweekly pay periods.** In addition to the pay periods permitted under RCW 36.17.040, the legislative authority of any county may establish a biweekly pay period where county officers and employees receive their compensation not later than seven days following the end of each two week pay period for services rendered during that pay period.

However, in a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW, the county legislative authority may establish a biweekly pay period where the county officers and employees receive their compensation not later than thirteen days following the end of each two-week pay period for services rendered during that pay period. [1995 c 38 § 3; 1994 c 301 § 5; 1977 c 42 § 1.]

**Acts of municipal officers ratified and confirmed—1995 c 38:** See note following RCW 3.02.045.

**36.17.045 Deductions for contributions, payments and dues, authorized.** Employees of the counties shall have the right to voluntarily authorize the monthly deduction of their pledges to the United Good Neighbor or its successor, monthly payment to a credit unit, and monthly dues to a labor union, from their salaries or wages. When such written authorization is received by the county auditor, he shall make such monthly deduction. [1963 c 164 § 3.]

**36.17.050 Salary warrant may be withheld.** The auditor shall not draw his warrant for the salary of any officer until the latter shall have first filed his duplicate receipt with the auditor, properly signed by the treasurer, showing he has made the last required monthly statement and settlement. If the superior court issues a declaratory judgment under RCW 36.16.125 finding that a county officer has abandoned his or

her duties, the county officer may not be paid a salary. [1999 c 71 § 3; 1963 c 4 § 36.17.050. Prior: 1890 p 314 § 38; RRS § 4221.]

**36.17.055 Salary adjustment for county legislative authority office—Ratification and validation of preelection action.** See RCW 36.40.205.

## Chapter 36.18 RCW

### FEES OF COUNTY OFFICERS

#### Sections

36.18.005	Definitions.
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36.18.012	Fees—Division for deposit in public safety and education account—Court transcript or abstract—Tax warrant—Other papers—Unlawful detainer—Striking discriminatory provisions in real estate—Will with no probate—Nonjudicial probate dispute—Common law liens—Certification of delinquent taxes.
36.18.014	Fees—Division with county law library—Petition for emancipation for minors.
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36.18.020	Clerk's fees.
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36.18.120	Statements to be checked.
36.18.130	Errors or irregularities.
36.18.160	Penalty for taking illegal fees.
36.18.170	Penalty for failure to pay over fees.
36.18.180	Office to be declared vacant on conviction.
36.18.190	Collection of unpaid financial obligations—Collection contracts—Interest to collection agencies authorized.

**36.18.005 Definitions.** The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Recording officer" means the county auditor, or in charter counties the county official charged with the responsibility for recording instruments in the county records.

(2) "File," "filed," or "filing" means the act of delivering an instrument to the auditor or recording officer for recording into the official public records.

(3) "Record," "recorded," or "recording" means the process, such as electronic, mechanical, optical, magnetic, or microfilm storage used by the auditor or recording officer after filing to incorporate the instrument into the public records.

(4) "Multiple transactions" means a document that contains two or more titles and/or two or more transactions requiring multiple indexing. [1999 c 233 § 2; 1991 c 26 § 1.]

**Effective date—1999 c 233:** See note following RCW 4.28.320.

**36.18.010 Auditor's fees.** County auditors or recording officers shall collect the following fees for their official services:

For recording instruments, for the first page eight and one-half by fourteen inches or less, five dollars; for each additional page eight and one-half by fourteen inches or less, one dollar. The fee for recording multiple transactions contained in one instrument will be calculated for each transaction requiring separate indexing as required under RCW 65.04.050 as follows: The fee for each title or transaction is the same fee as the first page of any additional recorded document; the fee for additional pages is the same fee as for any additional pages for any recorded document; the fee for the additional pages may be collected only once and may not be collected for each title or transaction;

For preparing and certifying copies, for the first page eight and one-half by fourteen inches or less, three dollars; for each additional page eight and one-half by fourteen inches or less, one dollar;

For preparing noncertified copies, for each page eight and one-half by fourteen inches or less, one dollar;

For administering an oath or taking an affidavit, with or without seal, two dollars;

For issuing a marriage license, eight dollars, (this fee includes taking necessary affidavits, filing returns, indexing, and transmittal of a record of the marriage to the state registrar of vital statistics) plus an additional five-dollar fee for use and support of the prevention of child abuse and neglect activities to be transmitted monthly to the state treasurer and deposited in the state general fund plus an additional ten-dollar fee to be transmitted monthly to the state treasurer and deposited in the state general fund. The legislature intends to appropriate an amount at least equal to the revenue generated by this fee for the purposes of the displaced homemaker act, chapter 28B.04 RCW;

For searching records per hour, eight dollars;

For recording plats, fifty cents for each lot except cemetery plats for which the charge shall be twenty-five cents per lot; also one dollar for each acknowledgment, dedication, and description: PROVIDED, That there shall be a minimum fee of twenty-five dollars per plat;

For recording of miscellaneous records not listed above, for the first page eight and one-half by fourteen inches or less, five dollars; for each additional page eight and one-half by fourteen inches or less, one dollar;

For modernization and improvement of the recording and indexing system, a surcharge as provided in RCW 36.22.170.

For recording an emergency nonstandard document as provided in RCW 65.04.047, fifty dollars, in addition to all other applicable recording fees.

For recording instruments, a surcharge as provided in RCW 36.22.178. [2002 c 294 § 3; 1999 c 233 § 3; 1996 c 143 § 1; 1995 c 246 § 37; 1991 c 26 § 2. Prior: 1989 c 304 § 1; 1989 c 204 § 6; 1987 c 230 § 1; 1985 c 44 § 2; 1984 c 261 § 4; 1982 1st ex.s. c 15 § 7; 1982 c 4 § 12; 1977 ex.s. c 56 § 1; 1967 c 26 § 8; 1963 c 4 § 36.18.010; prior: 1959 c 263 § 6; 1953 c 214 § 2; 1951 c 51 § 4; 1907 c 56 § 1, part, p 92; 1903 c 151 § 1, part, p 295; 1893 c 130 § 1, part, p 423; Code 1881 § 2086, part, p 358; 1869 p 369 § 3; 1865 p 94 § 1; part; 1863 p 391 § 1, part, p 394; 1861 p 34 § 1, part, p 37; 1854 p 368 § 1, part, p 371; RRS §§ 497, part, 4105.]

**Findings—2002 c 294:** See note following RCW 36.22.178.

**Effective date—1999 c 233:** See note following RCW 4.28.320.

**Effective date—1996 c 143:** "This act shall take effect January 1, 1997." [1996 c 143 § 5.]

**Effective date—1995 c 246 § 37:** "Section 37 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]." [1995 c 246 § 39.]

**Severability—1995 c 246:** See note following RCW 26.50.010.

**Findings—1989 c 204:** See note following RCW 36.22.160.

**Effective date—1987 c 230:** "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 230 § 4.]

**Severability—1984 c 261:** See note following RCW 43.121.020.

**Severability—1982 c 4:** See RCW 43.121.910.

**Effective date—1967 c 26:** See note following RCW 43.70.150.

*Family court funding, marriage license fee increase authorized:* RCW 26.12.220.

**36.18.012 Fees—Division for deposit in public safety and education account—Court transcript or abstract—Tax warrant—Other papers—Unlawful detainer—Striking discriminatory provisions in real estate—Will with no probate—Nonjudicial probate dispute—Common law liens—Certification of delinquent taxes.** (1) Revenue collected under this section is subject to division with the state for deposit in the public safety and education account under RCW 36.18.025.

(2) The party filing a transcript or abstract of judgment or verdict from a United States court held in this state, or from the superior court of another county or from a district court in the county of issuance, shall pay at the time of filing a fee of fifteen dollars.

(3) The clerk shall collect a fee of twenty dollars for: Filing a paper not related to or a part of a proceeding, civil or criminal, or a probate matter, required or permitted to be filed in the clerk's office for which no other charge is provided by law.

(4) If the defendant serves or files an answer to an unlawful detainer complaint under chapter 59.18 or 59.20 RCW, the plaintiff shall pay before proceeding with the unlawful detainer action eighty dollars.

(5) For a restrictive covenant for filing a petition to strike discriminatory provisions in real estate under RCW 49.60.227 a fee of twenty dollars must be charged.

(6) A fee of twenty dollars must be charged for filing a will only, when no probate of the will is contemplated.

(7) A fee of two dollars must be charged for filing a petition, written agreement, or written memorandum in a nonjudicial probate dispute under RCW 11.96A.220.

(8) A fee of thirty-five dollars must be charged for filing a petition regarding a common law lien under RCW 60.70.060.

(9) For certification of delinquent taxes by a county treasurer under RCW 84.64.190, a fee of five dollars must be charged.

(10) For the filing of a tax warrant for unpaid taxes or overpayment of benefits by any agency of the state of Washington, a fee of five dollars on or after July 22, 2001, and for the filing of such a tax warrant or overpayment of benefits on or after July 1, 2003, a fee of twenty dollars, of which forty-six percent of the first five dollars is directed to the public safety and education account established under RCW

43.08.250. [2001 c 146 § 1; 1999 c 42 § 634; 1996 c 211 § 1; 1995 c 292 § 12.]

**Part headings and captions not law—Effective date—1999 c 42:** See RCW 11.96A.901 and 11.96A.902.

**36.18.014 Fees—Division with county law library—Petition for emancipation for minors.** (1) Revenue collected under this section is subject to division with the county law library under RCW 27.24.070.

(2) For filing a petition for emancipation for minors as required under RCW 13.64.020 a fee up to fifty dollars must be collected. [1995 c 292 § 13.]

**36.18.016 Various fees—Not subject to division.** (1) Revenue collected under this section is not subject to division under RCW 36.18.025 or 27.24.070.

(2) For the filing of a petition for modification of a decree of dissolution or paternity, within the same case as the original action, a fee of twenty dollars must be paid.

(3)(a) The party making a demand for a jury of six in a civil action shall pay, at the time, a fee of one hundred twenty-five dollars; if the demand is for a jury of twelve, a fee of two hundred fifty dollars. If, after the party demands a jury of six and pays the required fee, any other party to the action requests a jury of twelve, an additional one hundred twenty-five dollar fee will be required of the party demanding the increased number of jurors.

(b) Upon conviction in criminal cases a jury demand charge of fifty dollars for a jury of six, or one hundred dollars for a jury of twelve may be imposed as costs under RCW 10.46.190.

(4) For preparing, transcribing, or certifying an instrument on file or of record in the clerk's office, with or without seal, for the first page or portion of the first page, a fee of two dollars, and for each additional page or portion of a page, a fee of one dollar must be charged. For authenticating or exemplifying an instrument, a fee of one dollar for each additional seal affixed must be charged.

(5) For executing a certificate, with or without a seal, a fee of two dollars must be charged.

(6) For a garnishee defendant named in an affidavit for garnishment and for a writ of attachment, a fee of twenty dollars must be charged.

(7) For approving a bond, including justification on the bond, in other than civil actions and probate proceedings, a fee of two dollars must be charged.

(8) For the issuance of a certificate of qualification and a certified copy of letters of administration, letters testamentary, or letters of guardianship, there must be a fee of two dollars.

(9) For the preparation of a passport application, the clerk may collect an execution fee as authorized by the federal government.

(10) For clerk's services such as processing ex parte orders, performing historical searches, compiling statistical reports, and conducting exceptional record searches, the clerk may collect a fee not to exceed twenty dollars per hour or portion of an hour.

(11) For duplicated recordings of court's proceedings there must be a fee of ten dollars for each audio tape and twenty-five dollars for each video tape.

(12) For the filing of oaths and affirmations under chapter 5.28 RCW, a fee of twenty dollars must be charged.

(13) For filing a disclaimer of interest under RCW 11.86.031(4), a fee of two dollars must be charged.

(14) For registration of land titles, Torrens Act, under RCW 65.12.780, a fee of five dollars must be charged.

(15) For the issuance of extension of judgment under RCW 6.17.020 and chapter 9.94A RCW, a fee of one hundred ten dollars must be charged.

(16) A facilitator surcharge of ten dollars must be charged as authorized under RCW 26.12.240.

(17) For filing a water rights statement under RCW 90.03.180, a fee of twenty-five dollars must be charged.

(18) A service fee of three dollars for the first page and one dollar for each additional page must be charged for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(19) For preparation of clerk's papers under RAP 9.7, a fee of fifty cents per page must be charged.

(20) For copies and reports produced at the local level as permitted by RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(21) Investment service charge and earnings under RCW 36.48.090 must be charged.

(22) Costs for nonstatutory services rendered by clerk by authority of local ordinance or policy must be charged.

(23) For filing a request for mandatory arbitration, a filing fee may be assessed against the party filing a statement of arbitrability not to exceed two hundred twenty dollars as established by authority of local ordinance. This charge shall be used solely to offset the cost of the mandatory arbitration program.

(24) For filing a request for trial de novo of an arbitration award, a fee not to exceed two hundred fifty dollars as established by authority of local ordinance must be charged. [2002 c 338 § 2; 2001 c 146 § 2; 2000 c 170 § 1; 1999 c 397 § 8; 1996 c 56 § 5; 1995 c 292 § 14.]

**36.18.018 Fees to state court, office of state administrator for the courts—Appellate review—Copies and reports by administrator for the courts.** (1) State revenue collected by county clerks under subsection (2) of this section must be transmitted to the appropriate state court. The office of the state administrator for the courts shall retain fees collected under subsection (3) of this section.

(2) For appellate review under RAP 5.1(b), two hundred fifty dollars must be charged.

(3) For all copies and reports produced by the administrator for the courts as permitted under RCW 2.68.020 and supreme court policy, a variable fee must be charged. [1995 c 292 § 15.]

**36.18.020 Clerk's fees.** (1) Revenue collected under this section is subject to division with the state public safety and education account under RCW 36.18.025 and with the county or regional law library fund under RCW 27.24.070.

(2) Clerks of superior courts shall collect the following fees for their official services:

(a) The party filing the first or initial paper in any civil action, including, but not limited to an action for restitution,

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adoption, or change of name, shall pay, at the time the paper is filed, a fee of one hundred ten dollars except, in an unlawful detainer action under chapter 59.18 or 59.20 RCW for which the plaintiff shall pay a case initiating filing fee of thirty dollars, or in proceedings filed under RCW 28A.225.030 alleging a violation of the compulsory attendance laws where the petitioner shall not pay a filing fee. The thirty dollar filing fee under this subsection for an unlawful detainer action shall not include an order to show cause or any other order or judgment except a default order or default judgment in an unlawful detainer action.

(b) Any party, except a defendant in a criminal case, filing the first or initial paper on an appeal from a court of limited jurisdiction or any party on any civil appeal, shall pay, when the paper is filed, a fee of one hundred ten dollars.

(c) For filing of a petition for judicial review as required under RCW 34.05.514 a filing fee of one hundred ten dollars.

(d) For filing of a petition for unlawful harassment under RCW 10.14.040 a filing fee of forty-one dollars.

(e) For filing the notice of debt due for the compensation of a crime victim under RCW 7.68.120(2)(a) a fee of one hundred ten dollars.

(f) In probate proceedings, the party instituting such proceedings, shall pay at the time of filing the first paper therein, a fee of one hundred ten dollars.

(g) For filing any petition to contest a will admitted to probate or a petition to admit a will which has been rejected, or a petition objecting to a written agreement or memorandum as provided in RCW 11.96A.220, there shall be paid a fee of one hundred ten dollars.

(h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmation of a conviction by a court of limited jurisdiction, a defendant in a criminal case shall be liable for a fee of one hundred ten dollars.

(i) With the exception of demands for jury hereafter made and garnishments hereafter issued, civil actions and probate proceedings filed prior to midnight, July 1, 1972, shall be completed and governed by the fee schedule in effect as of January 1, 1972: PROVIDED, That no fee shall be assessed if an order of dismissal on the clerk's record be filed as provided by rule of the supreme court.

(3) No fee shall be collected when a petition for relinquishment of parental rights is filed pursuant to RCW 26.33.080 or for forms and instructional brochures provided under RCW 26.50.030. [2000 c 9 § 1; 1999 c 42 § 635; 1996 c 211 § 2. Prior: 1995 c 312 § 70; 1995 c 292 § 10; 1993 c 435 § 1; 1992 c 54 § 1; 1989 c 342 § 1; prior: 1987 c 382 § 3; 1987 c 202 § 201; 1987 c 56 § 3; prior: 1985 c 24 § 1; 1985 c 7 § 104; 1984 c 263 § 29; 1981 c 330 § 5; 1980 c 70 § 1; 1977 ex.s. c 107 § 1; 1975 c 30 § 1; 1973 c 16 § 1; 1973 c 38 § 1; prior: 1972 ex.s. c 57 § 5; 1972 ex.s. c 20 § 1; 1970 ex.s. c 32 § 1; 1967 c 26 § 9; 1963 c 4 § 36.18.020; prior: 1961 c 304 § 1; 1961 c 41 § 1; 1951 c 51 § 5; 1907 c 56 § 1, part, p 89; 1903 c 151 § 1, part, p 294; 1893 c 130 § 1, part, p 421; Code 1881 § 2086, part, p 355; 1869 p 364 § 1, part; 1863 p 391 § 1, part; 1861 p 34 § 1, part; 1854 p 368 § 1, part; RRS § 497, part.]

**Rules of court:** *Cf. RAP 14.3, 18.22.*

**Part headings and captions not law—Effective date—1999 c 42:** See RCW 11.96A.901 and 11.96A.902.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**Effective date—1992 c 54:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1992." [1992 c 54 § 7.]

**Severability—Effective date—1989 c 342:** See RCW 59.18.910 and 59.18.911.

**Intent—1987 c 202:** See note following RCW 2.04.190.

**Effective date—Severability—1984 c 263:** See RCW 26.50.901 and 26.50.902.

**Severability—1981 c 330:** See note following RCW 3.62.060.

**Effective date—1972 ex.s. c 20:** "This act shall take effect July 1, 1972." [1972 ex.s. c 20 § 3.]

**Effective date—1967 c 26:** See note following RCW 43.70.150.

**36.18.022 Filing fees may be waived—When.** The court may waive the filing fees provided for under \*RCW 36.18.020(2) (a) and (b) upon affidavit by a party that the party is unable to pay the fee due to financial hardship. [1995 c 292 § 16; 1992 c 54 § 5.]

**\*Reviser's note:** RCW 36.18.020 was amended twice during the 1995 legislative session. The reference to RCW 36.18.020(2) (a) and (b) appears to apply to the changes in 1995 c 292 § 10.

**Effective date—1992 c 54:** See note following RCW 36.18.020.

**36.18.025 Portion of filing fees to be remitted to state treasurer.** Forty-six percent of the money received from filing fees paid pursuant to RCW 36.18.020, except those collected for the filing of warrants for unpaid taxes or overpayments by state agencies as outlined in RCW 36.18.012(10), shall be transmitted by the county treasurer each month to the state treasurer for deposit in the public safety and education account established under RCW 43.08.250. [2001 c 146 § 3; 1992 c 54 § 2; 1985 c 389 § 9; 1984 c 258 § 322; 1972 ex.s. c 20 § 2.]

**Effective date—1992 c 54:** See note following RCW 36.18.020.

**Effective date—1985 c 389:** See note following RCW 27.24.070.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.46.120.

**Effective date—1972 ex.s. c 20:** See note following RCW 36.18.020.

**36.18.030 Coroner's fees.** Coroners shall collect for their official services, the following fees:

For each inquest held, besides mileage, twenty dollars.

For issuing a venire, two dollars.

For drawing all necessary writings, two dollars for first page and one dollar for each page thereafter.

For mileage each way, per mile, ten cents.

For performing the duties of a sheriff, he shall receive the same fees as a sheriff would receive for the same service. [1963 c 4 § 36.18.030. Prior: 1959 c 263 § 7; 1907 c 56 § 1, part, p 93; 1903 c 151 § 1, part, p 296; 1893 c 130 § 1, part, p 424; Code 1881 § 2086, part, p 360; 1869 p 372 § 7, part; 1863 p 391 § 1, part, p 396; 1861 p 34 § 1, part, p 39; 1854 p 368 § 1, part, p 373; RRS §§ 497, part, 4185.]

**36.18.040 Sheriff's fees.** (1) Sheriffs shall collect the following fees for their official services:

(a) For service of each summons and complaint, notice and complaint, summons and petition, and notice of small

claim on one defendant at any location, ten dollars, and on two or more defendants at the same residence, twelve dollars, besides mileage;

(b) For making a return, besides mileage actually traveled, seven dollars;

(c) For levying each writ of attachment or writ of execution upon real or personal property, besides mileage, thirty dollars per hour;

(d) For filing copy of writ of attachment or writ of execution with auditor, ten dollars plus auditor's filing fee;

(e) For serving writ of possession or restitution without aid of the county, besides mileage, twenty-five dollars;

(f) For serving writ of possession or restitution with aid of the county, besides mileage, forty dollars plus thirty dollars for each hour after one hour;

(g) For serving an arrest warrant in any action or proceeding, besides mileage, thirty dollars;

(h) For executing any other writ or process in a civil action or proceeding, besides mileage, thirty dollars per hour;

(i) For each mile actually and necessarily traveled in going to or returning from any place of service, or attempted service, thirty-five cents;

(j) For making a deed to lands sold upon execution or order of sale or other decree of court, to be paid by the purchaser, thirty dollars;

(k) For making copies of papers when sufficient copies are not furnished, one dollar for first page and fifty cents per each additional page;

(l) For the service of any other document and supporting papers for which no other fee is provided for herein, twelve dollars;

(m) For posting a notice of sale, or postponement, ten dollars besides mileage;

(n) For certificate or bill of sale of property, or certificate of redemption, thirty dollars;

(o) For conducting a sale of property, thirty dollars per hour spent at a sheriff's sale;

(p) For notarizing documents, five dollars for each document;

(q) For fingerprinting for noncriminal purposes, ten dollars for each person for up to two sets, three dollars for each additional set;

(r) For mailing required by statute, whether regular, certified, or registered, the actual cost of postage;

(s) For an internal criminal history records check, ten dollars;

(t) For the reproduction of audio, visual, or photographic material, to include magnetic microfilming, the actual cost including personnel time.

(2) Fees allowable under this section may be recovered by the prevailing party incurring the same as court costs. Nothing contained in this section permits the expenditure of public funds to defray costs of private litigation. Such costs shall be borne by the party seeking action by the sheriff, and may be recovered from the proceeds of any subsequent judicial sale, or may be added to any judgment upon proper application to the court entering the judgment.

(3) Notwithstanding subsection (1) of this section, a county legislative authority may set the amounts of fees that shall be collected by the sheriff under subsection (1) of this section to cover the costs of administration and operation.

[1992 c 164 § 1; 1981 c 194 § 1; 1975 1st ex.s. c 94 § 1; 1963 c 4 § 36.18.040. Prior: 1959 c 263 § 8; 1951 c 51 § 6; 1907 c 56 § 1, part, p 91; 1903 c 151 § 1, part, p 294; 1893 c 130 § 1, p 422; Code 1881 § 2086, part, p 356; 1869 p 364 § 1, part, p 365; 1865 p 94 § 1, part, p 97; 1863 p 391 § 1, part, p 392; 1861 p 34 § 1, part, p 35; 1854 p 368 § 1, part, p 369; RRS § 497, part.]

**Severability—1981 c 194:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 194 § 5.]

**36.18.045 Treasurer's fees.** County treasurers shall collect the following fees for their official services:

For preparing and certifying copies, with or without seal for the first legal size page, two dollars, for each additional legal size page, one dollar. [1963 c 4 § 36.18.045. Prior: 1959 c 263 § 10.]

**36.18.050 Fees in special cases.** Every officer who shall be called on or required to perform service for which no fees or compensation are provided for in this chapter shall be allowed fees similar and equal to those allowed him for services of the same kind for which allowance is made herein. [1963 c 4 § 36.18.050. Prior: Code 1881 § 2098; 1869 p 374 § 20; 1863 p 398 § 5; 1861 p 41 § 5; 1854 p 375 § 4; RRS § 4234.]

**36.18.060 Fees payable in advance—Exception.** The officers mentioned in this chapter except the county sheriff shall not, in any case, except for the state or county, perform any official services unless the fees prescribed therefor are paid in advance, and on such payment the officer must perform the services required. The county sheriff may allow payment to be made after official services have been performed as the sheriff deems appropriate. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond. [1981 c 194 § 2; 1963 c 4 § 36.18.060. Prior: 1890 p 315 § 39; RRS § 506.]

**Severability—1981 c 194:** See note following RCW 36.18.040.

**36.18.070 Single mileage chargeable when.** When any sheriff, constable or coroner serves more than one process in the same cause or on the same person not requiring more than one journey from his office, he shall receive mileage only for the most distant service. [1963 c 4 § 36.18.070. Prior: Code 1881 § 2094; 1869 p 373 § 16; RRS § 501.]

**36.18.080 Fee schedule to be kept posted.** Every county officer entitled to collect fees from the public shall keep posted in his office a plain and legible statement of the fees allowed by law and failure so to do shall subject the officer to a fine of one hundred dollars and costs, to be recovered in any court of competent jurisdiction. [1963 c 4 § 36.18.080. Prior: 1890 p 315 § 41; RRS § 4223. Cf. Code 1881 § 2091; 1869 p 373 § 13.]

**36.18.090 Itemized receipt to be given.** Every officer, when requested so to do, shall make out a bill of his fees in every case, and for any services, specifying each particular item thereof, and receipt the same when it is paid, which bill

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of fees shall always be subject to examination and correction by the courts. Any officer who fails to comply with the requirements of this section shall be liable to the person paying the fees in treble the amount so paid. [1963 c 4 § 36.18.090. Prior: (i) 1890 p 315 § 40; RRS § 4222. (ii) Code 1881 § 2102; 1869 p 374 § 24; 1863 p 398 § 3; 1861 p 41 § 3; 1854 p 376 § 6; RRS § 4235.]

**36.18.110 Monthly statement to county auditor.** Every salaried county and precinct officer authorized to receive fees shall on or before the first Monday of each month and at the end of his or her term of office submit to the county auditor a statement for the month last past. [1985 c 44 § 3; 1984 c 128 § 3; 1963 c 4 § 36.18.110. Prior: 1907 c 65 § 1; RRS § 4214.]

**36.18.120 Statements to be checked.** The county auditor shall check the statements submitted to the county auditor and the records pertaining thereto, and if they are found to be correct, shall return them after having attached thereto the official certificates. [1985 c 44 § 4; 1984 c 128 § 4; 1963 c 4 § 36.18.120. Prior: 1907 c 65 § 2; RRS § 4215.]

**36.18.130 Errors or irregularities.** If any errors or irregularities are found by the checking officer he shall immediately notify the officer interested, and if within three days after such notification the errors or irregularities are not corrected by such officer, the checking officer shall notify the board of county commissioners in writing and upon receipt of such notification the board shall proceed against such officer in the manner provided by law. [1963 c 4 § 36.18.130. Prior: 1907 c 65 § 4; RRS § 4216.]

**36.18.160 Penalty for taking illegal fees.** If any officer takes more or greater fees than are allowed by law he shall be subject to prosecution, and on conviction, shall be removed from office and fined in a sum not exceeding one thousand dollars. [1963 c 4 § 36.18.160. Prior: Code 1881 § 2090; 1869 p 373 § 12; RRS § 4225. Cf. RCW 9.33.040.]

**36.18.170 Penalty for failure to pay over fees.** Any salaried county or precinct officer, who fails to pay to the county treasury all sums that have come into the officer's hands for fees and charges for the county, or by virtue of the officer's office, whether under the laws of this state or of the United States, is guilty of a class C felony, and upon conviction thereof shall be punished by imprisonment in a state correctional facility not less than one year nor more than three years: PROVIDED, That upon conviction, his or her office shall be declared to be vacant by the court pronouncing sentence. [2003 c 53 § 201; 1992 c 7 § 33; 1963 c 4 § 36.18.170. Prior: 1893 c 81 § 2; RRS § 4226. Cf. RCW 42.20.070.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**36.18.180 Office to be declared vacant on conviction.** The board of county commissioners of any county in this state, upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees, or where the officer collects fees and fails to account for the same, upon

proof thereof must declare his office vacant and appoint his successor. [1963 c 4 § 36.18.180. Prior: 1890 p 315 § 42; RRS § 4224.]

**36.18.190 Collection of unpaid financial obligations—Collection contracts—Interest to collection agencies authorized.** Superior court clerks may contract with collection agencies under chapter 19.16 RCW or may use county collection services for the collection of unpaid court-ordered legal financial obligations as enumerated in RCW 9.94A.030 that are ordered pursuant to a felony or misdemeanor conviction and of unpaid financial obligations imposed under Title 13 RCW. The costs for the agencies or county services shall be paid by the debtor. The superior court may, at sentencing or at any time within ten years, assess as court costs the moneys paid for remuneration for services or charges paid to collection agencies or for collection services. By agreement, clerks may authorize collection agencies to retain all or any portion of the interest collected on these accounts. Collection may not be initiated with respect to a criminal offender who is under the supervision of the department of corrections without the prior agreement of the department. Superior court clerks are encouraged to initiate collection action with respect to a criminal offender who is under the supervision of the department of corrections, with the department's approval.

Any contract with a collection agency shall be awarded only after competitive bidding. Factors that a court clerk shall consider in awarding a collection contract include but are not limited to: (1) A collection agency's history and reputation in the community; and (2) the agency's access to a local data base that may increase the efficiency of its collections. Contracts may specify the scope of work, remuneration for services, and other charges deemed appropriate.

The servicing of an unpaid court obligation does not constitute assignment of a debt, and no contract with a collection agency may remove the court's control over unpaid obligations owed to the court.

The county clerk may collect civil judgments where the county is the creditor. [1997 c 24 § 1. Prior: 1995 c 291 § 8; 1995 c 262 § 1; 1994 c 185 § 9.]

### Chapter 36.21 RCW COUNTY ASSESSOR

#### Sections

36.21.011	Appointment of deputies and assistants—Engaging expert appraisers—Employment and classification plans for appraisers.
36.21.015	Qualifications for persons assessing real property—Examination—Examination waiver—Continuing education requirement.
36.21.070	New construction building permits—Appraisal of building.
36.21.080	New construction building permits—When property placed on assessment rolls.
36.21.090	Initial placement of mobile home on assessment roll.
36.21.100	Annual report to department of revenue on property tax levies and related matters.

*Assessor's plats:* Chapter 58.18 RCW.

#### *Duties relating to*

*cemetery district organization:* Chapter 68.52 RCW.

*drainage district revenue act:* Chapter 85.32 RCW.

*drainage districts:* Chapter 85.06 RCW.

*fire protection district, resolution creating:* RCW 52.02.150.

*flood control districts:* Chapter 86.09 RCW.

*forest insect and disease control:* Chapter 76.06 RCW.

*forest rehabilitation:* Chapter 76.14 RCW.

#### *irrigation districts*

*dissolution of districts with bonds:* Chapter 87.53 RCW.

*dissolution of insolvent districts:* Chapter 87.56 RCW.

*generally:* Chapter 87.03 RCW.

*joint control of:* RCW 87.80.090.

*metropolitan municipal corporation:* Chapter 35.58 RCW.

*mosquito control districts:* Chapter 17.28 RCW.

*pest districts:* Chapter 17.12 RCW.

*reforestation:* RCW 79.22.010.

*school district organization:* Chapter 28A.315 RCW.

*school districts, appeals from boundary changes, decisions:* RCW 28A.645.040.

*section and corner lines, establishment of:* Chapter 58.04 RCW.

#### *taxes, property*

*certification of on operating property of private car companies:* RCW 84.16.130.

*certification of on operating property of public utilities:* RCW 84.12.370.

*collection of:* Chapter 84.56 RCW.

*equalization of assessments:* Chapter 84.48 RCW.

*exemptions:* Chapter 84.36 RCW.

*levy of:* Chapter 84.52 RCW.

*lien on:* Chapter 84.60 RCW.

*listing of:* Chapter 84.40 RCW.

*nonoperating property of private car companies:* RCW 84.16.140.

*nonoperating property of public utilities:* RCW 84.12.380.

*revaluation:* Chapter 84.41 RCW.

*taxable situs:* Chapter 84.44 RCW.

*weed district assessments:* Chapter 17.04 RCW.

*Lands lying in both a fire protection district and forest protection assessment area, assessment by:* RCW 52.16.170.

*Mobile home or park model trailer movement permits:* RCW 46.44.173.

*Property tax advisor:* RCW 84.48.140.

*Public lands, harbor areas, re-lease of, rental based on assessor's valuation:* RCW 79.92.080.

*Revenue, department of, to test work of, advise:* RCW 84.08.020, 84.08.030, 84.08.190.

*Taxes, property, penalty for nonperformance of duty:* RCW 84.09.040.

*Taxes for city and town purposes:* State Constitution Art. 11 § 12.

*Transfer of ownership of mobile home, county assessor notified:* RCW 46.12.105.

*Washington Clean Air Act, assessors' duties under:* RCW 70.94.095.

**36.21.011 Appointment of deputies and assistants—Engaging expert appraisers—Employment and classification plans for appraisers.** Any assessor who deems it necessary in order to complete the listing and the valuation of the property of the county within the time prescribed by law, (1) may appoint one or more well qualified persons to act as assistants or deputies who shall not engage in the private practice of appraising within the county in which he or she is employed without the written permission of the assessor filed with the auditor; and each such assistant or deputy so appointed shall, under the direction of the assessor, after taking the required oath, perform all the duties enjoined upon, vested in or imposed upon assessors, and (2) may contract with any persons, firms or corporations, who are expert appraisers, to assist in the valuation of property.

To assist each assessor in obtaining adequate and well qualified assistants or deputies, the state department of personnel, after consultation with the Washington state association of county assessors, the Washington state association of counties, and the department of revenue, shall establish by July 1, 1967, and shall thereafter maintain, a classification

and salary plan for those employees of an assessor who act as appraisers. The plan shall recommend the salary range and employment qualifications for each position encompassed by it, and shall, to the fullest extent practicable, conform to the classification plan, salary schedules and employment qualifications for state employees performing similar appraisal functions.

An assessor who intends to put such plan into effect shall inform the department of revenue and the county legislative authority of this intent in writing. The department of revenue and the county legislative authority may thereupon each designate a representative, and such representative or representatives as may be designated by the department of revenue or the county legislative authority, or both, shall form with the assessor a committee. The committee so formed may, by unanimous vote only, determine the required number of certified appraiser positions and their salaries necessary to enable the assessor to carry out the requirements relating to revaluation of property in chapter 84.41 RCW. The determination of the committee shall be certified to the county legislative authority. The committee may be formed only once in a period of four calendar years.

After such determination, the assessor may provide, in each of the four next succeeding annual budget estimates, for as many positions as are established in such determination. Each county legislative authority to which such a budget estimate is submitted shall allow sufficient funds for such positions. An employee may be appointed to a position covered by the plan only if the employee meets the employment qualifications established by the plan. [1995 c 134 § 12. Prior: 1994 c 301 § 6; 1994 c 124 § 1; 1973 1st ex.s. c 11 § 1; 1971 ex.s. c 85 § 2; 1967 ex.s. c 146 § 7; 1963 c 4 § 36.21.011; prior: 1955 c 251 § 10.]

**36.21.015 Qualifications for persons assessing real property—Examination—Examination waiver—Continuing education requirement.** (1) Any person having the responsibility of valuing real property for purposes of taxation including persons acting as assistants or deputies to a county assessor under RCW 36.21.011 shall have first:

(a) Had at least one year of experience in transactions involving real property, in appraisal of real property, or in assessment of real property, or at least one year of experience in a combination of the three;

(b) Become knowledgeable in repair and remodeling of buildings and improvement of land, and in the significance of locality and area to the value of real property;

(c) Become knowledgeable in the standards for appraising property set forth by the department of revenue; and

(d) Met other minimum requirements specified by department of revenue rule.

(2) The department of revenue shall prepare and administer an examination on subjects related to the valuation of real property. No person shall assess real property for purposes of taxation without having passed said examination or having received an examination waiver from the department of revenue upon showing education or experience determined by the department to be equivalent to passing the examination. A person passing said examination or receiving an examination waiver shall be accredited accordingly by the department of revenue.

(2004 Ed.)

(3) The department of revenue may by rule establish continuing education requirements for persons assessing real property for purposes of taxation. The department shall provide accreditation of completion of requirements imposed under this section. No person shall assess real property for purposes of taxation without complying with requirements imposed under this subsection.

(4) To the extent practical, the department of revenue shall coordinate accreditation requirements under this section with the requirements for certified real estate appraisers under chapter 18.140 RCW.

(5) The examination requirements of subsection (2) of this section shall not apply to any person who shall have either:

(a) Been certified as a real property appraiser by the department of personnel prior to July 1, 1992; or

(b) Attended and satisfactorily completed the assessor's school operated jointly by the department of revenue and the Washington state assessors association prior to August 9, 1971. [1991 c 218 § 3; 1977 c 75 § 30; 1971 ex.s. c 288 § 17; 1971 ex.s. c 27 § 1.]

**Effective date—1991 c 218:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except section 3 of this act, which shall take effect July 1, 1992." [1991 c 218 § 5.]

**Savings—Severability—1971 ex.s. c 288:** See notes following RCW 84.40.030.

**36.21.070 New construction building permits—Appraisal of building.** Upon receipt of a copy of a building permit, the county assessor shall, within twelve months of the date of issue of such permit, proceed to make a physical appraisal of the building or buildings covered by the permit. [1989 c 246 § 3; 1987 c 134 § 1; 1963 c 4 § 36.21.070. Prior: 1955 c 129 § 4.]

**36.21.080 New construction building permits—When property placed on assessment rolls.** The county assessor is authorized to place any property that is increased in value due to construction or alteration for which a building permit was issued, or should have been issued, under chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits on the assessment rolls for the purposes of tax levy up to August 31st of each year. The assessed valuation of the property shall be considered as of July 31st of that year. [1989 c 246 § 4; 1987 c 319 § 5; 1985 c 220 § 1; 1982 1st ex.s. c 46 § 4; 1981 c 274 § 3; 1975 1st ex.s. c 120 § 1; 1974 ex.s. c 196 § 7; 1963 c 4 § 36.21.080. Prior: 1955 c 129 § 5.]

**Severability—1974 ex.s. c 196:** See note following RCW 84.56.020.

*Destroyed property, reduction in value, abatement or refund of taxes: Chapter 84.70 RCW.*

**36.21.090 Initial placement of mobile home on assessment roll.** When any mobile home first becomes subject to assessment for property taxes in this state, the county assessor is authorized to place the mobile home on the assessment rolls for purposes of tax levy up to August 31st of each year. The assessed valuation of the mobile home shall be considered as of the July 31st immediately preceding the date that

the mobile home is placed on the assessment roll. [1987 c 134 § 2; 1977 ex.s. c 22 § 7.]

**Severability—1977 ex.s. c 22:** See note following RCW 46.04.302.

**36.21.100 Annual report to department of revenue on property tax levies and related matters.** Every county assessor shall report to the department of revenue on the property tax levies and related matters within the county annually at a date and in a form prescribed by the department of revenue. The report shall include, but need not be limited to, the results of sales-assessment ratio studies performed by the assessor. The ratio studies shall be based on use classes of real property and shall be performed under a plan approved by the department of revenue. [1991 c 218 § 4; 1987 c 138 § 8.]

**Effective date—1991 c 218:** See note following RCW 36.21.015.

## Chapter 36.22 RCW COUNTY AUDITOR

### Sections

36.22.010	Duties of auditor.
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36.22.050	Issuance of warrants—Multiple warrants.
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36.22.210	Process servers—Registration—Fees.
36.22.220	Election assistants, deputies—Appointment, qualifications.
36.22.230	Election assistants, deputies—Additional qualifications.

*Acknowledgments, auditor may take:* RCW 64.08.010.

*Appointment as agent for licensing of vehicles:* RCW 46.01.130, 46.01.140, 46.01.270.

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*Cities and towns, certificates of election, auditor to issue:* RCW 35.02.130.

*Civil actions, judgment by confession acknowledged before:* RCW 4.60.040.

*County accounts, expense for examination of, auditor to issue warrant for:* RCW 43.09.280.

*County canvassing board, auditor as member:* RCW 29A.60.160.

*Custodian of records, auditor as:* RCW 65.04.140.

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  - internal revenue, liens for: Chapter 60.68 RCW.
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- townsites on United States lands, acquisition of lands by inhabitants: Chapter 58.28 RCW.
- unemployment compensation contributions, lien for: RCW 50.24.050.
- vehicle licensing: RCW 46.01.130, 46.01.140, 46.01.270.
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- Mobile home identification tags, issuance: RCW 46.01.130, 46.01.140.
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*Public lands, sales and lease of, duties of auditor in certain counties transferred to treasurer: RCW 79.02.090.*

*Public lands and materials on, sale of, auditor as auctioneer: RCW 79.11.150.*

*Reclamation district commission, auditor as clerk of: RCW 89.30.058.*

*Registrar of titles auditor as: RCW 65.12.050.*

*not to practice law, when: RCW 65.12.065.*

*Summons for claim against county served on auditor: RCW 4.28.080.*

*Support of dependent children, auditor to charge no fees in connection with: RCW 74.20.300.*

*Taxes, property, penalty for nonperformance of duty: RCW 84.09.040.*

*Television reception improvement districts, auditor's duties: Chapter 36.95 RCW.*

*Temporary gate across highways, auditor to grant permit for, when: RCW 16.60.085.*

*Veterans, auditor to furnish marital status certificates to free: RCW 73.04.120.*

*Veterans' discharge, auditor to record without fee: RCW 73.04.030 through 73.04.042.*

*Veterans' pension papers, auditor to charge no fee: RCW 73.04.010.*

### **36.22.010 Duties of auditor.** The county auditor:

(1) Shall be recorder of deeds and other instruments in writing which by law are to be filed and recorded in and for the county for which he or she is elected;

(2) Shall keep an account current with the county treasurer, charge all money received as shown by receipts issued and credit all disbursements paid out according to the record of settlement of the treasurer with the legislative authority;

(3) Shall make out and transmit to the state auditor a complete statement of the state fund account with the county for the past fiscal year certified by his or her certificate and seal, immediately after the completion of the annual settlement of the county treasurer with the legislative authority. The statement must be available to the public;

(4) Shall make available a complete exhibit of the prior-year finances of the county including, but not limited to, a statement of financial condition and financial operation in accordance with standards developed by the state auditor. This exhibit shall be made available after the financial records are closed for the prior year;

(5) Shall make out a register of all warrants legally authorized and directed to be issued by the legislative body at any regular or special meeting. The auditor shall make the data available to the county treasurer. The auditor shall retain the original of the register of warrants for future reference;

(6) As clerk of the board of county commissioners, shall:  
Record all of the proceedings of the legislative authority;  
Make full entries of all of their resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

Record the vote of each member on any question upon which there is a division or at the request of any member present;

Sign all orders made and warrants issued by order of the legislative authority for the payment of money;

Record the reports of the county treasurer of the receipts and disbursements of the county;

Preserve and file all accounts acted upon by the legislative authority;

Preserve and file all petitions and applications for franchises and record the action of the legislative authority thereon;

Record all orders levying taxes;

Perform all other duties required by any rule or order of the legislative authority. [1995 c 194 § 1; 1984 c 128 § 2; 1963 c 4 § 36.22.010. Prior: 1955 c 157 § 9; prior: (i) Code 1881 § 2707; 1869 p 310 §§ 1, 2, 3; 1863 p 549 §§ 1, 2, 3; 1854 p 424 §§ 1, 2, 3; RRS § 4083. (ii) Code 1881 § 2709; RRS § 4085. (iii) Code 1881 § 2711; RRS § 4088. (iv) 1893 c 119 § 2; Code 1881 § 2712; 1869 p 311 § 6; 1863 p 550 § 6; 1854 p 425 § 6; RRS § 4089. (v) 1893 c 119 § 3; Code 1881 § 2571; RRS § 4090. (vi) 1893 c 119 § 4; Code 1881 § 2713; 1869 p 311 § 7; 1867 p 130 § 1; RRS § 4091. (vii) 1893 c 119 § 5; Code 1881 § 2714; 1869 p 311 § 8; 1867 p 131 § 2; RRS § 4092. (viii) 1893 c 119 § 7; Code 1881 § 2718; 1869 p 312 § 13; RRS § 4095. (ix) Code 1881 § 2719; RRS § 4098. (x) 1893 c 119 § 8; Code 1881 § 2720; RRS § 4099.]

**36.22.020 Publisher of legislative authority proceedings—Custodian of commissioners' seal.** It shall be the duty of the county auditor of each county, within fifteen days after the adjournment of each regular session, to publish a summary of the proceedings of the legislative authority at such term, in any newspaper published in the county or having a general circulation therein, or the auditor may post copies of such proceedings in three of the most public places in the county. The seal of the county commissioners for each county, used by the county auditor as clerk to attest the proceedings of the legislative authority, shall be and remain in the custody of the county auditor, and the auditor is hereby authorized to use such seal in attestation of all official acts, whether as clerk of the legislative authority, as auditor or recorder of deeds; and all certificates, exemplifications of records, or other acts performed as county auditor, certified under the seal of the county commissioners, pursuant to this section, in this state, shall be as valid and legally binding as though attested by a seal of office of the county auditor. [1995 c 194 § 2; 1963 c 4 § 36.22.020. Prior: Code 1881 § 2724; 1869 p 313 § 17; RRS §§ 4102, 4103. Formerly RCW 36.16.080, 36.22.020, and 36.22.130.]

**36.22.030 May administer oaths.** Auditors and their deputies may administer oaths necessary in the performance of their duties and in all other cases where oaths are required by law to be administered and take acknowledgments of deeds and other instruments in writing: PROVIDED, That any deputy county auditor, in administering such oath or taking such acknowledgment, shall certify to the same in his own name as deputy, and not in the name of his principal, and shall attach thereto the seal of the office: PROVIDED, That all oaths administered or acknowledgments taken by any deputy of any county auditor certifying to the same in the name of his principal by himself as such deputy, prior to the taking effect of chapter 119, Laws of 1893 be and the same are hereby legalized and made valid and binding. [1963 c 4 § 36.22.030. Prior: 1893 c 119 § 6; Code 1881 § 2717; 1869 p 312 § 11; 1863 p 550 § 8; 1854 p 425 § 8; RRS § 4094.]

**36.22.040 Duty to audit claims against county.** The county auditor shall audit all claims, demands, and accounts against the county which by law are chargeable to the county, except such cost or fee bills as are by law to be examined or approved by some other judicial tribunal or officer. Such claims as it is his duty to audit shall be presented to the board of county commissioners for their examination and allowance. [1963 c 4 § 36.22.040. Prior: 1893 c 119 § 1, part; Code 1881 § 2710, part; 1869 p 310 § 5, part; 1863 p 549 § 5, part; 1854 p 425 § 5, part; RRS § 4086, part.]

**36.22.050 Issuance of warrants—Multiple warrants.** For claims allowed by the county commissioners, and also for cost bills and other lawful claims duly approved by the competent tribunal designated by law for their allowance, he shall draw a warrant on the county treasurer, made payable to the claimant or his order, bearing date from the time of and regularly numbered in the order of their issue. If there is not sufficient cash in the county treasury to cover such claims or cost bills, or if a claimant requests, the auditor may issue a number of smaller warrants, the total principal amounts of which shall equal the amount of said claim or cost bill. [1975 c 31 § 1; 1969 ex.s. c 87 § 1; 1963 c 4 § 36.22.050. Prior: (i) 1893 c 119 § 1, part; Code 1881 § 2710, part; 1869 p 310 § 5, part; 1863 p 549 § 5, part; 1854 p 425 § 5, part; RRS § 4086, part. (ii) 1893 c 48 § 2; RRS § 4087.]

**36.22.060 Record of warrants.** The auditor shall maintain a record of when a warrant is issued. The record shall include the warrant number, date, name of payee, amount, nature of claims, or services provided. [1995 c 194 § 3; 1963 c 4 § 36.22.060. Prior: 1893 c 119 § 1, part; Code 1881 § 2710, part; 1869 p 310 § 5, part; 1863 p 549 § 5, part; 1854 p 425 § 5, part; RRS § 4086, part.]

**36.22.070 Original claims to be retained.** (1) The auditor shall also retain all original bills and indorse thereon claimant's name, nature of claim, the action had, and if a warrant was issued, date and number the voucher or claim the same as the warrant.

(2) The auditor may retain all claims, bills, and associated records referenced in subsection (1) of this section in an electronic format sufficient for the conduct of official business.

(3) For the purposes of this section, "claims" shall exclude claims filed against the county in accordance with the provisions of chapter 4.96 RCW. [2003 c 72 § 1; 1963 c 4 § 36.22.070. Prior: 1893 c 119 § 1, part; Code 1881 § 2710, part; 1869 p 310 § 5, part; 1863 p 549 § 5, part; 1854 p 425 § 5, part; RRS § 4086, part.]

**36.22.080 Claims of auditor.** All claims of the county auditor against the county for services shall be audited and allowed by the board of county commissioners as other claims are audited and allowed. Such warrants shall in all respects be audited, approved, issued, numbered, registered, and paid the same as any other county warrant. [1963 c 4 § 36.22.080. Prior: 1893 c 119 § 1, part; Code 1881 § 2710, part; 1869 p 310 § 5, part; 1863 p 549 § 5, part; 1854 p 425 § 5, part; RRS § 4086, part.]

**36.22.090 Warrants of political subdivisions.** All warrants for the payment of claims against diking, ditch, drainage and irrigation districts and school districts of the second class, who do not issue their own warrants, as well as political subdivisions within the county for which no other provision is made by law, shall be drawn and issued by the county auditor of the county wherein such subdivision is located upon vouchers properly approved by the governing body thereof. [1975 c 43 § 31; 1973 c 111 § 4; 1963 c 4 § 36.22.090. Prior: 1915 c 74 § 1; RRS § 4096.]

**Effective date—Severability—1975 c 43:** See notes following RCW 28A.535.050.

**Severability—1973 c 111:** See note following RCW 28A.330.230.

**36.22.100 Cancellation of unclaimed warrants.** Registered or interest bearing county warrants not presented within one year of the date of their call, and all other county warrants not presented within one year of the date of their issue shall be canceled by the legislative authority of the county and the auditor and treasurer of the county shall cancel all record of such warrants, so as to leave the funds as if such warrants had never been drawn. [1971 ex.s. c 120 § 1; 1963 c 4 § 36.22.100. Prior: 1909 c 170 § 1; 1886 p 161 § 1; RRS § 4097.]

**36.22.110 Auditor cannot act as attorney or lobbyist.** The person holding the office of county auditor, or deputy, or performing its duties, shall not practice as an attorney or represent any person who is making any claim against the county, or who is seeking to procure any legislative or other action by the board of county commissioners. [2002 c 141 § 1; 1963 c 4 § 36.22.110. Prior: Code 1881 § 2722; 1869 p 312 § 12; 1863 p 550 § 9; 1854 p 425 § 9; RRS § 4100.]

**36.22.120 Temporary clerk may be appointed.** In case the auditor is unable to attend to the duties of his office during any session of the board of county commissioners, and has no deputy by him appointed in attendance, the board may temporarily appoint a suitable person not by law disqualified from acting as such to perform the auditor's duties. [1963 c 4 § 36.22.120. Prior: Code 1881 § 2723; 1869 p 313 § 15; 1863 p 550 § 12; 1854 p 425 § 11; RRS § 4101.]

**36.22.140 Auditor or chief financial officer—Ex officio deputy state auditor.** Each county auditor or chief financial officer shall be ex officio deputy of the state auditor for the purpose of accounting and reporting on municipal corporations and in such capacity shall be under the direction of the state auditor, but he or she shall receive no additional salary or compensation by virtue thereof and shall perform no duties as such, except in connection with county business. [1995 c 301 § 61; 1963 c 4 § 36.22.140. Prior: 1909 c 76 § 12; RRS § 9962.]

**36.22.150 Duty of retiring auditor or his representative in case of death.** Each auditor, on retiring from office, shall deliver to his successor the seal of office and all the books, records, and instruments of writing belonging to the office, and take his receipt therefor. In case of the death of the auditor, his legal representatives shall deliver over the seal,

books, records and papers. [1963 c 4 § 36.22.150. Prior: Code 1881 § 2725; 1869 p 314 § 22; RRS § 4104.]

**36.22.160 Copying, preserving, and indexing documents.** Each county auditor is hereby authorized to provide for the installation and thereafter for the maintenance of an improved system for copying, preserving, and indexing documents recorded in the county. Such a system may utilize the latest technology including, but not limited to, photomicrographic and computerized electronic digital storage methodology. The initial installation of the improved system shall include the following:

(1) The acquisition, installation, operation, and maintenance of the equipment provided for in the definition above; and

(2) The establishment of procedures for the continued preservation, indexing, and filing of all instruments and records that will, after the effective installation date, constitute a part of the improved system. [1989 c 204 § 2.]

**Reviser's note:** 1989 c 204 § 7 directed that this section be added to chapter 36.18 RCW. This placement appears inappropriate and the section has been codified as a part of chapter 36.22 RCW.

**Findings—1989 c 204:** "The legislature, finding in this centennial year that many old documents recorded or filed with county officials are deteriorating due to age and environmental degradation and that such documents require preservation in the public interest before they are irreparably damaged, enacts the centennial document preservation act of 1989." [1989 c 204 § 1.]

**36.22.170 Surcharge for preservation of historical documents—Fifty percent to state treasurer—Creation of account.** A surcharge of two dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. Fifty percent of the revenue generated through this surcharge shall be transmitted monthly to the state treasurer who shall distribute such funds to each county treasurer within the state in July of each year in accordance with the formula described in RCW 36.22.190. The county treasurer shall place the funds received in a special account titled the auditor's centennial document preservation and modernization account to be used solely for ongoing preservation of historical documents of all county offices and departments and shall not be added to the county current expense fund. Fifty percent of the revenue generated by this surcharge shall be retained by the county and deposited in the auditor's operation and maintenance fund for ongoing preservation of historical documents of all county offices and departments.

The centennial document preservation and modernization account is hereby created in the custody of the state treasurer and shall be classified as a treasury trust account. State distributions from the centennial document preservation and modernization account shall be made without appropriation. [1993 c 37 § 1; 1989 c 204 § 3.]

**Findings—1989 c 204:** See note following RCW 36.22.160.

**36.22.175 Surcharge for local government archives and records management—Records management training—Eastern Washington regional facility.** (1) In addition to any other charge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for each document recorded. Revenue generated through this sur-

charge shall be transmitted monthly to the state treasurer for deposit in the local government archives account under RCW 40.14.024. These funds shall be used solely for providing records scheduling, security microfilm inspection and storage, archival preservation, cataloging, and indexing for local government records and digital data and access to those records and data through the regional branch archives of the division of archives and records management.

The division of archives and records management within the office of the secretary of state shall provide records management training for local governments and shall establish a competitive grant program to solicit and prioritize project proposals from local governments for potential funding to be paid for by funds from the auditor surcharge and tax warrant surcharge revenues. Application for specific projects may be made by local government agencies only. The state archivist in consultation with the advisory committee established under RCW 40.14.027 shall adopt rules governing project eligibility, evaluation, awarding of grants, and other criteria including requirements for records management training for grant recipients.

(2) The advisory committee established under RCW 40.14.027 shall review grant proposals and establish a prioritized list of projects to be considered for funding by January 1st of each even-numbered year, beginning in 2002. The evaluation of proposals and development of the prioritized list must be developed through open public meetings. Funding for projects shall be granted according to the ranking of each application on the prioritized list and projects will be funded only to the extent that funds are available. A grant award may have an effective date other than the date the project is placed on the prioritized list.

(3) In addition to any other surcharge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for every document recorded after January 1, 2002. Revenue generated through this surcharge shall be transmitted to the state treasurer monthly for deposit in the local government archives account under RCW 40.14.024 to be used exclusively for the construction and improvement of a specialized regional facility located in eastern Washington designed to serve the archives, records management, and digital data management needs of local government.

To the extent the facilities are used for the storage and retrieval of state agency records and digital data, that portion of the construction of such facilities used for state government records and data shall be supported by other charges and fees paid by state agencies and shall not be supported by the surcharge authorized in this subsection.

At such time that all debt service from construction on such facility has been paid, fifty percent of the surcharge authorized by this subsection shall be reverted to the centennial document preservation and modernization account as prescribed in RCW 36.22.170 and fifty percent of the surcharge authorized by this section shall be reverted to the state treasurer for deposit in the archives and records management account to serve the archives, records management, and digital data management needs of local government. [2003 c 163 § 5; 2001 2nd sp.s. c 13 § 1; 1996 c 245 § 1.]

**Effective date—2001 2nd sp.s. c 13:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of

the state government and its existing public institutions, and takes effect June 30, 2001." [2001 2nd sp.s. c 13 § 3.]

**Effective date—1996 c 245:** See note following RCW 40.14.025.

**36.22.178 Surcharge for low-income housing projects—Forty percent to state treasurer—Permissible uses.** (1) Except as provided in subsection (2) of this section, a surcharge of ten dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. The auditor may retain up to five percent of these funds collected to administer the collection of these funds. Of the remaining funds, forty percent of the revenue generated through this surcharge will be transmitted monthly to the state treasurer who will deposit the funds into the Washington housing trust account. The office of community development of the department of community, trade, and economic development will develop guidelines for the use of these funds to support building operation and maintenance costs of housing projects or units within housing projects that are affordable to extremely low-income persons with incomes at or below thirty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses. Sixty percent of the revenue generated by this surcharge will be retained by the county and be deposited into a fund that must be used by the county and its cities and towns for housing projects or units within housing projects that are affordable to very low-income persons with incomes at or below fifty percent of the area median income. The portion of the surcharge retained by a county shall be allocated to very low-income housing projects or units within such housing projects in the county and the cities within a county according to an interlocal agreement between the county and the cities within the county, consistent with countywide and local housing needs and policies. The funds generated with this surcharge shall not be used for construction of new housing if at any time the vacancy rate for available low-income housing within the county rises above ten percent. The vacancy rate for each county shall be developed using the state low-income vacancy rate standard developed under subsection (3) of this section. Permissible uses of these local funds are limited to:

(a) Acquisition, construction, or rehabilitation of housing projects or units within housing projects that are affordable to very low-income persons with incomes at or below fifty percent of the area median income;

(b) Supporting building operation and maintenance costs of housing projects or units within housing projects built with housing trust funds, that are affordable to very low-income persons with incomes at or below fifty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses;

(c) Rental assistance vouchers for housing projects or units within housing projects that are affordable to very low-income persons with incomes at or below fifty percent of the area median income, to be administered by a local public housing authority or other local organization that has an existing rental assistance voucher program, consistent with the United States department of housing and urban development's section 8 rental assistance voucher program standards; and

(d) Operating costs for emergency shelters and licensed overnight youth shelters.

(2) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust.

(3) The real estate research center at Washington State University shall develop a vacancy rate standard for low-income housing in the state as described in RCW 18.85.540(1)(i). [2002 c 294 § 2.]

**Findings—2002 c 294:** "The legislature recognizes housing affordability has become a significant problem for a large portion of society in many parts of Washington state in recent years. The state has traditionally focused its resources on housing for low-income populations. Additional funding resources are needed for building operation and maintenance activities for housing projects affordable to extremely low-income people, for example farmworkers or people with developmental disabilities. Affordable rents for extremely low-income people are not sufficient to cover the cost of building operations and maintenance. In addition resources are needed at the local level to assist in development and preservation of affordable low-income housing to address critical local housing needs." [2002 c 294 § 1.]

**36.22.181 Surcharge for prosecution of mortgage lending fraud—Transmittal to state treasurer. (Expires June 30, 2006.)** (1) Except as provided in subsection (2) of this section, a surcharge of one dollar shall be charged by the county auditor at the time of recording of each deed of trust, which will be in addition to any other charge authorized by law. The auditor may retain up to five percent of the funds collected to administer collection. The remaining funds shall be transmitted monthly to the state treasurer who will deposit the funds into the mortgage lending fraud prosecution account created in RCW 43.320.140. The department of financial institutions is responsible for the distribution of the funds in the account and shall, in consultation with the attorney general and local prosecutors, develop rules for the use of these funds to pursue criminal prosecution of fraudulent activities within the mortgage lending process.

(2) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust.

(3) This section expires June 30, 2006. [2003 c 289 § 1.]

**36.22.190 Distribution of funds.** After deduction of those costs of the state treasurer that are described under \*RCW 36.22.180, the balance of the funds will be distributed to the counties according to the following formula: One-half of the funds available shall be equally distributed among the thirty-nine counties; and the balance will be distributed among the counties in direct proportion to their population as it relates to the total state's population based on the most recent population statistics. [1989 c 204 § 5.]

**Reviser's note:** (1) 1989 c 204 § 7 directed that this section be added to chapter 36.18 RCW. This placement appears inappropriate and the section has been codified as a part of chapter 36.22 RCW.

\* (2) RCW 36.22.180 was repealed by 1991 sp.s. c 13 § 122, effective July 1, 1991.

**Findings—1989 c 204:** See note following RCW 36.22.160.

**36.22.200 Action for change of name—Filing and recording.** Upon receipt of the fee and the name change order from the district court as provided in RCW 4.24.130, the county auditor shall file and record the name change order. [1992 c 30 § 2.]

**36.22.210 Process servers—Registration—Fees.** (1)

Each county auditor shall develop a registration process to register process servers required to register under RCW 18.180.010.

(2) The county auditor may collect an annual registration fee from the process server not to exceed ten dollars.

(3) The county auditor shall use a form in the registration process for the purpose of identifying and locating the registrant, including the process server's name, birthdate, and social security number, and the process server's business name, business address, and business telephone number.

(4) The county auditor shall maintain a register of process servers and assign a number to each registrant. Upon renewal of the registration as required in RCW 18.180.020, the auditor shall continue to assign the same registration number. A successor entity composed of one or more registrants shall be permitted to transfer one or more registration numbers to the new entity. [1997 c 41 § 8; 1992 c 125 § 2.]

**Construction—1992 c 125:** See RCW 18.180.900.

**36.22.220 Election assistants, deputies—Appointment, qualifications.** The county auditor of each county, as ex officio supervisor of all primaries and elections, general or special, within the county under \*Title 29 RCW, may appoint one or more well-qualified persons to act as assistants or deputies; however, not less than two persons of the auditor's office who conduct primaries and elections in the county shall be certified under \*\*chapter 29.60 RCW as elections administrators. [1992 c 163 § 12.]

**Reviser's note:** \*(1) Title 29 RCW was repealed and/or recodified pursuant to 2003 c 111, effective July 1, 2004.

\*\* (2) Chapter 29.60 RCW was recodified as chapter 29A.04 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Effective date—1992 c 163 §§ 5-13:** See note following RCW 29A.04.530.

**36.22.230 Election assistants, deputies—Additional qualifications.** Each deputy or assistant appointed under RCW 36.22.220 shall have been graduated from an accredited high school or shall have passed a high school equivalency examination. Each shall be knowledgeable in the rules and laws of conducting elections. [1992 c 163 § 13.]

**Effective date—1992 c 163 §§ 5-13:** See note following RCW 29A.04.530.

## Chapter 36.23 RCW COUNTY CLERK

### Sections

36.23.020	New bond may be required.
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### County clerk

*as clerk of superior court: State Constitution Art. 4 § 26.*

*not to practice law: RCW 2.32.090.*

*powers and duties: RCW 2.32.050.*

*Dissolution of inactive port districts: Chapter 53.47 RCW.*

*Execution docket, clerk to keep: RCW 4.64.060.*

*Judgment journal, clerk to keep: RCW 4.64.030.*

*Lien foreclosure, clerk's duties: Chapter 84.64 RCW.*

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*Registration of land titles, clerk's duties: Chapter 65.12 RCW.*

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*Tax warrants, clerk's duties: Chapter 82.32 RCW.*

*Telegraphic copies as evidence, clerk to certify: RCW 5.52.050.*

*Veterans, clerk to furnish marital status certificates to free: RCW 73.04.120.*

*Witness fees and expenses, civil proceedings, clerk's duties: Chapter 2.40 RCW, RCW 5.56.010.*

**36.23.020 New bond may be required.** When the judge or judges of any court, or a majority of them, believe that the clerk of the court does not have a good and sufficient bond on file, or that the bond is not large enough in amount, such judge or judges shall enter an order requiring him, within such time as may be specified in the order, to execute and present to them a good and sufficient bond, in such sum as may be fixed by the order. In case of his failure to file the bond within ten days from the expiration of the date fixed the judge or judges shall declare the office vacant. [1963 c 4 § 36.23.020. Prior: 1895 c 53 § 3; RRS § 72.]

**36.23.030 Records to be kept.** The clerk of the superior court at the expense of the county shall keep the following records:

(1) A record in which he or she shall enter all appearances and the time of filing all pleadings in any cause;

(2) A docket in which before every session, he or she shall enter the titles of all causes pending before the court at that session in the order in which they were commenced, beginning with criminal cases, noting in separate columns the names of the attorneys, the character of the action, the pleadings on which it stands at the commencement of the session. One copy of this docket shall be furnished for the use of the court and another for the use of the members of the bar;

(3) A record for each session in which he or she shall enter the names of witnesses and jurors, with time of attendance, distance of travel, and whatever else is necessary to enable him or her to make out a complete cost bill;

(4) A record in which he or she shall record the daily proceedings of the court, and enter all verdicts, orders, judgments, and decisions thereof, which may, as provided by local court rule, be signed by the judge; but the court shall have full control of all entries in the record at any time during the session in which they were made;

(5) An execution docket and also one for a final record in which he or she shall make a full and perfect record of all criminal cases in which a final judgment is rendered, and all civil cases in which by any order or final judgment the title to real estate, or any interest therein, is in any way affected, and such other final judgments, orders, or decisions as the court may require;

(6) A record in which shall be entered all orders, decrees, and judgments made by the court and the minutes of the court in probate proceedings;

(7) A record of wills and bonds shall be maintained. Originals shall be placed in the original file and shall be preserved or duplicated pursuant to RCW 36.23.065;

(8) A record of letters testamentary, administration, and guardianship in which all letters testamentary, administration, and guardianship shall be recorded;

(9) A record of claims shall be entered in the appearance docket under the title of each estate or case, stating the name of each claimant, the amount of his or her claim and the date of filing of such;

(10) A memorandum of the files, in which at least one page shall be given to each estate or case, wherein shall be noted each paper filed in the case, and the date of filing each paper;

(11) Such other records as are prescribed by law and required in the discharge of the duties of his or her office. [2002 c 30 § 1; 1987 c 363 § 3; 1967 ex.s. c 34 § 2; 1963 c 4 § 36.23.030. Prior: (i) 1923 c 130 § 1; Code 1881 § 2179; 1863 p 417 § 6; 1854 p 366 § 6; RRS § 75. (ii) 1917 c 156 § 2; RRS § 1372. (iii) 1917 c 156 § 57; Code 1881 § 1384; 1863 p 219 § 118; 1860 p 181 § 85; RRS § 1427. (iv) 1917 c 156 § 72; Code 1881 § 1411; 1863 p 221 § 130; 1860 p 183 § 97; RRS § 1442.]

**36.23.040 Custody and delivery of records.** The clerk shall be responsible for the safe custody and delivery to his successor of all books and papers belonging to his office. [1963 c 4 § 36.23.040. Prior: Code 1881 § 2181; 1863 p 418 § 8; 1854 p 367 § 8; RRS § 76.]

**36.23.065 Destruction and reproduction of court records—Destruction of receipts for expenses under probate proceedings.** Notwithstanding any other law relating to the destruction of court records, the county clerk may cause to be destroyed all documents, records, instruments, books, papers, depositions, and transcripts, in any action or proceeding in the superior court, or otherwise filed in his or her office pursuant to law, if all of the following conditions exist:

(1) The county clerk maintains for the use of the public a photographic film, microphotographic, photostatic, electronic, or similar reproduction of each document, record, instrument, book, paper, deposition, or transcript so destroyed: PROVIDED, That all receipts and canceled checks filed by a personal representative pursuant to RCW 11.76.100 may be removed from the file by order of the court and destroyed the same as an exhibit pursuant to RCW 36.23.070.

(2) At the time of the taking of the photographic film, microphotographic, photostatic, electronic, or similar reproduction, the county clerk or other person under whose direction and control the same was taken, attached thereto, or to the sealed container in which the same was placed and has been kept, or incorporated in the photographic film, microphotographic, photostatic, electronic, or similar reproduction, a certification that the copy is a correct copy of the original, or of a specified part thereof, as the case may be, the date on which taken, and the fact it was taken under the clerk's direc-

tion and control. The certificate must be under the official seal of the certifying officer, if there be any, or if the certifying officer is the clerk of a court having a seal, under the seal of such court.

(3) The county clerk promptly seals and stores at least one original or negative of each such photographic film, microphotographic, photostatic, electronic, or similar reproduction in such manner and place as reasonably to assure its preservation indefinitely against loss, theft, defacement, or destruction. Electronic reproductions are acceptable media for this purpose if one of the following conditions exists:

(a) The electronic reproductions are continuously updated and, if necessary, transferred to another medium to ensure that they are accessible through contemporary and supported electronic or computerized systems; or

(b) The electronic reproductions are scheduled to be reproduced on photographic film, microphotographic, photostatic, or similar media for indefinite preservation.

(4) When copies of public records of the county clerk are transferred to the state archives for security storage, the state archives may only provide certified copies of those records with the written permission of the county clerk who is custodian of those records. When so transferred and authorized, the copies of the public records concerned shall be made by the state archives, which certification shall have the same force and effect as though made by the county clerk who is custodian of the record. If there is a statutory fee for the reproduction of the document, contracts can be made between the county clerk and the state archives for reproduction and certification of the copies, however no certification authority may be transferred except as provided in this subsection and for records of abolished or discontinued offices or agencies under chapter 40.14 RCW. [1998 c 226 § 1; 1981 c 277 § 10; 1973 c 14 § 1; 1971 c 29 § 1; 1963 c 4 § 36.23.065. Prior: 1957 c 201 § 1.]

**36.23.067 Reproduced court records have same force and effect as original.** Any print, whether enlarged or not, from any photographic film, including any photographic plate, microphotographic film, or photostatic negative or similar reproduction, or from any electronic record, of any original record, document, instrument, book, paper, deposition, or transcript which has been processed in accordance with the provisions of RCW 36.23.065, and has been certified by the county clerk under his or her official seal as a true copy, may be used in all instances, including introduction in evidence in any judicial or administrative proceeding, that the original record, document, instrument, book, paper, deposition, or transcript might have been used, and shall have the full force and effect of the original for all purposes. [1998 c 226 § 2; 1963 c 4 § 36.23.067. Prior: 1957 c 201 § 2.]

**36.23.070 Destruction of court exhibits—Preservation for historical purposes.** A county clerk may at any time more than six years after the entry of final judgment in any action apply to the superior court for an authorizing order and, upon such order being signed and entered, turn such exhibits of possible value over to the sheriff for disposal in accordance with the provisions of chapter 63.40 RCW, and destroy any other exhibits, unopened depositions, and report-

ers' notes which have theretofore been filed in such cause: PROVIDED, That reporters' notes in criminal cases must be preserved for at least fifteen years: PROVIDED FURTHER, That any exhibits which are deemed to possess historical value may be directed to be delivered by the clerk to libraries or historical societies. [1981 c 154 § 1; 1973 c 14 § 2; 1967 ex.s. c 34 § 3; 1963 c 4 § 36.23.070. Prior: 1957 c 201 § 3; 1947 c 277 § 1; Rem. Supp. 1947 § 81-1.]

**36.23.080 Office at county seat.** The office of the clerk of the superior court shall be kept at the county seat of the county of which he is clerk. [1963 c 4 § 36.23.080. Prior: 1891 c 57 § 1; RRS § 73, part. Cf. Code 1881 § 2125.]

**36.23.090 Search for birth parents—County clerk's duty.** The county clerk shall provide the name and telephone number of at least one resource to assist adopted persons who are searching for birth parents, or birth parents who are searching for children they have relinquished, if these resources have contacted the clerk's office and requested that their name be made available to persons making inquiry. [1990 c 146 § 10.]

**36.23.100 Electronic payment of court fees and other financial obligations—Authorized.** County clerks are authorized to accept credit cards, charge cards, debit cards, smart cards, stored value cards, federal wire, and automatic clearinghouse system transactions, or other electronic communication, for payment of all fees and moneys due the court under RCW 36.18.012 through 36.18.020, and for the payment of court-ordered legal financial obligations of criminal defendants which include, but are not limited to, fines, fees, assessments, restitution, and crime victims' compensation, consistent with RCW 36.48.010, 36.48.080, and 36.48.090. A payer desiring to pay by credit card, charge card, debit card, smart card, stored value card, federal wire, and automatic clearinghouse system transactions, or other electronic communication shall bear the cost of processing the transaction. [2000 c 202 § 1.]

**36.23.110 Legal financial obligations—Report on collections.** The Washington association of county officials, in consultation with county clerks, shall determine a funding formula for allocation of moneys to counties for purposes of collecting legal financial obligations, and report this formula to the legislature and the administrative office of the courts by September 1, 2003. The Washington association of county officials shall report on the amounts of legal financial obligations collected by the county clerks to the appropriate committees of the legislature no later than December 1, 2004, and annually thereafter. [2003 c 379 § 20.]

**Severability—Effective dates—2003 c 379:** See notes following RCW 9.94A.728.

**Intent—Purpose—2003 c 379 §§ 13-27:** See note following RCW 9.94A.760.

## Chapter 36.24 RCW COUNTY CORONER

### Sections

36.24.010	To act as sheriff under certain conditions.
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### **36.24.010 To act as sheriff under certain conditions.**

The coroner shall perform the duties of the sheriff in all cases where the sheriff is interested or otherwise incapacitated from serving; and whenever the coroner acts as sheriff he shall possess the powers and perform all the duties of sheriff, and shall be liable on his official bond in like manner as the sheriff would be, and shall be entitled to the same fees as are allowed by law to the sheriff for similar services: PROVIDED, That nothing herein contained shall prevent the court from appointing a suitable person to discharge such duties, as provided by RCW 36.28.090. [1963 c 4 § 36.24.010. Prior: 1897 c 21 § 1; Code 1881 § 2776; 1863 p 559 § 2; 1854 p 436 § 2; RRS § 4180.]

**36.24.020 Inquests.** Any coroner, in his or her discretion, may hold an inquest if the coroner suspects that the death of a person was unnatural, or violent, or resulted from unlawful means, or from suspicious circumstances, or was of such a nature as to indicate the possibility of death by the hand of the deceased or through the instrumentality of some other person: PROVIDED, That, except under suspicious circumstances, no inquest shall be held following a traffic death.

The coroner in the county where an inquest is to be convened pursuant to this chapter shall notify the superior court to provide persons to serve as a jury of inquest to hear all the evidence concerning the death and to inquire into and render a true verdict on the cause of death. Jurors shall be selected and summoned in the same manner and shall have the same qualifications as specified in chapter 2.36 RCW. The prosecuting attorney having jurisdiction shall be notified in advance of any such inquest to be held, and at his discretion may be present at and assist the coroner in the conduct of the same. The coroner may adjourn the inquest from time to time as he may deem necessary.

The costs of inquests shall be borne by the county in which the inquest is held. [1988 c 188 § 18; 1963 c 4 § 36.24.020. Prior: 1953 c 188 § 3; Code 1881 § 2777; 1863 p 560 § 3; 1854 p 436 § 3; RRS § 4181.]

**Legislative findings—Severability—Effective date—1988 c 188:** See notes following RCW 2.36.010.

**36.24.030 Penalty for nonattendance of juror.** Every person summoned as a juror who fails to appear without having a reasonable excuse shall forfeit a sum not exceeding twenty dollars, to be recovered by the coroner, in the name of the state, before any district judge of the county. The penalty when collected shall be paid over to the county treasurer for the use of the county. [1987 c 202 § 202; 1963 c 4 § 36.24.030. Prior: Code 1881 § 2778; 1863 p 560 § 4; 1854 p 436 § 4; RRS § 4182.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**36.24.040 Duty of coroner's jury—Oath.** When four or more of the jurors attend, they shall be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict therein, according to the evidence afforded them, or arising from the inspection of the body. [1963 c 4 § 36.24.040. Prior: Code 1881 § 2779; 1863 p 560 § 5; 1854 p 436 § 5; RRS § 4183.]

**36.24.050 Power to summon witnesses—Subpoenas.** The coroner may issue subpoenas for witnesses returnable forthwith or at such time and place as the coroner may appoint, which may be served by any competent person. The coroner must summon and examine as witnesses, on oath administered by the coroner, every person, who, in his or her opinion or that of any of the jury, has any knowledge of the facts. A witness served with a subpoena may be compelled to attend and testify, or be punished by the coroner for disobedience, in like manner as upon a subpoena issued by a district judge. [1987 c 202 § 203; 1963 c 4 § 36.24.050. Prior: (i) 1901 c 131 § 1, part; Code 1881 § 2780, part; 1863 p 560 § 6, part; 1854 p 436 § 6, part; RRS § 4184, part. (ii) Code 1881 § 2781; 1863 p 560 § 7; 1854 p 437 § 7; RRS § 4186.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**36.24.060 Power to employ physician or surgeon—Compensation.** The coroner may summon a surgeon or physician to inspect the body and give under oath a professional opinion as to the cause of death. The fees for the coroner's physician or surgeon shall not be less than ten dollars. [1963

c 4 § 36.24.060. Prior: (i) 1901 c 131 § 1, part; Code 1881 § 2780, part; 1863 p 560 § 6, part; 1854 p 436 § 6, part; RRS § 4184, part.]

**36.24.070 Verdict of jury.** After hearing the testimony, the jury shall render its verdict and certify the same in writing signed by the jurors, and setting forth who the person killed is, if known, and when, where and by what means he came to his death; or if he was killed, or his death was occasioned by the act of another by criminal means, who is guilty thereof, if known. [1963 c 4 § 36.24.070. Prior: 1953 c 188 § 4; Code 1881 § 2782; 1863 p 560 § 8; 1854 p 437 § 8; RRS § 4187.]

**36.24.080 Testimony reduced to writing in certain cases and witnesses recognized.** In all cases where murder or manslaughter is supposed to have been committed, the testimony of witnesses taken before the coroner's jury shall be reduced to writing by the coroner, or under his direction, and he shall also recognize such witnesses to appear and testify in the superior court of the county, and shall forthwith file the written testimony, inquisition, and recognizance with the clerk of such court. [1963 c 4 § 36.24.080. Prior: Code 1881 § 2783; 1863 p 561 § 9; 1854 p 437 § 9; RRS § 4188.]

**36.24.090 Procedure where accused is under arrest.** If the person charged with the commission of the offense has been arrested before the inquisition has been filed, the coroner shall deliver the recognizance and the inquisition, with the testimony taken, to the magistrate before whom such person may be brought, who shall return the same, with the depositions and statements taken before him to the clerk of the superior court of the county. [1963 c 4 § 36.24.090. Prior: Code 1881 § 2784; 1863 p 561 § 10; 1854 p 437 § 10; RRS § 4189.]

**36.24.100 Procedure where accused is at large—Warrant of arrest.** If the jury finds that the person was killed and the party committing the homicide is ascertained by the inquisition, but is not in custody, the coroner shall issue a warrant for the arrest of the person charged, returnable forthwith to the nearest magistrate. [1963 c 4 § 36.24.100. Prior: Code 1881 § 2785; 1863 p 561 § 11; 1854 p 437 § 11; RRS § 4190.]

**36.24.110 Form of warrant.** The coroner's warrant shall be in substantially the following form:

State of Washington, }  
County of . . . . . } ss.

To any sheriff or constable of the county.  
An inquisition having been this day found by the coroner's jury, before me, stating that A B has come to his death by the act of C D, by criminal means (or as the case may be, as found by the inquisition), you are therefore commanded, in the name of the state of Washington, forthwith to arrest the above named C D, and take him before the nearest or most accessible magistrate in this county.  
Given under my hand this . . . . day of . . . . ., A.D. 19. . .

E F, coroner of the county of . . . . .

[1963 c 4 § 36.24.110. Prior: Code 1881 § 2786; 1863 p 561 § 12; 1854 p 437 § 12; RRS § 4191.]

**36.24.120 Service of warrant.** The coroner's warrant may be served in any county, and the officers serving it shall proceed thereon, in all respects, as upon a warrant of arrest. [1963 c 4 § 36.24.120. Prior: Code 1881 § 2787; 1863 p 561 § 13; 1854 p 438 § 13; RRS § 4192.]

**36.24.130 Property of deceased.** The coroner or medical examiner must, within thirty days after the investigation of the death, deliver to the county treasurer any money which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If there is personal property, other than money, found upon the body, unless claimed in the meantime by a legal representative of the deceased, the coroner or medical examiner shall, within one hundred eighty days of the investigation, be authorized to dispose of any property of no resale value and forward any other property to the applicable county agency to be sold at the next county surplus sale. Any proceeds from the sale shall be forwarded to the county treasurer. If the coroner or medical examiner fails to do so, the treasurer may proceed against the coroner or medical examiner to recover the same by a civil action in the name of the county. [2004 c 79 § 1; 1963 c 4 § 36.24.130. Prior: Code 1881 § 2789; 1863 p 562 § 15; 1854 p 438 § 15; RRS § 4194.]

**36.24.140 Duty of treasurer.** Upon the delivery of money to the treasurer, the treasurer shall place it to the credit of the county. [2004 c 79 § 2; 1963 c 4 § 36.24.140. Prior: Code 1881 § 2790; 1863 p 562 § 16; 1854 p 438 § 16; RRS § 4195.]

**36.24.150 Delivery to representatives.** If the money in the treasury is demanded within six years by the legal representatives of the deceased, the treasurer shall pay it to them after deducting the fees and expenses of the coroner and of the county in relation to the matter, or the same may be so paid at any time thereafter, upon the order of the board of county commissioners of the county. [1963 c 4 § 36.24.150. Prior: Code 1881 § 2791; 1863 p 562 § 17; 1854 p 438 § 17; RRS § 4196.]

**36.24.155 Undisposed of remains—Entrusting to funeral homes or mortuaries.** Whenever anyone shall die within a county without making prior plans for the disposition of his body and there is no other person willing to provide for the disposition of the body, the county coroner shall cause such body to be entrusted to a funeral home in the county where the body is found. Disposition shall be on a rotation basis, which shall treat equally all funeral homes or mortuaries desiring to participate, such rotation to be established by the coroner after consultation with representatives of the funeral homes or mortuaries in the county or counties involved. [1969 ex.s. c 259 § 2.]

*Undisposed of remains, disposition of: RCW 68.50.230.*

**36.24.160 District judge may act as coroner.** If the office of coroner is vacant, or the coroner is absent or unable to attend, the duties of the coroner's office may be performed by any district judge in the county with the like authority and subject to the same obligations and penalties as the coroner. For such service a district judge shall be entitled to the same fees, payable in the same manner. [1987 c 202 § 204; 1963 c 4 § 36.24.160. Prior: (i) Code 1881 § 2793; 1863 p 562 § 19; 1854 p 438 § 19; RRS § 4198. (ii) Code 1881 § 2795; 1863 p 562 § 21; 1854 p 438 § 21; RRS § 4199.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**36.24.170 Coroner not to practice law.** The coroner shall not appear or practice as attorney in any court, except in defense of himself or his deputies. [1963 c 4 § 36.24.170. Prior: 1891 c 45 § 4, part; Code 1881 § 2770, part; 1863 p 558 § 5, part; 1854 p 434 § 5, part; RRS § 4171, part.]

**36.24.175 Coroner not to be owner or employee of funeral home or mortuary—Counties with populations of forty thousand or more.** In each county with a population of forty thousand or more, no person shall be qualified for the office of county coroner as provided for in RCW 36.16.030 who is an owner or employee of any funeral home or mortuary. [1991 c 363 § 54; 1969 ex.s. c 259 § 3.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.24.180 Audit of coroner's account.** Before auditing and allowing the account of the coroner the board of county commissioners shall require from him a verified statement in writing, accounting for all money or other property found upon persons on whom inquests have been held by him, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer. [1963 c 4 § 36.24.180. Prior: Code 1881 § 2792; 1863 p 562 § 18; 1854 p 438 § 18; RRS § 4197.]

**36.24.190 Medical examiner—When authorized—Election—Qualifications for appointment.** In a county with a population of two hundred fifty thousand or more, the county legislative authority may, upon majority vote at an election called by the county legislative authority, adopt a system under which a medical examiner may be appointed to replace the office of the coroner. The county legislative authority must adopt a resolution or ordinance that creates the office of medical examiner at least thirty days prior to the first day of filing for the primary election for county offices. If a county adopts such a resolution or ordinance, the resolution or ordinance shall be referred to the voters for confirmation or rejection at the next date for a special election that is more than forty-five days from the date the resolution or ordinance was adopted. If the resolution or ordinance is approved by majority vote, no election shall be held for the position of coroner and the coroner's position is abolished following the expiration of the coroner's term of office or upon vacating of the office of the coroner for any reason. The county legislative authority shall appoint a medical examiner to assume the statutory duties performed by the county coroner and the appointment shall become effective following the expiration

of the coroner's term of office or upon the vacating of the office of the coroner. To be appointed as a medical examiner pursuant to this section, a person must either be: (1) Certified as a forensic pathologist by the American board of pathology; or (2) a qualified physician eligible to take the American board of pathology exam in forensic pathology within one year of being appointed. A physician specializing in pathology who is appointed to the position of medical examiner and who is not certified as a forensic pathologist must pass the pathology exam within three years of the appointment. [1996 c 108 § 2.]

## Chapter 36.26 RCW PUBLIC DEFENDER

### Sections

36.26.010	Definitions.
36.26.020	Public defender district—Creation—Office of public defender.
36.26.030	Selection committee.
36.26.040	Public defender—Qualifications—Term.
36.26.050	Reports—Records—Costs and expenses.
36.26.060	Compensation—Office—Assistants, clerks, investigators, etc.
36.26.070	Duty to represent indigent defendants.
36.26.080	Duty to counsel, defend and prosecute appeals.
36.26.090	Appointment of attorney other than public defender.
36.26.900	Chapter cumulative and nonexclusive.

### 36.26.010 Definitions.

As used in this chapter:  
(1) "County commissioners" or "board of county commissioners" means and includes:

(a) Any single board of county commissioners, county council, or other governing body of any county which has neither a board of county commissioners nor a county council denominated as such; and

(b) The governing bodies, including any combination or mixture of more than one board of county commissioners, county council, or otherwise denominated governing body of a county, of any two or more contiguous counties electing to participate jointly in the support of any intercounty public defender.

(2) "District" or "public defender district" means any one or more entire counties electing to employ a public defender; and no county shall be divided in the creation of any public defender district. [1969 c 94 § 1.]

**36.26.020 Public defender district—Creation—Office of public defender.** The board of county commissioners of any single county or of any two or more territorially contiguous counties or acting in cooperation with the governing authority of any city located within the county or counties may, by resolution or by ordinance, or by concurrent resolutions or concurrent ordinances, constitute such county or counties or counties and cities as a public defender district, and may establish an office of public defender for such district. [1969 c 94 § 2.]

**36.26.030 Selection committee.** The board of county commissioners of every county electing to become or to join in a public defender district shall appoint a selection committee for the purpose of selecting a full or part time public defender for the public defender district. Such selection committee shall consist of one member of each board of county

commissioners, one member of the superior court from each county, and one practicing attorney from each county within the district. [1969 c 94 § 3.]

### 36.26.040 Public defender—Qualifications—Term.

Every public defender and every assistant public defender must be a qualified attorney licensed to practice law in this state; and the term of the public defender shall coincide with the elected term of the prosecuting attorney. [1969 c 94 § 4.]

### 36.26.050 Reports—Records—Costs and expenses.

The public defender shall make an annual report to each board of county commissioners within his district. If any public defender district embraces more than one county or a cooperating city, the public defender shall maintain records of expenses allocable to each county or city within the district, and shall charge such expenses only against the county or city for which the services were rendered or the costs incurred. The boards of county commissioners of counties and the governing authority of any city participating jointly in a public defender district are authorized to provide for the sharing of the costs of the district by mutual agreement, for any costs which cannot be specifically apportioned to any particular county or city within the district.

Expenditures by the public defender shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties or cities. [1969 c 94 § 5.]

**36.26.060 Compensation—Office—Assistants, clerks, investigators, etc.** (1) The board of county commissioners shall:

(a) Fix the compensation of the public defender and of any staff appointed to assist him in the discharge of his duties: PROVIDED, That the compensation of the public defender shall not exceed that of the county prosecutor in those districts which comprise only one county;

(b) Provide office space, furniture, equipment and supplies for the use of the public defender suitable for the conduct of his office in the discharge of his duties, or provide an allowance in lieu of facilities and supplies.

(2) The public defender may appoint as many assistant attorney public defenders, clerks, investigators, stenographers and other employees as the board of county commissioners considers necessary in the discharge of his duties as a public defender. [1969 c 94 § 6.]

### 36.26.070 Duty to represent indigent defendants.

The public defender must represent, without charge to any accused, every indigent person who is or has been arrested or charged with a crime for which court appointed counsel for indigent defendants is required either under the Constitution of the United States or under the Constitution and laws of the state of Washington:

(1) If such arrested person or accused, having been apprised of his constitutional and statutory rights to counsel, requests the appointment of counsel to represent him; and

(2) If a court, on its own motion or otherwise, does not appoint counsel to represent the accused; and

(3) Unless the arrested person or accused, having been apprised of his right to counsel in open court, affirmatively

rejects or intelligently repudiates his constitutional and statutory rights to be represented by counsel. [1984 c 76 § 18; 1969 c 94 § 7.]

**36.26.080 Duty to counsel, defend and prosecute appeals.** Whenever the public defender represents any indigent person held in custody without commitment or charged with any criminal offense, he must (1) counsel and defend such person, and (2) prosecute any appeals and other remedies, whether before or after conviction, which he considers to be in the interests of justice. [1969 c 94 § 8.]

**36.26.090 Appointment of attorney other than public defender.** For good cause shown, or in any case involving a crime of widespread notoriety, the court may, upon its own motion or upon application of either the public defender or of the indigent accused, appoint an attorney other than the public defender to represent the accused at any stage of the proceedings or on appeal: PROVIDED, That the public defender may represent an accused, not an indigent, in any case of public notoriety where the court may find that adequate retained counsel is not available. The court shall award, and the county in which the offense is alleged to have been committed shall pay, such attorney reasonable compensation and reimbursement for any expenses reasonably and necessarily incurred in the presentation of the accused's defense or appeal, in accordance with RCW 4.88.330. [1984 c 76 § 19; 1983 c 3 § 76; 1969 c 94 § 9.]

**36.26.900 Chapter cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy, particularly in counties electing not to create the office of public defender: PROVIDED, That nothing herein shall be construed to prevent the appointment of a full time or part time assigned-counsel administrator for the purpose of maintaining a centrally administered system for the assignment of counsel to represent indigent persons. [1969 c 94 § 10.]

## Chapter 36.27 RCW

### PROSECUTING ATTORNEY

#### Sections

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*lien foreclosure:* Chapter 84.64 RCW.

*recovery:* Chapter 84.68 RCW.

*term papers, theses, dissertations, sale of prohibited:* RCW 28B.10.584.

*uniform reciprocal enforcement of support act:* Chapter 26.21 RCW.

*veterans, employment, reemployment rights:* RCW 73.16.061.

*vital statistics:* Chapter 70.58 RCW.

*wages, payment and collection of:* RCW 49.48.050.

*Washington commercial feed law:* Chapter 15.53 RCW.

*Washington fertilizer act:* RCW 15.54.470.

*Washington pesticide act:* Chapter 15.58 RCW.

*Washington state agricultural enabling act of 1961:* RCW 15.65.550.

*water code:* RCW 90.03.100, 90.03.350.

*weed districts:* Chapter 17.04 RCW.

*wharves, eminent domain of county to provide:* RCW 88.24.070.

*Gambling activities, as affecting:* Chapter 9.46 RCW.

*Governor may request action by:* RCW 43.06.010(6).

*Juvenile justice act, duties of prosecuting attorney:* Chapter 13.40 RCW.

*Pawnbroker's and second-hand dealers' records open to inspection:* RCW 19.60.020.

*Support of dependent children, records available for use in proceedings relating to:* RCW 74.20.280.

*Uniform interstate family support act, prosecuting attorney may enter into agreement where attorney general will carry out duties under:* RCW 74.20.210.

*Vehicle of is emergency vehicle:* RCW 46.04.040.

*Washington habitual traffic offenders act, prosecuting attorney's duties:* Chapter 46.65 RCW.

**36.27.005 Defined.** Prosecuting attorneys are attorneys authorized by law to appear for and represent the state and the counties thereof in actions and proceedings before the courts and judicial officers. [1963 c 4 § 36.27.005. Prior: 1891 c 55 § 3; RRS § 113.]

**36.27.010 Eligibility to office.** No person shall be eligible to the office of prosecuting attorney in any county of this state, unless he is a qualified elector therein, and has been admitted as an attorney and counselor of the courts of this state. [1963 c 4 § 36.27.010. Prior: 1891 c 55 § 4; RRS § 4128. Cf. 1883 p 72 § 7.]

**36.27.020 Duties.** The prosecuting attorney shall:

(1) Be legal adviser of the legislative authority, giving them [it] his or her written opinion when required by the legislative authority or the chairperson thereof touching any subject which the legislative authority may be called or required to act upon relating to the management of county affairs;

(2) Be legal adviser to all county and precinct officers and school directors in all matters relating to their official business, and when required draw up all instruments of an official nature for the use of said officers;

(3) Appear for and represent the state, county, and all school districts subject to the supervisory control and direction of the attorney general in all criminal and civil proceedings in which the state or the county or any school district in the county may be a party;

(4) Prosecute all criminal and civil actions in which the state or the county may be a party, defend all suits brought against the state or the county, and prosecute actions upon forfeited recognizances and bonds and actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or the county;

(5) Attend and appear before and give advice to the grand jury when cases are presented to it for consideration and draw all indictments when required by the grand jury;

(6) Institute and prosecute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of felonies when the prosecuting attorney has information that any such offense has been committed and the prosecuting attorney shall for that purpose attend when required by them if the prosecuting attorney is not then in attendance upon the superior court;

(7) Carefully tax all cost bills in criminal cases and take care that no useless witness fees are taxed as part of the costs and that the officers authorized to execute process tax no other or greater fees than the fees allowed by law;

(8) Receive all cost bills in criminal cases before district judges at the trial of which the prosecuting attorney was not present, before they are lodged with the legislative authority for payment, whereupon the prosecuting attorney may retax the same and the prosecuting attorney must do so if the legislative authority deems any bill exorbitant or improperly taxed;

(9) Present all violations of the election laws which may come to the prosecuting attorney's knowledge to the special consideration of the proper jury;

(10) Examine once in each year the official bonds of all county and precinct officers and report to the legislative authority any defect in the bonds of any such officer;

(11) Make an annual report to the governor as of the 31st of December of each year setting forth the amount and nature of business transacted by the prosecuting attorney in that year with such other statements and suggestions as the prosecuting attorney may deem useful;

(12) Send to the state liquor control board at the end of each year a written report of all prosecutions brought under the state liquor laws in the county during the preceding year, showing in each case, the date of trial, name of accused, nature of charges, disposition of case, and the name of the judge presiding;

(13) Seek to reform and improve the administration of criminal justice and stimulate efforts to remedy inadequacies or injustice in substantive or procedural law. [1995 c 194 § 4; 1987 c 202 § 205; 1975 1st ex.s. c 19 § 1; 1963 c 4 § 36.27.020. Prior: (i) 1911 c 75 § 1; 1891 c 55 § 7; RRS § 116. (ii) 1886 p 65 § 5; 1883 p 73 § 10; Code 1881 § 2171; 1879 p 93 § 6; 1877 p 246 § 6; 1863 p 408 § 4; 1860 p 335 § 3; 1858 p 12 § 4; 1854 p 416 § 4; RRS § 4130. (iii) 1886 p 61 § 7; 1883 p 73 § 12; Code 1881 § 2168; 1879 p 94 § 8; 1877 p 247 § 8; RRS § 4131. (iv) 1886 p 61 § 8; 1883 p 74 § 13; Code 1881 § 2169; 1879 p 94 § 8; 1877 p 247 § 9; RRS § 4132. (v) 1886 p 61 § 9; 1883 p 74 § 14; Code 1881 § 2170; 1879 p 94 § 9; 1877 p 247 § 10; RRS § 4133. (vi) 1886 p 62 § 13; 1883 p 74 § 18; Code 1881 § 2165; 1879 p 95 § 13; 1877 p 248 § 14; 1863 p 409 § 5; 1860 p 334 § 4; 1858 p 12 § 5; 1854 p 417 § 5; RRS § 4134. (vii) Referendum No. 24; 1941 c 191 § 1; 1886 p 63 § 18; 1883 p 76 § 24; Code 1881 § 2146; 1879 p 96 § 18; RRS § 4136. (viii) Code 1881 § 3150; 1866 p 52 § 10; RRS § 4137. (ix) 1933 ex.s. c 62 § 81, part; RRS § 7306-81, part.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

*Annual report to include number of child abuse reports and cases:* RCW 26.44.075.

**36.27.030 Disability of prosecuting attorney.** When from illness or other cause the prosecuting attorney is temporarily unable to perform his duties, the court or judge may appoint some qualified person to discharge the duties of such officer in court until the disability is removed.

When any prosecuting attorney fails, from sickness or other cause, to attend a session of the superior court of his county, or is unable to perform his duties at such session, the court or judge may appoint some qualified person to discharge the duties of such session, and the appointee shall receive a compensation to be fixed by the court, to be deducted from the stated salary of the prosecuting attorney, not exceeding, however, one-fourth of the quarterly salary of

the prosecuting attorney: PROVIDED, That in counties wherein there is no person qualified for the position of prosecuting attorney, or wherein no qualified person will consent to perform the duties of that office, the judge of the superior court shall appoint some suitable person, a duly admitted and practicing attorney at law and resident of the state to perform the duties of prosecuting attorney for such county, and he shall receive such reasonable compensation for his services as shall be fixed and ordered by the court, to be paid by the county for which the services are performed. [1963 c 4 § 36.27.030. Prior: (i) 1891 c 55 § 5; RRS § 114. (ii) 1893 c 52 § 1; 1886 p 62 § 14; 1883 p 74 § 19; Code 1881 § 2166; 1879 p 95 § 14; 1877 p 248 § 15; 1863 p 409 § 6; 1860 p 335 § 5; 1858 p 13 § 6; 1854 p 417 § 6; RRS § 4135.]

**36.27.040 Appointment of deputies—Special and temporary deputies.** The prosecuting attorney may appoint one or more deputies who shall have the same power in all respects as their principal. Each appointment shall be in writing, signed by the prosecuting attorney, and filed in the county auditor's office. Each deputy thus appointed shall have the same qualifications required of the prosecuting attorney, except that such deputy need not be a resident of the county in which he serves. The prosecuting attorney may appoint one or more special deputy prosecuting attorneys upon a contract or fee basis whose authority shall be limited to the purposes stated in the writing signed by the prosecuting attorney and filed in the county auditor's office. Such special deputy prosecuting attorney shall be admitted to practice as an attorney before the courts of this state but need not be a resident of the county in which he serves and shall not be under the legal disabilities attendant upon prosecuting attorneys or their deputies except to avoid any conflict of interest with the purpose for which he has been engaged by the prosecuting attorney. The prosecuting attorney shall be responsible for the acts of his deputies and may revoke appointments at will.

Two or more prosecuting attorneys may agree that one or more deputies for any one of them may serve temporarily as deputy for any other of them on terms respecting compensation which are acceptable to said prosecuting attorneys. Any such deputy thus serving shall have the same power in all respects as if he were serving permanently.

The provisions of chapter 39.34 RCW shall not apply to such agreements.

The provisions of RCW 41.56.030(2) shall not be interpreted to permit a prosecuting attorney to alter the at-will relationship established between the prosecuting attorney and his or her appointed deputies by this section for a period of time exceeding his or her term of office. Neither shall the provisions of RCW 41.56.030(2) require a prosecuting attorney to alter the at-will relationship established by this section. [2000 c 23 § 2; 1975 1st ex.s. c 19 § 2; 1963 c 4 § 36.27.040. Prior: 1959 c 30 § 1; 1943 c 35 § 1; 1903 c 7 § 1; 1891 c 55 § 6; 1886 p 63 § 17; 1883 p 76 § 23; Code 1881 § 2142; 1879 p 95 § 16; Rem. Supp. 1943 § 115.]

**36.27.045 Employment of legal interns.** Notwithstanding any other provision of this chapter, nothing in this chapter shall be deemed to prevent a prosecuting attorney

from employing legal interns as otherwise authorized by statute or court rule. [1974 ex.s. c 6 § 1.]

**36.27.050 Special emoluments prohibited.** No prosecuting attorney shall receive any fee or reward from any person, on behalf of any prosecution, or for any of his official services, except as provided in this title, nor shall he be engaged as attorney or counsel for any party in any action depending upon the same facts involved in any criminal proceeding. [1963 c 4 § 36.27.050. Prior: 1888 p 189 § 1; 1886 p 62 § 12; 1883 p 74 § 17; Code 1881 § 2164; 1879 p 94 § 12; 1877 p 248 § 13; 1863 p 409 § 8; 1860 p 335 § 7; 1858 p 13 § 8; 1854 p 417 § 7; RRS § 4138.]

**36.27.060 Private practice prohibited in certain counties—Deputy prosecutors.** (1) The prosecuting attorney, and deputy prosecuting attorneys, of each county with a population of eighteen thousand or more shall serve full time and except as otherwise provided for in this section shall not engage in the private practice of law.

(2) Deputy prosecuting attorneys in a county with a population of from eighteen thousand to less than one hundred twenty-five thousand may serve part time and engage in the private practice of law if the county legislative authority so provides.

(3) Except as provided in subsection (4) of this section, nothing in this section prohibits a prosecuting attorney or deputy prosecuting attorney in any county from:

(a) Performing legal services for himself or herself or his or her immediate family; or

(b) Performing legal services of a charitable nature.

(4) The legal services identified in subsection (3) of this section may not be performed if they would interfere with the duties of a prosecuting attorney, or deputy prosecuting attorney and no services that are performed shall be deemed within the scope of employment of a prosecutor or deputy prosecutor. [1991 c 363 § 55; 1989 c 39 § 1; 1973 1st ex.s. c 86 § 1; 1971 ex.s. c 237 § 2; 1969 ex.s. c 226 § 2; 1963 c 4 § 36.27.060. Prior: 1941 c 46 § 2; Rem. Supp. 1941 § 4139-1.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Effective date—1973 1st ex.s. c 86:** "This 1973 amendatory act shall take effect on the second Monday in the month of January, 1975." [1973 1st ex.s. c 86 § 2.]

**Severability—Effective date—1971 ex.s. c 237:** See notes following RCW 36.17.020.

**36.27.070 Office at county seat.** The prosecuting attorney of each county in the state of Washington must keep an office at the county seat of the county of which he is prosecuting attorney. [1963 c 4 § 36.27.070. Prior: 1909 c 122 § 1; RRS § 4139.]

**36.27.100 Statewide drug prosecution assistance program—Created.** The legislature recognizes that, due to the magnitude or volume of offenses in a given area of the state, there is a recurring need for supplemental assistance in the prosecuting of drug and drug-related offenses that can be directed to the area of the state with the greatest need for short-term assistance. A statewide drug prosecution assistance program is created within the department of commu-

unity, trade, and economic development to assist county prosecuting attorneys in the prosecution of drug and drug-related offenses. [1995 c 399 § 41; 1989 c 271 § 236.]

**Severability—1989 c 271:** See note following RCW 9.94A.510.

**36.27.110 Statewide drug prosecution assistance program—Advisory committee—Selection of project director.** There is established a statewide advisory committee comprised of the attorney general, the chief of the Washington state patrol, both United States attorneys whose offices are located in Washington state, and three county prosecuting attorneys appointed by the Washington association of prosecuting attorneys, who will also act as supervising attorneys. The statewide advisory committee shall select one of the supervising attorneys to act as project director of the drug prosecution assistance program. [1989 c 271 § 237.]

**Severability—1989 c 271:** See note following RCW 9.94A.510.

**36.27.120 Statewide drug prosecution assistance program—Personnel—Review of assignments—Supervision of special deputies.** The project director of the drug prosecution assistance program shall employ up to five attorneys to act as special deputy prosecuting attorneys. A county or counties may request the assistance of one or more of the special deputy prosecuting attorneys. The project director after consultation with the advisory committee shall determine the assignment of the special deputy prosecutors. Within funds appropriated for this purpose, the project director may also employ necessary support staff and purchase necessary supplies and equipment.

The advisory committee shall regularly review the assignment of the special deputy prosecuting attorneys to ensure that the program's impact on the drug abuse problem is maximized.

During the time a special deputy prosecuting attorney is assigned to a county, the special deputy is under the direct supervision of the county prosecuting attorney for that county. The advisory committee may reassign a special deputy at any time: PROVIDED, That adequate notice must be given to the county prosecuting attorney if the special deputy is involved in a case scheduled for trial. [1989 c 271 § 238.]

**Severability—1989 c 271:** See note following RCW 9.94A.510.

**Chapter 36.28 RCW  
COUNTY SHERIFF**

Sections

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- 36.28.011 Duty to make complaint.
- 36.28.020 Powers of deputies, regular and special.
- 36.28.025 Qualifications.
- 36.28.030 New or additional bond of sheriff.
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- 36.28.120 Duty of retiring sheriffs, constables and coroners—Successors' duties.
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- 36.28.170 Standard uniform for sheriffs and deputies.

- 36.28.180 Allowance for clothing and other incidentals.
- 36.28.190 City contracts to obtain sheriff's office law enforcement services.

- Action against, limitation on:* RCW 4.16.080, 4.16.110.
- Attachment of witnesses directed to:* RCW 5.56.080.
- Civil service for sheriff's office:* Chapter 41.14 RCW.
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- Dissolution of inactive port districts, sheriff's sale:* RCW 53.47.040.
- Disturbances at state penal facilities:* Chapter 72.72 RCW.
- Dog handler using dog in line of duty—Immunity:* RCW 4.24.410.
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  - abandoned animals:* Chapter 16.54 RCW.
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  - attachment, sheriff's duties:* Chapter 6.25 RCW.
  - chattel mortgages, foreclosure of:* Chapter 61.12 RCW.
  - cities and towns*
    - involuntary dissolution:* RCW 35.07.260.
    - protection from water pollution:* Chapter 35.88 RCW.
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    - impanelling jury:* RCW 4.44.120.
    - sheriff to obtain money or property ordered deposited into court upon default:* RCW 4.44.490.
    - sheriff to provide jurors food and lodging:* RCW 4.44.310.
  - crop liens:* Chapter 60.11 RCW.
  - dairy products commission law:* RCW 15.44.160.
  - dead bodies, sheriff to surrender for dissection purposes:* RCW 68.50.070.
  - default in rent of forty dollars or less:* RCW 59.08.060, 59.08.090, 59.08.100.
  - department of revenue summons:* RCW 84.08.050.
  - diking, drainage district, dissolution of:* Chapter 85.07 RCW.
  - dogs:* Chapter 16.08 RCW.
  - elections, polling place regulations during voting hours:* Chapter 29A.44 RCW.
  - eminent domain by state:* Chapter 8.04 RCW.
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  - horses, mules, asses at large, sheriff to impound:* Chapter 16.24 RCW.
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  - juries, drawing of:* Chapter 2.36 RCW.
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  - lien for labor and services on timber and lumber, actions on:* Chapter 60.24 RCW.
  - limited access facility within city or town:* RCW 47.52.200.
  - liquor violations, sheriff as enforcement officer:* RCW 66.44.010.
  - lost and found property:* Chapter 63.21 RCW.
  - mental illness:* Chapter 71.05 RCW.
  - mentally ill, state hospitals for, escape by patient from:* Chapter 72.23 RCW.
  - mines, abandoned mining shafts and excavations:* Chapter 78.12 RCW.
  - missing children:* RCW 13.60.020.
  - motor vehicle*
    - accidents:* Chapter 46.52 RCW.
    - fuel haulers:* RCW 82.36.210.
    - offenses generally:* Title 46 RCW.
  - obstructions on public highways:* Chapter 47.32 RCW.
  - port districts*
    - dissolution of:* Chapter 53.48 RCW.
    - motor vehicle regulation enforcement:* RCW 53.08.230.
  - prevention of cruelty to animals:* Chapter 16.52 RCW.
  - proceedings supplemental to execution:* Chapter 6.32 RCW.
  - real estate mortgages, foreclosure of:* Chapter 61.12 RCW.
  - regional jail camps:* RCW 72.64.100.
  - sales under execution and redemption:* Chapter 6.21 RCW.

*search and seizure, cigarette excise tax: RCW 82.24.190.*  
*soft tree fruits commission law: RCW 15.28.290.*  
*state board of health measures: RCW 43.20.050.*  
*support of dependent children: Chapter 74.20 RCW.*  
*suretyship: Chapter 19.72 RCW.*  
*tax warrants*  
*generally: Chapter 82.32 RCW.*  
*motor vehicle fuel tax: RCW 82.36.130.*  
*taxes, property*  
*private car companies on, process serving: RCW 84.16.032.*  
*public utilities on, process serving: RCW 84.12.240.*  
*traffic control devices, forbidden devices, abatement of: RCW 47.36.180.*  
*traffic schools: Chapter 46.83 RCW.*  
*unclaimed property in hands of sheriff: Chapter 63.40 RCW.*  
*unemployment compensation: RCW 50.12.170, 50.24.110.*  
*uniform code of military justice: RCW 38.38.080 through 38.38.092, 38.38.492.*  
*Gambling activities, as affecting: Chapter 9.46 RCW.*  
*Law enforcement chaplains authorized: Chapter 41.22 RCW.*  
*Money in hands of sheriff under attachment may be garnished: RCW 6.27.050.*  
*Motor vehicle accidents, reports made to sheriff: Chapter 46.52 RCW.*  
*Names of amateur radio station vehicle licensees to be furnished to: RCW 46.16.340.*  
*Reports of motor vehicle repairs made to: RCW 46.52.090.*  
*Sheriff's deed: RCW 6.21.120.*  
*Support of dependent children, sheriff to charge no fees in connection with: RCW 74.20.300.*  
*Surety, sheriff ineligible as: RCW 19.72.020.*  
*Vehicle of as emergency vehicle: RCW 46.04.040.*  
*Vehicle wreckers (licensed) records, sheriff may inspect: RCW 46.80.080.*

**36.28.010 General duties.** The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his office, he and his deputies:

- (1) Shall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;
- (2) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;
- (3) Shall execute the process and orders of the courts of justice or judicial officers, when delivered for that purpose, according to law;
- (4) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes;
- (5) Shall attend the sessions of the courts of record held within the county, and obey their lawful orders or directions;
- (6) Shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary. [1965 c 92 § 1; 1963 c 4 § 36.28.010. Prior: (i) 1891 c 45 § 1; RRS § 4157. (ii) Code 1881 § 2769; 1863 p 557 § 4; 1854 p 434 § 4; RRS § 4168.]

**36.28.011 Duty to make complaint.** In addition to the duties contained in RCW 36.28.010, it shall be the duty of all sheriffs to make complaint of all violations of the criminal law, which shall come to their knowledge, within their respective jurisdictions. [1963 c 4 § 36.28.011. Prior: 1955

c 10 § 1. Cf. Code 1881 § 2801, part; 1869 p 264 § 311, part; RRS § 4173, part.]

**36.28.020 Powers of deputies, regular and special.** Every deputy sheriff shall possess all the power, and may perform any of the duties, prescribed by law to be performed by the sheriff, and shall serve or execute, according to law, all process, writs, precepts, and orders, issued by lawful authority.

Persons may also be deputed by the sheriff in writing to do particular acts; including the service of process in civil or criminal cases, and the sheriff shall be responsible on his official bond for their default or misconduct. [1963 c 4 § 36.28.020. Prior: 1961 c 35 § 2; prior: (i) Code 1881 § 2767, part; 1871 p 110 § 1, part; 1863 p 557 § 2, part; 1854 p 434 § 2, part; RRS § 4160, part. (ii) 1886 p 174 § 1; Code 1881 § 2768; 1863 p 557 § 3; 1854 p 434 § 3; RRS § 4167.]

**36.28.025 Qualifications.** A person who files a declaration of candidacy for the office of sheriff after September 1, 1979, shall have, within twelve months of assuming office, a certificate of completion of a basic law enforcement training program which complies with standards adopted by the criminal justice training commission pursuant to RCW 43.101.080 and \*43.101.160.

This requirement does not apply to persons holding the office of sheriff in any county on September 1, 1979. [1979 ex.s. c 153 § 6.]

\*Reviser's note: RCW 43.101.160 was repealed by 1983 c 197 § 55, effective June 30, 1987.

**36.28.030 New or additional bond of sheriff.** Whenever the company acting as surety on the official bond of a sheriff is disqualified, insolvent, or the penalty of the bond becomes insufficient on account of recovery had thereon, or otherwise, the sheriff shall submit a new or additional bond for approval to the board of county commissioners, if in session, or, if not in session, for the approval of the chairman of such board, and file the same, when approved, in the office of the county clerk of his county, and such new or additional bond shall be in a penal sum sufficient in amount to equal the sum specified in the original bond when added to the penalty of any existing bond, so that under one or more bonds there shall always be an enforceable obligation of the surety on the official bond or bonds of the sheriff in a penal sum of not less than the amount of the bond as originally approved. [1963 c 4 § 36.28.030. Prior: 1943 c 139 § 2; Rem. Supp. 1943 § 4155-1.]

**36.28.040 May demand fees in advance.** No sheriff, deputy sheriff, or coroner shall be liable for any damages for neglecting or refusing to serve any civil process unless his legal fees are first tendered him. [1963 c 4 § 36.28.040. Prior: 1941 c 237 § 1, part; 1935 c 33 § 1, part; Code 1881 § 2772, part; 1863 p 558 § 7, part; 1854 p 434 § 7, part; Rem. Supp. 1941 § 4172, part.]

**36.28.050 May demand indemnifying bond.** If any property levied upon by virtue of any writ of attachment or execution or other order issued to the sheriff out of any court

in this state is claimed by any person other than the defendant, and such person or his agent or attorney makes affidavit of his title thereto or his right to possession thereof, stating the value thereof and the basis of such right or title, the sheriff may release such levy, unless the plaintiff on demand indemnifies the sheriff against such claim by an undertaking executed by a sufficient surety.

No claim to such property by any person other than the defendant shall be valid against the sheriff, unless the supporting affidavit is made. Notwithstanding receipt of a proper claim the sheriff shall retain such property under levy a reasonable time to demand such indemnity.

Any sheriff, or other levying officer, may require an indemnifying bond of the plaintiff in all cases where he has to take possession of personal property. [1963 c 4 § 36.28.050. Prior: 1941 c 237 § 1, part; 1935 c 33 § 1, part; Code 1881 § 2772, part; 1863 p 558 § 7, part; 1854 p 434 § 7, part; Rem. Supp. 1941 § 4172, part.]

**36.28.060 Duplicate receipts—Penalties.** (1) The sheriff shall make duplicate receipts for all payments for his or her services specifying the particular items thereof, at the time of payment, whether paid by virtue of the laws of this state or of the United States. Such duplicate receipts shall be numbered consecutively for each month commencing with number one. One of such receipts shall have written or printed upon it the word "original"; and the other shall have written or printed upon it the word "duplicate."

(2) At the time of payment of any fees, the sheriff shall deliver to the person making payment, either personally or by mail, the copy of the receipt designated "duplicate."

(3) The receipts designated "original" for each month shall be attached to the verified statement of fees for the corresponding month and the sheriff shall file with the county treasurer of his or her county all original receipts for each month with such verified statement.

(4) A sheriff shall not receive his or her salary for the preceding month until the provisions of this section have been complied with.

(5) Any sheriff violating this section, or failing to perform any of the duties required thereby, is guilty of a misdemeanor and shall be fined in any sum not less than ten dollars nor more than fifty dollars for each offense. [2003 c 53 § 202; 1963 c 4 § 36.28.060. Prior: (i) 1909 c 105 § 1; RRS § 4161. (ii) 1909 c 105 § 2; RRS § 4162.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**36.28.090 Service of process when sheriff disqualified.** When there is no sheriff of a county, or he is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the discharge of that duty to appoint some suitable person, a citizen of the county, to execute the same: PROVIDED, That final process shall in no case be executed by any person other than the legally authorized officer; or in case he is disqualified, some suitable person appointed by the court, or judge thereof, out of which the process issues, who shall make such appointment in writing; and before such appointment shall take effect, the person appointed shall give security to the party interested for the faithful performance of

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his duties, which bond of suretyship shall be in writing, approved by the court or judge appointing him, and be placed on file with the papers in the case. [1963 c 4 § 36.28.090. Prior: Code 1881 § 745; 1869 p 172 § 687; RRS § 4170.]

**36.28.100 Employment of prisoners.** The sheriff or director of public safety shall employ all able bodied persons sentenced to imprisonment in the county jail in such manner and at such places within the county as may be directed by the legislative authority of the county. [1973 1st ex.s. c 154 § 54; 1963 c 4 § 36.28.100. Prior: 1909 c 249 § 27; RRS § 2279.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**36.28.110 Sheriff not to practice law.** No sheriff shall appear or practice as attorney in any court, except in their own defense. [1992 c 225 § 2; 1963 c 4 § 36.28.110. Prior: 1891 c 45 § 4, part; Code 1881 § 2770, part; 1863 p 558 § 5, part; 1854 p 434 § 5, part; RRS § 4171, part.]

**36.28.120 Duty of retiring sheriffs, constables and coroners—Successors' duties.** All sheriffs, constables and coroners, upon the completion of their term of office and the qualification of their successors, shall deliver and turn over to their successors all writs and other processes in their possession not wholly executed, and all personal property in their possession or under their control held under such writs or processes, and take receipts therefor in duplicate, one of which shall be filed in the office from which such writ or process issued as a paper in the action, which receipt shall be good and sufficient discharge to such officer of and from further charge of the execution of such writs and processes; and they shall also deliver to their successors all official papers and property in their possession or under their control. The successors shall execute or complete the execution of all such writs and processes, and finish and complete all business turned over to them. [1963 c 4 § 36.28.120. Prior: 1895 c 17 § 1; RRS § 4174.]

**36.28.130 Actions by successors and by officials after expiration of term of office validated.** In all cases where any sheriff, constable or coroner has executed any writ or other process delivered to him by his predecessor, or has completed any business commenced by his predecessor under any writ or process, and has completed any other business commenced by his predecessor, and in all cases where any sheriff, constable or coroner has executed any writ or other process, or completed any business connected with his office after the expiration of his term of office, which writ or process he had commenced to execute, or which business he had commenced to perform, prior to the expiration of his term of office, such action shall be valid and effectual for all purposes. [1963 c 4 § 36.28.130. Prior: 1895 c 17 § 2; RRS § 4175.]

**36.28.150 Liability for fault or misconduct.** Whenever any sheriff neglects to make due return of any writ or other process delivered to him to be executed, or is guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment, or both, at the discretion of the court, subject to appeal, such fine, however, not to exceed

two hundred dollars; and also to an action for damages to the party aggrieved. [1963 c 4 § 36.28.150. Prior: Code 1881 § 2771; 1863 p 558 § 6; 1854 p 434 § 6; RRS § 4169.]

**36.28.160 Office at county seat.** The sheriff must keep his office at the county seat of the county of which he is sheriff. [1963 c 4 § 36.28.160. Prior: 1891 c 45 § 2; RRS § 4158. SLC-RO-14.]

**36.28.170 Standard uniform for sheriffs and deputies.** The executive secretary of the Washington state association of elected county officials, upon written approval of a majority of the sheriffs in the state, shall file with the secretary of state a description of a standard uniform which may be withdrawn or modified by re-filing in the same manner as originally filed. A uniform of the description so filed shall thereafter be reserved exclusively for the use of sheriffs and their deputies: PROVIDED, That the filing of a standard uniform description shall not make mandatory the adoption of said uniform by any county sheriff or his deputies. [1963 c 50 § 1.]

**36.28.180 Allowance for clothing and other incidentals.** A county may from available funds provide for an allowance for clothing and other incidentals necessary to the performance of official duties for the sheriff and his deputies. [1979 c 132 § 1; 1963 c 50 § 2.]

**36.28.190 City contracts to obtain sheriff's office law enforcement services.** See RCW 41.14.250 through 41.14.280.

### Chapter 36.28A RCW

#### ASSOCIATION OF SHERIFFS AND POLICE CHIEFS

##### Sections

- 36.28A.010 Declarations.
- 36.28A.020 Local law and justice plan assistance.
- 36.28A.030 Malicious harassment—Information reporting and dissemination.
- 36.28A.040 Statewide city and county jail booking and reporting system—Standards committee.
- 36.28A.050 Statewide city and county jail booking and reporting system—Grant fund.
- 36.28A.060 Statewide first responder building mapping information system—Creation—Data must be available to law enforcement, military, and fire safety agencies—Standards—Public disclosure exemption.
- 36.28A.070 Statewide first responder building mapping information system—Committee established—Development of guidelines.
- 36.28A.080 Immunity from liability.

**36.28A.010 Declarations.** The Washington association of sheriffs and police chiefs is hereby declared to be a combination of units of local government: PROVIDED, That such association shall not be considered an "employer" within the meaning of RCW 41.26.030(2) or 41.40.010(4): PROVIDED FURTHER, That no compensation received as an employee of the association shall be considered salary for purposes of the provisions of any retirement system created pursuant to the general laws of this state: PROVIDED FURTHER, That such association shall not qualify for inclusion under the unallocated two mills of the property tax of any political subdivision: PROVIDED FURTHER, That the

association shall not have the authority to assess any excess levy or bond measure. [1975 1st ex.s. c 172 § 1.]

**36.28A.020 Local law and justice plan assistance.** The Washington association of sheriffs and police chiefs may, upon request of a county's legislative authority, assist the county in developing and implementing its local law and justice plan. In doing so, the association shall consult with the office of financial management and the department of corrections. [1991 c 363 § 56.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.28A.030 Malicious harassment—Information reporting and dissemination.** (1) The Washington association of sheriffs and police chiefs shall establish and maintain a central repository for the collection and classification of information regarding violations of RCW 9A.36.080. Upon establishing such a repository, the association shall develop a procedure to monitor, record, and classify information relating to violations of RCW 9A.36.080 and any other crimes of bigotry or bias apparently directed against other persons because the people committing the crimes perceived that their victims were of a particular race, color, religion, ancestry, national origin, gender, sexual orientation, or had a mental, physical, or sensory handicap.

(2) All local law enforcement agencies shall report monthly to the association concerning all violations of RCW 9A.36.080 and any other crimes of bigotry or bias in such form and in such manner as prescribed by rules adopted by the association. Agency participation in the association's reporting programs, with regard to the specific data requirements associated with violations of RCW 9A.36.080 and any other crimes of bigotry or bias, shall be deemed to meet agency reporting requirements. The association must summarize the information received and file an annual report with the governor and the senate law and justice committee and the house of representatives judiciary committee.

(3) The association shall disseminate the information according to the provisions of chapters 10.97 and 10.98 RCW, and all other confidentiality requirements imposed by federal or Washington law. [1993 c 127 § 4.]

**Severability—1993 c 127:** See note following RCW 9A.36.078.

**36.28A.040 Statewide city and county jail booking and reporting system—Standards committee.** (1) No later than July 1, 2002, the Washington association of sheriffs and police chiefs shall implement and operate an electronic statewide city and county jail booking and reporting system. The system shall serve as a central repository and instant information source for offender information and jail statistical data. The system shall be placed on the Washington state justice information network and be capable of communicating electronically with every Washington state city and county jail and with all other Washington state criminal justice agencies as defined in RCW 10.97.030.

(2) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, if a city or county jail or law enforcement agency receives state or fed-

eral funding to cover the entire cost of implementing or reconfiguring an electronic jail booking system, the city or county jail or law enforcement agency shall implement or reconfigure an electronic jail booking system that is in compliance with the jail booking system standards developed pursuant to subsection (4) of this section.

(3) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, city or county jails, or law enforcement agencies that operate electronic jail booking systems, but choose not to accept state or federal money to implement or reconfigure electronic jail booking systems, shall electronically forward jail booking information to the Washington association of sheriffs and police chiefs. At a minimum the information forwarded shall include the name of the offender, vital statistics, the date the offender was arrested, the offenses arrested for, the date and time an offender is released or transferred from a city or county jail, and if available, the mug shot. The electronic format in which the information is sent shall be at the discretion of the city or county jail, or law enforcement agency forwarding the information. City and county jails or law enforcement agencies that forward jail booking information under this subsection are not required to comply with the standards developed under subsection (4)(b) of this section.

(4) The Washington association of sheriffs and police chiefs shall appoint, convene, and manage a statewide jail booking and reporting system standards committee. The committee shall include representatives from the Washington association of sheriffs and police chiefs correction committee, the information service board's justice information committee, the judicial information system, at least two individuals who serve as jailers in a city or county jail, and other individuals that the Washington association of sheriffs and police chiefs places on the committee. The committee shall have the authority to:

(a) Develop and amend as needed standards for the statewide jail booking and reporting system and for the information that must be contained within the system. At a minimum, the system shall contain:

- (i) The offenses the individual has been charged with;
- (ii) Descriptive and personal information about each offender booked into a city or county jail. At a minimum, this information shall contain the offender's name, vital statistics, address, and mugshot;
- (iii) Information about the offender while in jail, which could be used to protect criminal justice officials that have future contact with the offender, such as medical conditions, acts of violence, and other behavior problems;
- (iv) Statistical data indicating the current capacity of each jail and the quantity and category of offenses charged;
- (v) The ability to communicate directly and immediately with the city and county jails and other criminal justice entities; and
- (vi) The date and time that an offender was released or transferred from a local jail;

(b) Develop and amend as needed operational standards for city and county jail booking systems, which at a minimum shall include the type of information collected and transmitted, and the technical requirements needed for the city and

county jail booking system to communicate with the statewide jail booking and reporting system;

(c) Develop and amend as needed standards for allocating grants to city and county jails or law enforcement agencies that will be implementing or reconfiguring electronic jail booking systems.

(5) By January 1, 2001, the standards committee shall complete the initial standards described in subsection (4) of this section, and the standards shall be placed into a report and provided to all Washington state city and county jails, all other criminal justice agencies as defined in RCW 10.97.030, the chair of the Washington state senate human services and corrections committee, and the chair of the Washington state house of representatives criminal justice and corrections committee. [2001 c 169 § 3; 2000 c 3 § 1.]

**Contingent expiration date—2000 c 3:** "If the Washington association of sheriffs and police chiefs does not receive federal funding for purposes of this act by December 31, 2000, this act is null and void." [2000 c 3 § 4.] According to the Washington association of sheriffs and police chiefs, federal funding for the purposes of chapter 3, Laws of 2000, was received by December 31, 2000.

**36.28A.050 Statewide city and county jail booking and reporting system—Grant fund.** (1) The Washington association of sheriffs and police chiefs shall establish and manage a local jail booking system grant fund. All federal or state money collected to offset the costs associated with RCW 36.28A.040(2) shall be processed through the grant fund established by this section. The statewide jail booking and reporting system standards committee established under RCW 36.28A.040(4) shall distribute the grants in accordance with any standards it develops.

(2) The Washington association of sheriffs and police chiefs shall pursue federal funding to be placed into the local jail booking system grant fund. [2000 c 3 § 2.]

**Contingent expiration date—2000 c 3:** See note following RCW 36.28A.040.

**36.28A.060 Statewide first responder building mapping information system—Creation—Data must be available to law enforcement, military, and fire safety agencies—Standards—Public disclosure exemption.** (1) When funded, the Washington association of sheriffs and police chiefs shall create and operate a statewide first responder building mapping information system.

(2) All state agencies and local governments must utilize building mapping software that complies with the building mapping software standards established under RCW 36.28A.070 for any building mapped for this purpose after the statewide first responder building mapping information system is operational. If, prior to creation of the statewide building mapping information system, a local government has utilized building mapping software standards established under RCW 36.28A.070, the local government may continue to use its own building mapping system unless the Washington association of sheriffs and police chiefs provides funding to bring the local government's system in compliance with the standards established under RCW 36.28A.070.

(3) All state and local government-owned buildings that are occupied by state or local government employees must be mapped when funding is provided by the Washington association of sheriffs and police chiefs, or from other sources.

Nothing in chapter 102, Laws of 2003 requires any state agency or local government to map a building unless the entire cost of mapping the building is provided by the Washington association of sheriffs and police chiefs, or from other sources.

(4) Once the statewide first responder building mapping information system is operational, all state and local government buildings that are mapped must forward their building mapping information data to the Washington association of sheriffs and police chiefs. All participating privately, federally, and tribally owned buildings may voluntarily forward their mapping and emergency information data to the Washington association of sheriffs and police chiefs. The Washington association of sheriffs and police chiefs may refuse any building mapping information that does not comply with the specifications described in RCW 36.28A.070.

(5) Consistent with the guidelines developed under RCW 36.28A.070, the Washington association of sheriffs and police chiefs shall electronically make the building mapping information available to all state, local, federal, and tribal law enforcement agencies, the military department of Washington state, and fire departments.

(6) Consistent with the guidelines developed under RCW 36.28A.070, the Washington association of sheriffs and police chiefs shall develop building mapping software standards that must be used to participate in the statewide first responder building mapping information system.

(7) The Washington association of sheriffs and police chiefs shall pursue federal funds to:

(a) Create the statewide first responder building mapping information system; and

(b) Develop grants for the mapping of all state and local government buildings in the order determined under RCW 36.28A.070.

(8) All tactical and intelligence information provided to the Washington association of sheriffs and police chiefs under chapter 102, Laws of 2003 is exempt from public disclosure as provided in RCW 42.17.310(1)(d). [2003 c 102 § 2.]

**Intent—2003 c 102:** "The legislature recognizes the extreme dangers present when the safety of our citizens requires first responders such as police and fire fighters to evacuate and secure a building. In an effort to prepare for responding to unintended disasters, criminal acts, and acts of terrorism, the legislature intends to create a statewide first responder building mapping information system that will provide all first responders with the information they need to be successful when disaster strikes. The first responder building mapping system in this act is to be developed for a limited and specific purpose and is in no way to be construed as imposing standards or system requirements on any other mapping systems developed and used for any other local government purposes." [2003 c 102 § 1.]

**36.28A.070 Statewide first responder building mapping information system—Committee established—Development of guidelines.** (1) The Washington association of sheriffs and police chiefs in consultation with the Washington state emergency management office, the Washington association of county officials, the Washington association of cities, the information services board, the Washington state fire chiefs' association, and the Washington state patrol shall convene a committee to establish guidelines related to the statewide first responder building mapping

information system. The committee shall have the following responsibilities:

(a) Develop the type of information to be included in the statewide first responder building mapping information system. The information shall include, but is not limited to: Floor plans, fire protection information, evacuation plans, utility information, known hazards, and text and digital images showing emergency personnel contact information;

(b) Develop building mapping software standards that must be utilized by all entities participating in the statewide first responder building mapping information system;

(c) Determine the order in which buildings shall be mapped when funding is received;

(d) Develop guidelines on how the information shall be made available. These guidelines shall include detailed procedures and security systems to ensure that the information is only made available to the government entity that either owns the building or is responding to an incident at the building;

(e) Recommend training guidelines regarding using the statewide first responder building mapping information system to the criminal justice training commission and the Washington state patrol fire protection bureau.

(2)(a) Nothing in this section supersedes the authority of the information services board under chapter 43.105 RCW.

(b) Nothing in this section supersedes the authority of state agencies and local governments to control and maintain access to information within their independent systems. [2003 c 102 § 3.]

**Intent—2003 c 102:** See note following RCW 36.28A.060.

**36.28A.080 Immunity from liability.** Units of local government and their employees, as provided in RCW 36.28A.010, are immune from civil liability for damages arising out of the creation and use of the statewide first responder building mapping information system, unless it is shown that an employee acted with gross negligence or bad faith. [2003 c 102 § 4.]

**Intent—2003 c 102:** See note following RCW 36.28A.060.

## Chapter 36.29 RCW COUNTY TREASURER

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*Water-sewer districts, bonds, payment of interest: RCW 57.20.130.*

*Weed district, treasurer as ex officio treasurer of: RCW 17.04.250.*

### **36.29.010 General duties.** The county treasurer:

(1) Shall receive all money due the county and disburse it on warrants issued and attested by the county auditor and electronic funds transfer under RCW 39.58.750 as attested by the county auditor;

(2) Shall issue a receipt in duplicate for all money received other than taxes; the treasurer shall deliver immediately to the person making the payment the original receipt and the duplicate shall be retained by the treasurer;

(3) Shall affix on the face of all paid warrants the date of redemption or, in the case of proper contract between the treasurer and a qualified public depository, the treasurer may consider the date affixed by the financial institution as the date of redemption;

(4) Shall endorse, before the date of issue by the county or by any taxing district for whom the county treasurer acts as treasurer, on the face of all warrants for which there are not sufficient funds for payment, "interest bearing warrant." When there are funds to redeem outstanding warrants, the county treasurer shall give notice:

(a) By publication in a legal newspaper published or circulated in the county; or

(b) By posting at three public places in the county if there is no such newspaper; or

(c) By notification to the financial institution holding the warrant;

(5) Shall pay interest on all interest-bearing warrants from the date of issue to the date of notification;

(6) Shall maintain financial records reflecting receipts and disbursement by fund in accordance with generally accepted accounting principles;

(7) Shall account for and pay all bonded indebtedness for the county and all special districts for which the county treasurer acts as treasurer;

(8) Shall invest all funds of the county or any special district in the treasurer's custody, not needed for immediate expenditure, in a manner consistent with appropriate statutes. If cash is needed to redeem warrants issued from any fund in the custody of the treasurer, the treasurer shall liquidate investments in an amount sufficient to cover such warrant redemptions; and

(9) May provide certain collection services for county departments.

The treasurer, at the expiration of the term of office, shall make a complete settlement with the county legislative authority, and shall deliver to the successor all public money, books, and papers in the treasurer's possession.

Money received by all entities for whom the county treasurer serves as treasurer must be deposited within twenty-

four hours unless a waiver is granted by the county treasurer in accordance with RCW 43.09.240. [2002 c 168 § 4; 2001 c 299 § 4; 1998 c 106 § 3; 1995 c 38 § 4; 1994 c 301 § 7; 1991 c 245 § 4; 1963 c 4 § 36.29.010. Prior: (i) 1893 c 104 § 1; Code 1881 § 2740; 1863 p 553 § 3; 1854 p 427 § 3; RRS § 4109. (ii) Code 1881 § 2742; 1863 p 553 § 5; 1854 p 427 § 5; RRS § 4110. (iii) Code 1881 § 2743; 1863 p 553 § 6; 1854 p 427 § 6; RRS § 4111. (iv) 1895 c 73 § 4; Code 1881 § 2744; 1863 p 553 § 7; 1854 p 427 § 7; RRS § 4113. (v) Code 1881 § 2745; 1863 p 553 § 8; RRS § 4114. (vi) 1893 c 104 § 3; Code 1881 § 2748; 1863 p 554 § 11; 1854 p 428 § 11; RRS § 4120. (vii) Code 1881 § 2750; 1863 p 554 § 13; 1854 p 428 § 13; RRS § 4121. (viii) 1895 c 73 § 3; RRS § 4122.]

**Acts of municipal officers ratified and confirmed—1995 c 38:** See note following RCW 3.02.045.

### **36.29.020 Custodian of moneys—Investment of funds not required for immediate expenditures—Service fee.**

The county treasurer shall keep all moneys belonging to the state, or to any county, in his or her own possession until disbursed according to law. The county treasurer shall not place the same in the possession of any person to be used for any purpose; nor shall he or she loan or in any manner use or permit any person to use the same; but it shall be lawful for a county treasurer to deposit any such moneys in any regularly designated qualified public depository. Any municipal corporation may by action of its governing body authorize any of its funds which are not required for immediate expenditure, and which are in the custody of the county treasurer or other municipal corporation treasurer, to be invested by such treasurer. The county treasurer may invest in savings or time accounts in designated qualified public depositories or in certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States; in bankers' acceptances purchased on the secondary market, in federal home loan bank notes and bonds, federal land bank bonds and federal national mortgage association notes, debentures and guaranteed certificates of participation, or the obligations of any other government sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system or deposit such funds or any portion thereof in investment deposits as defined in RCW 39.58.010 secured by collateral in accordance with the provisions of chapters 39.58 and 39.59 RCW: PROVIDED, Five percent of the earnings, with an annual maximum of fifty dollars, on each transaction authorized by the governing body shall be paid as an investment service fee to the office of the county treasurer or other municipal corporation treasurer when the earnings become available to the governing body: PROVIDED FURTHER, That if such investment service fee amounts to five dollars or less the county treasurer or other municipal corporation treasurer may waive such fee.

If in the judgment of the governing body of the municipal corporation or the county treasurer it is necessary to redeem or to sell any of the purchased securities before their ultimate maturity date, the governing body may, by resolution, direct the county treasurer pursuant to RCW 36.29.010(8) to cause such redemption to be had at the

redemption value of the securities or to sell the securities at not less than market value and accrued interest.

Whenever the funds of any municipal corporation which are not required for immediate expenditure are in the custody or control of the county treasurer, and the governing body of such municipal corporation has not taken any action pertaining to the investment of any such funds, the county finance committee shall direct the county treasurer, under the investment policy of the county finance committee, to invest, to the maximum prudent extent, such funds or any portion thereof in savings or time accounts in designated qualified public depositaries or in certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States, in bankers' acceptances purchased on the secondary market, in federal home loan bank notes and bonds, federal land bank bonds and federal national mortgage association notes, debentures and guaranteed certificates of participation, or the obligations of any other government sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system or deposit such funds or any portion thereof in investment deposits as defined in RCW 39.58.010 secured by collateral in accordance with the provisions of chapters 39.58 and 39.59 RCW: PROVIDED, That the county treasurer shall have the power to select the specific qualified financial institution in which the funds may be invested. The interest or other earnings from such investments or deposits shall be deposited in the current expense fund of the county and may be used for general county purposes. The investment or deposit and disposition of the interest or other earnings therefrom authorized by this paragraph shall not apply to such funds as may be prohibited by the state Constitution from being so invested or deposited. [1999 c 18 § 4; 1997 c 393 § 4; 1991 c 245 § 5; 1984 c 177 § 7; 1982 c 73 § 1; 1980 c 56 § 1; 1979 c 57 § 1; 1973 1st ex.s. c 140 § 1; 1969 ex.s. c 193 § 26; 1967 c 173 § 1; 1965 c 111 § 2; 1963 c 4 § 36.29.020. Prior: 1961 c 254 § 1; 1895 c 73 § 1; RRS § 4112.]

**Construction—Severability—1969 ex.s. c 193:** See notes following RCW 39.58.010.

*Liability of treasurers for losses on public deposits:* RCW 39.58.140.

*Public depositaries:* Chapter 39.58 RCW.

### **36.29.022 Combining of moneys for investment.**

Upon the request of one or several units of local government that invest their money with the county under the provisions of RCW 36.29.020, the treasurer of that county may combine those units' moneys for the purposes of investment. [1986 c 294 § 11.]

**36.29.024 Investment expenses.** The county treasurer may deduct the amounts necessary to reimburse the treasurer's office for the actual expenses the office incurs and to repay any county funds appropriated and expended for the initial administrative costs of establishing a county investment pool provided in RCW 36.29.022. These funds shall be used by the county treasurer as a revolving fund to defray the cost of administering the pool without regard to budget limitations. Any credits or payments to political subdivisions

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shall be calculated and made in a manner which equitably reflects the differing amounts of the political subdivision's respective deposits in the county investment pool and the differing periods of time for which the amounts were placed in the county investment pool. [2004 c 79 § 3; 1988 c 281 § 5.]

**Severability—1988 c 281:** See RCW 39.59.900.

**36.29.025 Official seal.** The county treasurer in each of the organized counties of the state of Washington, shall be by his county provided with a seal of office for the authentication of all tax deeds, papers, writing and documents required by law to be certified or authenticated by him. Such seal shall bear the device of crosskeys and the words: Official Seal Treasurer . . . . County, Washington; and an imprint of such seal, together with the certificate of the county treasurer that such seal has been regularly adopted, shall be filed in the office of the county auditor of such county. [1963 c 4 § 36.29.025. Prior: 1903 c 15 § 1; RRS § 4125.]

**36.29.040 Interest on unpaid warrants.** All county, school, city and town warrants, and taxing district warrants when not otherwise provided for by law, shall be paid according to their number, date and issue, and when not paid upon presentation shall draw interest from the date of their presentation to the proper treasurers or from the date the warrants were originally issued, as determined by the proper treasurer. No compound interest shall be paid directly or indirectly on any such warrants. [1980 c 100 § 3; 1963 c 4 § 36.29.040. Prior: 1893 c 48 § 1, part; RRS § 4116, part.]

### **36.29.050 Interest to be entered on warrant register.**

When the county treasurer redeems any warrant on which interest is due, the treasurer shall enter on the warrant register account the amount of interest paid, distinct from the principal. [2001 c 299 § 5; 1969 ex.s. c 48 § 1; 1963 c 4 § 36.29.050. Prior: Code 1881 § 2746; 1863 p 554 § 9; 1854 p 427 § 9; RRS § 4117.]

### **36.29.060 Warrant calls—Penalty for failure to call.**

(1) Whenever the county treasurer has funds belonging to any fund upon which "interest-bearing" warrants are outstanding, the treasurer shall have the discretion to call warrants. The county treasurer shall give notice as provided for in RCW 36.29.010(4). The treasurer shall pay on demand, in the order of their issue, any warrants when there shall be in the treasury sufficient funds applicable to such payment.

(2) Any treasurer who knowingly fails to call for or pay any warrant in accordance with this section is guilty of a misdemeanor and shall be fined not less than twenty-five dollars nor more than five hundred dollars, and such conviction shall be sufficient cause for removal from office. [2003 c 53 § 203; 1991 c 245 § 6; 1985 c 469 § 44; 1980 c 100 § 4; 1963 c 4 § 36.29.060. Prior: 1895 c 152 § 1, part; RRS § 4118, part.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**36.29.090 Suspension of treasurer.** Whenever an action based upon official misconduct is commenced against any county treasurer the county commissioners may suspend the treasurer from office until such suit is determined, and

may appoint some person to fill the vacancy. [2001 c 299 § 6; 1963 c 4 § 36.29.090. Prior: 1895 c 73 § 2; Code 1881 § 2749; 1863 p 554 § 12; 1854 p 428 § 12; RRS § 4124.]

**36.29.100 Ex officio collector of first class city taxes.**

The county treasurer of each county in which there is a city of the first class is ex officio collector of city taxes of such city, and before entering upon the duties of office the treasurer shall execute in favor of the city and file with the clerk thereof a good and sufficient bond, the penal sum to be fixed by the city council, such bond to be approved by the mayor of such city or other authority thereof by whom the bond of the city treasurer is required to be approved. All special assessments and special taxation for local improvements assessed on property benefited shall be collected by the city treasurer. [2001 c 299 § 7; 1963 c 4 § 36.29.100. Prior: 1895 c 160 § 1; 1893 c 71 § 4; RRS § 11321.]

**36.29.110 City taxes.** All city taxes and earnings on such taxes, as provided for in RCW 36.29.020, collected during the month shall be remitted to the city by the county treasurer on or before the tenth day of the following month. The county treasurer shall submit a statement of taxes collected with such remittance. To facilitate the investment of collected taxes, the treasurer may invest as provided for in RCW 36.29.020 without the necessity of the cities specifically requesting combining funds for the purposes of investment. [1991 c 245 § 7; 1963 c 4 § 36.29.110. Prior: 1905 c 157 § 1; 1895 c 160 § 2; 1893 c 71 § 5; RRS § 11322.]

**36.29.120 Ex officio collector of other city taxes.** For the purpose of collection of all taxes levied for cities and towns of other than the first class, the county treasurer of the county wherein such city or town is situated shall be ex officio tax collector. [1963 c 4 § 36.29.120. Prior: 1893 c 72 § 3; RRS § 11330.]

**36.29.130 Duty to collect taxes.** The county treasurer, upon receipt of the tax roll, shall proceed to collect and receipt for the municipal taxes extended thereon at the same time and in the same manner as he proceeds in the collection of other taxes on such roll. [1963 c 4 § 36.29.130. Prior: 1893 c 72 § 7; RRS § 11334.]

**36.29.160 Segregation and collection of specified assessments and charges made by public utility districts, water-sewer districts, or the county—Fee.** The county treasurer shall make segregation, collect, and receive from any owner or owners of any subdivision or portion of any lot, tract or parcel of land upon which assessments or charges have been made or may be made by public utility districts, water-sewer districts, or the county, under the terms of Title 54 RCW, Title 57 RCW, or chapter 36.88, 36.89, or 36.94 RCW, such portion of the assessments or charges levied or to be levied against such lot, tract or parcel of land in payment of such assessment or charges as the board of commissioners of the public utility district, the water-sewer district commissioners or the board of county commissioners, respectively, shall certify to be chargeable to such subdivision, which certificate shall state that such property as segregated is suffi-

cient security for the assessment or charges. Upon making collection upon any such subdivision the county treasurer shall note such payment upon the records of the office of the treasurer and give receipt therefor. When a segregation is required, a certified copy of the resolution shall be delivered to the treasurer of the county in which the real property is located who shall proceed to make the segregation ordered upon being tendered a fee of three dollars for each tract of land for which a segregation is to be made. [2001 c 299 § 8; 1998 c 106 § 4; 1996 c 230 § 1607; 1963 c 4 § 36.29.160. Prior: 1959 c 142 § 2; 1953 c 210 § 1.]

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**36.29.170 Office at county seat.** The county treasurer shall keep the office of the treasurer at the county seat, and shall keep the same open for transaction of business during business hours; and the treasurer and the treasurer's deputy are authorized to administer all oaths necessary in the discharge of the duties of the office. [2001 c 299 § 9; 1963 c 4 § 36.29.170. Prior: Code 1881 § 2742; 1863 p 553 § 5; 1854 p 427 § 5; RRS § 4110.]

**36.29.180 Fees for handling, collecting, dispersing, and accounting for special assessments, fees, rates, or charges.** The county treasurer, in all instances where required by law to handle, collect, disburse, and account for special assessments, fees, rates, or charges within the county, may charge and collect a fee for services not to exceed four dollars per parcel for each year in which the funds are collected. Such charges for services shall be based upon costs incurred by the treasurer in handling, collecting, disbursing, and accounting for the funds.

Such fees shall be a charge against the district and shall be credited to the county current expense fund by the county treasurer. [1991 c 245 § 8; 1963 c 4 § 36.29.180. Prior: 1961 c 270 § 1.]

**36.29.190 Acceptance of payment by credit cards, charge cards, and other electronic communications authorized—Costs borne by payer—Exception.** County treasurers are authorized to accept credit cards, charge cards, debit cards, smart cards, stored value cards, federal wire, and automatic clearinghouse system transactions, or other electronic communication, for any payment of any kind including, but not limited to, taxes, fines, interest, penalties, special assessments, fees, rates, charges, or moneys due counties. A payer desiring to pay by a credit card, charge card, debit card, smart card, stored value card, federal wire, automatic clearinghouse system, or other electronic communication shall bear the cost of processing the transaction in an amount determined by the treasurer, unless the county legislative authority or the legislative authority of a district where the county treasurer serves as ex officio treasurer finds that it is in the best interests of the county or district to not charge transaction processing costs for all payment transactions made for a specific category of nontax payments received by the county treasurer, including, but not limited to, fines, interest not associated with taxes, penalties not associated with taxes, special assessments, fees, rates, and charges. The treasurer's

cost determination shall be based upon costs incurred by the treasurer and may not, in any event, exceed the additional direct costs incurred by the county to accept the specific form of payment utilized by the payer. [2003 c 23 § 8; 1997 c 393 § 19; 1996 c 153 § 3.]

**Applicability—1996 c 153:** See note following RCW 84.56.020.

**36.29.200 Collection of sales and use taxes for zoo and aquarium advisory authority.** The county treasurer or, in the case of a home rule county, the county official designated by county charter and ordinance as the official with custody over the collection of county-wide tax revenues, shall receive all money representing revenues from taxes authorized under RCW 82.14.400, and shall disburse such money to the authority established in RCW 36.01.190. [1999 c 104 § 2.]

**Chapter 36.32 RCW  
COUNTY COMMISSIONERS**

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 United States reclamation areas, contracts to bring county lands into: RCW 89.12.110.  
 veterans, indigent, deceased, burial of: RCW 73.08.070.  
 veterans' meeting places, rent by county: RCW 73.04.080.  
 veterans' relief: Chapter 73.08 RCW.  
 vouchers on public funds: Chapter 42.24 RCW.  
*water-sewer districts*  
 annexation of property to: Chapter 57.24 RCW.  
 board of commissioners, vacancies: RCW 57.12.020.  
 consolidation of: Chapter 57.32 RCW.  
 generally: Title 57 RCW.  
 transfer of part: RCW 57.32.160.  
 withdrawal of territory from: Chapter 57.28 RCW.  
 weed district tax on county lands: RCW 17.04.180.  
 weed districts: Chapter 17.04 RCW.  
 wharves, authorizing of and prescribing rates: RCW 88.24.020.

*Flood control*  
 district (1937 act) board, commissioner to act for absent member: RCW 86.09.292.  
 zone districts, commissioners as ex officio supervisors: RCW 86.15.050.

*Health districts:* Chapter 70.46 RCW.

*Metropolitan sewer advisory committee, commissioner as member:* RCW 35.58.210.

*Metropolitan water advisory committee, commissioner as member:* RCW 35.58.230.

*Property tax advisor:* RCW 84.48.140.

*Public assistance as county function:* RCW 74.04.040.

*Rangers, commissioners as ex officio:* RCW 76.04.045.

*Reclamation district commission, commissioner as member of:* RCW 89.30.055.

*Redistricting by local governments and municipal corporations—Census information for—Plan, prepared when, criteria for, hearing on, request for review of, certification, remand—Sanctions when review request frivolous:* RCW 29A.76.010.

*Revenue, department of, to advise commissioners:* RCW 84.08.020.

*Review board, commissioner as member of:* RCW 35.13.171.

*Solid waste collection districts:* Chapter 36.58A RCW.

*Traffic safety commission, member of association of county commissioners appointed to:* RCW 43.59.030.

*United States townsite law, dedication of streets, etc., under commissioners may alienate:* RCW 58.28.440.

**36.32.005 "County commissioners" defined.** The term "county commissioners" when used in this title or any other provision of law shall include the governmental authority empowered to so act under the provisions of a charter adopted by any county of the state. [1971 ex.s. c 117 § 1.]

**36.32.010 Board of commissioners established—Quorum.** There is established in each county in this state a board of county commissioners. Except as provided in RCW 36.32.055 and 36.32.0552, each board of county commissioners shall consist of three qualified electors, two of whom shall constitute a quorum to do business. [1990 c 252 § 1;

(2004 Ed.)

1963 c 4 § 36.32.010. Prior: Code 1881 § 2663; 1869 p 303 § 1; 1867 p 52 § 1; 1863 p 540 § 1; 1854 p 420 § 1; RRS § 4036.]

**36.32.020 Commissioner districts.** The board of county commissioners of each county shall divide their county into three commissioner districts so that each district shall comprise as nearly as possible one-third of the population of the county: PROVIDED, That the territory comprised in any voting precincts of such districts shall remain compact, and shall not be divided by the lines of said districts.

However, the commissioners of any county composed entirely of islands and with a population of less than thirty-five thousand may divide their county into three commissioner districts without regard to population, except that if any single island is included in more than one district, the districts on such island shall comprise, as nearly as possible, equal populations.

The lines of the districts shall not be changed oftener than once in four years and only when a full board of commissioners is present. The districts shall be designated as districts numbered one, two and three. [1982 c 226 § 4; 1970 ex.s. c 58 § 1; 1963 c 4 § 36.32.020. Prior: 1893 c 39 § 2; 1890 p 317 §§ 1, 2; RRS § 4037.]

**Effective date—1982 c 226:** See note following RCW 35.21.180.

**36.32.030 Terms of commissioners.** The terms of office of county commissioners shall be four years and until their successors are elected and qualified and assume office in accordance with \*RCW 29.04.170: PROVIDED, That the terms shall be staggered so that either one or two commissioners are elected at a general election held in an even-numbered year. [1979 ex.s. c 126 § 27; 1963 c 4 § 36.32.030. Prior: 1951 c 89 § 1. Formerly: (i) 1891 c 97 §§ 1, 2; RRS § 4038. (ii) 1891 c 67 § 3; RRS § 4039. (iii) 1891 c 89 § 4; RRS § 4040. (iv) 1891 c 67 § 5; RRS § 4041.]

\***Reviser's note:** RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**36.32.040 Nomination by districts.** (1) Except as provided in subsection (2) of this section, the qualified electors of each county commissioner district, and they only, shall nominate from among their own number, candidates for the office of county commissioner of such commissioner district to be voted for at the following general election. Such candidates shall be nominated in the same manner as candidates for other county and district offices are nominated in all other respects.

(2) Where the commissioners of a county composed entirely of islands with a population of less than thirty-five thousand have chosen to divide the county into unequal-sized commissioner districts pursuant to the exception provided in RCW 36.32.020, the qualified electors of the entire county shall nominate from among their own number who reside within a commissioner district, candidates for the office of county commissioner of such commissioner district to be voted for at the following general election. Such candidates shall be nominated in the same manner as candidates for other county offices are nominated in all other respects.

[1982 c 226 § 5; 1963 c 4 § 36.32.040. Prior: 1909 c 232 § 1; RRS § 4043.]

**Effective date—1982 c 226:** See note following RCW 35.21.180.

**36.32.050 Elected by entire county.** County commissioners shall be elected by the qualified voters of the county and the person receiving the highest number of votes for the office of commissioner for the district in which he resides shall be declared duly elected from that district. [1963 c 4 § 36.32.050. Prior: 1895 c 110 § 1; 1893 c 39 § 1; 1891 c 67 § 6; 1890 p 317 § 3; RRS § 4042.]

**36.32.055 Five-member commission—When authorized—Ballot proposition—Petition—Procedures.** (1) The board of commissioners of any noncharter county with a population of three hundred thousand or more may cause a ballot proposition to be submitted at a general election to the voters of the county authorizing the board of commissioners to be increased to five members.

(2) As an alternative procedure, a ballot proposition shall be submitted to the voters of a noncharter county authorizing the board of commissioners to be increased to five members, upon petition of the county voters equal to at least ten percent of the voters voting at the last county general election. At least twenty percent of the signatures on the petition shall come from each of the existing commissioner districts.

Any petition requesting that such an election be held shall be submitted to the county auditor for verification of the signatures thereon. Within no more than thirty days after the submission of the petition, the auditor shall determine if the petition contains the requisite number of valid signatures. The auditor shall certify whether or not the petition has been signed by the requisite number of county voters and forward such petition to the board of county commissioners. If the petition has been signed by the requisite number of county voters, the board of county commissioners shall submit such a proposition to the voters for their approval or rejection at the next general election held at least sixty days after the proposition has been certified by the auditor. [1990 c 252 § 2.]

**36.32.0552 Five-member commission—Newly created positions—How filled—County divided into five districts.** If the ballot proposition receives majority voter approval, the size of the board of county commissioners shall be increased to five members as provided in this section.

The two newly created positions shall be filled at elections to be held in the next year. The county shall, as provided in this section, be divided into five commissioner districts, so that each district shall comprise as nearly as possible one-fifth of the population of the county. No two members of the existing board of county commissioners may, at the time of the designation of such districts, permanently reside in one of the five districts. The division of the county into five districts shall be accomplished as follows:

(1) The board of county commissioners shall, by the second Monday of March of the year following the election, adopt a resolution creating the districts;

(2) If by the second Tuesday of March of the year following the election the board of county commissioners has

failed to create the districts, the prosecuting attorney of the county shall petition the superior court of the county to appoint a referee to designate the five commissioner districts. The referee shall designate such districts by no later than June 1st of the year following the election. The two commissioner districts within which no existing member of the board of county commissioners permanently resides shall be designated as districts four and five. [1990 c 252 § 3.]

**36.32.0554 Five-member commission—Newly created positions—Terms of initially elected commissioners.** The terms of the persons who are initially elected to positions four and five under RCW 36.32.0552 shall be as follows:

(1) If the year in which the primary and general elections are held is an even-numbered year, the person elected to position four shall be elected for a two-year term, and the person elected to position five shall be elected for a four-year term; or

(2) If the year in which the primary and general elections are held is an odd-numbered year, the person elected to position four shall be elected for a one-year term, and the person elected to position five shall be elected for a three-year term. The length of the terms shall be calculated from the first day of January in the year following the election. Each person elected pursuant to subsection (1) or (2) of this section shall take office immediately upon the issuance of a certificate of his or her election.

Thereafter, persons elected to commissioner positions four and five shall be elected for four-year terms and shall take office at the same time the other members of the board of county commissioners take office. [1990 c 252 § 4.]

**36.32.0556 Five-member commissions—Four-year terms—Nominations by districts—Elected by entire county—Quorum.** The commissioners in a five-member board of county commissioners shall be elected to four-year staggered terms. Each commissioner shall reside in a separate commissioner district. Each commissioner shall be nominated from a separate commissioner district by the voters of that district. Each shall be elected by the voters of the entire county. Three members of a five-member board of commissioners shall constitute a quorum to do business. [1990 c 252 § 5.]

**36.32.0558 Five-member commissions—Vacancies.** Vacancies on a board of county commissioners consisting of five members shall be filled as provided in RCW 36.32.070, except that:

(1) Whenever there are three or more vacancies, the governor shall appoint one or more commissioners until there are a total of three commissioners;

(2) Whenever there are two vacancies, the three commissioners shall fill one of the vacancies;

(3) Whenever there is one vacancy, the four commissioners shall fill the single vacancy; and

(4) Whenever there is a vacancy after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in \*RCW 29.01.135

and shall continue through the term for which he or she was elected. [2003 c 238 § 2; 1990 c 252 § 6.]

**\*Reviser's note:** RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Contingent effective date—2003 c 238:** See note following RCW 36.16.110.

**36.32.060 Conditions of official bond.** The bond of each county commissioner shall be payable to the county, and it shall be conditioned that the commissioner shall well and faithfully discharge the duties of his office, and not approve, audit, or order paid any illegal, unwarranted, or unjust claim against the county for personal services. [1963 c 4 § 36.32.060. Prior: 1955 c 157 § 10; prior: 1921 c 132 § 1, part; 1893 c 75 § 7, part; RRS § 4046, part.]

**36.32.070 Vacancies on board.** Whenever there is a vacancy in the board of county commissioners, except as provided in RCW 36.32.0558, it shall be filled as follows:

(1) If there are three vacancies, the governor of the state shall appoint two of the officers. The two commissioners thus appointed shall then meet and select the third commissioner. If the two appointed commissioners fail to agree upon selection of the third after the expiration of five days from the day they were appointed, the governor shall appoint the remaining commissioner.

(2) Whenever there are two vacancies in the office of county commissioner, the governor shall appoint one commissioner, and the two commissioners then in office shall appoint the third commissioner. If they fail to agree upon a selection after the expiration of five days from the day of the governor's appointment, the governor shall appoint the third commissioner.

(3) Whenever there is one vacancy in the office of county commissioner, the two remaining commissioners shall fill the vacancy. If the two commissioners fail to agree upon a selection after the expiration of five days from the day the vacancy occurred, the governor shall appoint the third commissioner.

(4) Whenever there is a vacancy in the office of county commissioner after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in \*RCW 29.01.135 and shall continue through the term for which he or she was elected. [2003 c 238 § 3; 1990 c 252 § 7; 1963 c 4 § 36.32.070. Prior: 1933 c 100 § 1; RRS § 4038-1.]

**\*Reviser's note:** RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Contingent effective date—2003 c 238:** See note following RCW 36.16.110.

**36.32.080 Regular meetings.** The county legislative authority of each county shall hold regular meetings at the county seat to transact any business required or permitted by law. [1989 c 16 § 1; 1963 c 4 § 36.32.080. Prior: 1893 c 105 § 1; Code 1881 § 2667; 1869 p 303 § 5; 1867 p 53 § 5; 1863 p 541 § 5; 1854 p 420 § 5; RRS § 4047. Cf. 1893 c 75 § 1; RRS § 4048.]

(2004 Ed.)

**36.32.090 Special meetings.** The county legislative authority of each county may hold special meetings to transact the business of the county. Notice of a special meeting shall be made as provided in RCW 42.30.080. A special meeting may be held outside of the county seat at any location within the county if the agenda item or items are of unique interest or concern to the citizens of the portion of the county in which the special meeting is to be held. [1989 c 16 § 2; 1963 c 4 § 36.32.090. Prior: Code 1881 § 2669; 1869 p 304 § 7; 1867 p 53 § 7; 1863 p 541 § 7; 1854 p 420 § 7; RRS § 4049. Cf. 1893 c 75 § 2; RRS § 4050.]

**36.32.100 Chairman of board—Election, powers.** The board of county commissioners at their first session after the general election shall elect one of its number to preside at its meetings. He shall sign all documents requiring the signature of the board, and his signature as chairman of the board shall be as legal and binding as if all members had affixed their names. In case the chairman is absent at any meeting of the board, all documents requiring the signature of the board shall be signed by both members present. [1963 c 4 § 36.32.100. Prior: Code 1881 § 2676; 1869 p 305 § 14; 1867 p 55 § 14; 1863 p 542 § 14; 1854 p 421 § 14; RRS § 4051.]

**36.32.110 Clerk of board.** The county auditor shall be the clerk of the board of county commissioners unless the board of county commissioners designates one of its employees to serve as clerk who shall attend its meetings and keep a record of its proceedings. [1981 c 240 § 1; 1963 c 4 § 36.32.110. Prior: Code 1881 § 2668; 1869 p 304 § 6; 1867 p 53 § 6; 1863 p 541 § 6; 1854 p 420 § 6; RRS § 4052.]

**36.32.120 Powers of legislative authorities.** The legislative authorities of the several counties shall:

(1) Provide for the erection and repairing of court houses, jails, and other necessary public buildings for the use of the county;

(2) Lay out, discontinue, or alter county roads and highways within their respective counties, and do all other necessary acts relating thereto according to law, except within cities and towns which have jurisdiction over the roads within their limits;

(3) License and fix the rates of ferriage; grant grocery and other licenses authorized by law to be by them granted at fees set by the legislative authorities which shall not exceed the costs of administration and operation of such licensed activities;

(4) Fix the amount of county taxes to be assessed according to the provisions of law, and cause the same to be collected as prescribed by law;

(5) Allow all accounts legally chargeable against the county not otherwise provided for, and audit the accounts of all officers having the care, management, collection, or disbursement of any money belonging to the county or appropriated to its benefit;

(6) Have the care of the county property and the management of the county funds and business and in the name of the county prosecute and defend all actions for and against the county, and such other powers as are or may be conferred by law;

(7) Make and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law, and within the unincorporated area of the county may adopt by reference Washington state statutes and recognized codes and/or compilations printed in book form relating to the construction of buildings, the installation of plumbing, the installation of electric wiring, health, or other subjects, and may adopt such codes and/or compilations or portions thereof, together with amendments thereto, or additions thereto: PROVIDED, That except for Washington state statutes, there shall be filed in the county auditor's office one copy of such codes and compilations ten days prior to their adoption by reference, and additional copies may also be filed in library or city offices within the county as deemed necessary by the county legislative authority: PROVIDED FURTHER, That no such regulation, code, compilation, and/or statute shall be effective unless before its adoption, a public hearing has been held thereon by the county legislative authority of which at least ten days' notice has been given. Any violation of such regulations, ordinances, codes, compilations, and/or statutes or resolutions shall constitute a misdemeanor or a civil violation subject to a monetary penalty: PROVIDED FURTHER, That violation of a regulation, ordinance, code, compilation, and/or statute relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of a regulation, ordinance, code, compilation, and/or statute equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime and no act that is a state crime may be made a civil violation. The notice must set out a copy of the proposed regulations or summarize the content of each proposed regulation; or if a code is adopted by reference the notice shall set forth the full official title and a statement describing the general purpose of such code. For purposes of this subsection, a summary shall mean a brief description which succinctly describes the main points of the proposed regulation. When the county publishes a summary, the publication shall include a statement that the full text of the proposed regulation will be mailed upon request. An inadvertent mistake or omission in publishing the text or a summary of the content of a proposed regulation shall not render the regulation invalid if it is adopted. The notice shall also include the day, hour, and place of hearing and must be given by publication in the newspaper in which legal notices of the county are printed;

(8) Have power to compound and release in whole or in part any debt due to the county when in their opinion the interest of their county will not be prejudiced thereby, except in cases where they or any of them are personally interested;

(9) Have power to administer oaths or affirmations necessary in the discharge of their duties and commit for contempt any witness refusing to testify before them with the same power as district judges;

(10) Have power to declare by ordinance what shall be deemed a nuisance within the county, including but not limited to "litter" and "potentially dangerous litter" as defined in RCW 70.93.030; to prevent, remove, and abate a nuisance at the expense of the parties creating, causing, or committing the nuisance; and to levy a special assessment on the land or

premises on which the nuisance is situated to defray the cost, or to reimburse the county for the cost of abating it. This assessment shall constitute a lien against the property which shall be of equal rank with state, county, and municipal taxes. [2003 c 337 § 6; 1994 c 301 § 8; 1993 c 83 § 9; 1989 c 378 § 39; 1988 c 168 § 8; 1987 c 202 § 206; 1986 c 278 § 2; 1985 c 91 § 1; 1982 c 226 § 3; 1979 ex.s. c 136 § 35; 1975 1st ex.s. c 216 § 1; 1967 ex.s. c 59 § 1; 1963 c 4 § 36.32.120. Prior: 1961 c 27 § 2; prior: (i) 1947 c 61 § 1; 1943 c 99 § 1; Code 1881 § 2673; 1869 p 305 § 11; 1867 p 54 § 11; 1863 p 542 § 11; 1854 p 421 § 11; Rem. Supp. 1947 § 4056. (ii) Code 1881 § 2681; 1869 p 307 § 20; 1867 p 56 § 20; 1863 p 543 § 20; 1854 p 422 § 20; RRS § 4061. (iii) Code 1881 § 2687; 1869 p 308 § 26; 1867 p 57 § 26; 1863 p 545 § 28; 1854 p 423 § 22; RRS § 4071.]

**Findings—2003 c 337:** See note following RCW 70.93.060.

**Effective date—1993 c 83:** See note following RCW 35.21.163.

**Intent—1987 c 202:** See note following RCW 2.04.190.

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Effective date—1982 c 226:** See note following RCW 35.21.180.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**36.32.121 Community revitalization financing—Public improvements.** In addition to other authority that a county possesses, a county may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a county to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 13.]

**Severability—2001 c 212:** See RCW 39.89.902.

**36.32.122 Authority to regulate massage practitioners—Limitations.** (1) A state licensed massage practitioner seeking a county license to operate a massage business must provide verification of his or her state massage license as provided for in RCW 18.108.030.

(2) The county may charge a licensing or operating fee, but the fee charged a state licensed massage practitioner shall not exceed the licensing or operating fee imposed on similar health care providers, such as physical therapists or occupational therapists, operating within the same county.

(3) A state licensed massage practitioner is not subject to additional licensing requirements not currently imposed on similar health care providers, such as physical therapists or occupational therapists. [1991 c 182 § 3.]

**36.32.125 Adoption of certain regulations proscribed.** Nothing in this chapter shall permit the counties to adopt, by reference or by ordinance, regulations relating to the subject matter contained in chapters 19.28, 43.22, 70.79, or 70.87 RCW. [1971 ex.s. c 117 § 2.]

*Adoption of provisions relating to electricians and electrical installations by ordinance proscribed: RCW 19.28.101.*

**36.32.127 Driving while under the influence of liquor or drugs—Minimum penalties.** No county may establish a penalty for an act that constitutes the crime of driving while

under the influence of intoxicating liquor or any drug, as provided for in RCW 46.61.502, or the crime of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as provided in RCW 46.61.504, that is less than the penalties prescribed for those crimes in RCW 46.61.5055. [1995 c 332 § 9; 1994 c 275 § 37; 1983 c 165 § 41.]

**Severability—Effective dates—1995 c 332:** See notes following RCW 46.20.308.

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

**Legislative finding, intent—Effective dates—Severability—1983 c 165:** See notes following RCW 46.20.308.

**36.32.130 Postponement of action.** When only two members are present at a meeting of the board, and a division takes place on any question, the matter under consideration shall be postponed to the next subsequent meeting. [1963 c 4 § 36.32.130. Prior: Code 1881 § 2671; 1869 p 304 § 9; 1867 p 53 § 9; 1863 p 541 § 9; 1854 p 421 § 9; RRS § 4055.]

**36.32.135 Official seal.** The county commissioners of each county shall have and use a seal for the purpose of sealing their proceedings, and copies of the same when signed and sealed by the said county commissioners, and attested by their clerk, shall be admitted as evidence of such proceedings in the trial of any cause in any court in this state; and until such seal shall be provided, the private seal of the chairman of such board of county commissioners shall be adopted as a seal. [1963 c 4 § 36.32.135. Prior: Code 1881 § 2672; 1854 p 421 § 10; RRS § 4069. Formerly RCW 36.16.080.]

**36.32.140 Record of proceedings.** The board of county commissioners shall cause to be recorded, in a book kept for that purpose, all their proceedings and determinations touching all matters properly cognizable before it; and all books, accounts, vouchers, and papers, touching the business or property of the county shall be carefully kept by the clerk, and be open to public inspection. [1963 c 4 § 36.32.140. Prior: Code 1881 § 2675; 1869 p 305 § 13; 1867 p 54 § 13; 1863 p 542 § 13; 1854 p 421 § 13; RRS § 4072.]

**36.32.150 Transcribing mutilated records.** The county commissioners shall, when any of the county records become so mutilated that their handling becomes dangerous to the safety of such records, and when in the judgment of the county commissioners it may become necessary to, order the transcribing of said records at a sum not exceeding eight cents per folio of one hundred words, in books to be provided for that purpose by the county. [1963 c 4 § 36.32.150. Prior: 1893 c 14 § 1; RRS § 4065.]

**36.32.155 Transcribing mutilated records—Prior transcribing validated.** All records transcribed by order of any board of county commissioners in this state prior to the effective date of chapter 14, Laws of 1893, shall be and are hereby declared the legal records of said county the same as if transcribed under the provisions of RCW 36.32.150 through 36.32.170. [1963 c 4 § 36.32.155. Prior: 1893 c 14 § 4; RRS § 4068.]

(2004 Ed.)

**36.32.160 Transcribing mutilated records—Auditor to direct transcribing, certify.** The books containing the transcribed records shall be certified by the county auditor, under whose direction the transcribing was done, as being true copies of the original. [1963 c 4 § 36.32.160. Prior: 1893 c 14 § 2; RRS § 4066.]

**36.32.170 Transcribing mutilated records—Original records to be preserved.** All the original record books, after the transcribing thereof, shall be filed away in the auditor's office and only be used in case of contest on the correctness of the transcribed records. [1963 c 4 § 36.32.170. Prior: 1893 c 14 § 3; RRS § 4067.]

**36.32.200 Special attorneys, employment of.** It shall be unlawful for a county legislative authority to employ or contract with any attorney or counsel to perform any duty which any prosecuting attorney is authorized or required by law to perform, unless the contract of employment of such attorney or counsel has been first reduced to writing and approved by the presiding superior court judge of the county in writing endorsed thereon. This section shall not prohibit the appointment of deputy prosecuting attorneys in the manner provided by law.

Any contract written pursuant to this section shall be limited to two years in duration. [1983 c 129 § 1; 1963 c 4 § 36.32.200. Prior: 1905 c 25 § 1; RRS § 4075.]

**36.32.210 Inventory of county capitalized assets—County commission inventory statement—Filing and public inspection—Penalty—Prosecutions—Taxpayer's action.** (1) Each board of county commissioners of the several counties of the state of Washington shall, on the first Monday of March of each year, file with the auditor of the county a statement verified by oath showing for the twelve months period ending December 31st of the preceding year, the following:

(a) A full and complete inventory of all capitalized assets shall be kept in accordance with standards established by the state auditor. This inventory shall be segregated to show the following subheads:

(i) The assets, including equipment, on hand, together with a statement of the date when acquired, the amount paid therefor, the estimated life thereof and a sufficient description to fully identify such property;

(ii) All equipment of every kind or nature sold or disposed of in any manner during such preceding twelve months period, together with the name of the purchaser, the amount paid therefor, whether or not the same was sold at public or private sale, the reason for such disposal and a sufficient description to fully identify the same; and

(iii) All the equipment purchased during the period, together with the date of purchase, the amount paid therefor, whether or not the same was bought under competitive bidding, the price paid therefor and the probable life thereof, the reason for making the purchase and a sufficient description to fully identify such property; and

(b) The person to whom such money or any part thereof was paid and why so paid and the date of such payment.

(2) Inventories shall be filed with the county auditor as a public record and shall be open to the inspection of the public.

(3) Any county commissioner failing to file such statement or willfully making any false or incorrect statement therein or aiding or abetting in the making of any false or incorrect statement is guilty of a gross misdemeanor.

(4) It is the duty of the prosecuting attorney of each county to within three days from the calling to his or her attention of any violation to institute proceedings against such offending official and in addition thereto to prosecute appropriate action to remove such commissioner from office.

(5) Any taxpayer of such county is hereby authorized to institute the action in conjunction with or independent of the action of the prosecuting attorney. [2003 c 53 § 204; 1997 c 245 § 3; 1995 c 194 § 5; 1969 ex.s. c 182 § 2; 1963 c 108 § 1; 1963 c 4 § 36.32.210. Prior: 1931 c 95 § 1; RRS § 4056-1. FORMER PARTS OF SECTION: (i) 1931 c 95 § 2; RRS § 4056-2, now codified as RCW 36.32.213. (ii) 1931 c 95 § 3; RRS § 4056-3, now codified as RCW 36.32.215.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

*State building code: Chapter 19.27 RCW.*

**36.32.235 Competitive bids—Purchasing department—Counties with a population of one million or more—Public works procedures—Exceptions.** (1) In each county with a population of one million or more which by resolution establishes a county purchasing department, the purchasing department shall enter into leases of personal property on a competitive basis and purchase all supplies, materials, and equipment on a competitive basis, for all departments of the county, as provided in this chapter and chapter 39.04 RCW, except that the county purchasing department is not required to make purchases that are paid from the county road fund or equipment rental and revolving fund.

(2) As used in this section, "public works" has the same definition as in RCW 39.04.010.

(3) Except as otherwise specified in this chapter or in chapter 36.77 RCW, all counties subject to these provisions shall contract on a competitive basis for all public works after bids have been submitted to the county upon specifications therefor. Such specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection.

(4) An advertisement shall be published in the county official newspaper stating the time and place where bids will be opened, the time after which bids will not be received, the character of the work to be done, the materials and equipment to be furnished, and that specifications therefor may be seen at the office of the clerk of the county legislative authority. An advertisement shall also be published in a legal newspaper of general circulation in or as near as possible to that part of the county in which such work is to be done. If the county official newspaper is a newspaper of general circulation covering at least forty percent of the residences in that part of the county in which such public works are to be done, then the publication of an advertisement of the applicable specifications in the county official newspaper is sufficient. Such advertisements shall be published at least once at least thir-

teen days prior to the last date upon which bids will be received.

(5) The bids shall be in writing, shall be filed with the clerk, shall be opened and read in public at the time and place named therefor in the advertisements, and after being opened, shall be filed for public inspection. No bid may be considered for public work unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed.

(6) The contract for the public work shall be awarded to the lowest responsible bidder. Any or all bids may be rejected for good cause. The county legislative authority shall require from the successful bidder for such public work a contractor's bond in the amount and with the conditions imposed by law.

(7) If the bidder to whom the contract is awarded fails to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and the contract awarded to the next lowest and best bidder. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the county legislative authority. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry.

(8) As limited by subsection (10) of this section, a county subject to these provisions may have public works performed by county employees in any annual or biennial budget period equal to a dollar value not exceeding ten percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period.

Whenever a county subject to these provisions has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works except emergency work under subsection (12) of this section within that budget period shall be done by contract pursuant to public notice and call for competitive bids as specified in subsection (3) of this section. The state auditor shall report to the state treasurer any county subject to these provisions that exceeds this amount and the extent to which the county has or has not reduced the amount of public works it has performed by public employees in subsequent years.

(9) If a county subject to these provisions has public works performed by public employees in any budget period that are in excess of this ten percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that county in its next budget period. Ten percent of the motor vehicle fuel tax distributions to that county shall be withheld if two years after the year in which the excess amount of work occurred, the county has failed to so reduce the amount of public works that it has performed by public employees. The amount withheld shall be distributed to the county when it has demonstrated in its reports to the state auditor that the amount of public works it has performed by public employees has been reduced as required.

(10) In addition to the percentage limitation provided in subsection (8) of this section, counties subject to these provisions containing a population of one million or more shall not have public employees perform a public works project in excess of seventy thousand dollars if more than a single craft or trade is involved with the public works project, or a public works project in excess of twenty-five thousand dollars if only a single craft or trade is involved with the public works project. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by public employees on a single project.

The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The value of the public works budget shall be the value of all the separate public works projects within the budget.

(11) In addition to the accounting and recordkeeping requirements contained in chapter 39.04 RCW, any county which uses public employees to perform public works projects under RCW 36.32.240(1) shall prepare a year-end report to be submitted to the state auditor indicating the total dollar amount of the county's public works construction budget and the total dollar amount for public works projects performed by public employees for that year.

The year-end report submitted pursuant to this subsection to the state auditor shall be in accordance with the standard form required by RCW 43.09.205.

(12) Notwithstanding any other provision in this section, counties may use public employees without any limitation for emergency work performed under an emergency declared pursuant to RCW 36.32.270, and any such emergency work shall not be subject to the limitations of this section. Publication of the description and estimate of costs relating to correcting the emergency may be made within seven days after the commencement of the work. Within two weeks of the finding that such an emergency existed, the county legislative authority shall adopt a resolution certifying the damage to public facilities and costs incurred or anticipated relating to correcting the emergency. Additionally this section shall not apply to architectural and engineering or other technical or professional services performed by public employees in connection with a public works project.

(13) In lieu of the procedures of subsections (3) through (11) of this section, a county may let contracts using the small works roster process provided in RCW 39.04.155.

Whenever possible, the county shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(14) The allocation of public works projects to be performed by county employees shall not be subject to a collective bargaining agreement.

(15) This section does not apply to performance-based contracts, as defined in \*RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

(16) Nothing in this section prohibits any county from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

(2004 Ed.)

(17) This section does not apply to contracts between the public stadium authority and a team affiliate under RCW 36.102.060(4), or development agreements between the public stadium authority and a team affiliate under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8). [2000 c 138 § 206; 1997 c 220 § 401 (Referendum Bill No. 48, approved June 17, 1997); 1996 c 219 § 2.]

\*Reviser's note: RCW 39.35A.020 was amended by 2001 c 214 § 18, changing subsection (3) to subsection (4).

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**36.32.240 Competitive bids—Purchasing department—Counties with a population of less than one million.** (1) In any county the county legislative authority may by resolution establish a county purchasing department.

(2) In each county with a population of less than one million which exercises this option, the purchasing department shall contract on a competitive basis for all public works, enter into leases of personal property on a competitive basis, and purchase all supplies, materials, and equipment, on a competitive basis, for all departments of the county, as provided in this chapter and chapter 39.04 RCW, except that the county purchasing department is not required to make purchases for the county hospital, or make purchases that are paid from the county road fund or equipment rental and revolving fund. [1996 c 219 § 1; 1993 c 198 § 5; 1991 c 363 § 57; 1985 c 169 § 8; 1983 c 3 § 77; 1974 ex.s. c 52 § 1; 1967 ex.s. c 144 § 15; 1963 c 4 § 36.32.240. Prior: 1961 c 169 § 1; 1949 c 33 § 1; 1945 c 61 § 1; Rem. Supp. 1949 § 10322-15.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

**36.32.245 Competitive bids—Requirements—Advertisements—Exceptions—Recycled materials.** (1) No contract for the purchase of materials, equipment, or supplies may be entered into by the county legislative authority or by any elected or appointed officer of the county until after bids have been submitted to the county. Bid specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection. An advertisement shall be published in the official newspaper of the county stating the time and place where bids will be opened, the time after which bids will not be received, the materials, equipment, supplies, or services to be purchased, and that the specifications may be seen at the office of the clerk of the county legislative authority. The advertisement shall be published at least once at least thirteen days prior to the last date upon which bids will be received.

(2) The bids shall be in writing and filed with the clerk. The bids shall be opened and read in public at the time and place named in the advertisement. Contracts requiring competitive bidding under this section may be awarded only to the lowest responsible bidder. Immediately after the award is

made, the bid quotations shall be recorded and open to public inspection and shall be available by telephone inquiry. Any or all bids may be rejected for good cause.

(3) For advertisement and formal sealed bidding to be dispensed with as to purchases between two thousand five hundred and twenty-five thousand dollars, the county legislative authority must use the uniform process to award contracts as provided in RCW 39.04.190. Advertisement and formal sealed bidding may be dispensed with as to purchases of less than two thousand five hundred dollars upon the order of the county legislative authority.

(4) This section does not apply to performance-based contracts, as defined in \*RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW; or contracts and purchases for the printing of election ballots, voting machine labels, and all other election material containing the names of candidates and ballot titles.

(5) Nothing in this section shall prohibit the legislative authority of any county from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

(6) This section does not apply to contracting for public defender services by a county. [1993 c 233 § 1; 1993 c 198 § 7; 1991 c 363 § 62.]

**Reviser's note:** \*(1) RCW 39.35A.020 was amended by 2001 c 214 § 18, changing subsection (3) to subsection (4).

(2) This section was amended by 1993 c 198 § 7 and by 1993 c 233 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.32.250 Competitive bids—Contract procedure—Contracts under ten thousand dollars—Small works roster process.** No contract for public works may be entered into by the county legislative authority or by any elected or appointed officer of the county until after bids have been submitted to the county upon specifications therefor. Such specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection. An advertisement shall be published in the county official newspaper stating the time and place where bids will be opened, the time after which bids will not be received, the character of the work to be done, the materials and equipment to be furnished, and that specifications therefor may be seen at the office of the clerk of the county legislative authority. An advertisement shall also be published in a legal newspaper of general circulation in or as near as possible to that part of the county in which such work is to be done. If the county official newspaper is a newspaper of general circulation covering at least forty percent of the residences in that part of the county in which such public works are to be done, then the publication of an advertisement of the applicable specifications in the county official newspaper shall be sufficient. Such advertisements shall be published at least once at least thirteen days prior to the last date upon which bids will be received. The bids shall be in writing, shall be filed with the clerk, shall be opened and read in public at the time and place named therefor in the advertisements, and after being opened, shall be filed for public inspection. No bid may be considered for public work unless it is accompanied by a bid deposit in the

form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed. The contract for the public work shall be awarded to the lowest responsible bidder. Any or all bids may be rejected for good cause. The county legislative authority shall require from the successful bidder for such public work a contractor's bond in the amount and with the conditions imposed by law. If the bidder to whom the contract is awarded fails to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and the contract awarded to the next lowest and best bidder. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the county legislative authority. In the letting of any contract for public works involving less than ten thousand dollars, advertisement and competitive bidding may be dispensed with on order of the county legislative authority. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry.

As an alternative to requirements under this section, a county may let contracts using the small works roster process under RCW 39.04.155.

This section does not apply to performance-based contracts, as defined in \*RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW. [2000 c 138 § 207; 1996 c 18 § 3; 1993 c 198 § 8; 1991 c 363 § 58. Prior: 1989 c 431 § 57; 1989 c 244 § 6; prior: 1985 c 369 § 1; 1985 c 169 § 9; 1977 ex.s. c 267 § 1; 1975 1st ex.s. c 230 § 1; 1967 ex.s. c 144 § 16; 1967 c 97 § 1; 1965 c 113 § 1; 1963 c 4 § 36.32.250; prior: 1945 c 61 § 2; Rem. Supp. 1945 § 10322-16.]

**\*Reviser's note:** RCW 39.35A.020 was amended by 2001 c 214 § 18, changing subsection (3) to subsection (4).

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1989 c 431:** See RCW 70.95.901.

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030. *Subcontractors to be identified by bidder, when:* RCW 39.30.060.

**36.32.253 Competitive bids—Leases of personal property.** No lease of personal property may be entered into by the county legislative authority or by any elected or appointed officer of the county except upon use of the procedures specified in this chapter and chapter 39.04 RCW for awarding contracts for purchases when it leases personal property from the lowest responsible bidder. [1993 c 198 § 6; 1991 c 363 § 63.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.32.256 Competitive bids—Multiple awards for road maintenance materials.** A county when calling for competitive bids for the procurement of road maintenance materials may award to multiple bidders for the same com-

modity when the bid specifications provide for the factors of haul distance to be included in the determination of which vendor is truly the lowest price to the county. The county may readvertise for additional bidders and vendors if it deems it necessary in the public interest. [1991 c 363 § 61.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.32.260 Competitive bids—Purchasing agent.** In any county having a purchasing department the board of county commissioners shall appoint a county purchasing agent, who shall be the head of such purchasing department. The county purchasing agent shall have had previous purchasing experience as purchasing agent of a commercial, industrial, institutional, or governmental plant or agency, and shall be placed under such bond as the board may require. The board may establish a central storeroom or storerooms in charge of the county purchasing agent in which supplies and equipment may be stored and issued upon proper requisition by department heads. The purchasing agent shall be responsible for maintaining perpetual inventories of supplies and equipment and shall at least yearly, or oftener when so required by the board, report to the county commissioners a balancing of the inventory record with the actual amount of supplies or equipment on hand. [1963 c 4 § 36.32.260. Prior: 1961 c 169 § 2; 1945 c 61 § 3; Rem. Supp. 1945 § 10322-17.]

**36.32.265 Competitive bids—Inapplicability to certain agreements relating to water pollution control, solid waste handling facilities.** RCW 36.32.240, 36.32.250, and 36.32.260 do not apply to the selection of persons or entities to construct or develop water pollution control facilities or to provide water pollution control services under RCW 70.150.040 or the selection of persons or entities to construct or develop solid waste handling facilities or to provide solid waste handling services under RCW 36.58.090. [1989 c 399 § 8; 1987 c 436 § 9.]

**36.32.270 Competitive bids—Exemptions.** The county legislative authority may waive the competitive bidding requirements of this chapter pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [1998 c 278 § 4; 1963 c 4 § 36.32.270. Prior: 1961 c 169 § 3; 1945 c 61 § 4; Rem. Supp. 1945 § 10322-18.]

**36.32.280 Regulation of watercourses.** The state in the exercise of its sovereign and police power authorizes any county alone or acting jointly with any other county to regulate and control the flow of waters, both navigable and non-navigable, within such county or counties, for the purpose of preventing floods which may threaten or cause damage, public or private. [1963 c 4 § 36.32.280. Prior: 1921 c 30 § 1; RRS § 4057-1.]

**36.32.290 Regulation of watercourses—Removal of obstructions.** When the board of county commissioners of any county deems it essential to the public interest for flood prevention purposes it may remove drifts, jams, logs, debris, gravel, earth, stone or bars forming obstructions to the

stream, or other material from the beds, channels, and banks of watercourses in any manner deemed expedient, including the deposit thereof on bars not forming obstructions to the stream, or on subsidiary or high water channels of such watercourses. [1963 c 4 § 36.32.290. Prior: 1921 c 30 § 2; RRS § 4057-2.]

**36.32.300 Regulation of watercourses—Trees may be removed from river banks.** When any forest trees are situated upon the bank of any watercourse or so close thereto as to be in danger of falling into it, the owner or occupant of any of the premises shall be notified to remove them forthwith. The notice shall be based upon a resolution or order of the county commissioners and may be given by mail to the last known address of the owner or occupant. If the trees are not removed within ten days after the date of the notice, the county may thereupon fell them. [1963 c 4 § 36.32.300. Prior: 1921 c 30 § 3; RRS § 4057-3.]

**36.32.310 Compensation for extra services.** Whenever a member of the board of county commissioners of any county has a claim for compensation for per diem and expenses for attendance upon any special session of the board or a claim for compensation for extra services or expenses incurred as such commissioners, including services performed as road commissioner, the claim shall be verified by him and after being approved by a majority of the board of county commissioners of the county shall be filed with the clerk of the superior court and be approved by a judge of the superior court of such county or any superior court judge holding court in such county. The judge may make such investigation as he deems necessary to determine the correctness of the claim and may, after such investigation, approve or reject any part of such claim. If the judge so approve the claim or any part thereof the same shall be certified by the clerk under the seal of his office and be returned to the county auditor who shall draw a warrant therefor. The court shall not be required oftener than once in each month to pass upon such claims and it may fix a time in each month by general order filed with the clerk of the board of county commissioners on or before which such claims must be filed with the clerk of the court. [1963 c 4 § 36.32.310. Prior: 1921 c 100 § 1; 1911 c 66 § 1; RRS § 4053.]

**36.32.330 Appeals from board's action.** Any person may appeal to the superior court from any decision or order of the board of county commissioners. Such appeal shall be taken within twenty days after the decision or order, and the appellant shall within that time serve notice of appeal on the county commissioners. The notice shall be in writing and shall be delivered to at least one of the county commissioners personally, or left with the county auditor. The appellant shall, within ten days after service of the notice of appeal give a bond to the county with one or more sureties, to be approved by the county auditor, conditioned for the payment of all costs which shall be adjudged against him on such appeal in the superior court. The practice regulating appeals from and writs of certiorari to justice's courts shall, insofar as applicable, govern in matters of appeal from a decision or order of the board of county commissioners.

Nothing herein contained shall be construed to prevent a party having a claim against any county in this state from enforcing the collection thereof by civil action in any court of competent jurisdiction after the same has been presented to and filed as provided by law and disallowed in whole or in part by the board of county commissioners of the proper county. Such action must, however, be commenced within the time limitation provided in \*RCW 36.45.030. [1963 c 4 § 36.32.330. Prior: 1957 c 224 § 5; 1893 c 121 § 1; Code 1881 § 2695; 1869 p 308 § 29; 1867 p 57 § 29; 1863 p 545 § 30; 1854 p 423 § 24; RRS § 4076. Cf. 1879 p 143 §§ 1, 2.]

\*Reviser's note: RCW 36.45.030 was repealed by 1993 c 449 § 13.

**36.32.335 Coordination of county administrative programs—Legislative declaration.** The public necessity for the coordination of county administrative programs, especially in the fields of highways and social security, be and is hereby recognized. [1963 c 4 § 36.32.335. Prior: 1939 c 188 § 1; RRS § 4077-2.]

**36.32.340 Coordination of county administrative programs—Duties incident to.** The county commissioners shall take such action as is necessary to effect coordination of their administrative programs and prepare reports annually on the operations of all departments under their jurisdiction. [1998 c 245 § 27; 1963 c 4 § 36.32.340. Prior: 1939 c 188 § 2; RRS § 4077-3.]

**36.32.350 Coordination of county administrative programs—Coordinating agency—Agency reimbursement.** County legislative authorities may designate the Washington state association of counties as a coordinating agency in the execution of duties imposed by RCW 36.32.335 through 36.32.360 and reimburse the association from county current expense funds in the county legislative authority's budget for the costs of any such services rendered. Such reimbursement shall be paid on vouchers submitted to the county auditor and approved by the county legislative authority in the manner provided for the disbursement of other current expense funds and the vouchers shall set forth the nature of the service rendered, supported by affidavit that the service has actually been performed. [1991 c 363 § 59; 1973 1st ex.s. c 195 § 30; 1971 ex.s. c 85 § 3; 1970 ex.s. c 47 § 1; 1963 c 4 § 36.32.350. Prior: 1947 c 49 § 1; 1939 c 188 § 3; Rem. Supp. 1947 § 4077-4.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

*Associations of municipal corporations or municipal officers to furnish information to legislature and governor:* RCW 44.04.170.

*Merger of state association of counties with state association of county officials:* RCW 36.47.070.

*Winter recreation advisory committee, representative of association of counties as member:* RCW 79A.05.255.

**36.32.360 Coordination of county administrative programs—Attendance at conventions authorized.** County commissioners are hereby authorized to take such other and further action as may be deemed necessary to the compliance with the intent of RCW 36.32.335 through

36.32.360, including attendance at such state or district meetings as may be required to formulate the reports directed in RCW 36.32.340. [1963 c 4 § 36.32.360. Prior: 1939 c 188 § 4; RRS § 4077-5.]

**36.32.370 Land surveys.** Except as otherwise provided in this title, the board of county commissioners, through a surveyor employed by it shall execute all surveys of land that may be required by the county. The certificate of the surveyor so employed of any survey made of lands within the county shall be presumptive evidence of the facts therein contained. [1963 c 4 § 36.32.370. Prior: (i) 1895 c 77 § 3; RRS § 4144. (ii) 1895 c 77 § 4; RRS § 4145.]

**36.32.380 Land surveys—Record of surveys.** Except as otherwise provided in this title, the board of county commissioners shall cause to be recorded in a suitable book all surveys except such as are made for a temporary purpose. The record book shall be so constructed as to have one page for diagrams to be numbered progressively and the opposite page for notes and remarks; no diagram shall be so constructed as to scale less than one inch to twenty chains. [1963 c 4 § 36.32.380. Prior: 1895 c 77 § 5; RRS § 4150.]

**36.32.390 Nonmonthly employees, vacations and sick leaves.** Each employee of any county in this state who is employed on an hourly or per diem basis, who shall have worked fifteen hundred hours or more in any one year may in the discretion of the board of county commissioners be given the same vacations and sick leaves as are provided for the employees of the county employed on a monthly basis. [1963 c 4 § 36.32.390. Prior: 1951 c 187 § 1.]

**36.32.400 Health care and group insurance.** Subject to chapter 48.62 RCW, any county by a majority vote of its board of county commissioners may enter into contracts to provide health care services and/or group insurance for the benefit of its employees, and may pay all or any part of the cost thereof. Any two or more counties, by a majority vote of their respective boards of county commissioners may, if deemed expedient, join in the procuring of such health care services and/or group insurance, and the board of county commissioners of each participating county may, by appropriate resolution, authorize their respective counties to pay all or any portion of the cost thereof.

Nothing in this section shall impair the eligibility of any employee of a county, municipality, or other political subdivision under RCW 41.04.205. [1991 sp.s. c 30 § 21; 1975-'76 2nd ex.s. c 106 § 7; 1963 c 4 § 36.32.400. Prior: 1957 c 106 § 1; 1955 c 51 § 1.]

**Effective date, implementation, application—Severability—1991 sp.s. c 30:** See RCW 48.62.900 and 48.62.901.

**36.32.410 Participation in Economic Opportunity Act programs.** The board of county commissioners of any county is hereby authorized and empowered in its discretion by resolution or ordinance passed by a majority of the board, to take whatever action it deems necessary to enable the county to participate in the programs set forth in the Economic Opportunity Act of 1964 (Public Law 88-452; 78 Stat.

508), as amended. Such participation may be engaged in as a sole county operation or in conjunction or cooperation with the state, any other county, city, or municipal corporation, or any private corporation qualified under said Economic Opportunity Act. [1971 ex.s. c 177 § 1; 1965 c 14 § 1.]

**36.32.415 Low-income housing—Loans and grants.**

A county may assist in the development or preservation of publicly or privately owned housing for persons of low income by providing loans or grants of general county funds to the owners or developers of the housing. The loans or grants shall be authorized by the legislative authority of a county. They may be made to finance all or a portion of the cost of construction, reconstruction, acquisition, or rehabilitation of housing that will be occupied by a person or family of low income. As used in this section, "low income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the county is located. Housing constructed with loans or grants made under this section shall not be considered public works or improvements subject to competitive bidding or a purchase of services subject to the prohibition against advance payment for services: PROVIDED, That whenever feasible the borrower or grantee shall make every reasonable and practicable effort to utilize a competitive public bidding process. [1986 c 248 § 2.]

**36.32.420 Youth agencies—Establishment authorized.** See RCW 35.21.630.

**36.32.425 Juvenile curfews.** (1) The legislative authority of any county has the authority to enact an ordinance, for the purpose of preserving the public safety or reducing acts of violence by or against juveniles that are occurring at such rates as to be beyond the capacity of the police to assure public safety, establishing times and conditions under which juveniles may be present on the public streets, in the public parks, or in any other public place during specified hours.

(2) The ordinance shall not contain any criminal sanctions for a violation of the ordinance. [1994 sp.s. c 7 § 504.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**36.32.430 Parks, may designate name of.** The board of county commissioners is authorized to designate the name of any park established by the county. [1965 ex.s. c 76 § 3.]

*Acquisition of property for park, recreational, viewpoint, greenbelt, conservation, historic, scenic, or view purposes: RCW 36.34.340.*

**36.32.435 Historic preservation—Authorization to acquire property, borrow money, issue bonds, etc.** Any county may acquire title to or any interest in real and personal property for the purpose of historic preservation and may restore, improve, maintain, manage, and lease the property for public or private use and may enter into contracts, borrow money, and issue bonds and other obligations for such purposes. This authorization shall not expand the eminent domain powers of counties. [1984 c 203 § 4.]

**Severability—1984 c 203:** See note following RCW 35.43.140.

**36.32.440 Staff to aid in purchasing, poverty programs, parks, emergency services, budget, etc., authorized.** The board of county commissioners of the several counties may employ such staff as deemed appropriate to serve the several boards directly in matters including but not limited to purchasing, poverty and relief programs, parks and recreation, emergency services, budgetary preparations set forth in RCW 36.40.010-36.40.050, code enforcement and general administrative coordination. Such authority shall in no way infringe upon or relieve the county auditor of responsibilities contained in RCW \*36.22.010(9) and 36.22.020. [1974 ex.s. c 171 § 3; 1969 ex.s. c 252 § 3.]

**\*Reviser's note:** RCW 36.22.010 was amended by 1984 c 128 § 2, changing subsection (9) to subsection (8); and was subsequently amended by 1995 c 194 § 1, changing subsection (8) to subsection (6).

**36.32.450 Tourist promotion.** Any county in this state acting through its council or other legislative body shall have power to expend moneys and conduct promotion of resources and facilities in the county or general area by advertising, publicizing, or otherwise distributing information for the purpose of attracting visitors and encouraging tourist expansion. [1971 ex.s. c 61 § 1.]

**36.32.460 Employee safety award programs.** The board of county commissioners may establish an employee safety award program to reward and encourage the safe performance of assigned duties by county employees.

The board may establish standards and regulations necessary or appropriate for the proper administration and for otherwise accomplishing the purposes of such program.

The board may authorize every department head and other officer of county government who oversees or directs county employees to make the determination as to whether an employee safety award will be made.

Such awards shall be made annually from the county general fund by warrant on vouchers duly authorized by the board according to the following schedule based upon safe and accident-free performance:

5 years .....	\$ 2.50
10 years .....	5.00
15 years .....	7.50
20 years .....	10.00
25 years .....	12.50
30 years .....	20.00:

PROVIDED, That the board may give such department heads and other officers overseeing and directing county employees discretion to purchase a noncash award of equal value in lieu of the cash award. If a noncash award is given the warrants shall be made payable to the business enterprise from which the noncash award is purchased.

However, safety awards made to persons whose safe and accident-free performance has directly benefited the county road system shall be made from the county road fund by warrant on vouchers duly authorized by the board. [1971 c 79 § 1.]

**36.32.470 Fire protection, ambulance or other emergency services provided by municipal corporations within county—Financial and other assistance authorized.** The

legislative authority of any county shall have the power to furnish, upon such terms as the board may deem proper, with or without consideration, financial or other assistance to any municipal corporation, or political subdivision within such county for the purpose of implementing the fire protection, ambulance, medical or other emergency services provided by such municipal corporation, or political subdivision: PROVIDED, That no such municipal corporation or political subdivision shall be authorized to expend any funds or property received as part of such assistance for any purpose, or in any manner, for which it could not otherwise legally expend its own funds. [1974 ex.s. c 51 § 1.]

*Ambulance services may be provided by county: RCW 36.01.100.*

**36.32.475 Regulation of automatic number or location identification—Prohibited.** No county may enact or enforce an ordinance or regulation mandating automatic number identification or automatic location identification for a private telecommunications system or for a provider of private shared telecommunications services. [1995 c 243 § 8.]

**Findings—Severability—1995 c 243:** See notes following RCW 80.36.555.

**36.32.480 Emergency medical service districts—Creation authorized—Composition of governing body.** (1) A county legislative authority may adopt an ordinance creating an emergency medical service district in all or a portion of the unincorporated area of the county and, pursuant to subsection (2) of this section, within the corporate limits of any city or town. The ordinance may only be adopted after a public hearing has been held on the creation of such a district and the county legislative authority makes a finding that it is in the public interest to create the district.

An emergency medical service district shall be a quasi-municipal corporation and an independent taxing "authority" within the meaning of Article 7, Section 1, Washington State Constitution. Emergency medical service districts shall also be "taxing authorities" within the meaning of Article 7, Section 2, Washington State Constitution.

An emergency medical service district shall have the authority to provide emergency medical services.

(2) When any part of a proposed emergency medical service district includes an area within the corporate limits of a city or town, the governing body of the city or town shall approve the inclusion, and the county governing body shall maintain a certified copy of the resolution of approval before adopting an ordinance including the area.

(3) The members of the county legislative authority shall compose the governing body of any emergency medical service district which is created within the county: PROVIDED, That where an emergency medical service district includes an area within the corporate limits of a city or town, the emergency medical service district may be governed as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. The voters of an emergency medical service district must be registered voters residing within the service area. [2000 c 31 § 1; 1979 ex.s. c 200 § 2.]

**Severability—1979 ex.s. c 200:** See note following RCW 84.52.069.

*Levy for emergency medical care and services: RCW 84.52.069.*

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**36.32.490 County freeholders—Method of filling vacancies.** Vacancies in the position of county freeholder shall be filled with a person qualified for the position who is appointed by majority action of the remaining county freeholders. [1984 c 163 § 1.]

**36.32.510 Right of way donations—Credit against required improvements.** Where the zoning and planning provisions of a county require landscaping, parking, or other improvements as a condition to granting permits for commercial or industrial developments, the county may credit donations of right of way in excess of that required for traffic improvement against such landscaping, parking, or other requirements. [1987 c 267 § 10.]

**Severability—1987 c 267:** See RCW 47.14.910.

*Right of way donations: Chapter 47.14 RCW.*

**36.32.520 Child care facilities—Review of need and demand—Adoption of ordinances.** If a county operating under home rule charter zones pursuant to its inherent charter authority and not pursuant to chapter 35.63 RCW, nor chapter 36.70 RCW, and that county does not provide for the siting of family day care homes in zones or areas that are designated for single family or other residential uses, and for the siting of mini-day care centers and day care centers in zones or areas that are designated for any residential or commercial uses, the county shall conduct a review of the need and demand for child care facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 30, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the \*department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the \*department of community development as to why such implementing ordinances were not adopted. [1989 c 335 § 8.]

**\*Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994.

**Findings—Purpose—Severability—1989 c 335:** See notes following RCW 35.63.170.

**Definitions for RCW 36.32.520:** See RCW 35.63.170.

**36.32.525 Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections—Mediation prior to appeal required.** A final decision by a hearing examiner involving a conditional or special use permit application under a home-rule charter that is requested by a party that is licensed or certified by the department of social and health services or the department of corrections is subject to mediation under RCW 35.63.260 before an appeal may be filed. [1998 c 119 § 5.]

**36.32.540 Settlement of Indian claims.** (1) The settlement of Indian land and other claims against public and pri-

vate property owners is declared to be in the interest of public health and safety, orderly government, environmental protection, economic development, and the social well-being of the citizens of this state, and to specifically benefit the properties released from those claims.

It is the purpose of \*this act to encourage the settlement of such Indian land and other claims lawsuits by permitting the establishment and use of local improvement districts to finance all or a portion of the settlement costs of such lawsuits.

(2) A local improvement district may be established by a county legislative authority to finance all or part of the settlement costs in an Indian land and other claims settlement related to public and private property located within the incorporated or unincorporated areas of the county. The settlement of an Indian land and other claims lawsuit shall be deemed to be an improvement that may be financed in whole or in part through use of a local improvement district.

(3) Except as expressly provided in this section, all matters relating to the establishment and operation of such a local improvement district, the levying and collection of special assessments, the issuance of local improvement district bonds and other obligations, and all related matters, shall be subject to the provisions of chapter 36.94 RCW concerning the use of local improvement districts to finance sewer or water facilities. The requirements of chapter 36.94 RCW concerning the preparation of a general plan and formation of a review committee shall not apply to a local improvement district used to finance all or a portion of Indian land and other claims settlements. The resolution or petition that initiates the creation of a local improvement district used to finance all or a portion of an Indian land and other claims settlement shall describe the general nature of the Indian land and other claims and the proposed settlement. The value of a contribution by any person, municipal corporation, political subdivision, or the state of money, real property, or personal property to the settlement of Indian land and other claims shall be credited to any assessment for a local improvement district under this section. [1989 1st ex.s. c 4 § 3.]

**\*Reviser's note:** "This act" consists of the enactment of this section, RCW 35.43.280, and an uncodified section.

**Severability—1989 1st ex.s. c 4:** See note following RCW 35.43.280.

**36.32.550 Conformance with chapter 43.97 RCW required.** With respect to the National Scenic Area, as defined in the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a county pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the Interstate Compact adopted by RCW 43.97.015, and with the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact. [1987 c 499 § 8.]

**36.32.560 Home rule charter counties—Residential care facilities—Review of need and demand—Adoption of ordinances.** If a county operating under home rule charter zones pursuant to its inherent charter authority and not pursuant to chapter 35.63 RCW, nor chapter 36.70 RCW, and that county does not provide for the siting of residential care facilities in zones or areas that are designated for single family or

other residential uses, the county shall conduct a review of the need and demand for the facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 30, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the \*department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the \*department of community development as to why such implementing ordinances were not adopted. [1989 c 427 § 40.]

**\*Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994.

**Severability—1989 c 427:** See RCW 74.39.900.

**36.32.570 Conservation area acquisition and maintenance.** The legislative authority of each county may acquire a fee simple interest, or lesser interest, in conservation areas in the county and may maintain the conservation areas. The conservation areas may be acquired and maintained with moneys obtained from the excise tax under RCW 82.46.070, or any other moneys available for such purposes.

As used in this section, the term "conservation area" means land and water that has environmental, agricultural, aesthetic, cultural, scientific, historic, scenic, or low-intensity recreational value for existing and future generations, and includes, but is not limited to, open spaces, wetlands, marshes, aquifer recharge areas, shoreline areas, natural areas, and other lands and waters that are important to preserve flora and fauna. [1990 1st ex.s. c 5 § 2.]

**Purpose—1990 1st ex.s. c 5:** "The purpose of this act is to provide a mechanism for the acquisition and maintenance of conservation areas through an orderly process that is approved by the voters of a county. The authorities provided in this act are supplemental, and shall not be construed to limit otherwise existing authorities." [1990 1st ex.s. c 5 § 1.]

**36.32.580 Home rule charter counties subject to limitations on moratoria, interim zoning controls.** A charter county that plans under the authority of its charter is subject to the provisions of RCW 36.70.795. [1992 c 207 § 5.]

**36.32.590 Building construction projects—County prohibited from requiring state agencies or local governments to provide bond or other security as a condition for issuance of permit.** A county legislative authority may not require any state agency or unit of local government to secure the performance of a permit requirement with a surety bond or other financial security device, including cash or assigned account, as a condition of issuing a permit to that unit of local government for a building construction project.

As used in this section, "building construction project" includes, in addition to its usual meaning, associated landscaping, street alteration, pedestrian or vehicular access alteration, or other amenities or alterations necessarily associated with the project. [1993 c 439 § 3.]

**36.32.600 Amateur radio antennas—Local regulation to conform with federal law.** No county shall enact or enforce an ordinance or regulation that fails to conform to the limited preemption entitled "Amateur Radio Preemption, 101 FCC 2nd 952 (1985)" issued by the federal communications commission. An ordinance or regulation adopted by a county with respect to amateur radio antennas shall conform to the limited federal preemption, that states local regulations that involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and to represent the minimal practicable regulation to accomplish the local authority's legitimate purpose. [1994 c 50 § 3.]

**Effective date—1994 c 50:** See note following RCW 35.21.315.

**36.32.610 Library capital facility areas authorized.** A county legislative authority may establish a library capital facility area pursuant to chapter 27.15 RCW. [1995 c 368 § 8.]

**Findings—1995 c 368:** See RCW 27.15.005.

**36.32.620 Abandoned or derelict vessels.** A county has the authority, subject to the processes and limitation outlined in chapter 79.100 RCW, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above publicly or privately owned aquatic lands within the jurisdiction of the county. [2002 c 286 § 17.]

**Severability—Effective date—2002 c 286:** See RCW 79.100.900 and 79.100.901.

## Chapter 36.33 RCW COUNTY FUNDS

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*Liquor*

*excise tax fund moneys as:* RCW 82.08.170.

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*general tax levy for road fund:* RCW 36.82.040.

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*Motor vehicle fuel tax moneys as:* RCW 82.36.020, 82.36.100, 82.36.420.

*Motor vehicle funds allocated to counties*

*distribution of:* RCW 46.68.120.

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*Motor vehicle licensing fees for oversize or overweight movements paid to county, when:* RCW 46.44.096.

*Public assistance moneys, allocation to counties:* Chapter 74.04 RCW.

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*Public health funds (county): Chapter 70.12 RCW.*  
*Public health pooling fund: RCW 70.12.030 through 70.12.070.*  
*Public utility district privilege taxes as: Chapter 54.28 RCW.*  
*Reforestation lands proceeds as: RCW 79.22.040, 79.22.050.*  
*Registration of land titles, disposition of fees: RCW 65.12.800.*  
*Reserve fund for labor, material or tax liens on public works: Chapter 60.28 RCW.*  
*River improvement fund*  
*flood control maintenance account: RCW 86.12.010, 86.12.020.*  
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*Sale of stock found in stock restricted area, proceeds as: RCW 16.24.070.*  
*Taxes for city and town purposes: State Constitution Art. 11 § 12.*  
*Teachers' institute fund: RCW 28A.410.060.*  
*Tuberculosis funds, moneys to go into: RCW 70.30.045.*  
*Witness fees of county officers as: RCW 42.16.030.*

**36.33.010 Current expense fund.** Every county shall maintain a current expense fund to which shall be credited all taxes levied for that purpose and all fees collected, fines assessed, and forfeitures adjudged in the county the proceeds of which have not been specifically allocated to any other purpose. [1963 c 4 § 36.33.010. Prior: 1945 c 85 § 1; Rem. Supp. 1945 § 5634-1.]

*Moneys paid from for*  
*disinfection of horticultural premises: Chapter 15.08 RCW.*  
*public health pooling fund: RCW 70.12.040.*  
*weed district taxes on county lands: RCW 17.04.180.*

*Moneys paid into from*  
*disinfection of horticultural premises tax: RCW 15.08.170.*  
*horticultural tax funds: RCW 15.08.260.*  
*motor vehicle fuel tax violation fines: RCW 82.36.420.*  
*motor vehicle use tax collection fees: RCW 82.12.045.*  
*registration of land titles fees: RCW 65.12.800.*  
*unclaimed property in hands of sheriff, sale of: RCW 63.40.030.*  
*use tax on motor vehicles, auditor's collection fees: RCW 82.12.045.*  
*vehicle licensing handling fees: RCW 46.01.140.*  
*violations bureau funds: RCW 3.30.090.*

**36.33.020 Cumulative reserve fund—Purposes—Election to allow other specified use.** Any board of county commissioners may establish by resolution a cumulative reserve fund in general terms for several different county purposes as well as for a very specific county purpose, including that of buying any specified supplies, material or equipment, or the construction, alteration or repair of any public building or work, or the making of any public improvement. The resolution shall designate the fund as "cumulative reserve fund for . . . . (naming the purpose or purposes for which the fund is to be accumulated and expended)." The moneys in said fund may be allowed to accumulate from year to year until the board of county commissioners of the county shall determine to expend the moneys in the fund for the purpose or purposes specified: PROVIDED, That any moneys in said fund shall never be expended for any other purpose or purposes than those specified, without an approving vote by a majority of the electors of the county at a general or special election to allow other specified uses to be made of said fund. [1963 c 4 § 36.33.020. Prior: 1961 c 172 § 1; 1945 c 51 § 1; Rem. Supp. 1945 § 5634-10.]

**36.33.030 Cumulative reserve fund—Accumulation of, current expense fund limits not to affect.** An item for said cumulative reserve fund may be included in the county's

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annual budget or estimate of amounts required to meet public expense for the ensuing year and a tax levy made within the limits and as authorized by law for said item; and said item and levy may be repeated from year to year until, in the judgment of the board of county commissioners of the county the amount required for the specified purpose or purposes has been raised or accumulated. The board of county commissioners may accept gifts or bequests for the cumulative reserve fund and may make transfers from the current expense fund to the cumulative reserve fund. Any moneys in said fund at the end of the fiscal year shall not lapse nor shall the same be a surplus available or which may be used for any other purpose or purposes than those specified, except as herein provided, nor shall moneys in said fund be considered when computing the limitations on cash balances set out in section 4, chapter 164, Laws of 1923 as last amended by section 1, chapter 145, Laws of 1943 and RCW 36.40.090. [1963 c 4 § 36.33.030. Prior: 1961 c 172 § 2; 1945 c 51 § 2; Rem. Supp. 1945 § 5634-11.]

**36.33.040 Cumulative reserve fund—Permissible uses of funds in.** No money in any cumulative reserve fund shall be used for any purpose other than that for which the fund was created except:

(1) If the purpose of the creation of a cumulative reserve fund has been accomplished by the completion of the proposed building or improvement, the balance remaining in the fund may be transferred to any other cumulative reserve fund or to the county current expense fund by order of the board.

(2) If the purpose of the creation of a cumulative reserve fund ceases to exist or is abandoned, the fund or any part thereof, may be transferred to any other cumulative reserve fund or to the county current expense fund by order of the board after a public hearing thereon pursuant to a notice by publication: PROVIDED, That if the amount to be transferred exceeds fifty thousand dollars, no transfer may be made until authorized by a majority of the voters of the county voting upon the question at an election. [1963 c 4 § 36.33.040. Prior: 1945 c 51 § 3; Rem. Supp. 1945 § 5634-12.]

**36.33.060 Salary fund—Reimbursement.** The county legislative authority of each county with a population of one hundred twenty-five thousand or more shall establish a salary fund to be used for paying the salaries and wages of all officials and employees. The county legislative authority of any other county may establish such a salary fund. Said salary fund shall be reimbursed from any county funds or other funds under the jurisdiction or control of the county treasurer or county auditor budgeted for salaries and wages. The deposits shall be made in the exact amount of the payroll or vouchers paid from the salary fund. [1991 c 363 § 64; 1973 1st ex.s. c 38 § 1; 1971 ex.s. c 214 § 1; 1963 c 4 § 36.33.060. Prior: 1961 c 273 § 1; prior: (i) 1935 c 94 § 1; 1933 ex.s. c 14 § 1; RRS § 4201-1. (ii) 1933 ex.s. c 14 § 2; RRS § 4201-2. (iii) 1933 ex.s. c 14 § 3; RRS § 4201-3.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.33.065 Claims fund—Reimbursement.** The county legislative authority of any county may establish by resolution a fund to be known as the claims fund, which shall be used for paying claims against the county. Such claims fund shall be reimbursed from any county funds or other funds under the jurisdiction or control of the county treasurer or county auditor budgeted for such expenditures. The deposits shall be made in the exact amount of the vouchers paid from the claims fund. [1991 c 363 § 65; 1973 1st ex.s. c 38 § 2; 1971 ex.s. c 214 § 2.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.33.070 Investment in warrants on tax refund fund.** Whenever the county treasurer deems it expedient and for the best interests of the county he may invest any moneys in the county current expense fund in outstanding warrants on the county tax refund fund in the following manner: When he has determined the amount of moneys in the county current expense fund available for investment, he shall call, in the order of their issuance, a sufficient number of warrants drawn on the county tax refund fund as nearly as possible equaling in amount but not exceeding the moneys to be invested, and upon presentation and surrender thereof he shall pay to the holders of such warrants the face amount thereof and the accrued interest thereon out of moneys in the county current expense fund. [1963 c 4 § 36.33.070. Prior: 1943 c 61 § 1; Rem. Supp. 1943 § 5545-10.]

**36.33.080 Investment in warrants on tax refund fund—Procedure upon purchase—Interest on.** Upon receipt of any such warrant on the tax refund fund the county treasurer shall enter the principal amount thereof, and accrued interest thereon, as a suspense credit upon his records, and shall hold the warrant until it with interest, if any, is paid in due course out of the county tax refund fund, and upon such payment, the amount thereof shall be restored to the county current expense fund. The refund warrants held by the county treasurer shall continue to draw interest until the payment thereof out of the county tax refund fund, which interest accruing subsequent to acquisition of the warrants by the county treasurer shall be paid into the county current expense fund. [1963 c 4 § 36.33.080. Prior: 1943 c 61 § 2; Rem. Supp. 1943 § 5545-11.]

**36.33.090 Investment in warrants on tax refund fund—Breaking of warrants authorized.** Whenever it appears to the county treasurer that the face amount plus accrued interest of the tax refund warrant next eligible for investment exceeds by one hundred dollars the amount of moneys in the county current expense fund available for investment, the county treasurer may notify the warrant holder who shall thereupon apply to the county auditor for the breaking of the warrant and the county auditor upon such application shall take up the original warrant and reissue, as of the date which the original warrant bears, two new refund warrants one of which shall be in an amount approximately equaling, with accrued interest, the amount of moneys in the county current expense fund determined by the county treasurer to be available for investment. The new warrants when issued shall be callable and payable in the same order with

respect to other outstanding tax refund warrants as the original warrant in lieu of which the new warrants were issued. [1963 c 4 § 36.33.090. Prior: 1943 c 61 § 3; Rem. Supp. 1943 § 5545-12.]

**36.33.100 Investment in warrants on tax refund fund—Purchased warrants as cash.** In making settlements of accounts between outgoing and incoming county treasurers, any county tax refund warrant in which money in the county current expense fund has been invested shall be deemed in every way the equivalent of cash and shall be receipted for by the incoming county treasurer as such. [1963 c 4 § 36.33.100. Prior: 1943 c 61 § 4; Rem. Supp. 1943 § 5545-13.]

**36.33.120 County lands assessment fund created—Levy for.** The boards of county commissioners may annually levy a tax upon all taxable property in the county, for the purpose of creating a fund to be known as "county lands assessment fund." [1963 c 4 § 36.33.120. Prior: 1929 c 193 § 1; RRS § 4027-1.]

**36.33.130 County lands assessment fund created—Purpose of fund.** The county lands assessment fund may be expended by the county commissioners to pay in full or in part, any assessment or installment of assessments of drainage improvement districts, diking improvement districts, or districts formed for the foregoing purposes, or assessments for road improvements, falling due against lands in the year when such lands are acquired by the county or while they are owned by the county, including lands acquired by the county for general purposes; also lands which have been acquired by the county by foreclosure of general taxes. Payment may be made of such assessments, or installments thereof, against such lands or classes of lands, and in such districts or classes of districts as the county commissioners deem advisable. No payment shall be made of any assessments or installments of assessments falling due prior to the year in which the lands were acquired by the county, nor shall any assessments be paid in advance of the time when they fall due. Assessments for maintenance and operation of dikes, drains, or other improvements of districts falling due upon such lands while owned by the county, may be paid without the payment of assessments or installments thereof for construction of the improvements, if the county commissioners elect so to do. [1963 c 4 § 36.33.130. Prior: 1929 c 193 § 2; RRS § 4027-2.]

**36.33.140 County lands assessment fund created—Amount of levy.** The amount of the levy in any year for the county lands assessment fund shall not exceed the estimated amount needed over and above all moneys on hand in the fund, to pay the aggregate amount of such assessments falling due against the lands in the ensuing year; and in no event shall the levy exceed twelve and one-half cents per thousand dollars of assessed value upon all taxable property in the county. [1973 1st ex.s. c 195 § 31; 1963 c 4 § 36.33.140. Prior: 1929 c 193 § 3; RRS § 4027-3.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**36.33.150 County lands assessment fund created—Surplus from tax sales to go into fund.** Into the county lands assessment fund shall also be paid any surplus moneys from the sale by the county, pursuant to foreclosure of real estate taxes, of any lands lying in any district formed for diking or drainage purposes or for assessment of road improvements, over and above the amount necessary to redeem the general taxes and other assessments against them, as required by law. Any surplus from any county levy for the fund, unexpended in any year, shall be carried forward in the fund to the next year. [1963 c 4 § 36.33.150. Prior: 1929 c 193 § 4; RRS § 4027-4.]

**36.33.160 County lands assessment fund created—List of lands to be furnished.** Upon request the county treasurer shall furnish to the county legislative authority a list of all lands owned by the county, together with the amounts levied as assessments and the district in or by which such assessments are levied, against each description of the lands, as it appears on the assessment roll of the district. On or before the first day of August of each year, upon request, the treasurer shall furnish to the county legislative authority a similar list of all land owned by the county and subject to any such assessments, together with the amounts of any installment of assessments falling due against any of such lands in the ensuing year and an estimate of any maintenance or other assessments to be made against same to fall due in the ensuing year. [1991 c 245 § 9; 1963 c 4 § 36.33.160. Prior: 1929 c 193 § 5; RRS § 4027-5.]

**36.33.170 County lands assessment fund created—Rentals may be applied against assessments.** Moneys received as rentals of irrigated lands may be applied to the payment of current irrigation charges or assessments against the land. [1963 c 4 § 36.33.170. Prior: 1929 c 193 § 6; RRS § 4027-6.]

**36.33.190 County lands assessment fund created—Disposal of bonds.** The county treasurer shall cash any United States bonds owned by the county as they mature or, with the approval of the state finance committee and of the county finance committee, he may at any time sell them. In either event he must return the proceeds into the treasury. [1963 c 4 § 36.33.190. Prior: 1937 c 209 § 2; RRS § 5646-12.]

**36.33.200 Election reserve fund.** The board of county commissioners may establish an election reserve fund for the payment of expenses of conducting regular and special state and county elections and compensation of election and registration officers and annually budget and levy a tax therefor. It may also make transfers into the election reserve fund from the current expense fund and receive funds for such purposes from cities, school districts and other subdivisions. [1963 c 4 § 36.33.200. Prior: 1955 c 48 § 1.]

**36.33.210 Election reserve fund—Accumulation of fund—Transfers.** The limits placed upon the amount to be accumulated in the current expense fund shall not affect the election reserve fund nor shall the existence of the election

reserve fund affect the amount which may be accumulated in the current expense fund, nor shall any unexpended balance in the election reserve fund at the end of any budget year revert to the current expense fund but shall be carried forward in the election reserve fund to be used for the purposes for which the fund was created: PROVIDED, That at a regular session, the county commissioners may transfer any surplus in said fund to the current expense fund, if they deem it expedient to do so. [1963 c 4 § 36.33.210. Prior: 1955 c 48 § 2.]

**36.33.220 County road property tax revenues, expenditure for services authorized.** The legislative authority of any county may budget, in accordance with the provisions of chapter 36.40 RCW, and expend any portion of the county road property tax revenues for any service to be provided in the unincorporated area of the county notwithstanding any other provision of law, including chapter 36.82 RCW and RCW 84.52.050 and 84.52.043. County road property tax revenues that are diverted under chapter 39.89 RCW may be expended as provided under chapter 39.89 RCW. [2001 c 212 § 25; 1973 1st ex.s. c 195 § 142; 1973 1st ex.s. c 195 § 32; 1971 ex.s. c 25 § 1.]

**Severability—2001 c 212:** See RCW 39.89.902.

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**Severability—1971 ex.s. c 25:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 25 § 4.]

## Chapter 36.33A RCW

### EQUIPMENT RENTAL AND REVOLVING FUND

#### Sections

- 36.33A.010 Equipment rental and revolving fund—Establishment—Purposes.
- 36.33A.020 Use of fund by other offices, departments or agencies.
- 36.33A.030 Administration of fund.
- 36.33A.040 Rates for equipment rental.
- 36.33A.050 Deposits in fund.
- 36.33A.060 Accumulated moneys.

**36.33A.010 Equipment rental and revolving fund—Establishment—Purposes.** Every county shall establish, by resolution, an "equipment rental and revolving fund", hereinafter referred to as "the fund", in the county treasury to be used as a revolving fund for the purchase, maintenance, and repair of county road department equipment; for the purchase of equipment, materials, supplies, and services required in the administration and operation of the fund; and for the purchase or manufacture of materials and supplies needed by the county road department. [1977 c 67 § 1.]

**36.33A.020 Use of fund by other offices, departments or agencies.** The legislative body of any county may authorize, by resolution, the use of the fund by any other office or department of the county government or any other governmental agency for similar purposes. [1977 c 67 § 2.]

**36.33A.030 Administration of fund.** With the approval of the county legislative body, the county engineer, or other appointee of the county legislative body, shall

administer the fund and shall be responsible for establishing the terms and charges for the sale of any material or supplies which have been purchased, maintained, or manufactured with moneys from the fund. The terms and charges shall be set to cover all costs of purchasing, storing, and distributing the material or supplies, and may be amended as considered necessary. [1977 c 67 § 3.]

**36.33A.040 Rates for equipment rental.** Rates for the rental of equipment owned by the fund shall be set to cover all costs of maintenance and repair, material and supplies consumed in operating or maintaining the equipment, and the future replacement thereof. The rates shall be determined by the county engineer and shall be subject to annual review by the legislative body. [1977 c 67 § 4.]

**36.33A.050 Deposits in fund.** The legislative authority of the county may, from time to time, place moneys in the fund from any source lawfully available to it and may transfer equipment, materials, and supplies of any office or department to the equipment rental and revolving fund with or without charge consistent with RCW 43.09.210. Charges for the rental of equipment and for providing materials, supplies, and services to any county office or department shall be paid monthly into the fund. Proceeds received from other governmental agencies for similar charges and from the sale of equipment or other personal property owned by the equipment rental and revolving fund, which is no longer of any value to or needed by the county, shall be placed in the fund as received. [1977 c 67 § 5.]

**36.33A.060 Accumulated moneys.** Moneys accumulated in the equipment rental and revolving fund shall be retained therein from year to year; shall be used only for the purposes stated in this chapter; and shall be subject to the budgetary regulations in chapter 36.40 RCW. [1977 c 67 § 6.]

## Chapter 36.34 RCW COUNTY PROPERTY

### Sections

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36.34.320	Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when.
36.34.330	Exchange for privately owned real property of equal value.
36.34.340	May acquire property for park, recreational, viewpoint, greenbelt, conservation, historic, scenic, or view purposes.

*Acquisition and operation of public cemeteries and funeral facilities: Chapter 68.52 RCW.*

*Eminent domain by state of county property: Chapter 8.04 RCW.*

*Federal areas on*

*generally: Chapters 37.08, 37.16 RCW.*

*Indians and Indian lands, jurisdiction: Chapter 37.12 RCW.*

*King county*

*Auburn general depot: RCW 37.08.260.*

*Lake Washington ship canal: RCW 37.08.240, 37.08.250.*

*military installations (permanent United States), county aid in acquisition of land for: Chapter 37.16 RCW.*

*Flood control by counties jointly, lease or sale of property: RCW 86.13.100.*

*Industrial development districts, transfer of county lands to: Chapter 53.25 RCW.*

*Local improvement assessments against county lands: RCW 35.44.140, 35.49.070.*

*Mineral and petroleum leases on county lands: Chapter 78.16 RCW.*

*Property subject to diking, drainage or sewerage improvement assessments, resale or lease by county: RCW 85.08.500.*

*Rights of way over by diking districts: RCW 85.05.080.*

*Tax liens, property, county acquisitions as subject to: RCW 84.60.050.*

*Television reception improvement district dissolution, disposition of property: RCW 36.95.200.*

*Underground storage of natural gas, lease of county lands for: RCW 80.40.070.*

**36.34.005 Establishment of comprehensive procedures for management of county property authorized—Exemption from chapter.** Pursuant to public notice and hearing, any county may establish comprehensive procedures for the management of county property consistent with the public interest and counties establishing such procedures shall be exempt from the provisions of chapter 36.34 RCW: PROVIDED, That all counties shall retain all powers now or hereafter granted by chapter 36.34 RCW. [1973 1st ex.s. c 196 § 1.]

**36.34.010 Authority to sell—May sell timber, minerals separately—Mineral reservation.** Whenever it appears to the board of county commissioners that it is for the best interests of the county and the taxing districts and the people

thereof that any part or parcel, or portion of such part or parcel, of property, whether real, personal, or mixed, belonging to the county, including tax title land, should be sold, the board shall sell and convey such property, under the limitations and restrictions and in the manner hereinafter provided.

In making such sales the board of county commissioners may sell any timber, mineral, or other resources on any land owned by the county separate and apart from the land in the same manner and upon the same terms and conditions as provided in this chapter for the sale of real property.

The board of county commissioners may reserve mineral rights in such land and, if such reservation is made, any conveyance of the land shall contain the following reservation:

"The party of the first part hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself, its successors, and assigns, forever, all oils, gases, coals, ores, minerals, gravel, timber, and fossils of every name, kind, or description, and which may be in or upon said lands above described; or any part thereof, and the right to explore the same for such oils, gases, coals, ores, minerals, gravel, timber and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its successors, and assigns, forever, the right to enter by itself, its agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, gravel, timber, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its successors, and assigns, forever, the right by it or its agents, servants, and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads and railroads, sink such shafts, remove such oil, and to remain on said lands or any part thereof, for the business of mining and to occupy as much of said lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself, its successors, and assigns, as aforesaid, generally, all rights and powers in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved."

No rights shall be exercised under the foregoing reservation until provision has been made to pay to the owner of the land upon which the rights reserved are sought to be exercised, full payment for all damages sustained by reason of entering upon the land: PROVIDED, That if the owner for any cause refuses or neglects to settle the damages, the county, its successors, or assigns, or any applicant for a lease or contract from the county for the purpose of prospecting for or mining valuable minerals, or operation contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situated, as may be necessary to determine the damages which the owner of the land may suffer. Any of the reserved minerals or other resources not exceeding two hundred dollars in value may be sold, when the board deems it advisable, either with or without publication of notice of sale, and in such manner as the board may determine will be most beneficial to the

county. [1963 c 4 § 36.34.010. Prior: 1945 c 172 § 3; 1943 c 19 § 1; 1891 c 76 § 1; Rem. Supp. 1945 § 4007.]

### **36.34.020 Publication of notice of intention to sell.**

Whenever the county legislative authority desires to dispose of any county property except:

- (1) When selling to a governmental agency;
- (2) When personal property to be disposed of is to be traded in upon the purchase of a like article;
- (3) When the value of the property to be sold is less than two thousand five hundred dollars;
- (4) When the county legislative authority by a resolution setting forth the facts has declared an emergency to exist;

it shall publish notice of its intention so to do once each week during two successive weeks in a legal newspaper of general circulation in the county. [1991 c 363 § 66; 1985 c 469 § 45; 1967 ex.s. c 144 § 1; 1963 c 4 § 36.34.020. Prior: 1945 c 254 § 1; Rem. Supp. 1945 § 4014-1; prior: 1891 c 76 § 2, part; RRS § 4008, part.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

### **36.34.030 Requirements of notice—Posting.**

The notice of hearing on the proposal to dispose of any county property must particularly describe the property or portion thereof proposed to be sold and designate the place where and the day and hour when a hearing will be held thereon and be posted in a conspicuous place in the courthouse. Both posting and the date of first publication must be at least ten days before the day set for the hearing. [1963 c 4 § 36.34.030. Prior: 1945 c 254 § 2; Rem. Supp. 1945 § 4014-2; prior: 1891 c 76 § 2, part; RRS § 4008, part.]

### **36.34.040 Public hearing.**

The board shall hold a public hearing upon a proposal to dispose of county property at the day and hour fixed in the notice at its usual place of business and admit evidence offered for and against the propriety and advisability of the proposed action. Any taxpayer in person or by counsel may submit evidence and submit an argument, but the board may limit the number to three on a side. [1963 c 4 § 36.34.040. Prior: 1945 c 254 § 3; Rem. Supp. 1945 § 4014-3; prior: 1891 c 76 § 2, part; RRS § 4008, part.]

### **36.34.050 Findings and determination—Minimum price.**

Within three days after the hearing upon a proposal to dispose of county property, the county legislative authority shall make its findings and determination thereon and cause them to be spread upon its minutes and made a matter of record. The county legislative authority may set a minimum sale price on property that is proposed for sale. [1991 c 363 § 67; 1963 c 4 § 36.34.050. Prior: 1945 c 254 § 4; Rem. Supp. 1945 § 4014-4; prior: 1891 c 76 § 3; RRS § 4009.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

### **36.34.060 Sales of personalty.**

Sales of personal property must be for cash except:

- (1) When property is transferred to a governmental agency;

(2) When the county property is to be traded in on the purchase of a like article, in which case the proposed cash allowance for the trade-in must be part of the proposition to be submitted by the seller in the transaction. [1963 c 4 § 36.34.060. Prior: 1945 c 254 § 5; Rem. Supp. 1945 § 4014-5; prior: 1915 c 8 § 1, part; 1891 c 76 § 5, part; RRS § 4011, part.]

**36.34.070 Sales and purchases of equipment—Trade-ins.** The board may advertise and sell used highway or other equipment belonging to the county or to any taxing division thereof subject to its jurisdiction in the manner prescribed for the sale of county property, or it may trade it in on the purchase of new equipment. If the board elects to trade in the used equipment it shall include in its call for bids on the new equipment a notice that the county has for sale or trade-in used equipment of a specified type and description which will be sold or traded in on the same day and hour that the bids on the new equipment are opened. Any bidder on the new equipment may include in his offer to sell, an offer to accept the used equipment as a part payment of the new equipment purchase price, setting forth the amount of such allowance.

In determining the lowest and best bid on the new equipment the board shall consider the net cost to the county of such new equipment after trade-in allowances have been deducted. The board may accept the new equipment bid of any bidder without trading in the used equipment but may not require any such bidder to purchase the used equipment without awarding the bidder the new equipment contract. Nothing in this section shall bar anyone from making an offer for the purchase of the used equipment independent of a bid on the new equipment and the board shall consider such offers in relation to the trade-in allowances offered to determine the net best sale and purchase combination for the county. [1963 c 4 § 36.34.070. Prior: 1945 c 254 § 6; Rem. Supp. 1945 § 4014-6.]

**36.34.080 Sales to be at public auction.** All sales of county property ordered after a public hearing upon the proposal to dispose thereof must be supervised by the county treasurer and may be sold at a county or other government agency's public auction, at a privately operated consignment auction that is open to the public, or by sealed bid to the highest and best bidder meeting or exceeding the minimum sale price as directed by the county legislative authority. [1993 c 8 § 1. Prior: 1991 c 363 § 68; 1991 c 245 § 10; 1965 ex.s. c 23 § 1; 1963 c 4 § 36.34.080; prior: 1945 c 254 § 7; Rem. Supp. 1945 § 4014-7; prior: 1891 c 76 § 4, part; RRS § 4010, part.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

*Public auction sales, where held:* RCW 36.16.140.

**36.34.090 Notice of sale.** Whenever county property is to be sold at public auction, consignment auction, or sealed bid, the county treasurer or the county treasurer's designee shall publish notice thereof once during each of two successive calendar weeks in a newspaper of general circulation in the county. Notice thereof must also be posted in a conspicu-

ous place in the courthouse. The posting and date of first publication must be at least ten days before the day fixed for the sale. [1997 c 393 § 5; 1991 c 363 § 69; 1985 c 469 § 46; 1963 c 4 § 36.34.090. Prior: 1945 c 254 § 8; Rem. Supp. 1945 § 4014-8; prior: 1891 c 76 § 4, part; RRS § 4010, part.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.34.100 Notice of sale—Requirements of.** The notice of sale of county property by auction sale must particularly describe the property to be sold and designate the day and hour and the location of the auction sale. The notice of sale of county property by sealed bid must describe the property to be sold, designate the date and time after which the bids are not received, the location to turn in the sealed bid, and the date, time, and location of the public meeting of the county legislative authority when the bids are opened and read in public. [1991 c 363 § 70; 1963 c 4 § 36.34.100. Prior: 1945 c 254 § 9; Rem. Supp. 1945 § 4014-9; prior: 1891 c 76 § 4, part; RRS § 4010, part.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.34.110 Disposition of proceeds.** The proceeds of sales of county property except in cases of trade-in allowances upon purchases of like property must be paid to the county treasurer who must receipt therefor and execute the proper documents transferring title attested to by the county auditor. In no case shall the title be transferred until the purchase price has been fully paid. [1963 c 4 § 36.34.110. Prior: 1945 c 254 § 10; Rem. Supp. 1945 § 4014-10; prior: (i) 1915 c 8 § 1, part; 1891 c 76 § 5, part; RRS § 4011, part. (ii) 1891 c 76 § 6, part; RRS § 4013, part.]

**36.34.120 Used equipment sales.** Proceeds from the sale of used equipment must be credited to the fund from which the original purchase price was paid. [1963 c 4 § 36.34.120. Prior: 1945 c 254 § 11; Rem. Supp. 1945 § 4014-11.]

**36.34.130 Intergovernmental sales.** The board of county commissioners may dispose of county property to another governmental agency and may acquire property for the county from another governmental agency by means of private negotiation upon such terms as may be agreed upon and for such consideration as may be deemed by the board of county commissioners to be adequate. [1963 c 4 § 36.34.130. Prior: 1945 c 254 § 12; Rem. Supp. 1945 § 4014-12.]

**36.34.135 Leases of county property—Affordable housing.** If a county owns property that is located anywhere within the county, including within the limits of a city or town, and that is suitable for affordable housing, the legislative authority of the county may, by negotiation, lease the property for affordable housing for a term not to exceed seventy-five years to any public housing authority or nonprofit organization that has demonstrated its ability to construct or operate housing for very low-income, low-income, or moderate-income households as defined in RCW 43.63A.510 and special needs populations. Leases for housing for very low-

income, low-income, or moderate-income households and special needs populations shall not be subject to any requirement of periodic rental adjustments, as provided in RCW 36.34.180, but shall provide for such fixed annual rents as appear reasonable considering the public, social, and health benefits to be derived by providing an adequate supply of safe and sanitary housing for very low-income, low-income, or moderate-income households and special needs populations. [1993 c 461 § 6; 1990 c 253 § 7.]

**Finding—1993 c 461:** See note following RCW 43.63A.510.

**Legislative finding and purpose—1990 c 253:** See note following RCW 43.70.340.

**36.34.137 Affordable housing—Inventory of suitable property.** (1) Every county shall identify and catalog real property owned by the county that is no longer required for its purposes and is suitable for the development of affordable housing for very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510. The inventory shall include the location, approximate size, and current zoning classification of the property. Every county shall provide a copy of the inventory to the \*department of community development by November 1, 1993, with inventory revisions each November 1 thereafter.

(2) By November 1 of each year, beginning in 1994, every county shall purge the inventory of real property of sites that are no longer available for the development of affordable housing. The inventory revision shall include an updated listing of real property that has become available since the last update. As used in this section, "real property" means buildings, land, or buildings and land. [1993 c 461 § 5.]

**\*Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994.

**Finding—1993 c 461:** See note following RCW 43.63A.510.

**36.34.140 Leases of county property—Airports.** The board of county commissioners, if it appears that it is for the best interests of the county and the people thereof, that any county real property and its appurtenances should be leased for a year or a term of years, may lease such property under the limitations and restrictions and in the manner provided in this chapter, and, if it appears that it is for the best interests of the county and the people thereof, that any county real property and its appurtenances which is now being, or is to be devoted to airport or aeronautical purposes or purposes incidental thereto, should be leased for a year or a term of years, said board of county commissioners may lease such property under the limitations and restrictions and in the manner provided in this chapter, and said board of county commissioners shall have power to lease such county real property and its appurtenances whether such property was heretofore or hereafter acquired or whether heretofore or hereafter acquired by tax deed under tax foreclosure proceedings for nonpayment of taxes or whether held or acquired in any other manner. Any lease executed under the authority of the provisions hereof creates a vested interest and a contract binding upon the county and the lessee. [1963 c 4 § 36.34.140. Prior: 1951

2nd ex.s. c 14 § 1; prior: (i) 1901 c 87 § 1; RRS § 4019. (ii) 1901 c 87 § 6, part; RRS § 4024, part.]

**36.34.145 Leases of county property to nonprofit organizations for agricultural fairs.** The legislative authority of any county owning property in or outside the limits of any city or town, or anywhere within the county, which is suitable for agricultural fair purposes may by negotiation lease such property for such purposes for a term not to exceed seventy-five years to any nonprofit organization that has demonstrated its qualification to conduct agricultural fairs. Such agricultural fair leases shall not be subject to any requirement of periodic rental adjustments, as provided in RCW 36.34.180, but shall provide for such fixed annual rental as shall appear reasonable, considering the benefit to be derived by the county in the promotion of the fair and in the improvement of the property. The lessee may utilize or rent out such property at times other than during the fair season for nonfair purposes in order to obtain income for fair purposes, and during the fair season may sublease portions of the property for purposes and activities associated with such fair. No sublease shall be valid unless the same shall be approved in writing by the county legislative authority: PROVIDED, That failure of such lessee, except by act of God, war or other emergency beyond its control, to conduct an annual agricultural fair or exhibition, shall cause said lease to be subject to cancellation by the county legislative authority. A county legislative authority entering into an agreement with a nonprofit association to lease property for agricultural fair purposes shall, when requested to do so, file a copy of the lease agreement with the department of agriculture or the state fair commission in order to assure compliance with the provisions of RCW 15.76.165. [1986 c 171 § 2; 1963 c 4 § 36.34.145. Prior: 1957 c 134 § 1.]

**36.34.150 Application to lease—Deposit.** Any person desiring to lease county lands shall make application in writing to the board of county commissioners. Each application shall be accompanied by a deposit of not less than ten dollars or such other sum as the county commissioners may require, not to exceed twenty-five dollars. The deposit shall be in the form of a certified check or certificate of deposit on some bank in the county, or may be paid in cash. In case the lands applied for are leased at the time they are offered, the deposit shall be returned to the applicant, but if the party making application fails or refuses to comply with the terms of his application and to execute the lease, the deposit shall be forfeited to the county, and the board of county commissioners shall pay the deposit over to the county treasurer, who shall place it to the credit of the current expense fund. [1963 c 4 § 36.34.150. Prior: 1901 c 87 § 2; RRS § 4020.]

**36.34.160 Notice of intention to lease.** When, in the judgment of the board of county commissioners, it is found desirable to lease the land applied for, it shall first give notice of its intention to make such lease by publishing a notice in a legal newspaper at least once a week for the term of three weeks, and shall also post a notice of such intention in a conspicuous place in the courthouse for the same length of time. The notice so published and posted shall designate and

describe the property which is proposed to be leased, together with the improvements thereon and appurtenances thereto, and shall contain a notice that the board of county commissioners will meet at the county courthouse on a day and at an hour designated in the notice, for the purpose of leasing the property which day and hour shall be at a time not more than a week after the expiration of the time required for the publication of the notice. [1963 c 4 § 36.34.160. Prior: 1901 c 87 § 3; RRS § 4021.]

**36.34.170 Objections to leasing.** Any person may appear at the meeting of the county commissioners or any adjourned meeting thereof, and make objection to the leasing of the property, which objection shall be stated in writing. In passing upon objections the board of county commissioners shall, in writing, briefly give its reasons for accepting or rejecting the same, and such objections, and the reasons for accepting or refusing the application, shall be published by the board in the next subsequent weekly issue of the newspaper in which the notice of hearing was published. [1963 c 4 § 36.34.170. Prior: 1901 c 87 § 5; RRS § 4023.]

**36.34.180 Lease terms.** At the day and hour designated in the notice or at any subsequent time to which the meeting may be adjourned by the board of county commissioners, but not more than thirty days after the day and hour designated for the meeting in the published notice, the board may lease the property in such notice described for a term of years and upon such terms and conditions as to the board may seem just and right in the premises. No lease shall be for a longer term in any one instance than ten years, and no renewal of a lease once executed and delivered shall be had, except by a re-leasing and re-letting of the property according to the terms and conditions of this chapter: PROVIDED, That if a county owns property within or outside the corporate limits of any city or town or anywhere in the county suitable for municipal purposes, or for commercial buildings, or owns property suitable for manufacturing or industrial purposes or sites, or for military purposes, or for temporary or emergency housing, or for any requirement incidental to manufacturing, commercial, agricultural, housing, military, or governmental purposes, the board of county commissioners may lease it for such purposes for any period not to exceed thirty-five years: PROVIDED FURTHER, Where the property involved is or is to be devoted to airport purposes and construction work or the installation of new facilities is contemplated, the board may lease said property for such period as may equal the estimated useful life of such work or facilities but not to exceed seventy-five years.

If property is leased for municipal purposes or for commercial buildings or manufacturing or industrial purposes the lessee shall prior to the execution of the lease file with the board of county commissioners general plans and specifications of the building or buildings to be erected thereon for such purposes. All leases when executed shall provide that they shall be canceled by failure of the lessee to construct such building or buildings or other improvements for such purposes within three years from date of the lease, and in case of failure so to do the lease and all improvements thereon including the rentals paid, shall thereby be forfeited to the

county unless otherwise stipulated. No change or modification of the plans shall be made unless first approved by the board of county commissioners. If at any time during the life of the lease the lessee fails to use the property for the purposes leased, without first obtaining permission in writing from the board of county commissioners so to do, the lease shall be forfeited.

Any lease made for a longer period than ten years shall contain provisions requiring the lessee to permit the rentals for every five year period thereafter, or part thereof, at the commencement of such period, to be readjusted and fixed by the board of county commissioners. In the event that the lessee and the board cannot agree upon the rentals for said five year period, the lessee shall submit to have the disputed rentals for the subsequent period adjusted by arbitration. The lessee shall pick one arbitrator and the board one, and the two so chosen shall select a third. No board of arbitrators shall reduce the rentals below the sum fixed or agreed upon for the last preceding period. All buildings, factories, or other improvements made upon property leased shall belong to and become property of such county, unless otherwise stipulated, at the expiration of the lease.

No lease shall be assigned without the assignment being first authorized by resolution of the board of county commissioners and the consent in writing of at least two members of the board endorsed on the lease. All leases when drawn shall contain this provision.

This section shall not be construed to limit the power of the board of county commissioners to sell, lease, or by gift convey any property of the county to the United States or any of its governmental agencies to be used for federal government purposes. [1963 c 4 § 36.34.180. Prior: 1951 c 41 § 1; 1941 c 110 § 2; 1913 c 162 § 1; 1903 c 57 § 1; 1901 c 87 § 4; RRS § 4022.]

**36.34.190 Lease to highest responsible bidder.** No lease shall be made by the county except to the highest responsible bidder at the time of the hearing set forth in the notice of intention to lease. [1963 c 4 § 36.34.190. Prior: 1901 c 87 § 6, part; RRS § 4024, part.]

**36.34.192 Application of RCW 36.34.150 through 36.34.190 to certain service provider agreements under chapter 70.150 RCW.** RCW 36.34.150 through 36.34.190 shall not apply to agreements entered into pursuant to chapter 70.150 RCW provided there is compliance with the procurement procedure under RCW 70.150.040. [1986 c 244 § 12.]

**Severability—1986 c 244:** See RCW 70.150.905.

**36.34.200 Execution of lease agreement.** Upon the decision of the board of county commissioners to lease the lands applied for, a lease shall be executed in duplicate to the lessee by the chairman of the board and the county auditor, attested by his seal of office, which lease shall also be signed by the lessee. The lease shall refer to the order of the board directing the lease, with a description of the lands conveyed, the periods of payment, and the amounts to be paid for each period. [1963 c 4 § 36.34.200. Prior: 1901 c 87 § 7; RRS § 4025.]

**36.34.205 Lease of building space—Counties with a population of one million or more.** In accordance with RCW 35.42.010 through 35.42.220, a county with a population of one million or more may lease space and provide for the leasing of such space through leases with an option to purchase and the acquisition of buildings erected upon land owned by the county upon the expiration of lease of such land. For the purposes of this section, "building," as defined in RCW 35.42.020 shall be construed to include any building or buildings used as part of, or in connection with, the operation of the county. The authority conferred by this section is in addition to and not in lieu of any other provision authorizing counties to lease property. [1998 c 278 § 10.]

**36.34.210 Forest lands may be conveyed to United States.** The board of county commissioners of any county which acquires any lands through foreclosure of tax liens or otherwise, which by reason of their location, topography, or geological formation are chiefly valuable for the purpose of developing and growing timber, and which are situated within the boundaries of any national forest, may, upon application by the proper forest service official of the United States government, convey such lands to the United States government for national forest purposes under the national forest land exchange regulations, for such compensation as may be deemed equitable. [1963 c 4 § 36.34.210. Prior: 1931 c 69 § 1; RRS § 4015-1.]

**36.34.220 Lease or conveyance to United States for flood control, navigation, and allied purposes.** If the board of county commissioners of any county adjudges that it is desirable and for the general welfare and benefit of the people of the county and for the interest of the county to lease or convey property, real or personal, belonging to the county, however acquired, whether by tax foreclosure or in any other manner, to the United States for the purpose of flood control, navigation, power development, or for use in connection with federal projects within the scope of the federal reclamation act of June 17, 1902, and the act of congress of August 30, 1935, entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," and federal acts amendatory thereof and supplemental thereto, for the reclamation and irrigation of arid lands, the board, by majority vote, may lease or convey such property to the United States for flood control, navigation, and power development purposes, or for use in connection with federal projects for the reclamation and irrigation of arid lands. This property may be conveyed or leased by deed or other instrument of conveyance or lease without notice and upon such consideration, if any, as shall be determined by the board and the deed or lease may be signed by the county treasurer when authorized to do so by resolution of the board. Any deed issued heretofore by any county to the United States under authority of section 1, chapter 46, Laws of 1937 and the amendments thereto, is ratified and approved and declared to be valid. [1963 c 4 § 36.34.220. Prior: 1945 c 94 § 1; 1941 c 142 § 1; 1937 c 46 § 1; Rem. Supp. 1945 § 4015-6.]

**36.34.230 Lease or conveyance to United States for flood control, navigation, and allied purposes—State con-**

**sents to conveyance.** Pursuant to the Constitution and laws of the United States and the Constitution of this state, consent of the legislature is given to such conveyance by a county to the United States for such purposes. [1963 c 4 § 36.34.230. Prior: 1937 c 46 § 2; RRS § 4015-7.]

**36.34.240 Lease or conveyance to United States for flood control, navigation, and allied purposes—Cession of jurisdiction.** Pursuant to the Constitution and laws of the United States and the Constitution of this state, consent of the legislature is given to the exercise by the congress of the United States of exclusive legislation in all cases whatsoever on such tract or parcels of land so conveyed to it: PROVIDED, That all civil process issued from the courts of the state and such criminal process as may issue under the authority of the state against any person charged with crime in cases arising outside of said tract may be served and executed thereon in the same manner as if such property were retained by the county. [1963 c 4 § 36.34.240. Prior: 1937 c 46 § 3; RRS § 4015-8.]

**36.34.250 Lease or conveyance to the state or to United States for military, housing, and other purposes.** The board of county commissioners of any county by a majority vote are hereby authorized to directly lease, sell, or convey by gift, all or any portion of real estate, or any interest therein owned by the county, however acquired, by tax foreclosure or in any other manner, to the United States for the use and benefit of any branch of the army, navy, marine corps or air forces of the United States, or for enlarging or improving any military base thereof, or for any governmental housing project, or for the purpose of constructing and operating any federal power project, or to the state of Washington, without requiring competitive bids or notice to the public and at such price and terms as the board may deem for the best interests of the county. The property may be conveyed to the United States or to the state of Washington by deed or other instrument of conveyance and shall not require any consideration, if donated, other than the benefit which may be derived by the county on account of the use thereof and development of such property by the United States government or the state. [1963 c 4 § 36.34.250. Prior: 1941 c 227 § 1; Rem. Supp. 1941 § 4026-1a.]

**36.34.260 Lease or conveyance to the state or to United States for military, housing, and other purposes—Procedure.** In any county where the federal government owns and maintains property under the jurisdiction of the navy department or war department, or any other federal department, the board of county commissioners by majority vote may sell, lease or transfer to the United States government any real or personal property owned by said county, however acquired, for the use and benefit of any branch of the army, navy, marine corps or air forces thereof or for enlarging or improving any military base thereof, or for any other governmental housing project, or to the state of Washington, without requiring competitive bids or notice to the public and at such price and terms as the board may deem for the best interests of the county. This property may be conveyed to the government of the United States by bill of sale or other

instrument of conveyance and need not require consideration other than the benefit which may be derived by the county on account of the use thereof and development of such property by the United States government. The state of Washington may buy and/or sell such property, or the state of Washington may buy and/or sell such property for the purposes herein stated; or mutually interchange or trade such property or purchase one from the other. [1963 c 4 § 36.34.260. Prior: 1941 c 227 § 2; Rem. Supp. 1941 § 4026-1b.]

**36.34.270 Lease or conveyance to the state or to United States for military, housing, and other purposes—Execution of instrument of transfer.** The resolution of the board of county commissioners to grant an option to purchase, contract to sell, lease, sell and convey, or donate, as provided, shall be entered by said board upon its journal, and any option to purchase, contract to sell, lease, sale and conveyance, or donation executed pursuant thereto, shall be signed on behalf of the county by the board of county commissioners, or a majority thereof, and shall be acknowledged in the manner prescribed by law. [1963 c 4 § 36.34.270. Prior: 1941 c 227 § 3; Rem. Supp. 1941 § 4026-1c.]

**36.34.280 Conveyance to municipality.** Whenever any county holds title to lands, for county purposes, acquired by grant, patent, or other conveyance from the United States executed under and pursuant to an act of congress, and the board of county commissioners of such county by resolution finds and determines that any portion thereof is not required for county purposes and that it would be for the best interest of the county to have such portion of the lands devoted to use by a municipality lying within the county, the board of county commissioners may, with the consent of the congress of the United States, by a proper instrument of conveyance executed by the board on behalf of the county, convey such lands to the municipality for municipal purposes, either with or without consideration, and shall not be required to advertise or offer such lands for sale or lease in the manner provided by law for the sale or lease of county property. [1963 c 4 § 36.34.280. Prior: 1917 c 69 § 1; RRS § 4015.]

**36.34.290 Dedication of county land for streets and alleys.** The boards of county commissioners of the several counties may dedicate any county land to public use for public streets and alleys in any city or town. [1963 c 4 § 36.34.290. Prior: 1903 c 89 § 1; RRS § 4026.]

**36.34.300 Dedication of county land for streets and alleys—Execution of dedication—Effective date.** Whenever the board of county commissioners of any county deems it for the best interests of the public that any county land lying in any city or town should be dedicated to the public use for streets or alleys, it shall make and enter an order upon its records, designating the land so dedicated, and shall cause a certified copy of the order to be recorded in the auditor's office of the county in which the land is situated, and from and after entry of such order of dedication and the recording thereof as herein provided, such lands shall be thereby dedicated to the public use. [1963 c 4 § 36.34.300. Prior: 1903 c 89 § 2; RRS § 4027.]

**36.34.310 Long term leases to United States.** Any county in the state may lease any property owned by it to the United States of America or to any agency thereof for a term not exceeding ninety-nine years upon such conditions as may be contained in a written agreement therefor executed on behalf of the county by its board of county commissioners, and by any person on behalf of the United States of America or any agency thereof who has been thereunto authorized: PROVIDED, That any lease made for a longer period than ten years hereunder shall contain provisions requiring the lessee to permit the rentals for every five-year period thereafter, or part thereof, at the commencement of such period, to be readjusted upward and fixed by the board of county commissioners. In the event that the lessee and the board of county commissioners cannot agree upon the rentals for the five-year period, the lessee shall submit to have the disputed rentals for such subsequent period adjusted by arbitration. The lessee shall pick one arbitrator and the board of county commissioners one, and the two so chosen shall select a third. No board of arbitrators shall reduce the rentals below the sum fixed or agreed upon for the last preceding period. All buildings, factories or other improvements made upon property leased under this proviso shall belong to and become property of the county, unless otherwise stipulated, at the expiration of the lease. [1963 c 4 § 36.34.310. Prior: 1949 c 85 § 1; Rem. Supp. 1949 § 4019-1.]

**36.34.320 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when.** See RCW 39.30.010.

**36.34.330 Exchange for privately owned real property of equal value.** The board of county commissioners of any county shall have authority to exchange county real property for privately owned real property of equal value whenever it is determined by a decree of the superior court in the county in which the real property is located, after publication of notice of hearing is given as fixed and directed by such court, that:

- (1) The county real property proposed to be exchanged is not necessary to the future foreseeable needs of such county; and
- (2) The real property to be acquired by such exchange is necessary for the future foreseeable needs of such county; and
- (3) The value of the county real property to be exchanged is not more than the value of the real property to be acquired by such exchange. [1965 ex.s. c 21 § 1.]

**36.34.340 May acquire property for park, recreational, viewpoint, greenbelt, conservation, historic, scenic, or view purposes.** Any county or city may acquire by purchase, gift, devise, bequest, grant or exchange, title to or any interests or rights in real property to be provided or preserved for (a) park or recreational purposes, viewpoint or greenbelt purposes, (b) the conservation of land or other natural resources, or (c) historic, scenic, or view purposes. [1965 ex.s. c 76 § 4.]

*Acquisition of interests in land for conservation, protection, preservation, or open space purposes by counties: RCW 64.04.130.*

*Historic preservation—Authority of county to acquire property: RCW 36.32.435.*

*Parks, county commissioners may designate name of: RCW 36.32.430.*

## Chapter 36.35 RCW TAX TITLE LANDS

### Sections

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**36.35.010 Purpose—Powers of county legislative authority as to tax title lands.** The purpose of this chapter is to increase the power of county legislative authorities over tax title lands. The legislative authority of each county shall have the power to devote tax title lands to public use under its own control or the control of other governmental or quasi-governmental agencies, to exchange such lands for lands worth at least ninety percent of the value of the land exchanged, and to manage such lands to produce maximum revenue therefrom in the manner which derives the most income from such lands. The further purpose of this chapter is to relieve the courts of the obligation of supervising the county legislative authorities in the management and disposition of tax title lands. [1972 ex.s. c 150 § 1.]

**36.35.020 "Tax title lands" defined.** The term "tax title lands" as used in this chapter shall mean any tract of land acquired by the county for lack of other bidders at a tax foreclosure sale. [1972 ex.s. c 150 § 2.]

**36.35.070 Chapter as alternative.** The provisions of this chapter shall be deemed as alternatives to, and not be limited by, the provisions of RCW 39.33.010, 36.34.130, and 36.35.140, nor shall the authority granted in this chapter be

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held to be subjected to or qualified by the terms of such statutory provisions. [1998 c 106 § 22; 1972 ex.s. c 150 § 8.]

**36.35.080 Other lands not affected.** Nothing in this chapter shall affect any land deeded in trust to the department of natural resources or its successors pursuant to the provisions of Title 76 RCW. [1988 c 128 § 7; 1972 ex.s. c 150 § 9.]

**36.35.090 Chapter not affected by other acts.** Notwithstanding any provision of law to the contrary, or provisions of law limiting the authority granted in this chapter, the legislative authority of any county shall have the authority to manage and exchange tax title lands heretofore or hereafter acquired in the manner and on the terms and conditions set forth in this chapter. [1972 ex.s. c 150 § 3.]

**36.35.100 County held tax-title property exempt.** All property deeded to the county under the provisions of this chapter shall be stricken from the tax rolls as county property and exempt from taxation and shall not be again assessed or taxed while the property of the county. The sale, management, and leasing of tax title property shall be handled as under chapter 36.35 RCW. [1998 c 106 § 13; 1961 c 15 § 84.64.220. Prior: 1925 ex.s. c 130 § 131; RRS § 11292; prior: 1899 c 141 § 27. Formerly RCW 84.64.220.]

**36.35.110 Disposition of proceeds of sales.** No claims shall ever be allowed against the county from any municipality, school district, road district or other taxing district for taxes levied on property acquired by the county by tax deed under the provisions of this chapter, but all taxes shall at the time of deeding said property be thereby canceled: PROVIDED, That the proceeds of any sale of any property acquired by the county by tax deed shall be justly apportioned to the various funds existing at the date of the sale, in the territory in which such property is located, according to the tax levies of the year last in process of collection. [1961 c 15 § 84.64.230. Prior: 1925 ex.s. c 130 § 132; RRS § 11293; prior: 1899 c 141 § 28. Formerly RCW 84.64.230.]

**36.35.120 Sales of tax-title property—Reservations—Notices—Installment contracts—Separate sale of reserved resources.** Real property acquired by any county of this state by foreclosure of delinquent taxes may be sold by order of the county legislative authority of the county when in the judgment of the county legislative authority it is deemed in the best interests of the county to sell the real property.

When the legislative authority desires to sell any such property it may, if deemed advantageous to the county, combine any or all of the several lots and tracts of such property in one or more units, and may reserve from sale coal, oil, gas, gravel, minerals, ores, fossils, timber, or other resources on or in the lands, and the right to mine for and remove the same, and it shall then enter an order on its records fixing the unit or units in which the property shall be sold and the minimum price for each of such units, and whether the sale will be for cash or whether a contract will be offered, and reserving from sale such of the resources as it may determine and from which units such reservations shall apply, and directing the

county treasurer to sell such property in the unit or units and at not less than the price or prices and subject to such reservations so fixed by the county legislative authority. The order shall be subject to the approval of the county treasurer if several lots or tracts of land are combined in one unit.

Except in cases where the sale is to be by direct negotiation as provided in RCW 36.35.150, it shall be the duty of the county treasurer upon receipt of such order to publish once a week for three consecutive weeks a notice of the sale of such property in a newspaper of general circulation in the county where the land is situated. The notice shall describe the property to be sold, the unit or units, the reservations, and the minimum price fixed in the order, together with the time and place and terms of sale, in the same manner as foreclosure sales as provided by RCW 84.64.080.

The person making the bid shall state whether he or she will pay cash for the amount of his or her bid or accept a real estate contract of purchase in accordance with the provisions hereinafter contained. The person making the highest bid shall become the purchaser of the property. If the highest bidder is a contract bidder the purchaser shall be required to pay thirty percent of the total purchase price at the time of the sale and shall enter into a contract with the county as vendor and the purchaser as vendee which shall obligate and require the purchaser to pay the balance of the purchase price in ten equal annual installments commencing November 1st and each year following the date of the sale, and shall require the purchaser to pay twelve percent interest on all deferred payments, interest to be paid at the time the annual installment is due; and may contain a provision authorizing the purchaser to make payment in full at any time of any balance due on the total purchase price plus accrued interest on such balance. The contract shall contain a provision requiring the purchaser to pay before delinquency all subsequent taxes and assessments that may be levied or assessed against the property subsequent to the date of the contract, and shall contain a provision that time is of the essence of the contract and that in event of a failure of the vendee to make payments at the time and in the manner required and to keep and perform the covenants and conditions therein required of him or her that the contract may be forfeited and terminated at the election of the vendor, and that in event of the election all sums theretofore paid by the vendee shall be forfeited as liquidated damages for failure to comply with the provisions of the contract; and shall require the vendor to execute and deliver to the vendee a deed of conveyance covering the property upon the payment in full of the purchase price, plus accrued interest.

The county legislative authority may, by order entered in its records, direct the coal, oil, gas, gravel, minerals, ores, timber, or other resources sold apart from the land, such sale to be conducted in the manner hereinabove prescribed for the sale of the land. Any such reserved minerals or resources not exceeding two hundred dollars in value may be sold, when the county legislative authority deems it advisable, either with or without such publication of the notice of sale, and in such manner as the county legislative authority may determine will be most beneficial to the county. [2001 c 299 § 10; 1993 c 310 § 1; 1991 c 245 § 30; 1981 c 322 § 7; 1965 ex.s. c 23 § 5; 1961 c 15 § 84.64.270. Prior: 1945 c 172 § 1; 1937 c 68 § 1; 1927 c 263 § 1; 1925 ex.s. c 130 § 133; Rem. Supp. 1945 § 11294; prior: 1903 c 59 § 1; 1899 c 141 § 29; 1890 p

579 § 124; Code 1881 § 2934. Formerly RCW 84.64.270, 84.64.280, 84.64.290, and 84.64.270.]

*City may acquire property from county before resale: RCW 35.49.150.*

*Disposition of proceeds upon resale generally: RCW 35.49.160. of property subject to diking, drainage or sewerage improvement district assessments: RCW 85.08.500.*

*Exchange, lease, management of county tax title lands: Chapter 36.35 RCW.*

*Tax title land conveyance of to port districts: RCW 53.25.050. may be deeded to department of natural resources for reforestation purposes: RCW 79.22.010. may be leased for mineral, gas and petroleum development: Chapter 78.16 RCW.*

**36.35.130 Form of deed and reservation.** The county treasurer shall upon payment to the county treasurer of the purchase price for the property and any interest due, make and execute under the county treasurer's hand and seal, and issue to the purchaser, a deed in the following form for any lots or parcels of real property sold under the provisions of RCW 36.35.120.

State of Washington }  
County of . . . . . } ss.

This indenture, made this . . . . day of . . . . , . . (year) . . , between . . . . , as treasurer of . . . . county, state of Washington, the party of the first part, and . . . . , party of the second part.

WITNESSETH, That whereas, at a public sale of real property, held on the . . . . day of . . . . , . . (year) . . , pursuant to an order of the county legislative authority of the county of . . . . , state of Washington, duly made and entered, and after having first given due notice of the time and place and terms of the sale, and, whereas, in pursuance of the order of the county legislative authority, and of the laws of the state of Washington, and for and in consideration of the sum of . . . . dollars, lawful money of the United States of America, to me in hand paid, the receipt whereof is hereby acknowledged, I have this day sold to . . . . the following described real property, and which the real property is the property of . . . . county, and which is particularly described as follows, to wit: . . . . , the . . . . being the highest and best bidder at the sale, and the sum being the highest and best sum bid at the sale;

NOW, THEREFORE, Know ye that I, . . . . , county treasurer of the county of . . . . , state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases made and provided, do hereby grant and convey unto . . . . , heirs and assigns, forever, the real property hereinbefore described, as fully and completely as the party of the first part can by virtue of the premises convey the same.

Given under my hand and seal of office this . . . . day of . . . . , . . (year) . .

.....  
County Treasurer,  
By .....  
Deputy:

PROVIDED, That when by order of the county legislative authority any of the minerals or other resources enumerated in RCW 36.35.120 are reserved, the deed or contract of purchase shall contain the following reservation:

The party of the first part hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its successors, and assigns, forever, all oils, gases, coals, ores, minerals, gravel, timber and fossils of every name, kind or description, and which may be in or upon the lands above described; or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, gravel, timber and fossils; and it also hereby expressly saves reserves out of the grant hereby made, unto itself, its successors and assigns, forever, the right to enter by itself, its agents, attorneys and servants upon the lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, gravel, timber and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its successors and assigns, forever, the right by it or its agents, servants and attorneys at any and all times to erect, construct, maintain and use all such buildings, machinery, roads and railroads, sink such shafts, remove such oil, and to remain on the lands or any part thereof, for the business of mining and to occupy as much of the lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself, its successors and assigns, as aforesaid, generally, all rights and powers in, to and over, the land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved. No rights shall be exercised under the foregoing reservation, by the county, its successors or assigns, until provision has been made by the county, its successors or assigns, to pay to the owner of the land upon which the rights herein reserved to the county, its successors or assigns, are sought to be exercised, full payment for all damages sustained by the owner, by reason of entering upon the land: PROVIDED, That if the owner from any cause whatever refuses or neglects to settle the damages, then the county, its successors or assigns, or any applicant for a lease or contract from the county for the purpose of prospecting for or mining valuable minerals, or operation contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situated, as may be necessary to determine the damages which the owner of the land may suffer: PROVIDED, The county treasurer shall cross out of such reservation any of the minerals or other resources which were not reserved by order of the county legislative authority. [1998 c 106 § 14; 1961 c 15 § 84.64.300. Prior: 1945 c 172 § 2; 1927 c 263 § 2; 1925 ex.s. c 130 § 134; Rem. Supp. 1945 § 11295; prior: 1903 c 59 § 5; 1890 p 577 § 119; Code 1881 § 2938. Formerly RCW 84.64.300.]

**36.35.140 Rental of tax-title property on month to month tenancy authorized.** The board of county commissioners of any county may, pending sale of any county property acquired by foreclosure of delinquent taxes, rent any portion thereof on a tenancy from month to month. From the pro-

ceeds of the rentals the board of county commissioners shall first pay all expense in management of said property and in repairing, maintaining and insuring the improvements thereon, and the balance of said proceeds shall be paid to the various taxing units interested in the taxes levied against said property in the same proportion as the current tax levies of the taxing units having levies against said property. [1961 c 15 § 84.64.310. Prior: 1945 c 170 § 1; Rem. Supp. 1945 § 11298-1. Formerly RCW 84.64.310.]

**36.35.150 Tax-title property may be disposed of without bids in certain cases.** The county legislative authority may dispose of tax foreclosed property by private negotiation, without a call for bids, for not less than the principal amount of the unpaid taxes in any of the following cases: (1) When the sale is to any governmental agency and for public purposes; (2) when the county legislative authority determines that it is not practical to build on the property due to the physical characteristics of the property or legal restrictions on construction activities on the property; (3) when the property has an assessed value of less than five hundred dollars and the property is sold to an adjoining landowner; or (4) when no acceptable bids were received at the attempted public auction of the property, if the sale is made within twelve months from the date of the attempted public auction. [2001 c 299 § 11; 1997 c 244 § 2; 1993 c 310 § 2; 1961 c 15 § 84.64.320. Prior: 1947 c 238 § 1; Rem. Supp. 1947 § 11295-1. Formerly RCW 84.64.320.]

**Effective date—1997 c 244:** See note following RCW 84.36.015.

**36.35.160 Quieting title to tax-title property.** In any and all instances in this state in which a treasurer's deed to real property has been or shall be issued to the county in proceedings to foreclose the lien of general taxes, and for any reason a defect in title exists or adverse claims against the same have not been legally determined, the county or its successors in interest or assigns shall have authority to institute an action in the superior court in the county to correct such defects, and to determine such adverse claims and the priority thereof as provided in RCW 36.35.160 through 36.35.270. [1998 c 106 § 15; 1961 c 15 § 84.64.330. Prior: 1931 c 83 § 1; 1925 ex.s. c 171 § 1; RRS § 11308-1. Formerly RCW 84.64.330.]

**36.35.170 Quieting title to tax-title property—Form of action—Pleadings.** The county or its successors in interest or assigns shall have authority to include in one action any and all tracts of land in which plaintiff or plaintiffs in such action, jointly or severally, has or claims to have an interest. Such action shall be one in rem as against every right and interest in and claim against any and every part of the real property involved, except so much thereof as may be at the time the summons and notice is filed with the clerk of the superior court in the actual, open and notorious possession of any person or corporation, and then except only as to the interest claimed by such person so in possession: PROVIDED, That the possession required under the provisions of RCW 36.35.160 through 36.35.270 shall be construed to be that by personal occupancy only, and not merely by representation or in contemplation of law. No person, firm or corpora-

tion claiming an interest in or to such lands need be specifically named in the summons and notice, except as in RCW 36.35.160 through 36.35.270, and no pleadings other than the summons and notice and the written statements of those claiming a right, title and interest in and to the property involved shall be required. [1998 c 106 § 16; 1961 c 15 § 84.64.340. Prior: 1931 c 83 § 2; 1925 ex.s. c 171 § 2; RRS § 11308-2. Formerly RCW 84.64.340.]

**36.35.180 Quieting title to tax-title property—Summons and notice.** Upon filing a copy of the summons and notice in the office of the county clerk, service thereof as against every interest in and claim against any and every part of the property described in such summons and notice, and every person, firm, or corporation, except one who is in the actual, open and notorious possession of any of the properties, shall be had by publication in the official county newspaper for six consecutive weeks; and no affidavit for publication of such summons and notice shall be required. In case special assessments imposed by a city or town against any of the real property described in the summons and notice remain outstanding, a copy of the same shall be served on the treasurer of the city or town within which such real property is situated within five days after such summons and notice is filed.

The summons and notice in such action shall contain the title of the court; specify in general terms the years for which the taxes were levied and the amount of the taxes and the costs for which each tract of land was sold; give the legal description of each tract of land involved, and the tax record owner thereof during the years in which the taxes for which the property was sold were levied; state that the purpose of the action is to foreclose all adverse claims of every nature in and to the property described, and to have the title of existing liens and claims of every nature against the described real property, except that of the county, forever barred.

The summons and notice shall also summon all persons, firms and corporations claiming any right, title and interest in and to the described real property to appear within sixty days after the date of the first publication, specifying the day and year, and state in writing what right, title and interest they have or claim to have in and to the property described, and file the same with the clerk of the court above named; and shall notify them that in case of their failure so to do, judgment will be rendered determining that the title to the real property is in the county free from all existing adverse interests, rights or claims whatsoever: PROVIDED, That in case any of the lands involved is in the actual, open and notorious possession of anyone at the time the summons and notice is filed, as herein provided, a copy of the same modified as herein specified shall be served personally upon such person in the same manner as summons is served in civil actions generally. The summons shall be substantially in the form above outlined, except that in lieu of the statement relative to the date and day of publication it shall require the person served to appear within twenty days after the day of service, exclusive of the date of service, and that the day of service need not be specified therein, and except further that the recitals regarding the amount of the taxes and costs and the years the same were levied, the legal description of the land

and the tax record owner thereof may be omitted except as to the land occupied by the persons served.

Every summons and notice provided for in RCW 36.35.160 through 36.35.270 shall be subscribed by the prosecuting attorney of the county, or by any successor or assign of the county or his attorney, as the case may be, followed by the post office address of the successor or assign. [1998 c 106 § 17; 1961 c 15 § 84.64.350. Prior: 1931 c 83 § 3; 1925 ex.s. c 171 § 3; RRS § 11308-3. Formerly RCW 84.64.350.]

**36.35.190 Quieting title to tax-title property—Redemption before judgment.** Any person, firm or corporation who or which may have been entitled to redeem the property involved prior to the issuance of the treasurer's deed to the county, and his or its successor in interest, shall have the right, at any time after the commencement of, and prior to the judgment in the action authorized herein, to redeem such property by paying to the county treasurer the amount of the taxes for which the property was sold to the county, and the amount of any other general taxes which may have accrued prior to the issuance of said treasurer's deed, together with interest on all such taxes from the date of delinquency thereof, respectively, at the rate of twelve percent per annum, and by paying for the benefit of the assessment district concerned the amount of principal, penalty and interest of all special assessments, if any, which shall have been levied against such property and by paying such proportional part of the costs of the tax foreclosure proceedings and of the action herein authorized as the county treasurer shall determine.

Upon redemption of any property before judgment as herein provided, the county treasurer shall issue to the redemptioner a certificate specifying the amount of the taxes, special assessments, penalty, interest and costs charged describing the land and stating that the taxes, special assessments, penalty, interest and costs specified have been fully paid, and the lien thereof discharged. Such certificate shall clear the land described therein from any claim of the county based on the treasurer's deed previously issued in the tax foreclosure proceedings. [1961 c 15 § 84.64.360. Prior: 1925 ex.s. c 171 § 4; RRS § 11308-4. Formerly RCW 84.64.360.]

**36.35.200 Quieting title to tax-title property—Judgment.** At any time after the return day named in the summons and notice the plaintiff in the cause shall be entitled to apply for judgment. In case any person has appeared in such action and claimed any interest in the real property involved adverse to that of the county or its successors in interest, such person shall be given a three days' notice of the time when application for judgment shall be made. The court shall hear and determine the matter in a summary manner similar to that provided in RCW 84.64.080, relating to judgment and order of sale in general tax foreclosure proceedings, and shall pronounce and enter judgment according to the rights of the parties and persons concerned in the action. No order of sale shall be made nor shall any sale on execution be necessary to determine the title of the county to the real property involved in such action. [1961 c 15 § 84.64.370. Prior: 1931 c 83 § 4; 1925 ex.s. c 171 § 5; RRS § 11308-5. Formerly RCW 84.64.370.]

**36.35.210 Quieting title to tax-title property—Proof—Presumptions.** The right of action of the county, its successors or assigns, under RCW 36.35.160 through 36.35.270 shall rest on the validity of the taxes involved, and the plaintiff shall be required to prove only the amount of the former judgment foreclosing the lien thereof, together with the costs of the foreclosure and sale of each tract of land for the taxes, and all the presumptions in favor of the tax foreclosure sale and issuance of treasurer's deed existing by law shall obtain in the action. [1998 c 106 § 18; 1961 c 15 § 84.64.380. Prior: 1931 c 83 § 5; 1925 ex.s. c 171 § 6; RRS § 11308-6. Formerly RCW 84.64.380.]

**36.35.220 Quieting title to tax-title property—Appearance fee—Tender of taxes.** Any person filing a statement in such action shall pay the clerk of the court an appearance fee in the amount required by the county for appearances in civil actions, and shall be required to tender the amount of all taxes, interest and costs charged against the real property to which he lays claim, and no further costs in such action shall be required or recovered. [1961 c 15 § 84.64.390. Prior: 1925 ex.s. c 171 § 7; RRS § 11308-7. Formerly RCW 84.64.390.]

**36.35.230 Quieting title to tax-title property—Appellate review.** Any person aggrieved by the judgment rendered in such action may seek appellate review of the part of said judgment objectionable to him in the manner and within the time prescribed for appeals in RCW 84.64.120. [1988 c 202 § 71; 1971 c 81 § 155; 1961 c 15 § 84.64.400. Prior: 1925 ex.s. c 171 § 8; 1925 ex.s. c 130 § 121; RRS § 11308-8; prior: 1903 c 59 § 4; 1897 c 71 § 104; 1893 c 124 § 106. Formerly RCW 84.64.400.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**36.35.240 Quieting title to tax-title property—Effect of judgment.** The judgment rendered in such action, unless appealed from within the time prescribed herein and upon final judgment on appeal, shall be conclusive, without the right of redemption upon and against every person who may or could claim any lien or any right, title or interest in or to any of the properties involved in said action, including minors, insane persons, those convicted of crime, as well as those free from disability, and against those who may have at any time attempted to pay any tax on any of the properties, and against those in actual open and notorious possession of any of said properties.

Such judgment shall be conclusive as to those who appeal therefrom, except as to the particular property to which such appellant laid claim in the action and concerning which he appealed, and shall be conclusive as to those in possession of any property and who were not served except as to the property which such person is in the actual, open and notorious possession of, and in any case where it is asserted that the judgment was not conclusive because of such possession, the burden of showing such actual, open and notorious possession shall be on the one asserting such possession. [1961 c 15 § 84.64.410. Prior: 1925 ex.s. c 171 § 9; RRS § 11308-9. Formerly RCW 84.64.410.]

(2004 Ed.)

**36.35.250 Quieting title to tax-title property—Special assessments payable out of surplus.** Nothing in RCW 36.35.160 through 36.35.270 contained shall be construed to deprive any city, town, or other unit of local government that imposed special assessments on the property by including the property in a local improvement or special assessment district of its right to reimbursement for special assessments out of any surplus over and above the taxes, interest and costs involved. [1998 c 106 § 19; 1961 c 15 § 84.64.420. Prior: 1925 ex.s. c 171 § 10; RRS § 11308-10. Formerly RCW 84.64.420.]

**36.35.260 Quieting title to tax-title property—Form of deed on sale after title quieted.** That in all cases where any county of the state of Washington has perfected title to real estate owned by the county, under the provisions of RCW 36.35.160 through 36.35.270 and resells the same or part thereof, it shall give to the purchaser a warranty deed in substantially the following form:

STATE OF WASHINGTON }  
County of . . . . . } ss.

This indenture, made this . . . . day of . . . . . (year) . . , between . . . . . as treasurer of . . . . . county, state of Washington, the party of the first part, and . . . . . , party of the second part.

WITNESSETH, THAT WHEREAS, at a public sale of real property, held on the . . . . day of . . . . . (year) . . , pursuant to an order of the county legislative authority of the county of . . . . . , state of Washington, duly made and entered, and after having first given due notice of the time and place and terms of the sale, and, whereas, in pursuance of the order of the county legislative authority, and of the laws of the state of Washington, and for and in consideration of the sum of . . . . . dollars, lawful money of the United States of America, to me in hand paid, the receipt whereof is hereby acknowledged, I have this day sold to . . . . . the following described real property, and which the real property is the property of . . . . . county, and which is particularly described as follows, to wit:

. . . . . , the . . . . . being the highest and best bidder at the sale, and the sum being the highest and best sum bid at the sale:

NOW THEREFORE KNOW YE that I, . . . . . county treasurer of the county of . . . . . , state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases made and provided, do hereby grant, convey and warrant on behalf of . . . . . county unto . . . . . , his or her heirs and assigns, forever, the real property hereinbefore described.

Given under my hand and seal of office this . . . . day of . . . . . , (year) . .

.....  
County Treasurer.  
By .....  
Deputy.

[1998 c 106 § 20; 1961 c 15 § 84.64.430. Prior: 1929 c 197 § 1; RRS § 11308-11. Formerly RCW 84.64.430.]

**36.35.270 Quieting title to tax-title property—Limitation on recovery for breach of warranty.** No recovery for breach of warranty shall be had, against the county executing a deed under the provisions of RCW 36.35.260, in excess of the purchase price of the land described in such deed, with interest at the legal rate. [1998 c 106 § 21; 1961 c 15 § 84.64.440. Prior: 1929 c 197 § 2; RRS § 11308-12. Formerly RCW 84.64.440.]

**36.35.280 Tax deeds to cities and towns absolute despite reversionary provision.** All sales of tax-title lands heretofore consummated by any county, to a city or town, for municipal purposes, or public use, shall be absolute and final, and transfer title in fee, notwithstanding any reversionary provision in the tax deed to the contrary; and all tax-title deeds containing any such reversionary provision shall upon application of grantee in interest, be revised to conform with the provisions herein. [1961 c 15 § 84.64.450. Prior: 1947 c 269 § 1; Rem. Supp. 1947 § 11295-2. Formerly RCW 84.64.450.]

**36.35.290 Easements.** The general property tax assessed on any tract, lot, or parcel of real property includes all easements appurtenant thereto, provided said easements are a matter of public record in the auditor's office of the county in which said real property is situated. Any foreclosure of delinquent taxes on any tract, lot or parcel of real property subject to such easement or easements, and any tax deed issued pursuant thereto shall be subject to such easement or easements, provided such easement or easements were established of record prior to the year for which the tax was foreclosed. [1961 c 15 § 84.64.460. Prior: 1959 c 129 § 1. Formerly RCW 84.64.460.]

**Chapter 36.36 RCW  
AQUIFER PROTECTION AREAS**

Sections

- 36.36.010 Purpose.
- 36.36.020 Creation of aquifer protection area—Public hearing—Ballot proposition.
- 36.36.030 Imposition of fees—Ballot proposition to authorize increased fees or additional purposes.
- 36.36.035 Reduced fees for low-income persons.
- 36.36.040 Use of fee revenues.
- 36.36.045 Lien for delinquent fees.
- 36.36.050 Dissolution of aquifer protection area—Petition—Ballot proposition.
- 36.36.900 Severability—1985 c 425.

*Assessments and charges against state lands: Chapter 79.44 RCW.*

**36.36.010 Purpose.** The protection of subterranean water from pollution or degradation is of great concern. The depletion of subterranean water is of great concern. The purpose of this chapter is to allow the creation of aquifer protection areas to finance the protection, preservation, and rehabilitation of subterranean water, and to reduce special assessments imposed upon households to finance facilities for such purposes. Pollution and degradation of subterranean drinking water supplies, and the depletion of subterranean drinking water supplies, pose immediate threats to the safety and welfare of the citizens of this state. [1991 c 151 § 1; 1985 c 425 § 1.]

**36.36.020 Creation of aquifer protection area—Public hearing—Ballot proposition.** The county legislative authority of a county may create one or more aquifer protection areas for the purpose of funding the protection, preservation, and rehabilitation of subterranean water.

When a county legislative authority proposes to create an aquifer protection area it shall conduct a public hearing on the proposal. Notice of the public hearing shall be published at least once, not less than ten days prior to the hearing, in a newspaper of general circulation within the proposed aquifer protection area. The public hearing may be continued to other times, dates, and places announced at the public hearing, without publication of the notice. At the public hearing, the county legislative authority shall hear objections and comments from anyone interested in the proposed aquifer protection area.

After the public hearing, the county legislative authority may adopt a resolution causing a ballot proposition to be submitted to the registered voters residing within the proposed aquifer protection area to authorize the creation of the aquifer protection area, if the county legislative authority finds that the creation of the aquifer protection area would be in the public interest. The resolution shall: (1) Describe the boundaries of the proposed aquifer protection area; (2) find that its creation is in the public interest; (3) state the maximum level of fees for the withdrawal of water, or on-site sewage disposal, occurring in the aquifer protection area, or both; and (4) describe the uses for the fees.

An aquifer protection area shall be created by ordinances of the county if the voters residing in the proposed aquifer protection area approve the ballot proposition by a simple majority vote. The ballot proposition shall be in substantially the following form:

"Shall the . . . (insert the name) aquifer protection area be created and authorized to impose monthly fees on . . . (insert "the withdrawal of water" or "on-site sewage disposal") of not to exceed . . . (insert a dollar amount) per household unit for up to . . . (insert a number of years) to finance . . . (insert the type of activities proposed to be financed)?"

Yes . . . . .  
No . . . . . "

If both types of monthly fees are proposed to be imposed, maximum rates for each shall be included in the ballot proposition.

An aquifer protection area may not include territory located within a city or town without the approval of the city or town governing body, nor may it include territory located in the unincorporated area of another county without the approval of the county legislative authority of that county. [1985 c 425 § 2.]

**36.36.030 Imposition of fees—Ballot proposition to authorize increased fees or additional purposes.** Aquifer protection areas are authorized to impose fees on the withdrawal of subterranean water and on on-site sewage disposal. The fees shall be expressed as a dollar amount per household unit. Fees imposed for the withdrawal of water, or on-site sewage disposal, other than by households shall be expressed

and imposed in equivalents of household units. If both types of fees are imposed, the rate imposed on on-site sewage disposal shall not exceed the rate imposed for the withdrawal of water.

No fees shall be imposed in excess of the amount authorized by the voters of the aquifer protection area. Fees shall only be used for the activity or activities authorized by the voters of the aquifer protection area. Ballot propositions may be submitted to the voters of an aquifer protection area to authorize a higher maximum level of such fees or to authorize additional activities for which the fees may be used. Such a ballot proposition shall be substantially in the form of that portion of the proposition to authorize the creation of an aquifer protection district that relates to fees or activities, as provided in RCW 36.36.020. Approval of the ballot proposition by simple majority vote shall authorize the higher maximum level of fees or additional activities for which the fees may be used.

A county may contract with existing public utilities to collect the fees, or collect the fees itself. [1985 c 425 § 3.]

**36.36.035 Reduced fees for low-income persons.** A county may adopt an ordinance reducing the level of fees, for the withdrawal of subterranean water or for on-site sewage disposal, that are imposed upon the residential property of a class or classes of low-income persons. [1987 c 381 § 1.]

**36.36.040 Use of fee revenues.** Aquifer protection areas may impose fees to fund:

(1) The preparation of a comprehensive plan to protect, preserve, and rehabilitate subterranean water, including ground water management programs adopted under chapter 90.44 RCW. This plan may be prepared as a portion of a county sewerage and/or water general plan pursuant to RCW 36.94.030;

(2) The construction of facilities for: (a) The removal of water-borne pollution; (b) water quality improvement; (c) sanitary sewage collection, disposal, and treatment; (d) storm water or surface water drainage collection, disposal, and treatment; and (e) the construction of public water systems;

(3) The proportionate reduction of special assessments imposed by a county, city, town, or special district in the aquifer protection area for any of the facilities described in subsection (2) of this section;

(4) The costs of monitoring and inspecting on-site sewage disposal systems or community sewage disposal systems for compliance with applicable standards and rules, and for enforcing compliance with these applicable standards and rules in aquifer protection areas created after June 9, 1988; and

(5) The costs of: (a) Monitoring the quality and quantity of subterranean water and analyzing data that is collected; (b) ongoing implementation of the comprehensive plan developed under subsection (1) of this section; (c) enforcing compliance with standards and rules relating to the quality and quantity of subterranean waters; and (d) public education relating to protecting, preserving, and enhancing subterranean waters. [1991 c 151 § 2; 1988 c 258 § 1; 1985 c 425 § 4.]

(2004 Ed.)

**36.36.045 Lien for delinquent fees.** The county shall have a lien for any delinquent fees imposed for the withdrawal of subterranean water or on-site sewage disposal, which shall attach to the property to which the fees were imposed, if the following conditions are met:

(1) At least eighteen months have passed since the first billing for a delinquent fee installment; and

(2) At least three billing notices and a letter have been mailed to the property owner, within the period specified in subsection (1) of this section, explaining that a lien may be imposed for any delinquent fee installment that has not been paid in that period.

The lien shall otherwise be subject to the provisions of chapter 36.94 RCW related to liens for delinquent charges. The county shall record liens for any delinquent fees in the office of the county auditor. Failure on the part of the county to record the lien does not affect the validity of the lien. [1997 c 393 § 6; 1987 c 381 § 2.]

**36.36.050 Dissolution of aquifer protection area—Petition—Ballot proposition.** A county legislative authority may dissolve an aquifer protection area upon a finding that such dissolution is in the public interest.

A ballot proposition to dissolve an aquifer protection district shall be placed on the ballot for the approval or rejection of the voters residing in an aquifer protection area, when a petition requesting such a ballot proposition is signed by at least twenty percent of the voters residing in the aquifer protection area and is filed with the county legislative authority of the county originally creating the aquifer protection area. The ballot proposition shall be placed on the ballot at the next general election occurring sixty or more days after the petition has been filed. Approval of the ballot proposition by a simple majority vote shall cause the dissolution of the aquifer protection area. [1985 c 425 § 5.]

**36.36.900 Severability—1985 c 425.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 425 § 7.]

## Chapter 36.37 RCW

### AGRICULTURAL FAIRS AND POULTRY SHOWS

#### Sections

36.37.010	Fairs authorized—Declared county purpose.
36.37.020	Property may be acquired for fairs.
36.37.040	Expenditure of funds—Revolving fund—Management of fairs.
36.37.050	District or multiple county fairs authorized.
36.37.090	Poultry shows—Petition—Appropriation.
36.37.100	Poultry shows—Open to public—Admission charge.
36.37.110	Poultry shows—Conduct of shows.
36.37.150	Lease of state-owned lands for county fairgrounds.
36.37.160	Lease of state-owned lands for county fairgrounds—Lands adjacent to Northern State Hospital.

**36.37.010 Fairs authorized—Declared county purpose.** The holding of county fairs and agricultural exhibitions of stock, cereals, and agricultural produce of all kinds, including dairy produce, as well as arts and manufactures, by any county in the state, and the participation by any county in

a district fair or agricultural exhibition, is declared to be in the interest of public good and a strictly county purpose. [1963 c 4 § 36.37.010. Prior: 1947 c 184 § 1; 1917 c 32 § 1; Rem. Supp. 1947 § 2750.]

**36.37.020 Property may be acquired for fairs.** The board of county commissioners of any county in the state may acquire by gift, devise, purchase, condemnation and purchase, or otherwise, lands, property rights, leases, easements, and all kinds of personal property and own and hold the same and construct and maintain temporary or permanent improvements suitable and necessary for the purpose of holding and maintaining county or district fairs for the exhibition of county or district resources and products. [1963 c 4 § 36.37.020. Prior: 1947 c 184 § 2; 1917 c 32 § 2; Rem. Supp. 1947 § 2751.]

**36.37.040 Expenditure of funds—Revolving fund—Management of fairs.** The board of county commissioners of any county may appropriate and expend each year such sums of money as they deem advisable and necessary for (1) acquisition of necessary grounds for fairs and world fairs, (2) construction, improvement and maintenance of buildings thereon, (3) payment of fair premiums, and (4) the general maintenance of such fair. The board of county commissioners of any county may also authorize the county auditor to provide a revolving fund to be used by the fair officials for the conduct of the fair. The board of county commissioners may employ persons to assist in the management of fairs or by resolution designate a nonprofit corporation as the exclusive agency to operate and manage such fairs. [1963 c 4 § 36.37.040. Prior: 1957 c 124 § 1; 1955 c 297 § 1; prior: (i) 1947 c 184 § 3; 1943 c 101 § 1; 1923 c 83 § 2; Rem. Supp. 1947 § 2753 1/2. (ii) 1923 c 83 § 1; 1917 c 32 § 4; RRS § 2753.]

**36.37.050 District or multiple county fairs authorized.** Each county is authorized to hold one county fair in each year, or, as an alternative, to participate with any other county or counties in the holding of a district fair. Where counties participate in the holding of a district fair, the boards of county commissioners of each of participating counties may enter into mutual agreements setting forth the manner and extent of the participation by each county in the management and support of the district fair, subject to the limitations imposed on each respective county by the provisions of this chapter. [1963 c 4 § 36.37.050. Prior: 1947 c 184 § 4; Rem. Supp. 1947 § 2753a.]

**36.37.090 Poultry shows—Petition—Appropriation.** Upon petition of twenty-five resident taxpayers of any county who are interested in the poultry industry, the board of county commissioners may set aside and include in its annual budget a sum equivalent to five percent of the assessed valuation of poultry in the county each year for the purpose of holding winter poultry shows, the said sum not to exceed five hundred dollars in any one year. [1963 c 4 § 36.37.090. Prior: 1929 c 109 § 1; RRS § 2755-1.]

**36.37.100 Poultry shows—Open to public—Admission charge.** All poultry shows shall be open to the public. Such admission charge may be made as is authorized by the board of county commissioners. [1963 c 4 § 36.37.100. Prior: 1929 c 109 § 2; RRS § 2755-2.]

**36.37.110 Poultry shows—Conduct of shows.** All such poultry shows shall be held under the rules of the American Poultry Association and only licensed poultry judges shall be employed thereat. [1963 c 4 § 36.37.110. Prior: 1929 c 109 § 3; RRS § 2755-3.]

**36.37.150 Lease of state-owned lands for county fairgrounds.** If requested by a county legislative authority, an agency of the state managing state-owned lands, other than state trust lands, shall consider leasing a requested portion of these lands that are not used for any significant purpose and if not otherwise prohibited, to the county to be used as county fairgrounds. If it is determined that such a lease shall be made, the agency in setting lease charges shall consider the fair market return for leasing the land, the public benefit for leasing the land to the county for county fair purposes at a level below the fair market return, and other appropriate factors. [1986 c 307 § 3.]

**Intent—1986 c 307:** "The legislature finds that county fairs provide unique educational opportunities to the people of this state and are a public purpose. By helping counties acquire lands for county fairs, the legislature intends to preserve and enhance the educational opportunities of the people of this state." [1986 c 307 § 1.]

**36.37.160 Lease of state-owned lands for county fairgrounds—Lands adjacent to Northern State Hospital.** If requested by a county legislative authority, the department of natural resources shall negotiate a lease for any requested portion of the state lands directly adjacent to buildings on the Northern State Hospital site that were transferred to the department under chapter 178, Laws of 1974 ex. sess., if not otherwise prohibited, to the county to use for the purpose of establishing county fairgrounds. However, the portion to be leased shall be contiguous and compact, of an area not to exceed two hundred fifty acres and shall be segregated in such a manner that the remaining portion of these state lands can be efficiently managed by the department. The lease shall be for as long as the county is actually using the land as the site of the county fairgrounds. Notwithstanding chapter 178, Laws of 1974 ex. sess., the department shall charge the county the sum of one thousand dollars per year for the lease of such lands and this sum may be periodically adjusted to compensate the department for any increased costs in administration of the lease. The lease shall contain provisions directing payment of all assessments and authorizing the county to place any improvements on the leased lands if the improvements are consistent with the purposes of county fairs. [1986 c 307 § 2.]

**Intent—1986 c 307:** See note following RCW 36.37.150.

## Chapter 36.38 RCW ADMISSIONS TAX

### Sections

36.38.010 Taxes authorized—Exception as to schools.

- 36.38.020 Optional provisions in ordinance.  
 36.38.030 Form of ordinance.  
 36.38.040 Vehicle parking charges tax—Parking facility at stadium and exhibition center—Use of revenues before and after issuance of bonds.

*Taxes for city and town purposes: State Constitution Art. 11 § 12.*

**36.38.010 Taxes authorized—Exception as to schools.** (1) Any county may by ordinance enacted by its county legislative authority, levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid for county purposes by persons who pay an admission charge to any place, including a tax on persons who are admitted free of charge or at reduced rates to any place for which other persons pay a charge or a regular higher charge for the same or similar privileges or accommodations; and require that one who receives any admission charge to any place shall collect and remit the tax to the county treasurer of the county: **PROVIDED**, No county shall impose such tax on persons paying an admission to any activity of any elementary or secondary school or any public facility of a public facility district under chapter 35.57 or 36.100 RCW for which a tax is imposed under RCW 35.57.100 or 36.100.210.

(2) As used in this chapter, the term "admission charge" includes a charge made for season tickets or subscriptions, a cover charge, or a charge made for use of seats and tables, reserved or otherwise, and other similar accommodations; a charge made for food and refreshments in any place where any free entertainment, recreation, or amusement is provided; a charge made for rental or use of equipment or facilities for purpose of recreation or amusement, and where the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge. It shall also include any automobile parking charge where the amount of such charge is determined according to the number of passengers in any automobile.

(3) Subject to subsections (4) and (5) of this section, the tax herein authorized shall not be exclusive and shall not prevent any city or town within the taxing county, when authorized by law, from imposing within its corporate limits a tax of the same or similar kind: **PROVIDED**, That whenever the same or similar kind of tax is imposed by any such city or town, no such tax shall be levied within the corporate limits of such city or town by the county.

(4) Notwithstanding subsection (3) of this section, the legislative authority of a county with a population of one million or more may exclusively levy taxes on events in baseball stadiums constructed on or after January 1, 1995, that are owned by a public facilities district under chapter 36.100 RCW and that have seating capacities over forty thousand at the rates of:

(a) Not more than one cent on twenty cents or fraction thereof, to be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium as defined in RCW 82.14.0485. If the revenue from the tax exceeds the amount needed for that purpose, the excess shall be placed in a contingency fund which may only be used to pay unanticipated capital costs on the baseball stadium, excluding any cost overruns on initial construction; and

(b) Not more than one cent on twenty cents or fraction thereof, to be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium as defined in RCW 82.14.0485. The tax imposed under this subsection (4)(b) shall expire when the bonds issued for the construction of the baseball stadium are retired, but not later than twenty years after the tax is first collected.

(5) Notwithstanding subsection (3) of this section, the legislative authority of a county that has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.050 may levy and fix a tax on charges for admission to events in a stadium and exhibition center, as defined in RCW 36.102.010, constructed in the county on or after January 1, 1998, that is owned by a public stadium authority under chapter 36.102 RCW. The tax shall be exclusive and shall preclude the city or town within which the stadium and exhibition center is located from imposing a tax of the same or similar kind on charges for admission to events in the stadium and exhibition center, and shall preclude the imposition of a general county admissions tax on charges for admission to events in the stadium and exhibition center. For the purposes of this subsection, "charges for admission to events" means only the actual admission charge, exclusive of taxes and service charges and the value of any other benefit conferred by the admission. The tax authorized under this subsection shall be at the rate of not more than one cent on ten cents or fraction thereof. Revenues collected under this subsection shall be deposited in the stadium and exhibition center account under RCW 43.99N.060 until the bonds issued under RCW 43.99N.020 for the construction of the stadium and exhibition center are retired. After the bonds issued for the construction of the stadium and exhibition center are retired, the tax authorized under this section shall be used exclusively to fund repair, reequipping, and capital improvement of the stadium and exhibition center. The tax under this subsection may be levied upon the first use of any part of the stadium and exhibition center but shall not be collected at any facility already in operation as of July 17, 1997. [1999 c 165 § 20; 1997 c 220 § 301 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 203; 1995 1st sp.s. c 14 § 9; 1963 c 4 § 36.38.010. Prior: 1957 c 126 § 2; 1951 c 34 § 1; 1943 c 269 § 1; Rem. Supp. 1943 § 11241-10.]

**Severability—1999 c 164:** See RCW 35.57.900.

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**Severability—Effective dates—1995 1st sp.s. c 14:** See notes following RCW 36.100.010.

**36.38.020 Optional provisions in ordinance.** In addition to the provisions levying and fixing the amount of tax, the ordinance may contain any or all of the following provisions:

(1) A provision defining the words and terms used therein;

(2) A provision requiring the price (exclusive of the tax to be paid by the person paying for admission) at which every admission ticket or card is sold to be conspicuously and indelibly printed or written on the face or back of that part of the ticket which is to be taken up by the management of the place for which an admission charge is exacted, and making the violation of such provision a misdemeanor punishable by fine of not exceeding one hundred dollars;

(3) Provisions fixing reasonable exemptions from such tax;

(4) Provisions allowing as an offset against the tax, the amount of like taxes levied, fixed, and collected within their jurisdiction by incorporated cities and towns in the county;

(5) A provision requiring persons receiving payments for admissions taxed under said ordinance to collect the amount of the tax from the persons making such payments;

(6) A provision to the effect that the tax imposed by said ordinance shall be deemed to be held in trust by the person required to collect the same until paid to the county treasurer, and making it a misdemeanor for any person receiving payment of the tax and appropriating or converting the same to his own use or to any use other than the payment of the tax as provided in said ordinance to the extent that the amount of such tax is not available for payment on the due date for filing returns as provided in said ordinance;

(7) A provision that in case any person required by the ordinance to collect the tax imposed thereby fails to collect the same, or having collected the tax fails to pay the same to the county treasurer in the manner prescribed by the ordinance, whether such failure is the result of such person's own acts or the result of acts or conditions beyond such person's control, such person shall nevertheless be personally liable to the county for the amount of the tax;

(8) Provisions fixing the time when the taxes imposed by the ordinance shall be due and payable to the county treasurer; requiring persons receiving payments for admissions to make periodic returns to the county treasurer on such forms and setting forth such information as the county treasurer may specify; requiring such return to show the amount of tax upon admissions for which such person is liable for specified preceding periods, and requiring such person to sign and transmit the same to the county treasurer together with a remittance for the amount;

(9) A provision requiring taxpayers to file with the county treasurer verified annual returns setting forth such additional information as he may deem necessary to determine tax liability correctly;

(10) A provision to the effect that whenever a certificate of registration, if required by the ordinance, is obtained for operating or conducting temporary places of amusement by persons who are not the owners, lessees, or custodians of the building, lot or place where the amusement is to be conducted, or whenever the business is permitted to be conducted without the procurement of a certificate, the tax imposed shall be returned and paid as provided in the ordinance by such owner, lessee, or custodian, unless paid by the person conducting the place of amusement;

(11) A provision requiring the applicant for a temporary certificate of registration, if required by the ordinance, to furnish with the application therefor, the name and address of the owner, lessee, or custodian of the premises upon which

the amusement is to be conducted, and requiring the county treasurer to notify such owner, lessee, or custodian of the issuance of any such temporary certificate, and of the joint liability for such tax;

(12) A provision empowering the county treasurer to declare the tax upon temporary or itinerant places of amusement to be immediately due and payable and to collect the same, when he believes there is a possibility that the tax imposed under the ordinance will not be otherwise paid;

(13) Any or all of the applicable general administrative provisions contained in RCW 82.32.010 through 82.32.340 and 82.32.380, and the amendments thereto, except that unless otherwise indicated by the context of said sections, in all provisions so incorporated in such ordinance (a) the term "county treasurer" (of the county enacting said ordinance) shall be substituted for each reference made in said sections to the "department," the "department of revenue," "any employee of the department," or "director of the department of revenue"; (b) the name of the county enacting such ordinance shall be substituted for each reference made in said sections to the "state" or to the "state of Washington"; (c) the term "this ordinance" shall be substituted for each reference made in said sections to "this chapter"; (d) the name of the county enacting said ordinance shall be substituted for each reference made in said sections to "Thurston county"; and (e) the term "board of county commissioners" shall be substituted for each reference made in said sections to the "director of financial management." [1979 c 151 § 38; 1975 1st ex.s. c 278 § 21; 1963 c 4 § 36.38.020. Prior: 1943 c 269 § 3; Rem. Supp. 1943 § 11241-12.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**36.38.030 Form of ordinance.** The ordinance levying and fixing the tax shall be headed by a title expressing the subject thereof, and the style of the ordinance shall be: "Be it ordained by the Board of County Commissioners of . . . . . County, State of Washington." The ordinance shall be enacted by a majority vote of the board at a regular meeting thereof, and only after the form of such ordinance as ultimately enacted has been on file with the clerk of the board and open to public inspection for not less than ten days. The ordinance shall not become effective until thirty days following its enactment, and within five days following its enactment it shall be printed and published in a newspaper of general circulation in the county. The ordinance shall be signed by a majority of the board, attested by the clerk of the board, and shall be duly entered and recorded in the book wherein orders of the board are entered and recorded. The ordinance may be at any time amended or repealed by an ordinance enacted, published, and recorded in the same manner. [1963 c 4 § 36.38.030. Prior: 1943 c 269 § 2; Rem. Supp. 1943 § 11241-11.]

**36.38.040 Vehicle parking charges tax—Parking facility at stadium and exhibition center—Use of revenues before and after issuance of bonds.** The legislative authority of a county that has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.050 may levy and fix a tax on any vehicle parking charges imposed at any parking facility that is part of a sta-

dium and exhibition center, as defined in RCW 36.102.010. The tax shall be exclusive and shall preclude the city or town within which the stadium and exhibition center is located from imposing within its corporate limits a tax of the same or similar kind on any vehicle parking charges imposed at any parking facility that is part of a stadium and exhibition center. For the purposes of this section, "vehicle parking charges" means only the actual parking charges exclusive of taxes and service charges and the value of any other benefit conferred. The tax authorized under this section shall be at the rate of not more than ten percent. Revenues collected under this section shall be deposited in the stadium and exhibition center account under RCW 43.99N.060 until the bonds issued under RCW 43.99N.020 for the construction of the stadium and exhibition center are retired. After the bonds issued for the construction of the stadium and exhibition center are retired, the tax authorized under this section shall be used exclusively to fund repair, reequipping, and capital improvement of the stadium and exhibition center. The tax under this section may be levied upon the first use of any part of the stadium and exhibition center but shall not be collected at any facility already in operation as of July 17, 1997. [1997 c 220 § 302 (Referendum Bill No. 48, approved June 17, 1997).]

**Referendum—Other legislation limited—Legislator's personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

### Chapter 36.39 RCW ASSISTANCE AND RELIEF

#### Sections

36.39.010	Public assistance.
36.39.030	Disposal of remains of indigent persons.
36.39.040	Federal surplus commodities—County expenses—Handling commodities for certified persons—County program, cooperative program.
36.39.050	Federal surplus commodities—Certification of persons by department of social and health services.
36.39.060	Senior citizens programs—Long-term care ombudsman programs—Authorization.

*Burial of indigent war veterans: Chapter 73.24 RCW.*

*Housing authorities law: Chapter 35.82 RCW.*

*Veterans' relief: Chapter 73.08 RCW.*

**36.39.010 Public assistance.** Public assistance generally, see Title 74 RCW.

**36.39.030 Disposal of remains of indigent persons.** The board of county commissioners of any county shall provide for the disposition of the remains of any indigent person including a recipient of public assistance who dies within the county and whose body is unclaimed by relatives or church organization. [1963 c 4 § 36.39.030. Prior: 1953 c 224 § 1; 1951 c 258 § 1.]

**36.39.040 Federal surplus commodities—County expenses—Handling commodities for certified persons—County program, cooperative program.** The county commissioners of any county may expend from the county general fund for the purpose of receiving, warehousing and dis-

tributing federal surplus commodities for the use of or assistance to recipients of public assistance or other needy families and individuals when such recipients, families or individuals are certified as eligible to obtain such commodities by the state department of social and health services. The county commissioners may expend county general fund moneys to carry out any such program as a sole county operation or in conjunction or cooperation with any similar program of distribution by private individuals or organizations, any department of the state, or any political subdivision of the state. [1979 c 141 § 43; 1963 c 4 § 36.39.040. Prior: 1957 c 187 § 5.]

**36.39.050 Federal surplus commodities—Certification of persons by department of social and health services.** See RCW 74.04.340 through 74.04.360.

**36.39.060 Senior citizens programs—Long-term care ombudsman programs—Authorization.** (1) Counties, cities, and towns are granted the authority, and it is hereby declared to be a public purpose for counties, cities, and towns, to establish and administer senior citizens programs either directly or by creating public corporations or authorities to carry out the programs and to expend their own funds for such purposes, as well as to expend federal, state, or private funds that are made available for such purposes. Such federal funds shall include, but not be limited to, funds provided under the federal older Americans act, as amended (42 U.S.C. Sec. 3001 et seq.).

(2) Counties, cities, and towns may establish and administer long-term care ombudsman programs for residents, patients, and clients if such a program is not prohibited by federal or state law. Such local ombudsman programs shall be coordinated with the efforts of other long-term care ombudsman programs, including the office of the state long-term care ombudsman established in RCW 43.190.030, to avoid multiple investigation of complaints. [1983 c 290 § 13; 1979 c 109 § 1.]

**Severability—1983 c 290:** See RCW 43.190.900.

### Chapter 36.40 RCW BUDGET

#### Sections

36.40.010	Estimates to be filed by county officials.
36.40.020	Commissioners to file road and bridge estimate and estimate of future bond expenditures.
36.40.030	Forms of estimates—Penalty for delay.
36.40.040	Preliminary budget prepared by county auditor or chief financial officer.
36.40.050	Revision by county commissioners.
36.40.060	Notice of hearing on budget.
36.40.070	Budget hearing.
36.40.071	Budget hearing—Alternate date for budget hearing.
36.40.080	Final budget to be fixed.
36.40.090	Taxes to be levied.
36.40.100	Budget constitutes appropriations—Transfers—Supplemental appropriations.
36.40.120	Limitation on use of borrowed money.
36.40.130	County not liable on overexpenditure—Penalty against officials.
36.40.140	Emergencies subject to hearing.
36.40.150	Emergencies subject to hearing—Right of taxpayer to review order.
36.40.160	Emergencies subject to hearing—Petition for review suspends order.

36.40.170	Emergencies subject to hearing—Court's power on review.
36.40.180	Emergencies subject to hearing—Nondebatable emergencies.
36.40.190	Payment of emergency warrants.
36.40.195	Supplemental appropriations of unanticipated funds from local sources.
36.40.200	Lapse of budget appropriations.
36.40.205	Salary adjustment for county legislative authority office—Ratification and validation of preelection action.
36.40.210	Monthly report by auditor.
36.40.220	Rules, classifications, and forms.
36.40.230	No new funds created.
36.40.240	Penalty.
36.40.250	Biennial budgets—Supplemental and emergency budgets.

*County road property tax revenues, budgeting of for services:* RCW 36.33.220.

*Flood control zone district budget as affecting:* RCW 86.15.140.

*Juvenile detention facilities, budget allocation may be used for:* RCW 13.16.080.

*Metropolitan municipal corporation costs in:* RCW 35.58.420.

### 36.40.010 Estimates to be filed by county officials.

On or before the second Monday in July of each year the county auditor shall notify in writing each county official, elective or appointive, in charge of an office, department, service, or institution of the county, to file with him on or before the second Monday in August thereafter detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by such office, department, service, or institution for the ensuing fiscal year. [1963 c 4 § 36.40.010. Prior: 1923 c 164 § 1, part; RRS § 3997-1, part.]

**36.40.020 Commissioners to file road and bridge estimate and estimate of future bond expenditures.** The county commissioners shall submit to the auditor a detailed statement showing all new road and bridge construction to be financed from the county road fund, and from bond issues theretofore issued, if any, for the ensuing fiscal year, together with the cost thereof as computed by the county road engineer or for constructions in charge of a special engineer, then by such engineer, and such engineer shall prepare such estimates of cost for the county commissioners. They shall also submit a similar statement showing the road and bridge maintenance program, as near as can be estimated.

The county commissioners shall also submit to the auditor detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bonds or warrants not yet authorized. [1963 c 4 § 36.40.020. Prior: 1923 c 164 § 1, part; RRS § 3997-1, part.]

### 36.40.030 Forms of estimates—Penalty for delay.

The estimates required in RCW 36.40.010 and 36.40.020 shall be submitted on forms provided by the county auditor or chief financial officer and classified according to the classification established by the state auditor. The county auditor or chief financial officer shall provide such forms. He or she shall also prepare the estimates for interest and debt redemption requirements and any other estimates the preparation of which properly falls within the duties of his or her office.

Each such official shall file his or her estimates within the time and in the manner provided in the notice and form and the county auditor or chief financial officer shall deduct and withhold as a penalty from the salary of each official failing or refusing to file such estimates as herein provided, the

sum of ten dollars for each day of delay: PROVIDED, That the total penalty against any one official shall not exceed fifty dollars in any one year.

In the absence or disability of any official the duties required herein shall devolve upon the official or employee in charge of the office, department, service, or institution for the time being. The notice shall contain a copy of this penalty clause. [1995 c 301 § 62; 1963 c 4 § 36.40.030. Prior: 1923 c 164 § 1, part; RRS § 3997-1, part.]

**36.40.040 Preliminary budget prepared by county auditor or chief financial officer.** Upon receipt of the estimates the county auditor or chief financial officer shall prepare the county budget which shall set forth the complete financial program of the county for the ensuing fiscal year, showing the expenditure program and the sources of revenue by which it is to be financed.

The revenue section shall set forth the estimated receipts from sources other than taxation for each office, department, service, or institution for the ensuing fiscal year, the actual receipts for the first six months of the current fiscal year and the actual receipts for the last completed fiscal year, the estimated surplus at the close of the current fiscal year and the amount proposed to be raised by taxation.

The expenditure section shall set forth in comparative and tabular form by offices, departments, services, and institutions the estimated expenditures for the ensuing fiscal year, the appropriations for the current fiscal year, the actual expenditures for the first six months of the current fiscal year including all contracts or other obligations against current appropriations, and the actual expenditures for the last completed fiscal year.

All estimates of receipts and expenditures for the ensuing year shall be fully detailed in the annual budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor after consultation with the Washington state association of counties and the Washington state association of county officials.

The county auditor or chief financial officer shall set forth separately in the annual budget to be submitted to the county legislative authority the total amount of emergency warrants issued during the preceding fiscal year, together with a statement showing the amount issued for each emergency, and the legislative authority shall include in the annual tax levy, a levy sufficient to raise an amount equal to the total of such warrants: PROVIDED, That the legislative authority may fund the warrants or any part thereof into bonds instead of including them in the budget levy. [1995 c 301 § 63; 1995 c 194 § 7; 1973 c 39 § 1. Prior: 1971 ex.s. c 85 § 4; 1969 ex.s. c 252 § 1; 1963 c 4 § 36.40.040; prior: (i) 1923 c 164 § 2; RRS § 3997-2. (ii) 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

**Reviser's note:** This section was amended by 1995 c 194 § 7 and by 1995 c 301 § 63, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**36.40.050 Revision by county commissioners.** The budget shall be submitted by the auditor to the board of county commissioners on or before the first Tuesday in Sep-

tember of each year. The board shall thereupon consider the same in detail, making any revisions or additions it deems advisable. [1963 c 4 § 36.40.050. Prior: 1923 c 164 § 3, part; RRS § 3997-3, part.]

**36.40.060 Notice of hearing on budget.** The county legislative authority shall then publish a notice stating that it has completed and placed on file its preliminary budget for the county for the ensuing fiscal year, a copy of which will be furnished any citizen who will call at its office for it, and that it will meet on the first Monday in October thereafter for the purpose of fixing the final budget and making tax levies, designating the time and place of the meeting, and that any taxpayer may appear thereat and be heard for or against any part of the budget. The notice shall be published once each week for two consecutive weeks immediately following adoption of the preliminary budget in the official newspaper of the county. The county legislative authority shall provide a sufficient number of copies of the detailed and comparative preliminary budget to meet the reasonable demands of taxpayers therefor and the same shall be available for distribution not later than two weeks immediately preceding the first Monday in October. [1985 c 469 § 47; 1963 c 4 § 36.40.060. Prior: 1923 c 164 § 3, part; RRS § 3997-3, part.]

**36.40.070 Budget hearing.** On the first Monday in October in each year the board of county commissioners shall meet at the time and place designated in the notice, whereat any taxpayer may appear and be heard for or against any part of the budget. The hearing may be continued from day to day until concluded but not to exceed a total of five days. The officials in charge of the several offices, departments, services, and institutions shall, at the time the estimates for their respective offices, departments, services or institutions are under consideration be called in and appear before such hearing by the board at the request of any taxpayer and may be questioned concerning such estimates by the commissioners or any taxpayer present. [1963 c 4 § 36.40.070. Prior: 1943 c 145 § 1, part; 1941 c 99 § 1, part; 1923 c 164 § 4, part; Rem. Supp. 1943 § 3997-4, part.]

**36.40.071 Budget hearing—Alternate date for budget hearing.** Notwithstanding any provision of law to the contrary, the board of county commissioners may meet for the purpose of holding a budget hearing, provided for in RCW 36.40.070, on the first Monday in December. The board of county commissioners may also set other dates relating to the budget process, including but not limited to the dates set in RCW 36.40.010, 36.40.050, and 36.81.130 to conform to the alternate date for the budget hearing. [1971 ex.s. c 136 § 1.]

**36.40.080 Final budget to be fixed.** Upon the conclusion of the budget hearing the county legislative authority shall fix and determine each item of the budget separately and shall by resolution adopt the budget as so finally determined and enter the same in detail in the official minutes of the board, a copy of which budget shall be forwarded to the state auditor. [1995 c 301 § 64; 1963 c 4 § 36.40.080. Prior: 1943

c 145 § 1, part; 1941 c 99 § 1, part; 1923 c 164 § 4, part; Rem. Supp. 1943 § 3997-4, part.]

**36.40.090 Taxes to be levied.** The board of county commissioners shall then fix the amount of the levies necessary to raise the amount of the estimated expenditures as finally determined, less the total of the estimated revenues from sources other than taxation, including such portion of any available surplus as in the discretion of the board it shall be advisable to so use, and such expenditures as are to be met from bond or warrant issues: PROVIDED, That no county shall retain an unbudgeted cash balance in the current expense fund in excess of a sum equal to the proceeds of a one dollar and twenty-five cents per thousand dollars of assessed value levy against the assessed valuation of the county. All taxes shall be levied in specific sums and shall not exceed the amount specified in the preliminary budget. [1973 1st ex.s. c 195 § 33; 1963 c 4 § 36.40.090. Prior: 1943 c 145 § 1, part; 1941 c 99 § 1, part; 1923 c 164 § 4, part; Rem. Supp. 1943 § 3997-4, part.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**36.40.100 Budget constitutes appropriations—Transfers—Supplemental appropriations.** The estimates of expenditures itemized and classified as required in RCW 36.40.040 and as finally fixed and adopted in detail by the board of county commissioners shall constitute the appropriations for the county for the ensuing fiscal year; and every county official shall be limited in the making of expenditures or the incurring of liabilities to the amount of the detailed appropriation items or classes respectively: PROVIDED, That upon a resolution formally adopted by the board at a regular or special meeting and entered upon the minutes, transfers or revisions within departments, or supplemental appropriations to the budget from unanticipated federal or state funds may be made: PROVIDED FURTHER, That the board shall publish notice of the time and date of the meeting at which the supplemental appropriations resolution will be adopted, and the amount of the appropriation, once each week, for two consecutive weeks prior to the meeting in the official newspaper of the county. [1985 c 469 § 48; 1973 c 97 § 1; 1969 ex.s. c 252 § 2; 1965 ex.s. c 19 § 1; 1963 c 4 § 36.40.100. Prior: 1945 c 201 § 1, part; 1943 c 66 § 1, part; 1927 c 301 § 1, part; 1923 c 164 § 5, part; Rem. Supp. 1945 § 3997-5, part.]

**36.40.120 Limitation on use of borrowed money.** Moneys received from borrowing shall be used for no other purpose than that for which borrowed except that if any surplus shall remain after the accomplishment of the purpose for which borrowed, it shall be used to redeem the county debt. Where the budget contains an expenditure program to be financed from a bond issue to be authorized thereafter no such expenditure shall be made or incurred until such bonds have been duly authorized. [1963 c 4 § 36.40.120. Prior: 1945 c 201 § 1, part; 1943 c 66 § 1, part; 1927 c 301 § 1, part; 1923 c 164 § 5, part; Rem. Supp. 1945 § 3997-5, part.]

**36.40.130 County not liable on overexpenditure—Penalty against officials.** Expenditures made, liabilities incurred, or warrants issued in excess of any of the detailed budget appropriations or as revised by transfer as in RCW 36.40.100, \*36.40.110 or 36.40.120 provided shall not be a liability of the county, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond. The county auditor shall issue no warrant and the county commissioners shall approve no claim for any expenditure in excess of the detailed budget appropriations or as revised under the provisions of RCW 36.40.100 through 36.40.130, except upon an order of a court of competent jurisdiction, or for emergencies as hereinafter provided. Any county commissioner, or county auditor, approving any claim or issuing any warrant in excess of any such budget appropriation except as herein provided shall forfeit to the county fourfold the amount of such claim or warrant which shall be recovered by action against such county commissioner or auditor, or all of them, and the several sureties on their official bonds. [1963 c 4 § 36.40.130. Prior: 1945 c 201 § 1, part; 1943 c 66 § 1, part; 1927 c 301 § 1, part; 1923 c 164 § 5, part; Rem. Supp. 1945 § 3997-5, part.]

\*Reviser's note: RCW 36.40.110 was repealed by 1997 c 204 § 6.

**36.40.140 Emergencies subject to hearing.** When a public emergency, other than such as are specifically described in RCW 36.40.180, and which could not reasonably have been foreseen at the time of making the budget, requires the expenditure of money not provided for in the budget, the board of county commissioners by majority vote of the commissioners at any meeting the time and place of which all the commissioners have had reasonable notice, shall adopt and enter upon its minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet it, and shall publish the same, together with a notice that a public hearing thereon will be held at the time and place designated therein, which shall not be less than one week after the date of publication, at which any taxpayer may appear and be heard for or against the expenditure of money for the alleged emergency. The resolution and notice shall be published once in the official county newspaper, or if there is none, in a legal newspaper in the county. Upon the conclusion of the hearing, if the board of county commissioners approves it, an order shall be made and entered upon its official minutes by a majority vote of all the members of the board setting forth the facts constituting the emergency, together with the amount of expenditure authorized, which order, so entered, shall be lawful authorization to expend said amount for such purpose unless a review is applied for within five days thereafter. [1969 ex.s. c 185 § 3; 1963 c 4 § 36.40.140. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

Severability—1969 ex.s. c 185: See RCW 36.87.900.

**36.40.150 Emergencies subject to hearing—Right of taxpayer to review order.** No expenditure shall be made or liability incurred pursuant to the order until a period of five days, exclusive of the day of entry of the order, have elapsed, during which time any taxpayer or taxpayers of the county

feeling aggrieved by the order may have the superior court of the county review it by filing with the clerk of such court a verified petition, a copy of which has been served upon the county auditor. The petition shall set forth in detail the objections of the petitioners to the order and the reasons why the alleged emergency does not exist. [1963 c 4 § 36.40.150. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

**36.40.160 Emergencies subject to hearing—Petition for review suspends order.** The service and filing of the petition shall operate to suspend the emergency order and the authority to make any expenditure or incur any liability thereunder until final determination of the matter by the court. [1963 c 4 § 36.40.160. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

**36.40.170 Emergencies subject to hearing—Court's power on review.** Upon the filing of a petition the court shall immediately fix a time for hearing it which shall be at the earliest convenient date. At such hearing the court shall hear the matter de novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination as to whether an emergency such as is contemplated within the meaning and purpose of this chapter exists or not and whether the expenditure authorized by said order is excessive or not shall be final. [1963 c 4 § 36.40.170. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

**36.40.180 Emergencies subject to hearing—Nondebtable emergencies.** Upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection, or for the immediate preservation of order or of public health or for the restoration to a condition of usefulness of any public property the usefulness of which has been destroyed by accident, or for the relief of a stricken community overtaken by a calamity, or in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the county, or to meet mandatory expenditures required by any law, the board of county commissioners may, upon the adoption by the unanimous vote of the commissioners present at any meeting the time and place of which all of such commissioners have had reasonable notice, of a resolution stating the facts constituting the emergency and entering the same upon their minutes, make the expenditures necessary to meet such emergency without further notice or hearing. [1963 c 4 § 36.40.180. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

**36.40.190 Payment of emergency warrants.** All emergency expenditures shall be paid for by the issuance of emergency warrants which shall be paid from any moneys on hand in the county treasury in the fund properly chargeable therewith and the county treasurer shall pay such warrants out of any moneys in the treasury in such fund. If at any time there are insufficient moneys on hand in the treasury to pay any of such warrants, they shall be registered, bear interest and be called in the manner provided by law for other county

warrants. [1963 c 4 § 36.40.190. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

**36.40.195 Supplemental appropriations of unanticipated funds from local sources.** In addition to the supplemental appropriations provided in RCW 36.40.100 and 36.40.140, the county legislative authority may provide by resolution a policy for supplemental appropriations as a result of unanticipated funds from local revenue sources. [1997 c 204 § 4.]

**36.40.200 Lapse of budget appropriations.** All appropriations shall lapse at the end of the fiscal year: PROVIDED, That the appropriation accounts may remain open for a period of thirty days, and may, at the auditor's discretion, remain open for a period not to exceed sixty days thereafter for the payment of claims incurred against such appropriations prior to the close of the fiscal year.

After such period has expired all appropriations shall become null and void and any claim presented thereafter against any such appropriation shall be provided for in the next ensuing budget: PROVIDED, That this shall not prevent payments upon uncompleted improvements in progress at the close of the fiscal year. [1997 c 204 § 2; 1963 c 4 § 36.40.200. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

**36.40.205 Salary adjustment for county legislative authority office—Ratification and validation of preelection action.** If prior to the election for any county legislative authority office, a salary adjustment for such position to become effective upon the commencement of the term next following such election is adopted by ordinance or resolution of the legislative authority of such county, and a salary adjustment coinciding with such preceding ordinance or resolution thereof is properly adopted as part of the county budget for the years following such election, such action shall be deemed a continuing part of and shall ratify and validate the preelection action as to such salary adjustment. [1975 1st ex.s. c 32 § 1.]

**36.40.210 Monthly report by auditor.** On or before the twenty-fifth day of each month the auditor shall submit to the board of county commissioners a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month and like information for the whole of the current fiscal year to the first day of said month, together with the unexpended and unencumbered balance of each appropriation. He shall also set forth the receipts from taxes and from sources other than taxation for the same periods. [1963 c 4 § 36.40.210. Prior: 1923 c 164 § 7; RRS § 3997-7.]

**36.40.220 Rules, classifications, and forms.** The state auditor may make such rules, classifications, and forms as may be necessary to carry out the provisions in respect to county budgets, define what expenditures shall be chargeable to each budget account, and establish such accounting and cost systems as may be necessary to provide accurate budget

information. [1995 c 301 § 65; 1963 c 4 § 36.40.220. Prior: 1923 c 164 § 8; RRS § 3997-8.]

**36.40.230 No new funds created.** This chapter shall not be construed to create any new fund. [1963 c 4 § 36.40.230. Prior: 1923 c 164 § 9; RRS § 3997-9.]

**36.40.240 Penalty.** Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars. [1963 c 4 § 36.40.240. Prior: 1923 c 164 § 10; RRS § 3997-10.]

**36.40.250 Biennial budgets—Supplemental and emergency budgets.** In lieu of adopting an annual budget, the county legislative authority of any county may adopt an ordinance or a resolution providing for biennial budgets with a mid-biennium review and modification for the second year of the biennium. The county legislative authority may repeal such an ordinance or resolution and revert to adopting annual budgets for a period commencing after the end of a biennial budget cycle. The county legislative authority of a county with a biennial budget cycle may adopt supplemental and emergency budgets in the same manner and subject to the same conditions as the county legislative authority in a county with an annual budget cycle.

The procedure and steps for adopting a biennial budget shall conform with the procedure and steps for adopting an annual budget and with requirements established by the state auditor. The state auditor shall establish requirements for preparing and adopting the mid-biennium review and modification for the second year of the biennium.

Expenditures included in the biennial budget, mid-term modification budget, supplemental budget, or emergency budget shall constitute the appropriations for the county during the applicable period of the budget and every county official shall be limited in making expenditures or incurring liabilities to the amount of the detailed appropriation item or classes in the budget.

In lieu of adopting an annual budget or a biennial budget with a mid-biennium review for all funds, the legislative authority of any county may adopt an ordinance or a resolution providing for a biennial budget or budgets for any one or more funds of the county, with a mid-biennium review and modification for the second year of the biennium, with the other funds remaining on an annual budget. The county legislative authority may repeal such an ordinance or resolution and revert to adopting annual budgets for a period commencing after the end of the biennial budget or biennial budgets for the specific agency fund or funds. The county legislative authority of a county with a biennial budget cycle may adopt supplemental and emergency budgets in the same manner and subject to the same conditions as the county legislative authority in a county with an annual budget cycle.

The county legislative authority shall hold a public hearing on the proposed county property taxes and proposed road district property taxes prior to imposing the property tax levies. [1997 c 204 § 3; 1995 c 193 § 1.]

**Reviser's note:** 1995 c 193 directed that this section be added to chapter 36.32 RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 36.40 RCW.

### Chapter 36.42 RCW RETAIL SALES AND USE TAXES

*County and city sales and use taxes: Chapter 82.14 RCW.*

### Chapter 36.43 RCW BUILDING CODES AND FIRE REGULATIONS

#### Sections

36.43.010	Authority to adopt.
36.43.020	Area to which applicable.
36.43.030	Enforcement—Inspectors.
36.43.040	Penalty for violation of code or regulation.

*Electrical construction regulations applicable to counties: RCW 19.29.010.*

*Energy-related building standards: Chapter 19.27A RCW.*

*State building code: Chapter 19.27 RCW.*

**36.43.010 Authority to adopt.** The boards of county commissioners may adopt standard building codes and standard fire regulations to be applied within their respective jurisdictions. [1963 c 4 § 36.43.010. Prior: 1943 c 204 § 1; Rem. Supp. 1943 § 4077-10.]

**36.43.020 Area to which applicable.** The building codes or fire regulations when adopted by the board of county commissioners shall be applicable to all the area of the county situated outside the corporate limits of any city or town, or to such portion thereof as may be prescribed in such building code or fire regulation. [1963 c 4 § 36.43.020. Prior: 1943 c 204 § 2; Rem. Supp. 1943 § 4077-11.]

**36.43.030 Enforcement—Inspectors.** The boards of county commissioners may appoint fire inspectors or other inspectors to enforce any building code or fire regulation adopted by them. The boards must enforce any building code or fire regulation adopted by them. [1963 c 4 § 36.43.030. Prior: 1943 c 204 § 3; Rem. Supp. 1943 § 4077-12.]

**36.43.040 Penalty for violation of code or regulation.** Any person violating the provisions of any building code or any fire regulation lawfully adopted by any board of county commissioners shall be guilty of a misdemeanor. [1963 c 4 § 36.43.040. Prior: 1943 c 204 § 4; Rem. Supp. 1943 § 4077-13.]

### Chapter 36.45 RCW CLAIMS AGAINST COUNTIES

#### Sections

36.45.010	Manner of filing.
36.45.040	Labor and material claims.

*Assessor's expense when meeting with department of revenue as: RCW 84.08.190.*

*Autopsy costs as: RCW 68.50.104, 68.50.106.*

*Claims, reports, etc., filing: RCW 1.12.070.*

*Compromise of unlawful, when: RCW 43.09.260.*

*Costs against county, civil actions: RCW 4.84.170.*

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*Courtrooms, expense of sheriff in providing as county charge: RCW 2.28.140.*

*Diking, drainage, or sewerage improvement assessments as: RCW 85.08.500, 85.08.530.*

*Elections, expense of registration of voters as: RCW 29A.08.150.*

*Expense of keeping jury as: RCW 4.44.310.*

*Flood control*

*by counties jointly, county liability: RCW 86.13.080.*

*districts (1937 act) assessments as: RCW 86.09.526, 86.09.529.*

*Health officers' convention expense as: RCW 43.70.140.*

*Incorporation into city or town of intercounty areas as: RCW 35.02.240.*

*Liability of county on failure to require contractors bond: RCW 39.08.015.*

*Lien for labor, material, taxes on public works: Chapter 60.28 RCW.*

*Metropolitan municipal corporation costs as: Chapter 35.58 RCW.*

*Municipal court expenses as: RCW 35.20.120.*

*Port district election costs as: RCW 53.04.070.*

*Railroad grade crossing costs as: Chapter 81.53 RCW.*

*Reclamation district commission expenses as: RCW 89.30.070.*

*Regional jail camps, cost of committing county prisoners to as: RCW 72.64.110.*

*Superior court, expenses of visiting judge as: RCW 2.08.170.*

*Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.*

*Veterans' meeting place rental as: RCW 73.04.080.*

*Vital statistics registrars' fees as charge against: RCW 70.58.040.*

**36.45.010 Manner of filing.** All claims for damages against any county shall be filed in the manner set forth in chapter 4.96 RCW. [1993 c 449 § 10; 1967 c 164 § 14; 1963 c 4 § 36.45.010. Prior: 1957 c 224 § 7; prior: 1919 c 149 § 1, part; RRS § 4077, part.]

**Purpose—Severability—1993 c 449:** See notes following RCW 4.96.010.

**Severability—Purpose—1967 c 164:** See notes following RCW 4.96.010.

*Tortious conduct of political subdivisions and municipal corporations, liability for damages: Chapter 4.96 RCW.*

**36.45.040 Labor and material claims.** Whenever any county, by its board of county commissioners, has entered into a contract for the construction of any public improvement for the benefit of the county, whereby the contractor agreed to furnish all labor, material, and supplies necessary for the improvement, and the contractor has proceeded with such improvement and procured from other persons labor, material, or supplies and used the same in the construction of the improvement, but has failed to pay such persons therefor, and such persons have filed claims therefor against the county, and the claims have been audited in the manner provided by law and found to be just claims against the county, and valid obligations of the county except for the fact that they were not filed within the time provided by law; the board of county commissioners may provide funds sufficient therefor, and cause the payment, of such claims in the manner provided by law for the payment of valid claims against the county. [1963 c 4 § 36.45.040. Prior: 1927 c 220 § 1; RRS § 4077-1.]

(2004 Ed.)

**Chapter 36.47 RCW**  
**COORDINATION OF**  
**ADMINISTRATIVE PROGRAMS**

Sections

- 36.47.010 Declaration of necessity.
- 36.47.020 Joint action by officers of each county.
- 36.47.030 State association of county officials may be coordinating agency.
- 36.47.040 Reimbursement for costs and expenses to state association of county officials.
- 36.47.050 County officials—Further action authorized—Meetings.
- 36.47.060 Association financial records subject to audit by state auditor.
- 36.47.070 Merger of state association of county officials with state association of counties.

**36.47.010 Declaration of necessity.** The necessity and the desirability of coordinating the administrative programs of all of the counties in this state is recognized by this chapter. [1963 c 4 § 36.47.010. Prior: 1959 c 130 § 1.]

**36.47.020 Joint action by officers of each county.** It shall be the duty of the assessor, auditor, clerk, coroner, sheriff, superintendent of schools, treasurer, and prosecuting attorney of each county in the state, including appointive officials in charter counties heading like departments, to take such action as they jointly deem necessary to effect the coordination of the administrative programs of each county. [1998 c 245 § 28; 1969 ex.s. c 5 § 1; 1963 c 4 § 36.47.020. Prior: 1959 c 130 § 2.]

**36.47.030 State association of county officials may be coordinating agency.** The county officials enumerated in RCW 36.47.020 are empowered to designate the Washington state association of county officials as a coordinating agency through which the duties imposed by RCW 36.47.020 may be performed, harmonized, or correlated. [1969 ex.s. c 5 § 2; 1963 c 4 § 36.47.030. Prior: 1959 c 130 § 3.]

**36.47.040 Reimbursement for costs and expenses to state association of county officials.** Each county which designates the Washington state association of county officials as the agency through which the duties imposed by RCW 36.47.020 may be executed is authorized to reimburse the association from the county current expense fund for the cost of any such services rendered: PROVIDED, That no reimbursement shall be made to the association for any expenses incurred under RCW 36.47.050 for travel, meals, or lodging of such county officials, or their representatives at such meetings, but such expenses may be paid by such official's respective county as other expenses are paid for county business. Such reimbursement shall be paid only on vouchers submitted to the county auditor and approved by the legislative authority of each county in the manner provided for the disbursement of other current expense funds. Each such voucher shall set forth the nature of the services rendered by the association, supported by affidavit that the services were actually performed. [1991 c 363 § 71; 1977 ex.s. c 221 § 1; 1973 1st ex.s. c 195 § 35; 1970 ex.s. c 47 § 2; 1969 ex.s. c 5 § 3; 1963 c 4 § 36.47.040. Prior: 1959 c 130 § 4.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

(2004 Ed.)

**36.47.050 County officials—Further action authorized—Meetings.** The county officials enumerated in RCW 36.47.020 are authorized to take such further action as they deem necessary to comply with the intent of this chapter, including attendance at state and district meetings which may be required to formulate the reports provided for in \*RCW 36.47.020. [1969 ex.s. c 5 § 4; 1963 c 4 § 36.47.050. Prior: 1959 c 130 § 5.]

**\*Reviser's note:** RCW 36.47.020 was amended by 1998 c 245 § 28, removing the requirement to submit reports.

**36.47.060 Association financial records subject to audit by state auditor.** The financial records of the Washington state association of county officials shall be subject to audit by the state auditor. [1995 c 301 § 66; 1969 ex.s. c 5 § 5; 1963 c 4 § 36.47.060. Prior: 1959 c 130 § 6.]

**36.47.070 Merger of state association of county officials with state association of counties.** It is the desire of the legislature that the Washington State Association of County Officials, as set forth in chapter 36.47 RCW and the Washington State Association of Counties, as set forth in RCW 36.32.350, shall merge into one association of elected county officers. Only one association shall carry out the duties imposed by RCW 36.32.335 through 36.32.360 and 36.47.020 through 36.47.060. [1998 c 245 § 29; 1977 ex.s. c 221 § 2.]

**Chapter 36.48 RCW**  
**DEPOSITARIES**

Sections

- 36.48.010 Depositories to be designated by treasurer.
- 36.48.040 Depositories to be designated by treasurer—Deposited funds deemed in county treasury.
- 36.48.050 Depositories to be designated by treasurer—Treasurer's liability and bond additional.
- 36.48.060 Definition—"Financial institution."
- 36.48.070 County finance committee—Approval of investment policy and debt policy—Rules.
- 36.48.080 County clerk's funds may be deposited.
- 36.48.090 Clerk's trust fund created—Deposits—Interest—Investments.

**36.48.010 Depositories to be designated by treasurer.** Each county treasurer shall annually at the end of each fiscal year or at such other times as may be deemed necessary, designate one or more financial institutions in the state which are qualified public depositories as set forth by the public deposit protection commission as depository or depositories for all public funds held and required to be kept by the treasurer, and no county treasurer shall deposit any public money in financial institutions, except as herein provided. Public funds of the county or a special district for which the county treasurer acts as its treasurer may only be deposited in bank accounts authorized by the treasurer or authorized in statute. All bank card depository service contracts for the county and special districts for which the county treasurer acts as its treasurer must be authorized by the county treasurer. [1998 c 106 § 6; 1984 c 177 § 8; 1973 c 126 § 5; 1969 ex.s. c 193 § 27; 1963 c 4 § 36.48.010. Prior: 1907 c 51 § 1; RRS § 5562.]

**Construction—Severability—1969 ex.s. c 193:** See notes following RCW 39.58.010.

*Public depositories:* Chapter 39.58 RCW.

**36.48.040 Depositories to be designated by treasurer—Deposited funds deemed in county treasury.** The county treasurer shall deposit with any depository, which has fully complied with all requirements of RCW 36.48.010 through 36.48.060, any county money in his hands or under his official control, and for the purpose of making the quarterly settlement and counting funds in the hands of the treasurer any sums so on deposit shall be deemed to be in the county treasury. [1963 c 4 § 36.48.040. Prior: 1907 c 51 § 4; RRS § 5565.]

**36.48.050 Depositories to be designated by treasurer—Treasurer's liability and bond additional.** The provisions of RCW 36.48.010 through 36.48.060 shall in no way relieve or release the county treasurer from any liability upon his official bond as such treasurer, or any surety upon such bond, and shall in no way affect the duty of the several county treasurers to give bond as required by law. [1963 c 4 § 36.48.050. Prior: 1907 c 51 § 5; RRS § 5566.]

**36.48.060 Definition—"Financial institution."** "Financial institution," whenever it occurs in RCW 36.48.010 through 36.48.050, means a branch of a bank engaged in banking in this state in accordance with RCW 30.04.300, and any state bank or trust company, national banking association, stock savings bank, mutual savings bank, or savings and loan association, which institution is located in this state and lawfully engaged in business. [1984 c 177 § 9; 1963 c 4 § 36.48.060. Prior: 1907 c 51 § 6; RRS § 5567.]

**36.48.070 County finance committee—Approval of investment policy and debt policy—Rules.** The county treasurer, the county auditor, and the chair of the county legislative authority, ex officio, shall constitute the county finance committee. The county treasurer shall act as chair of the committee and the county auditor as secretary thereof. The committee shall keep a full and complete record of all its proceedings in appropriate books of record and all such records and all correspondence relating to the committee shall be kept in the office of the county auditor and shall be open to public inspection. The committee shall approve county investment policy and a debt policy and shall make appropriate rules and regulations for the carrying out of the provisions of RCW 36.48.010 through 36.48.060, not inconsistent with law. [1999 c 18 § 5; 1991 c 245 § 11; 1963 c 4 § 36.48.070. Prior: 1933 ex.s. c 45 § 2; RRS § 5567-1.]

**Effective date—1999 c 18 § 5:** "Section 5 of this act takes effect January 1, 2000." [1999 c 18 § 10.]

**36.48.080 County clerk's funds may be deposited.** The county clerks of all the counties of the state shall deposit all funds in their custody, as clerk of the superior court of their respective counties, in one or more qualified depositories, as provided in chapter 39.58 RCW, as now or hereafter amended. [1973 c 126 § 7; 1963 c 4 § 36.48.080. Prior: 1933 ex.s. c 40 § 1; RRS § 5561-1.]

**36.48.090 Clerk's trust fund created—Deposits—Interest—Investments.** Whenever the clerk of the superior

court has funds held in trust for any litigant or for any purpose, they shall be deposited in a separate fund designated "clerk's trust fund," and shall not be commingled with any public funds. However, in the case of child support payments, the clerk may send the checks or drafts directly to the recipient or endorse the instrument to the recipient and the clerk is not required to deposit such funds. In processing child support payments, the clerk shall comply with RCW 26.09.120. The clerk may invest the funds in any of the investments authorized by RCW 36.29.020. The clerk shall place the income from such investments in the county current expense fund to be used by the county for general county purposes unless: (1) The funds being held in trust in a particular matter are two thousand dollars or more, and (2) a litigant in the matter has filed a written request that such investment be made of the funds being held in trust. Interest income accrued from the date of filing of the written request for investment shall be paid to the beneficiary. In such an event, any income from such investment shall be paid to the beneficiary of such trust upon the termination thereof: PROVIDED, That five percent of the income shall be deducted by the clerk as an investment service fee and placed in the county current expense fund to be used by the county for general county purposes.

In any matter where funds are held in the clerk's trust fund, any litigant who is not represented by an attorney and who has appeared in matters where the funds held are two thousand dollars or more shall receive written notice of the provisions of this section from the clerk. [1994 c 185 § 4; 1987 c 363 § 4; 1979 ex.s. c 227 § 1; 1977 c 63 § 1; 1973 c 126 § 8; 1963 c 4 § 36.48.090. Prior: 1933 ex.s. c 40 § 2; RRS § 5561-2.]

## Chapter 36.49 RCW DOG LICENSE TAX

### Sections

36.49.020	Treasurer to collect—Tags.
36.49.030	Application for license after assessor's list returned.
36.49.040	Delinquent tax, how collected.
36.49.050	"County dog license tax fund"—Created.
36.49.060	"County dog license tax fund"—Transfer of excess funds in.
36.49.070	Penalty.

*Indemnity for dogs doing damage, etc.: RCW 16.08.010 through 16.08.030.*  
*Taxes for city and town purposes: State Constitution Art. 11 § 12.*

**36.49.020 Treasurer to collect—Tags.** The county assessor shall turn over the list of dog owners to the county treasurer for collection of the taxes. Upon the payment of the license tax upon any dog or kennel the county treasurer shall deliver to the owner or keeper of such dog or kennel a license, and a metallic tag for each dog taxed and licensed or kept in such kennel. The license shall be dated and numbered and shall bear the name of the county issuing it, the name and address of the owner of the dog or kennel licensed; and if a dog license, a description of the dog including its breed, age, color, and markings; and if a kennel license, a description of the breed, number, and ages of the dogs kept in such kennel. The metallic tag shall bear the name of the county issuing it, a serial number corresponding with the number on the license, and the calendar year in which it is issued. Every owner or keeper of a dog shall keep a substantial collar on the

dog and attached firmly thereto the license tag for the current year. [1963 c 4 § 36.49.020. Prior: 1929 c 198 § 2; RRS § 8304-2; prior: 1919 c 6 § 2, part.]

**36.49.030 Application for license after assessor's list returned.** Any person becoming the owner of a dog or kennel after the assessment has been returned by the assessor and any owner of a dog or kennel which for any reason the assessor has failed to assess, may at any time apply to the county treasurer, and upon the payment of the required fee procure a license and a metallic tag or tags. [1963 c 4 § 36.49.030. Prior: 1929 c 198 § 3, part; RRS § 8304-3, part.]

**36.49.040 Delinquent tax, how collected.** If any person whose name appears upon the list prepared by the county assessor fails to pay the license tax to the county treasurer on or before the first day of August of the year in which the list is made, the county treasurer shall proceed to collect the delinquent license taxes in the manner provided by law for collection of delinquent personal property taxes. [1963 c 4 § 36.49.040. Prior: 1929 c 198 § 3, part; RRS § 8304-3, part.]

**36.49.050 "County dog license tax fund"—Created.** All license taxes collected in accordance with the provisions of this chapter shall be placed in a separate fund in the office of the county treasurer to be known as the "county dog license tax fund." [1963 c 4 § 36.49.050. Prior: 1929 c 198 § 4; RRS § 8304-4; prior: 1919 c 6 § 2, part.]

**36.49.060 "County dog license tax fund"—Transfer of excess funds in.** On the first day of March of each year all moneys in the county dog license tax fund in excess of five hundred dollars shall be transferred and credited by the county treasurer to the current expense fund of the county. [1963 c 4 § 36.49.060. Prior: 1929 c 198 § 8; RRS § 8304-5.]

**36.49.070 Penalty.** Any person or officer who refuses to comply with or enforce any of the provisions of this chapter shall be guilty of a misdemeanor. [1963 c 4 § 36.49.070. Prior: 1929 c 198 § 9; RRS § 8304-6.]

### Chapter 36.50 RCW

#### FARM AND HOME EXTENSION WORK

##### Sections

36.50.010 Cooperative extension work in agriculture and home economics authorized.

**36.50.010 Cooperative extension work in agriculture and home economics authorized.** The board of county commissioners of any county and the governing body of any municipality are authorized to establish and conduct extension work in agriculture and home economics in cooperation with Washington State University, upon such terms and conditions as may be agreed upon by any such board or governing body and the director of the extension service of Washington State University; and may employ such means and appropriate and expend such sums of money as may be necessary to effectively establish and carry on such work in agriculture and home economics in their respective counties and

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municipalities. [1963 c 4 § 36.50.010. Prior: 1949 c 181 § 1; Rem. Supp. 1949 § 4589-1.]

### Chapter 36.53 RCW

#### FERRIES—PRIVATELY OWNED

##### Sections

36.53.010 Grant of license—Term.  
 36.53.020 Licensing tax.  
 36.53.030 To whom license granted—Notice of intention if nonowner.  
 36.53.040 Notice of application to be posted.  
 36.53.050 Bond of licensee.  
 36.53.060 Duties of licensee.  
 36.53.070 Duties of licensee—Duties as to ferriage—Liability for non-performance.  
 36.53.080 Rates of ferriage.  
 36.53.090 Commissioners may fix and alter rates.  
 36.53.100 Rates to be posted.  
 36.53.110 Order of ferriage—Liability for nonperformance.  
 36.53.120 Grant exclusive.  
 36.53.130 Revocation of license.  
 36.53.140 Penalty for maintaining unlicensed ferry.  
 36.53.150 Interstate ferry—County may contribute to—Grant of permit to operator.

**36.53.010 Grant of license—Term.** The board of county commissioners may grant a license to keep a ferry across any lake or stream within its county, upon being satisfied that a ferry is necessary at the point applied for, which license shall continue in force for a term to be fixed by the commissioners not exceeding five years. [1963 c 4 § 36.53.010. Prior: Code 1881 § 3002; 1879 p 61 § 38; 1869 p 280 § 40; 1863 p 521 § 1; 1854 p 354 § 1; RRS § 5462.]

**36.53.020 Licensing tax.** The county legislative authority may charge such sum as may be fixed under the authority of RCW 36.32.120(3) for such license, and the person to whom the license is granted shall pay to the appropriate county official the tax for one year in advance. [1985 c 91 § 2; 1963 c 4 § 36.53.020. Prior: Code 1881 § 3003; 1879 p 61 § 39; 1869 p 280 § 41; 1863 p 522 § 2; 1854 p 354 § 2; RRS § 5463.]

**36.53.030 To whom license granted—Notice of intention if nonowner.** No license shall be granted to any person other than the owner of the land embracing or adjoining the lake or stream where the ferry is proposed to be kept, unless the owner neglects to apply therefor. Whenever application for a license is made by any person other than the owner, the board of county commissioners shall not grant it, unless proof is made that the applicant caused notice, in writing, of his intention to make such application to be given to such owner, if residing in the county, at least ten days before the session of the board of county commissioners at which application is made. [1963 c 4 § 36.53.030. Prior: Code 1881 § 3004; 1879 p 61 § 40; 1869 p 280 § 42; 1863 p 522 § 3; 1854 p 354 § 3; RRS § 5464.]

**36.53.040 Notice of application to be posted.** Every person intending to apply for a license to keep a ferry at any place shall give notice of his intention by posting up at least three notices in public places in the neighborhood where the ferry is proposed to be kept, twenty days prior to any regular session of the board of county commissioners at which the

application is to be made. [1963 c 4 § 36.53.040. Prior: Code 1881 § 3005; 1879 p 61 § 41; 1869 p 281 § 43; 1863 p 522 § 4; 1854 p 354 § 4; RRS § 5465.]

**36.53.050 Bond of licensee.** Every person applying for a license to keep a ferry shall, before the same is issued, enter into a bond with one or more sureties, to be approved by the county auditor, in a sum not less than one hundred nor more than five hundred dollars, conditioned that such person will keep the ferry according to law and that if default at any time is made in the condition of the bond, damages, not exceeding the penalty, may be recovered by any person aggrieved, before any court having jurisdiction. [1963 c 4 § 36.53.050. Prior: Code 1881 § 3006; 1879 p 62 § 42; 1869 p 281 § 44; 1863 p 522 § 5; 1854 p 354 § 5; RRS § 5466.]

**36.53.060 Duties of licensee.** Every person obtaining a license to keep a ferry shall provide and keep in good and complete repair the necessary boat or boats for the safe conveyance of all persons and property, and furnish such boats at all times with suitable oars, setting poles, and other implements necessary for the service thereof, and shall keep a sufficient number of discreet and skillful men to attend and manage the same; and he shall also at all times keep the place of embarking and landing in good order and repair, by cutting away the bank of the stream so that persons and property may be embarked and landed without danger or unnecessary delay. [1963 c 4 § 36.53.060. Prior: Code 1881 § 3007; 1879 p 62 § 43; 1869 p 281 § 45; 1863 p 522 § 6; 1854 p 354 § 6; RRS § 5467.]

**36.53.070 Duties of licensee—Duties as to ferriage—Liability for nonperformance.** Every person obtaining a ferry license shall give constant and diligent attention to such ferry from daylight in the morning until dark in the evening of each day, and shall, moreover, at any hour in the night, if required, except in cases of imminent danger, give passage to all persons requiring the same on the payment of double rate of ferriage allowed to be taken in the daytime.

If the licensee at any time neglects or refuses to give passage to any person or property, the licensee shall forfeit and pay to the party aggrieved for every such offense the sum of five dollars, to be recovered before any district judge having jurisdiction; the licensee shall, moreover, be liable in an action at law for any special damage which such person may have sustained in consequence of such neglect or refusal.

No forfeiture or damages shall be recovered for a failure or refusal to convey any person or property across the stream when it is manifestly hazardous to do so, by reason of any storm, flood, or ice; nor shall any keeper of a ferry be compelled to give passage to any person or property until the fare or toll chargeable by law has been fully paid or tendered. [1987 c 202 § 207; 1963 c 4 § 36.53.070. Prior: Code 1881 § 3008; 1879 p 62 § 44; 1869 p 281 § 46; 1863 p 523 § 7; 1854 p 355 § 7; RRS § 5468.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**36.53.080 Rates of ferriage.** Whenever the board of county commissioners grants a license to keep a ferry across any lake or stream, it shall establish the rates of ferriage

which may be lawfully demanded for the transportation of persons and property across the same, having due regard for the breadth and situation of the stream, and the dangers and difficulties incident thereto, and the publicity of the place at which the same is established, and every keeper of a ferry who at any time demands and receives more than the amount so designated for ferrying shall forfeit and pay to the party aggrieved, for every such offense, the sum of five dollars, over and above the amount which has been illegally received, to be recovered before any district judge having jurisdiction. [1987 c 202 § 208; 1963 c 4 § 36.53.080. Prior: Code 1881 § 3009; 1879 p 63 § 45; 1869 p 282 § 47; 1863 p 523 § 8; 1854 p 355 § 8; RRS § 5469.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**36.53.090 Commissioners may fix and alter rates.** The boards of county commissioners may fix, alter, and establish from time to time, the rates of ferriage to be levied and collected at all ferries established by law, within or bordering upon the county lines of any of the counties in this state. [1963 c 4 § 36.53.090. Prior: Code 1881 § 3010; 1879 p 63 § 46; 1869 p 282 § 48; RRS § 5470.]

**36.53.100 Rates to be posted.** Every person licensed to keep a ferry shall post up, in some conspicuous place near his ferry landing a list of the rates of ferriage which are chargeable by law at such ferry, which list of rates shall at all times be plain and legible and posted up so near the place where persons pass across the ferry that it may be easily read. If the keeper neglects or refuses to post and keep up such list, it shall not be lawful to charge or take any ferriage or compensation at the ferry, during the time of such delinquency. [1963 c 4 § 36.53.100. Prior: Code 1881 § 3011; 1879 p 63 § 47; 1869 p 283 § 49; 1863 p 523 § 9; 1854 p 355 § 9; RRS § 5471.]

**36.53.110 Order of ferriage—Liability for nonperformance.** All persons shall be received into the ferry boats and conveyed across the stream over which a ferry is established according to their arrival thereat, and if the keeper of a ferry acts contrary to this regulation, the keeper shall forfeit and pay to the party aggrieved the sum of ten dollars for every such offense, to be recovered before any district judge having jurisdiction: PROVIDED, That public officers on urgent business, post riders, couriers, physicians, surgeons, and midwives shall in all cases be first carried over, when all cannot go at the same time. [1987 c 202 § 209; 1963 c 4 § 36.53.110. Prior: Code 1881 § 3012; 1879 p 63 § 48; 1869 p 283 § 50; 1863 p 524 § 10; 1854 p 356 § 10; RRS § 5472.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**36.53.120 Grant exclusive.** Every person licensed to keep a ferry under the provisions of RCW 36.53.010 through 36.53.140 shall have the exclusive privilege of transporting all persons and property over and across the stream where the ferry is established, and shall be entitled to all the fare arising by law therefrom: PROVIDED, That any person may cross such stream at the ferry location in his own boat, or take in and carry over his neighbor, when done without fee or charge, and not with intent to injure the person licensed to

keep a ferry. [1963 c 4 § 36.53.120. Prior: Code 1881 § 3013; 1879 p 63 § 49; 1869 p 283 § 51; 1863 p 524 § 11; 1854 p 356 § 11; RRS § 5473.]

**36.53.130 Revocation of license.** If any person licensed to keep a ferry fails to pay the taxes assessed thereon when due, or to provide and keep in good and complete repair the necessary boat or boats, with the oars, setting poles, and other necessary implements for the service thereof, or to employ a sufficient number of skilled and discreet ferrymen within three months from the time license is granted, or if the ferry is not at any time kept in good condition and repair, or if it is abandoned, disused, or unfrequented for the space of six months at any one time, the board of county commissioners, on complaint being made in writing, may summon the person licensed to keep such ferry, to show cause why his license should not be revoked. The board may revoke or not according to the testimony adduced and the laws of this state, the decision subject to review by the superior court: **PROVIDED**, That if disuse resulted because the stream is fordable at certain seasons of the year, or because travel by that route is subject to periodical fluctuations, it shall not work a forfeiture within the meaning of this section. [1963 c 4 § 36.53.130. Prior: Code 1881 § 3014; 1879 p 64 § 50; 1869 p 283 § 52; 1863 p 524 § 12; 1854 p 356 § 12; RRS § 5474.]

**36.53.140 Penalty for maintaining unlicensed ferry.** Any person who maintains any ferry and receives ferriage without first obtaining a license therefor shall pay a fine of ten dollars for each offense, to be collected for the use of the county, by suit before any district judge having jurisdiction, and any person may bring such suit: **PROVIDED**, That it shall not be unlawful for any person to transport any other person or property over any stream for hire, when there is no ferry, or the ferry established at such place was not in actual operation at the time, or in sufficient repair to have afforded to such person or property a safe and speedy passage. [1987 c 202 § 210; 1963 c 4 § 36.53.140. Prior: Code 1881 § 3015; 1879 p 64 § 51; 1869 p 284 § 53; 1863 p 525 § 13; 1854 p 356 § 13; RRS § 5475.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**36.53.150 Interstate ferry—County may contribute to—Grant of permit to operator.** Whenever the board of county commissioners of any county determines that the construction or maintenance of a ferry in a state adjoining such county or connecting such county with the adjoining state is of necessity or convenience to the citizens of the county, the board may enter into a contract for the construction or maintenance of such ferry, or make such contribution as may be deemed advisable toward the construction or maintenance thereof, and may lease, or grant exclusive permits to use, any wharf or landing owned or leased by the board to any person, firm or corporation furnishing, or agreeing to furnish, ferry service between such county and the adjoining state. [1963 c 4 § 36.53.150. Prior: 1921 c 165 § 1; 1915 c 26 § 1; RRS § 5478.]

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## Chapter 36.54 RCW

### FERRIES—COUNTY OWNED

#### Sections

- 36.54.010 County may acquire, construct, maintain, and operate ferry.
- 36.54.015 Ferries—Fourteen year long range improvement plan—Contents.
- 36.54.020 Joint ferries—Generally.
- 36.54.030 Joint ferries over water boundary between two counties.
- 36.54.040 Joint ferries over water boundary between two counties—Joint board of commissioners to administer—Records kept.
- 36.54.050 Joint ferries over water boundary between two counties—Commission authority—Expenses shared.
- 36.54.060 Joint ferries over water boundary between two counties—Audit and allowance of claims.
- 36.54.070 Joint ferries over water boundary between two counties—County commissioner duties enumerated—Omission as ground for impeachment.
- 36.54.110 County ferry districts—Authorized—Powers—Governing body.
- 36.54.120 County ferry districts—District may construct, purchase, operate, and maintain passenger-only ferries and wharves.
- 36.54.130 County ferry districts—Tax levy authorized—Uses.
- 36.54.140 County ferry districts—Excess levies.
- 36.54.150 County ferry districts—Budget of fund requirements.
- 36.54.160 County ferry districts—General property tax levies.
- 36.54.170 County ferry districts—Treasurer—Ferry district fund.
- 36.54.180 County ferry districts—Not subject to Washington utilities and transportation commission.
- 36.54.190 County ferry districts—Dissolution.

**36.54.010 County may acquire, construct, maintain, and operate ferry.** Any county may construct, condemn, or purchase, operate and maintain ferries or wharves at any unfordable stream, lake, estuary or bay within or bordering on said county, or between portions of the county, or between such county and other counties, together with all the necessary boats, grounds, roads, approaches, and landings appertaining thereto under the direction and control of the board of county commissioners free or for toll and as the board shall by resolution determine. [1963 c 4 § 36.54.010. Prior: 1919 c 115 § 1; 1899 c 29 § 1; 1895 c 130 § 2; RRS § 5477.]

**36.54.015 Ferries—Fourteen year long range improvement plan—Contents.** The legislative authority of every county operating ferries shall prepare, with the advice and assistance of the county engineer, a fourteen year long range capital improvement plan embracing all major elements of the ferry system. Such plan shall include a listing of each major element of the system showing its estimated current value, its estimated replacement cost, and its amortization period. [1975 1st ex.s. c 21 § 2.]

**36.54.020 Joint ferries—Generally.** The board of county commissioners of any county may, severally or jointly with any other county, city or town, or the state of Washington, or any other state or any county, city or town of any other state, construct or acquire by purchase, gift, or condemnation, and operate any ferry necessary for continuation or connection of any county road across any navigable water. The procedure with respect to the exercise of the power herein granted shall be the same as provided for the joint erection or acquisition of bridges, trestles, or other structures. Any such ferries may be operated as free ferries or as toll ferries under the provisions of law of this state relating thereto. [1963 c 4 § 36.54.020. Prior: 1937 c 187 § 31; RRS § 6450-31.]

**36.54.030 Joint ferries over water boundary between two counties.** Whenever a river, lake, or other body of water is on the boundary line between two counties, the boards of county commissioners of the counties adjoining such stream or body of water may construct, purchase, equip, maintain, and operate a ferry across such river, lake, or other body of water, when such ferry connects the county roads or other public highways of their respective counties. All costs and expenses of constructing, purchasing, maintaining, and operating such ferry shall be paid by the two counties, each paying such proportion thereof as shall be agreed upon by the boards of county commissioners. [1963 c 4 § 36.54.030. Prior: 1917 c 158 § 1; RRS § 5479.]

**36.54.040 Joint ferries over water boundary between two counties—Joint board of commissioners to administer—Records kept.** The boards of county commissioners of the two counties, participating in a joint ferry, shall meet in the joint session at the county seat of one of the counties interested, and shall elect one of their members as chairman of the joint board of commissioners, who shall act as such chairman during the remainder of his term of office, and, at the expiration of his term of office, the two boards of county commissioners shall meet and elect a new chairman, who shall act as such chairman during his term of office as county commissioner, and they shall continue to elect a chairman in like manner thereafter. The county auditors of the counties shall be clerks of such joint commission, and the county auditor of the county where each meeting is held shall act as clerk of the commission at all meetings held in his county. Each county auditor, as soon as the joint commission is organized, shall procure a record book and enter therein a complete record of the proceedings of the commission, and immediately after each adjournment the county auditor of the county in which the meeting is held shall forward a complete copy of the minutes of the proceedings of the commission to the auditor of the other county to be entered by him in his record. Each county shall keep a complete record of the proceedings of the commission. [1963 c 4 § 36.54.040. Prior: 1917 c 158 § 2; RRS § 5480.]

**36.54.050 Joint ferries over water boundary between two counties—Commission authority—Expenses shared.** The joint commission is authorized to transact all business necessary in carrying out the purposes of RCW 36.54.030 through 36.54.070 and its acts shall be binding upon the two counties, and one-half of all bills and obligations created by the commission shall be binding and a legal charge against the road fund of each county and the claims therefor shall be allowed and paid out of the county road fund the same as other claims against said fund are allowed and paid. [1963 c 4 § 36.54.050. Prior: 1917 c 158 § 3; RRS § 5481.]

**36.54.060 Joint ferries over water boundary between two counties—Audit and allowance of claims.** All claims and accounts for the construction, operation and maintenance of a joint county ferry shall be presented to and audited by the joint commission: PROVIDED, That items of expense connected with the operation of such ferry which do not exceed the sum of thirty dollars may be presented to the chairman of the joint commission and allowed by him and when allowed

shall be a joint charge against the road fund of each of the counties operating such ferry. [1963 c 4 § 36.54.060. Prior: 1917 c 158 § 4; RRS § 5482.]

**36.54.070 Joint ferries over water boundary between two counties—County commissioner duties enumerated—Omission as ground for impeachment.** The members of the board of county commissioners of each county shall be members of the joint commission and their refusal to act shall be ground for impeachment. They shall provide for the maintenance and operation of the ferry until it is discontinued by a majority vote of the joint commission. [1963 c 4 § 36.54.070. Prior: 1917 c 158 § 5; RRS § 5483.]

**36.54.110 County ferry districts—Authorized—Powers—Governing body.** (1) The legislative authority of a county with a population over one million persons and having a boundary on Puget Sound may adopt an ordinance creating a ferry district in all or a portion of the area of the county, including the area within the corporate limits of any city or town within the county. The ordinance may be adopted only after a public hearing has been held on the creation of a ferry district, and the county legislative authority makes a finding that it is in the public interest to create the district. A ferry district is limited to providing passenger-only ferry service.

(2) A ferry district is a municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(3) A ferry district is a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(4) The members of the county legislative authority, acting ex officio and independently, shall compose the governing body of any ferry district that is created within the county. The voters of a ferry district must be registered voters residing within the boundaries of the district.

(5) For the purposes of this section, Puget Sound is considered as extending north as far as the Canadian border and west as far as Port Angeles. [2003 c 83 § 301.]

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**36.54.120 County ferry districts—District may construct, purchase, operate, and maintain passenger-only ferries and wharves.** A ferry district may construct, purchase, operate, and maintain passenger-only ferries or wharves at any unfordable stream, lake, estuary, or bay within or bordering the ferry district, or between portions of the ferry district, or between the ferry district and other ferry districts, together with all the necessary boats, grounds, roads, approaches, and landings appertaining thereto under the direction and control of the governing body of the ferry district, free or for toll as the governing body determines by resolution. [2003 c 83 § 302.]

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**36.54.130 County ferry districts—Tax levy authorized—Uses.** (1) To carry out the purposes for which ferry districts are created, the governing body of a ferry district may levy each year an ad valorem tax on all taxable property located in the district not to exceed seventy-five cents per thousand dollars of assessed value. The levy must be sufficient for the provision of ferry services as shown to be required by the budget prepared by the governing body of the ferry district.

(2) A tax imposed under this section may be used only for providing passenger-only ferry services, including the purchase, lease, or rental of passenger-only ferry vessels and dock facilities, the operation and maintenance of passenger-only ferry vessels and dock facilities, and related personnel costs. [2003 c 83 § 303.]

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**36.54.140 County ferry districts—Excess levies.** A ferry district may impose excess levies upon the property included within the district for a one-year period to be used for operating or capital purposes whenever authorized by the electors of the district under RCW 84.52.052 and Article VII, section 2(a) of the state Constitution. [2003 c 83 § 304.]

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**36.54.150 County ferry districts—Budget of fund requirements.** The governing body of the ferry district shall annually prepare a budget of the requirements of each district fund. [2003 c 83 § 305.]

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**36.54.160 County ferry districts—General property tax levies.** At the time of making general tax levies in each year, the county legislative authority of the county in which a ferry district is located shall make the required levies for district purposes against the real and personal property in the district. The tax levies must be a part of the general tax roll and be collected as a part of the general taxes against the property in the district. [2003 c 83 § 306.]

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**36.54.170 County ferry districts—Treasurer—Ferry district fund.** (1) The treasurer of the county in which a ferry district is located shall be treasurer of the district. The county treasurer shall receive and disburse ferry district revenues, collect taxes authorized and levied under this chapter, and credit district revenues to the proper fund.

(2) The county treasurer shall establish a ferry district fund, into which must be paid all district revenues, and the county treasurer shall also maintain such special funds as may be created by the governing body of a ferry district, into which the county treasurer shall place all money as the governing body of the district may, by resolution, direct.

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(3) The county treasurer shall pay out money received for the account of the ferry district on warrants issued by the county auditor against the proper funds of the district.

(4) All district funds must be deposited with the county depositories under the same restrictions, contracts, and security as provided for county depositories.

(5) All interest collected on ferry district funds belongs to the district and must be deposited to its credit in the proper district funds. [2003 c 83 § 307.]

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**36.54.180 County ferry districts—Not subject to Washington utilities and transportation commission.** A ferry district is exempt from the provisions of Title 81 RCW and is not subject to the control of the Washington utilities and transportation commission. It is not necessary for a ferry district to apply for a certificate of public convenience and necessity. [2003 c 83 § 308.]

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**36.54.190 County ferry districts—Dissolution.** A ferry district formed under this chapter may be dissolved in the manner provided in chapter 53.48 RCW, relating to port districts. [2003 c 83 § 309.]

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

## Chapter 36.55 RCW

### FRANCHISES ON ROADS AND BRIDGES

#### Sections

36.55.010	Pipe line and wire line franchises on county roads.
36.55.020	Cattleguards, tramroad, and railway rights.
36.55.030	Franchises on county bridges.
36.55.040	Application—Notice of hearing.
36.55.050	Hearing—Order.
36.55.060	Limitations upon grants.
36.55.070	Existing franchises validated.
36.55.080	Record of franchises.

**36.55.010 Pipe line and wire line franchises on county roads.** Any board of county commissioners may grant franchises to persons or private or municipal corporations to use the right of way of county roads in their respective counties for the construction and maintenance of waterworks, gas pipes, telephone, telegraph, and electric light lines, sewers and any other such facilities. [1963 c 4 § 36.55.010. Prior: 1961 c 55 § 2; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

**36.55.020 Cattleguards, tramroad, and railway rights.** Any board of county commissioners may grant to any person the right to build and maintain tramroads and railway roads upon county roads under such regulations and conditions as the board may prescribe, and may grant to any person the right to build and maintain cattleguards across the entire right of way on any county road, under such regulations and conditions as the board may prescribe: PROVIDED, That such tramroad or railway road shall not occupy more than

eight feet of the county road upon which the same is built and shall not be built upon the roadway of such county road nor in such a way as to interfere with the public travel thereon. [1963 c 4 § 36.55.020. Prior: 1941 c 138 § 1; 1937 c 187 § 39; Rem. Supp. 1941 § 6450-39.]

**36.55.030 Franchises on county bridges.** Any board of county commissioners may grant franchises upon bridges, trestles, or other structures constructed and maintained by it, severally or jointly with any other county or city or town of this state, or jointly with any other state or any county, city or town of any other state, in the same manner and under the same provisions as govern the granting of franchises on county roads. [1963 c 4 § 36.55.030. Prior: 1937 c 187 § 40; RRS § 6450-40.]

**36.55.040 Application—Notice of hearing.** On application being made to the county legislative authority for franchise, it shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting notices in three public places in the county seat of the county at least fifteen days before the day fixed for the hearing. The county legislative authority shall also publish a like notice two times in the official newspaper of the county, the last publication to be not less than five days before the day fixed for the hearing. The notice shall state the name or names of the applicant or applicants, a description of the county roads by reference to section, township and range in which the county roads or portions thereof are physically located, to be included in the franchise for which the application is made, and the time and place fixed for the hearing. [1985 c 469 § 49; 1963 c 4 § 36.55.040. Prior: 1961 c 55 § 3; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

**36.55.050 Hearing—Order.** The hearing may be adjourned from time to time by the order of the board of county commissioners. If, after the hearing, the board deems it to be for the public interest to grant the franchise in whole or in part, it may make and enter a resolution to that effect and may require the applicant to place his utility and its appurtenances in such location on or along the county road as the board finds will cause the least interference with other uses of the road. [1963 c 4 § 36.55.050. Prior: 1961 c 55 § 4; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

**36.55.060 Limitations upon grants.** (1) Any person constructing or operating any utility on or along a county road shall be liable to the county for all necessary expense incurred in restoring the county road to a suitable condition for travel.

(2) No franchise shall be granted for a period of longer than fifty years.

(3) No exclusive franchise or privilege shall be granted.

(4) The facilities of the holder of any such franchise shall be removed at the expense of the holder thereof, to some other location on such county road in the event it is to be constructed, altered, or improved or becomes a primary state highway and such removal is reasonably necessary for the construction, alteration, or improvement thereof. [1963 c 4 §

36.55.060. Prior: 1961 c 55 § 5; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

**36.55.070 Existing franchises validated.** All rights, privileges, or franchises granted or attempted to be granted by the board of county commissioners of any county prior to April 1, 1937, when such board of county commissioners was in regular or special session and when the action of such board is shown by its records, to any person to erect, construct, maintain, or operate any railway or poles, pole lines, wires, or any other thing for the furnishing, transmission, delivery, enjoyment, or use of electric energy, electric power, electric light, and telephone connection therewith, or any other matter relating thereto; or to lay or maintain pipes for the distribution of water, or gas, or to or for any other such facilities in, upon, along, through or over any county roads, are confirmed and declared to be valid to the extent that such rights, privileges, or franchises specifically refer or apply to any county road or county roads, or to the extent that any such county road has prior to April 1, 1937, been actually occupied by the bona fide construction and operation of such utility, and such rights, privileges, and franchises hereby confirmed shall have the same force and effect as if the board of county commissioners prior to the time of granting said rights, privileges, and franchises, had been specifically authorized to grant them. [1963 c 4 § 36.55.070. Prior: 1937 c 187 § 41; RRS § 6450-41.]

**36.55.080 Record of franchises.** The board of county commissioners shall cause to be recorded with the county auditor a complete record of all existing franchises upon the county roads of its county and the auditor shall keep and maintain a currently correct record of all franchises existing or granted with the information describing the holder of the franchise, the purpose thereof, the portion of county road over or along which granted, the date of granting, term for which granted, and date of expiration, and any other information with reference to any special provisions of such franchises. [1963 c 4 § 36.55.080. Prior: 1937 c 187 § 42; RRS § 6450-42.]

## Chapter 36.56 RCW

### METROPOLITAN MUNICIPAL CORPORATION FUNCTIONS, ETC.—ASSUMPTION BY COUNTIES

#### Sections

- 36.56.010 Assumption of rights, powers, functions, and obligations authorized.
- 36.56.020 Ordinance or resolution of intention to assume rights, powers, functions and obligations—Adoption—Publication—Hearing.
- 36.56.030 Hearing.
- 36.56.040 Declaration of intention to assume—Submission of ordinance or resolution to voters required—Extent of rights, powers, functions and obligations assumed and vested in county—Abolition of metropolitan council—Transfer of rights, powers, functions and obligations to county.
- 36.56.050 Employees and personnel.
- 36.56.060 Apportionment of budgeted funds—Transfer and adjustment of funds, accounts and records.
- 36.56.070 Existing rights, actions, proceedings, etc. not impaired or altered.
- 36.56.080 Collective bargaining units or agreements.
- 36.56.090 Rules and regulations, pending business, contracts, obligations, validity of official acts.

- 36.56.100 Real and personal property—Reports, books, records, etc.—  
Funds, credits, assets—Appropriations or federal grants.
- 36.56.110 Debts and obligations.
- 36.56.121 Maintenance plan.
- 36.56.900 Severability—Construction—1977 ex.s. c 277.
- 36.56.910 Effective date—1977 ex.s. c 277.

*Acquisition of interests in land for conservation, protection, preservation, or open space purposes by county or metropolitan municipal corporation: RCW 64.04.130.*

**36.56.010 Assumption of rights, powers, functions, and obligations authorized.** Any county with a population of two hundred ten thousand or more in which a metropolitan municipal corporation has been established pursuant to chapter 35.58 RCW with boundaries coterminous with the boundaries of the county may by ordinance or resolution, as the case may be, of the county legislative authority assume the rights, powers, functions, and obligations of such metropolitan municipal corporation in accordance with the provisions of \*this 1977 amendatory act. The definitions contained in RCW 35.58.020 shall be applicable to this chapter. [1991 c 363 § 72; 1977 ex.s. c 277 § 1.]

**\*Reviser's note:** "this 1977 amendatory act" or "this act" [1977 ex.s. c 277] consists of chapter 36.56 RCW and the amendment to RCW 35.58.020 by 1977 ex.s. c 277.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.56.020 Ordinance or resolution of intention to assume rights, powers, functions and obligations—Adoption—Publication—Hearing.** The assumption of the rights, powers, functions, and obligations of a metropolitan municipal corporation may be initiated by the adoption of an ordinance or a resolution, as the case may be, by the county legislative authority indicating its intention to conduct a hearing concerning assumption of such rights, powers, functions, and obligations. In the event the county legislative authority adopts such an ordinance or a resolution of intention, such ordinance or resolution shall set a time and place at which it will consider the proposed assumption of the rights, powers, functions, and obligations of the metropolitan municipal corporation, and shall state that all persons interested may appear and be heard. Such ordinance or resolution of intention shall be published for at least four times during the four weeks next preceding the scheduled hearing in newspapers of daily general circulation printed or published in said county. [1977 ex.s. c 277 § 2.]

**36.56.030 Hearing.** At the time scheduled for the hearing in the ordinance or resolution of intention, the county legislative authority shall consider the assumption of the rights, powers, functions, and obligations of the metropolitan municipal corporation, and hear those appearing and all protests and objections to it. The county legislative authority may continue the hearing from time to time, not exceeding sixty days in all. [1977 ex.s. c 277 § 3.]

**36.56.040 Declaration of intention to assume—Submission of ordinance or resolution to voters required—Extent of rights, powers, functions and obligations assumed and vested in county—Abolition of metropolitan council—Transfer of rights, powers, functions and obligations to county.** If, from the testimony given before the

county legislative authority, it appears that the public interest or welfare would be satisfied by the county assuming the rights, powers, functions, and obligations of the metropolitan municipal corporation, the county legislative authority may declare that to be its intent and assume such rights, powers, functions, and obligations by ordinance or resolution, as the case may be, providing that the county shall be vested with every right, power, function, and obligation currently granted to or possessed by the metropolitan municipal corporation pursuant to chapter 35.58 RCW (including \*RCW 35.58.273 relating to levy and use of the motor vehicle excise tax) or other provision of state law, including but not limited to, the power and authority to levy a sales and use tax pursuant to chapter 82.14 RCW or other provision of law: PROVIDED, That such ordinance or resolution shall be submitted to the voters of the county for their adoption and ratification or rejection, and if a majority of the persons voting on the proposition residing within the central city shall vote in favor thereof and a majority of the persons voting on the proposition residing in the metropolitan area outside of the central city shall vote in favor thereof, the ordinance or resolution shall be deemed adopted and ratified.

Upon assumption of the rights, powers, functions, and obligations of the metropolitan municipal corporation by the county, the metropolitan council established pursuant to the provisions of RCW 35.58.120 through 35.58.160 shall be abolished, said provisions shall be inapplicable to the county, and the county legislative authority shall thereafter be vested with all rights, powers, duties, and obligations otherwise vested by law in the metropolitan council: PROVIDED, That in any county with a home rule charter such rights, powers, functions, and obligations shall vest in accordance with the executive and legislative responsibilities defined in such charter. [1977 ex.s. c 277 § 4.]

**\*Reviser's note:** RCW 35.58.273 was repealed by 2002 c 6 § 2.

**36.56.050 Employees and personnel.** All employees and personnel of the metropolitan municipal corporation who are under a personnel system pursuant to RCW 35.58.370 shall be assigned to the county personnel system to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the county personnel system. [1977 ex.s. c 277 § 5.]

**36.56.060 Apportionment of budgeted funds—Transfer and adjustment of funds, accounts and records.** If apportionments of budgeted funds are required because of the transfers authorized by this chapter, the county budget office shall certify such apportionments to the agencies and local governmental units affected and to the state auditor. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with such certification. [1977 ex.s. c 277 § 6.]

**36.56.070 Existing rights, actions, proceedings, etc. not impaired or altered.** No transfer of any function made pursuant to this chapter shall be construed to impair or alter any existing rights acquired under the provisions of chapter

35.58 RCW or any other provision of law relating to metropolitan municipal corporations, nor as impairing or altering any actions, activities, or proceedings validated thereunder, nor as impairing or altering any civil or criminal proceedings instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor any administrative action taken thereunder; and neither the assumption of control of any metropolitan municipal function by a county, nor any transfer of rights, powers, functions, and obligations as provided in this chapter, shall impair or alter the validity of any act performed by such metropolitan municipal corporation or division thereof or any officer thereof prior to the assumption of such rights, powers, functions, and obligations by any county as authorized by this chapter. [1977 ex.s. c 277 § 7.]

**36.56.080 Collective bargaining units or agreements.**

Nothing contained in this chapter shall be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until any such agreement has expired or until any such bargaining unit has been modified as provided by law. [1977 ex.s. c 277 § 8.]

**36.56.090 Rules and regulations, pending business, contracts, obligations, validity of official acts.** All rules and regulations, and all pending business before the committees, divisions, boards, and other agencies of any metropolitan municipal corporation transferred pursuant to the provisions of this chapter shall be continued and acted upon by the county.

All existing contracts and obligations of the transferred metropolitan municipal corporation shall remain in full force and effect, and shall be performed by the county. No transfer authorized in this chapter shall affect the validity of any official act performed by any official or employee prior to the transfer authorized pursuant to \*this amendatory act. [1977 ex.s. c 277 § 9.]

**\*Reviser's note:** "this amendatory act," see note following RCW 36.56.010.

**36.56.100 Real and personal property—Reports, books, records, etc.—Funds, credits, assets—Appropriations or federal grants.** When the rights, powers, functions, and obligations of a metropolitan municipal corporation are transferred pursuant to this chapter, all real and personal property owned by the metropolitan municipal corporation shall become that of the county.

All reports, documents, surveys, books, records, files, papers, or other writings relating to the administration of the powers, duties, and functions transferred pursuant to this chapter and available to the metropolitan municipal corporation shall be made available to the county.

All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed in carrying out the rights, powers, functions, and obligations transferred by this chapter and available to the metropolitan municipal corporation shall be made available to the county.

All funds, credits, or other assets held in connection with powers, duties, and functions herein transferred shall be assigned to the county.

Any appropriations or federal grant made to any committee, division, board, or other department of a metropolitan municipal corporation for the purpose of carrying out the rights, powers, functions, and obligations authorized to be assumed by a county pursuant to this chapter shall on the effective date of such transfer be credited to the county for the purpose of carrying out such transferred rights, powers, functions, and obligations. [1977 ex.s. c 277 § 10.]

**36.56.110 Debts and obligations.** The county shall assume and agree to provide for the payment of all of the indebtedness of the metropolitan municipal corporation including the payment and retirement of outstanding general obligation and revenue bonds issued by the metropolitan municipal corporation. Until the indebtedness of a metropolitan municipal corporation thus assumed by a county has been discharged, all property within the boundaries of the metropolitan municipal corporation and the owners and occupants of that property, shall continue to be liable for taxes, special assessments, and other charges legally pledged to pay the indebtedness of the metropolitan municipal corporation. The county shall assume the obligation of causing the payment of such indebtedness, collecting such taxes, assessments, and charges and observing and performing the other contractual obligations of the metropolitan municipal corporation. The legislative authority of the county shall act in the same manner as the governing body of the metropolitan municipal corporation for the purpose of certifying the amount of any property tax to be levied and collected therein, and may cause service and other charges and assessments to be collected from such property or owners or occupants thereof, enforce such collection and perform all acts necessary to ensure performance of the contractual obligations of the metropolitan municipal corporation in the same manner and by the same means as if the property of the metropolitan municipal corporation had not been acquired by the county.

When a county assumes the obligation of paying indebtedness of a metropolitan municipal corporation and if property taxes or assessments have been levied and service and other charges have accrued for such purpose but have not been collected by the metropolitan municipal corporation prior to such assumption, the same when collected shall belong and be paid to the county and be used by such county so far as necessary for payment of the indebtedness of the metropolitan municipal corporation existing and unpaid on the date such county assumed that indebtedness. Any funds received by the county which have been collected for the purpose of paying any bonded or other indebtedness of the metropolitan municipal corporation shall be used for the purpose for which they were collected and for no other purpose until such indebtedness has been paid and retired or adequate provision has been made for such payment and retirement. No transfer of property as provided in \*this act shall derogate from the claims or rights of the creditors of the metropolitan municipal corporation or impair the ability of the metropolitan municipal corporation to respond to its debts and obligations. [1977 ex.s. c 277 § 11.]

**\*Reviser's note:** "this act," see note following RCW 36.56.010.

**36.56.121 Maintenance plan.** As a condition of receiving state funding, a county that has assumed the transportation functions of a metropolitan municipal corporation shall submit a maintenance and preservation management plan for certification by the transportation commission or its successor entity. The plan must inventory all transportation system assets within the direction and control of the county, and provide a preservation plan based on lowest life-cycle cost methodologies. [2003 c 363 § 303.]

**Finding—Intent—2003 c 363:** See note following RCW 35.84.060.

**Part headings not law—Severability—2003 c 363:** See notes following RCW 47.28.241.

**36.56.900 Severability—Construction—1977 ex.s. c 277.** If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. In the event the provisions in RCW 36.56.040 requiring approval by both the voters of a central city and the county voters residing outside of the central city are held to be invalid, then such provisions shall be severable and the ballot proposition on the transfer of the metropolitan municipal corporation to the county shall be decided by the majority vote of the voters voting thereon in a county-wide election. [1977 ex.s. c 277 § 14.]

**36.56.910 Effective date—1977 ex.s. c 277.** This 1977 amendatory act shall take effect July 1, 1978. [1977 ex.s. c 277 § 15.]

## Chapter 36.57 RCW

### COUNTY PUBLIC TRANSPORTATION AUTHORITY

#### Sections

36.57.010	Definitions.
36.57.020	Public transportation authority authorized.
36.57.030	Membership—Compensation.
36.57.040	Powers and duties.
36.57.050	Chairman—General manager.
36.57.060	Transportation fund—Contributions.
36.57.070	Public transportation plan.
36.57.080	Transfer of transportation powers and rights to authority—Funds—Contract indebtedness.
36.57.090	Acquisition of existing transportation system—Assumption of labor contracts—Transfer of employees—Preservation of benefits—Collective bargaining.
36.57.100	Counties authorized to perform public transportation function in unincorporated areas—Exceptions.
36.57.110	Boundaries of unincorporated transportation benefit areas.
36.57.120	Rail fixed guideway system—Safety and security program plan.
36.57.130	Public transportation for persons with special needs.

*Financing of public transportation systems: Chapter 35.95 RCW and RCW 82.14.045.*

*Municipality defined for purposes of RCW 36.57.080, 36.57.100, and 36.57.110: RCW 35.58.272.*

**36.57.010 Definitions.** For the purposes of this chapter the following definitions shall apply:

(1) "Authority" means the county transportation authority created pursuant to this chapter.

(2) "Population" means the number of residents as shown by the figures released for the most recent official

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state, federal, or county census, or population determination made by the office of financial management.

(3) "Public transportation function" means the transportation of passengers and their incidental baggage by means other than by chartered bus, sightseeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people-moving systems, and may include contracting for the provision of ambulance services for the transportation of the sick and injured: PROVIDED, That such contracting for ambulance services shall not include the exercise of eminent domain powers: PROVIDED, FURTHER, That nothing shall prohibit an authority from leasing its buses to private certified carriers or prohibit the county from providing school bus service. [1981 c 319 § 1; 1979 c 151 § 39; 1974 ex.s. c 167 § 1.]

*Population determinations, office of financial management: Chapter 43.62 RCW.*

**36.57.020 Public transportation authority authorized.** Every county, except a county in which a metropolitan municipal corporation is performing the function of public transportation on May 5, 1974, is authorized to create a county transportation authority which shall perform the function of public transportation. Such authority shall embrace all the territory within a single county and all cities and towns therein. [1974 ex.s. c 167 § 2.]

**36.57.030 Membership—Compensation.** Every county which undertakes the transportation function pursuant to RCW 36.57.020 shall create by resolution of the county legislative body a county transportation authority which shall be composed as follows:

(1) The elected officials of the county legislative body, not to exceed three such elected officials;

(2) The mayor of the most populous city within the county;

(3) The mayor of a city with a population less than five thousand, to be selected by the mayors of all such cities within the county;

(4) The mayor of a city with a population greater than five thousand, excluding the most populous city, to be selected by the mayors of all such cities within the county: PROVIDED, HOWEVER, That if there is no city with a population greater than five thousand, excluding the most populous city, then the sixth member who shall be an elected official, shall be selected by the other two mayors selected pursuant to subsections (2) and (3) of this section.

The members of the authority shall be selected within sixty days after the date of the resolution creating such authority.

Any member of the authority who is a mayor or an elected official selected pursuant to subsection (4) above and whose office is not a full time position shall receive one hundred dollars for each day attending official meetings of the authority. [1974 ex.s. c 167 § 3.]

**36.57.040 Powers and duties.** Every county transportation authority created to perform the function of public

transportation pursuant to RCW 36.57.020 shall have the following powers:

(1) To prepare, adopt, carry out, and amend a general comprehensive plan for public transportation service.

(2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of any transportation facilities and properties, including terminal and parking facilities, together with all lands, rights of way, property, equipment, and accessories necessary for such systems and facilities.

(3) To fix rates, tolls, fares, and charges for the use of such facilities and to establish various routes and classes of service. Fares or charges may be adjusted or eliminated for any distinguishable class of users including, but not limited to senior citizens, handicapped persons, and students.

(4) If a county transit authority extends its transportation function to any area in which service is already offered by any company holding a certificate of public convenience and necessity from the Washington utilities and transportation commission under RCW 81.68.040, to acquire by purchase or condemnation at the fair market value, from the person holding the existing certificate for providing the services, that portion of the operating authority and equipment representing the services within the area of public operation, or to contract with such person or corporation to continue to operate such service or any part thereof for time and upon such terms and conditions as provided by contract.

(5)(a) To contract with the United States or any agency thereof, any state or agency thereof, any metropolitan municipal corporation, any other county, city, special district, or governmental agency and any private person, firm, or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction, operation, or maintenance of transportation facilities and ambulance services: PROVIDED, That before the authority enters into any such contract for the provision of ambulance service, it shall submit to the voters a proposition authorizing such contracting authority, and a majority of those voting thereon shall have approved the proposition; and

(b) To contract with any governmental agency or with any private person, firm, or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands, and rights of way of all kinds which are owned, leased, or held by the other party and for the purpose of planning, constructing, or operating any facility or performing any service related to transportation which the county is authorized to operate or perform, on such terms as may be agreed upon by the contracting parties: PROVIDED, That before any contract for the lease or operation of any transportation facilities shall be let to any private person, firm, or corporation, competitive bids shall first be called for and contracts awarded in accord with the procedures established in accord with RCW 36.32.240, 36.32.250, and 36.32.270.

(6) In addition to all other powers and duties, an authority shall have the power to own, construct, purchase, lease, add to, and maintain any real and personal property or property rights necessary for the conduct of the affairs of the authority. An authority may sell, lease, convey, or otherwise dispose of any authority real or personal property no longer

necessary for the conduct of the affairs of the authority. An authority may enter into contracts to carry out the provisions of this section. [1982 c 10 § 6. Prior: 1981 c 319 § 2; 1981 c 25 § 3; 1974 ex.s. c 167 § 4.]

**Severability—1982 c 10:** See note following RCW 6.13.080.

**36.57.050 Chairman—General manager.** The authority shall elect a chairman, and appoint a general manager who shall be experienced in administration, and who shall act as executive secretary to, and administrative officer for the authority. He shall also be empowered to employ such technical and other personnel as approved by the authority. The general manager shall be paid such salary and allowed such expenses as shall be determined by the authority. The general manager shall hold office at the pleasure of the authority, and shall not be removed until after notice is given him, and an opportunity for a hearing before the authority as to the reason for his removal. [1974 ex.s. c 167 § 5.]

**36.57.060 Transportation fund—Contributions.** Each authority shall establish a fund to be designated as the "transportation fund", in which shall be placed all sums received by the authority from any source, and out of which shall be expended all sums disbursed by the authority. The county treasurer shall be the custodian of the fund, and the county auditor shall keep the record of the receipts and disbursements, and shall draw and the county treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the authority.

The county and each city or town which is included in the authority shall contribute such sums towards the expense for maintaining and operating the authority as shall be agreed upon between them. [1974 ex.s. c 167 § 6.]

**36.57.070 Public transportation plan.** The authority shall adopt a public transportation plan. Such plan shall be a general comprehensive plan designed to best serve the residents of the entire county. Prior to adoption of the plan, the authority shall provide a minimum of sixty days during which sufficient hearings shall be held to provide interested persons an opportunity to participate in development of the plan. [1974 ex.s. c 167 § 7.]

**36.57.080 Transfer of transportation powers and rights to authority—Funds—Contract indebtedness.** On the effective date of the proposition approved by the voters in accord with RCW 35.95.040 or 82.14.045, as now or hereafter amended, the authority shall have and exercise all rights with respect to the construction, acquisition, maintenance, operation, extension, alteration, repair, control and management of passenger transportation which the county or any city located within such county shall have been previously empowered to exercise and such powers shall not thereafter be exercised by the county or such cities without the consent of the authority. The county and all cities within such county upon demand of the authority shall transfer to the authority all unexpended funds earmarked or budgeted from any source for public transportation, including funds receivable. The county in which an authority is located shall have the power to contract indebtedness and issue bonds pursuant to

chapter 36.67 RCW to enable the authority to carry out the purposes of this chapter and RCW 35.95.040 or 82.14.045, as now or hereafter amended, and the purposes of this chapter and RCW 35.95.040 or 82.14.045, as now or hereafter amended, shall constitute a "county purpose" as that term is used in chapter 36.67 RCW. [1975 1st ex.s. c 270 § 5; 1974 ex.s. c 167 § 8.]

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57.090 Acquisition of existing transportation system—Assumption of labor contracts—Transfer of employees—Preservation of benefits—Collective bargaining.** A county transportation authority may acquire any existing transportation system by conveyance, sale, or lease. In any purchase from a county or city, the authority shall receive credit from the county or city for any federal assistance and state matching assistance used by the county or city in acquiring any portion of such system. The authority shall assume and observe all existing labor contracts relating to such system and, to the extent necessary for operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions to those which they held at the time of such transfer, and no employee or retired or pensioned employee of such systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he enjoyed as an employee of such system prior to such acquisition. The authority shall engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into labor contracts with such employee labor organization. [1974 ex.s. c 167 § 9.]

**36.57.100 Counties authorized to perform public transportation function in unincorporated areas—Exceptions.** Every county, except a county in which a metropolitan municipal corporation is performing the public transportation function as of July 1, 1975, is authorized to perform such function in such portions of the unincorporated areas of the county, except within the boundaries of a public transportation benefit area established pursuant to chapter 36.57A RCW, as the county legislative body shall determine and the county shall have those powers as are specified in RCW 36.57.040 with respect to the provision of public transportation as is authorized pursuant to RCW 36.57.040. [1975 1st ex.s. c 270 § 9.]

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57.110 Boundaries of unincorporated transportation benefit areas.** The legislative body of any county is hereby authorized to create and define the boundaries of unincorporated transportation benefit areas within the unincorporated areas of the county, following school district or election precinct lines, as far as practicable. Such areas shall include only those portions of the unincorporated area of the county which could reasonably assume to benefit from the provision of public transportation services. [1975 1st ex.s. c 270 § 10.]

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**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57.120 Rail fixed guideway system—Safety and security program plan.** (1) Each county transportation authority that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the county transportation authority's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the county transportation authority shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each county transportation authority shall implement and comply with its system safety and security program plan. The county transportation authority shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The county transportation authority shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each county transportation authority shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The county transportation authority shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.17 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption. [1999 c 202 § 4.]

**Effective date—1999 c 202:** See note following RCW 35.21.228.

**36.57.130 Public transportation for persons with special needs.** (1) Effective January 1, 2001, in addition to any other authority granted under this chapter, a county transportation authority may be created to purchase, acquire, main-

tain, operate, or lease transportation services, equipment, and facilities for public transportation limited only to persons with special needs by any method or combination of methods provided by the authority.

(2) As used in this section, "persons with special needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or purchase transportation.

(3) The county transportation authority may fix, regulate, and control fares and rates to be charged for these transportation services. [2001 c 89 § 1.]

### Chapter 36.57A RCW

#### PUBLIC TRANSPORTATION BENEFIT AREAS

##### Sections

- 36.57A.010 Definitions.
- 36.57A.011 Municipality defined.
- 36.57A.020 Public transportation improvement conference—Convening—Purpose—Multi-county conferences.
- 36.57A.030 Establishment or change in boundaries of public transportation benefit area—Hearing—Notice—Procedure—Authority of county to terminate public transportation benefit area.
- 36.57A.040 Cities included or excluded—Boundaries—Only benefited areas included—One area per county, exception.
- 36.57A.050 Governing body—Selection, qualification, number of members—Travel expenses, compensation.
- 36.57A.055 Governing body—Periodic review of composition.
- 36.57A.060 Comprehensive plan—Development—Elements.
- 36.57A.070 Comprehensive plan—Review—Approval or disapproval—Resubmission.
- 36.57A.080 General powers.
- 36.57A.090 Additional powers—Acquisition of existing system.
- 36.57A.100 Agreements with operators of local public transportation services—Operation without agreement prohibited—Purchase or condemnation of assets.
- 36.57A.110 Powers of component city concerning passenger transportation transferred to benefit area—Operation of system by city until acquired by benefit area—Consent.
- 36.57A.120 Acquisition of existing system—Labor contracts, employee rights preserved—Collective bargaining.
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- 36.57A.160 Dissolution and liquidation.
- 36.57A.170 Rail fixed guideway system—Safety and security program plan.
- 36.57A.180 Public transportation for persons with special needs.
- 36.57A.191 Maintenance plan.
- 36.57A.200 Passenger-only ferry service—Authorized—Investment plan.
- 36.57A.210 Passenger-only ferry service—Taxes, fees, and tolls.

*Financing of public transportation systems: Chapter 35.95 RCW and RCW 82.14.045.*

*Transportation centers authorized: Chapter 81.75 RCW.*

**36.57A.010 Definitions.** The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Public transportation benefit area" means a municipal corporation of the state of Washington created pursuant to this chapter.

(2) "Public transportation benefit area authority" or "authority" means the legislative body of a public transportation benefit area.

(3) "City" means an incorporated city or town.

(4) "Component city" means an incorporated city or town within a public transportation benefit area.

(5) "City council" means the legislative body of any city or town.

(6) "County legislative authority" means the board of county commissioners or the county council.

(7) "Population" means the number of residents as shown by the figures released for the most recent official state, federal, or county census, or population determination made by the office of financial management.

(8) "Public transportation service" means the transportation of packages, passengers, and their incidental baggage by means other than by chartered bus, sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems: PROVIDED, That nothing shall prohibit an authority from leasing its buses to private certified carriers or prohibit the authority from providing school bus service. "Public transportation service" includes passenger-only ferry service for those public transportation benefit areas eligible to provide passenger-only ferry service under RCW 36.57A.200.

(9) "Public transportation improvement conference" or "conference" means the body established pursuant to RCW 36.57A.020 which shall be authorized to establish, subject to the provisions of RCW 36.57A.030, a public transportation benefit area pursuant to the provisions of this chapter. [2003 c 83 § 209; 1983 c 65 § 1; 1979 c 151 § 40; 1975 1st ex.s. c 270 § 11.]

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

*Population determinations, office of financial management: Chapter 43.62 RCW.*

**36.57A.011 Municipality defined.** See RCW 35.58.272.

**36.57A.020 Public transportation improvement conference—Convening—Purpose—Multi-county conferences.** The county legislative authority of every county with a population of forty thousand or more shall, and the legislative authority of every other county may, within ninety days of July 1, 1975, and as often thereafter as it deems necessary, and upon thirty days prior written notice addressed to the legislative body of each city within the county and with thirty days public notice, convene a public transportation improvement conference to be attended by an elected representative selected by the legislative body of each city, within such county, and by the county legislative authority. Such conference shall be for the purpose of evaluating the need for and the desirability of the creation of a public transportation benefit area within certain incorporated and unincorporated portions of the county to provide public transportation services within such area. In those counties where county officials believe the need for public transportation service extends across county boundaries so as to provide public transportation service in a metropolitan area, the county legislative bodies of two or more neighboring counties may elect to convene a multi-county conference. In addition, county-wide conferences may be convened by resolution of the legislative bodies of two or more cities within the county, not to exceed one in

any twelve month period, or a petition signed by at least ten percent of the registered voters in the last general election of the city, county or city/county areas of a proposed benefit area. The chair of the conference shall be elected from the members at large. [1991 c 363 § 73; 1975 1st ex.s. c 270 § 12.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.030 Establishment or change in boundaries of public transportation benefit area—Hearing—Notice—Procedure—Authority of county to terminate public transportation benefit area.** Any conference which finds it desirable to establish a public transportation benefit area or change the boundaries of any existing public transportation benefit area shall fix a date for a public hearing thereon, or the legislative bodies of any two or more component cities or the county legislative body by resolution may require the public transportation improvement conference to fix a date for a public hearing thereon. Prior to the convening of the public hearing, the county governing body shall delineate the area of the county proposed to be included within the transportation benefit area, and shall furnish a copy of such delineation to each incorporated city within such area. Each city shall advise the county governing body, on a preliminary basis, of its desire to be included or excluded from the transportation benefit area. The county governing body shall cause the delineations to be revised to reflect the wishes of such incorporated cities. This delineation shall be considered by the conference at the public hearing for inclusion in the public transportation benefit area.

Notice of such hearing shall be published once a week for at least four consecutive weeks in one or more newspapers of general circulation within the area. The notice shall contain a description and map of the boundaries of the proposed public transportation benefit area and shall state the time and place of the hearing and the fact that any changes in the boundaries of the public transportation benefit area will be considered at such time and place. At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the effect of the formation of the proposed public transportation benefit area.

The conference may make such changes in the boundaries of the public transportation benefit area as they shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands, and may not delete a portion of any city. If the conference shall determine that any additional territory should be included in the public transportation benefit area, a second hearing shall be held and notice given in the same manner as for the original hearing. The conference may adjourn the hearing on the formation of a public transportation benefit area from time to time not exceeding thirty days in all.

Following the conclusion of such hearing the conference shall adopt a resolution fixing the boundaries of the proposed public transportation benefit area, declaring that the formation of the proposed public transportation benefit area will be

conducive to the welfare and benefit of the persons and property therein.

Within thirty days of the adoption of such conference resolution, the county legislative authority of each county wherein a conference has established proposed boundaries of a public transportation benefit area, may by resolution, upon making a legislative finding that the proposed benefit area includes portions of the county which could not be reasonably expected to benefit from such benefit area or excludes portions of the county which could be reasonably expected to benefit from its creation, disapprove and terminate the establishment of such public transportation benefit area within such county. [1977 ex.s. c 44 § 1; 1975 1st ex.s. c 270 § 13.]

**Severability—1977 ex.s. c 44:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 44 § 7.]

**Effective date—1977 ex.s. c 44:** "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1977." [1977 ex.s. c 44 § 8.]

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.040 Cities included or excluded—Boundaries—Only benefited areas included—One area per county, exception.** At the time of its formation no public transportation benefit area may include only a part of any city, and every city shall be either wholly included or wholly excluded from the boundaries of such area. Notwithstanding any other provision of law, if subsequent to the formation of a public transportation benefit area additional area became or will become a part of a component city by annexation, merger, or otherwise, the additional area shall be included within the boundaries of the transportation benefit area and be subject to all taxes and other liabilities and obligations of the public transportation benefit area. The component city shall be required to notify the public transportation benefit area at the time the city has added the additional area. Furthermore, notwithstanding any other provisions of law except as specifically provided in this section, if a city that is not a component city of the public transportation benefit area adds area to its boundaries that is within the boundaries of the public transportation benefit area, the area so added shall be deemed to be excluded from the public transportation benefit area: PROVIDED, That the public transportation benefit area shall be given notice of the city's intention to add such area. If a city extends its boundaries through annexation across a county boundary line and such extended boundaries include areas within the public transportation benefit area, then the entire area of the city within the county that is within the public transportation benefit area shall be included within the public transportation benefit area boundaries. Such area of the city in the public transportation benefit area shall be considered a component city of the public transportation benefit area corporation.

The boundaries of any public transportation benefit area shall follow school district lines or election precinct lines, as far as practicable. Only such areas shall be included which the conference determines could reasonably benefit from the provision of public transportation services. Except as provided in RCW 36.57A.140(2), only one public transportation

benefit area may be created in any county. [1992 c 16 § 1; 1991 c 318 § 15; 1983 c 65 § 2; 1975 1st ex.s. c 270 § 14.]

**Intent—1991 c 318:** "The legislature recognizes that certain communities have important cultural, economic, or transportation linkages to communities in other counties. Many public services can most efficiently be delivered from public agencies located in counties other than the county within which the community is located. It is the intent of the legislature by enacting sections 15 through 17 of this act to further more effective public transportation linkages between communities, regardless of county association, in order to better serve state citizen needs." [1991 c 318 § 14.]

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.050 Governing body—Selection, qualification, number of members—Travel expenses, compensation.** Within sixty days of the establishment of the boundaries of the public transportation benefit area the members of the county legislative authority and the elected representative of each city within the area shall provide for the selection of the governing body of such area, the public transportation benefit area authority, which shall consist of elected officials selected by and serving at the pleasure of the governing bodies of component cities within the area and the county legislative authority of each county within the area. If at the time a public transportation benefit area authority assumes the public transportation functions previously provided under the Interlocal Cooperation Act (chapter 39.34 RCW) there are citizen positions on the governing board of the transit system, those positions may be retained as positions on the governing board of the public transportation benefit area authority.

Within such sixty-day period, any city may by resolution of its legislative body withdraw from participation in the public transportation benefit area. The county legislative authority and each city remaining in the public transportation benefit area may disapprove and prevent the establishment of any governing body of a public transportation benefit area if the composition thereof does not meet its approval.

In no case shall the governing body of a single county public transportation benefit area be greater than nine members and in the case of a multicounty area, fifteen members. Those cities within the transportation benefit area and excluded from direct membership on the authority are hereby authorized to designate a member of the authority who shall be entitled to represent the interests of such city which is excluded from direct membership on the authority. The legislative body of such city shall notify the authority as to the determination of its authorized representative on the authority.

Each member of the authority is eligible to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and to receive compensation, as set by the authority, in an amount not to exceed forty-four dollars for each day during which the member attends official meetings of the authority or performs prescribed duties approved by the chairman of the authority. Except that the authority may, by resolution, increase the payment of per diem compensation to each member from forty-four dollars up to seventy dollars per day or portion of a day for attendance at board meetings and for performance of other services on behalf of the authority. In no event may a member be compensated in any year for more than seventy-five days, except the chairman who may be paid compensation for not more

than one hundred days: PROVIDED, That compensation shall not be paid to an elected official or employee of federal, state, or local government who is receiving regular full-time compensation from such government for attending meetings and performing prescribed duties of the authority. [1998 c 121 § 15; 1983 c 65 § 3; 1977 ex.s. c 44 § 2; 1975 1st ex.s. c 270 § 15.]

**Severability—Effective date—1977 ex.s. c 44:** See notes following RCW 36.57A.030.

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.055 Governing body—Periodic review of composition.** After a public transportation benefit area has been in existence for four years, members of the county legislative authority and the elected representative of each city within the boundaries of the public transportation benefit area shall review the composition of the governing body of the benefit area and change the composition of the governing body if the change is deemed appropriate. The review shall be at a meeting of the designated representatives of the component county and cities, and the majority of those present shall constitute a quorum at such meeting. Twenty days notice of the meeting shall be given by the chief administrative officer of the public transportation benefit area authority. After the initial review, a review shall be held every four years.

If an area having a population greater than fifteen percent, or areas with a combined population of greater than twenty-five percent of the population of the existing public transportation benefit area as constituted at the last review meeting, annex to the public transportation benefit area, or if an area is added under RCW 36.57A.140(2), the representatives of the component county and cities shall meet within ninety days to review and change the composition of the governing body, if the change is deemed appropriate. This meeting is in addition to the regular four-year review meeting and shall be conducted pursuant to the same notice requirement and quorum provisions of the regular review. [1991 c 318 § 16; 1983 c 65 § 4.]

**Intent—1991 c 318:** See note following RCW 36.57A.040.

**36.57A.060 Comprehensive plan—Development—Elements.** The public transportation benefit area authority authorized pursuant to RCW 36.57A.050 shall develop a comprehensive transit plan for the area. Such plan shall include, but not be limited to the following elements:

(1) The levels of transit service that can be reasonably provided for various portions of the benefit area.

(2) The funding requirements, including local tax sources, state and federal funds, necessary to provide various levels of service within the area.

(3) The impact of such a transportation program on other transit systems operating within that county or adjacent counties.

(4) The future enlargement of the benefit area or the consolidation of such benefit area with other transit systems. [1975 1st ex.s. c 270 § 16.]

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.070 Comprehensive plan—Review—Approval or disapproval—Resubmission.** The comprehensive transit plan adopted by the authority shall be reviewed by the state transportation commission to determine:

(1) The completeness of service to be offered and the economic viability of the transit system proposed in such comprehensive transit plan;

(2) Whether such plan integrates the proposed transportation system with existing transportation modes and systems that serve the benefit area;

(3) Whether such plan coordinates that area's system and service with nearby public transportation systems;

(4) Whether such plan is eligible for matching state or federal funds;

After reviewing the comprehensive transit plan, the state transportation commission shall have sixty days in which to approve such plan and to certify to the state treasurer that such public transportation benefit area shall be eligible to receive the motor vehicle excise tax proceeds authorized pursuant to \*RCW 35.58.273, as now or hereafter amended in the manner prescribed by chapter 82.44 RCW, as now or hereafter amended. To be approved a plan shall provide for coordinated transportation planning, the integration of such proposed transportation program with other transportation systems operating in areas adjacent to, or in the vicinity of the proposed public transportation benefit area, and be consistent with the public transportation coordination criteria adopted pursuant to the urban mass transportation act of 1964 as amended as of July 1, 1975. In the event such comprehensive plan is disapproved and ruled ineligible to receive motor vehicle tax proceeds, the state transportation commission shall provide written notice to the authority within thirty days as to the reasons for such plan's disapproval and such ineligibility. The authority may resubmit such plan upon reconsideration and correction of such deficiencies in the plan cited in such notice of disapproval. [1985 c 6 § 5; 1975 1st ex.s. c 270 § 17.]

**\*Reviser's note:** RCW 35.58.273 was repealed by 2002 c 6 § 2.

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.080 General powers.** In addition to the powers specifically granted by this chapter a public transportation benefit area shall have all powers which are necessary to carry out the purposes of the public transportation benefit area. A public transportation benefit area may contract with the United States or any agency thereof, any state or agency thereof, any other public transportation benefit area, any county, city, metropolitan municipal corporation, special district, or governmental agency, within or without the state, and any private person, firm or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction or operation of transportation facilities. In addition a public transportation benefit area may contract with any governmental agency or with any private person, firm or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands and rights of way of all kinds which are owned, leased or held by the other party and for the purpose

of planning, constructing or operating any facility or performing any service which the public transportation benefit area may be authorized to operate or perform, on such terms as may be agreed upon by the contracting parties. Before any contract for the lease or operation of any public transportation benefit area facilities shall be let to any private person, firm or corporation, a general schedule of rental rates for bus equipment with or without drivers shall be publicly posted applicable to all private certificated carriers, and for other facilities competitive bids shall first be called upon such notice, bidder qualifications and bid conditions as the public transportation benefit area authority shall determine.

A public transportation benefit area may sue and be sued in its corporate capacity in all courts and in all proceedings. [1975 1st ex.s. c 270 § 18.]

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.090 Additional powers—Acquisition of existing system.** A public transportation benefit area authority shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare, adopt, and carry out a general comprehensive plan for public transportation service which will best serve the residents of the public transportation benefit area and to amend said plan from time to time to meet changed conditions and requirements.

(2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of transportation facilities and properties within or without the public transportation benefit area or the state, including systems of surface, underground, or overhead railways, tramways, buses, or any other means of local transportation except taxis, and including escalators, moving sidewalks, or other people-moving systems, passenger terminal and parking facilities and properties, and such other facilities and properties as may be necessary for passenger and vehicular access to and from such people-moving systems, terminal and parking facilities and properties, together with all lands, rights of way, property, equipment, and accessories necessary for such systems and facilities. Public transportation facilities and properties which are owned by any city may be acquired or used by the public transportation benefit area authority only with the consent of the city council of the city owning such facilities. Cities are hereby authorized to convey or lease such facilities to a public transportation benefit area authority or to contract for their joint use on such terms as may be fixed by agreement between the city council of such city and the public transportation benefit area authority, without submitting the matter to the voters of such city.

The facilities and properties of a public transportation benefit area system whose vehicles will operate primarily within the rights of way of public streets, roads, or highways, may be acquired, developed, and operated without the corridor and design hearings which are required by \*RCW 35.58.273, as now or hereafter amended, for mass transit facilities operating on a separate right of way.

(3) To fix rates, tolls, fares, and charges for the use of such facilities and to establish various routes and classes of service. Fares or charges may be adjusted or eliminated for

any distinguishable class of users including, but not limited to, senior citizens, handicapped persons, and students.

In the event any person holding a certificate of public convenience and necessity from the Washington utilities and transportation commission under RCW 81.68.040 has operated under such certificate for a continuous period of one year prior to the date of certification and is offering service within the public transportation benefit area on the date of the certification by the county canvassing board that a majority of votes cast authorize a tax to be levied and collected by the public transportation benefit area authority, such authority may by purchase or condemnation acquire at the fair market value, from the person holding the existing certificate for providing the services, that portion of the operating authority and equipment representing the services within the area of public operation. The person holding such existing certificate may require the public transportation benefit area authority to initiate such purchase of those assets of such person, existing as of the date of the county canvassing board certification, within sixty days after the date of such certification. [1981 c 25 § 4; 1977 ex.s. c 44 § 3; 1975 1st ex.s. c 270 § 19.]

\*Reviser's note: RCW 35.58.273 was repealed by 2002 c 6 § 2.

**Severability—Effective date—1977 ex.s. c 44:** See notes following RCW 36.57A.030.

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.100 Agreements with operators of local public transportation services—Operation without agreement prohibited—Purchase or condemnation of assets.** Except in accordance with an agreement made as provided in this section or in accordance with the provisions of RCW 36.57A.090(3) as now or hereafter amended, upon the effective date on which the public transportation benefit area commences to perform the public transportation service, no person or private corporation shall operate a local public passenger transportation service, including passenger-only ferry service, within the public transportation benefit area with the exception of taxis, buses owned or operated by a school district or private school, and buses owned or operated by any corporation or organization solely for the purposes of the corporation or organization and for the use of which no fee or fare is charged.

An agreement may be entered into between the public transportation benefit area authority and any person or corporation legally operating a local public passenger transportation service, including passenger-only ferry service, wholly within or partly within and partly without the public transportation benefit area and on said effective date under which such person or corporation may continue to operate such service or any part thereof for such time and upon such terms and conditions as provided in such agreement. Such agreement shall provide for a periodic review of the terms and conditions contained therein. Where any such local public passenger transportation service, including passenger-only ferry service, will be required to cease to operate within the public transportation benefit area, the public transportation benefit area authority may agree with the owner of such service to purchase the assets used in providing such service, or if no agreement can be reached, the public transportation benefit area authority shall condemn such assets in the manner and

by the same procedure as is or may be provided by law for the condemnation of other properties for cities of the first class, except insofar as such laws may be inconsistent with the provisions of this chapter.

Wherever a privately owned public carrier operates wholly or partly within a public transportation benefit area, the Washington utilities and transportation commission shall continue to exercise jurisdiction over such operation as provided by law. [2003 c 83 § 210; 1977 ex.s. c 44 § 4; 1975 1st ex.s. c 270 § 20.]

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**Severability—Effective date—1977 ex.s. c 44:** See notes following RCW 36.57A.030.

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.110 Powers of component city concerning passenger transportation transferred to benefit area—Operation of system by city until acquired by benefit area—Consent.** The public transportation benefit area shall have and exercise all rights with respect to the construction, acquisition, maintenance, operation, extension, alteration, repair, control and management of passenger transportation which any component city shall have been previously empowered to exercise and such powers shall not thereafter be exercised by such component cities without the consent of the public transportation benefit area: PROVIDED, That any city owning and operating a public transportation system on July 1, 1975 may continue to operate such system within such city until such system shall have been acquired by the public transportation benefit area and a public transportation benefit area may not acquire such system without the consent of the city council of such city. [1975 1st ex.s. c 270 § 21.]

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.120 Acquisition of existing system—Labor contracts, employee rights preserved—Collective bargaining.** If a public transportation benefit area shall acquire any existing transportation system, it shall assume and observe all existing labor contracts relating to such system and, to the extent necessary for operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions to those which they held at the time of such transfer, and no employee or retired or pensioned employee of such systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he enjoyed as an employee of such system prior to such acquisition. The public transportation benefit area authority shall engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into labor contracts with such employee labor organization. [1975 1st ex.s. c 270 § 22.]

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.130 Treasurer and auditor—Powers and duties—Transportation fund—Contribution of sums for expenses.** The treasurer of the county in which a public transportation benefit area authority is located shall be ex officio treasurer of the authority. In the case of a multicounty public transportation benefit area the county treasurer of the largest component county, by population, shall be the treasurer of the authority. However, the authority, by resolution, and upon the approval of the county treasurer, may designate some other person having experience in financial or fiscal matters as treasurer of the authority. Such a treasurer shall possess all of the powers, responsibilities, and duties the county treasurer possesses for a public transportation benefit area authority related to investing surplus authority funds. The authority may (and if the treasurer is not a county treasurer, it shall) require a bond with a surety company authorized to do business in the state of Washington in an amount and under the terms and conditions the authority, by resolution, from time to time finds will protect the authority against loss. The premium on any such bond shall be paid by the authority.

All authority funds shall be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by the county auditor, upon orders or vouchers approved by the authority. However, the authority may, by resolution, designate some person having experience in financial or fiscal matters, other than the county auditor, as the auditor of the authority. Such an auditor shall possess all of the powers, responsibilities, and duties that the county auditor possesses for a public transportation benefit area authority related to creating and maintaining funds, issuing warrants, and maintaining a record of receipts and disbursements.

The treasurer shall establish a "transportation fund," into which shall be paid all authority funds, and the treasurer shall maintain such special accounts as may be created by the authority into which shall be placed all money as the authority may, by resolution, direct.

If the treasurer of the authority is a treasurer of the county, all authority funds shall be deposited with the county depository under the same restrictions, contracts, and security as provided for county depositories. If the treasurer of the authority is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state that have qualified for insured deposits under any federal deposit insurance act as the authority, by resolution, shall designate.

An authority may provide and require a reasonable bond of any other person handling moneys or securities of the authority, but the authority shall pay the premium on the bond.

The county or counties and each city or town which is included in the authority shall contribute such sums towards the expense for maintaining and operating the public transportation system as shall be agreed upon between them. [1983 c 151 § 1; 1975 1st ex.s. c 270 § 23.]

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.140 Annexation of additional area.** (1) An election to authorize the annexation of territory contiguous to a public transportation benefit area may be called within the

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area to be annexed pursuant to resolution or petition in the following manner:

(a) By resolution of a public transportation benefit area authority when it determines that the best interests and general welfare of the public transportation benefit area would be served. The authority shall consider the question of areas to be annexed to the public transportation benefit area at least once every two years.

(b) By petition calling for such an election signed by at least four percent of the qualified voters residing within the area to be annexed and filed with the auditor of the county wherein the largest portion of the public transportation benefit area is located, and notice thereof shall be given to the authority. Upon receipt of such a petition, the auditor shall examine it and certify to the sufficiency of the signatures thereon.

(c) By resolution of a public transportation benefit area authority upon request of any city for annexation thereto.

(2) If the area proposed to be annexed is located within another county, the petition or resolution for annexation as set forth in subsection (1) of this section must be approved by the legislative authority of the county if the area is unincorporated or by the legislative authority of the city or town if the area is incorporated. Any annexation under this subsection must involve contiguous areas.

(3) The resolution or petition shall describe the boundaries of the area to be annexed. It shall require that there also be submitted to the electorate of the territory sought to be annexed a proposition authorizing the inclusion of the area within the public transportation benefit area and authorizing the imposition of such taxes authorized by law to be collected by the authority. [1991 c 318 § 17; 1983 c 65 § 5; 1975 1st ex.s. c 270 § 24.]

**Intent—1991 c 318:** See note following RCW 36.57A.040.

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

### **36.57A.150 Advanced financial support payments.**

Counties that have established a county transportation authority pursuant to chapter 36.57 RCW and public transportation benefit areas that have been established pursuant to this chapter are eligible to receive a one-time advanced financial support payment from the state to assist in the development of the initial comprehensive transit plan required by RCW 36.57.070 and 36.57A.060. The amount of this support payment is established at one dollar per person residing within each county or public transportation benefit area, as determined by the office of financial management, but no single payment shall exceed fifty thousand dollars. Repayment of an advanced financial support payment shall be made to the public transportation account in the general fund or, if such account does not exist, to the general fund by each agency within two years of the date such advanced payment was received. Such repayment shall be waived within two years of the date such advanced payment was received if the voters in the appropriate counties or public transportation benefit areas do not elect to levy and collect taxes enabled under authority of this chapter and RCW 35.95.040 and 82.14.045. The state department of transportation shall provide technical assistance in the preparation of local transit plans, and administer the advanced financial support pay-

ments authorized by this section. [1985 c 6 § 6; 1979 c 151 § 41; 1975 1st ex.s. c 270 § 25.]

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.160 Dissolution and liquidation.** A public transportation benefit area established pursuant to this chapter may be dissolved and its affairs liquidated when so directed by a majority of persons in the benefit area voting on such question. An election placing such question before the voters may be called in the following manner:

(1) By resolution of the public transportation benefit area authority;

(2) By resolution of the county legislative body or bodies with the concurrence therein by resolution of the city council of a component city; or

(3) By petition calling for such election signed by at least ten percent of the qualified voters residing within the area filed with the auditor of the county wherein the largest portion of the public transportation benefit area is located. The auditor shall examine the same and certify to the sufficiency of the signatures thereon: PROVIDED, That to be validated, signatures must have been collected within a ninety day period as designated by the petition sponsors.

Any dissolution of a public transportation benefit area authority shall be carried out in accordance with the procedures in chapter 53.48 RCW. Any remaining deficit of the authority determined pursuant to RCW 53.48.080 shall be paid from the moneys collected from the tax source under which the authority operated. [1977 ex.s. c 44 § 5; 1975 1st ex.s. c 270 § 26.]

**Severability—Effective date—1977 ex.s. c 44:** See notes following RCW 36.57A.030.

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.170 Rail fixed guideway system—Safety and security program plan.** (1) Each public transportation benefit area that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the public transportation benefit area's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the public transportation benefit area shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each public transportation benefit area shall implement and comply with its system safety and security program plan. The public transportation benefit area shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department

of transportation no later than December 15th each year. The public transportation benefit area shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each public transportation benefit area shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The public transportation benefit area shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.17 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption. [1999 c 202 § 5.]

**Effective date—1999 c 202:** See note following RCW 35.21.228.

**36.57A.180 Public transportation for persons with special needs.** (1) Effective January 1, 2001, in addition to any other authority granted under this chapter, a newly formed public transportation benefit area, or an existing public transportation benefit area that has not yet successfully submitted an authorizing proposition to the voters under RCW 82.14.045, may purchase, acquire, maintain, operate, or lease transportation services, equipment, and facilities for public transportation limited only to persons with special needs by any method or combination of methods provided by the area authority.

(2) As used in this section, "persons with special needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or purchase transportation.

(3) The public transportation benefit area may fix, regulate, and control fares and rates to be charged for these transportation services. [2001 c 89 § 2.]

**36.57A.191 Maintenance plan.** As a condition of receiving state funding, a public transportation benefit area authority shall submit a maintenance and preservation management plan for certification by the transportation commission or its successor entity. The plan must inventory all transportation system assets within the direction and control of the authority, and provide a preservation plan based on lowest life-cycle cost methodologies. [2003 c 363 § 304.]

**Finding—Intent—2003 c 363:** See note following RCW 35.84.060.

**Part headings not law—Severability—2003 c 363:** See notes following RCW 47.28.241.

**36.57A.200 Passenger-only ferry service—Authorized—Investment plan.** A public transportation benefit area having a boundary located on Puget Sound may provide passenger-only ferry service. For the purposes of this chapter and RCW 82.14.440 and 82.80.130, Puget Sound is considered as extending north as far as the Canadian border and west as far as Port Angeles. Before a benefit area may provide passenger-only ferry service, it must develop a passenger-only ferry investment plan including elements to operate or contract for the operation of passenger-only ferry services, purchase, lease, or rental of ferry vessels and dock facilities for the provision of transit service, and identify other activities necessary to implement the plan. The plan must set forth terminal locations to be served, projected costs of providing services, and revenues to be generated from tolls, locally collected tax revenues, and other revenue sources. The plan must ensure that services provided under the plan are for the benefit of the residents of the benefit area. The benefit area may use any of its powers to carry out this purpose, unless otherwise prohibited by law. In addition, the public transportation benefit area may enter into contracts and agreements to operate passenger-only ferry service and public-private partnerships and design-build, general contractor/construction management, or other alternative procurement process substantially consistent with chapter 39.10 RCW. [2003 c 83 § 201.]

**Findings—Intent—2003 c 83:** "The legislature finds that passenger-only ferry service is a key element to the state's transportation system and that it is in the interest of the state to ensure provision of such services. The legislature further finds that diminished state transportation resources require that regional and local authorities be authorized to develop, operate, and fund needed services.

The legislature recognizes that if the state eliminates passenger-only ferry service on one or more routes, it should provide an opportunity for locally sponsored service and the department of transportation should assist in this effort.

It is the intent of the legislature to encourage interlocal agreements to ensure passenger-only ferry service is reinstated on routes that the Washington state ferry system eliminates." [2003 c 83 § 101.]

**Captions, part headings not law—2003 c 83:** "Captions and part headings used in this act are not part of the law." [2003 c 83 § 401.]

**Severability—2003 c 83:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 83 § 402.]

**Effective date—2003 c 83:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 23, 2003]." [2003 c 83 § 403.]

**36.57A.210 Passenger-only ferry service—Taxes, fees, and tolls.** (1) A public transportation benefit area may, as part of a passenger-only ferry investment plan, recommend some or all of the following revenue sources as provided in this chapter:

(a) A motor vehicle excise tax, as provided in RCW 82.80.130;

(b) A sales and use tax, as provided in RCW 82.14.440;

(c) Tolls for passengers and packages and, where applicable, parking; and

(d) Charges or licensing fees for advertising, leasing space for services to ferry passengers, and other revenue-generating activities.

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(2) Taxes may not be imposed without an affirmative vote of the majority of the voters within the boundaries of the area voting on a single ballot proposition to both approve a passenger-only ferry investment plan and to approve taxes to implement the plan. Revenues from these taxes and fees may be used only to implement the plan and must be used for the benefit of the residents of the benefit area. A district may contract with the state department of revenue or other appropriate entities for administration and collection of any of the taxes or charges authorized in this section. [2003 c 83 § 202.]

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

## Chapter 36.58 RCW SOLID WASTE DISPOSAL

### Sections

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36.58.150	Solid waste disposal district—Excess levies authorized—General obligation and revenue bonds.
36.58.160	Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation—Application of chapter.

*Solid waste collection companies: Chapter 81.77 RCW.*

**36.58.010 Acquisition of solid waste or recyclable materials sites authorized.** Any county legislative authority may acquire by purchase or by gift, dedication, or donation, sites for the use of the public in disposing of solid waste or recyclable materials. However, no county legislative authority shall be authorized to require any retail enterprise engaged in the sale of consumer-packaged products to locate or place a public solid waste collection site or buy-back center upon or within a certain distance of the retail establishment as a condition of engaging in the sale of consumer-packaged products. [1989 c 431 § 52; 1963 c 4 § 36.58.010. Prior: 1943 c 87 § 1; Rem. Supp. 1943 § 6294-150.]

**Severability—1989 c 431:** See RCW 70.95.901.

**36.58.020 Rules and regulations as to use—Penalty.** Any board of county commissioners may make such rules and regulations as may be deemed necessary for the use and

occupation of such sites, and may provide for the maintenance and care thereof. Any person violating any of the rules and regulations made by the board relating to the use or occupation of any site owned or occupied by the county for garbage disposal purposes shall be guilty of a misdemeanor. [1963 c 4 § 36.58.020. Prior: 1943 c 87 § 2; Rem. Supp. 1943 § 6294-151.]

**36.58.030 "Transfer station" defined.** As used in RCW 36.58.030 through 36.58.060, the term "transfer station" means a staffed, fixed supplemental facility used by persons and route collection vehicles to deposit solid wastes into transfer trailers for transportation to a disposal site. This does not include detachable containers, except in counties with a population of less than seventy thousand, and in any county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand that is located east of the crest of the Cascade mountain range, where detachable containers shall be securely fenced, staffed by an attendant during all hours when the detachable container is open to the public, charge a tipping fee that shall cover the cost of providing and for use of the service, and shall be operated as a transfer station. [1991 c 363 § 74; 1989 c 431 § 27; 1975-'76 2nd ex.s. c 58 § 1.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1989 c 431:** See RCW 70.95.901.

**36.58.040 Solid waste handling systems authorized—Disposal sites—Contracts for solid waste handling and collection of source separated recyclable material—Waste reduction and recycling.** The legislative authority of a county may by ordinance provide for the establishment of a system or systems of solid waste handling for all unincorporated areas of the county or for portions thereof. A county may designate a disposal site or sites for all solid waste collected in the unincorporated areas pursuant to the provisions of a comprehensive solid waste plan adopted pursuant to chapter 70.95 RCW. However for any solid waste collected by a private hauler operating under a certificate granted by the Washington utilities and transportation commission under the provisions of chapter 81.77 RCW and which certificate is for collection in a geographic area lying in more than one county, such designation of disposal sites shall be pursuant to an interlocal agreement between the involved counties.

A county may construct, lease, purchase, acquire, add to, alter, or extend solid waste handling systems, plants, sites, or other facilities and shall have full jurisdiction and authority to manage, regulate, maintain, utilize, operate, control, and establish the rates and charges for those solid waste handling systems, plants, sites, or other facilities. A county may enter into agreements with public or private parties to: (1) Construct, purchase, acquire, lease, add to, alter, extend, maintain, manage, utilize, or operate publicly or privately owned or operated solid waste handling systems, plants, sites, or other facilities; (2) establish rates and charges for those systems, plants, sites, or other facilities; (3) designate particular publicly or privately owned or operated systems, plants, sites, or other facilities as disposal sites; (4) process, treat, or convert solid waste into other valuable or useful materials or

products; and (5) sell the material or products of those systems, plants, or other facilities.

The legislative authority of a county may award contracts for solid waste handling that provide that a county provide for a minimum periodic fee or other method of compensation in consideration of the operational availability of those solid waste handling systems, plants, sites, or other facilities at a specified minimum level, without regard to the ownership of the systems, plants, sites or other facilities, or the amount of solid waste actually handled during all or any part of the contract. When a minimum level of solid waste is specified in a contract entered into under this section, there shall be a specific allocation of financial responsibility in the event the amount of solid waste handled falls below the minimum level provided in the contract. Solid waste handling systems, plants, sites, or other facilities constructed, purchased, acquired, leased, added to, altered, extended, maintained, managed, utilized, or operated pursuant to this section, whether publicly or privately owned, shall be in substantial compliance with the solid waste management plan applicable to the county adopted pursuant to chapter 70.95 RCW. Agreements relating to such solid waste handling systems, plans, sites, or other facilities may be for such term and may contain such covenants, conditions, and remedies as the legislative authority of the county may deem necessary or appropriate.

As used in this chapter, the terms "solid waste" and "solid waste handling" shall be as defined in RCW 70.95.030.

The legislative authority of a county may:

(1) By ordinance award a contract to collect source separated recyclable materials from residences within unincorporated areas. The legislative authority has complete authority to manage, regulate, and fix the price of the source separated recyclable collection service. The contracts may provide that the county pay minimum periodic fees to a municipal entity or permit holder; or

(2) Notify the commission in writing to carry out and implement the provisions of the waste reduction and recycling element of the comprehensive solid waste management plan.

This election may be made by counties at any time after July 23, 1989. An initial election must be made no later than ninety days following approval of the local comprehensive waste management plan required by RCW 70.95.090.

Nothing in this section shall be construed to authorize the operation of a solid waste collection system by counties or to authorize counties to affect the authority of the utilities and transportation commission under RCW 81.77.020. [1992 c 131 § 3. Prior: 1989 c 431 § 28; 1989 c 399 § 9; 1986 c 282 § 20; 1975-'76 2nd ex.s. c 58 § 2.]

**Severability—1989 c 431:** See RCW 70.95.901.

**Severability—Legislative findings—Construction—Liberal construction—Supplemental powers—1986 c 282:** See notes following RCW 35.21.156.

**36.58.045 County may impose fee upon solid waste collection services—Revenue to fund compliance with comprehensive solid waste management plan.** (1) The legislative authority of any county may impose a fee upon the solid waste collection services of a solid waste collection company operating within the unincorporated areas of the

county, to fund the administration and planning expenses that may be incurred by the county in complying with the requirements in RCW 70.95.090. The fee may be in addition to any other solid waste services fees and charges a county may legally impose.

(2) Each county imposing the fee authorized by this section shall notify the Washington utilities and transportation commission and the affected solid waste collection companies of the amount of the fee ninety days prior to its implementation. [1989 c 431 § 15.]

**Severability—Sections captions not law—1989 c 431:** See RCW 70.95.901 and 70.95.902.

### **36.58.050 Solid waste disposal—Transfer stations.**

When a comprehensive solid waste plan, as provided in RCW 70.95.080, incorporates the use of transfer stations, such stations shall be considered part of the disposal site and as such, along with the transportation of solid wastes between disposal sites, shall be exempt from regulation by the Washington utilities and transportation commission as provided in chapter 81.77 RCW.

Each county may enter into contracts for the hauling of trailers of solid wastes from these transfer stations to disposal sites and return either by (1) the normal bidding process, or (2) negotiation with the qualified collection company servicing the area under authority of chapter 81.77 RCW. [1975-'76 2nd ex.s. c 58 § 3.]

**36.58.060 Solid waste disposal—Ownership of solid wastes—Responsibility for handling.** Ownership of solid wastes shall be vested in the person or local jurisdiction managing disposal and/or resource recovery facilities upon the arrival of said solid wastes at said facility: PROVIDED, That the original owner retains ownership of the solid wastes until they arrive at the disposal site or transfer station or detachable container, and the original owner has the right of recovery to any valuable items inadvertently discarded: PROVIDED FURTHER, That the person or agency providing the collection service shall be responsible for the proper handling of the solid wastes from the point of collection to the disposal or recovery facility. [1975-'76 2nd ex.s. c 58 § 4.]

**36.58.080 County solid waste facilities—Exempt from municipal taxes—Charges to mitigate impacts—Negotiation and arbitration.** County-owned solid waste facilities shall not be subject to any tax or excise imposed by any city or town. Cities or towns may charge counties to mitigate impacts directly attributable to the solid waste facility: PROVIDED, That any city or town establishes that such charges are reasonably necessary to mitigate such impacts and that revenue generated from such charges is expended only to mitigate such impacts. Impacts resulting from commercial and residential solid waste collection within any city or town shall not be considered to be directly attributable to the solid waste facility. In the event that no agreement can be reached between the city or town and the county following a reasonable period of good faith negotiations, including mediation where appropriate, the matter shall be resolved by a board of arbitrators, to be convened at the request of either party, such board of arbitrators to consist of a representative

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from the city or town involved, a representative of the county, and a third representative to be appointed by the other two representatives. If no agreement can be reached with regard to said third representative, the third representative shall be appointed by a judge of the superior court of the county of the jurisdiction owning the solid waste facility. The determination by the board of arbitrators of the sum to be paid by the county shall be binding on all parties. Each party shall pay the costs of their individual representatives on the board of arbitrators and they shall pay one-half of the cost of the third representative. [1983 c 171 § 1; 1982 c 175 § 8.]

**Severability—1982 c 175:** See note following RCW 36.58.100.

**36.58.090 Contracts with vendors for solid waste handling systems, plants, sites, or facilities—Requirements—Vendor selection procedures.** (1) Notwithstanding the provisions of any county charter or any law to the contrary, and in addition to any other authority provided by law, the legislative authority of a county may contract with one or more vendors for one or more of the design, construction, or operation of, or other service related to, the solid waste handling systems, plants, sites, or other facilities in accordance with the procedures set forth in this section. When a contract for design services is entered into separately from other services permitted under this section, procurement shall be in accord with chapter 39.80 RCW. For the purpose of this chapter, the term "legislative authority" shall mean the board of county commissioners or, in the case of a home rule charter county, the official, officials, or public body designated by the charter to perform the functions authorized therein.

(2) If the legislative authority of the county decides to proceed with the consideration of qualifications or proposals for services from vendors, the county shall publish notice of its requirements and request submission of qualifications statements or proposals. The notice shall be published in the official newspaper of the county at least once a week for two weeks not less than sixty days before the final date for the submission of qualifications statements or proposals. The notice shall state in summary form (a) the general scope and nature of the design, construction, operation, or other service, (b) the name and address of a representative of the county who can provide further details, (c) the final date for the submission of qualifications statements or proposals, (d) an estimated schedule for the consideration of qualifications, the selection of vendors, and the negotiation of a contract or contracts for services, (e) the location at which a copy of any request for qualifications or request for proposals will be made available, and (f) the criteria established by the legislative authority to select a vendor or vendors, which may include but shall not be limited to the vendor's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability and financial resources; cost of the services, nature of facility design proposed by the vendor; system reliability; performance standards required for the facilities; compatibility with existing service facilities operated by the public body or other providers of service to the public; project performance guarantees; penalty and other enforcement provisions; environmental protection measures to be

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used; consistency with the applicable comprehensive solid waste management plan; and allocation of project risks.

(3) If the legislative authority of the county decides to proceed with the consideration of qualifications or proposals, it may designate a representative to evaluate the vendors who submitted qualifications statements or proposals and conduct discussions regarding qualifications or proposals with one or more vendors. The legislative authority or representative may request submission of qualifications statements and may later request more detailed proposals from one or more vendors who have submitted qualifications statements, or the representative may request detailed proposals without having first received and evaluated qualifications statements. The representative shall evaluate the qualifications or proposals, as applicable. If two or more vendors submit qualifications or proposals that meet the criteria established by the legislative authority of the county, discussions and interviews shall be held with at least two vendors. Any revisions to a request for qualifications or request for proposals shall be made available to all vendors then under consideration by the city or town and shall be made available to any other person who has requested receipt of that information.

(4) Based on criteria established by the legislative authority of the county, the representative shall recommend to the legislative authority a vendor or vendors that are initially determined to be the best qualified to provide one or more of the design, construction, or operation of, or other service related to, the proposed project or services. The legislative authority may select one or more qualified vendors for one or more of the design, construction, or operation of, or other service related to, the proposed project or services.

(5) The legislative authority or its representative may attempt to negotiate a contract with the vendor or vendors selected for one or more of the design, construction, or operation of, or other service related to, the proposed project or services on terms that the legislative authority determines to be fair and reasonable and in the best interest of the county. If the legislative authority or its representative is unable to negotiate such a contract with any one or more of the vendors first selected on terms that it determines to be fair and reasonable and in the best interest of the county, negotiations with any one or more of the vendors shall be terminated or suspended and another qualified vendor or vendors may be selected in accordance with the procedures set forth in this section. If the legislative authority decides to continue the process of selection, negotiations shall continue with a qualified vendor or vendors in accordance with this section at the sole discretion of the legislative authority until an agreement is reached with one or more qualified vendors, or the process is terminated by the legislative authority. The process may be repeated until an agreement is reached.

(6) Prior to entering into a contract with a vendor, the legislative authority of the county shall make written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the contract, that the contract is financially sound, and that it is advantageous for the county to use this method for awarding contracts compared to other methods.

(7) Each contract shall include a project performance bond or bonds or other security by the vendor that in the judg-

ment of the legislative authority of the county is sufficient to secure adequate performance by the vendor.

(8) The provisions of chapters 39.12, 39.19, and \*39.25 RCW shall apply to a contract entered into under this section to the same extent as if the systems and plants were owned by a public body.

(9) The vendor selection process permitted by this section shall be supplemental to and shall not be construed as a repeal of or limitation on any other authority granted by law.

(10) The alternative selection process provided by this section may not be used in the selection of a person or entity to construct a publicly owned facility for the storage or transfer of solid waste or solid waste handling equipment unless the facility is either (a) privately operated pursuant to a contract greater than five years, or (b) an integral part of a solid waste processing facility located on the same site. Instead, the applicable provisions of RCW 36.32.250 and chapters 39.04 and 39.30 RCW shall be followed. [1992 c 131 § 4; 1989 c 399 § 10; 1986 c 282 § 19.]

\*Reviser's note: Chapter 39.25 RCW was repealed by 1994 c 138 § 2.

**Construction of 1986 c 282 § 19—1990 c 279:** "Section 19, chapter 282, Laws of 1986, codified as RCW 36.58.090, established an alternate procedure by which a county was authorized to procure systems and plants for solid waste handling and to contract with private vendors for the design, construction, or operation thereof. Any county with a population of over one hundred thousand that, prior to the effective date of chapter 399, Laws of 1989 [July 23, 1989], complied with the requirements of either (1) section 10 (3), (4), and (5), chapter 399, Laws of 1989, or (2) section 19(3), chapter 282, Laws of 1986, shall be deemed to have complied with the requirements of section 19(3), chapter 282, Laws of 1986." [1990 c 279 § 1.]

**Severability—Legislative findings—Construction—Liberal construction—Supplemental powers—1986 c 282:** See notes following RCW 35.21.156.

**36.58.100 Solid waste disposal district—Authorized—Boundaries—Powers—Governing body.** The legislative authority of any county with a population of less than one million is authorized to establish one or more solid waste disposal districts within the county for the purpose of providing and funding solid waste disposal services. No solid waste disposal district may include any area within the corporate limits of a city or town unless the city or town governing body adopts a resolution approving inclusion of the area within its limits. The county legislative authority may modify the boundaries of the solid waste disposal district by the same procedure used to establish the district. A solid waste disposal district may be dissolved by the county legislative authority after holding a hearing as provided in RCW 36.58.110.

As used in RCW 36.58.100 through 36.58.150 the term "county" includes all counties other than a county with a population of one million or more.

A solid waste disposal district is a quasi-municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

A solid waste disposal district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute: PROVIDED, That a solid waste disposal district shall not have the power of eminent domain.

The county legislative authority shall be the governing body of a solid waste disposal district. The electors of a solid waste disposal district shall be all registered voters residing within the district. [1991 c 363 § 75; 1982 c 175 § 1.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1982 c 175:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 175 § 9.]

**36.58.110 Solid waste disposal district—Establishment, modification, or dissolution—Hearing—Notice.** A county legislative authority proposing to establish a solid waste disposal district or to modify or dissolve an existing solid waste disposal district shall conduct a hearing at the time and place specified in a notice published at least once not less than ten days prior to the hearing in a newspaper of general circulation within the proposed solid waste disposal district. This notice shall be in addition to any other notice required by law to be published. Additional notice of such hearing may be given by mail, posting within the proposed solid waste disposal district, or in any manner local authorities deem necessary to notify affected persons. All hearings shall be public and the county legislative authority shall hear objections from any person affected by the formation, modification, or dissolution of the solid waste disposal district and make such changes in the boundaries of the district or any other modifications that the county legislative authority deems necessary. [1982 c 175 § 2.]

**Severability—1982 c 175:** See note following RCW 36.58.100.

**36.58.120 Solid waste disposal district—Establishment—Ordinance.** No solid waste disposal district shall be established within a county unless the county legislative authority determines, following a hearing held pursuant to RCW 36.58.110, that it is in the public interest to form the district and the county legislative authority adopts an ordinance creating the solid waste disposal district and establishing its boundaries. [1982 c 175 § 3.]

**Severability—1982 c 175:** See note following RCW 36.58.100.

**36.58.130 Solid waste disposal district—Powers—Restrictions—Fees.** A solid waste disposal district may provide for all aspects of disposing of solid wastes. All moneys received by a solid waste disposal district shall be used exclusively for district purposes. Nothing in this chapter shall permit waste disposal districts to engage in the collection of residential or commercial garbage.

A solid waste disposal district shall perform all construction in excess of twenty-five thousand dollars by contract let pursuant to RCW 36.32.250.

A solid waste disposal district may collect disposal fees based exclusively upon utilization by weight or volume for accepting solid wastes at a disposal site or transfer station. The county may transfer moneys to a solid waste disposal district to be used for district purposes. [1982 c 175 § 4.]

**Severability—1982 c 175:** See note following RCW 36.58.100.

**36.58.140 Solid waste disposal district—Excise tax—Lien for delinquent taxes and penalties.** A solid waste dis-

posal district may levy and collect an excise tax on the privilege of living in or operating a business in a solid waste disposal taxing district sufficient to fund its solid waste disposal activities: PROVIDED, That any property which is producing commercial garbage shall be exempt if the owner is providing regular collection and disposal. The excise tax shall be billed and collected at times and in the manner fixed and determined by the solid waste disposal district. Penalties for failure to pay the tax on time may be provided for. A solid waste disposal district shall have a lien for delinquent taxes and penalties, plus an interest rate equal to the interest rate for delinquent property taxes. The lien shall be attached to each parcel of property in the district that is occupied by the person so taxed and shall be superior to all other liens and encumbrances except liens for property taxes.

The solid waste disposal district shall periodically certify the delinquencies to the county treasurer at which time the lien shall be attached. The lien shall be foreclosed in the same manner as the foreclosure of real property taxes. [1982 c 175 § 5.]

**Severability—1982 c 175:** See note following RCW 36.58.100.

**36.58.150 Solid waste disposal district—Excess levies authorized—General obligation and revenue bonds.** (1) A solid waste disposal district shall not have the power to levy an annual levy without voter approval, but it shall have the power to levy a tax, in excess of the one percent limitation, upon the property within the district for a one year period to be used for operating or capital purposes whenever authorized by the electors of the district pursuant to RCW 84.52.052 and Article VII, section 2(a) of the state Constitution.

A solid waste disposal district may issue general obligation bonds for capital purposes only, subject to the limitations prescribed in RCW 39.36.020(1), and may provide for the retirement of the bonds by voter-approved bond retirement tax levies pursuant to Article VII, section 2(b) of the state Constitution and RCW 84.52.056. Such general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW.

A solid waste disposal district may issue revenue bonds to fund its activities. Such revenue bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such revenue bonds may be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 25; 1983 c 167 § 71; 1982 c 175 § 6.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Severability—1982 c 175:** See note following RCW 36.58.100.

**36.58.160 Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation—Application of chapter.** Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or

industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 34.]

**Severability—1989 c 431:** See RCW 70.95.901.

### Chapter 36.58A RCW

#### SOLID WASTE COLLECTION DISTRICTS

##### Sections

- 36.58A.010 Authorized—Conditions—Modification or dissolution of district.
- 36.58A.020 Hearings upon establishing, modification or dissolution of district—Notice—Scope.
- 36.58A.030 County legislative authority determination required to establish district—Commission findings as to present services.
- 36.58A.040 County may collect fees of garbage and refuse collection company—Disposition of fees—Subrogation—Lien.

*Dissolution of inactive special purpose districts: Chapter 36.96 RCW.*

**36.58A.010 Authorized—Conditions—Modification or dissolution of district.** Any county legislative authority may establish solid waste collection districts within the county boundaries for the mandatory collection of solid waste: PROVIDED, That no such district shall include any area within the corporate limits of any city or town without the consent of the legislative authority of the city or town. Such districts may be established only after approval of a coordinated, comprehensive solid waste management plan adopted pursuant to chapter 134, Laws of 1969 ex. sess. and chapter 70.95 RCW or pursuant to another solid waste management plan adopted prior to May 21, 1971 or within one year thereafter. The legislative authority of the county may modify or dissolve such district after a hearing as provided for in RCW 36.58A.020. [1971 ex.s. c 293 § 2.]

*Certain provisions not to detract from commission powers, duties, and functions: RCW 80.01.300.*

**36.58A.020 Hearings upon establishing, modification or dissolution of district—Notice—Scope.** The county legislative authority proposing to establish a solid waste collection district or to modify or dissolve an existing solid waste collection district shall conduct a hearing at the time and place specified in a notice published at least once not less than ten days prior to the hearing in a newspaper of general circulation within the county. Additional notice of such hearing may be given by mail, posting on the property, or in any manner local authorities deem necessary to notify adjacent landowners and the public. All hearings shall be public and the legislative authority shall hear objections from any person affected by the formation of the solid waste collection district and make such changes in the boundaries of the district or any other modifications of plans that the legislative authority deems necessary. [1971 ex.s. c 293 § 3.]

*Certain provisions not to detract from commission powers, duties, and functions: RCW 80.01.300.*

**36.58A.030 County legislative authority determination required to establish district—Commission findings**

[Title 36 RCW—page 128]

**as to present services.** No solid waste collection district shall be established in an area within the county boundaries unless the county legislative authority, after the hearing regarding formation of such district, determines from that hearing that mandatory solid waste collection is in the public interest and necessary for the preservation of public health. Such determination by the county legislative authority shall require the utilities and transportation commission to investigate and make a finding as to the ability and willingness of the existing garbage and refuse collection companies servicing the area to provide the required service.

If the utilities and transportation commission finds that the existing garbage and refuse collection company or companies are unable or unwilling to provide the required service it shall proceed to issue a certificate of public need and necessity to any qualified person or corporation in accordance with the provisions of RCW 81.77.040.

The utilities and transportation commission shall notify the county legislative authority within sixty days of its findings and actions and if no qualified garbage and refuse collection company or companies are available in the proposed solid waste collection district, the county legislative authority may provide county garbage and refuse collection services in the area and charge and collect reasonable fees therefor. The county shall not provide service in any portion of the area found by the utilities and transportation commission to be receiving adequate service from an existing certificated carrier unless the county shall acquire the rights of such existing certificated carrier by purchase or condemnation. [1971 ex.s. c 293 § 4.]

*Certain provisions not to detract from commission powers, duties, and functions: RCW 80.01.300.*

**36.58A.040 County may collect fees of garbage and refuse collection company—Disposition of fees—Subrogation—Lien.** If any garbage and refuse collection company certified by the utilities and transportation commission which operates in any solid waste collection district fails to collect any fees due and payable to it for garbage and refuse collection services, such company may request the county to collect such fees. Upon the collection of such fees, the county shall pay one-half of the fees actually collected to the garbage and refuse collection company entitled to receive such and shall deposit the remaining one-half in the county general fund.

When the county undertakes to collect such fees as requested by the garbage and refuse collection companies, the county shall be subrogated to all of the rights of such companies. Any such fees which the county fails to collect shall become liens on the real or personal property of the persons owing such fees and the county may take all appropriate legal action to enforce such liens. [1971 ex.s. c 293 § 6.]

*Certain provisions not to detract from commission powers, duties, and functions: RCW 80.01.300.*

### Chapter 36.60 RCW COUNTY RAIL DISTRICTS

##### Sections

- 36.60.010 Establishment of district—Boundaries—Powers.
- 36.60.020 Establishment, modification, or dissolution of district—Public notice and hearing—Election.

(2004 Ed.)

- 36.60.030 Authority of district to provide rail service.
- 36.60.040 Excess property tax levies authorized.
- 36.60.050 General obligation bonds authorized—Limitations—Terms.
- 36.60.060 Revenue bonds authorized—Limitations—Terms.
- 36.60.070 Power of eminent domain.
- 36.60.100 Establishment, modification, or dissolution of district—Alternate method.
- 36.60.110 Establishment, modification, or dissolution of district—Alternate method—Petition.
- 36.60.120 Establishment, modification, or dissolution of district—Alternate method—Public hearing.
- 36.60.130 Establishment, modification, or dissolution of district—Alternate method—Determination by county legislative authority.
- 36.60.140 Annexation by boundary modification—Assumption of outstanding indebtedness.
- 36.60.900 Liberal construction.
- 36.60.905 Severability—1983 c 303.

**36.60.010 Establishment of district—Boundaries—**

**Powers.** Subject to RCW 36.60.020, the legislative authority of a county may establish one or more county rail districts within the county for the purpose of providing and funding improved rail freight or passenger service, or both. The boundaries of county rail districts shall be drawn to include contiguous property in an area from which agricultural or other goods could be shipped by the rail service provided. The district shall not include property outside this area which does not, or, in the judgment of the county legislative authority, is not expected to produce goods which can be shipped by rail, or property substantially devoted to fruit crops or producing goods that are shipped in a direction away from the district. A county rail district is a quasi municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

A county rail district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to accept and expend or use gifts, grants, and donations, and to sue and be sued.

The county legislative authority shall be the governing body of a county rail district. The county treasurer shall act as the ex officio treasurer of the county rail district. The electors of a district are all registered voters residing within the district.

This authority and that provided in RCW 36.60.030 may only be exercised outside the boundaries of the county rail district if such extraterritorial rail services, equipment, or facilities are found, by resolution of the county legislative authority exercising such authority, to be reasonably necessary to link the rail services, equipment, and facilities within the rail district to an interstate railroad system; however, if such extraterritorial rail services, equipment, or facilities are in or are to be located in one or more other counties, the legislative authority of such other county must consent by resolution to the proposed plan of the originating county which consent shall not be unreasonably withheld. [2001 c 58 § 1; 1985 c 187 § 1; 1983 c 303 § 8.]

**36.60.020 Establishment, modification, or dissolution of district—Public notice and hearing—Election. (1)**

(2004 Ed.)

A county legislative authority proposing to establish a county rail district, or to modify the boundaries of an existing county rail district, or to dissolve an existing county rail district, shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days prior to the hearing, in a newspaper of general circulation within the proposed county rail district. This notice shall be in addition to any other notice required by law to be published. Additional notice of the hearing may be given by mail, posting within the proposed county rail district, or in any manner the county legislative authority deems necessary to notify affected persons. All hearings shall be public and the county legislative authority shall hear objections from any person affected by the formation, modification of the boundaries, or dissolution of the county rail district.

(2) Following the hearing held under subsection (1) of this section, the county legislative authority may adopt a resolution providing for the submission of a proposal to establish a county rail district, modify the boundaries of an existing county rail district, or dissolve an existing county rail district, if the county legislative authority finds the proposal to be in the public interest. The resolution shall contain the boundaries of the district if applicable.

A proposition to create a county rail district, modify the boundaries of an existing county rail district, or dissolve an existing rail district shall be submitted to the affected voters at the next general election held sixty or more days after the adoption of the resolution providing for the submittal by the county legislative authority. The resolution shall establish the boundaries of the district and include a finding that the creation of the district is in the public interest and that the area included within the district can reasonably be expected to benefit from its creation. No portion of a city may be included in such a district unless the entire city is included.

The district shall be created upon approval of the proposition by simple majority vote. The ballot proposition submitted to the voters shall be in substantially the following form:

FORMATION OF COUNTY RAIL DISTRICT . . . . .

Shall a county rail district be established for the area described in a resolution of the legislative authority of . . . . . county, adopted on the . . . . day of . . . . ., 19. . . ?

[1983 c 303 § 9.]

*Dissolution of inactive special purpose districts: Chapter 36.96 RCW.*

**36.60.030 Authority of district to provide rail service.**

A county rail district is authorized to contract with a person, partnership, or corporation to provide rail service along a light-density essential-service rail line for the purpose of carrying commodities. The district shall also have the power to acquire, maintain, improve, or extend rail facilities within the district that are necessary for the safe and efficient operation of the contracted rail service. A county rail district may receive state rail assistance under chapter 47.76 RCW. Two or more county rail districts may enter into interlocal cooperation agreements under chapter 39.34 RCW to carry out the purposes of this chapter. [1983 c 303 § 10.]

**36.60.040 Excess property tax levies authorized.** A county rail district is not authorized to impose a regular ad valorem property tax levy but may:

(1) Levy an ad valorem property tax, in excess of the one percent limitation, upon the property within the district for a one-year period to be used for operating or capital purposes whenever authorized by the voters of the district pursuant to RCW 84.52.052 and Article VII, section 2(a) of the state Constitution.

(2) Provide for the retirement of voter approved general obligation bonds, issued for capital purposes only, by levying bond retirement ad valorem property tax levies, in excess of the one percent limitation, whenever authorized by the voters of the district pursuant to Article VII, section 2(b) of the state Constitution and RCW 84.52.056. [1983 c 303 § 11.]

**36.60.050 General obligation bonds authorized—Limitations—Terms.** (1) To carry out the purpose of this chapter, a county rail district may issue general obligation bonds, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness, equal to three-eighths of one percent of the value of taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015. A county rail district may additionally issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to one and one-fourth percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, as prescribed in Article VIII, section 6 of the state Constitution, and to provide for the retirement thereof by excess property tax levies as provided in RCW 36.60.040(2). The county rail district may submit a single proposition to the voters which, if approved, authorizes both the issuance of the bonds and the bond retirement property tax levies.

(2) General obligation bonds with a maturity in excess of forty years shall not be issued. The governing body of the county rail district shall by resolution determine for each general obligation bond issue the amount, date or dates, terms, conditions, denominations, interest rate or rates, which may be fixed or variable, maturity or maturities, redemption rights, registration privileges, manner of execution, price, manner of sale, and covenants. The bonds may be in any form, including bearer bonds or registered bonds. Facsimile signatures may be used on the bonds and any coupons. Refunding general obligation bonds may be issued in the same manner as general obligation bonds are issued.

(3) Whenever general obligation bonds are issued to fund specific projects or enterprises that generate revenues, charges, user fees, or special assessments, the county rail district which issues the bonds may specifically pledge all or a portion of the revenues, charges, user fees, or special assessments to refund the general obligation bonds. [1983 c 303 § 12.]

**36.60.060 Revenue bonds authorized—Limitations—Terms.** (1) A county rail district may issue revenue bonds to fund revenue generating facilities which it is authorized to provide or operate. Whenever revenue bonds are to be issued, the governing body of the district shall create or

have created a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the governing body may obligate the district to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, repaired, or replaced pursuant to this chapter as the governing body determines.

(2) The governing body of a county rail district issuing revenue bonds shall create a special fund or funds from which, along with any reserves created under RCW 39.44.140, the principal and interest on the revenue bonds shall exclusively be payable. The governing body may obligate the county rail district to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues from the public improvements, projects, facilities, and all related additions funded by the revenue bonds. This amount or proportion shall be a lien and charge against these revenues, subject only to operating and maintenance expenses. The governing body shall consider the cost of operation and maintenance of the public improvement, project, facility, or additions funded by the revenue bonds and shall not place into the special fund or funds a greater amount or proportion of the revenues than it thinks will be available after maintenance and operation expenses have been paid and after the payment of revenue previously pledged. The governing body may also provide that revenue bonds payable from the same source or sources of revenue may later be issued on parity with any revenue bonds issued and sold.

(3) Revenue bonds issued pursuant to this section shall not be an indebtedness of the county rail district issuing the bonds, and the interest and principal on the bonds shall only be payable from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The owner of a revenue bond or any interest coupon issued pursuant to this section shall not have any claim against the county rail district arising from the bond or coupon except for payment from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each bond issued pursuant to this section.

(4) Revenue bonds with a maturity in excess of thirty years shall not be issued. The governing body of the county rail district shall by resolution determine for each revenue bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, and covenants including the refunding of existing revenue bonds. The bonds may be in any form, including bearer bonds or registered bonds. Facsimile signatures may be used on the bonds and any coupons. Refunding revenue bonds may be issued in the same manner as revenue bonds are issued. [1983 c 303 § 13.]

**36.60.070 Power of eminent domain.** A county rail district may exercise the power of eminent domain to obtain property for its authorized purposes in the manner counties exercise the powers of eminent domain. [1983 c 303 § 14.]

*Eminent domain by counties: Chapter 8.08 RCW.*

**36.60.100 Establishment, modification, or dissolution of district—Alternate method.** The method of establishing, modifying, or dissolving a county rail district in RCW 36.60.110 through 36.60.130 is an alternate method to that specified in RCW 36.60.020. [1986 c 26 § 1.]

**36.60.110 Establishment, modification, or dissolution of district—Alternate method—Petition.** A petition to establish, modify the boundaries, or dissolve a county rail district shall be filed with the county legislative authority. The petition shall be signed by the owners of property valued at not less than seventy-five percent according to the assessed valuation for general taxation of the property for which establishment, modification or dissolution is petitioned. The petition shall set forth a legal description of the property and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. [1986 c 26 § 2.]

**36.60.120 Establishment, modification, or dissolution of district—Alternate method—Public hearing.** If a petition to establish, modify the boundaries, or dissolve a county rail district is filed with the county legislative authority that complies with the requirements specified in RCW 36.60.110, the legislative authority may accept the petition, fix a date for a public hearing, and publish notice of the hearing in one issue of the official county newspaper. The notice shall also be posted in three public places within the area proposed for establishment, modification, or dissolution, and shall specify the time and place of hearing. The expense of publication and posting of the notice shall be paid by the signers of the petition. [1986 c 26 § 3.]

**36.60.130 Establishment, modification, or dissolution of district—Alternate method—Determination by county legislative authority.** Following the hearing, the county legislative authority shall determine by resolution whether the area proposed shall establish, modify the boundaries, or dissolve the county rail district. They may include all or any portion of the proposed area but may not include any property not described in the petition. [1986 c 26 § 4.]

**36.60.140 Annexation by boundary modification—Assumption of outstanding indebtedness.** All property annexed to a county rail district by a boundary modification under RCW 36.60.110 through 36.60.130 shall assume all or any portion of the outstanding indebtedness of the county rail district existing at the date of modification. [1986 c 26 § 5.]

**36.60.900 Liberal construction.** The rule of strict construction does not apply to this chapter, and this chapter shall be liberally construed to permit the accomplishment of its purposes. [1983 c 303 § 15.]

**36.60.905 Severability—1983 c 303.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 303 § 23.]

(2004 Ed.)

## Chapter 36.61 RCW

### LAKE MANAGEMENT DISTRICTS

#### Sections

36.61.010	Purpose.
36.61.020	Creation of district—Special assessments or rates and charges.
36.61.025	Creation of district—Duration.
36.61.030	Creation of district—Resolution or petition—Contents.
36.61.040	Creation of district—Public hearing—Notice—Contents.
36.61.050	Creation of district—Public hearing—Amendments to original plan.
36.61.060	Creation of district—Public hearing—Legislative authority may delegate responsibility.
36.61.070	Creation of district—Submittal of question to landowners.
36.61.080	Creation of district—Submittal of question to landowners—Mail ballot.
36.61.090	Creation of district—Submittal of question to landowners—Balloting—Conditions.
36.61.100	Creation of district—Submittal of question to landowners—Majority vote required—Adoption of ordinance.
36.61.110	Creation of district—Limitations on appeals.
36.61.115	Limitation on special assessments, rates and charges.
36.61.120	Special assessment roll—Adoption—Public hearing.
36.61.130	Special assessment roll—Public hearing—Legislative authority may delegate responsibility—Appeals.
36.61.140	Special assessment roll—Public hearing—Notice—Contents.
36.61.150	Special assessment roll—Appeal to superior and appellate courts—Procedure.
36.61.160	Special assessments—Calculation.
36.61.170	Special assessments—Limitations.
36.61.180	Special assessments—Modification.
36.61.190	Special assessments—Collection—Notice.
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36.61.210	Special assessments—Subdivision of land—Segregation of assessment.
36.61.220	Special assessments—Filing with county treasurer.
36.61.230	Special assessments—Lien created.
36.61.240	Special assessments—Lien—Validity—Foreclosure.
36.61.250	Special assessments—Legislative authority may stop.
36.61.260	Bonds.
36.61.270	Imposition of rates and charges.

*Assessments and charges against state lands: Chapter 79.44 RCW.*

*Boat trailer fee: RCW 46.16.670.*

**36.61.010 Purpose.** The legislature finds that the environmental, recreational, and aesthetic values of many of the state's lakes are threatened by eutrophication and other deterioration and that existing governmental authorities are unable to adequately improve and maintain the quality of the state's lakes.

It is the purpose of this chapter to establish a governmental mechanism by which property owners can embark on a program of lake improvement and maintenance for their and the general public's benefit, health, and welfare. Public property, including state property, shall be considered the same as private property in this chapter, except liens for special assessments and liens for rates and charges shall not extend to public property. Lake bottom property shall not be considered to be benefited, shall not be subject to special assessments or rates and charges, and shall not receive voting rights under this chapter. [1987 c 432 § 1; 1985 c 398 § 1.]

**36.61.020 Creation of district—Special assessments or rates and charges.** Any county may create lake management districts to finance the improvement and maintenance of lakes located within or partially within the boundaries of the county. All or a portion of a lake and the adjacent land areas may be included within one or more lake management districts. More than one lake, or portions of lakes, and the adjacent land areas may be included in a single lake management district.

Special assessments or rates and charges may be imposed on the property included within a lake management district to finance lake improvement and maintenance activities, including: (1) The control or removal of aquatic plants and vegetation; (2) water quality; (3) the control of water levels; (4) storm water diversion and treatment; (5) agricultural waste control; (6) studying lake water quality problems and solutions; (7) cleaning and maintaining ditches and streams entering or leaving the lake; and (8) the related administrative, engineering, legal, and operational costs, including the costs of creating the lake management district.

Special assessments or rates and charges may be imposed annually on all the land in a lake management district for the duration of the lake management district without a related issuance of lake management district bonds or revenue bonds. Special assessments also may be imposed in the manner of special assessments in a local improvement district with each landowner being given the choice of paying the entire special assessment in one payment, or to paying installments, with lake management district bonds being issued to obtain moneys not derived by the initial full payment of the special assessments, and the installments covering all of the costs related to issuing, selling, and redeeming the lake management district bonds. [2000 c 184 § 5; 1987 c 432 § 2; 1985 c 398 § 2.]

**Effective date—2000 c 184:** See note following RCW 39.96.010.

*Cities and towns authorized to establish lake management districts:* RCW 35.21.403.

*Flood control districts authorized to engage in activities under RCW 36.61.020:* RCW 86.09.151.

**36.61.025 Creation of district—Duration.** To improve the ability of counties to finance long-term lake management objectives, lake management districts may be created for any needed period of time. [2000 c 184 § 4.]

**Effective date—2000 c 184:** See note following RCW 39.96.010.

**36.61.030 Creation of district—Resolution or petition—Contents.** A lake management district may be initiated upon either the adoption of a resolution of intention by a county legislative authority or the filing of a petition signed by ten landowners or the owners of at least fifteen percent of the acreage contained within the proposed lake management district, whichever is greater. A petition or resolution of intention shall set forth: (1) The nature of the lake improvement or maintenance activities proposed to be financed; (2) the amount of money proposed to be raised by special assessments or rates and charges; (3) if special assessments are to be imposed, whether the special assessments will be imposed annually for the duration of the lake management district, or the full special assessments will be imposed at one time, with the possibility of installments being made to finance the issuance of lake management district bonds, or both methods; (4) if rates and charges are to be imposed, the annual amount of revenue proposed to be collected and whether revenue bonds payable from the rates and charges are proposed to be issued; (5) the number of years proposed for the duration of the lake management district; and (6) the proposed boundaries of the lake management district.

The county legislative authority may require the posting of a bond of up to five thousand dollars before the county

considers the proposed creation of a lake management district initiated by petition. The bond may only be used by the county to finance its costs in studying, holding hearings, making notices, preparing special assessment rolls or rolls showing the rates and charges on each parcel, and conducting elections related to the lake management district if the proposed lake management district is not created.

A resolution of intention shall also designate the number of the proposed lake management district, and fix a date, time, and place for a public hearing on the formation of the proposed lake management district. The date for the public hearing shall be at least thirty days and no more than ninety days after the adoption of the resolution of intention unless an emergency exists.

Petitions shall be filed with the county legislative authority. The county legislative authority shall determine the sufficiency of the signatures, which shall be conclusive upon all persons. No person may withdraw his or her name from a petition after it is filed. If the county legislative authority determines a petition to be sufficient and the proposed lake management district appears to be in the public interest and the financing of the lake improvement or maintenance activities is feasible, it shall adopt a resolution of intention, setting forth all of the details required to be included when a resolution of intention is initiated by the county legislative authority. [1987 c 432 § 3; 1985 c 398 § 3.]

**36.61.040 Creation of district—Public hearing—Notice—Contents.** Notice of the public hearing shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed lake management district, the date of the first publication to be at least fifteen days prior to the date fixed for the public hearing by the resolution of intention. Notice of the public hearing shall also be given to the owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed lake management district by mailing the notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county assessor at the address shown thereon. Notice of the public hearing shall also be mailed to the departments of fish and wildlife and ecology at least fifteen days before the date fixed for the public hearing.

Notices of the public hearing shall: (1) Refer to the resolution of intention; (2) designate the proposed lake management district by number; (3) set forth a proposed plan describing: (a) The nature of the proposed lake improvement or maintenance activities; (b) the amount of special assessments or rates and charges proposed to be raised by the lake management district; (c) if special assessments are proposed to be imposed, whether the special assessments will be imposed annually for the duration of the lake management district, or the full special assessments will be payable at one time, with the possibility of periodic installments being paid and lake management bonds being issued, or both; (d) if rates and charges are proposed to be imposed, the annual amount of revenue proposed to be collected and whether revenue bonds payable from the rates and charges are proposed to be issued; and (e) the proposed duration of the lake management district; and (4) indicate the date, time, and place of the public hearing designated in the resolution of intention.

In the case of the notice sent to each owner or reputed owner by mail, the notice shall set forth the estimated amount of the cost of the lake improvement or maintenance activities to be borne by special assessment, or annual special assessments, or rates and charges on the lot, tract, parcel of land, or other property owned by the owner or reputed owner.

If the county legislative authority has designated a committee of itself or an officer to hear complaints and make recommendations to the full county legislative authority, as provided in RCW 36.61.060, the notice shall also describe this additional step before the full county legislative authority may adopt a resolution creating the lake management district. [1994 c 264 § 9; 1988 c 36 § 9; 1987 c 432 § 4; 1985 c 398 § 4.]

**36.61.050 Creation of district—Public hearing—Amendments to original plan.** The county legislative authority shall hold a public hearing on the proposed lake management district at the date, time, and place designated in the resolution of intention.

At this hearing the county legislative authority shall hear objections from any person affected by the formation of the lake management district. Representatives of the departments of fish and wildlife and ecology shall be afforded opportunities to make presentations on and comment on the proposal. Members of the public shall be afforded an opportunity to comment on the proposal. The county legislative authority must consider recommendations provided to it by the departments of fish and wildlife and ecology. The public hearing may be extended to other times and dates declared at the public hearing. The county legislative authority may make such changes in the boundaries of the lake management district or such modification in plans for the proposed lake improvement or maintenance activities as it deems necessary. The county legislative authority may not change boundaries of the lake management district to include property that was not included previously without first passing an amended resolution of intention and giving new notice to the owners or reputed owners of property newly included in the proposed lake management district in the manner and form and within the time provided for the original notice. The county legislative authority shall not alter the plans for the proposed lake improvement or maintenance activities to result in an increase in the amount of money proposed to be raised, and shall not increase the amount of money proposed to be raised, without first passing an amended resolution of intention and giving new notice to property owners in the manner and form and within the time provided for the original notice. [1994 c 264 § 10; 1988 c 36 § 10; 1985 c 398 § 5.]

**36.61.060 Creation of district—Public hearing—Legislative authority may delegate responsibility.** A county legislative authority may adopt an ordinance providing for a committee of itself, or an officer, to hold public hearings on the proposed formation of a lake management district and hear objections to the proposed formation as provided in RCW 36.61.050. The committee or officer shall make a recommendation to the full legislative authority, which need not hold a public hearing on the proposed creation of the lake management district. The full county legis-

lative authority by resolution may approve or disapprove the recommendation and submit the question of creating the lake management district to the property owners as provided in RCW 36.61.070 through 36.61.100. [1985 c 398 § 10.]

**36.61.070 Creation of district—Submittal of question to landowners.** After the public hearing, the county legislative authority may adopt a resolution submitting the question of creating the lake management district to the owners of land within the proposed lake management district, including publicly owned land, if the county legislative authority finds that it is in the public interest to create the lake management district and the financing of the lake improvement and maintenance activities is feasible. The resolution shall also include: (1) A plan describing the proposed lake improvement and maintenance activities which avoid adverse impacts on fish and wildlife and provide for appropriate measures to protect and enhance fish and wildlife; (2) the number of years the lake management district will exist; (3) the amount to be raised by special assessments or rates and charges; (4) if special assessments are to be imposed, whether the special assessments shall be imposed annually for the duration of the lake management district or only once with the possibility of installments being imposed and lake management bonds being issued, or both, and, if both types of special assessments are proposed to be imposed, the lake improvement or maintenance activities proposed to be financed by each type of special assessment; (5) if rates and charges are to be imposed, a description of the rates and charges and the possibility of revenue bonds being issued that are payable from the rates and charges; and (6) the estimated special assessment or rate and charge proposed to be imposed on each parcel included in the proposed lake management district.

No lake management district may be created by a county that includes territory located in another county without the approval of the legislative authority of the other county. [1987 c 432 § 5; 1985 c 398 § 6.]

**36.61.080 Creation of district—Submittal of question to landowners—Mail ballot.** A ballot shall be mailed to each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed lake management district, including publicly owned land, which ballot shall contain the following proposition:

"Shall lake management district No. . . . be formed?  
 Yes . . . . .  
 No . . . . ."

In addition, the ballot shall contain appropriate spaces for the signatures of the landowner or landowners, or officer authorized to cast such a ballot. Each ballot shall include a description of the property owner's property and the estimated special assessment, or rate and charge, proposed to be imposed upon the property. A copy of the instructions and the resolution submitting the question to the landowners shall also be included. [1987 c 432 § 6; 1985 c 398 § 7.]

**36.61.090 Creation of district—Submittal of question to landowners—Balloting—Conditions.** The balloting shall be subject to the following conditions, which shall be

included in the instructions mailed with each ballot, as provided in RCW 36.61.080: (1) All ballots must be signed by the owner or reputed owner of property according to the assessor's tax rolls; (2) each ballot must be returned to the county legislative authority not later than five o'clock p.m. of a specified day, which shall be at least twenty but not more than thirty days after the ballots are mailed; (3) each property owner shall mark his or her ballot for or against the creation of the proposed lake management district, with the ballot weighted so that the property owner has one vote for each dollar of estimated special assessment or rate and charge proposed to be imposed on his or her property; and (4) the valid ballots shall be tabulated and a simple majority of the votes cast shall determine whether the proposed lake management district shall be approved or rejected. [1987 c 432 § 7; 1985 c 398 § 8.]

**36.61.100 Creation of district—Submittal of question to landowners—Majority vote required—Adoption of ordinance.** If the proposal receives a simple majority vote in favor of creating the lake management district, the county legislative authority shall adopt an ordinance creating the lake management district and may proceed with establishing the special assessments or rates and charges, collecting the special assessments or rates and charges, and performing the lake improvement or maintenance activities. If a proposed lake management district includes more than one lake and its adjacent areas, the lake management district may only be established if the proposal receives a simple majority vote in favor of creating it by the voters on each lake and its adjacent areas. The county legislative authority shall publish a notice in a newspaper of general circulation in a lake management district indicating that such an ordinance has been adopted within ten days of the adoption of the ordinance.

The ballots shall be available for public inspection after they are counted. [1987 c 432 § 8; 1985 c 398 § 9.]

**36.61.110 Creation of district—Limitations on appeals.** No lawsuit may be maintained challenging the jurisdiction or authority of the county legislative authority to proceed with the lake improvement and maintenance activities and creating the lake management district or in any way challenging the validity of the actions or decisions or any proceedings relating to the actions or decisions unless the lawsuit is served and filed no later than forty days after publication of a notice that the ordinance has been adopted ordering the lake improvement and maintenance activities and creating the lake management district. Written notice of the appeal shall be filed with the county legislative authority and clerk of the superior court in the county in which the property is situated. [1985 c 398 § 11.]

**36.61.115 Limitation on special assessments, rates and charges.** A special assessment, or rate and charge, on any lot, tract, parcel of land, or other property shall not be increased beyond one hundred ten percent of the estimated special assessment, or rate and charge, proposed to be imposed as provided in the resolution adopted in RCW 36.61.070, unless the creation of a lake management district is approved under another mailed ballot election that reflects

the weighted voting arising from such increases. [1987 c 432 § 9.]

**36.61.120 Special assessment roll—Adoption—Public hearing.** After a lake management district is created, the county shall prepare a proposed special assessment roll. A separate special assessment roll shall be prepared for annual special assessments if both annual special assessments and special assessments paid at one time are imposed. The proposed special assessment roll shall list: (1) Each separate lot, tract, parcel of land, or other property in the lake management district; (2) the acreage of such property, and the number of feet of lake frontage, if any; (3) the name and address of the owner or reputed owner of each lot, tract, parcel of land, or other property as shown on the tax rolls of the county assessor; and (4) the special assessment proposed to be imposed on each lot, tract, parcel of land, or other property, or the annual special assessments proposed to be imposed on each lot, tract, parcel of land, or other property.

At the time, date, and place fixed for a public hearing, the county legislative authority shall act as a board of equalization and hear objections to the special assessment roll, and at the times to which the public hearing may be adjourned, the county legislative authority may correct, revise, raise, lower, change, or modify the special assessment roll or any part thereof, or set the proposed special assessment roll aside and order a new proposed special assessment roll to be prepared. The county legislative authority shall confirm and approve a special assessment roll by adoption of a resolution.

If a proposed special assessment roll is amended to raise any special assessment appearing thereon or to include omitted property, a new public hearing shall be held. The new public hearing shall be limited to considering the increased special assessments or omitted property. Notices shall be sent to the owners or reputed owners of the affected property in the same manner and form and within the time provided for the original notice.

Objections to a proposed special assessment roll must be made in writing, shall clearly state the grounds for objections, and shall be filed with the governing body prior to the public hearing. Objections to a special assessment or annual special assessments that are not made as provided in this section shall be deemed waived and shall not be considered by the governing body or a court on appeal. [1985 c 398 § 12.]

**36.61.130 Special assessment roll—Public hearing—Legislative authority may delegate responsibility—Appeals.** A county legislative authority may adopt an ordinance providing for a committee of itself, or an officer, to hear objections to the special assessment roll, act as a board of equalization, and make recommendations to the full county legislative authority, which need not hold a public hearing on the special assessment roll. The ordinance shall provide a process by which an appeal may be made in writing to the full county legislative authority by a person protesting his or her special assessment or annual special assessments as confirmed by the committee or officer. The full county legislative authority by resolution shall approve the special assessment roll, modify and approve the special assessment roll as a result of hearing objections, or reject the special assessment

roll and return it to the committee or officer for further work and recommendations. No objection to the decision of the full county legislative authority approving the special assessment roll may be considered by a court unless an objection to the decision has been timely filed with the county legislative authority as provided in this section. [1985 c 398 § 13.]

**36.61.140 Special assessment roll—Public hearing—Notice—Contents.** Notice of the original public hearing on the proposed special assessment roll, and any public hearing held as a result of raising special assessments or including omitted property, shall be published and mailed to the owner or reputed owner of the property as provided in RCW 36.61.040 for the public hearing on the formation of the lake management district. However, the notice need only provide the total amount to be collected by the special assessment roll and shall state that: (1) A public hearing on the proposed special assessment roll will be held, giving the time, date, and place of the public hearing; (2) the proposed special assessment roll is available for public perusal, giving the times and location where the proposed special assessment roll is available for public perusal; (3) objections to the proposed special assessment must be in writing, include clear grounds for objections, and must be filed prior to the public hearing; and (4) failure to so object shall be deemed to waive an objection.

Notices mailed to the owners or reputed owners shall additionally indicate the amount of special assessment ascribed to the particular lot, tract, parcel of land, or other property owned by the person so notified. [1985 c 398 § 14.]

**36.61.150 Special assessment roll—Appeal to superior and appellate courts—Procedure.** The decision of a county legislative authority upon any objection to the special assessment roll may be appealed to the superior court only if the objection had been timely made in the manner prescribed in this chapter. The appeal shall be made within ten days after publication of a notice that the resolution confirming the special assessment roll has been adopted by filing written notice of the appeal with the county legislative authority and the clerk of the superior court in the county in which the real property is situated. The notice of appeal shall describe the property and set forth the objections of the appellant to the special assessment. Within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of the court a transcript consisting of the special assessment roll and his or her objections thereto, together with the resolution confirming such special assessment roll and the record of the county legislative authority with reference to the special assessment or annual special assessments, which transcript, upon payment of the necessary fees therefor, shall be furnished by an officer of the county and by him or her certified to contain full, true, and correct copies of all matters and proceedings required to be included in the transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions.

At the time of the filing of the notice of appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with a surety or sureties thereon as

provided by law for appeals in civil cases, shall be filed conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all costs incurred by the county because of the appeal. The court may order the appellant, upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require.

Within three days after such transcript is filed in the superior court, the appellant shall give written notice to the county legislative authority that such transcript is filed. The notice shall state a time, not less than three days from the service thereof, when the appellant will call up the cause for hearing.

The superior court shall, at this time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury, and such cause shall have preference over all civil causes pending in the court, except proceedings under an act relating to eminent domain in such county and actions of forcible entry and detainer. The judgment of the court shall confirm, correct, modify, or annul the special assessment or annual special assessments insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer having custody of the special assessment roll, and he or she shall modify and correct such special assessment roll in accordance with the decision.

An appeal shall lie to the supreme court or the court of appeals from the judgment of the superior court, as in other cases, however, such appeal must be taken within fifteen days after the date of the entry of the judgment of the superior court, and the record and opening brief of the appellant in the cause shall be filed in the supreme court or the court of appeals within sixty days after the appeal is taken by notice as provided in this section. The time for filing the record and serving and filing of briefs may be extended by order of the superior court, or by stipulation of the parties concerned. The supreme court or the court of appeals on such appeal may correct, modify, confirm, or annul the special assessment or annual special assessments insofar as the same affects the property of the appellant. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such special assessment roll, who shall thereupon modify and correct such special assessment roll in accordance with such decision. [1985 c 398 § 15.]

**36.61.160 Special assessments—Calculation.** Whenever special assessments are imposed, all property included within a lake management district shall be considered to be the property specially benefited by the lake improvement or maintenance activities and shall be the property upon which special assessments are imposed to pay the costs and expenses of the lake improvement or maintenance activities, or such part of the costs and expenses as may be chargeable against the property specially benefited. The special assessments shall be imposed on property in accordance with the special benefits conferred on the property up to but not in excess of the total costs and expenses of the lake improvement or maintenance activities as provided in the special assessment roll.

Special assessments may be measured by front footage, acreage, the extent of improvements on the property, or any

other factors that are deemed to fairly reflect special benefits, including those authorized under RCW 35.51.030. Special assessments may be calculated by using more than one factor. Zones around the public improvement may be used that reflect different levels of benefit in each zone that are measured by a front footage, acreage, the extent of improvements, or other factors.

Public property, including property owned by the state of Washington, shall be subject to special assessments to the same extent that private property is subject to the special assessments, except no lien shall extend to public property. [1987 c 432 § 10; 1985 c 398 § 16.]

**36.61.170 Special assessments—Limitations.** The total annual special assessments may not exceed the estimated cost of the lake improvement or maintenance activities proposed to be financed by such special assessments, as specified in the resolution of intention. The total of special assessments imposed in a lake management district that are of the nature of special assessments imposed in a local improvement district shall not exceed one hundred fifty percent of the estimated total cost of the lake improvement or maintenance activities that are proposed to be financed by the lake management district as specified in the resolution of intention. After a lake management district has been created, the resolution of intention may be amended to increase the amount to be financed by the lake management district by using the same procedure in which a lake management district is created. [1985 c 398 § 17.]

**36.61.180 Special assessments—Modification.** Whenever annual special assessments are being imposed, the county legislative authority may modify the level of annual special assessments imposed by conforming with the procedures and subject to the limitations included in RCW 36.61.120 through 36.61.170. [1985 c 398 § 18.]

**36.61.190 Special assessments—Collection—Notice.** Special assessments and installments on any special assessment shall be collected by the county treasurer.

The county treasurer shall publish a notice indicating that the special assessment roll has been confirmed and that the special assessments are to be collected. The notice shall indicate the duration of the lake management district and shall describe whether the special assessments will be paid in annual payments for the duration of the lake management district, or whether the full special assessments will be payable at one time, with the possibility of periodic installments being paid and lake management bonds being issued, or both.

If the special assessments are to be payable at one time, the notice additionally shall indicate that all or any portion of the special assessments may be paid within thirty days from the date of publication of the first notice without penalty or interest. This notice shall be published in a newspaper of general circulation in the lake management district.

Within ten days of the first newspaper publication, the county treasurer shall notify each owner or reputed owner of property whose name appears on the special assessment roll, at the address shown on the special assessment roll, for each item of property described on the list: (1) Whether one spe-

cial assessment payable at one time or special assessments payable annually have been imposed; (2) the amount of the property subject to the special assessment or annual special assessments; and (3) the total amount of the special assessment due at one time, or annual amount of special assessments due. If the special assessment is due at one time, the notice shall also describe the thirty-day period during which the special assessment may be paid without penalty, interest, or cost. [1985 c 398 § 19.]

**36.61.200 Special assessments—Payment period—Interest and penalty.** If the special assessments are to be payable at one time, all or any portion of any special assessment may be paid without interest, penalty, or costs during this thirty-day period and placed into a special fund to defray the costs of the lake improvement or maintenance activities. The remainder shall be paid in installments as provided in a resolution adopted by the county legislative authority, but the last installment shall be due at least two years before the maximum term of the bonds issued to pay for the improvements or maintenance. The installments shall include amounts sufficient to redeem the bonds issued to pay for the lake improvement and maintenance activities. A twenty-day period shall be allowed after the due date of any installment within which no interest, penalty, or costs on the installment may be imposed.

The county shall establish by ordinance an amount of interest that will be imposed on late special assessments imposed annually or at once, and on installments of a special assessment. The ordinance shall also specify the penalty, in addition to the interest, that will be imposed on a late annual special assessment, special assessment, or installment which shall not be less than five percent of the delinquent special assessment or installment.

The owner of any lot, tract, parcel of land, or other property charged with a special assessment may redeem it from all liability for the unpaid amount of the installments by paying, to the county treasurer, the remaining portion of the installments that is attributable to principal on the lake management district bonds. [1985 c 398 § 20.]

**36.61.210 Special assessments—Subdivision of land—Segregation of assessment.** Whenever any land against which there has been levied any special assessment or annual special assessments by any county has been sold in part, subdivided, or short subdivided, the county legislative authority may order a segregation of the special assessment or annual special assessments. If an installment has been made, the segregation shall apportion the remaining installments on the parts or lots created.

Any person desiring to have such a special assessment or annual special assessments against a tract of land segregated to apply to smaller parts thereof shall apply to the county legislative authority which levied the special assessment or annual special assessments. If the county legislative authority determines that a segregation should be made, it shall by resolution order the county treasurer to segregate the special assessment or annual special assessments on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the

original special assessment or annual special assessments were levied, and the total of the segregated parts of the special assessment or annual special assessments shall equal the amount of the special assessment or annual special assessments unpaid before segregation. The resolution shall describe the original tract and the amount and date of the original special assessment or annual special assessments and shall define the boundaries of the divided parts and the amount of the special assessment or annual special assessments chargeable to each part. A certified copy of the resolution shall be delivered to the county treasurer who shall proceed to segregate the special assessment or annual special assessments upon being tendered a fee of three dollars for each tract of land for which a segregation is to be made. In addition to such charge the county legislative authority may require as a condition to the order of segregation that the person seeking it pay the local government the reasonable engineering and clerical costs incident to making the segregation. [1985 c 398 § 21.]

**36.61.220 Special assessments—Filing with county treasurer.** Within fifteen days after a county creates a lake management district, the county shall cause to be filed with the county treasurer, a description of the lake improvement and maintenance activities proposed that the lake management district finances, the lake management district number, and a copy of the diagram or print showing the boundaries of the lake management district and preliminary special assessment roll or abstract of same showing thereon the lots, tracts, parcels of land, and other property that will be specially benefited thereby and the estimated cost and expense of such lake improvement and maintenance activities to be borne by each lot, tract, parcel of land, or other property. The treasurer shall immediately post the proposed special assessment roll upon his or her index of special assessments against the properties affected by the lake improvement or maintenance activities. [1985 c 398 § 22.]

**36.61.230 Special assessments—Lien created.** The special assessment or annual special assessments imposed upon the respective lots, tracts, parcels of land, and other property in the special assessment roll or annual special assessment roll confirmed by resolution of the county legislative authority for the purpose of paying the cost and expense in whole or in part of any lake improvement or maintenance activities shall be a lien upon the property assessed from the time the special assessment roll is placed in the hands of the county treasurer for collection, but as between the grantor and grantee, or vendor and vendee of any real property, when there is no express agreement as to payment of the special assessments against the real property, the lien of such special assessments shall attach thirty days after the filing of the diagram or print and the estimated cost and expense of such lake improvement or maintenance activities to be borne by each lot, tract, parcel of land, or other property, as provided in RCW 36.61.220. Interest and penalty shall be included in and shall be a part of the special assessment lien. No lien shall extend to public property subjected to special assessments.

The special assessment lien shall be paramount and superior to any other lien or encumbrance theretofore or

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thereafter created except a lien for general taxes. [1985 c 398 § 23.]

**36.61.240 Special assessments—Lien—Validity—Foreclosure.** Special assessments shall be valid and enforceable as such and the lien thereof on the property assessed shall be valid if the county legislative authority in making the special assessments acted in good faith and without fraud. Delinquent special assessments or installments shall be foreclosed in the same manner as special assessments are foreclosed under chapter 36.94 RCW. Public property subject to special assessments shall not be subject to liens. [1985 c 398 § 24.]

**36.61.250 Special assessments—Legislative authority may stop.** The county legislative authority may stop the imposition of annual special assessments if, in its opinion, the public interest will be served by such action. [1985 c 398 § 25.]

**36.61.260 Bonds.** (1) Counties may issue lake management district bonds in accordance with this section. Lake management district bonds may be issued to obtain money sufficient to cover that portion of the special assessments that are not paid within the thirty-day period provided in RCW 36.61.190.

Whenever lake management district bonds are proposed to be issued, the county legislative authority shall create a special fund or funds for the lake management district from which all or a portion of the costs of the lake improvement and maintenance activities shall be paid. Lake management district bonds shall not be issued in excess of the costs and expenses of the lake improvement and maintenance activities and shall not be issued prior to twenty days after the thirty days allowed for the payment of special assessments without interest or penalties.

Lake management district bonds shall be exclusively payable from the special fund or funds and from a guaranty fund that the county may have created out of a portion of proceeds from the sale of the lake management district bonds.

(2) Lake management district bonds shall not constitute a general indebtedness of the county issuing the bond nor an obligation, general or special, of the state. The owner of any lake management district bond shall not have any claim for the payment thereof against the county that issues the bonds except for payment from the special assessments made for the lake improvement or maintenance activities for which the lake management district bond was issued and from a lake management district guaranty fund that may have been created. The county shall not be liable to the owner of any lake management district bond for any loss to the lake management district guaranty fund occurring in the lawful operation of the fund. The owner of a lake management district bond shall not have any claim against the state arising from the lake management district bond, special assessments, or guaranty fund. Tax revenues shall not be used to secure or guarantee the payment of the principal of or interest on lake management district bonds.

The substance of the limitations included in this subsection shall be plainly printed, written, engraved, or reproduced

on: (a) Each lake management district bond that is a physical instrument; (b) the official notice of sale; and (c) each official statement associated with the lake management district bonds.

(3) If the county fails to make any principal or interest payments on any lake management district bond or to promptly collect any special assessment securing the bonds when due, the owner of the lake management district bond may obtain a writ of mandamus from any court of competent jurisdiction requiring the county to collect the special assessments, foreclose on the related lien, and make payments out of the special fund or guaranty fund if one exists. Any number of owners of lake management districts may join as plaintiffs.

(4) A county may create a lake management district bond guaranty fund for each issue of lake management district bonds. The guaranty fund shall only exist for the life of the lake management district bonds with which it is associated. A portion of the bond proceeds may be placed into a guaranty fund. Unused moneys remaining in the guaranty fund during the last two years of the installments shall be used to proportionally reduce the required level of installments and shall be transferred into the special fund into which installment payments are placed.

(5) Lake management district bonds shall be issued and sold in accordance with chapter 39.46 RCW. The authority to create a special fund or funds shall include the authority to create accounts within a fund. [2000 c 184 § 6; 1985 c 398 § 26.]

**Effective date—2000 c 184:** See note following RCW 39.96.010.

**36.61.270 Imposition of rates and charges.** Whenever rates and charges are to be imposed in a lake management district, the county legislative authority shall prepare a roll of rates and charges that includes those matters required to be included in a special assessment roll and shall hold a public hearing on the proposed roll of rates and charges as provided under RCW 36.61.120 through 36.61.150 for a special assessment roll. The county legislative authority shall have full jurisdiction and authority to fix, alter, regulate, and control the rates and charges imposed by a lake management district and may classify the rates or charges by any reasonable factor or factors, including benefit, use, front footage, acreage, the extent of improvements on the property, the type of improvements on the property, uses to which the property is put, service to be provided, and any other reasonable factor or factors. The flexibility to establish rates and charges includes the authority to reduce rates and charges on property owned by low-income persons.

Except as provided in this section, the collection of rates and charges, lien status of unpaid rates and charges, and method of foreclosing on such liens shall be subject to the provisions of chapter 36.94 RCW. Public property, including state property, shall be subject to the rates and charges to the same extent that private property is subject to them, except that liens may not be foreclosed on the public property, and the procedure for imposing such rates and charges on state property shall conform with the procedure provided for in chapter 79.44 RCW concerning the imposition of special assessments upon state property. The total amount of rates

and charges cannot exceed the cost of lake improvement or maintenance activities proposed to be financed by such rates and charges, as specified in the resolution of intention. Revenue bonds exclusively payable from the rates and charges may be issued by the county under chapter 39.46 RCW. [1987 c 432 § 11.]

## Chapter 36.62 RCW HOSPITALS

### Sections

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*County health boards and officers: Chapter 70.05 RCW.*

*Public hospital districts, county participation: Chapter 70.44 RCW.*

*Sexually transmitted diseases, control and treatment of: Chapter 70.24 RCW.*

*Utilization of, for state medical care: Chapter 74.09 RCW.*

**36.62.010 Authority to establish.** The legislative authority of any county may establish, provide, and maintain hospitals for the care and treatment of the indigent, sick, injured, or infirm, and for this purpose the county legislative authority may:

(1) Purchase or lease real property or use lands already owned by the county;

(2) Erect all necessary buildings, make all necessary improvements and repairs and alter any existing building for the use of said hospitals;

(3) Use county moneys, levy taxes, and issue bonds as authorized by law, to raise a sufficient amount of money to cover the cost of procuring the site, constructing and operating hospitals, and for the maintenance thereof and all other necessary and proper expenses; and

(4) Accept and hold in trust for the county any grant of land, gift or bequest of money, or any donation for the benefit of the purposes of this chapter, and apply the same in accordance with the terms of the gift. [1984 c 26 § 1; 1963 c 4 §

36.62.010. Prior: 1947 c 228 § 1, part; 1925 ex.s. c 174 § 1, part; Rem. Supp. 1947 § 6090-1, part.]

**36.62.030 Hospital may be jointly owned and operated.** Any number of counties or any county and any city in which the county seat of the county is situated may contract one with the other for the joint purchase, acquisition, ownership, control, and disposition of land and other property suitable as a site for a county hospital. [1963 c 4 § 36.62.030. Prior: 1947 c 228 § 1, part; 1925 ex.s. c 174 § 1, part; Rem. Supp. 1947 § 6090-1, part.]

**36.62.040 Contract for joint hospital.** All contracts made in pursuance hereof shall be for such period of time and upon such terms and conditions as shall be agreed upon. The contract shall fully set forth the amount of money to be contributed by the county and city towards the acquisition of such site and the improvement thereof and the manner in which the property shall be improved and the character of the building or buildings to be erected thereon. It may provide for the amount of money to be contributed annually by the county and city for the upkeep and maintenance of the property and the building or buildings thereon, or it may provide for the relative proportion of such expense, which the county and city shall annually pay. The contract may specify the parts of such building or buildings which shall be set apart for the exclusive use and occupation of the county and city. The money to be contributed by the county or city may be raised by a sale of bonds of such county or city or by general taxation. Any such county or city now possessing funds or having funds available for a county or city hospital from a sale of bonds or otherwise may contract for the expenditure of such funds, as herein provided. Such contract shall be made only after a proper resolution or ordinance of the county legislative authority and ordinance of the city have been passed specifically authorizing it. The contract when made shall be binding upon the county and city during its existence or until it is modified or abrogated by mutual consent evidenced by appropriate legislation. A site with or without buildings may be contributed in lieu of money at a valuation to be agreed upon. [1984 c 26 § 2; 1963 c 4 § 36.62.040. Prior: (i) 1925 ex.s. c 174 § 2; RRS § 6090-2. (ii) 1947 c 228 § 1, part; 1925 ex.s. c 174 § 1, part; Rem. Supp. 1947 § 6090-1, part.]

**36.62.050 Petition to establish—Beds limited.** When it is proposed to establish such hospital, a petition shall be presented to the county legislative authority, signed by three hundred or more resident taxpayers of the county, requesting the county legislative authority to submit to the electors the proposition to issue bonds for the purpose of procuring a site, and erecting, equipping, and maintaining such hospital, and specifying the amount of bonds proposed to be issued for that purpose and the number of hospital beds. [1984 c 26 § 3; 1963 c 4 § 36.62.050. Prior: 1925 ex.s. c 174 § 3; RRS § 6090-3.]

**36.62.060 Bond election.** Upon presentation of the petition, the county legislative authority may submit to the voters of the county at the next general election the question of issuing bonds and levying a tax for such hospital. [1984 c

26 § 4; 1963 c 4 § 36.62.060. Prior: 1925 ex.s. c 174 § 4; RRS § 6090-4.]

**36.62.070 Issuance of bonds—Terms.** The bonds issued for such hospital shall not have maturities in excess of twenty years. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 26; 1984 c 26 § 5; 1983 c 167 § 72; 1970 ex.s. c 56 § 49; 1969 ex.s. c 232 § 26; 1963 c 4 § 36.62.070. Prior: 1925 ex.s. c 174 § 5; RRS § 6090-5.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**36.62.090 Tax levy for maintenance.** If the hospital is established, the county legislative authority, at the time of levying general taxes, may levy a tax, not to exceed fifty cents per thousand dollars of assessed value in any one year, for the maintenance of the hospital. [1984 c 26 § 6; 1973 1st ex.s. c 195 § 37; 1963 c 4 § 36.62.090. Prior: 1925 ex.s. c 174 § 6; RRS § 6090-6.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**36.62.100 Admission of patients—Liability for support.** Patients shall be admitted to such hospitals in accordance with policies to be proposed by the board of trustees and approved by the county legislative authority. The policies shall provide, within the resources available to the hospital, that admission of patients shall not be dependent upon their ability to pay. Whenever a patient has been admitted to the hospital and in accordance with rules established by the board of trustees, the hospital may determine the person's ability to pay for the care provided by the hospital, render billings for the care, and take necessary steps to obtain payment for the costs of the care from the person, from the person's estate, or from any persons or organizations legally liable for the person's support. [1984 c 26 § 7; 1963 c 4 § 36.62.100. Prior: 1945 c 62 § 1; 1925 ex.s. c 174 § 8; Rem. Supp. 1945 § 6090-8.]

**36.62.110 Board of trustees—Membership.** Whenever any county, or any county and city jointly, or two or more counties jointly, establish a hospital for the care and treatment of the indigent, sick, injured, or infirm, under the provisions of this chapter, and such hospital is completed and ready for operation, the county legislative authority of the county in which the institution is located shall appoint thirteen persons as trustees for the institution. The thirteen trustees, together with the additional trustees required by RCW 36.62.130, if any, shall constitute a board of trustees for such hospital. [1984 c 26 § 8; 1967 ex.s. c 36 § 2; 1963 c 4 § 36.62.110. Prior: 1931 c 139 § 1, part; RRS § 6090-9, part.]

**Effective date—1967 ex.s. c 36:** See note following RCW 36.62.290.

**36.62.120 Board of trustees—Initial appointment—Terms of office.** The first members of the board of trustees

of such institution shall be appointed by the county legislative authority within thirty days after the institution has been completed and is ready for operation. The county legislative authority appointing the initial members shall appoint three members for one-year terms, three members for two-year terms, three members for three-year terms, and four members for four-year terms, and until their successors are appointed and qualified, and thereafter their successors shall be appointed for terms of four years and until their successors are appointed and qualified: PROVIDED, That the continuation of a member past the expiration date of the term shall not change the commencement date of the term of the succeeding member. Each term of the initial trustees shall be deemed to commence on the first day of August following the appointment but shall also include the period intervening between the appointment and the first day of August following the appointment.

For an institution which is already in existence on June 7, 1984, the county legislative authority shall appoint within thirty days of June 7, 1984, three additional members for one-year terms, two additional members for two-year terms, and two additional members for three-year terms, and until their successors are appointed and qualified, and thereafter their successors shall be appointed for terms of four years and until their successors are appointed and qualified: PROVIDED FURTHER, That the continuation of an additional member past the expiration date of the term shall not change the commencement date of the term of the succeeding member. Each term of the initial additional members shall be deemed to commence on the first day of August of the year of appointment but shall also include the period intervening between the appointment and the first day of August of the year of the appointment.

Upon expiration of the terms of current members, the successors to current members shall be appointed for four-year terms and until their successors are appointed and qualified: AND PROVIDED FURTHER, That the continuation of a successor to a current member past the expiration date of the term shall not change the commencement date of the term of the succeeding member. Each term of the initial successors to current members shall be deemed to commence on the first day of August following the expiration of a current term but shall also include the period intervening between the appointment and the first day of August of the year of the appointment. [1984 c 26 § 9; 1963 c 4 § 36.62.120. Prior: (i) 1931 c 139 § 1, part; RRS § 6090-9, part. (ii) 1931 c 139 § 4, part; RRS § 6090-12, part.]

**36.62.130 Board of trustees—Additional trustees for joint hospital.** In case two or more counties establish a hospital jointly, the thirteen members of the board of trustees shall be chosen as provided from the county in which the institution is located and each county legislative authority of the other county or counties which contributed to the establishment of the hospital shall appoint two additional members of the board of trustees. The regular term of each of the two additional members shall be four years and until their successors are appointed and qualified. Such additional members shall be residents of the respective counties from which they are appointed and shall otherwise possess the same qualifications as other trustees. The first term of office of the persons

first appointed as additional members shall be fixed by the county legislative authority of the county in which said hospital or institution is located, but shall not be for more than four years. [1984 c 26 § 10; 1963 c 4 § 36.62.130. Prior: 1931 c 139 § 1, part; RRS § 6090-9, part.]

**36.62.140 Board of trustees—Qualifications of trustees.** No person shall be eligible for appointment as a trustee who holds or has held during the period of two years immediately prior to appointment any salaried office or position in any office, department, or branch of the government which established or maintained the hospital. [1984 c 26 § 11; 1963 c 4 § 36.62.140. Prior: 1931 c 139 § 2; RRS § 6090-10.]

**36.62.150 Board of trustees—Removal of trustee—Procedure.** The county legislative authority which appointed a member of the board of trustees may remove the member for cause and in the manner provided in this section. Notice shall be provided by the county appointing authority to the trustee and the board of trustees generally. The notice shall set forth reasons which justify removal. The trustee shall be provided opportunity for a hearing before the county appointing authority: PROVIDED, That three consecutive unexcused absences from regular meetings of the board of trustees shall be deemed cause for removal of a trustee without hearing. Any trustee removed for a cause other than three consecutive unexcused absences may appeal the removal within twenty days of the order of removal by seeking a writ of review before the superior court pursuant to chapter 7.16 RCW. Removal shall disqualify the trustee from subsequent reappointment. [1984 c 26 § 12; 1963 c 4 § 36.62.150. Prior: 1933 c 174 § 1, part; 1931 c 139 § 3, part; RRS § 6090-11, part.]

**36.62.160 Board of trustees—Vacancies.** Any vacancy in the board of trustees shall be filled by appointment by the county legislative authority making the original appointment, and such appointee shall hold office for the remainder of the term of the trustee replaced. [1984 c 26 § 13; 1963 c 4 § 36.62.160. Prior: 1933 c 174 § 1, part; 1931 c 139 § 3, part; RRS § 6090-11, part.]

**36.62.170 Board of trustees—Quorum.** A majority of the trustees shall constitute a quorum for the transaction of business. [1984 c 26 § 14; 1963 c 4 § 36.62.170. Prior: 1931 c 139 § 4, part; RRS § 6090-12, part.]

**36.62.180 Board of trustees—Powers and duties.** The board of trustees shall:

- (1) Have general supervision and care of such hospitals and institutions and the buildings and grounds thereof and power to do everything necessary to the proper maintenance and operation thereof within the limits of approved budgets and the appropriations authorized;
- (2) Elect from among its members a president and vice president;
- (3) Adopt bylaws and rules for its own guidance and for the government of the hospital;
- (4) Prepare annually a budget covering both hospital operations and capital projects, in accordance with the provi-

sions of applicable law, and file such budgets with the county treasurer or if the hospital has been established by more than one county, with the county treasurer of each county, and if a city has contributed to the establishment of the hospital, with the official of the city charged by law with the preparation of the city budget; and

(5) File with the legislative authority of each county and city contributing to the establishment of such hospital, at a time to be determined by the county legislative authority of the county in which the hospital is located, a report covering the proceedings of the board with reference to the hospital during the preceding twelve months and an annual financial report and statement. [1984 c 26 § 15; 1963 c 4 § 36.62.180. Prior: 1945 c 118 § 1, part; 1931 c 139 § 7, part; Rem. Supp. 1945 § 6090-15, part.]

**36.62.190 Board of trustees—Authority to accept gifts and bequests.** The board of trustees may accept property by gift, devise, bequest, or otherwise for the use of such institution, except that acceptance of any interest in real property shall be by prior authorization by the county. [1984 c 26 § 16; 1963 c 4 § 36.62.190. Prior: (i) 1945 c 118 § 1, part; 1931 c 139 § 7, part; Rem. Supp. 1945 § 6090-15, part. (ii) 1931 c 139 § 8; RRS § 6090-16.]

**36.62.200 Board of trustees—Trustees not compensated—Contract interest barred—Reimbursement for travel expenses.** No trustee shall receive any compensation or emolument whatever for services as trustee; nor shall any trustee have or acquire any personal interest in any lease or contract whatsoever, made by the county or board of trustees with respect to such hospital or institution: PROVIDED, That each member of a board of trustees of a county hospital may be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended: PROVIDED FURTHER, That, in addition, trustees of a county hospital shall be reimbursed for travel expenses for traveling from their home to a trustee meeting at a rate provided for in RCW 43.03.060 as now existing or hereafter amended. [1984 c 26 § 17; 1979 ex.s. c 17 § 1; 1963 c 4 § 36.62.200. Prior: 1931 c 139 § 5; RRS § 6090-13.]

**36.62.210 Superintendent—Appointment—Salary.** The board of trustees shall appoint a superintendent who shall be appointed for an indefinite time and be removable at the will of the board of trustees. Appointments and removals shall be by resolution, introduced at a regular meeting and adopted at a subsequent regular meeting by a majority vote. The superintendent shall receive such salary as the board of trustees shall fix by resolution. [1984 c 26 § 18; 1963 c 4 § 36.62.210. Prior: 1945 c 118 § 1, part; 1931 c 139 § 7, part; Rem. Supp. 1945 § 6090-15, part.]

**36.62.230 Superintendent—Duties.** The superintendent shall be the chief executive officer of the hospital or institution and shall perform all administrative services necessary to the efficient and economical conduct of the hospital or institution and the admission and proper care of persons properly entitled to the services thereof as provided by law or by the rules and regulations of the board of trustees. [1984 c

26 § 19; 1963 c 4 § 36.62.230. Prior: 1931 c 139 § 9; RRS § 6090-17.]

**36.62.252 County hospital fund—Established—Purpose—Monthly report.** Every county which maintains a county hospital or infirmary shall establish a "county hospital fund" into which fund shall be deposited all unrestricted moneys received from any source for hospital or infirmary services including money received for services to recipients of public assistance and other persons without income and resources sufficient to secure such services. The county may maintain other funds for restricted moneys. Obligations incurred by the hospital shall be paid from such funds by the county treasurer in the same manner as general county obligations are paid. The county treasurer shall furnish to the county legislative authority a monthly report of receipts and disbursements in the county hospital funds which report shall also show the balance of cash on hand. [1984 c 26 § 20; 1971 ex.s. c 277 § 1; 1967 ex.s. c 36 § 3; 1963 c 4 § 36.62.252. Prior: 1961 c 144 § 1; 1951 c 256 § 1.]

**Effective date—1967 ex.s. c 36:** See note following RCW 36.62.290.

**36.62.270 Supplementary budget.** In the event that additional funds are needed for the operation of a county hospital or infirmary, the county legislative authority shall have authority to adopt a supplemental budget. Such supplemental budget shall set forth the amount and sources of funds and the items of expenditure involved. [1984 c 26 § 21; 1971 ex.s. c 277 § 2; 1963 c 4 § 36.62.270. Prior: 1951 c 256 § 3.]

**36.62.290 Contracts between board of regents of state universities and hospital board of trustees for medical services and teaching and research activities.** Whenever any county, or any county and city jointly, or two or more counties jointly, establish a hospital under the provisions of this chapter, the board of trustees of the hospital is empowered, with the approval of the county legislative authority, to enter into a contract with the board of regents of a state university to provide hospital services, including management under the direction of a hospital administrator for the hospital, to provide for the rendering of medical services in connection with the hospital and to provide for the conduct of teaching and research activities by the university in connection with the hospital. Any such board of regents is empowered to enter into such a contract, to provide such hospital services, and to provide for the rendition of such medical services and for the carrying on of teaching and research in connection with such a hospital. If such a contract is entered into, the provisions of RCW 36.62.210 and 36.62.230 shall not be applicable during the term of the contract and all of the powers, duties and functions vested in the superintendent in this chapter shall be vested in the board of trustees. The board of trustees shall provide for such conditions and controls in the contract as it shall deem to be in the community interest. [1984 c 26 § 22; 1967 ex.s. c 36 § 1.]

**Effective date—1967 ex.s. c 36:** "This act shall take effect on July 1, 1967." [1967 ex.s. c 36 § 4.]

**36.62.300 Work ordered and materials purchased.** All work ordered and materials purchased by a hospital shall

be subject to the requirements established in RCW 70.44.140 for public hospital districts. [1991 c 363 § 76.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

## Chapter 36.63 RCW

### JAILS

#### Sections

36.63.255 Transfer of convicted felon to state institution pending appeal.  
*City and county jails act—Bond issue: Chapters 70.48 and 70.48A RCW.*  
*Use of strip and body cavity searches in correctional facilities: RCW 10.79.060 through 10.79.110.*

**36.63.255 Transfer of convicted felon to state institution pending appeal.** Any person imprisoned in a county jail pending the appeal of his conviction of a felony and who has not obtained bail bond pending his appeal shall be transferred after thirty days but within forty days from the date judgment was entered against him to a state institution for felons designated by the secretary of corrections: PROVIDED, That when good cause is shown, a superior court judge may order the prisoner detained in the county jail beyond said forty days for an additional period not to exceed ten days. [1981 c 136 § 60; 1969 ex.s. c 4 § 2; 1969 c 103 § 2.]

**Effective date—1981 c 136:** See RCW 72.09.900.

## Chapter 36.64 RCW

### JOINT GOVERNMENTAL ACTIVITIES

#### Sections

36.64.010 Joint courthouse and city hall.  
36.64.020 Joint courthouse and city hall—Terms of contract.  
36.64.030 Joint courthouse and city hall—Approval of contract.  
36.64.040 Joint courthouse and city hall—Funds, how provided.  
36.64.050 Joint armory sites.  
36.64.060 Joint canal construction.  
36.64.070 Counties with populations of two hundred ten thousand or more—Contracts with cities concerning buildings and related improvements.  
36.64.080 Conferences to study regional and governmental problems—Counties and cities may establish—Subjects—Recommendations.  
36.64.090 Conferences to study regional and governmental problems—Articles—Officers—Agents and employees.  
36.64.100 Conferences to study regional and governmental problems—Contracts with other governmental agencies—Grants and gifts—Consultants.  
36.64.110 Conferences to study regional and governmental problems—Public purpose—Contributions to support by municipal corporations.

*Care, support, and relief of needy persons: RCW 74.04.040.*

*Cemetery facilities as: RCW 68.52.192, 68.52.193.*

#### *Cities and towns*

*agreements with county for planning, establishing, construction, and maintenance of streets: Chapter 35.77 RCW.*  
*city may contribute to support of county in which city owned utility plant located: RCW 35.21.420.*  
*community renewal: RCW 35.21.660, 35.81.130.*

*Combined city-county health departments: Chapter 70.08 RCW.*

*County and city tuberculosis hospitals: Chapter 70.30 RCW.*

*County public works project, department of transportation cooperation: RCW 47.08.070.*

*County roads: RCW 47.04.080.*

*County superintendent of schools, consolidation of office into joint county district: Chapter 28A.310 RCW.*

*Diking and drainage, intercounty districts: Chapter 85.24 RCW.*

*Elevators, escalators, like conveyances, municipal governing over: RCW 70.87.050.*

*Executory conditional sales contracts for purchase of property for park and library purposes: RCW 39.30.010.*

*Fire protection districts, county contracts with: RCW 52.12.031.*

#### *Flood control*

*by counties jointly: Chapter 86.13 RCW.*

*county participation with flood control district: RCW 86.24.040.*

*county participation with state and federal governments: Chapter 86.24 RCW.*

*districts (1937 act): Chapter 86.09 RCW.*

*maintenance, county participation with state: Chapter 86.26 RCW.*

*Franchises across joint bridges: RCW 47.56.256.*

*Health districts as: Chapter 70.46 RCW.*

*Highways, construction, benefit of, cooperative agreements, prevention or minimization of flood damages: RCW 47.28.140.*

*Housing authorities, cooperation between: RCW 35.82.100.*

*Housing cooperation law: Chapter 35.83 RCW.*

*Intercounty rural library districts: Chapter 27.12 RCW.*

*Intercounty weed districts: Chapter 17.06 RCW.*

*Intergovernmental disposition of property: RCW 39.33.010.*

*Interlocal cooperation act: Chapter 39.34 RCW.*

*Joint aid river and harbor improvements: RCW 88.32.230, 88.32.235.*

*Joint county teachers' institutes: Chapter 28A.415 RCW.*

*Joint hospitals: RCW 36.62.030.*

*Joint operations by political subdivisions, deposit and control of funds: RCW 43.09.285.*

*Joint planning for improvement of navigable stream: RCW 88.32.240, 88.32.250.*

*Limited access facilities, cooperative agreements: RCW 47.52.090.*

*Metropolitan municipal corporations: Chapter 35.58 RCW.*

#### *Mosquito control*

*districts: Chapter 17.28 RCW.*

*generally: Chapter 70.22 RCW.*

*Motor vehicles, removal of when disabled and impounding: RCW 46.55.113.*

*Municipal airports: Chapters 14.07 and 14.08 RCW.*

*Operating agencies (electricity, water resources): Chapter 43.52 RCW.*

*Pesticide application, agreements authorized: RCW 17.21.300.*

#### *Port districts*

*contracts with: RCW 53.08.240.*

*ownership of improvements by with county: RCW 53.20.030.*

*Public assistance, joint county administration: RCW 74.04.180.*

*Public health pooling fund: RCW 70.12.030 through 70.12.070.*

*Reclamation districts of one million acres: Chapter 89.30 RCW.*

*Regional libraries: Chapter 27.12 RCW.*

*Regional planning commission: RCW 35.63.070.*

*River and harbor improvements by counties jointly: RCW 88.32.180 through 88.32.220.*

*Roads and bridges, limited access facilities: Chapter 47.52 RCW.*

*Soil and water conservation districts, county cooperation with: RCW 89.08.341.*

#### *Taxes, property*

*collection of: Chapter 84.56 RCW.*

*revaluation program: Chapter 84.41 RCW.*

#### *Toll bridges*

*state boundary, county participation: RCW 47.56.042.*

*tunnels and ferries: Chapter 47.56 RCW.*

*Traffic schools: Chapter 46.83 RCW.*

*Transfer of real property or contract for use for park and recreational purposes: RCW 39.33.060.*

*Washington clean air act: Chapter 70.94 RCW.*

*World fair or exposition participation: Chapter 35.60 RCW.*

**36.64.010 Joint courthouse and city hall.** If the county seat of a county is in an incorporated city, the county and city may contract, one with the other, for the joint purchase, acquisition, leasing, ownership, control, and disposition of land and other property suitable as a site for a county courthouse and city hall and for the joint construction, ownership, control, and disposition of a building or buildings thereon for the use by such county and city as a county courthouse and city hall. Any county or city owning a site or any interest therein, or a site with buildings thereon, may, upon such terms as appear fair and just to the board of county commissioners of such county and to the legislative body of such city, contract with reference to the joint ownership, acquisition, leasing, control, improvement, and occupation of such property. [1963 c 4 § 36.64.010. Prior: 1913 c 90 § 1; RRS § 3992.]

**36.64.020 Joint courthouse and city hall—Terms of contract.** A contract made in pursuance of RCW 36.64.010 shall fully set forth the amount of money to be contributed by each towards acquisition of the site and the improvement thereof and the manner in which such property shall be improved and the character of the building or buildings to be erected thereon. The contract may provide for the amount of money to be contributed annually by each for the upkeep and maintenance of the property and the building or buildings thereon, or it may provide for the relative proportion of such expense which such county and city shall annually pay. The contract shall specify the parts of such building or buildings which shall be set apart for the exclusive use and occupation of each. [1963 c 4 § 36.64.020. Prior: 1913 c 90 § 2; RRS § 3993.]

**36.64.030 Joint courthouse and city hall—Approval of contract.** The contract between a county and a city shall be made only after a proper resolution of the board of county commissioners of the county and a proper ordinance of the city have been passed specifically authorizing it. The contract shall be binding upon the county and the city during the term thereof, or until it is modified or abrogated by mutual consent evidenced by a proper resolution and ordinance of the county and city. [1963 c 4 § 36.64.030. Prior: 1913 c 90 § 4; RRS § 3995.]

**36.64.040 Joint courthouse and city hall—Funds, how provided.** The money to be contributed by a county or a city or both may be raised by a sale of its bonds, or by general taxation. Any county or city possessing funds or having funds available for a county courthouse or city hall from the sale of bonds or otherwise, may contract for the expenditure of such funds. [1963 c 4 § 36.64.040. Prior: 1913 c 90 § 3; RRS § 3994.]

**36.64.050 Joint armory sites.** Any city or county in the state may expend money from its current expense funds in payment in whole or in part for an armory site whenever the legislature has authorized the construction of an armory

within such city or county. [1963 c 4 § 36.64.050. Prior: 1913 c 91 § 1; RRS § 3996.]

**36.64.060 Joint canal construction.** Whenever the county legislative authority of a county with a population of one hundred twenty-five thousand or more deems it for the interest of the county to construct or to aid the United States in constructing a canal to connect any bodies of water within the county, such county may construct such canal or aid the United States in constructing it and incur indebtedness for such purpose to an amount not exceeding five hundred thousand dollars and issue its negotiable bonds therefor in the manner and form provided in RCW 36.67.010. Such construction or aid in construction is a county purpose. [1991 c 363 § 77; 1985 c 7 § 105; 1983 c 3 § 78; 1963 c 4 § 36.64.060. Prior: (i) 1907 c 158 § 1; RRS § 9664. (ii) 1907 c 158 § 2; RRS § 9665.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.64.070 Counties with populations of two hundred ten thousand or more—Contracts with cities concerning buildings and related improvements.** Any county with a population of two hundred ten thousand or more may contract with any city or cities within such county for the financing, erection, ownership, use, lease, operation, control or maintenance of any building or buildings, including open spaces, off-street parking facilities for the use of county and city employees and persons doing business with such county or city, plazas and other improvements incident thereto, for county or city, or combined county-city, or other public use. Property for such buildings and related improvements may be acquired by either such county or city or by both by lease, purchase, donation, exchange, and/or gift or by eminent domain in the manner provided by law for the exercise of such power by counties and cities respectively and any property acquired hereunder, together with the improvements thereon, may be sold, exchanged or leased, as the interests of said county, city or cities may from time to time require. [1991 c 363 § 78; 1965 c 24 § 1.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.64.080 Conferences to study regional and governmental problems—Counties and cities may establish—Subjects—Recommendations.** The boards of county commissioners of any county and any counties contiguous thereto and the governing body of any cities and/or towns within said counties may establish and organize a regional agency hereinafter referred to as a conference, for the purpose of studying regional and governmental problems of mutual interest and concern, including but not limited to, facility studies on highways, transit, airports, ports or harbor development, water supply and distribution, codes and ordinances, governmental finances, flood control, air and water pollution, recommendations of sites for schools and educational institutions, hospitals and health facilities, parks and recreation, public buildings, land use and drainage; and to formulate recommendations for review and action by the member counties and/or cities legislative body. [1965 ex.s. c 84 § 1.]

*Youth agencies, joint establishment: RCW 35.21.630.*

**36.64.090 Conferences to study regional and governmental problems—Articles—Officers—Agents and employees.** The governing bodies of the counties and cities so associated in a conference shall adopt articles of association and bylaws, select a chairman and such other officers as they may determine, and may employ and discharge such agents and employees as the officers deem convenient to carry out the purposes of the conference. [1965 ex.s. c 84 § 2.]

**36.64.100 Conferences to study regional and governmental problems—Contracts with other governmental agencies—Grants and gifts—Consultants.** The conference is authorized to contract generally and to enter into any contract with the federal government, the state, any municipal corporation and/or other governmental agency for the purpose of conducting the study of regional problems of mutual concern, and shall have the power to receive grants and gifts in furtherance of the program. The conference may retain consultants if deemed advisable. [1965 ex.s. c 84 § 3.]

**36.64.110 Conferences to study regional and governmental problems—Public purpose—Contributions to support by municipal corporations.** The formation of the conference is hereby declared to be a public purpose, and any municipal corporation may contribute to the expenses of such conference pursuant to the budgetary laws of the municipal corporations and such bylaws as may be adopted by the conference: PROVIDED, That services and facilities may be provided by a municipal corporation in lieu of assessment. [1965 ex.s. c 84 § 4.]

#### Chapter 36.65 RCW

#### COMBINED CITY AND COUNTY MUNICIPAL CORPORATIONS

##### Sections

36.65.010	Intent.
36.65.020	School districts to be retained as separate political subdivisions.
36.65.030	Tax on net income prohibited.
36.65.040	Method of allocating state revenues.
36.65.050	Fire protection or law enforcement units—Binding arbitration in collective bargaining.
36.65.060	Public employee retirement or disability benefits not affected.

**36.65.010 Intent.** It is the intent of the legislature in enacting this chapter to provide for the implementation and clarification of Article XI, section 16 of the state Constitution, which authorizes the formation of combined city and county municipal corporations.

"City-county," as used in this chapter, means a combined city and county municipal corporation under Article XI, section 16 of the state Constitution. [1984 c 91 § 1.]

**36.65.020 School districts to be retained as separate political subdivisions.** Recognizing the paramount duty of the state to provide for the common schools under Article IX, sections 1 and 2 of the state Constitution, school districts shall be retained as separate political subdivisions within the city-county. [1984 c 91 § 2.]

**36.65.030 Tax on net income prohibited.** A county, city, or city-county shall not levy a tax on net income. [1984 c 91 § 3.]

**36.65.040 Method of allocating state revenues.** The method of allocating state revenues shall not be modified for a period of one year from the date the initial officers of the city-county assume office. During the one-year period, state revenue shares shall be calculated as if the preexisting county, cities, and special purpose districts had continued as separate entities. However, distributions of the revenue to the consolidated entities shall be made to the city-county. [1984 c 91 § 4.]

**36.65.050 Fire protection or law enforcement units—Binding arbitration in collective bargaining.** If the city-county government includes a fire protection or law enforcement unit that was, prior to the formation of the city-county, governed by a state statute providing for binding arbitration in collective bargaining, then the entire fire protection or law enforcement unit of the city-county shall be governed by that statute. [1984 c 91 § 5.]

**36.65.060 Public employee retirement or disability benefits not affected.** The formation of a city-county shall not have the effect of reducing, restricting, or limiting retirement or disability benefits of any person employed by or retired from a municipal corporation, or who had a vested right in any state or local retirement system, prior to the formation of the city-county. [1984 c 91 § 6.]

#### Chapter 36.67 RCW

#### LIMITATION OF INDEBTEDNESS—COUNTY BONDS

##### Sections

36.67.010	Authority to contract indebtedness—Limitations.
36.67.060	Bond retirement.
36.67.070	Payment of interest.

##### REVENUE BONDS

36.67.500	"This chapter" means RCW 36.67.510 through 36.67.570.
36.67.510	Revenue bonds authorized.
36.67.520	When issued—Amounts—Purposes—Costs and expenses.
36.67.530	Form—Terms—Interest—Execution and signatures.
36.67.540	Special funds, creation and use—Use of tax revenue prohibited—Bonds are negotiable instruments—Statement on face—Remedy for failure to set aside revenue.
36.67.550	Covenants—Law and resolutions constitute contract with holders—Remedies.
36.67.560	Funding and refunding.
36.67.570	Liberal construction—Effect of other acts.

*Airport purposes, bonds for: Chapter 14.08 RCW.*

*Alternative authority to issue revenue bonds: RCW 39.46.150, 39.46.160.*

*Bond elections, vote required: Chapter 39.40 RCW.*

##### *Bonds*

*as security for city depositary: RCW 35.38.040.*

*form, sale, terms of sale, payment, etc.: Chapter 39.44 RCW.*

*sale to federal government at private sale: Chapter 39.48 RCW.*

*Funding indebtedness in counties: Chapter 39.52 RCW.*

*Funds for reserve purposes may be included in issue amount: RCW 39.44.140.*

*Housing authority act, bonds issued under: Chapter 35.82 RCW.*

*Industrial development revenue bonds: Chapter 39.84 RCW.*

*Juvenile detention facilities, bonds for:* Chapter 13.16 RCW.

*Limitation of indebtedness of taxing districts (counties):* Chapter 39.36 RCW.

*Public obligations as insurance investment:* RCW 48.13.040.

*State funds, investment in county bonds authorized:* RCW 43.84.080.

*Validation of bonds and financing proceedings:* Chapter 39.90 RCW.

**36.67.010 Authority to contract indebtedness—Limitations.** A county may contract indebtedness for general county purposes subject to the limitations on indebtedness provided for in RCW 39.36.020(2). Bonds evidencing such indebtedness shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 27; 1971 c 76 § 1; 1970 ex.s. c 42 § 17; 1963 c 4 § 36.67.010. Prior: 1890 p 37 § 1; RRS § 5575.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

*Validation requirement:* RCW 39.40.010.

**36.67.060 Bond retirement.** Bonds issued under this chapter shall be retired by an annual tax levy and by any other moneys lawfully available and pledged therefor. [1984 c 186 § 28; 1983 c 167 § 77; 1975 1st ex.s. c 188 § 1; 1963 c 4 § 36.67.060. Prior: (i) 1890 p 39 § 6; RRS § 5580. (ii) 1890 p 39 § 7; RRS § 5581.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Severability—1975 1st ex.s. c 188:** See RCW 36.94.921.

**36.67.070 Payment of interest.** Any coupons for the payment of interest on the bonds shall be considered for all purposes as warrants drawn upon the current expense fund of the county issuing bonds, and if when presented to the treasurer of the county no funds are in the treasury to pay them, the treasurer shall indorse the coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter they shall bear interest at the same rate as county warrants presented and unpaid. If there are no funds in the treasury to make payment on a bond not having coupons, the interest payment shall continue bearing interest at the bond rate until it is paid, unless otherwise provided in the proceedings authorizing the sale of the bonds. [1983 c 167 § 78; 1963 c 4 § 36.67.070. Prior: 1890 p 39 § 8; RRS § 5582.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

## REVENUE BONDS

**36.67.500 "This chapter" means RCW 36.67.510 through 36.67.570.** As used in RCW 36.67.500 through 36.67.570 "this chapter" means RCW 36.67.510 through 36.67.570. [1965 c 142 § 8.]

**36.67.510 Revenue bonds authorized.** The county legislative authority of any county is hereby authorized for the purpose of carrying out the lawful powers granted to the counties by the laws of the state to contract indebtedness and to issue revenue bonds evidencing such indebtedness in conformity with this chapter. Such bonds may be issued and sold

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in accordance with chapter 39.46 RCW. [1983 c 167 § 79; 1965 c 142 § 1.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**36.67.520 When issued—Amounts—Purposes—Costs and expenses.** All such revenue bonds authorized under the terms of this chapter may be issued and sold by the counties from time to time and in such amounts as is deemed necessary by the legislative authority of each county to provide sufficient funds for the carrying out of all county powers, without limiting the generality thereof, including the following: Acquisition; construction; reconstruction; maintenance; repair; additions; operations of parks and recreations; flood control facilities; pollution facilities; parking facilities as a part of a courthouse or combined county-city building facility; and any other county purpose from which revenues can be derived. Included in the costs thereof shall be any necessary engineering, inspection, accounting, fiscal, and legal expenses, the cost of issuance of bonds, including printing, engraving, and advertising and other similar expenses, payment of interest on such bonds during the construction of such facilities and a period no greater than one year after such construction is completed, and the proceeds of such bond issue are hereby made available for all such purposes. Revenue bonds may also be issued to refund revenue bonds or general obligation bonds which are issued for any of the purposes specified in this section. [1981 c 313 § 12; 1969 ex.s. c 8 § 2; 1965 c 142 § 2.]

**Severability—1981 c 313:** See note following RCW 36.94.020.

*Parking facilities as part of courthouse or county-city building:* RCW 36.01.080.

**36.67.530 Form—Terms—Interest—Execution and signatures.** (1) When revenue bonds are issued for authorized purposes, said bonds shall be either registered as to principal only or as to principal and interest as provided in RCW 39.46.030, or shall be bearer bonds; shall be in such denominations, shall be numbered, shall bear such date, shall be payable at such time or times up to a maximum period of not to exceed thirty years and payable at the office of the county treasurer, and such other places as determined by the county legislative authority of the county; shall bear interest payable and evidenced to maturity on bonds not registered as to interest by coupons attached to said bonds bearing a coupon interest rate or rates as authorized by the county legislative authority; shall be executed by the chairman of the county legislative authority, and attested by the clerk of the legislative authority, and the seal of such legislative authority shall be affixed to each bond, but not to any coupon; and may have facsimile signatures of the chairman and the clerk imprinted on each bond and any interest coupons in lieu of original signatures and the facsimile seal imprinted on each bond.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 80; 1981 c 313 § 13; 1970 ex.s. c 56 § 50; 1969 ex.s. c 232 § 27; 1965 c 142 § 3.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Severability—1981 c 313:** See note following RCW 36.94.020.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**36.67.540 Special funds, creation and use—Use of tax revenue prohibited—Bonds are negotiable instruments—Statement on face—Remedy for failure to set aside revenue.** Bonds issued under the provisions of this chapter shall be payable solely out of the operating revenues of the county. Such bonds shall be authorized by resolution adopted by the county legislative authority, which resolution shall create a special fund or funds into which the county legislative authority may obligate and bind the county to set aside and pay any part or parts of, or all of, or a fixed proportion of, or fixed amounts of gross revenue received by the county from moneys for services or activities as stated in the resolution, for the purpose of paying the principal of and interest on such bonds as the same shall become due, and if deemed necessary to maintain adequate reserves therefor. Such fund or funds shall be drawn upon solely for the purpose of paying the principal and interest upon the bonds issued pursuant to this chapter.

The bonds shall be negotiable instruments within the provision and intent of the negotiable instruments law of this state, even though they shall be payable solely from such special fund or funds, and the tax revenue of the county may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds. The bonds and any coupons attached thereto shall state upon their face that they are payable solely from such special fund or funds. If the county fails to set aside and pay into such fund or funds, the payments provided for in such resolution, the owner of any such bonds may bring suit to compel compliance with the provisions of the resolution. [1983 c 167 § 81; 1965 c 142 § 4.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**36.67.550 Covenants—Law and resolutions constitute contract with holders—Remedies.** The board of county commissioners may provide covenants as it may deem necessary to secure the payment of the principal of and interest on such bonds and may, but shall not be required to, include covenants to create a reserve fund or account and to authorize the payment or deposit of certain moneys therein for the purpose of securing the payment of such principal and interest; to establish, maintain, and collect rates, charges, fees, rentals, and the like on the facilities and service the income of which is pledged for the payment of such bonds, sufficient to pay or secure the payment of such principal and interest and to maintain an adequate coverage over annual debt service; and to make any and all other covenants not inconsistent with the provisions of this chapter which will increase the marketability of such bonds. The board may also provide that revenue bonds payable out of the same source or sources may later be sold on a parity with any revenue bonds being issued and sold. The provisions of this chapter and any resolution or resolutions providing for the authorization, issuance, and sale of such bonds shall constitute a contract with the holder of such bonds, and the provisions thereof shall be enforceable by any owner or holder of such bonds by mandamus or any appropriate suit, action or proceeding at law or in

equity in any court of competent jurisdiction. [1965 c 142 § 5.]

**36.67.560 Funding and refunding.** (1) The county legislative authority of any county may by resolution, from time to time, provide for the issuance of funding or refunding revenue bonds to fund or refund any outstanding revenue bonds and any interest and premiums due thereon at or before the maturity of such bonds, and parts or all of various series and issues of outstanding revenue bonds in the amount thereof to be funded or refunded. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

The county legislative authority shall create a special fund for the sole purpose of paying the principal of and interest on such funding or refunding revenue bonds, into which fund the legislative authority shall obligate and bind the county to set aside and pay any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the revenue of the facility of the county sufficient to pay such principal and interest as the same shall become due, and if deemed necessary to maintain adequate reserves therefor.

Such funding or refunding bonds shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state, and the tax revenue of the county may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds.

The county may exchange such funding or refunding bonds for the bonds, and any coupons being funded or refunded, or it may sell such funding or refunding bonds in the manner, at such price and at such rate or rates of interest as the legislative authority shall deem to be for the best interest of the county and its inhabitants, either at public or private sale.

The provisions of this chapter relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such funding or refunding bonds except as may be otherwise specifically provided in this section.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 82; 1970 ex.s. c 56 § 51; 1969 ex.s. c 232 § 28; 1965 c 142 § 6.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**36.67.570 Liberal construction—Effect of other acts.** This chapter shall be complete authority for the issuance of the revenue bonds hereby authorized, and shall be liberally construed to accomplish its purposes. Any restrictions, limitations or regulations relative to the issuance of such revenue bonds contained in any other act shall not apply to the bonds issued under this chapter. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purpose of this chapter only. [1965 c 142 § 7.]

## Chapter 36.68 RCW

## PARKS AND RECREATIONAL FACILITIES

## Sections

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- 36.68.020 Programs of public recreation.
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- 36.68.040 Park and recreation board—Terms of members.
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*State parks and recreation commission: Chapter 79A.05 RCW.*

*Transfer of real property or contract for use for park and recreational purposes: RCW 39.33.060.*

**36.68.010 Counties may establish park and playground systems—Disposition of surplus park property.**

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Counties may establish park and playground systems for public recreational purposes and for such purposes shall have the power to acquire lands, buildings and other facilities by gift, purchase, lease, devise, bequest and condemnation. A county may lease or sell any park property, buildings or facilities surplus to its needs, or no longer suitable for park purposes: PROVIDED, That such park property shall be subject to the requirements and provisions of notice, hearing, bid or inter-governmental transfer as provided in chapter 36.34 RCW: PROVIDED FURTHER, That nothing in this section shall be construed as authorizing any county to sell any property which such county acquired by condemnation for park or playground or other public recreational purposes on or after January 1, 1960, until held for five years or more after such acquisition: PROVIDED FURTHER, That funds acquired from the lease or sale of any park property, buildings or facilities shall be placed in the park and recreation fund to be used for capital purposes. [1963 c 4 § 36.68.010. Prior: 1961 c 92 § 1; 1949 c 94 § 1; Rem. Supp. 1949 § 3991-14.]

**36.68.020 Programs of public recreation.** Counties may conduct programs of public recreation, and in any such program property or facilities owned by any individual, group or organization, whether public or private, may be utilized by consent of the owner. [1963 c 4 § 36.68.020. Prior: 1949 c 94 § 2; Rem. Supp. 1949 § 3991-15.]

**36.68.030 Park and recreation board—Composition.** Each county may form a county park and recreation board composed of seven members, who shall be appointed by the board of county commissioners to serve without compensation. [1969 ex.s. c 176 § 93; 1963 c 4 § 36.68.030. Prior: 1949 c 94 § 3; Rem. Supp. 1949 § 3991-16.]

**36.68.040 Park and recreation board—Terms of members.** For the appointive positions on the county park and recreation board the initial terms shall be two years for two positions, four years for two positions, and six years for the remaining positions plus the period in each instance to the next following June 30th; thereafter the term for each appointive position shall be six years and shall end on June 30th. [1969 ex.s. c 176 § 94; 1963 c 4 § 36.68.040. Prior: 1949 c 94 § 4; Rem. Supp. 1949 § 3991-17.]

**36.68.050 Park and recreation board—Removal of members—Vacancies.** Any appointed county park and recreation board member may be removed by a majority vote of the board of county commissioners either for cause or upon the joint written recommendation of five members of the county park and recreation board. Vacancies on the county park and recreation board shall be filled by appointment, made by the board of county commissioners for the unexpired portions of the terms vacated. [1963 c 4 § 36.68.050. Prior: 1949 c 94 § 5; Rem. Supp. 1949 § 3991-18.]

**36.68.060 Park and recreation board—Powers and duties.** The county park and recreation board:

(1) Shall elect its officers, including a chairman, vice chairman and secretary, and such other officers as it may determine it requires.

(2) Shall hold regular public meetings at least monthly.

(3) Shall adopt rules for transaction of business and shall keep a written record of its meetings, resolutions, transactions, findings and determinations, which record shall be a public record.

(4) Shall initiate, direct, and administer county recreational activities, and shall select and employ a county park and recreation superintendent and such other properly qualified employees as it may deem desirable.

(5) Shall improve, operate, and maintain parks, playgrounds, and other recreational facilities, together with all structures and equipment useful in connection therewith, and may recommend to the board of county commissioners acquisition of real property.

(6) Shall promulgate and enforce reasonable rules and regulations deemed necessary in the operation of parks, playgrounds, and other recreational facilities, and may recommend to the board of county commissioners adoption of any rules or regulations requiring enforcement by legal process which relate to parks, playgrounds, or other recreational facilities.

(7) Shall each year submit to the board of county commissioners for approval a proposed budget for the following year in the manner provided by law for the preparation and submission of budgets by elective or appointive county officials.

(8) May, subject to the approval of the board of county commissioners, enter into contracts with any other municipal corporation, governmental or private agency for the conduct of park and recreational programs. [1963 c 4 § 36.68.060. Prior: 1949 c 94 § 6; Rem. Supp. 1949 § 3991-19.]

**36.68.070 Park and recreation fund.** In counties in which county park and recreation boards are formed, a county park and recreation fund shall be established. Into this fund shall be placed the allocation as the board of county commissioners annually appropriates thereto, together with miscellaneous revenues derived from the operation of parks, playgrounds, and other recreational facilities, as well as grants, gifts, and bequests for park or recreational purposes. All expenditures shall be disbursed from this fund by the county park and recreation board, and all balances remaining in this fund at the end of any year shall be carried over in such fund to the succeeding year. [1963 c 4 § 36.68.070. Prior: 1949 c 94 § 7; Rem. Supp. 1949 § 3991-20.]

**36.68.080 Penalty for violations of regulations.** (1) Except as otherwise provided in this section, any person violating any rules or regulations adopted by the board of county commissioners relating to parks, playgrounds, or other recreational facilities is guilty of a misdemeanor.

(2)(a) Except as provided in (b) of this subsection, violation of such a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [2003 c 53 § 205; 1979 ex.s. c 136 § 36; 1963 c 4 § 36.68.080. Prior: 1949 c 94 § 8; Rem. Supp. 1949 § 3991-21.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**36.68.090 Counties authorized to build, improve, operate and maintain, etc., parks, playgrounds, gymnasiums, swimming pools, beaches, stadiums, golf courses, etc., and other recreational facilities—Regulation—Charges for use.** Any county, acting through its board of county commissioners, is empowered to build, construct, care for, control, supervise, improve, operate and maintain parks, playgrounds, gymnasiums, swimming pools, field houses, bathing beaches, stadiums, golf courses, automobile race tracks and drag strips, coliseums for the display of spectator sports, public campgrounds, boat ramps and launching sites, public hunting and fishing areas, arboretums, bicycle and bridle paths, and other recreational facilities, and to that end may make, promulgate and enforce such rules and regulations regarding the use thereof, and make such charges for the use thereof, as may be deemed by said board to be reasonable. [1967 ex.s. c 144 § 11.]

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

*Authority to establish park and playground systems:* RCW 36.68.010.

*Stadiums, powers of cities and counties to acquire and operate:* Chapter 67.28 RCW.

**36.68.100 Moorage facilities—Regulations authorized—Port charges, delinquency—Abandoned vessels, public sale.** See RCW 53.08.310 and 53.08.320.

**36.68.110 Counties authorized to permit public libraries on land used for park and recreation purposes.** A county, acting through its county legislative authority, is authorized to permit the location of public libraries on land owned by the county that is used for park and recreation purposes, unless a covenant or other binding restriction precludes such uses. [1993 c 84 § 1.]

#### PARK AND RECREATION SERVICE AREAS

**36.68.400 Creation authorized—Purposes—Taxing districts—Powers.** Any county shall have the power to create park and recreation service areas for the purpose of financing, acquiring, constructing, improving, maintaining, or operating any park, senior citizen activities centers, zoos, aquariums, and recreational facilities as defined in RCW 36.69.010 which shall be owned or leased by the county and administered as other county parks or shall be owned or leased and administered by a city or town or shall be owned or leased and administered by the park and recreation service area. A park and recreation service area may purchase athletic equipment and supplies, and provide for the upkeep of park buildings, grounds and facilities, and provide custodial, recreational and park program personnel at any park or recreational facility owned or leased by the service area or a county, city, or town. A park and recreation service area shall be a quasi-municipal corporation, an independent taxing "authority" within the meaning of section 1, Article 7 of the Constitution, and a "taxing district" within the meaning of section 2, Article 7 of the Constitution.

A park and recreation service area shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to accept and expend or use gifts, grants, and donations, and to sue and be sued as well as all other powers that may now or hereafter be specifically conferred by statute.

The members of the county legislative authority, acting ex officio and independently, shall compose the governing body of any park and recreation service area which is created within the county: PROVIDED, That where a park and recreation service area includes an incorporated city or town within the county, the park and recreation service area may be governed as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. The voters of a park and recreation service area shall be all registered voters residing within the service area.

A multicounty park and recreation service area shall be governed as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. [1988 c 82 § 1; 1985 c 253 § 1; 1981 c 210 § 1; 1965 ex.s. c 76 § 1; 1963 c 218 § 1.]

**Severability—1981 c 210:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 210 § 21.]

*Contracts with community service organizations for public improvements:* RCW 35.21.278.

*Dissolution of inactive special purpose districts:* Chapter 36.96 RCW.

*May acquire property for park, recreational, viewpoint, greenbelt, conservation, historic, scenic, or view purposes:* RCW 36.34.340.

*Parks, county commissioners may designate name of:* RCW 36.32.430.

### **36.68.410 May be initiated by resolution or petition.**

Park and recreation service areas may be initiated in any unincorporated area of any county by resolution adopted by the county legislative authority or by a petition signed by ten percent of the registered voters within the proposed park and recreation service area. Incorporated areas may be included under RCW 36.68.610 and 36.68.620. [1981 c 210 § 2; 1965 ex.s. c 76 § 2; 1963 c 218 § 2.]

**Severability—1981 c 210:** See note following RCW 36.68.400.

**36.68.420 Resolution or petition—Contents.** Any resolution or petition initiating a proposed park and recreation service area shall set forth the boundaries of the service area with certainty, describe the purpose or purposes for which the service area is to be formed, and contain an estimate of the initial cost of any capital improvements or services to be authorized in the service area.

"Initial costs" as used herein shall include the estimated cost during the first year of operation of:

- (1) Land to be acquired or leased for neighborhood park purposes by the service area to establish a park or park facility specified in the resolution or petition;
- (2) Capital improvements specified in the objectives or purposes of the service area;
- (3) Forming the service area; and
- (4) Personnel, maintenance or operation of any park facility within the service area as specified by the resolution or petition. [1981 c 210 § 3; 1963 c 218 § 3.]

**Severability—1981 c 210:** See note following RCW 36.68.400.

**36.68.430 Petitions—Verification of signatures.** Petitions shall be submitted to the county auditor who shall verify the signatures thereon to determine that the petition has been signed by the requisite number of persons who are registered voters within the proposed service area. If the petition is found not to have the requisite number of signatures, it shall be returned to the petitioners. If the petition is found to be sufficient, the auditor shall so certify and transmit the same to the board of county commissioners. [1963 c 218 § 4.]

**36.68.440 Feasibility and cost studies—Public hearing—Notice.** Upon accepting a petition to form a park and recreation service area, or upon passage of a resolution to establish such a service area, the county legislative authority shall order a full investigation for the purpose or purposes of the proposed service area to determine the feasibility of forming the same and to determine the estimated initial costs involved in obtaining the objectives set forth in the petition or resolution. The reports on the feasibility and the cost of the proposed service area shall be made available to the county legislative authority, and copies of such reports shall be filed with the clerk of the county legislative authority not more than eighty days after the county legislative authority first directs that the studies and reports be undertaken. The county legislative authority shall also provide by resolution that within twenty days after receiving the reports a public hearing shall be held at the county seat or at some convenient location within the proposed service area. At least five days before the hearing, the county legislative authority shall give notice of the hearing not less than twice in a legal newspaper of general circulation in the county. The notice shall describe the boundaries of the proposed service area, the purpose or purposes of the proposed service area, the estimated initial costs, indicate that the reports and other materials prepared at the order of the county legislative authority are available in the office of the clerk of the county legislative authority for the study and review of any interested party, and set the time, date and place of the hearing. [1981 c 210 § 4; 1963 c 218 § 5.]

**Severability—1981 c 210:** See note following RCW 36.68.400.

**36.68.450 Hearing procedure—Inclusion of property—Examination of reports—Recess.** At the hearing, the county legislative authority shall first provide for an explanation of the objectives of the proposed park and recreation service area and the estimated initial costs thereof. The county legislative authority shall permit any resident or property owner of the proposed service area to appear and be heard, and may permit property owners in contiguous areas to include their property within the proposed service area in the event that they make their request for inclusion in writing. The county legislative authority shall examine all reports on the feasibility of the proposed service area and its initial costs and may, if they deem it necessary, recess the hearing for not more than twenty days to obtain any additional information necessary to arrive at the findings provided for in RCW 36.68.420. [1981 c 210 § 5; 1963 c 218 § 6.]

**Severability—1981 c 210:** See note following RCW 36.68.400.

**36.68.460 Findings of county commissioners—Dismissal of proceedings, limitation on subsequent initiation.** At the conclusion of a hearing, the board of county commissioners shall make the following findings:

(1) Whether or not the service area's objectives fit within the general framework of the county's comprehensive park plan and general park policies.

(2) The exact boundaries of the service area: The board shall be empowered to modify the boundaries as originally defined in the petition or resolution initiating the proposed service area: PROVIDED, That the boundaries of the service area may not be enlarged unless the property owners within the area to be added consent to their inclusion in writing; or unless the board gives the property owners of the area to be added, written notice, mailed to their regular permanent residences as shown on the latest records of the county auditor, five days prior to a regular or continued hearing upon the formation of the proposed service area.

(3) A full definition or explanation of the nature of improvements or services to be financed by the proposed service area.

(4) Whether or not the objectives of the service area are feasible.

(5) The number or name of the service area.

If satisfactory findings cannot be made by the board, the petition or resolution shall be dismissed, and no petition or resolution embracing the same area may be accepted or heard for at least two years. [1963 c 218 § 7.]

**36.68.470 Resolution ordering election—Election procedure—Formation.** (1) Upon making findings under the provisions of RCW 36.68.460, the county legislative authority shall, by resolution, order an election of the voters of the proposed park and recreation service area to determine if the service area shall be formed. The county legislative authority shall in their resolution direct the county auditor to set the election to be held at the next general election or at a special election held for such purpose; describe the purposes of the proposed service area; set forth the estimated cost of any initial improvements or services to be financed by the service area should it be formed; describe the method of financing the initial improvements or services described in the resolution or petition; and order that notice of election be published in a newspaper of general circulation in the county at least twice prior to the election date.

(2) A proposition to form a park and recreation service area shall be submitted to the voters of the proposed service area. Upon approval by a majority of the voters voting on the proposition, a park and recreation service area shall be established. The proposition submitted to the voters by the county auditor on the ballot shall be in substantially the following form:

FORMATION OF PARK AND RECREATION SERVICE AREA

Shall a park and recreation service area be established for the area described in a resolution of the legislative authority of . . . . . county, adopted on the . . . . day of . . . . . 19. . . ., to provide financing for neighborhood park facilities, improvements, and services?

Yes . . . . . No . . . . .

[1981 c 210 § 6; 1963 c 218 § 8.]

**Severability—1981 c 210:** See note following RCW 36.68.400.

**36.68.480 Property tax levies or bond retirement levies—Election.** If the petition or resolution initiating the formation of the proposed park and recreation service area proposes that the initial capital or operational costs are to be financed by regular property tax levies for a six-year period as authorized by RCW 36.68.525, or an annual excess levy, or that proposed capital costs are to be financed by the issuance of general obligation bonds and bond retirement levies, a proposition or propositions for such purpose or purposes shall be submitted to the voters of the proposed service area at the same election. A proposition or propositions for regular property tax levies for a six-year period as authorized by RCW 36.68.525, an annual excess levy, or the issuance of general obligation bonds and bond retirement levies, may also be submitted to the voters at any general or special election. [1984 c 131 § 7; 1981 c 210 § 7; 1973 1st ex.s. c 195 § 38; 1963 c 218 § 9.]

**Purpose—1984 c 131 §§ 3-9:** See note following RCW 29A.36.210.

**Severability—1981 c 210:** See note following RCW 36.68.400.

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**36.68.490 Annual excess levy or bond retirement levies—Election procedure—Vote required.** In order for the annual excess tax levy proposition or bond retirement levies proposition to be approved, voters exceeding in number at least sixty percent of the number of voters who cast ballots for the office of county legislative authority within the park and recreation area, or within the proposed service area, in the last preceding general election for that office must cast ballots on the tax levy proposition, and of all the votes cast at the election at least sixty percent of said votes must approve the annual excess tax levy or the bond retirement levies. [1981 c 210 § 8; 1963 c 218 § 10.]

**Severability—1981 c 210:** See note following RCW 36.68.400.

**36.68.500 Resolution declaring formation—Treasurer—Disbursement procedure.** If the formation of the service area is approved by the voters, the county legislative authority shall by resolution declare the service area to be formed and direct the county treasurer to be the treasurer of the service area. Expenditures of the service area shall be made upon warrants drawn by the county auditor pursuant to vouchers approved by the governing body of the service area. [1981 c 210 § 9; 1963 c 218 § 11.]

**Severability—1981 c 210:** See note following RCW 36.68.400.

**36.68.510 Local service area fund.** If the service area is formed, there shall be created in the office of the county treasurer a local service area fund with such accounts as the treasurer may find convenient, or as the state auditor may direct, into which shall be deposited all revenues received by the service area from tax levy, from gifts or donations, and from service or admission charges. Such fund shall be designated "(name of county) service area No. . . . . fund." Or "(name of district) service area fund." Special accounts shall be established within the fund for the deposit of the proceeds

of each bond issue made for the construction of a specified project or improvement, and there shall also be established special accounts, within the fund for the deposit of revenues raised by special levy or derived from other specific revenues, to be used exclusively for the retirement of an outstanding bond issue or for paying the interest or service charges on any bond issue. [1963 c 218 § 12.]

**36.68.520 Annual excess property tax levy—General obligation bonds.** (1) A park and recreation service area shall have the power to levy annual excess levies upon the property included within the service area if authorized at a special election called for the purpose in the manner prescribed by section 2, Article VII of the Constitution and by RCW 84.52.052 for operating funds, capital outlay funds, and cumulative reserve funds.

(2) A park and recreation service area may issue general obligation bonds for capital purposes only, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness, equal to three-eighths of one percent of the value of the taxable property within the service area. Additionally, a park and recreation service area may issue general obligation bonds, together with any outstanding voter approved and nonvoter approved general indebtedness, equal to two and one-half percent of the value of the taxable property within the service area, as the term "value of the taxable property" is defined in RCW 39.36.015, when such bonds are approved by the voters of the service area at a special election called for the purpose in accordance with the provisions of Article VIII, section 6 of the Constitution. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW.

Bonds may be retired by excess property tax levies when such levies are approved by the voters at a special election in accordance with the provisions of Article VII, section 2 of the Constitution and RCW 84.52.056.

Any elections shall be held as provided in RCW 39.36.050. [1994 c 156 § 4. Prior: 1984 c 186 § 29; 1984 c 131 § 8; (1983 c 167 § 271 repealed by 1984 c 186 § 70; and repealed by 1984 c 131 § 10); 1983 c 167 § 83; 1981 c 210 § 10; 1973 1st ex.s. c 195 § 39; 1970 ex.s. c 42 § 19; 1963 c 218 § 13.]

**Intent—1994 c 156:** See note following RCW 36.69.140.

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Purpose—1984 c 131 §§ 3-9:** See note following RCW 29A.36.210.

**Effective dates—1983 c 167:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except sections 271 and 272 shall take effect July 1, 1985." [1983 c 167 § 274.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Severability—1981 c 210:** See note following RCW 36.68.400.

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

**36.68.525 Six-year regular property tax levies—Limitations—Election.** A park and recreation service area may impose regular property tax levies in an amount equal to sixty

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cents or less per thousand dollars of assessed value of property in the service area in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the voters thereof approving a proposition authorizing the levies submitted not more than twelve months prior to the date on which the proposed initial levy is to be made and not oftener than twice in such twelve month period, either at a special election or at the regular election of the service area, at which election the number of voters voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percent of the number of voters voting in the service area at the last preceding general election when the number of voters voting on the proposition does not exceed forty percent of the number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the voters thereof voting on the proposition if the number of voters voting on the proposition exceeds forty per centum of the number of voters voting in such taxing district in the last preceding general election. A proposition authorizing such tax levies shall not be submitted by a park and recreation service area more than twice in any twelve-month period. Ballot propositions shall conform with \*RCW 29.30.111. If a park and recreation service area is levying property taxes, which in combination with property taxes levied by other taxing districts result in taxes in excess of the nine-dollar and fifteen cents per thousand dollars of assessed valuation limitation provided for in RCW 84.52.043, the park and recreation service area property tax levy shall be reduced or eliminated before the property tax levies of other taxing districts are reduced. [1994 c 156 § 5; 1984 c 131 § 9.]

**\*Reviser's note:** RCW 29.30.111 was recodified as RCW 29A.36.210 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Intent—1994 c 156:** See note following RCW 36.69.140.

**Purpose—1984 c 131 §§ 3-9:** See note following RCW 29A.36.210.

**36.68.527 Community revitalization financing—Public improvements.** In addition to other authority that a park and recreation service area possesses, a park and recreation service area may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a park and recreation service area to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 14.]

**Severability—2001 c 212:** See RCW 39.89.902.

**36.68.530 Budgets—Appropriations—Accumulation of reserves.** The governing body of each park and recreation service area shall annually compile a budget for each service area in a form prescribed by the state auditor for the ensuing calendar year which shall, to the extent that anticipated income is actually realized, constitute the appropriations for the service area. The budget may include an amount to accumulate a reserve for a stated capital purpose. In compiling the budget, all available funds and anticipated income shall be taken into consideration, including contributions or contractual payments from school districts, cities, or towns, county

or any other governmental entity, gifts and donations, special tax levy, fees and charges, proceeds of bond issues, and cumulative reserve funds. [1995 c 301 § 67; 1981 c 210 § 11; 1963 c 218 § 14.]

**Severability—1981 c 210:** See note following RCW 36.68.400.

**36.68.541 Employees.** Park and recreation service areas may hire employees and may fund all or a portion of the salaries and benefits of county park employees who perform work on county park and recreation facilities within the service area and may fund all or a portion of the salaries and benefits of city or town park employees who perform work on city or town park and recreation facilities within the service area. [1988 c 82 § 2; 1981 c 210 § 12.]

**Severability—1981 c 210:** See note following RCW 36.68.400.

**36.68.550 Use and admission fees and charges.** A park and recreation service area may impose and collect use fees or other direct charges on facilities financed, acquired, and operated by the park and recreation service area. The county legislative authority may allow admission fees or other direct charges which are paid by persons using county park facilities located within a park and recreation service area to be transferred to a park and recreation service area. Such direct charges to users may be made for the use of or admission to swimming pools, field houses, tennis and handball courts, bathhouses, swimming beaches, boat launching, storage or moorage facilities, ski lifts, picnic areas and other similar recreation facilities, and for parking lots used in conjunction with such facilities. All funds collected under the provisions of this section shall be deposited to the fund of the service area established in the office of the county treasurer, to be disbursed under the service area budget as approved by the governing body of the park and recreation service area. [1988 c 82 § 3; 1981 c 210 § 13; 1963 c 218 § 16.]

**Severability—1981 c 210:** See note following RCW 36.68.400.

**36.68.555 Eminent domain.** A park and recreation service area may exercise the power of eminent domain to obtain property for its authorized purposes in a manner consistent with the power of eminent domain of the county in which the park and recreation service area is located. [1988 c 82 § 8.]

**36.68.560 Concessions.** The county legislative authority may transfer the proceeds from concessions for food and other services accruing to the county from park or park facilities which are located in a park and recreation service area to the fund of the service area in the office of the county treasurer to be disbursed under the service area budget. [1981 c 210 § 14; 1963 c 218 § 17.]

**Severability—1981 c 210:** See note following RCW 36.68.400.

**36.68.570 Use of funds—Purchases.** A park and recreation service area may reimburse the county for any charge incurred by the county current expense fund which is properly an expense of the service area, including reasonable administrative costs incurred by the offices of county treasurer and the county auditor in providing accounting, clerical or other services for the benefit of the service area. The

county legislative authority may, where a county purchasing department has been established, provide for the purchase of all supplies and equipment for a park and recreation service area through the department. The park and recreation service area may contract with the county to administer purchasing. [1988 c 82 § 4; 1981 c 210 § 15; 1963 c 218 § 18.]

**Severability—1981 c 210:** See note following RCW 36.68.400.

**36.68.580 Ownership of parks and facilities—Expenditure of funds budgeted for park purposes.** Any park facility or park acquired, improved or otherwise financed in whole or in part by park and recreation service area funds shall be owned by the park service area and/or the county and/or the city or town in which the park or facility is located. The county may make expenditures from its current expense funds budgeted for park purposes for the maintenance, operation or capital improvement of any county park or park facility acquired, improved, or otherwise financed in whole or in part by park and recreation service area funds. Similarly, a city or town may make expenditures for any city or town park or park facility acquired, improved, or otherwise financed in whole or in part by park and recreation service area funds. [1988 c 82 § 5; 1981 c 210 § 16; 1963 c 218 § 19.]

**Severability—1981 c 210:** See note following RCW 36.68.400.

**36.68.590 Purpose—Level of services—General park programs.** The purpose of RCW 36.68.400 et seq. shall be to provide a higher level of park services and shall not in any way diminish the right of a county to provide a general park program financed from current expense funds. [1963 c 218 § 20.]

**36.68.600 Use of park and recreation service area funds in exercise of powers enumerated in chapter 67.20 RCW.** A park and recreation service area may exercise any of the powers enumerated in chapter 67.20 RCW with respect to any park and recreation facility financed in whole or part from park and recreation service area funds. [1988 c 82 § 6; 1981 c 210 § 17; 1963 c 218 § 21.]

**Severability—1981 c 210:** See note following RCW 36.68.400.

*Parks, bathing beaches, public camps: Chapter 67.20 RCW.*

**36.68.610 Area which may be included—Inclusion of area within city or town—Procedure.** A park and recreation service area may include any unincorporated area in the state, and when any part of the proposed district lies within the corporate limits of any city or town said resolution or petition shall be accompanied by a certified copy of a resolution of the governing body of said city or town, approving inclusion of the area within the corporate limits of the city or town. [1973 c 65 § 1.]

**36.68.620 Enlargement by inclusion of additional area—Procedure.** After a park and recreation service area has been organized, an additional area may be added by the same procedure within the proposed additional area as is provided herein for the organization of a park and recreation service area, and all electors within both the organized park and recreation service area and the proposed additional territory

shall vote upon the proposition for enlargement. [1973 c 65 § 2.]

### Chapter 36.69 RCW

## PARK AND RECREATION DISTRICTS

(Formerly: Recreation districts act)

### Sections

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*RCW 39.33.060 to govern on sales by water-sewer district for park and recreational purposes: RCW 57.08.140.*

*Transfer of real property or contract for use for park and recreational purposes: RCW 39.33.060.*

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**36.69.010 Park and recreation districts authorized—"Recreational facilities" defined.** Park and recreation districts are hereby authorized to be formed as municipal corporations for the purpose of providing leisure time activities and facilities and recreational facilities, of a nonprofit nature as a public service to the residents of the geographical areas included within their boundaries.

The term "recreational facilities" means parks, playgrounds, gymnasiums, swimming pools, field houses, bathing beaches, stadiums, golf courses, automobile race tracks and drag strips, coliseums for the display of spectator sports, public campgrounds, boat ramps and launching sites, public hunting and fishing areas, arboretums, bicycle and bridle paths, senior citizen centers, community centers, and other recreational facilities. [1991 c 363 § 79; 1990 c 32 § 1; 1972 ex.s. c 94 § 1; 1969 c 26 § 1; 1967 c 63 § 1; 1963 c 4 § 36.69.010. Prior: 1961 c 272 § 1; 1959 c 304 § 1; 1957 c 58 § 1.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.69.020 Formation of district by petition—Procedure.** The formation of a park and recreation district shall be initiated by a petition designating the boundaries thereof by metes and bounds, or by describing the land to be included therein by townships, ranges and legal subdivisions. Such petition shall set forth the object of the district and state that it will be conducive to the public welfare and convenience, and that it will be a benefit to the area therein. Such petition shall be signed by not less than fifteen percent of the registered voters residing within the area so described. The name of a person who has signed the petition may not be withdrawn from the petition after the petition has been filed.

The petition shall be filed with the auditor of the county within which the proposed district is located, accompanied by an obligation signed by two or more petitioners, agreeing to pay the cost of the publication of the notice provided for in RCW 36.69.040. The county auditor shall, within thirty days from the date of filing the petition, examine the signatures and certify to the sufficiency or insufficiency thereof.

If the petition is found to contain a sufficient number of signatures of qualified persons, the auditor shall transmit it, together with a certificate of sufficiency attached thereto, to the county legislative authority, which shall by resolution entered upon its minutes receive it and fix a day and hour when the legislative authority will publicly hear the petition, as provided in RCW 36.69.040. [1994 c 223 § 42; 1969 c 26 § 2; 1967 c 63 § 2; 1963 c 4 § 36.69.020. Prior: 1961 c 272 § 2; 1959 c 304 § 2; 1957 c 58 § 2.]

**36.69.030 Area which may be included—Resolution of governing body of city or town.** A park and recreation district may include any unincorporated area in the state and, when any part of the proposed district lies within the corporate limits of any city or town, said petition shall be accompanied by a certified copy of a resolution of the governing body of said city or town, approving inclusion of the area within the corporate limits of the city or town. [1969 c 26 § 3; 1967 c 63 § 3; 1963 c 4 § 36.69.030. Prior: 1961 c 272 § 3; 1959 c 304 § 3; 1957 c 58 § 3.]

**36.69.040 Hearing on petition—Notice.** The board of county commissioners shall set a time for a hearing on the petition for the formation of a park and recreation district to be held not more than sixty days following the receipt of such petition. Notice of hearing shall be given by publication three times, at intervals of not less than one week, in a newspaper of general circulation within the county. Such notice shall state the time and place of hearing and describe particularly the area proposed to be included within the district. [1963 c 4 § 36.69.040. Prior: 1957 c 58 § 4.]

**36.69.050 Boundaries—Name—Inclusion, exclusion of lands.** The board of county commissioners shall designate a name for and fix the boundaries of the proposed district following such hearing. No land shall be included in the boundaries as fixed by the county commissioners which was not described in the petition, unless the owners of such land shall consent in writing thereto.

The board of county commissioners shall eliminate from the boundaries of the proposed district land which they find will not be benefited by inclusion therein. [1963 c 4 § 36.69.050. Prior: 1957 c 58 § 5.]

**36.69.065 Election for formation—Inclusion of proposition for tax levy or issuance of bonds.** If the petition or resolution initiating the formation of the proposed park and recreation district proposes that the initial capital or operational costs are to be financed by regular property tax levies for a \*five-year period as authorized by RCW 36.69.145, or an annual excess levy, or that proposed capital costs are to be financed by the issuance of general obligation bonds and bond retirement levies, a proposition or propositions for such purpose or purposes shall be submitted to the voters of the proposed park and recreation district at the same election. A proposition or propositions for regular property tax levies for a \*five-year period as authorized by RCW 36.69.145, an annual excess levy, or the issuance of general obligation bonds and bond retirement levies, may also be submitted to the voters at any general or special election. The ballot proposition or propositions authorizing the imposition of a tax levy or levies, or issuance of general obligation bonds and imposition of tax levies, shall be null and void if the park and recreation district was not authorized to be formed. [1989 c 184 § 1.]

**\*Reviser's note:** 1994 c 156 § 3 amended RCW 36.69.145 to authorize a six-year period.

**36.69.070 Elections—Procedures—Terms.** A ballot proposition authorizing the formation of the proposed park and recreation district shall be submitted to the voters of the proposed district for their approval or rejection at the next general state election occurring sixty or more days after the county legislative authority fixes the boundaries of the proposed district. Notices of the election for the formation of the park and recreation district shall state generally and briefly the purpose thereof and shall give the boundaries of the proposed district and name the day of the election and the hours during which the polls will be open. The proposition to be submitted to the voters shall be stated in such manner that the voters may indicate yes or no upon the proposition of forming the proposed park and recreation district.

The initial park and recreation commissioners shall be elected at the same election, but this election shall be null and void if the district is not authorized to be formed. No primary shall be held to nominate candidates for the initial commissioner positions. Candidates shall run for specific commissioner positions. A special filing period shall be opened as provided in \*RCW 29.15.170 and 29.15.180. The person who receives the greatest number of votes for each commissioner position shall be elected to that position. The three persons who are elected receiving the greatest number of votes shall be elected to four-year terms of office if the election is held in an odd-numbered year or three-year terms of office if the election is held in an even-numbered year. The other two persons who are elected shall be elected to two-year terms of office if the election is held in an odd-numbered year or one-year terms of office if the election is held in an even-numbered year. The initial commissioners shall take office immediately upon being elected and qualified, but the length of such terms shall be computed from the first day of January in the year following this election. [1994 c 223 § 43; 1979 ex.s. c 126 § 28; 1963 c 4 § 36.69.070. Prior: 1959 c 304 § 4; 1957 c 58 § 7.]

**\*Reviser's note:** RCW 29.15.170 and 29.15.180 were recodified as RCW 29A.24.170 and 29A.24.180 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.24.170 and 29A.24.180 were subsequently repealed by 2004 c 271 § 193.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**36.69.080 Election results.** If a majority of all votes cast upon the proposition favors the formation of the district, the county legislative authority shall, by resolution, declare the territory organized as a park and recreation district under the designated name. [1994 c 223 § 44; 1979 ex.s. c 126 § 29; 1963 c 4 § 36.69.080. Prior: 1957 c 58 § 8.]

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**36.69.090 Commissioners—Terms—Election procedures.** A park and recreation district shall be governed by a board of five commissioners. Except for the initial commissioners, all commissioners shall be elected to staggered four-year terms of office and shall serve until their successors are elected and qualified and assume office in accordance with \*RCW 29.04.170. Candidates shall run for specific commissioner positions.

Elections for park and recreation district commissioners shall be held biennially in conjunction with the general election in each odd-numbered year. Elections shall be held in accordance with the provisions of \*\*Title 29 RCW dealing with general elections, except that there shall be no primary to nominate candidates. All persons filing and qualifying shall appear on the general election ballot and the person receiving the largest number of votes for each position shall be elected. [1996 c 324 § 2; 1994 c 223 § 45; 1987 c 53 § 1; 1979 ex.s. c 126 § 30; 1963 c 200 § 18; 1963 c 4 § 36.69.090. Prior: 1957 c 58 § 9.]

**Reviser's note:** \*(1) RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

\*\* (2) Title 29 RCW was repealed and/or recodified pursuant to 2003 c 111, effective July 1, 2004. See Title 29A RCW.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**36.69.100 Commissioners—Vacancies.** Vacancies on the board of park and recreation commissioners shall occur and shall be filled as provided in chapter 42.12 RCW. [1994 c 223 § 46; 1963 c 4 § 36.69.100. Prior: 1957 c 58 § 10.]

**36.69.110 Commissioners—Compensation, expenses.** The park and recreation commissioners shall receive no compensation for their services but shall receive necessary expenses in attending meetings of the board or when otherwise engaged on district business. [1963 c 4 § 36.69.110. Prior: 1957 c 58 § 11.]

**36.69.120 Commissioners—Duties.** The park and recreation district board of commissioners shall:

- (1) Elect its officers including a chairman, vice chairman, secretary, and such other officers as it may determine it requires;
- (2) Hold regular public meetings at least monthly;
- (3) Adopt policies governing transaction of board business, keeping of records, resolutions, transactions, findings and determinations, which shall be of public record;
- (4) Initiate, direct and administer district park and recreation activities, and select and employ such properly qualified employees as it may deem necessary. [1963 c 4 § 36.69.120. Prior: 1957 c 58 § 12.]

**36.69.130 Powers of districts.** Park and recreation districts shall have such powers as are necessary to carry out the purpose for which they are created, including, but not being limited to, the power: (1) To acquire and hold real and personal property; (2) to dispose of real and personal property only by unanimous vote of the district commissioners; (3) to make contracts; (4) to sue and be sued; (5) to borrow money to the extent and in the manner authorized by this chapter; (6) to grant concessions; (7) to make or establish charges, fees, rates, rentals and the like for the use of facilities (including recreational facilities) or for participation; (8) to make and enforce rules and regulations governing the use of property, facilities or equipment and the conduct of persons thereon; (9) to contract with any municipal corporation, governmental, or private agencies for the conduct of park and recreation programs; (10) to operate jointly with other governmental units any facilities or property including participation in the acquisition; (11) to hold in trust or manage public property useful to the accomplishment of their objectives; (12) to establish cumulative reserve funds in the manner and for the purposes prescribed by law for cities; (13) to acquire, construct, reconstruct, maintain, repair, add to, and operate recreational facilities; and, (14) to make improvements or to acquire property by the local improvement method in the manner prescribed by this chapter: PROVIDED, That such improvement or acquisition is within the scope of the purposes granted to such park and recreation district. [1972 ex.s. c 94 § 2; 1969 c 26 § 4; 1967 c 63 § 4; 1963 c 4 § 36.69.130. Prior: 1961 c 272 § 4; 1959 c 304 § 5; 1957 c 58 § 13.]

**36.69.140 Excess levies authorized—Bonds—Interest bearing warrants.** (1) A park and recreation district shall have the power to levy excess levies upon the property included within the district, in the manner prescribed by Arti-

cle VII, section 2, of the Constitution and by RCW 84.52.052 for operating funds, capital outlay funds, and cumulative reserve funds.

(2) A park and recreation district may issue general obligation bonds for capital purposes only, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness equal to three-eighths of one percent of the value of the taxable property within such district, as the term "value of the taxable property" is defined in RCW 39.36.015. A park and recreation district may additionally issue general obligation bonds, together with outstanding voter approved and nonvoter approved general obligation indebtedness, equal to one and one-fourth percent of the value of the taxable property within the district, as the term "value of the taxable property" is defined in RCW 39.36.015, when such bonds are approved by three-fifths of the voters of the district at a general or special election called for that purpose and may provide for the retirement thereof by levies in excess of dollar rate limitations in accordance with the provisions of RCW 84.52.056. When authorized by the voters of the district, the district may issue interest bearing warrants payable out of and to the extent of excess levies authorized in the year in which the excess levy was approved. These elections shall be held as provided in RCW 39.36.050. Such bonds and warrants shall be issued and sold in accordance with chapter 39.46 RCW. [1994 c 156 § 2; 1984 c 186 § 30; 1983 c 167 § 84; 1981 c 210 § 19; 1977 ex.s. c 90 § 1; 1973 1st ex.s. c 195 § 40; 1970 ex.s. c 42 § 20; 1969 c 26 § 5; 1967 c 63 § 5; 1963 c 4 § 36.69.140. Prior: 1961 c 272 § 5; 1959 c 304 § 6; 1957 c 58 § 14.]

**Intent—1994 c 156:** "The intent of the legislature by enacting sections 2 through 5, chapter 156, Laws of 1994 is:

(1) To allow park and recreation districts and park and recreation service areas to place more than one excess levy on the same ballot, allowing districts and service areas to give voters the opportunity to vote on separate issues, such as for operating and capital funds, at the same election, thereby reducing election costs; and

(2) To increase the amount a park and recreation district or park and recreation service area may collect through a six-year property tax levy from a maximum of fifteen cents per thousand dollars of assessed value to a maximum of sixty cents per thousand dollars of assessed value. This would allow for a more stable funding source for park and recreation districts and park and recreation service areas at a realistic tax rate and reduce the need for holding excess levy elections on an annual or biannual [biennial] basis. In addition, it would level out the collection of taxes over each of six years rather than the practice now of collecting in one year to fund two years." [1994 c 156 § 1.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Severability—1981 c 210:** See note following RCW 36.68.400.

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

**36.69.145 Six-year regular property tax levies—Limitations—Election.** (1) A park and recreation district may impose regular property tax levies in an amount equal to sixty cents or less per thousand dollars of assessed value of property in the district in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the voters thereof approving a proposition authorizing the levies submitted at a special election or at the regular

election of the district, at which election the number of voters voting "yes" on the proposition shall constitute three-fifths of a number equal to forty per centum of the number of voters voting in such district at the last preceding general election when the number of voters voting on the proposition does not exceed forty per centum of the number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the voters thereof voting on the proposition if the number of voters voting on the proposition exceeds forty per centum of the number of voters voting in such taxing district in the last preceding general election. A proposition authorizing the tax levies shall not be submitted by a park and recreation district more than twice in any twelve-month period. Ballot propositions shall conform with \*RCW 29.30.111. In the event a park and recreation district is levying property taxes, which in combination with property taxes levied by other taxing districts subject to the one percent limitation provided for in Article 7, section 2, of our state Constitution resulted in taxes in excess of the limitation provided for in RCW 84.52.043, the park and recreation district property tax levy shall be reduced or eliminated before the property tax levies of other taxing districts are reduced.

(2) The limitation in RCW 84.55.010 shall not apply to the first levy imposed under this section following the approval of the levies by the voters under subsection (1) of this section. [1994 c 156 § 3; 1984 c 131 § 6; 1981 c 210 § 18.]

**\*Reviser's note:** RCW 29.30.111 was recodified as RCW 29A.36.210 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Intent—1994 c 156:** See note following RCW 36.69.140.

**Purpose—1984 c 131 §§ 3-9:** See note following RCW 29A.36.210.

**36.69.147 Community revitalization financing—Public improvements.** In addition to other authority that a park and recreation district possesses, a park and recreation district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a park and recreation district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 15.]

**Severability—2001 c 212:** See RCW 39.89.902.

**36.69.150 District treasurer—Warrants—Vouchers.** The county treasurer of the county in which the district shall be located shall be the treasurer of the district, and expenditures shall be made upon warrants drawn by the county auditor pursuant to vouchers approved by the board of park and recreation commissioners. [1963 c 4 § 36.69.150. Prior: 1957 c 58 § 16.]

**36.69.160 Budget.** The board of park and recreation commissioners of each park and recreation district shall annually compile a budget, in form prescribed by the state auditor, for the ensuing calendar year, and which shall, to the extent that anticipated income is actually realized, constitute the appropriations for the district. The budget may include an

amount to accumulate a reserve for a stated capital purpose. In compiling the budget, all available funds and anticipated income shall be taken into consideration, including contributions or contractual payments from school districts, cities or towns, county, or any other governmental unit; gifts and donations; special tax levy; assessments; fees and charges; proceeds of bond issues; cumulative reserve funds. [1995 c 301 § 68; 1963 c 4 § 36.69.160. Prior: 1957 c 58 § 17.]

**36.69.170 Expenditures.** Expenditures shall be made solely in accordance with the budget, and should revenues accrue at a rate below the anticipated amounts, the board of park and recreation commissioners shall reduce expenditures accordingly: PROVIDED, That the board may, by unanimous vote, authorize such expenditures, or authorize expenditures in excess of those budgeted, if sufficient revenue to pay such expenditures is derived by the levy of the district or if provided by other governmental agencies specifically for such purposes. [1963 c 4 § 36.69.170. Prior: 1957 c 58 § 18.]

**36.69.180 Violation of rules—Penalty.** (1) Except as otherwise provided in this section, the violation of any of the rules or regulations of a park and recreation district adopted by its board for the preservation of order, control of traffic, protection of life or property, or for the regulation of the use of park property is a misdemeanor.

(2)(a) Except as provided in (b) of this subsection, violation of such a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [2003 c 53 § 206; 1979 ex.s. c 136 § 37; 1963 c 4 § 36.69.180. Prior: 1957 c 58 § 19.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**36.69.190 Additional area may be added to district.** After a park and recreation district has been organized, an additional area may be added by the same procedure within the proposed additional area as is provided herein for the organization of a park and recreation district, except that no first commissioners shall be nominated by the board of county commissioners or elected, and all electors within both the organized park and recreation district and the proposed additional territory shall vote upon the proposition for enlargement. [1969 c 26 § 6; 1967 c 63 § 6; 1963 c 4 § 36.69.190. Prior: 1961 c 272 § 6; 1959 c 304 § 7; 1957 c 58 § 20.]

**36.69.200 L.I.D.'s—Authorization—Assessments, warrants, bonds—County treasurer's duties.** (1) Whenever the board of park and recreation commissioners of any district shall determine that any proposed capital improvement would be of special benefit to all or to any portion of the district, it may establish local improvement districts within its territory; levy special assessments under the mode of annual installments extending over a period not exceeding

twenty years, on all property specially benefited by a local improvement, on the basis of special benefits to pay in whole or in part the damage or costs of any improvements ordered in the district; and issue local improvement bonds in the improvement district to be repaid by the collection of local improvement assessments. The method of establishment, levying, collection and enforcement of such assessments and issuance and redemption of local improvement warrants and bonds and the provisions regarding the conclusiveness of the assessment roll and the review by the superior court of any objections thereto shall be as provided for the levying, collection, and enforcement of local improvement assessments and the issuance of local improvement bonds by cities and towns, insofar as consistent herewith. The duties devolving upon the city treasurer are hereby imposed upon the county treasurer for the purposes hereof. The mode of assessment shall be determined by the board. Such bonds may be in any form, including coupon bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 85; 1983 c 3 § 80; 1963 c 4 § 36.69.200. Prior: 1957 c 58 § 21.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

*Local improvements, supplemental authority: Chapter 35.51 RCW.*

**36.69.210 L.I.D.'s—Initiation by resolution or petition.** Local improvement districts may be initiated either (1) by resolution of the board of park and recreation commissioners, or, (2) by petition signed by the owners (according to the county auditor's records) of at least fifty-one percent of the area of land within the limits of the local improvement district to be created. [1963 c 4 § 36.69.210. Prior: 1957 c 58 § 22.]

**36.69.220 L.I.D.'s—Procedure when by resolution.** If the board of park and recreation commissioners desires to initiate the formation of a local improvement district by resolution, it shall first pass a resolution declaring its intention to order such improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed local improvement district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, and fixing a date, time and place for a public hearing on the formation of the proposed local district. [1963 c 4 § 36.69.220. Prior: 1957 c 58 § 23.]

**36.69.230 L.I.D.'s—Procedure when by petition—Publication of notice of intent by either resolution or petition.** If such local improvement district is initiated by petition, such petition shall set forth the nature and territorial extent of the proposed improvement requested to be ordered and the fact that the signers thereof are the owners (according to the records of the county auditor) of at least fifty-one percent of the area of land within the limits of the local improvement district to be created. Upon the filing of such petition the board of park and recreation commissioners shall deter-

mine whether it is sufficient, and the board's determination thereof shall be conclusive upon all persons. No person shall withdraw his name from the petition after it has been filed with the board. If the board shall find the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the nature and territorial extent of said improvement, designating the number of the proposed local district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed local district, and fixing a date, time and place for a public hearing on the formation of the proposed local district.

The resolution of intention, whether adopted on the initiative of the board or pursuant to a petition of the property owners, shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed local district, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board. [1963 c 4 § 36.69.230. Prior: 1957 c 58 § 24.]

**36.69.240 L.I.D.'s—Notice—Contents.** Notice of the adoption of the resolution of intention shall be given each owner or reputed owner of any lot, tract, parcel of land or other property within the proposed improvement district by mailing said notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer at the address shown thereon. The notice shall refer to the resolution of intention and designate the proposed improvement district by number. Said notice shall also set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract or parcel, the date, time and place of the hearing before the board of park and recreation commissioners; and in the case of improvements initiated by resolution, the notice shall also state that all persons desiring to object to the formation of the proposed district must file their written protests with the secretary of the board before the time fixed for said public hearing. [1963 c 4 § 36.69.240. Prior: 1957 c 58 § 25.]

**36.69.245 L.I.D.'s—Notice must contain statement that assessments may vary from estimates.** Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 4.]

**36.69.250 L.I.D.'s—Public hearing—Inclusion, exclusion of property.** Whether the improvement is initiated by petition or resolution, the board of park and recreation commissioners shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing the board shall hear objections from any person affected by the formation of the local district and may make

such changes in the boundaries of the district or such modifications in the plans for the proposed improvement as shall be deemed necessary: PROVIDED, That the board may not change the boundaries of the district to include or exclude property not previously included or excluded without first passing a new resolution of intention and giving a new notice to property owners in the manner and form and within the time herein provided for the original notice. [1963 c 4 § 36.69.250. Prior: 1957 c 58 § 26.]

**36.69.260 L.I.D.'s—Protests—Procedure—Jurisdiction of board.** After said hearing the board of park and recreation commissioners shall have jurisdiction to overrule protests and proceed with any such improvement initiated by petition or resolution: PROVIDED, That the jurisdiction of the board to proceed with any improvement initiated by resolution shall be divested by a protest filed with the secretary of the board prior to said public hearing for the improvement signed by the owners of the property within the proposed local improvement district which is subject to sixty percent or more of the cost of the improvement as shown and determined by the preliminary estimates and assessment roll of the proposed improvement district. [1963 c 4 § 36.69.260. Prior: 1957 c 58 § 27.]

**36.69.270 L.I.D.'s—Powers and duties of board upon formation.** If the board of park and recreation commissioners finds that the district should be formed, it shall by resolution order the improvement, adopt detailed plans of the local improvement district and declare the estimated cost thereof, acquire all necessary land therefor, pay all damages caused thereby, and commence in the name of the park and recreation district such eminent domain proceedings as may be necessary to entitle the district to proceed with the work. The board shall thereupon proceed with the work and file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property situated within the improvement district in proportion to the special benefits to be derived by the property therein from the improvement. [1963 c 4 § 36.69.270. Prior: 1957 c 58 § 28.]

**36.69.280 L.I.D.'s—Assessment roll—Procedure for approval—Objections.** Before approval of the roll a notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the local district, stating that the roll is on file and open to inspection in the office of the secretary, and fixing the time, not less than fifteen or more than thirty days from the date of the first publication of the notice within which protests must be filed with the secretary against any assessments shown thereon, and fixing a time when a hearing will be held by the board of park and recreation commissioners on the protests. Notice shall also be given by mailing, at least fifteen days before the hearing, a similar notice to the owners or reputed owners of the land in the local district as they appear on the books of the treasurer of the county in which the park and recreation district is located. At the hearing, or any adjournment thereof, the commissioners may correct, change or modify the roll, or any part thereof, or set aside the roll and order a new assessment, and may then by resolution approve it. If an assessment is raised

a new notice similar to the first shall be given, after which final approval of the roll may be made. When property has been entered originally upon the roll and the assessment thereon is not raised, no objection thereto shall be considered by the commissioners or by any court on appeal unless the objection is made in writing at, or prior, to the date fixed for the original hearing upon the roll. [1963 c 4 § 36.69.280. Prior: 1957 c 58 § 29.]

**36.69.290 L.I.D.'s—Segregation of assessments—Power of board.** Whenever any land against which there has been levied any special assessment by any park and recreation district shall have been sold in part or subdivided, the board of park and recreation commissioners of such district shall have the power to order a segregation of the assessment. [1963 c 4 § 36.69.290. Prior: 1957 c 58 § 30.]

**36.69.300 L.I.D.'s—Segregation of assessments—Procedure—Fee, charges.** Any person desiring to have such a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the board of park and recreation commissioners of the park and recreation district which levied the assessment. If the board determines that a segregation should be made, it shall by resolution order the county treasurer to make segregation on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the resolution shall be delivered to the county treasurer who shall proceed to make the segregation ordered upon being tendered a fee of three dollars for each tract of land for which a segregation is to be made. In addition to such charge the board may require as a condition to the order of segregation that the person seeking it pay the district the reasonable engineering and clerical costs incident to making the segregation. [1963 c 4 § 36.69.300. Prior: 1957 c 58 § 31.]

**36.69.305 L.I.D.'s—Acquisition of property subject to unpaid or delinquent assessments by state or political subdivision—Payment of lien or installments.** See RCW 79.44.190.

**36.69.310 Dissolution.** Any park and recreation district formed under the provisions of this chapter may be dissolved in the manner provided in chapter 53.48 RCW, relating to port districts. [1963 c 4 § 36.69.310. Prior: 1957 c 58 § 32.]

*Alternative procedure for dissolution of special districts: Chapter 36.96 RCW.*

**36.69.320 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.** See chapter 57.90 RCW.

**36.69.350 Board authorized to contract indebtedness and issue revenue bonds.** The board of parks and recreation

commissioners is hereby authorized for the purpose of carrying out the lawful powers granted to park and recreation districts by the laws of the state to contract indebtedness and to issue revenue bonds evidencing such indebtedness in conformity with this chapter. [1972 ex.s. c 94 § 3.]

### **36.69.360 Revenue bonds—Authorized purposes.**

All such revenue bonds authorized under the terms of this chapter may be issued and sold by the district from time to time and in such amounts as is deemed necessary by the board of park and recreation commissioners of each district to provide sufficient funds for the carrying out of all district powers, without limiting the generality thereof, including the following: Acquisition; construction; reconstruction; maintenance; repair; additions; operations of recreational facilities; parking facilities as a part of a recreational facility; and any other district purpose from which revenues can be derived. Included in the costs thereof shall be any necessary engineering, inspection, accounting, fiscal, and legal expenses, the cost of issuance of bonds, including printing, engraving and advertising and other similar expenses, and the proceeds of such bond issue are hereby made available for all such purposes. [1972 ex.s. c 94 § 4.]

*Alternative authority to issue revenue bonds: RCW 39.46.150, 39.46.160.*

*Funds for reserve purposes may be included in issue amount: RCW 39.44.140.*

### **36.69.370 Revenue bonds—Issuance, form, seal, etc.**

(1) When revenue bonds are issued for authorized purposes, said bonds shall be either registered as to principal only or principal and interest as provided in RCW 39.46.030 or shall be bearer bonds; shall be in such denominations, shall be numbered, shall bear such date, shall be payable at such time or times up to a maximum period of not to exceed thirty years and payable as determined by the park and recreation commissioners of the district; shall bear interest payable semiannually; shall be executed by the chairman of the board of park and recreation commissioners, and attested by the secretary of the board, and the seal of such board shall be affixed to each bond, but not to any coupon; and may have facsimile signatures of the chairman and the secretary imprinted on any interest coupons in lieu of original signatures.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 86; 1972 ex.s. c 94 § 5.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

### **36.69.380 Resolution to authorize bonds—Contents.**

Bonds issued under the provisions of this chapter shall be payable solely out of the operating revenues of the park and recreation district. Such bonds shall be authorized by resolution adopted by the board of park and recreation commissioners, which resolution shall create a special fund or funds into which the board of park and recreation commissioners may obligate and bind the district to set aside and pay any part or parts of, or all of, or a fixed proportion of, or fixed amounts of gross revenue received by the district from moneys for services or activities as stated in the resolution, for the purpose of paying the principal of and interest on such bonds as the same shall become due, and if deemed necessary to maintain

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adequate reserves therefor. Such fund or funds shall be drawn upon solely for the purpose of paying the principal and interest upon the bonds issued pursuant to this chapter.

The bonds shall be negotiable instruments within the provision and intent of the negotiable instruments law of this state, even though they shall be payable solely from such special fund or funds, and the tax revenue of the district may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds. The bonds and any coupons attached thereto shall state upon their face that they are payable solely from such special fund or funds. If the county fails to set aside and pay into such fund or funds, the payments provided for in such resolution, the owner of any such bonds may bring suit to compel compliance with the provisions of the resolution. [1983 c 167 § 87; 1972 ex.s. c 94 § 6.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

### **36.69.390 Payment of bonds—Covenants—Enforcement.**

The board of park and recreation commissioners may provide covenants as it may deem necessary to secure the payment of the principal of and interest on such bonds and may, but shall not be required to, include covenants to create a reserve fund or account and to authorize the payment or deposit of certain moneys therein for the purpose of securing the payment of such principal and interest; to establish, maintain, and collect rates, charges, fees, rentals, and the like on the facilities and service the income of which is pledged for the payment of such bonds, sufficient to pay or secure the payment of such principal and interest and to maintain an adequate coverage over annual debt service; and to make any and all other covenants not inconsistent with the provisions of this chapter which will increase the marketability of such bonds. The board may also provide that revenue bonds payable out of the same source or sources may later be sold on a parity with any revenue bonds being issued and sold. The provisions of this chapter and any resolution or resolutions providing for the authorization, issuance, and sale of such bonds shall constitute a contract with the owner of such bonds, and the provisions thereof shall be enforceable by any owner of such bonds by mandamus or any appropriate suit, action or proceeding at law or in equity in any court of competent jurisdiction. [1983 c 167 § 88; 1972 ex.s. c 94 § 7.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

### **36.69.400 Funding, refunding bonds.**

(1) The board of parks and recreation commissioners of any district may by resolution, from time to time, provide for the issuance of funding or refunding revenue bonds to fund or refund any outstanding revenue bonds and any interest and premiums due thereon at or before the maturity of such bonds, and parts or all of various series and issues of outstanding revenue bonds in the amount thereof to be funded or refunded.

The board shall create a special fund for the sole purpose of paying the principal of and interest on such funding or refunding revenue bonds, into which fund the board shall obligate and bind the district to set aside and pay any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the revenue of the recreational facility of the district sufficient to pay such principal and interest as the same shall

become due, and if deemed necessary to maintain adequate reserves therefor.

Such funding or refunding bonds shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state, and the tax revenue of the district may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

The district may exchange such funding or refunding bonds for the bonds, and any coupons being funded or refunded, or it may sell such funding or refunding bonds in the manner, at such price and at such rate or rates of interest as the board shall deem to be for the best interest of the district and its inhabitants, either at public or private sale.

The provisions of this chapter relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such funding or refunding bonds except as may be otherwise specifically provided in this section.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 89; 1972 ex.s. c 94 § 8.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**36.69.410 Authority for issuance of bonds—Construction.** This chapter shall be complete authority for the issuance of the revenue bonds hereby authorized, and shall be liberally construed to accomplish its purposes. Any restrictions, limitations or regulations relative to the issuance of such revenue bonds contained in any other act shall not apply to the bonds issued under this chapter. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purpose of this chapter only. [1972 ex.s. c 94 § 9.]

**36.69.420 Joint park and recreation district—Authorization.** A park and recreation district may be formed encompassing portions of two or more counties. Such a district shall be known as a joint park and recreation district and shall have all powers and duties of a park and recreation district. The procedures established in this chapter for the formation of a park and recreation district shall be followed in the formation of a joint park and recreation district except as otherwise provided by RCW 36.69.430, 36.69.440, and 36.69.450. [1979 ex.s. c 11 § 1.]

**Severability—1979 ex.s. c 11:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 11 § 7.]

**36.69.430 Joint park and recreation district—Formation—Petition.** The formation of a joint park and recreation district shall be initiated by a petition as prescribed in RCW 36.69.020. The petition shall be filed with the county auditor of one of the counties within which a portion of the proposed joint district is located. A copy of the petition shall be filed with the county auditor of the other county or counties within which a portion of the proposed joint district is located. The county auditors shall jointly certify the suffi-

ciency or insufficiency of the petition to the legislative authorities of the counties. [1979 ex.s. c 11 § 2.]

**Severability—1979 ex.s. c 11:** See note following RCW 36.69.420.

**36.69.440 Joint park and recreation district—Formation—Hearing—Boundaries—Election.** (1) If the petition filed under RCW 36.69.430 is found to contain a sufficient number of signatures, the legislative authority of each county shall set a time for a hearing on the petition for the formation of a park and recreation district as prescribed in RCW 36.69.040.

(2) At the public hearing the legislative authority for each county shall fix the boundaries for that portion of the proposed park and recreation district that lies within the county as provided in RCW 36.69.050. Each county shall notify the other county or counties of the determination of the boundaries within ten days.

(3) If the territories created by the county legislative authorities are not contiguous, a joint park and recreation district shall not be formed. If the territories are contiguous, the county containing the portion of the proposed joint district having the larger population shall determine the name of the proposed joint district.

(4) The proposition for the formation of the proposed joint park and recreation district shall be submitted to the voters of the district at the next general election, which election shall be conducted as required by RCW 36.69.070 and 36.69.080. [1994 c 223 § 47; 1979 ex.s. c 11 § 3.]

**Severability—1979 ex.s. c 11:** See note following RCW 36.69.420.

**36.69.450 Joint park and recreation district—Duties of county officers.** For all purposes essential to the maintenance, operation, and administration of a joint park and recreation district, including the apportionment of any funds, the county in which a joint park and recreation district shall be considered as belonging shall be the county containing the largest population of the joint district. Whenever the laws relating to park and recreation districts provide for an action by a county officer, the action, if required to be performed on behalf of a joint park and recreation district, shall be performed by the proper officer of the county to which the joint district belongs, except as otherwise provided by law. This delegation of authority extends but is not limited to:

(1) The declaration by the county legislative authority of the election results, as required by RCW 36.69.080;

(2) The filing of declarations of candidacy with the county auditor under RCW 36.69.090;

(3) The issuance of warrants by the county treasurer under RCW 36.69.150;

(4) The duties of the county treasurer and auditor in the establishment and operation of a local improvement district under RCW 36.69.200, 36.69.220, 36.69.240, and 36.69.300. If the local improvement district is located wholly within any one of the participating counties, then the officers of that county shall perform the duties relating to that local improvement district; and

(5) Receipt by the county treasurer of payments of revenue bonds under RCW 36.69.370. [1979 ex.s. c 11 § 4.]

**Severability—1979 ex.s. c 11:** See note following RCW 36.69.420.

**36.69.460 Joint park and recreation district—Population determinations.** Population determinations for the purposes of RCW 36.69.440 and 36.69.450 shall be made by the office of financial management. [1979 ex.s. c 11 § 5.]

**Severability—1979 ex.s. c 11:** See note following RCW 36.69.420.

**36.69.900 Short title.** This chapter may be cited as the "Recreation Districts Act for Counties." [1969 c 26 § 7; 1967 c 63 § 7; 1963 c 4 § 36.69.900. Prior: 1961 c 272 § 7; 1959 c 304 § 9; 1957 c 58 § 33.]

**Chapter 36.70 RCW**

**PLANNING ENABLING ACT**

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*Acquisition of interests in land for conservation, protection, preservation, or open space purposes by counties: RCW 64.04.130.*

*Adult family homes—Permitted use in residential and commercial zones: RCW 70.128.175.*

*Alternative planning enabling act: Chapter 35.63 RCW.*

*Appearance of fairness doctrine—Application to local land use decisions: RCW 42.36.010.*

*County, sewerage, water, and drainage systems as part of comprehensive plan: Chapter 36.70 RCW.*

*Expediting completion of industrial projects of statewide significance—Requirements of agreements: RCW 43.157.020.*

*Joint operations by political subdivisions, deposit and control of funds: RCW 43.09.285.*

*Unfit dwellings, buildings, and structures: Chapter 35.80 RCW.*

**36.70.010 Purpose and intent.** The purpose and intent of this chapter is to provide the authority for, and the procedures to be followed in, guiding and regulating the physical development of a county or region through correlating both public and private projects and coordinating their execution with respect to all subject matters utilized in developing and servicing land, all to the end of assuring the highest standards of environment for living, and the operation of commerce, industry, agriculture and recreation, and assuring maximum economies and conserving the highest degree of public health, safety, morals and welfare. [1963 c 4 § 36.70.010. Prior: 1959 c 201 § 1.]

**36.70.015 Expenditure of funds declared public purpose.** Regional planning under the provisions of this chapter is hereby declared to be a proper public purpose for the expenditure of the funds of counties, school districts, public utility districts, housing authorities, port districts, cities or towns or any other public organization interested in regional planning. [1963 c 4 § 36.70.015. Prior: 1961 c 232 § 6.]

**36.70.020 Definitions.** The following words or terms as used in this chapter shall have the following meaning unless a different meaning is clearly indicated by the context:

(1) "Approval by motion" is a means by which a board, through other than by ordinance, approves and records recognition of a comprehensive plan or amendments thereto.

(2) "Board" means the board of county commissioners.

(3) "Certification" means the affixing on any map or by adding to any document comprising all or any portion of a comprehensive plan a record of the dates of action thereon by the commission and by the board, together with the signatures of the officer or officers authorized by ordinance to so sign.

(4) "Commission" means a county or regional planning commission.

(5) "Commissioners" means members of a county or regional planning commission.

(6) "Comprehensive plan" means the policies and proposals approved and recommended by the planning agency or initiated by the board and approved by motion by the board (a) as a beginning step in planning for the physical development of the county; (b) as the means for coordinating county programs and services; (c) as a source of reference to aid in developing, correlating, and coordinating official regulations and controls; and (d) as a means for promoting the general welfare. Such plan shall consist of the required elements set forth in RCW 36.70.330 and may also include the optional elements set forth in RCW 36.70.350 which shall serve as a policy guide for the subsequent public and private development and official controls so as to present all proposed developments in a balanced and orderly relationship to existing physical features and governmental functions.

(7) "Conditional use" means a use listed among those classified in any given zone but permitted to locate only after

review by the board of adjustment, or zoning adjustor if there be such, and the granting of a conditional use permit imposing such performance standards as will make the use compatible with other permitted uses in the same vicinity and zone and assure against imposing excessive demands upon public utilities, provided the county ordinances specify the standards and criteria that shall be applied.

(8) "Department" means a planning department organized and functioning as any other department in any county.

(9) "Element" means one of the various categories of subjects, each of which constitutes a component part of the comprehensive plan.

(10) "Ex officio member" means a member of the commission who serves by virtue of his official position as head of a department specified in the ordinance creating the commission.

(11) "Official controls" means legislatively defined and enacted policies, standards, precise detailed maps and other criteria, all of which control the physical development of a county or any part thereof or any detail thereof, and are the means of translating into regulations and ordinances all or any part of the general objectives of the comprehensive plan. Such official controls may include, but are not limited to, ordinances establishing zoning, subdivision control, platting, and adoption of detailed maps.

(12) "Ordinance" means a legislative enactment by a board; in this chapter the word, "ordinance", is synonymous with the term "resolution", as representing a legislative enactment by a board of county commissioners.

(13) "Planning agency" means (a) a planning commission, together with its staff members, employees and consultants, or (b) a department organized and functioning as any other department in any county government together with its planning commission.

(14) "Variance." A variance is the means by which an adjustment is made in the application of the specific regulations of a zoning ordinance to a particular piece of property, which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same vicinity and zone and which adjustment remedies disparity in privileges. [1963 c 4 § 36.70.020. Prior: 1959 c 201 § 2.]

**36.70.025 "Solar energy system" defined.** As used in this chapter, "solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (1) The heating or cooling of a structure or building;
- (2) The heating or pumping of water;
- (3) Industrial, commercial, or agricultural processes; or
- (4) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall. [1979 ex.s. c 170 § 9.]

**Severability—1979 ex.s. c 170:** See note following RCW 64.04.140.

*Local governments authorized to encourage and protect solar energy systems: RCW 64.04.140.*

**36.70.030 Commission—Creation.** By ordinance a board may create a planning commission and provide for the appointment by the commission of a director of planning. [1963 c 4 § 36.70.030. Prior: 1959 c 201 § 3.]

**36.70.040 Department—Creation—Creation of commission to assist department.** By ordinance a board may, as an alternative to and in lieu of the creation of a planning commission as provided in RCW 36.70.030, create a planning department which shall be organized and function as any other department of the county. When such department is created, the board shall also create a planning commission which shall assist the planning department in carrying out its duties, including assistance in the preparation and execution of the comprehensive plan and recommendations to the department for the adoption of official controls and/or amendments thereto. To this end, the planning commission shall conduct such hearings as are required by this chapter and shall make findings and conclusions therefrom which shall be transmitted to the department which shall transmit the same on to the board with such comments and recommendations it deems necessary. [1963 c 4 § 36.70.040. Prior: 1959 c 201 § 4.]

**36.70.050 Authority for planning.** Upon the creation of a planning agency as authorized in RCW 36.70.030 and 36.70.040, a county may engage in a planning program as defined by this chapter. Two or more counties may jointly engage in a planning program as defined herein for their combined areas. [1963 c 4 § 36.70.050. Prior: 1959 c 201 § 5.]

**36.70.060 Regional planning commission—Appointment and powers.** A county or a city may join with one or more other counties, cities and towns, and/or with one or more school districts, public utility districts, private utilities, housing authorities, port districts, or any other private or public organizations interested in regional planning to form and organize a regional planning commission and provide for the administration of its affairs. Such regional planning commission may carry on a planning program involving the same subjects and procedures provided by this chapter for planning by counties, provided this authority shall not include enacting official controls other than by the individual participating municipal corporations. The authority to initiate a regional planning program, define the boundaries of the regional planning district, specify the number, method of appointment and terms of office of members of the regional planning commission and provide for allocating the cost of financing the work shall be vested individually in the governing bodies of the participating municipal corporations.

Any regional planning commission or municipal corporation participating in any regional planning district is authorized to receive grants-in-aid from, or enter into reasonable agreement with any department or agency of the government of the United States or of the state of Washington to arrange for the receipt of federal funds and state funds for planning in the interests of furthering the planning program. [1963 c 4 § 36.70.060. Prior: 1961 c 232 § 1; 1959 c 201 § 6.]

*Commission as employer for retirement system purposes: RCW 41.40.010.*

(2004 Ed.)

**36.70.070 Commission—Composition.** Whenever a commission is created by a county, it shall consist of five, seven, or nine members as may be provided by ordinance: PROVIDED, That where a commission, on June 10, 1959, is operating with more than nine members, no further appointments shall be made to fill vacancies for whatever cause until the membership of the commission is reduced to five, seven or nine, whichever is the number specified by the county ordinance under this chapter. Departments of a county may be represented on the commission by the head of such departments as are designated in the ordinance creating the commission, who shall serve in an ex officio capacity, but such ex officio members shall not exceed one of a five-member commission, two of a seven-member commission, or three of a nine-member commission. At no time shall there be more than three ex officio members serving on a commission: PROVIDED FURTHER, That in lieu of one ex officio member, only, one employee of the county other than a department head may be appointed to serve as a member of the commission. [1963 c 4 § 36.70.070. Prior: 1959 c 201 § 7.]

**36.70.080 Commission—Appointment—County.** The members of a commission shall be appointed by the chairman of the board with the approval of a majority of the board: PROVIDED, That each member of the board shall submit to the chairman a list of nominees residing in his commissioner district, and the chairman shall make his appointments from such lists so that as nearly as mathematically possible, each commissioner district shall be equally represented on the commission. [1963 c 4 § 36.70.080. Prior: 1959 c 201 § 8.]

**36.70.090 Commission—Membership—Terms—Existing commissions.** When a commission is created after June 10, 1959, the first terms of the members of the commission consisting of five, seven, and nine members, respectively, other than ex officio members, shall be as follows:

(1) For a five-member commission—one, shall be appointed for one year; one, for two years; one, for three years; and two, for four years.

(2) For a seven-member commission—one, shall be appointed for one year; two, for two years; two, for three years; and two, for four years.

(3) For a nine-member commission—two, shall be appointed for one year; two, for two years; two, for three years; and three, for four years.

Thereafter, the successors to the first member shall be appointed for four year terms: PROVIDED, That where the commission includes one ex officio member, the number of appointive members first appointed for a four year term shall be reduced by one; if there are to be two ex officio members, the number of appointive members for the three year and four year terms shall each be reduced by one; if there are to be three ex officio members, the number of appointive members for the four year term, the three year term, and the two year term shall each be reduced by one. The term of an ex officio member shall correspond to his official tenure: PROVIDED FURTHER, That where a commission, on the effective date of this chapter, is operating with members appointed for longer than four year terms, such members shall serve out the full term for which they were appointed, but their successors,

if any, shall be appointed for four year terms. [1963 c 4 § 36.70.090. Prior: 1959 c 201 § 9.]

**36.70.100 Commission—Vacancies.** Vacancies occurring for any reason other than the expiration of the term shall be filled by appointment for the unexpired portion of the term except if, on June 10, 1959, the unexpired portion of a term is for more than four years the vacancy shall be filled for a period of time that will obtain the maximum staggered terms, but shall not exceed four years. Vacancies shall be filled from the same commissioner district as that of the vacating member. [1963 c 4 § 36.70.100. Prior: 1959 c 201 § 10.]

**36.70.110 Commission—Removal.** After public hearing, any appointee member of a commission may be removed by the chairman of the board, with the approval of the board, for inefficiency, neglect of duty, or malfeasance in office. [1963 c 4 § 36.70.110. Prior: 1959 c 201 § 11.]

**36.70.120 Commission—Officers.** Each commission shall elect its chairman and vice chairman from among the appointed members. The commission shall appoint a secretary who need not be a member of the commission. [1963 c 4 § 36.70.120. Prior: 1959 c 201 § 12.]

**36.70.130 Planning agency—Meetings.** Each planning agency shall hold not less than one regular meeting in each month: PROVIDED, That if no matters over which the planning agency has jurisdiction are pending upon its calendar, a meeting may be canceled. [1963 c 4 § 36.70.130. Prior: 1959 c 201 § 13.]

**36.70.140 Planning agency—Rules and records.** Each planning agency shall adopt rules for the transaction of its business and shall keep a public record of its transactions, findings, and determinations. [1963 c 4 § 36.70.140. Prior: 1959 c 201 § 14.]

**36.70.150 Planning agency—Joint meetings.** Two or more county planning agencies in any combination may hold joint meetings and by approval of their respective boards may have the same chairman. [1963 c 4 § 36.70.150. Prior: 1959 c 201 § 15.]

**36.70.160 Director—Appointment.** If a director of planning is provided for, he shall be appointed:

(1) By the commission when a commission is created under RCW 36.70.030;

(2) If a planning department is established as provided in RCW 36.70.040, then he shall be appointed by the board. [1963 c 4 § 36.70.160. Prior: 1959 c 201 § 16.]

**36.70.170 Director—Employees.** The director of planning shall be authorized to appoint such employees as are necessary to perform the duties assigned to him within the budget allowed. [1963 c 4 § 36.70.170. Prior: 1959 c 201 § 17.]

**36.70.180 Joint director.** The boards of two or more counties or the legislative bodies of other political subdivi-

sions or special districts may jointly engage a single director of planning and may authorize him to employ such other personnel as may be necessary to carry out the joint planning program. [1963 c 4 § 36.70.180. Prior: 1959 c 201 § 18.]

**36.70.190 Special services.** Each planning agency, subject to the approval of the board, may employ or contract with the planning consultants or other specialists for such services as it requires. [1963 c 4 § 36.70.190. Prior: 1959 c 201 § 19.]

**36.70.200 Board of adjustment—Creation—Zoning adjutor.** Whenever a board shall have created a planning agency, it shall also by ordinance, coincident with the enactment of a zoning ordinance, create a board of adjustment, and may establish the office of zoning adjutor: PROVIDED, That any county that has prior to June 10, 1959, enacted a zoning ordinance, shall, within ninety days thereof, create a board of adjustment. [1963 c 4 § 36.70.200. Prior: 1959 c 201 § 20.]

**36.70.210 Board of adjustment—Membership—Quorum.** A board of adjustment shall consist of five or seven members as may be provided by ordinance, and a majority of the members shall constitute a quorum for the transaction of all business. [1965 ex.s. c 24 § 1; 1963 c 4 § 36.70.210. Prior: 1959 c 201 § 21.]

**36.70.220 Board of adjustment—Appointment—Appointment of zoning adjutor.** The members of a board of adjustment and the zoning adjutor shall be appointed in the same manner as provided for the appointment of commissioners in RCW 36.70.080. One member of the board of adjustment may be an appointee member of the commission. [1963 c 4 § 36.70.220. Prior: 1959 c 201 § 22.]

**36.70.230 Board of adjustment—Terms.** If the board of adjustment is to consist of three members, when it is first appointed after June 10, 1959, the first terms shall be as follows: One shall be appointed for one year; one, for two years; and one, for three years. If it consists of five members, when it is first appointed after June 10, 1959, the first terms shall be as follows: One shall be appointed for one year; one, for two years; one, for three years; one, for four years; and one, for six years. Thereafter the terms shall be for six years and until their successors are appointed and qualified. [1963 c 4 § 36.70.230. Prior: 1959 c 201 § 23.]

**36.70.240 Board of adjustment—Vacancies.** Vacancies in the board of adjustment shall be filled by appointment in the same manner in which the commissioners are appointed in RCW 36.70.080. Appointment shall be for the unexpired portion of the term. [1963 c 4 § 36.70.240. Prior: 1959 c 201 § 24.]

**36.70.250 Board of adjustment—Removal.** Any member of the board of adjustment may be removed by the chairman of the board with the approval of the board for inefficiency, neglect of duty or malfeasance in office. [1963 c 4 § 36.70.250. Prior: 1959 c 201 § 25.]

**36.70.260 Board of adjustment—Organization.** The board of adjustment shall elect a chairman and vice chairman from among its members. The board of adjustment shall appoint a secretary who need not be a member of the board. [1963 c 4 § 36.70.260. Prior: 1959 c 201 § 26.]

**36.70.270 Board of adjustment—Meetings.** The board of adjustment shall hold not less than one regular meeting in each month of each year: PROVIDED, That if no issues over which the board has jurisdiction are pending upon its calendar, a meeting may be canceled. [1963 c 4 § 36.70.270. Prior: 1959 c 201 § 27.]

**36.70.280 Board of adjustment—Rules and records.** The board of adjustment shall adopt rules for the transaction of its business and shall keep a public record of its transactions, findings and determinations. [1963 c 4 § 36.70.280. Prior: 1959 c 201 § 28.]

**36.70.290 Appropriation for planning agency, board of adjustment.** The board shall provide the funds, equipment and accommodations necessary for the work of the planning agency. Such appropriations may include funds for joint ventures as set forth in RCW 36.70.180. The expenditures of the planning agency, exclusive of gifts, shall be within the amounts appropriated for the respective purposes. The provisions herein for financing the work of the planning agencies shall also apply to the board of adjustment and the zoning adjustor. [1963 c 4 § 36.70.290. Prior: 1959 c 201 § 29.]

**36.70.300 Accept gifts.** The planning agency of a county may accept gifts in behalf of the county to finance any planning work authorized by law. [1963 c 4 § 36.70.300. Prior: 1959 c 201 § 30.]

**36.70.310 Conference and travel expenses—Commission members and staff.** Members of planning agencies shall inform themselves on matter affecting the functions and duties of planning agencies. For that purpose, and when authorized, such members may attend planning conferences, meetings of planning executives or of technical bodies; hearings on planning legislation or matters relating to the work of the planning agency. The reasonable travel expenses, registration fees and other costs incident to such attendance at such meetings and conferences shall be charges upon the funds allocated to the planning agency. In addition, members of a commission may also receive reasonable travel expenses to and from their usual place of business to the place of a regular meeting of the commission. The planning agency may, when authorized, pay dues for membership in organizations specializing in the subject of planning. The planning agency may, when authorized, subscribe to technical publications pertaining to planning. [1963 c 4 § 36.70.310. Prior: 1959 c 201 § 31.]

**36.70.315 Public notice—Identification of affected property.** Any notice made under chapter 36.70 RCW that identifies affected property may identify this affected property without using a legal description of the property includ-

ing, but not limited to, identification by an address, written description, vicinity sketch, or other reasonable means. [1988 c 168 § 11.]

**36.70.317 Statement of restrictions applicable to real property.** (1) A property owner may make a written request for a statement of restrictions applicable to a single parcel, tract, lot, or block of real property located in an unincorporated portion of a county to the county in which the real property is located.

(2) Within thirty days of the receipt of the request, the county shall provide the owner, by registered mail, with a statement of restrictions as described in subsection (3) of this section.

(3) The statement of restrictions shall include the following:

- (a) The zoning currently applicable to the real property;
- (b) Pending zoning changes currently advertised for public hearing that would be applicable to the real property;

(c) Any designations made by the county pursuant to chapter 36.70A RCW of any portion of the real property as agricultural land, forest land, mineral resource land, wetland, an area with a critical recharging effect on aquifers used for potable water, a fish and wildlife habitat conservation area, a frequently flooded area, and as a geological hazardous area; and

(d) If information regarding the designations listed in (c) of this subsection are not readily available, inform the owner of the procedure by which the owner can obtain that site-specific information from the county.

(4) If a county fails to provide the statement of restrictions within thirty days after receipt of the written request, the owner shall be awarded recovery of all attorneys' fees and costs incurred in any successful application for a writ of mandamus to compel production of a statement.

(5) For purposes of this section:

(a) "Owner" means any vested owner or any person holding the buyer's interest under a recorded real estate contract in which the seller is the vested owner; and

(b) "Real property" means a parcel, tract, lot or block: (i) Containing a single-family residence that is occupied by the owner or a member of his or her family, or rented to another by the owner; or (ii) five acres or less in size.

(6) This section does not affect the vesting of permits or development rights.

Nothing in this section shall be deemed to create any liability on the part of a county. [1996 c 206 § 8.]

**Effective date—1996 c 206 §§ 6-8:** See note following RCW 35.21.475.

**Findings—1996 c 206:** See note following RCW 43.05.030.

**36.70.320 Comprehensive plan.** Each planning agency shall prepare a comprehensive plan for the orderly physical development of the county, or any portion thereof, and may include any land outside its boundaries which, in the judgment of the planning agency, relates to planning for the county. The plan shall be referred to as the comprehensive plan, and, after hearings by the commission and approval by motion of the board, shall be certified as the comprehensive plan. Amendments or additions to the comprehensive plan shall be similarly processed and certified.

Any comprehensive plan adopted for a portion of a county shall not be deemed invalid on the ground that the remainder of the county is not yet covered by a comprehensive plan. \*This 1973 amendatory act shall also apply to comprehensive plans adopted for portions of a county prior to April 24, 1973. [1973 1st ex.s. c 172 § 1; 1963 c 4 § 36.70.320. Prior: 1959 c 201 § 32.]

\*Reviser's note: "This 1973 amendatory act" refers to 1973 1st ex.s. c 172 § 1.

### 36.70.330 Comprehensive plan—Required elements.

The comprehensive plan shall consist of a map or maps, and descriptive text covering objectives, principles and standards used to develop it, and shall include each of the following elements:

(1) A land use element which designates the proposed general distribution and general location and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land, including a statement of the standards of population density and building intensity recommended for the various areas in the jurisdiction and estimates of future population growth in the area covered by the comprehensive plan, all correlated with the land use element of the comprehensive plan. The land use element shall also provide for protection of the quality and quantity of ground water used for public water supplies and shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute Puget Sound or waters entering Puget Sound;

(2) A circulation element consisting of the general location, alignment and extent of major thoroughfares, major transportation routes, trunk utility lines, and major terminal facilities, all of which shall be correlated with the land use element of the comprehensive plan;

(3) Any supporting maps, diagrams, charts, descriptive material and reports necessary to explain and supplement the above elements. [1985 c 126 § 3; 1984 c 253 § 3; 1963 c 4 § 36.70.330. Prior: 1959 c 201 § 33.]

**36.70.340 Comprehensive plan—Amplification of required elements.** When the comprehensive plan containing the mandatory subjects as set forth in RCW 36.70.330 shall have been approved by motion by the board and certified, it may thereafter be progressively amplified and augmented in scope by expanding and increasing the general provisions and proposals for all or any one of the required elements set forth in RCW 36.70.330 and by adding provisions and proposals for the optional elements set forth in RCW 36.70.350. The comprehensive plan may also be amplified and augmented in scope by progressively including more completely planned areas consisting of natural homogeneous communities, distinctive geographic areas, or other types of districts having unified interests within the total area of the county. In no case shall the comprehensive plan, whether in its entirety or area by area or subject by subject be considered to be other than in such form as to serve as a guide to the later development and adoption of official controls. [1963 c 4 § 36.70.340. Prior: 1959 c 201 § 34.]

### 36.70.350 Comprehensive plan—Optional elements.

A comprehensive plan may include—

(1) a conservation element for the conservation, development and utilization of natural resources, including water and its hydraulic force, forests, water sheds, soils, rivers and other waters, harbors, fisheries, wild life, minerals and other natural resources,

(2) a solar energy element for encouragement and protection of access to direct sunlight for solar energy systems,

(3) a recreation element showing a comprehensive system of areas and public sites for recreation, natural reservations, parks, parkways, beaches, playgrounds and other recreational areas, including their locations and proposed development,

(4) a transportation element showing a comprehensive system of transportation, including general locations of rights of way, terminals, viaducts and grade separations. This element of the plan may also include port, harbor, aviation and related facilities,

(5) a transit element as a special phase of transportation, showing proposed systems of rail transit lines, including rapid transit in any form, and related facilities,

(6) a public services and facilities element showing general plans for sewerage, refuse disposal, drainage and local utilities, and rights of way, easements and facilities for such services,

(7) a public buildings element, showing general locations, design and arrangements of civic and community centers, and showing locations of public schools, libraries, police and fire stations and all other public buildings,

(8) a housing element, consisting of surveys and reports upon housing conditions and needs as a means of establishing housing standards to be used as a guide in dealings with official controls related to land subdivision, zoning, traffic, and other related matters,

(9) a renewal and/or redevelopment element comprising surveys, locations, and reports for the elimination of slums and other blighted areas and for community renewal and/or redevelopment, including housing sites, business and industrial sites, public building sites and for other purposes authorized by law,

(10) a plan for financing a capital improvement program,

(11) as a part of a comprehensive plan the commission may prepare, receive and approve additional elements and studies dealing with other subjects which, in its judgment, relate to the physical development of the county. [1979 ex.s. c 170 § 10; 1963 c 4 § 36.70.350. Prior: 1959 c 201 § 35.]

**Severability—1979 ex.s. c 170:** See note following RCW 64.04.140.

"Solar energy system" defined: RCW 36.70.025.

**36.70.360 Comprehensive plan—Cooperation with affected agencies.** During the formulation of the comprehensive plan, and especially in developing a specialized element of such comprehensive plan, the planning agency may cooperate to the extent it deems necessary with such authorities, departments or agencies as may have jurisdiction over the territory or facilities for which plans are being made, to the end that maximum correlation and coordination of plans may be secured and properly located sites for all public purposes may be indicated on the comprehensive plan. [1963 c 4 § 36.70.360. Prior: 1959 c 201 § 36.]

**36.70.370 Comprehensive plan—Filing of copies.**

Whenever a planning agency has developed a comprehensive plan, or any addition or amendment thereto, covering any land outside of the boundaries of the county as provided in RCW 36.70.320, copies of any features of the comprehensive plan extending into an adjoining jurisdiction shall for purposes of information be filed with such adjoining jurisdiction. [1963 c 4 § 36.70.370. Prior: 1959 c 201 § 37.]

**36.70.380 Comprehensive plan—Public hearing required.** Before approving all or any part of the comprehensive plan or any amendment, extension or addition thereto, the commission shall hold at least one public hearing and may hold additional hearings at the discretion of the commission. [1963 c 4 § 36.70.380. Prior: 1959 c 201 § 38.]

**36.70.390 Comprehensive plan—Notice of hearing.**

Notice of the time, place and purpose of any public hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county, at least ten days before the hearing. [1963 c 4 § 36.70.390. Prior: 1959 c 201 § 39.]

**36.70.400 Comprehensive plan—Approval—**

**Required vote—Record.** The approval of the comprehensive plan, or of any amendment, extension or addition thereto, shall be by the affirmative vote of not less than a majority of the total members of the commission. Such approval shall be by a recorded motion which shall incorporate the findings of fact of the commission and the reasons for its action and the motion shall refer expressly to the maps, descriptive, and other matters intended by the commission to constitute the plan or amendment, addition or extension thereto. The indication of approval by the commission shall be recorded on the map and descriptive matter by the signatures of the chairman and the secretary of the commission and of such others as the commission in its rules may designate. [1963 c 4 § 36.70.400. Prior: 1961 c 232 § 2; 1959 c 201 § 40.]

**36.70.410 Comprehensive plan—Amendment.** When changed conditions or further studies by the planning agency indicate a need, the commission may amend, extend or add to all or part of the comprehensive plan in the manner provided herein for approval in the first instance. [1963 c 4 § 36.70.410. Prior: 1959 c 201 § 41.]

**36.70.420 Comprehensive plan—Referral to board.**

A copy of a comprehensive plan or any part, amendment, extension of or addition thereto, together with the motion of the planning agency approving the same, shall be transmitted to the board for the purpose of being approved by motion and certified as provided in this chapter. [1963 c 4 § 36.70.420. Prior: 1959 c 201 § 42.]

**36.70.430 Comprehensive plan—Board may initiate or change—Notice.** When it deems it to be for the public interest, or when it considers a change in the recommendations of the planning agency to be necessary, the board may initiate consideration of a comprehensive plan, or any ele-

ment or part thereof, or any change in or addition to such plan or recommendation. The board shall first refer the proposed plan, change or addition to the planning agency for a report and recommendation. Before making a report and recommendation, the commission shall hold at least one public hearing on the proposed plan, change or addition. Notice of the time and place and purpose of the hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county, at least ten days before the hearing. [1963 c 4 § 36.70.430. Prior: 1959 c 201 § 43.]

**36.70.440 Comprehensive plan—Board may approve or change—Notice.**

After the receipt of the report and recommendations of the planning agency on the matters referred to in RCW 36.70.430, or after the lapse of the prescribed time for the rendering of such report and recommendation by the commission, the board may approve by motion and certify such plan, change or addition without further reference to the commission: PROVIDED, That the plan, change or addition conforms either to the proposal as initiated by the county or the recommendation thereon by the commission: PROVIDED FURTHER, That if the planning agency has failed to report within a ninety day period, the board shall hold at least one public hearing on the proposed plan, change or addition. Notice of the time, place and purpose of the hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county, at least ten days before the hearing. Thereafter, the board may proceed to approve by motion and certify the proposed comprehensive plan or any part, amendment or addition thereto. [1963 c 4 § 36.70.440. Prior: 1959 c 201 § 44.]

**36.70.450 Planning agency—Relating projects to comprehensive plan.**

After a board has approved by motion and certified all or parts of a comprehensive plan for a county or for any part of a county, the planning agency shall use such plan as the basic source of reference and as a guide in reporting upon or recommending any proposed project, public or private, as to its purpose, location, form, alignment and timing. The report of the planning agency on any project shall indicate wherein the proposed project does or does not conform to the purpose of the comprehensive plan and may include proposals which, if effected, would make the project conform. If the planning agency finds that a proposed project reveals the justification or necessity for amending the comprehensive plan or any part of it, it may institute proceedings to accomplish such amendment, and in its report to the board on the project shall note that appropriate amendments to the comprehensive plan, or part thereof, are being initiated. [1963 c 4 § 36.70.450. Prior: 1959 c 201 § 45.]

**36.70.460 Planning agency—Annual report.** After all or part of the comprehensive plan of a county has been approved by motion and certified, the planning agency shall render an annual report to the board on the status of the plan and accomplishments thereunder. [1963 c 4 § 36.70.460. Prior: 1959 c 201 § 46.]

**36.70.470 Planning agency—Promotion of public interest in plan.** Each planning agency shall endeavor to promote public interest in, and understanding of, the comprehensive plan and its purpose, and of the official controls related to it. [1963 c 4 § 36.70.470. Prior: 1959 c 201 § 47.]

**36.70.480 Planning agency—Cooperation with agencies.** Each planning agency shall, to the extent it deems necessary, cooperate with officials and agencies, public utility companies, civic, educational, professional and other organizations and citizens generally with relation to carrying out the purpose of the comprehensive plan. [1963 c 4 § 36.70.480. Prior: 1959 c 201 § 48.]

**36.70.490 Information to be furnished agency.** Upon request, all public officials or agencies shall furnish to the planning agency within a reasonable time such available information as is required for the work of the planning agency. [1963 c 4 § 36.70.490. Prior: 1959 c 201 § 49.]

**36.70.493 Manufactured housing communities—Elimination of existing community by county prohibited.** After June 10, 2004, a county may designate a manufactured housing community as a nonconforming use, but may not order the removal or phased elimination of an existing manufactured housing community because of its status as a nonconforming use. [2004 c 210 § 3.]

**36.70.495 Planning regulations—Copies provided to county assessor.** By July 31, 1997, a county planning under RCW 36.70A.040 shall provide to the county assessor a copy of the county's comprehensive plan and development regulations in effect on July 1st of that year and shall thereafter provide any amendments to the plan and regulations that were adopted before July 31st of each following year. [1996 c 254 § 5.]

**36.70.500 Right of entry—Commission or planning staff.** In the performance of their functions and duties, duly authorized members of a commission or planning staff may enter upon any land and make examinations and surveys: PROVIDED, That such entries, examinations and surveys do not damage or interfere with the use of the land by those persons lawfully entitled to the possession thereof. [1963 c 4 § 36.70.500. Prior: 1959 c 201 § 50.]

**36.70.510 Special referred matters—Reports.** By general or special rule the board creating a planning agency may provide that other matters shall be referred to the planning agency before final action is taken thereupon by the board or officer having final authority on the matter, and final action thereon shall not be taken upon the matter so referred until the planning agency has submitted its report within such period of time as the board shall designate. In reporting upon the matters referred to in this section the planning agency may make such investigations, maps, reports and recommendations as it deems desirable. [1963 c 4 § 36.70.510. Prior: 1959 c 201 § 51.]

**36.70.520 Required submission of capital expenditure projects.** At least five months before the end of each fiscal year each county officer, department, board or commission and each governmental body whose jurisdiction lies entirely within the county, except incorporated cities and towns, whose functions include preparing and recommending plans for, or constructing major public works, shall submit to the respective planning agency a list of the proposed public works being recommended for initiation or construction during the ensuing fiscal year. [1963 c 4 § 36.70.520. Prior: 1959 c 201 § 52.]

**36.70.530 Relating capital expenditure projects to comprehensive plan.** The planning agency shall list all such matters referred to in RCW 36.70.520 and shall prepare for and submit a report to the board which report shall set forth how each proposed project relates to all other proposed projects on the list and to all features in the comprehensive plan both as to location and timing. The planning agency shall report to the board through the planning director if there be such. [1963 c 4 § 36.70.530. Prior: 1959 c 201 § 53.]

**36.70.540 Referral procedure—Reports.** Whenever a county legislative authority has approved by motion and certified all or part of a comprehensive plan, no road, square, park or other public ground or open space shall be acquired by dedication or otherwise and no public building or structure shall be constructed or authorized to be constructed in the area to which the comprehensive plan applies until its location, purpose and extent has been submitted to and reported upon by the planning agency. The report by the planning agency shall set forth the manner and the degree to which the proposed project does or does not conform to the objectives of the comprehensive plan. If final authority is vested by law in some governmental officer or body other than the county legislative authority, such officer or governmental body shall report the project to the planning agency and the planning agency shall render its report to such officer or governmental body. In both cases the report of the planning agency shall be advisory only. Failure of the planning agency to report on such matter so referred to it within forty days or such longer time as the county legislative authority or other governmental officer or body may indicate, shall be deemed to be approval. [1991 c 363 § 80; 1963 c 4 § 36.70.540. Prior: 1959 c 201 § 54.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.70.545 Development regulations—Consistency with comprehensive plan.** Beginning July 1, 1992, the development regulations of each county that does not plan under RCW 36.70A.040 shall not be inconsistent with the county's comprehensive plan. For the purposes of this section, "development regulations" has the same meaning as set forth in RCW 36.70A.030. [1990 1st ex.s. c 17 § 24.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**36.70.547 General aviation airports—Siting of incompatible uses.** Every county, city, and town in which there is located a general aviation airport that is operated for

the benefit of the general public, whether publicly owned or privately owned public use, shall, through its comprehensive plan and development regulations, discourage the siting of incompatible uses adjacent to such general aviation airport. Such plans and regulations may only be adopted or amended after formal consultation with: Airport owners and managers, private airport operators, general aviation pilots, ports, and the aviation division of the department of transportation. All proposed and adopted plans and regulations shall be filed with the aviation division of the department of transportation within a reasonable time after release for public consideration and comment. Each county, city, and town may obtain technical assistance from the aviation division of the department of transportation to develop plans and regulations consistent with this section.

Any additions or amendments to comprehensive plans or development regulations required by this section may be adopted during the normal course of land-use proceedings.

This section applies to every county, city, and town, whether operating under chapter 35.63, 35A.63, 36.70, [or] 36.70A RCW, or under a charter. [1996 c 239 § 2.]

**36.70.550 Official controls.** From time to time, the planning agency may, or if so requested by the board shall, cause to be prepared official controls which, when adopted by ordinance by the board, will further the objectives and goals of the comprehensive plan. The planning agency may also draft such regulations, programs and legislation as may, in its judgment, be required to preserve the integrity of the comprehensive plan and assure its systematic execution, and the planning agency may recommend such plans, regulations, programs and legislation to the board for adoption. [1963 c 4 § 36.70.550. Prior: 1959 c 201 § 55.]

**36.70.560 Official controls—Forms of controls.** Official controls may include:

(1) Maps showing the exact boundaries of zones within each of which separate controls over the type and degree of permissible land uses are defined;

(2) Maps for streets showing the exact alignment, gradients, dimensions and other pertinent features, and including specific controls with reference to protecting such accurately defined future rights of way against encroachment by buildings, other physical structures or facilities;

(3) Maps for other public facilities, such as parks, playgrounds, civic centers, etc., showing exact location, size, boundaries and other related features, including appropriate regulations protecting such future sites against encroachment by buildings and other physical structures or facilities;

(4) Specific regulations and controls pertaining to other subjects incorporated in the comprehensive plan or establishing standards and procedures to be employed in land development including, but not limited to, subdividing of land and the approval of land plats and the preservation of streets and lands for other public purposes requiring future dedication or acquisition and general design of physical improvements, and the encouragement and protection of access to direct sunlight for solar energy systems. [1979 ex.s. c 170 § 11; 1963 c 4 § 36.70.560. Prior: 1959 c 201 § 56.]

**Severability—1979 ex.s. c 170:** See note following RCW 64.04.140.

*"Solar energy system" defined:* RCW 36.70.025.

**36.70.570 Official controls—Adoption.** Official controls shall be adopted by ordinance and shall further the purpose and objectives of a comprehensive plan and parts thereof. [1963 c 4 § 36.70.570. Prior: 1959 c 201 § 57.]

**36.70.580 Official controls—Public hearing by commission.** Before recommending an official control or amendment to the board for adoption, the commission shall hold at least one public hearing. [1963 c 4 § 36.70.580. Prior: 1959 c 201 § 58.]

**36.70.590 Official controls—Notice of hearing.** Notice of the time, place and purpose of the hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county at least ten days before the hearing. The board may prescribe additional methods for providing notice. [1963 c 4 § 36.70.590. Prior: 1959 c 201 § 59.]

**36.70.600 Official controls—Recommendation to board—Required vote.** The recommendation to the board of any official control or amendments thereto by the planning agency shall be by the affirmative vote of not less than a majority of the total members of the commission. Such approval shall be by a recorded motion which shall incorporate the findings of fact of the commission and the reasons for its action and the motion shall refer expressly to the maps, descriptive and other matters intended by the commission to constitute the plan, or amendment, addition or extension thereto. The indication of approval by the commission shall be recorded on the map and descriptive matter by the signatures of the chairman and the secretary of the commission and of such others as the commission in its rules may designate. [1963 c 4 § 36.70.600. Prior: 1961 c 232 § 3; 1959 c 201 § 60.]

**36.70.610 Official controls—Reference to board.** A copy of any official control or amendment recommended pursuant to RCW 36.70.550, 36.70.560, 36.70.570 and 36.70.580 shall be submitted to the board not later than fourteen days following the action by the commission and shall be accompanied by the motion of the planning agency approving the same, together with a statement setting forth the factors considered at the hearing, and analysis of findings considered by the commission to be controlling. [1963 c 4 § 36.70.610. Prior: 1961 c 232 § 4; 1959 c 201 § 61.]

**36.70.620 Official controls—Action by board.** Upon receipt of any recommended official control or amendment thereto, the board shall at its next regular public meeting set the date for a public meeting where it may, by ordinance, adopt or reject the official control or amendment. [1963 c 4 § 36.70.620. Prior: 1959 c 201 § 62.]

**36.70.630 Official controls—Board to conduct hearing, adopt findings prior to incorporating changes in recommended control.** If after considering the matter at a public meeting as provided in RCW 36.70.620 the board deems a

change in the recommendations of the planning agency to be necessary, the change shall not be incorporated in the recommended control until the board shall conduct its own public hearing, giving notice thereof as provided in RCW 36.70.590, and it shall adopt its own findings of fact and statement setting forth the factors considered at the hearing and its own analysis of findings considered by it to be controlling. [1963 c 4 § 36.70.630. Prior: 1961 c 232 § 5; 1959 c 201 § 63.]

#### **36.70.640 Official controls—Board may initiate.**

When it deems it to be for the public interest, the board may initiate consideration of an ordinance establishing an official control, or amendments to an existing official control, including those specified in RCW 36.70.560. The board shall first refer the proposed official control or amendment to the planning agency for report which shall, thereafter, be considered and processed in the same manner as that set forth in RCW 36.70.630 regarding a change in the recommendation of the planning agency. [1963 c 4 § 36.70.640. Prior: 1959 c 201 § 64.]

**36.70.650 Board final authority.** The report and recommendation by the planning agency, whether on a proposed control initiated by it, whether on a matter referred back to it by the board for further report, or whether on a matter initiated by the board, shall be advisory only and the final determination shall rest with the board. [1963 c 4 § 36.70.650. Prior: 1959 c 201 § 65.]

**36.70.660 Procedures for adoption of controls limited to planning matters.** The provisions of this chapter with references to the procedures to be followed in the adoption of official controls shall apply only to establishing official controls pertaining to subjects set forth in RCW 36.70.560. [1963 c 4 § 36.70.660. Prior: 1959 c 201 § 66.]

**36.70.670 Enforcement—Official controls.** The board may determine and establish administrative rules and procedures for the application and enforcement of official controls, and may assign or delegate such administrative functions, powers and duties to such department or official as may be appropriate. [1963 c 4 § 36.70.670. Prior: 1959 c 201 § 67.]

**36.70.675 Child care facilities—Review of need and demand—Adoption of ordinances.** Each county that does not provide for the siting of family day care homes in zones that are designated for single family or other residential uses, and for the siting of mini-day care centers and day care centers in zones that are designated for any residential or commercial uses, shall conduct a review of the need and demand for child care facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 30, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the \*department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of

this review, if the findings indicate that such changes are necessary, or shall notify the \*department of community development as to why such implementing ordinances were not adopted. [1989 c 335 § 6.]

**\*Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994.

**Findings—Purpose—Severability—1989 c 335:** See notes following RCW 35.63.170.

**Definitions for RCW 36.70.675:** See RCW 35.63.170.

**36.70.677 Accessory apartments.** Any local government, as defined in RCW 43.63A.215, that is planning under this chapter shall comply with RCW 43.63A.215(3). [1993 c 478 § 10.]

**36.70.678 Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections—Mediation prior to appeal required.** A final decision by a hearing examiner involving a conditional or special use permit application under this chapter that is requested by a party that is licensed or certified by the department of social and health services or the department of corrections is subject to mediation under RCW 35.63.260 before an appeal may be filed. [1998 c 119 § 3.]

**36.70.680 Subdividing and platting.** The planning agency shall review all proposed land plats and subdivisions and make recommendations to the board thereon with reference to approving, or recommending any modifications necessary to assure conformance to the general purposes of the comprehensive plan and to standards and specifications established by state law or local controls. [1963 c 4 § 36.70.680. Prior: 1959 c 201 § 68.]

**36.70.690 County improvements.** No county shall improve any street or lay or authorize the laying of sewers or connections or other improvements to be laid in any street within any territory for which the board has adopted an official control in the form of precise street map or maps, until the matter has been referred to the planning agency by the department or official having jurisdiction for a report thereon and a copy of the report has been filed with the department or official making the reference unless one of the following conditions apply:

- (1) The street has been accepted, opened, or has otherwise received legal status of a public street;
- (2) It corresponds with and conforms to streets shown on the official controls applicable to the subject;
- (3) It corresponds with and conforms to streets shown on a subdivision (land plat) approved by the board. [1963 c 4 § 36.70.690. Prior: 1959 c 201 § 69.]

**36.70.700 Planning agency—Time limit for report.** Failure of the planning agency to report on the matters referred to in RCW 36.70.690 within forty days after the reference, or such longer period as may be designated by the board, department or official making the reference, shall be

deemed to be approval of such matter. [1963 c 4 § 36.70.700. Prior: 1959 c 201 § 70.]

**36.70.710 Final authority.** Reports and recommendations by the planning agency on all matters shall be advisory only, and final determination shall rest with the administrative body, official, or the board whichever has authority to decide under applicable law. [1963 c 4 § 36.70.710. Prior: 1959 c 201 § 71.]

**36.70.720 Prerequisite for zoning.** Zoning maps as an official control may be adopted only for areas covered by a comprehensive plan containing not less than a land use element and a circulation element. Zoning ordinances and maps adopted prior to June 10, 1959, are hereby validated, provided only that at the time of their enactment the comprehensive plan for the county existed according to law applicable at that time. [1963 c 4 § 36.70.720. Prior: 1959 c 201 § 72.]

**36.70.730 Text without map.** The text of a zoning ordinance may be prepared and adopted in the absence of a comprehensive plan providing no zoning map or portion of a zoning map may be adopted thereunder until there has been compliance with the provisions of RCW 36.70.720. [1963 c 4 § 36.70.730. Prior: 1959 c 201 § 73.]

**36.70.740 Zoning map—Progressive adoption.** Because of practical considerations, the total area of a county to be brought under the control of zoning may be divided into areas possessing geographical, topographical or urban identity and such divisions may be progressively and separately officially mapped. [1963 c 4 § 36.70.740. Prior: 1959 c 201 § 74.]

**36.70.750 Zoning—Types of regulations.** Any board, by ordinance, may establish classifications, within each of which, specific controls are identified, and which will:

(1) Regulate the use of buildings, structures, and land as between agriculture, industry, business, residence, and other purposes;

(2) Regulate location, height, bulk, number of stories and size of buildings and structures; the size of yards, courts, and other open spaces; the density of population; the percentage of a lot which may be occupied by buildings and structures; and the area required to provide off-street facilities for the parking of motor vehicles. [1963 c 4 § 36.70.750. Prior: 1959 c 201 § 75.]

**36.70.755 Residential care facilities—Review of need and demand—Adoption of ordinances.** Each county that does not provide for the siting of residential care facilities in zones that are designated for single family or other residential uses, shall conduct a review of the need and demand for the facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 30, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the \*department of community development by September 30, 1990.

(2004 Ed.)

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the \*department of community development as to why such implementing ordinances were not adopted. [1989 c 427 § 38.]

**\*Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994.

**Severability—1989 c 427:** See RCW 74.39.900.

**36.70.757 Family day-care provider's home facility—County may not prohibit in residential or commercial area—Conditions.** (1) Except as provided in subsections (2) and (3) of this section, no county may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's facility serving twelve or fewer children.

(2) A county may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the office of child care policy licensor as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care who work a nonstandard work shift.

(3) A county may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

(4) This section may not be construed to prohibit a county from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home serving twelve or fewer children in an area zoned for residential or commercial use, if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 74.15.020. [2003 c 286 § 2.]

**36.70.760 Establishing zones.** For the purpose set forth in RCW 36.70.750 the county may divide a county, or portions thereof, into zones which, by number, shape, area and classification are deemed to be best suited to carry out the purposes of this chapter. [1963 c 4 § 36.70.760. Prior: 1959 c 201 § 76.]

**36.70.770 All regulations shall be uniform in each zone.** All regulations shall be uniform in each zone, but the

regulations in one zone may differ from those in other zones. [1963 c 4 § 36.70.770. Prior: 1959 c 201 § 77.]

**36.70.780 Classifying unmapped areas.** After the adoption of the first map provided for in RCW 36.70.740, and pending the time that all property within a county can be precisely zoned through the medium of a zoning map, all properties not so precisely zoned by map shall be given a classification affording said properties such broad protective controls as may be deemed appropriate and necessary to serve public and private interests. Such controls shall be clearly set forth in the zoning ordinance in the form of a zone classification, and such classification shall apply to such areas until they shall have been included in the detailed zoning map in the manner provided for the adoption of a zoning map. [1963 c 4 § 36.70.780. Prior: 1959 c 201 § 78.]

**36.70.790 Interim zoning.** If the planning agency in good faith, is conducting or intends to conduct studies within a reasonable time for the purpose of, or is holding a hearing for the purpose of, or has held a hearing and has recommended to the board the adoption of any zoning map or amendment or addition thereto, or in the event that new territory for which no zoning may have been adopted as set forth in RCW 36.70.800 may be annexed to a county, the board, in order to protect the public safety, health and general welfare may, after report from the commission, adopt as an emergency measure a temporary interim zoning map the purpose of which shall be to so classify or regulate uses and related matters as constitute the emergency. [1963 c 4 § 36.70.790. Prior: 1959 c 201 § 79.]

**36.70.795 Moratoria, interim zoning controls—Public hearing—Limitation on length.** A board that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the board received a recommendation on the matter from the commission or department. If the board does not adopt findings of fact justifying its action before this hearing, then the board shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. [1992 c 207 § 4.]

**36.70.800 Procedural amendments—Zoning ordinance.** An amendment to the text of a zoning ordinance which does not impose, remove or modify any regulation theretofore existing and affecting the zoning status of land shall be processed in the same manner prescribed by this

chapter for the adoption of an official control except that no public hearing shall be required either by the commission or the board. [1963 c 4 § 36.70.800. Prior: 1959 c 201 § 80.]

**36.70.810 Board of adjustment—Authority.** The board of adjustment, subject to appropriate conditions and safeguards as provided by the zoning ordinance or the ordinance establishing the board of adjustment, if there be such, shall hear and decide:

(1) Applications for conditional uses or other permits when the zoning ordinance sets forth the specific uses to be made subject to conditional use permits and establishes criteria for determining the conditions to be imposed;

(2) Application for variances from the terms of the zoning ordinance: PROVIDED, That any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which subject property is situated, and that the following circumstances are found to apply;

(a) because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive subject property of rights and privileges enjoyed by other properties in the vicinity and under identical zone classification;

(b) that the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated.

(3) Appeals, where it is alleged by the applicant that there is error in any order, requirement, permit, decision, or determination made by an administrative official in the administration or enforcement of this chapter or any ordinance adopted pursuant to it. [1963 c 4 § 36.70.810. Prior: 1959 c 201 § 81.]

**36.70.820 Board of adjustment—Quasi judicial powers.** The board of adjustment may also exercise such other quasi judicial powers as may be granted by county ordinance. [1963 c 4 § 36.70.820. Prior: 1959 c 201 § 82.]

**36.70.830 Board of adjustment—Appeals—Time limit.** Appeals may be taken to the board of adjustment by any person aggrieved, or by any officer, department, board or bureau of the county affected by any decision of an administrative official. Such appeals shall be filed in writing in duplicate with the board of adjustment within twenty days of the date of the action being appealed. [1963 c 4 § 36.70.830. Prior: 1959 c 201 § 83.]

**36.70.840 Board of adjustment—Notice of time and place of hearing on conditional permit.** Upon the filing of an application for a conditional use permit or a variance as set forth in RCW 36.70.810, the board of adjustment shall set the time and place for a public hearing on such matter, and written notice thereof shall be addressed through the United States mail to all property owners of record within a radius of three hundred feet of the exterior boundaries of subject property. The written notice shall be mailed not less than twelve

days prior to the hearing. [1963 c 4 § 36.70.840. Prior: 1959 c 201 § 84.]

**36.70.850 Board of adjustment—Appeal—Notice of time and place.** Upon the filing of an appeal from an administrative determination, or from the action of the zoning adjustor, the board of adjustment shall set the time and place at which the matter will be considered. At least a ten day notice of such time and place together with one copy of the written appeal, shall be given to the official whose decision is being appealed. At least ten days notice of the time and place shall also be given to the adverse parties of record in the case. The officer from whom the appeal is being taken shall forthwith transmit to the board of adjustment all of the records pertaining to the decision being appealed from, together with such additional written report as he deems pertinent. [1963 c 4 § 36.70.850. Prior: 1959 c 201 § 85.]

**36.70.860 Board of adjustment—Scope of authority on appeal.** In exercising the powers granted by RCW 36.70.810 and 36.70.820, the board of adjustment may, in conformity with this chapter, reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as should be made and, to that end, shall have all the powers of the officer from whom the appeal is taken, insofar as the decision on the particular issue is concerned. [1963 c 4 § 36.70.860. Prior: 1959 c 201 § 86.]

**36.70.870 Zoning adjustor—Powers and duties.** If the office of zoning adjustor is established as provided in this chapter, all of the provisions of this chapter defining the powers, duties, and procedures of the board of adjustment shall also apply to the zoning adjustor. [1963 c 4 § 36.70.870. Prior: 1959 c 201 § 87.]

**36.70.880 Zoning adjustor—Action final unless appealed.** The action by the zoning adjustor on all matters coming before him shall be final and conclusive unless within ten days after the zoning adjustor has made his order, requirement, decision or determination, an appeal in writing is filed with the board of adjustment. Such an appeal may be taken by the original applicant, or by opponents of record in the case. [1963 c 4 § 36.70.880. Prior: 1959 c 201 § 88.]

**36.70.890 Board of adjustment—Action final—Writs.** The action by the board of adjustment on an application for a conditional use permit or a variance, or on an appeal from the decision of the zoning adjustor or an administrative officer shall be final and conclusive unless within ten days from the date of said action the original applicant or an adverse party makes application to a court of competent jurisdiction for a writ of certiorari, a writ of prohibition or a writ of mandamus. [1963 c 4 § 36.70.890. Prior: 1959 c 201 § 89.]

**36.70.900 Inclusion of findings of fact.** Both the board of adjustment and the zoning adjustor shall, in making an order, requirement, decision or determination, include in a

written record of the case the findings of fact upon which the action is based. [1963 c 4 § 36.70.900. Prior: 1959 c 201 § 90.]

**36.70.910 Short title.** This chapter shall be known as the "Planning Enabling Act of the State of Washington". [1963 c 4 § 36.70.910. Prior: 1959 c 201 § 91.]

**36.70.920 Duties and responsibilities imposed by other acts.** Any duties and responsibilities which by other acts are imposed upon a planning commission shall, after June 10, 1959, be performed by a planning agency however constituted. [1963 c 4 § 36.70.920. Prior: 1959 c 201 § 92.]

**36.70.930 Chapter alternative method.** This chapter shall not repeal, amend, or modify any other law providing for planning methods but shall be deemed an alternative method providing for such purpose. [1963 c 4 § 36.70.930. Prior: 1959 c 201 § 93.]

**36.70.940 Elective adoption.** Any county or counties presently operating under the provisions of chapter 35.63 RCW may elect to operate henceforth under the provisions of this chapter. Such election shall be effected by the adoption of an ordinance under the procedure prescribed by RCW 36.32.120(7), and by compliance with the provisions of this chapter. [1963 c 4 § 36.70.940. Prior: 1959 c 201 § 94.]

**36.70.970 Hearing examiner system—Adoption authorized—Alternative—Functions—Procedures.** (1) As an alternative to those provisions of this chapter relating to powers or duties of the planning commission to hear and issue recommendations on applications for plat approval and applications for amendments to the zoning ordinance, the county legislative authority may adopt a hearing examiner system under which a hearing examiner or hearing examiners may hear and issue decisions on proposals for plat approval and for amendments to the zoning ordinance when the amendment which is applied for is not of general applicability. In addition, the legislative authority may vest in a hearing examiner the power to hear and decide those issues it believes should be reviewed and decided by a hearing examiner, including but not limited to:

- (a) Applications for conditional uses, variances, shoreline permits, or any other class of applications for or pertaining to development of land or land use;
- (b) Appeals of administrative decisions or determinations; and
- (c) Appeals of administrative decisions or determinations pursuant to chapter 43.21C RCW.

The legislative authority shall prescribe procedures to be followed by a hearing examiner.

Any county which vests in a hearing examiner the authority to hear and decide conditional uses and variances shall not be required to have a zoning adjustor or board of adjustment.

(2) Each county legislative authority electing to use a hearing examiner pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. Such legal effect may vary for the different classes of

applications decided by the examiner but shall include one of the following:

(a) The decision may be given the effect of a recommendation to the legislative authority;

(b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative authority; or

(c) Except in the case of a rezone, the decision may be given the effect of a final decision of the legislative authority.

(3) Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the county's comprehensive plan and the county's development regulations. Each final decision of a hearing examiner, unless a longer period is mutually agreed to in writing by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings. [1995 c 347 § 425; 1994 c 257 § 9; 1977 ex.s. c 213 § 3.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**Severability—1977 ex.s. c 213:** See note following RCW 35.63.130.

**36.70.980 Conformance with chapter 43.97 RCW required.** With respect to the National Scenic Area, as defined in the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a county or city pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the Interstate Compact adopted by RCW 43.97.015, and with the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact. [1987 c 499 § 9.]

**36.70.982 Fish enhancement projects—County's liability.** A county is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of RCW 77.55.290 and has been permitted by the department of fish and wildlife. [2003 c 39 § 19; 1998 c 249 § 8.]

**Findings—Purpose—Report—Effective date—1998 c 249:** See notes following RCW 77.55.290.

**36.70.990 Treatment of residential structures occupied by persons with handicaps.** No county may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602). [1993 c 478 § 22.]

**36.70.992 Watershed restoration projects—Permit processing—Fish habitat enhancement project.** A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat

enhancement project meeting the criteria of RCW 77.55.290(1) shall be reviewed and approved according to the provisions of RCW 77.55.290. [2003 c 39 § 20; 1998 c 249 § 7; 1995 c 378 § 10.]

**Findings—Purpose—Report—Effective date—1998 c 249:** See notes following RCW 77.55.290.

## Chapter 36.70A RCW

### GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES

#### Sections

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*Building permits—Evidence of adequate water supply required: RCW 19.27.097.*

*Expediting completion of industrial projects of statewide significance—Requirements of agreements: RCW 43.157.020.*

*Impact fees: RCW 82.02.050 through 82.02.100.*

*Population forecasts: RCW 43.62.035.*

*Regional transportation planning: Chapter 47.80 RCW.*

*Subdivision and short subdivision requirements: RCW 58.17.060, 58.17.110.*

**36.70A.010 Legislative findings.** The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth. [1990 1st ex.s. c 17 § 1.]

**36.70A.011 Findings—Rural lands.** The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The leg-

islature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.

Finally, the legislature finds that in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life. [2002 c 212 § 1.]

**36.70A.020 Planning goals.** The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

(5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the con-

servation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

(9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

(13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance. [2002 c 154 § 1; 1990 1st ex.s. c 17 § 2.]

**36.70A.030 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by \*RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.

(6) "Department" means the department of community, trade, and economic development.

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under \*RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

(9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(11) "Minerals" include gravel, sand, and valuable metallic substances.

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(14) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(15) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preserva-

tion of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(16) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(17) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(18) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

(19) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(20) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. [1997 c 429 § 3; 1995 c 382 § 9. Prior: 1994 c 307 § 2; 1994 c 257 § 5; 1990 1st ex.s. c 17 § 3.]

**\*Reviser's note:** RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Finding—Intent—1994 c 307:** "The legislature finds that it is in the public interest to identify and provide long-term conservation of those pro-

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ductive natural resource lands that are critical to and can be managed economically and practically for long-term commercial production of food, fiber, and minerals. Successful achievement of the natural resource industries' goal set forth in RCW 36.70A.020 requires the conservation of a land base sufficient in size and quality to maintain and enhance those industries and the development and use of land use techniques that discourage uses incompatible to the management of designated lands. The 1994 amendment to RCW 36.70A.030(8) (section 2(8), chapter 307, Laws of 1994) is intended to clarify legislative intent regarding the designation of forest lands and is not intended to require every county that has already complied with the interim forest land designation requirement of RCW 36.70A.170 to review its actions until the adoption of its comprehensive plans and development regulations as provided in RCW 36.70A.060(3)." [1994 c 307 § 1.]

**Effective date—1994 c 257 § 5:** "Section 5 of this act shall take effect July 1, 1994." [1994 c 257 § 25.]

**Severability—1994 c 257:** See note following RCW 36.70A.270.

### 36.70A.035 Public participation—Notice provisions.

(1) The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulation. Examples of reasonable notice provisions include:

- (a) Posting the property for site-specific proposals;
- (b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;
- (c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;
- (d) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and
- (e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

(2)(a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.

(b) An additional opportunity for public review and comment is not required under (a) of this subsection if:

- (i) An environmental impact statement has been prepared under chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;
- (ii) The proposed change is within the scope of the alternatives available for public comment;
- (iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.

(3) This section is prospective in effect and does not apply to a comprehensive plan, development regulation, or amendment adopted before July 27, 1997. [1999 c 315 § 708; 1997 c 429 § 9.]

**Part headings and captions not law—1999 c 315:** See RCW 28A.315.901.

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**36.70A.040 Who must plan—Summary of requirements—Development regulations must implement comprehensive plans.** (1) Each county that has both a population of fifty thousand or more and, until May 16, 1995, has had its population increase by more than ten percent in the previous ten years or, on or after May 16, 1995, has had its population increase by more than seventeen percent in the previous ten years, and the cities located within such county, and any other county regardless of its population that has had its population increase by more than twenty percent in the previous ten years, and the cities located within such county, shall conform with all of the requirements of this chapter. However, the county legislative authority of such a county with a population of less than fifty thousand population may adopt a resolution removing the county, and the cities located within the county, from the requirements of adopting comprehensive land use plans and development regulations under this chapter if this resolution is adopted and filed with the department by December 31, 1990, for counties initially meeting this set of criteria, or within sixty days of the date the office of financial management certifies that a county meets this set of criteria under subsection (5) of this section. For the purposes of this subsection, a county not currently planning under this chapter is not required to include in its population count those persons confined in a correctional facility under the jurisdiction of the department of corrections that is located in the county.

Once a county meets either of these sets of criteria, the requirement to conform with all of the requirements of this chapter remains in effect, even if the county no longer meets one of these sets of criteria.

(2) The county legislative authority of any county that does not meet either of the sets of criteria established under subsection (1) of this section may adopt a resolution indicating its intention to have subsection (1) of this section apply to the county. Each city, located in a county that chooses to plan under this subsection, shall conform with all of the requirements of this chapter. Once such a resolution has been adopted, the county and the cities located within the county remain subject to all of the requirements of this chapter.

(3) Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall designate critical areas, agricultural lands, forest lands, and mineral resource lands, and adopt development regulations con-

serving these designated agricultural lands, forest lands, and mineral resource lands and protecting these designated critical areas, under RCW 36.70A.170 and 36.70A.060; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; (d) if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan on or before July 1, 1994, and if the county has a population of less than fifty thousand, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan by January 1, 1995, but if the governor makes written findings that a county with a population of less than fifty thousand or a city located within such a county is not making reasonable progress toward adopting a comprehensive plan and development regulations the governor may reduce this deadline for such actions to be taken by no more than one hundred eighty days. Any county or city subject to this subsection may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(4) Any county or city that is required to conform with all the requirements of this chapter, as a result of the county legislative authority adopting its resolution of intention under subsection (2) of this section, shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city that is located within the county shall adopt development regulations conserving agricultural lands, forest lands, and mineral resource lands it designated under RCW 36.70A.060 within one year of the date the county legislative authority adopts its resolution of intention; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city that is located within the county shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan not later than four years from the date the county legislative authority adopts its resolution of intention, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(5) If the office of financial management certifies that the population of a county that previously had not been required to plan under subsection (1) or (2) of this section has changed sufficiently to meet either of the sets of criteria specified under subsection (1) of this section, and where applicable, the county legislative authority has not adopted a resolution removing the county from these requirements as provided in subsection (1) of this section, the county and each city within such county shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the

county and each city located within the county shall adopt development regulations under RCW 36.70A.060 conserving agricultural lands, forest lands, and mineral resource lands it designated within one year of the certification by the office of financial management; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city located within the county shall adopt a comprehensive land use plan and development regulations that are consistent with and implement the comprehensive plan within four years of the certification by the office of financial management, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(6) A copy of each document that is required under this section shall be submitted to the department at the time of its adoption.

(7) Cities and counties planning under this chapter must amend the transportation element of the comprehensive plan to be in compliance with this chapter and chapter 47.80 RCW no later than December 31, 2000. [2000 c 36 § 1; 1998 c 171 § 1; 1995 c 400 § 1; 1993 sp.s. c 6 § 1; 1990 1st ex.s. c 17 § 4.]

**Effective date—1995 c 400:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 16, 1995]." [1995 c 400 § 6.]

**Effective date—1993 sp.s. c 6:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1993." [1993 sp.s. c 6 § 7.]

**36.70A.045 Phasing of comprehensive plan submittal.** The department may adopt a schedule to permit phasing of comprehensive plan submittal for counties and cities planning under RCW 36.70A.040. This schedule shall not permit a comprehensive plan to be submitted greater than one hundred eighty days past the date that the plan was required to be submitted and shall be used to facilitate expeditious review and interjurisdictional coordination of comprehensive plans and development regulations. [1991 sp.s. c 32 § 15.]

**36.70A.050 Guidelines to classify agriculture, forest, and mineral lands and critical areas.** (1) Subject to the definitions provided in RCW 36.70A.030, the department shall adopt guidelines, under chapter 34.05 RCW, no later than September 1, 1990, to guide the classification of: (a) Agricultural lands; (b) forest lands; (c) mineral resource lands; and (d) critical areas. The department shall consult with the department of agriculture regarding guidelines for agricultural lands, the department of natural resources regarding forest lands and mineral resource lands, and the department of ecology regarding critical areas.

(2) In carrying out its duties under this section, the department shall consult with interested parties, including but not limited to: (a) Representatives of cities; (b) representatives of counties; (c) representatives of developers; (d) representatives of builders; (e) representatives of owners of agricultural lands, forest lands, and mining lands; (f) representatives of local economic development officials; (g)

representatives of environmental organizations; (h) representatives of special districts; (i) representatives of the governor's office and federal and state agencies; and (j) representatives of Indian tribes. In addition to the consultation required under this subsection, the department shall conduct public hearings in the various regions of the state. The department shall consider the public input obtained at such public hearings when adopting the guidelines.

(3) The guidelines under subsection (1) of this section shall be minimum guidelines that apply to all jurisdictions, but also shall allow for regional differences that exist in Washington state. The intent of these guidelines is to assist counties and cities in designating the classification of agricultural lands, forest lands, mineral resource lands, and critical areas under RCW 36.70A.170.

(4) The guidelines established by the department under this section regarding classification of forest lands shall not be inconsistent with guidelines adopted by the department of natural resources. [1990 1st ex.s. c 17 § 5.]

**36.70A.060 Natural resource lands and critical areas—Development regulations.** (1) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals. Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may

alter such designations and development regulations to insure consistency.

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights. [1998 c 286 § 5; 1991 sp.s. c 32 § 21; 1990 1st ex.s. c 17 § 6.]

**36.70A.070 Comprehensive plans—Mandatory elements.** The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs

and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv)

of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(14). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(14). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominantly by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's six-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned

transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the six-year improvement program developed by the department of transportation as required by RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6) "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(c) The transportation element described in this subsection (6), and the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. The element shall include: (a) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate; (b) a summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, work force, housing, and natural/cultural resources; and (c) an identification of policies, programs, and projects to foster economic growth and development and to address future needs. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130. [2004 c 196 § 1; 2003 c 152 § 1. Prior: 2002 c 212 § 2; 2002 c 154 § 2; 1998 c 171 § 2; 1997 c 429 § 7; 1996 c 239 § 1; prior: 1995 c 400 § 3; 1995 c 377 § 1; 1990 1st ex.s. c 17 § 7.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Construction—Application—1995 c 400:** "A comprehensive plan adopted or amended before May 16, 1995, shall be considered to be in compliance with RCW 36.70A.070 or 36.70A.110, as in effect before their amendment by this act, if the comprehensive plan is in compliance with RCW 36.70A.070 and 36.70A.110 as amended by this act. This section shall not be construed to alter the relationship between a county-wide planning policy and comprehensive plans as specified under RCW 36.70A.210.

As to any appeal relating to compliance with RCW 36.70A.070 or 36.70A.110 pending before a growth management hearings board on May 16, 1995, the board may take up to an additional ninety days to resolve such appeal. By mutual agreement of all parties to the appeal, this additional ninety-day period may be extended." [1995 c 400 § 4.]

**Effective date—1995 c 400:** See note following RCW 36.70A.040.

**36.70A.080 Comprehensive plans—Optional elements.** (1) A comprehensive plan may include additional elements, items, or studies dealing with other subjects relating to the physical development within its jurisdiction, including, but not limited to:

- (a) Conservation;
- (b) Solar energy; and
- (c) Recreation.

(2) A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan. [1990 1st ex.s. c 17 § 8.]

**36.70A.090 Comprehensive plans—Innovative techniques.** A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights. [1990 1st ex.s. c 17 § 9.]

**36.70A.100 Comprehensive plans—Must be coordinated.** The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues. [1990 1st ex.s. c 17 § 10.]

**36.70A.103 State agencies required to comply with comprehensive plans.** State agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter except as otherwise provided in RCW 71.09.250 (1) through (3), 71.09.342, and 72.09.333.

The provisions of chapter 12, Laws of 2001 2nd sp. sess. do not affect the state's authority to site any other essential public facility under RCW 36.70A.200 in conformance with local comprehensive plans and development regulations adopted pursuant to chapter 36.70A RCW. [2002 c 68 § 15; 2001 2nd sp.s. c 12 § 203; 1991 sp.s. c 32 § 4.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**36.70A.106 Comprehensive plans—Development regulations—Transmittal to state—Amendments—Expedited review.** (1) Each county and city proposing adoption of a comprehensive plan or development regulations under this chapter shall notify the department of its intent to adopt such plan or regulations at least sixty days prior to final adoption. State agencies including the department may provide comments to the county or city on the proposed comprehensive plan, or proposed development regulations, during the public review process prior to adoption.

(2) Each county and city planning under this chapter shall transmit a complete and accurate copy of its comprehensive plan or development regulations to the department within ten days after final adoption.

(3)(a) Any amendments for permanent changes to a comprehensive plan or development regulation that are proposed by a county or city to its adopted plan or regulations shall be submitted to the department in the same manner as initial plans and development regulations under this section. Any amendments to a comprehensive plan or development regulations that are adopted by a county or city shall be transmitted to the department in the same manner as the initial plans and regulations under this section.

(b) Each county and city planning under this chapter may request expedited review for any amendments for permanent changes to a development regulation. Upon receiving a request for expedited review, and after consultation with other state agencies, the department may grant expedited review if the department determines that expedited review does not compromise the state's ability to provide timely comments related to compliance with the goals and requirements of this chapter or on other matters of state interest. Cities and counties may adopt amendments for permanent changes to a development regulation immediately following the granting of the request for expedited review by the department. [2004 c 197 § 1; 1991 sp.s. c 32 § 8.]

**36.70A.110 Comprehensive plans—Urban growth areas.** (1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area

may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve.

Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. In the case of urban growth areas contained totally within a national historical reserve, the city may restrict densities, intensities, and forms of urban growth as determined to be necessary and appropriate to protect the physical, cultural, or historic integrity of the reserve. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those lim-

ited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

(5) On or before October 1, 1993, each county that was initially required to plan under RCW 36.70A.040(1) shall adopt development regulations designating interim urban growth areas under this chapter. Within three years and three months of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall adopt development regulations designating interim urban growth areas under this chapter. Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110. Such action may be appealed to the appropriate growth management hearings board under RCW 36.70A.280. Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

(6) Each county shall include designations of urban growth areas in its comprehensive plan.

(7) An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county. [2004 c 206 § 1; 2003 c 299 § 5; 1997 c 429 § 24; 1995 c 400 § 2; 1994 c 249 § 27; 1993 sp.s. c 6 § 2; 1991 sp.s. c 32 § 29; 1990 1st ex.s. c 17 § 11.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Construction—Application—1995 c 400:** See note following RCW 36.70A.070.

**Effective date—1995 c 400:** See note following RCW 36.70A.040.

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**Effective date—1993 sp.s. c 6:** See note following RCW 36.70A.040.

**36.70A.115 Comprehensive plans and development regulations must provide sufficient land capacity for development.** Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management. [2003 c 333 § 1.]

**36.70A.120 Planning activities and capital budget decisions—Implementation in conformity with comprehensive plan.** Each county and city that is required or chooses to plan under RCW 36.70A.040 shall perform its activities and make capital budget decisions in conformity with its comprehensive plan. [1993 sp.s. c 6 § 3; 1990 1st ex.s. c 17 § 12.]

**Effective date—1993 sp.s. c 6:** See note following RCW 36.70A.040.

**36.70A.130 Comprehensive plans—Review—Amendments.** (1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. A county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the time periods specified in subsection (4) of this section. A county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the time periods specified in subsection (4) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore. The review and evaluation required by this subsection may be combined with the review required by subsection (3) of this section. The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(b) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the time periods specified in subsection (4) of this section. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan that does not modify the comprehensive plan policies and designations applicable to the subarea;

(ii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW; and

(iii) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with a growth management hearings board or with the court.

(3) Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas. The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

(4) The department shall establish a schedule for counties and cities to take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter. The schedule established by the department shall provide for the reviews and evaluations to be completed as follows:

(a) On or before December 1, 2004, and every seven years thereafter, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(b) On or before December 1, 2005, and every seven years thereafter, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(c) On or before December 1, 2006, and every seven years thereafter, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before December 1, 2007, and every seven years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the time limits established in subsection (4) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

(b) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.

(6) A county or city subject to the time periods in subsection (4)(a) of this section that, pursuant to an ordinance adopted by the county or city establishing a schedule for periodic review of its comprehensive plan and development regulations, has conducted a review and evaluation of its comprehensive plan and development regulations and, on or after January 1, 2001, has taken action in response to that review and evaluation shall be deemed to have conducted the first review required by subsection (4)(a) of this section. Subse-

quent review and evaluation by the county or city of its comprehensive plan and development regulations shall be conducted in accordance with the time periods established under subsection (4)(a) of this section.

(7) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities in compliance with the schedules in this section shall have the requisite authority to receive grants, loans, pledges, or financial guarantees from those accounts established in RCW 43.155.050 and 70.146.030. Only those counties and cities in compliance with the schedules in this section shall receive preference for grants or loans subject to the provisions of RCW 43.17.250. [2002 c 320 § 1; 1997 c 429 § 10; 1995 c 347 § 106; 1990 1st ex.s. c 17 § 13.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

*RCW 36.70A.130(2) does not apply to master planned locations in industrial land banks: RCW 36.70A.367(5).*

**36.70A.131 Mineral resource lands—Review of related designations and development regulations.** As part of the review required by RCW 36.70A.130(1), a county or city shall review its mineral resource lands designations adopted pursuant to RCW 36.70A.170 and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060. In its review, the county or city shall take into consideration:

(1) New information made available since the adoption or last review of its designations or development regulations, including data available from the department of natural resources relating to mineral resource deposits; and

(2) New or modified model development regulations for mineral resource lands prepared by the department of natural resources, the department of community, trade, and economic development, or the Washington state association of counties. [1998 c 286 § 7.]

**36.70A.140 Comprehensive plans—Ensure public participation.** Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. In enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order. Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan

or development regulations invalid if the spirit of the program and procedures is observed. [1995 c 347 § 107; 1990 1st ex.s. c 17 § 14.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**36.70A.150 Identification of lands useful for public purposes.** Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify lands useful for public purposes such as utility corridors, transportation corridors, landfills, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. The county shall work with the state and the cities within its borders to identify areas of shared need for public facilities. The jurisdictions within the county shall prepare a prioritized list of lands necessary for the identified public uses including an estimated date by which the acquisition will be needed.

The respective capital acquisition budgets for each jurisdiction shall reflect the jointly agreed upon priorities and time schedule. [1991 c 322 § 23; 1990 1st ex.s. c 17 § 15.]

**Findings—Intent—1991 c 322:** See notes following RCW 86.12.200.

**36.70A.160 Identification of open space corridors—Purchase authorized.** Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Identification of a corridor under this section by a county or city shall not restrict the use or management of lands within the corridor for agricultural or forest purposes. Restrictions on the use or management of such lands for agricultural or forest purposes imposed after identification solely to maintain or enhance the value of such lands as a corridor may occur only if the county or city acquires sufficient interest to prevent development of the lands or to control the resource development of the lands. The requirement for acquisition of sufficient interest does not include those corridors regulated by the interstate commerce commission, under provisions of 16 U.S.C. Sec. 1247(d), 16 U.S.C. Sec. 1248, or 43 U.S.C. Sec. 912. Nothing in this section shall be interpreted to alter the authority of the state, or a county or city, to regulate land use activities.

The city or county may acquire by donation or purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources. [1992 c 227 § 1; 1990 1st ex.s. c 17 § 16.]

**36.70A.165 Property designated as greenbelt or open space—Not subject to adverse possession.** The legislature recognizes that the preservation of urban greenbelts is an integral part of comprehensive growth management in Washington. The legislature further recognizes that certain greenbelts are subject to adverse possession action which, if carried out, threaten the comprehensive nature of this chapter. Therefore, a party shall not acquire by adverse possession property that is designated as a plat greenbelt or open space

area or that is dedicated as open space to a public agency or to a bona fide homeowner's association. [1997 c 429 § 41.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**36.70A.170 Natural resource lands and critical areas—Designations.** (1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:

(a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products;

(b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;

(c) Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals; and

(d) Critical areas.

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050. [1990 1st ex.s. c 17 § 17.]

**36.70A.172 Critical areas—Designation and protection—Best available science to be used.** (1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, a growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW 36.70A.290 that involves critical areas. [1995 c 347 § 105.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**36.70A.175 Wetlands to be delineated in accordance with manual.** Wetlands regulated under development regulations adopted pursuant to this chapter shall be delineated in accordance with the manual adopted by the department pursuant to RCW 90.58.380. [1995 c 382 § 12.]

**36.70A.177 Agricultural lands—Innovative zoning techniques—Accessory uses.** (1) A county or a city may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170. The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy. A county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

(2) Innovative zoning techniques a county or city may consider include, but are not limited to:

(a) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses that support, pro-

mote, or sustain agricultural operations and production, as provided in subsection (3) of this section;

(b) Cluster zoning, which allows new development on one portion of the land, leaving the remainder in agricultural or open space uses;

(c) Large lot zoning, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;

(d) Quarter/quarter zoning, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land; and

(e) Sliding scale zoning, which allows the number of lots for single-family residential purposes with a minimum lot size of one acre to increase inversely as the size of the total acreage increases.

(3)(a) Accessory uses allowed under subsection (2)(a) of this section shall comply with the following:

(i) Accessory uses shall be located, designed, and operated so as not to interfere with natural resource land uses and shall be accessory to the growing of crops or raising of animals;

(ii) Accessory commercial or retail uses shall predominately produce, store, or sell regionally produced agricultural products from one or more producers, products derived from regional agricultural production, agriculturally related experiences, or products produced on-site. Accessory commercial and retail uses shall offer for sale predominantly products or services produced on-site; and

(iii) Accessory uses may operate out of existing or new buildings with parking and other supportive uses consistent with the size and scale of existing agricultural buildings on the site but shall not otherwise convert agricultural land to nonagricultural uses.

(b) Accessory uses may include compatible commercial or retail uses including, but not limited to:

(i) Storage and refrigeration of regional agricultural products;

(ii) Production, sales, and marketing of value-added agricultural products derived from regional sources;

(iii) Supplemental sources of on-farm income that support and sustain on-farm agricultural operations and production;

(iv) Support services that facilitate the production, marketing, and distribution of agricultural products; and

(v) Off-farm and on-farm sales and marketing of predominately regional agricultural products and experiences, locally made art and arts and crafts, and ancillary retail sales or service activities. [2004 c 207 § 1; 1997 c 429 § 23.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**36.70A.180 Report on planning progress.** (1) It is the intent of the legislature that counties and cities required to adopt a comprehensive plan under RCW 36.70A.040(1) begin implementing this chapter on or before July 1, 1990, including but not limited to: (a) Inventorying, designating, and conserving agricultural, forest, and mineral resource lands, and critical areas; and (b) considering the modification or adoption of comprehensive land use plans and development regulations implementing the comprehensive land use plans. It is also the intent of the legislature that funds be made

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available to counties and cities beginning July 1, 1990, to assist them in meeting the requirements of this chapter.

(2) Each county and city that adopts a plan under RCW 36.70A.040 (1) or (2) shall report to the department annually for a period of five years, beginning on January 1, 1991, and each five years thereafter, on the progress made by that county or city in implementing this chapter. [1990 1st ex.s. c 17 § 19.]

**36.70A.190 Technical assistance, procedural criteria, grants, and mediation services.** (1) The department shall establish a program of technical and financial assistance and incentives to counties and cities to encourage and facilitate the adoption and implementation of comprehensive plans and development regulations throughout the state.

(2) The department shall develop a priority list and establish funding levels for planning and technical assistance grants both for counties and cities that plan under RCW 36.70A.040. Priority for assistance shall be based on a county's or city's population growth rates, commercial and industrial development rates, the existence and quality of a comprehensive plan and development regulations, and other relevant factors.

(3) The department shall develop and administer a grant program to provide direct financial assistance to counties and cities for the preparation of comprehensive plans under this chapter. The department may establish provisions for county and city matching funds to conduct activities under this subsection. Grants may be expended for any purpose directly related to the preparation of a county or city comprehensive plan as the county or city and the department may agree, including, without limitation, the conducting of surveys, inventories and other data gathering and management activities, the retention of planning consultants, contracts with regional councils for planning and related services, and other related purposes.

(4) The department shall establish a program of technical assistance:

(a) Utilizing department staff, the staff of other state agencies, and the technical resources of counties and cities to help in the development of comprehensive plans required under this chapter. The technical assistance may include, but not be limited to, model land use ordinances, regional education and training programs, and information for local and regional inventories; and

(b) Adopting by rule procedural criteria to assist counties and cities in adopting comprehensive plans and development regulations that meet the goals and requirements of this chapter. These criteria shall reflect regional and local variations and the diversity that exists among different counties and cities that plan under this chapter.

(5) The department shall provide mediation services to resolve disputes between counties and cities regarding, among other things, coordination of regional issues and designation of urban growth areas.

(6) The department shall provide planning grants to enhance citizen participation under RCW 36.70A.140. [1991 sp.s. c 32 § 3; 1990 1st ex.s. c 17 § 20.]

**36.70A.200 Siting of essential public facilities—Limitation on liability.** (1) The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

(2) Each county and city planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process, or amend its existing process, for identifying and siting essential public facilities and adopt or amend its development regulations as necessary to provide for the siting of secure community transition facilities consistent with statutory requirements applicable to these facilities.

(3) Any city or county not planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process for siting secure community transition facilities and adopt or amend its development regulations as necessary to provide for the siting of such facilities consistent with statutory requirements applicable to these facilities.

(4) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list.

(5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

(6) No person may bring a cause of action for civil damages based on the good faith actions of any county or city to provide for the siting of secure community transition facilities in accordance with this section and with the requirements of chapter 12, Laws of 2001 2nd sp. sess. For purposes of this subsection, "person" includes, but is not limited to, any individual, agency as defined in RCW 42.17.020, corporation, partnership, association, and limited liability entity.

(7) Counties or cities siting facilities pursuant to subsection (2) or (3) of this section shall comply with RCW 71.09.341.

(8) The failure of a county or city to act by the deadlines established in subsections (2) and (3) of this section is not:

(a) A condition that would disqualify the county or city for grants, loans, or pledges under RCW 43.155.070 or 70.146.070;

(b) A consideration for grants or loans provided under RCW 43.17.250(2); or

(c) A basis for any petition under RCW 36.70A.280 or for any private cause of action. [2002 c 68 § 2; 2001 2nd sp.s. c 12 § 205; 1998 c 171 § 3; 1991 sp.s. c 32 § 1.]

**Purpose—2002 c 68:** "The purpose of this act is to:

(1) Enable the legislature to act upon the recommendations of the joint select committee on the equitable distribution of secure community transition facilities established in section 225, chapter 12, Laws of 2001 2nd sp. sess.; and

(2) Harmonize the preemption provisions in RCW 71.09.250 with the preemption provisions applying to future secure community transition facilities to reflect the joint select committee's recommendation that the preemption granted for future secure community transition facilities be the same throughout the state." [2002 c 68 § 1.]

**Severability—2002 c 68:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 68 § 19.]

**Effective date—2002 c 68:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 21, 2002]." [2002 c 68 § 20.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**36.70A.210 County-wide planning policies.** (1) The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. For the purposes of this section, a "county-wide planning policy" is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities.

(2) The legislative authority of a county that plans under RCW 36.70A.040 shall adopt a county-wide planning policy in cooperation with the cities located in whole or in part within the county as follows:

(a) No later than sixty calendar days from July 16, 1991, the legislative authority of each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040 shall convene a meeting with representatives of each city located within the county for the purpose of establishing a collaborative process that will provide a framework for the adoption of a county-wide planning policy. In other counties that are required or choose to plan under RCW 36.70A.040, this meeting shall be convened no later than sixty days after the date the county adopts its resolution of intention or was certified by the office of financial management.

(b) The process and framework for adoption of a county-wide planning policy specified in (a) of this subsection shall determine the manner in which the county and the cities agree to all procedures and provisions including but not limited to desired planning policies, deadlines, ratification of final agreements and demonstration thereof, and financing, if any, of all activities associated therewith.

(c) If a county fails for any reason to convene a meeting with representatives of cities as required in (a) of this subsection, the governor may immediately impose any appropriate sanction or sanctions on the county from those specified under RCW 36.70A.340.

(d) If there is no agreement by October 1, 1991, in a county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or if there is no agreement within one hundred twenty days of the date the county adopted its resolution of intention or was certified by the office of financial management in any other county that is required or chooses to plan under RCW 36.70A.040, the governor shall first inquire of the jurisdictions as to the reason or reasons for failure to reach an agreement. If the governor deems it appropriate, the governor may immediately request the assistance of the department of community, trade, and economic development to mediate any disputes that preclude

agreement. If mediation is unsuccessful in resolving all disputes that will lead to agreement, the governor may impose appropriate sanctions from those specified under RCW 36.70A.340 on the county, city, or cities for failure to reach an agreement as provided in this section. The governor shall specify the reason or reasons for the imposition of any sanction.

(e) No later than July 1, 1992, the legislative authority of each county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or no later than fourteen months after the date the county adopted its resolution of intention or was certified by the office of financial management the county legislative authority of any other county that is required or chooses to plan under RCW 36.70A.040, shall adopt a county-wide planning policy according to the process provided under this section and that is consistent with the agreement pursuant to (b) of this subsection, and after holding a public hearing or hearings on the proposed county-wide planning policy.

(3) A county-wide planning policy shall at a minimum, address the following:

(a) Policies to implement RCW 36.70A.110;

(b) Policies for promotion of contiguous and orderly development and provision of urban services to such development;

(c) Policies for siting public capital facilities of a county-wide or statewide nature, including transportation facilities of statewide significance as defined in RCW 47.06.140;

(d) Policies for county-wide transportation facilities and strategies;

(e) Policies that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution;

(f) Policies for joint county and city planning within urban growth areas;

(g) Policies for county-wide economic development and employment; and

(h) An analysis of the fiscal impact.

(4) Federal agencies and Indian tribes may participate in and cooperate with the county-wide planning policy adoption process. Adopted county-wide planning policies shall be adhered to by state agencies.

(5) Failure to adopt a county-wide planning policy that meets the requirements of this section may result in the imposition of a sanction or sanctions on a county or city within the county, as specified in RCW 36.70A.340. In imposing a sanction or sanctions, the governor shall specify the reasons for failure to adopt a county-wide planning policy in order that any imposed sanction or sanctions are fairly and equitably related to the failure to adopt a county-wide planning policy.

(6) Cities and the governor may appeal an adopted county-wide planning policy to the growth management hearings board within sixty days of the adoption of the county-wide planning policy.

(7) Multicounty planning policies shall be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous urban areas and may be adopted by other counties, according to the process established under this section or other processes agreed to among the counties and cities within the affected counties through-

out the multicounty region. [1998 c 171 § 4; 1994 c 249 § 28; 1993 sp.s. c 6 § 4; 1991 sp.s. c 32 § 2.]

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**Effective date—1993 sp.s. c 6:** See note following RCW 36.70A.040.

**36.70A.215 Review and evaluation program.** (1) Subject to the limitations in subsection (7) of this section, a county shall adopt, in consultation with its cities, county-wide planning policies to establish a review and evaluation program. This program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130, and 36.70A.210. In developing and implementing the review and evaluation program required by this section, the county and its cities shall consider information from other appropriate jurisdictions and sources. The purpose of the review and evaluation program shall be to:

(a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and

(b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.

(2) The review and evaluation program shall:

(a) Encompass land uses and activities both within and outside of urban growth areas and provide for annual collection of data on urban and rural land uses, development, critical areas, and capital facilities to the extent necessary to determine the quantity and type of land suitable for development, both for residential and employment-based activities;

(b) Provide for evaluation of the data collected under (a) of this subsection every five years as provided in subsection (3) of this section. The first evaluation shall be completed not later than September 1, 2002. The county and its cities may establish in the county-wide planning policies indicators, benchmarks, and other similar criteria to use in conducting the evaluation;

(c) Provide for methods to resolve disputes among jurisdictions relating to the county-wide planning policies required by this section and procedures to resolve inconsistencies in collection and analysis of data; and

(d) Provide for the amendment of the county-wide policies and county and city comprehensive plans as needed to remedy an inconsistency identified through the evaluation required by this section, or to bring these policies into compliance with the requirements of this chapter.

(3) At a minimum, the evaluation component of the program required by subsection (1) of this section shall:

(a) Determine whether there is sufficient suitable land to accommodate the county-wide population projection established for the county pursuant to RCW 43.62.035 and the subsequent population allocations within the county and between the county and its cities and the requirements of RCW 36.70A.110;

(b) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area

since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by subsection (1) of this section; and

(c) Based on the actual density of development as determined under (b) of this subsection, review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.

(4) If the evaluation required by subsection (3) of this section demonstrates an inconsistency between what has occurred since the adoption of the county-wide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, as the inconsistency relates to the evaluation factors specified in subsection (3) of this section, the county and its cities shall adopt and implement measures that are reasonably likely to increase consistency during the subsequent five-year period. If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to county-wide planning policies to increase consistency. The county and its cities shall annually monitor the measures adopted under this subsection to determine their effect and may revise or rescind them as appropriate.

(5)(a) Not later than July 1, 1998, the department shall prepare a list of methods used by counties and cities in carrying out the types of activities required by this section. The department shall provide this information and appropriate technical assistance to counties and cities required to or choosing to comply with the provisions of this section.

(b) By December 31, 2007, the department shall submit to the appropriate committees of the legislature a report analyzing the effectiveness of the activities described in this section in achieving the goals envisioned by the county-wide planning policies and the comprehensive plans and development regulations of the counties and cities.

(6) From funds appropriated by the legislature for this purpose, the department shall provide grants to counties, cities, and regional planning organizations required under subsection (7) of this section to conduct the review and perform the evaluation required by this section.

(7) The provisions of this section shall apply to counties, and the cities within those counties, that were greater than one hundred fifty thousand in population in 1995 as determined by office of financial management population estimates and that are located west of the crest of the Cascade mountain range. Any other county planning under RCW 36.70A.040 may carry out the review, evaluation, and amendment programs and procedures as provided in this section. [1997 c 429 § 25.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

### **36.70A.250 Growth management hearings boards.**

(1) There are hereby created three growth management hearings boards for the state of Washington. The boards shall be established as follows:

(a) An Eastern Washington board with jurisdictional boundaries including all counties that are required to or

choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains;

(b) A Central Puget Sound board with jurisdictional boundaries including King, Pierce, Snohomish, and Kitsap counties; and

(c) A Western Washington board with jurisdictional boundaries including all counties that are required or choose to plan under RCW 36.70A.040 and are located west of the crest of the Cascade mountains and are not included in the Central Puget Sound board jurisdictional boundaries. Skamania county, should it be required or choose to plan under RCW 36.70A.040, may elect to be included within the jurisdictional boundaries of either the Western or Eastern board.

(2) Each board shall only hear matters pertaining to the cities and counties located within its jurisdictional boundaries. [1994 c 249 § 29; 1991 sp.s. c 32 § 5.]

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

### **36.70A.260 Growth management hearings boards—Qualifications.**

(1) Each growth management hearings board shall consist of three members qualified by experience or training in matters pertaining to land use planning and residing within the jurisdictional boundaries of the applicable board. At least one member of each board must be admitted to practice law in this state and at least one member must have been a city or county elected official. Each board shall be appointed by the governor and not more than two members at the time of appointment or during their term shall be members of the same political party. No more than two members at the time of appointment or during their term shall reside in the same county.

(2) Each member of a board shall be appointed for a term of six years. A vacancy shall be filled by appointment by the governor for the unexpired portion of the term in which the vacancy occurs. The terms of the first three members of a board shall be staggered so that one member is appointed to serve until July 1, 1994, one member until July 1, 1996, and one member until July 1, 1998. [1994 c 249 § 30; 1991 sp.s. c 32 § 6.]

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

### **36.70A.270 Growth management hearings boards—Conduct, procedure, and compensation.**

Each growth management hearings board shall be governed by the following rules on conduct and procedure:

(1) Any board member may be removed for inefficiency, malfeasance, and misfeasance in office, under specific written charges filed by the governor. The governor shall transmit such written charges to the member accused and the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Removal of any member of a board by the tribunal shall disqualify such member for reappointment.

(2) Each board member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with RCW 43.03.050 and 43.03.060. If it is determined that the review boards shall operate on a full-time basis, each member shall receive an annual salary to be deter-

mined by the governor pursuant to RCW 43.03.040. If it is determined that a review board shall operate on a part-time basis, each member shall receive compensation pursuant to RCW 43.03.250, provided such amount shall not exceed the amount that would be set if they were a full-time board member. The principal office of each board shall be located by the governor within the jurisdictional boundaries of each board. The boards shall operate on either a part-time or full-time basis, as determined by the governor.

(3) Each board member shall not: (a) Be a candidate for or hold any other public office or trust; (b) engage in any occupation or business interfering with or inconsistent with his or her duty as a board member; and (c) for a period of one year after the termination of his or her board membership, act in a representative capacity before the board on any matter.

(4) A majority of each board shall constitute a quorum for making orders or decisions, adopting rules necessary for the conduct of its powers and duties, or transacting other official business, and may act even though one position of the board is vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law.

(5) The board may appoint one or more hearing examiners to assist the board in its hearing function, to make conclusions of law and findings of fact and, if requested by the board, to make recommendations to the board for decisions in cases before the board. Such hearing examiners must have demonstrated knowledge of land use planning and law. The boards shall specify in their joint rules of practice and procedure, as required by subsection (7) of this section, the procedure and criteria to be employed for designating hearing examiners as a presiding officer. Hearing examiners selected by a board shall meet the requirements of subsection (3) of this section. The findings and conclusions of the hearing examiner shall not become final until they have been formally approved by the board. This authorization to use hearing examiners does not waive the requirement of RCW 36.70A.300 that final orders be issued within one hundred eighty days of board receipt of a petition.

(6) Each board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members of the board and upon being filed at the board's principal office, and shall be open for public inspection at all reasonable times.

(7) All proceedings before the board, any of its members, or a hearing examiner appointed by the board shall be conducted in accordance with such administrative rules of practice and procedure as the boards jointly prescribe. All three boards shall jointly meet to develop and adopt joint rules of practice and procedure, including rules regarding expeditious and summary disposition of appeals. The boards shall publish such rules and decisions they render and arrange for the reasonable distribution of the rules and decisions. Except as it conflicts with specific provisions of this chapter, the administrative procedure act, chapter 34.05 RCW, and specifically including the provisions of RCW 34.05.455 governing expedite communications, shall govern the practice and procedure of the boards.

(8) A board member or hearing examiner is subject to disqualification under chapter 34.05 RCW. The joint rules of practice of the boards shall establish procedures by which a party to a hearing conducted before the board may file with the board a motion to disqualify, with supporting affidavit, against a board member or hearing examiner assigned to preside at the hearing.

(9) The members of the boards shall meet jointly on at least an annual basis with the objective of sharing information that promotes the goals and purposes of this chapter. [1997 c 429 § 11; 1996 c 325 § 1; 1994 c 257 § 1; 1991 sp.s. c 32 § 7.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Severability—1996 c 325:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 325 § 6.]

**Effective date—1996 c 325:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1996]." [1996 c 325 § 7.]

**Severability—1994 c 257:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 257 § 26.]

**36.70A.280 Matters subject to board review.** (1) A growth management hearings board shall hear and determine only those petitions alleging either:

(a) That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, a board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by a board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by a board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as a "board adjusted population projection". None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes. [2003 c 332 § 2; 1996 c 325 § 2; 1995 c 347 § 108; 1994 c 249 § 31; 1991 sp.s. c 32 § 9.]

**Intent—2003 c 332:** "This act is intended to codify the Washington State Court of Appeals holding in *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. 657 (2000), by mandating that to establish participation standing under the growth management act, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the growth management hearings board." [2003 c 332 § 1.]

**Severability—Effective date—1996 c 325:** See notes following RCW 36.70A.270.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**36.70A.290 Petitions to growth management hearings boards—Evidence.** (1) All requests for review to a growth management hearings board shall be initiated by filing a petition that includes a detailed statement of issues presented for resolution by the board. The board shall render written decisions articulating the basis for its holdings. The board shall not issue advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order.

(2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication by the legislative bodies of the county or city.

(a) Except as provided in (c) of this subsection, the date of publication for a city shall be the date the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations, or amendment thereto, as is required to be published.

(b) Promptly after adoption, a county shall publish a notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

Except as provided in (c) of this subsection, for purposes of this section the date of publication for a county shall be the date the county publishes the notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

(c) For local governments planning under RCW 36.70A.040, promptly after approval or disapproval of a local government's shoreline master program or amendment thereto by the department of ecology as provided in RCW 90.58.090, the local government shall publish a notice that the shoreline master program or amendment thereto has been approved or disapproved by the department of ecology. For purposes of this section, the date of publication for the adop-

tion or amendment of a shoreline master program is the date the local government publishes notice that the shoreline master program or amendment thereto has been approved or disapproved by the department of ecology.

(3) Unless the board dismisses the petition as frivolous or finds that the person filing the petition lacks standing, or the parties have filed an agreement to have the case heard in superior court as provided in RCW 36.70A.295, the board shall, within ten days of receipt of the petition, set a time for hearing the matter.

(4) The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.

(5) The board, shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations. [1997 c 429 § 12; 1995 c 347 § 109. Prior: 1994 c 257 § 2; 1994 c 249 § 26; 1991 sp.s. c 32 § 10.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**36.70A.295 Direct judicial review.** (1) The superior court may directly review a petition for review filed under RCW 36.70A.290 if all parties to the proceeding before the board have agreed to direct review in the superior court. The agreement of the parties shall be in writing and signed by all of the parties to the proceeding or their designated representatives. The agreement shall include the parties' agreement to proper venue as provided in RCW 36.70A.300(5). The parties shall file their agreement with the board within ten days after the date the petition is filed, or if multiple petitions have been filed and the board has consolidated the petitions pursuant to RCW 36.70A.300, within ten days after the board serves its order of consolidation.

(2) Within ten days of receiving the timely and complete agreement of the parties, the board shall file a certificate of agreement with the designated superior court and shall serve the parties with copies of the certificate. The superior court shall obtain exclusive jurisdiction over a petition when it receives the certificate of agreement. With the certificate of agreement the board shall also file the petition for review, any orders entered by the board, all other documents in the board's files regarding the action, and the written agreement of the parties.

(3) For purposes of a petition that is subject to direct review, the superior court's subject matter jurisdiction shall be equivalent to that of the board. Consistent with the requirements of the superior court civil rules, the superior court may consolidate a petition subject to direct review under this section with a separate action filed in the superior court.

(4)(a) Except as otherwise provided in (b) and (c) of this subsection, the provisions of RCW 36.70A.280 through

36.70A.330, which specify the nature and extent of board review, shall apply to the superior court's review.

(b) The superior court:

(i) Shall not have jurisdiction to directly review or modify an office of financial management population projection;

(ii) Except as otherwise provided in RCW 36.70A.300(2)(b), shall render its decision on the petition within one hundred eighty days of receiving the certification of agreement; and

(iii) Shall give a compliance hearing under RCW 36.70A.330(2) the highest priority of all civil matters before the court.

(c) An aggrieved party may secure appellate review of a final judgment of the superior court under this section by the supreme court or the court of appeals. The review shall be secured in the manner provided by law for review of superior court decisions in other civil cases.

(5) If, following a compliance hearing, the court finds that the state agency, county, or city is not in compliance with the court's prior order, the court may use its remedial and contempt powers to enforce compliance.

(6) The superior court shall transmit a copy of its decision and order on direct review to the board, the department, and the governor. If the court has determined that a county or city is not in compliance with the provisions of this chapter, the governor may impose sanctions against the county or city in the same manner as if a board had recommended the imposition of sanctions as provided in RCW 36.70A.330.

(7) After the court has assumed jurisdiction over a petition for review under this section, the superior court civil rules shall govern a request for intervention and all other procedural matters not specifically provided for in this section. [1997 c 429 § 13.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**36.70A.300 Final orders.** (1) The board shall issue a final order that shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW.

(2)(a) Except as provided in (b) of this subsection, the final order shall be issued within one hundred eighty days of receipt of the petition for review, or, if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated.

(b) The board may extend the period of time for issuing a decision to enable the parties to settle the dispute if additional time is necessary to achieve a settlement, and (i) an extension is requested by all parties, or (ii) an extension is requested by the petitioner and respondent and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute. The request must be filed with the board not later than seven days before the date scheduled for the hearing on the merits of the petition. The board may authorize one or more extensions for

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up to ninety days each, subject to the requirements of this section.

(3) In the final order, the board shall either:

(a) Find that the state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) Find that the state agency, county, or city is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, in which case the board shall remand the matter to the affected state agency, county, or city. The board shall specify a reasonable time not in excess of one hundred eighty days, or such longer period as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply with the requirements of this chapter. The board may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

(4) Unless the board makes a determination of invalidity as provided in RCW 36.70A.302, a finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand.

(5) Any party aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in RCW 34.05.514 or 36.01.050 within thirty days of the final order of the board. [1997 c 429 § 14; 1995 c 347 § 110; 1991 sp.s. c 32 § 11.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**36.70A.302 Determination of invalidity—Vesting of development permits—Interim controls.** (1) A board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;

(b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

(2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by

the county or city or to related construction permits for that project.

(3)(a) Except as otherwise provided in subsection (2) of this section and (b) of this subsection, a development permit application not vested under state or local law before receipt of the board's order by the county or city vests to the local ordinance or resolution that is determined by the board not to substantially interfere with the fulfillment of the goals of this chapter.

(b) Even though the application is not vested under state or local law before receipt by the county or city of the board's order, a determination of invalidity does not apply to a development permit application for:

(i) A permit for construction by any owner, lessee, or contract purchaser of a single-family residence for his or her own use or for the use of his or her family on a lot existing before receipt by the county or city of the board's order, except as otherwise specifically provided in the board's order to protect the public health and safety;

(ii) A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before receipt of the board's order by the county or city; and

(iii) A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before receipt of the board's order by the county or city.

(4) If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (1) of this section whether the prior policies or regulations are valid during the period of remand.

(5) A county or city subject to a determination of invalidity may adopt interim controls and other measures to be in effect until it adopts a comprehensive plan and development regulations that comply with the requirements of this chapter. A development permit application may vest under an interim control or measure upon determination by the board that the interim controls and other measures do not substantially interfere with the fulfillment of the goals of this chapter.

(6) A county or city subject to a determination of invalidity may file a motion requesting that the board clarify, modify, or rescind the order. The board shall expeditiously schedule a hearing on the motion. At the hearing on the motion, the parties may present information to the board to clarify the part or parts of the comprehensive plan or development regulations to which the final order applies. The board shall issue any supplemental order based on the information provided at the hearing not later than thirty days after the date of the hearing.

(7)(a) If a determination of invalidity has been made and the county or city has enacted an ordinance or resolution amending the invalidated part or parts of the plan or regulation or establishing interim controls on development affected by the order of invalidity, after a compliance hearing, the board shall modify or rescind the determination of invalidity if it determines under the standard in subsection (1) of this section that the plan or regulation, as amended or made subject to such interim controls, will no longer substantially interfere with the fulfillment of the goals of this chapter.

(b) If the board determines that part or parts of the plan or regulation are no longer invalid as provided in this subsection, but does not find that the plan or regulation is in compliance with all of the requirements of this chapter, the board, in its order, may require periodic reports to the board on the progress the jurisdiction is making towards compliance. [1997 c 429 § 16.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**36.70A.305 Expedited review.** The court shall provide expedited review of a determination of invalidity or an order effectuating a determination of invalidity made or issued under \*RCW 36.70A.300. The matter must be set for hearing within sixty days of the date set for submitting the board's record, absent a showing of good cause for a different date or a stipulation of the parties. [1996 c 325 § 4.]

**\*Reviser's note:** The reference to RCW 36.70A.300 appears to refer to the amendments made by 1996 c 325 § 3, which was vetoed by the governor.

**Severability—Effective date—1996 c 325:** See notes following RCW 36.70A.270.

**36.70A.310 Limitations on appeal by the state.** A request for review by the state to a growth management hearings board may be made only by the governor, or with the governor's consent the head of an agency, or by the commissioner of public lands as relating to state trust lands, for the review of whether: (1) A county or city that is required or chooses to plan under RCW 36.70A.040 has failed to adopt a comprehensive plan or development regulations, or county-wide planning policies within the time limits established by this chapter; or (2) a county or city that is required or chooses to plan under this chapter has adopted a comprehensive plan, development regulations, or county-wide planning policies, that are not in compliance with the requirements of this chapter. [1994 c 249 § 32; 1991 sp.s. c 32 § 12.]

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**36.70A.320 Presumption of validity—Burden of proof—Plans and regulations.** (1) Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

(2) Except as otherwise provided in subsection (4) of this section, the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter.

(3) In any petition under this chapter, the board, after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter. In making its determination, the board shall consider the criteria adopted by the department under RCW 36.70A.190(4). The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

(4) A county or city subject to a determination of invalidity made under RCW 36.70A.300 or 36.70A.302 has the

burden of demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of this chapter under the standard in RCW 36.70A.302(1).

(5) The shoreline element of a comprehensive plan and the applicable development regulations adopted by a county or city shall take effect as provided in chapter 90.58 RCW. [1997 c 429 § 20; 1995 c 347 § 111; 1991 sp.s. c 32 § 13.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**36.70A.3201 Intent—Finding—1997 c 429 § 20(3).** In amending RCW 36.70A.320(3) by section 20(3), chapter 429, Laws of 1997, the legislature intends that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community. [1997 c 429 § 2.]

**Prospective application—1997 c 429 §§ 1-21:** "Except as otherwise specifically provided in RCW 36.70A.335, sections 1 through 21, chapter 429, Laws of 1997 are prospective in effect and shall not affect the validity of actions taken or decisions made before July 27, 1997." [1997 c 429 § 53.]

**Severability—1997 c 429:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 429 § 54.]

**36.70A.330 Noncompliance.** (1) After the time set for complying with the requirements of this chapter under RCW 36.70A.300(3)(b) has expired, or at an earlier time upon the motion of a county or city subject to a determination of invalidity under RCW 36.70A.300, the board shall set a hearing for the purpose of determining whether the state agency, county, or city is in compliance with the requirements of this chapter.

(2) The board shall conduct a hearing and issue a finding of compliance or noncompliance with the requirements of this chapter and with any compliance schedule established by the board in its final order. A person with standing to challenge the legislation enacted in response to the board's final order may participate in the hearing along with the petitioner and the state agency, county, or city. A hearing under this subsection shall be given the highest priority of business to be conducted by the board, and a finding shall be issued within forty-five days of the filing of the motion under subsection

(1) of this section with the board. The board shall issue any order necessary to make adjustments to the compliance schedule and set additional hearings as provided in subsection (5) of this section.

(3) If the board after a compliance hearing finds that the state agency, county, or city is not in compliance, the board shall transmit its finding to the governor. The board may recommend to the governor that the sanctions authorized by this chapter be imposed. The board shall take into consideration the county's or city's efforts to meet its compliance schedule in making the decision to recommend sanctions to the governor.

(4) In a compliance hearing upon petition of a party, the board shall also reconsider its final order and decide, if no determination of invalidity has been made, whether one now should be made under RCW 36.70A.302.

(5) The board shall schedule additional hearings as appropriate pursuant to subsections (1) and (2) of this section. [1997 c 429 § 21; 1995 c 347 § 112; 1991 sp.s. c 32 § 14.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**36.70A.335 Order of invalidity issued before July 27, 1997.** A county or city subject to an order of invalidity issued before July 27, 1997, by motion may request the board to review the order of invalidity in light of the section 14, chapter 429, Laws of 1997 amendments to RCW 36.70A.300, the section 21, chapter 429, Laws of 1997 amendments to RCW 36.70A.330, and RCW 36.70A.302. If a request is made, the board shall rescind or modify the order of invalidity as necessary to make it consistent with the section 14, chapter 429, Laws of 1997 amendments to RCW 36.70A.300, and to the section 21, chapter 429, Laws of 1997 amendments to RCW 36.70A.330, and RCW 36.70A.302. [1997 c 429 § 22.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**36.70A.340 Noncompliance and sanctions.** Upon receipt from the board of a finding that a state agency, county, or city is in noncompliance under RCW 36.70A.330, or as a result of failure to meet the requirements of RCW 36.70A.210, the governor may either:

(1) Notify and direct the director of the office of financial management to revise allotments in appropriation levels;

(2) Notify and direct the state treasurer to withhold the portion of revenues to which the county or city is entitled under one or more of the following: The motor vehicle fuel tax, as provided in chapter 82.36 RCW; the transportation improvement account, as provided in RCW 47.26.084; the urban arterial trust account, as provided in RCW 47.26.080; the rural arterial trust account, as provided in RCW 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the liquor profit tax, as provided in RCW 66.08.190; and the liquor excise tax, as provided in RCW 82.08.170; or

(3) File a notice of noncompliance with the secretary of state and the county or city, which shall temporarily rescind the county or city's authority to collect the real estate excise

tax under RCW 82.46.030 until the governor files a notice rescinding the notice of noncompliance. [1991 sp.s. c 32 § 26.]

**36.70A.345 Sanctions.** The governor may impose a sanction or sanctions specified under RCW 36.70A.340 on: (1) A county or city that fails to designate critical areas, agricultural lands, forest lands, or mineral resource lands under RCW 36.70A.170 by the date such action was required to have been taken; (2) a county or city that fails to adopt development regulations under RCW 36.70A.060 protecting critical areas or conserving agricultural lands, forest lands, or mineral resource lands by the date such action was required to have been taken; (3) a county that fails to designate urban growth areas under RCW 36.70A.110 by the date such action was required to have been taken; and (4) a county or city that fails to adopt its comprehensive plan or development regulations when such actions are required to be taken.

Imposition of a sanction or sanctions under this section shall be preceded by written findings by the governor, that either the county or city is not proceeding in good faith to meet the requirements of the act; or that the county or city has unreasonably delayed taking the required action. The governor shall consult with and communicate his or her findings to the appropriate growth management hearings board prior to imposing the sanction or sanctions. For those counties or cities that are not required to plan or have not opted in, the governor in imposing sanctions shall consider the size of the jurisdiction relative to the requirements of this chapter and the degree of technical and financial assistance provided. [1994 c 249 § 33; 1993 sp.s. c 6 § 5.]

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**Effective date—1993 sp.s. c 6:** See note following RCW 36.70A.040.

**36.70A.350 New fully contained communities.** A county required or choosing to plan under RCW 36.70A.040 may establish a process as part of its urban growth areas, that are designated under RCW 36.70A.110, for reviewing proposals to authorize new fully contained communities located outside of the initially designated urban growth areas.

(1) A new fully contained community may be approved in a county planning under this chapter if criteria including but not limited to the following are met:

(a) New infrastructure is provided for and impact fees are established consistent with the requirements of RCW 82.02.050;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the new fully contained communities and adjacent urban development;

(d) A mix of uses is provided to offer jobs, housing, and services to the residents of the new community;

(e) Affordable housing is provided within the new community for a broad range of income levels;

(f) Environmental protection has been addressed and provided for;

(g) Development regulations are established to ensure urban growth will not occur in adjacent nonurban areas;

(h) Provision is made to mitigate impacts on designated agricultural lands, forest lands, and mineral resource lands;

(i) The plan for the new fully contained community is consistent with the development regulations established for the protection of critical areas by the county pursuant to RCW 36.70A.170.

(2) New fully contained communities may be approved outside established urban growth areas only if a county reserves a portion of the twenty-year population projection and offsets the urban growth area accordingly for allocation to new fully contained communities that meet the requirements of this chapter. Any county electing to establish a new community reserve shall do so no more often than once every five years as a part of the designation or review of urban growth areas required by this chapter. The new community reserve shall be allocated on a project-by-project basis, only after specific project approval procedures have been adopted pursuant to this chapter as a development regulation. When a new community reserve is established, urban growth areas designated pursuant to this chapter shall accommodate the unreserved portion of the twenty-year population projection.

Final approval of an application for a new fully contained community shall be considered an adopted amendment to the comprehensive plan prepared pursuant to RCW 36.70A.070 designating the new fully contained community as an urban growth area. [1991 sp.s. c 32 § 16.]

**36.70A.360 Master planned resorts.** (1) Counties that are required or choose to plan under RCW 36.70A.040 may permit master planned resorts which may constitute urban growth outside of urban growth areas as limited by this section. A master planned resort means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

(2) Capital facilities, utilities, and services, including those related to sewer, water, storm water, security, fire suppression, and emergency medical, provided on-site shall be limited to meeting the needs of the master planned resort. Such facilities, utilities, and services may be provided to a master planned resort by outside service providers, including municipalities and special purpose districts, provided that all costs associated with service extensions and capacity increases directly attributable to the master planned resort are fully borne by the resort. A master planned resort and service providers may enter into agreements for shared capital facilities and utilities, provided that such facilities and utilities serve only the master planned resort or urban growth areas.

Nothing in this subsection may be construed as: Establishing an order of priority for processing applications for water right permits, for granting such permits, or for issuing certificates of water right; altering or authorizing in any manner the alteration of the place of use for a water right; or affecting or impairing in any manner whatsoever an existing water right.

All waters or the use of waters shall be regulated and controlled as provided in chapters 90.03 and 90.44 RCW and not otherwise.

(3) A master planned resort may include other residential uses within its boundaries, but only if the residential uses are

integrated into and support the on-site recreational nature of the resort.

(4) A master planned resort may be authorized by a county only if:

(a) The comprehensive plan specifically identifies policies to guide the development of master planned resorts;

(b) The comprehensive plan and development regulations include restrictions that preclude new urban or suburban land uses in the vicinity of the master planned resort, except in areas otherwise designated for urban growth under RCW 36.70A.110;

(c) The county includes a finding as a part of the approval process that the land is better suited, and has more long-term importance, for the master planned resort than for the commercial harvesting of timber or agricultural production, if located on land that otherwise would be designated as forest land or agricultural land under RCW 36.70A.170;

(d) The county ensures that the resort plan is consistent with the development regulations established for critical areas; and

(e) On-site and off-site infrastructure and service impacts are fully considered and mitigated. [1998 c 112 § 2; 1991 sp.s. c 32 § 17.]

**Intent—1998 c 112:** "The primary intent of this act is to give effect to recommendations by the 1994 department of community, trade, and economic development's master planned resort task force by clarifying that master planned resorts may make use of capital facilities, utilities, and services provided by outside service providers, and may enter into agreements for shared facilities with such providers, when all costs directly attributable to the resort, including capacity increases, are fully borne by the resort." [1998 c 112 § 1.]

**36.70A.362 Master planned resorts—Existing resort may be included.** Counties that are required or choose to plan under RCW 36.70A.040 may include existing resorts as master planned resorts which may constitute urban growth outside of urban growth areas as limited by this section. An existing resort means a resort in existence on July 1, 1990, and developed, in whole or in part, as a significantly self-contained and integrated development that includes short-term visitor accommodations associated with a range of indoor and outdoor recreational facilities within the property boundaries in a setting of significant natural amenities. An existing resort may include other permanent residential uses, conference facilities, and commercial activities supporting the resort, but only if these other uses are integrated into and consistent with the on-site recreational nature of the resort.

An existing resort may be authorized by a county only if:

(1) The comprehensive plan specifically identifies policies to guide the development of the existing resort;

(2) The comprehensive plan and development regulations include restrictions that preclude new urban or suburban land uses in the vicinity of the existing resort, except in areas otherwise designated for urban growth under RCW 36.70A.110 and \*36.70A.360(1);

(3) The county includes a finding as a part of the approval process that the land is better suited, and has more long-term importance, for the existing resort than for the commercial harvesting of timber or agricultural production, if located on land that otherwise would be designated as forest land or agricultural land under RCW 36.70A.170;

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(4) The county finds that the resort plan is consistent with the development regulations established for critical areas; and

(5) On-site and off-site infrastructure impacts are fully considered and mitigated.

A county may allocate a portion of its twenty-year population projection, prepared by the office of financial management, to the master planned resort corresponding to the projected number of permanent residents within the master planned resort. [1997 c 382 § 1.]

**\*Reviser's note:** RCW 36.70A.360 was amended by 1998 c 112 § 2, changing subsection (1) to subsection (4)(a).

**36.70A.365 Major industrial developments.** A county required or choosing to plan under RCW 36.70A.040 may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for reviewing and approving proposals to authorize siting of specific major industrial developments outside urban growth areas.

(1) "Major industrial development" means a master planned location for a specific manufacturing, industrial, or commercial business that: (a) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or (b) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent. The major industrial development shall not be for the purpose of retail commercial development or multitenant office parks.

(2) A major industrial development may be approved outside an urban growth area in a county planning under this chapter if criteria including, but not limited to the following, are met:

(a) New infrastructure is provided for and/or applicable impact fees are paid;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;

(f) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;

(g) The plan for the major industrial development is consistent with the county's development regulations established for protection of critical areas; and

(h) An inventory of developable land has been conducted and the county has determined and entered findings that land suitable to site the major industrial development is unavailable within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close proximity to the urban growth area.

(3) Final approval of an application for a major industrial development shall be considered an adopted amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070 designating the major industrial development site on the land use map as an urban growth area. Final approval of an application for a major industrial development shall not be considered an amendment to the comprehensive

plan for the purposes of RCW 36.70A.130(2) and may be considered at any time. [1995 c 190 § 1.]

**36.70A.367 Major industrial developments—Master planned locations.** (1) In addition to the major industrial development allowed under RCW 36.70A.365, a county planning under RCW 36.70A.040 that meets the criteria in subsection (10) or (11) of this section may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for designating a bank of no more than two master planned locations for major industrial activity outside urban growth areas.

(2) A master planned location for major industrial developments outside an urban growth area may be included in the urban industrial land bank for the county if criteria including, but not limited to, the following are met through the completion of a comprehensive planning process that ensures that:

(a) Development regulations are adopted to ensure that urban growth will not occur in adjacent nonurban areas;

(b) The master plan for the major industrial developments is consistent with the county's development regulations adopted for protection of critical areas;

(c) An inventory of developable land has been conducted as provided in RCW 36.70A.365;

(d) Provisions are established for determining the availability of alternate sites within urban growth areas and the long-term annexation feasibility of land sites outside of urban growth areas; and

(e) Development regulations are adopted to require the industrial land bank site to be used primarily for locating industrial and manufacturing businesses and specify that the gross floor area of all commercial and service buildings or facilities locating within the industrial land bank shall not exceed ten percent of the total gross floor area of buildings or facilities in the industrial land bank. The commercial and service businesses operated within the ten percent gross floor area limit shall be necessary to the primary industrial or manufacturing businesses within the industrial land bank. The intent of this provision for commercial or service use is to meet the needs of employees, clients, customers, vendors, and others having business at the industrial site and as an adjunct to the industry to attract and retain a quality work force and to further other public objectives, such as trip reduction. Such uses would not be promoted to attract additional clientele from the surrounding area. The commercial and service businesses should be established concurrently with or subsequent to the industrial or manufacturing businesses.

(3) The process for reviewing and approving proposals to authorize siting of specific major industrial developments within an approved industrial land bank must ensure through adopted development regulations that:

(a) New infrastructure is provided for and/or applicable impact fees are paid;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands; and

(f) An interlocal agreement related to infrastructure cost sharing and revenue sharing between the county and interested cities is established.

(4) In selecting master planned locations for inclusion in the urban industrial land bank, priority shall be given to locations that are adjacent to, or in close proximity to, an urban growth area.

(5) Final approval of inclusion of a master planned location in an urban industrial land bank under subsection (2) of this section shall be considered an adopted amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070, except that RCW 36.70A.130(2) does not apply so that inclusion or exclusion of master planned locations may be considered at any time. Approval of specific development proposals under subsection (3) of this section requires no further comprehensive plan amendment.

(6) Once a master planned location has been included in an urban industrial land bank, manufacturing and industrial businesses that qualify as major industrial development under RCW 36.70A.365 may be located there.

(7) Nothing in this section alters the requirements for a county to comply with chapter 43.21C RCW.

(8)(a) The authority of a county meeting the criteria of subsection (10) of this section to engage in the process of including or excluding master planned locations from an urban industrial land bank terminates on December 31, 2007. However, any location included in an urban industrial land bank on or before December 31, 2007, shall be available for major industrial development as long as the criteria of subsection (2) of this section are met. A county that has established or proposes to establish an industrial land bank pursuant to this section shall review the need for an industrial land bank within the county, including a review of the availability of land for industrial and manufacturing uses within the urban growth area, during the review and evaluation of comprehensive plans and development regulations required by RCW 36.70A.130.

(b) The authority of a county meeting the criteria of subsection (11) of this section to engage in the process of including or excluding master planned locations from the urban industrial land bank terminates on December 31, 2002. However, any location included in the urban industrial land bank on December 31, 2002, shall be available for major industrial development as long as the criteria of subsection (2) of this section are met.

(9) For the purposes of this section:

(a) "Major industrial development" means a master planned location suitable for manufacturing or industrial businesses that: (i) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; (ii) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent; or (iii) requires a location with characteristics such as proximity to transportation facilities or related industries such that there is no suitable location in an urban growth area. The major industrial development may not be for the purpose of retail commercial development or multitenant office parks.

(b) "Industrial land bank" means up to two master planned locations, each consisting of a parcel or parcels of contiguous land, sufficiently large so as not to be readily available within the urban growth area of a city, or otherwise meeting the criteria contained in (a) of this subsection, suitable for manufacturing, industrial, or commercial businesses and designated by the county through the comprehensive planning process specifically for major industrial use.

(10) This section and the termination date specified in subsection (8)(a) of this section apply to a county that at the time the process is established under subsection (1) of this section:

(a) Has a population greater than two hundred fifty thousand and is part of a metropolitan area that includes a city in another state with a population greater than two hundred fifty thousand;

(b) Has a population greater than one hundred forty thousand and is adjacent to another country;

(c) Has a population greater than forty thousand but less than seventy-five thousand and has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(i) Is bordered by the Pacific Ocean;

(ii) Is located in the Interstate 5 or Interstate 90 corridor; or

(iii) Is bordered by Hood Canal;

(d) Is east of the Cascade divide; and

(i) Borders another state to the south; or

(ii) Is located wholly south of Interstate 90 and borders the Columbia river to the east; or

(e) Has an average population density of less than one hundred persons per square mile as determined by the office of financial management, and is bordered by the Pacific Ocean and by Hood Canal.

(11) This section and the termination date specified in subsection (8)(b) of this section apply to a county that at the time the process is established under subsection (1) of this section:

(a) Has a population greater than forty thousand but fewer than eighty thousand;

(b) Has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(c) Is located in the Interstate 5 or Interstate 90 corridor.

(12) Any location included in an industrial land bank pursuant to section 2, chapter 289, Laws of 1998, section 1, chapter 402, Laws of 1997, and section 2, chapter 167, Laws of 1996 shall remain available for major industrial development according to this section as long as the criteria of subsection (2) of this section continue to be satisfied. [2004 c 208 § 1; 2003 c 88 § 1; 2002 c 306 § 1; 2001 c 326 § 1; 1998 c 289 § 2; 1997 c 402 § 1; 1996 c 167 § 2.]

**Findings—Purpose—1998 c 289:** "The legislature finds that to fulfill the economic development goal of this chapter, it is beneficial to expand the limited authorization for pilot projects for identifying locations for major industrial activity in advance of specific proposals by an applicant. The legislature further finds that land bank availability may provide economically disadvantaged counties the opportunity to attract new industrial activity by offering expeditious siting and therefore promote a community's economic health and vitality. The purpose of this act is to authorize and evaluate addi-

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tional pilot projects for major industrial activity in economically disadvantaged counties." [1998 c 289 § 1.]

**Findings—Purpose—1996 c 167:** "In 1995 the legislature addressed the demand for siting of major industrial facilities by passage of Engrossed Senate Bill No. 5019, implementing a process for siting such activities outside urban growth areas. The legislature recognizes that the 1995 act requires consideration of numerous factors necessary to ensure that the community can reasonably accommodate a major industrial development outside an urban growth area.

The legislature finds that the existing case-by-case procedure for evaluating and approving such a site under the 1995 act may operate to a community's economic disadvantage when a firm, for business reasons, must make a business location decision expeditiously. The legislature therefore finds that it would be useful to authorize, on a limited basis, and evaluate a process for identifying locations for major industrial activity in advance of specific proposals by an applicant.

It is the purpose of this act (1) to authorize a pilot project under which a bank of major industrial development locations outside urban growth areas is created for use in expeditiously siting such a development; (2) to evaluate the impact of this process on the county's compliance with chapter 36.70A RCW; and (3) to encourage consolidation and planning, and environmental review procedures under chapter 36.70B RCW." [1996 c 167 § 1.]

**Effective date—1996 c 167:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1996]." [1996 c 167 § 3.]

**36.70A.370 Protection of private property.** (1) The state attorney general shall establish by October 1, 1991, an orderly, consistent process, including a checklist if appropriate, that better enables state agencies and local governments to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property. It is not the purpose of this section to expand or reduce the scope of private property protections provided in the state and federal Constitutions. The attorney general shall review and update the process at least on an annual basis to maintain consistency with changes in case law.

(2) Local governments that are required or choose to plan under RCW 36.70A.040 and state agencies shall utilize the process established by subsection (1) of this section to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property.

(3) The attorney general, in consultation with the Washington state bar association, shall develop a continuing education course to implement this section.

(4) The process used by government agencies shall be protected by attorney client privilege. Nothing in this section grants a private party the right to seek judicial relief requiring compliance with the provisions of this section. [1991 sp.s. c 32 § 18.]

**36.70A.380 Extension of designation date.** The department may extend the date by which a county or city is required to designate agricultural lands, forest lands, mineral resource lands, and critical areas under RCW 36.70A.170, or the date by which a county or city is required to protect such lands and critical areas under RCW 36.70A.060, if the county or city demonstrates that it is proceeding in an orderly fashion, and is making a good faith effort, to meet these requirements. An extension may be for up to an additional one hundred eighty days. The length of an extension shall be based on the difficulty of the effort to conform with these requirements. [1991 sp.s. c 32 § 39.]

**36.70A.385 Environmental planning pilot projects.**

(1) The legislature intends to determine whether the environmental review process mandated under chapter 43.21C RCW may be enhanced and simplified, and coordination improved, when applied to comprehensive plans mandated by this chapter. The department shall undertake pilot projects on environmental review to determine if the review process can be improved by fostering more coordination and eliminating duplicative environmental analysis which is made to assist decision makers approving comprehensive plans pursuant to this chapter. Such pilot projects should be designed and scoped to consider cumulative impacts resulting from plan decisions, plan impacts on environmental quality, impacts on adjacent jurisdictions, and similar factors in sufficient depth to simplify the analysis of subsequent specific projects being carried out pursuant to the approved plan.

(2) The legislature hereby authorizes the department to establish, in cooperation with business, industry, cities, counties, and other interested parties, at least two but not more than four pilot projects, one of which shall be with a county, on enhanced draft and final nonproject environmental analysis of comprehensive plans prepared pursuant to this chapter, for the purposes outlined in subsection (1) of this section. The department may select appropriate geographic subareas within a comprehensive plan if that will best serve the purposes of this section and meet the requirements of chapter 43.21C RCW.

(3) An enhanced draft and final nonproject environmental analysis prepared pursuant to this section shall follow the rules adopted pursuant to chapter 43.21C RCW.

(4) Not later than December 31, 1993, the department shall evaluate the overall effectiveness of the pilot projects under this section regarding preparing enhanced nonproject environmental analysis for the approval process of comprehensive plans and shall:

(a) Provide an interim report of its findings to the legislature with such recommendations as may be appropriate, including the need, if any, for further legislation;

(b) Consider adoption of any further rules or guidelines as may be appropriate to assist counties and cities in meeting requirements of chapter 43.21C RCW when considering comprehensive plans; and

(c) Prepare and circulate to counties and cities such instructional manuals or other information derived from the pilot projects as will assist all counties and cities in meeting the requirements and objectives of chapter 43.21C RCW in the most expeditious and efficient manner in the process of considering comprehensive plans pursuant to this chapter. [1998 c 245 § 30; 1995 c 399 § 43; 1991 sp.s. c 32 § 20.]

**36.70A.390 Moratoria, interim zoning controls—Public hearing—Limitation on length—Exceptions.** A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning

commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

This section does not apply to the designation of critical areas, agricultural lands, forest lands, and mineral resource lands, under RCW 36.70A.170, and the conservation of these lands and protection of these areas under RCW 36.70A.060, prior to such actions being taken in a comprehensive plan adopted under RCW 36.70A.070 and implementing development regulations adopted under RCW 36.70A.120, if a public hearing is held on such proposed actions. [1992 c 207 § 6.]

**36.70A.400 Accessory apartments.** Any local government, as defined in RCW 43.63A.215, that is planning under this chapter shall comply with RCW 43.63A.215(3). [1993 c 478 § 11.]

**36.70A.410 Treatment of residential structures occupied by persons with handicaps.** No county or city that plans or elects to plan under this chapter may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602). [1993 c 478 § 23.]

**36.70A.420 Transportation projects—Findings—Intent.** The legislature recognizes that there are major transportation projects that affect multiple jurisdictions as to economic development, fiscal influence, environmental consequences, land use implications, and mobility of people and goods. The legislature further recognizes that affected jurisdictions have important interests that must be addressed, and that these jurisdictions' present environmental planning and permitting authority may result in multiple local permits and other requirements being specified for the projects.

The legislature finds that the present permitting system may result in segmented and sequential decisions by local governments that do not optimally serve all the parties with an interest in the decisions. The present system may also make more difficult achieving the consistency among plans and actions that is an important aspect of this chapter.

It is the intent of the legislature to provide for more efficiency and equity in the decisions of local governments regarding major transportation projects by encouraging coordination or consolidation of the processes for reviewing environmental planning and permitting requirements for those projects. The legislature intends that local governments coor-

dinate their regulatory decisions by considering together the range of local, state, and federal requirements for major transportation projects. Nothing in RCW 36.70A.420 or 36.70A.430 alters the authority of cities or counties under any other planning or permitting statute. [1994 c 258 § 1.]

**Captions not law—1994 c 258:** "Section captions used in this act constitute no part of the law." [1994 c 258 § 6.]

**36.70A.430 Transportation projects—Collaborative review process.** For counties engaged in planning under this chapter, there shall be established by December 31, 1994, a collaborative process to review and coordinate state and local permits for all transportation projects that cross more than one city or county boundary. This process shall at a minimum, establish a mechanism among affected cities and counties to designate a permit coordinating agency to facilitate multijurisdictional review and approval of such transportation projects. [1994 c 258 § 2.]

**Captions not law—1994 c 258:** See note following RCW 36.70A.420.

**36.70A.450 Family day-care provider's home facility—County or city may not prohibit in residential or commercial area—Conditions.** (1) Except as provided in subsections (2) and (3) of this section, no county or city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

(2) A county or city may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the office of child care policy licensor as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(3) A county or city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

(4) Nothing in this section shall be construed to prohibit a county or city from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 74.15.020. [2003 c 286 § 5; 1995 c 49 § 3; 1994 c 273 § 17.]

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**36.70A.460 Watershed restoration projects—Permit processing—Fish habitat enhancement project.** A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of RCW 77.55.290(1) shall be reviewed and approved according to the provisions of RCW 77.55.290. [2003 c 39 § 21; 1998 c 249 § 11; 1995 c 378 § 11.]

**Findings—Purpose—Report—Effective date—1998 c 249:** See notes following RCW 77.55.290.

**36.70A.470 Project review—Amendment suggestion procedure—Definitions.** (1) Project review, which shall be conducted pursuant to the provisions of chapter 36.70B RCW, shall be used to make individual project decisions, not land use planning decisions. If, during project review, a county or city planning under RCW 36.70A.040 identifies deficiencies in plans or regulations:

(a) The permitting process shall not be used as a comprehensive planning process;

(b) Project review shall continue; and

(c) The identified deficiencies shall be docketed for possible future plan or development regulation amendments.

(2) Each county and city planning under RCW 36.70A.040 shall include in its development regulations a procedure for any interested person, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest plan or development regulation amendments. The suggested amendments shall be docketed and considered on at least an annual basis, consistent with the provisions of RCW 36.70A.130.

(3) For purposes of this section, a deficiency in a comprehensive plan or development regulation refers to the absence of required or potentially desirable contents of a comprehensive plan or development regulation. It does not refer to whether a development regulation addresses a project's probable specific adverse environmental impacts which the permitting agency could mitigate in the normal project review process.

(4) For purposes of this section, docketing refers to compiling and maintaining a list of suggested changes to the comprehensive plan or development regulations in a manner that will ensure such suggested changes will be considered by the county or city and will be available for review by the public. [1995 c 347 § 102.]

**Findings—Intent—1995 c 347 § 102:** "The legislature finds that during project review, a county or city planning under RCW 36.70A.040 is likely to discover the need to make various improvements in comprehensive plans and development regulations. There is no current requirement or process for applicants, citizens, or agency staff to ensure that these improvements are considered in the plan review process. The legislature also finds that in the past environmental review and permitting of proposed projects have been used to reopen and make land use planning decisions that should have been made through the comprehensive planning process, in part because agency staff and hearing examiners have not been able to ensure consideration of all issues in the local planning process. The legislature further finds that, while plans and regulations should be improved and refined over time, it is unfair to penalize applicants that have submitted permit applications that meet current requirements. It is the intent of the legislature in enacting RCW 36.70A.470 to establish a means by which cities and counties will docket suggested plan or development regulation amendments and ensure their consideration during the planning process." [1995 c 347 § 101.]

**Finding—1995 c 347:** "The legislature recognizes by this act that the growth management act is a fundamental building block of regulatory reform. The state and local governments have invested considerable resources in an act that should serve as the integrating framework for all other land-use related laws. The growth management act provides the means to effectively combine certainty for development decisions, reasonable environmental protection, long-range planning for cost-effective infrastructure, and orderly growth and development." [1995 c 347 § 1.]

**Severability—1995 c 347:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 347 § 901.]

**Part headings and table of contents not law—1995 c 347:** "Part headings and the table of contents as used in this act do not constitute any part of the law." [1995 c 347 § 902.]

**36.70A.480 Shorelines of the state.** (1) For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(2) The shoreline master program shall be adopted pursuant to the procedures of chapter 90.58 RCW rather than the goals, policies, and procedures set forth in this chapter for the adoption of a comprehensive plan or development regulations.

(3) The policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program with this chapter except as the shoreline master program is required to comply with the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105.

(a) As of the date the department of ecology approves a local government's shoreline master program adopted under applicable shoreline guidelines, the protection of critical areas as defined by RCW 36.70A.030(5) within shorelines of the state shall be accomplished only through the local government's shoreline master program and shall not be subject to the procedural and substantive requirements of this chapter, except as provided in subsection (6) of this section.

(b) Critical areas within shorelines of the state that have been identified as meeting the definition of critical areas as defined by RCW 36.70A.030(5), and that are subject to a shoreline master program adopted under applicable shoreline guidelines shall not be subject to the procedural and substantive requirements of this chapter, except as provided in subsection (6) of this section. Nothing in chapter 321, Laws of 2003 is intended to affect whether or to what extent agricultural activities, as defined in RCW 90.58.065, are subject to chapter 36.70A RCW.

(c) The provisions of RCW 36.70A.172 shall not apply to the adoption or subsequent amendment of a local government's shoreline master program and shall not be used to determine compliance of a local government's shoreline master program with chapter 90.58 RCW and applicable guide-

lines. Nothing in this section, however, is intended to limit or change the quality of information to be applied in protecting critical areas within shorelines of the state, as required by chapter 90.58 RCW and applicable guidelines.

(4) Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that is at least equal to the level of protection provided to critical areas by the local government's critical area ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).

(5) Shorelines of the state shall not be considered critical areas under this chapter except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided by RCW 36.70A.030(5) and have been designated as such by a local government pursuant to RCW 36.70A.060(2).

(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized by RCW 90.58.030(2)(f), then the local jurisdiction shall continue to regulate those critical areas and their required buffers pursuant to RCW 36.70A.060(2). [2003 c 321 § 5; 1995 c 347 § 104.]

**Finding—Intent—2003 c 321:** See note following RCW 90.58.030.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**36.70A.481 Construction—Chapter 347, Laws of 1995.** Nothing in RCW 36.70A.480 shall be construed to authorize a county or city to adopt regulations applicable to shorelands as defined in RCW 90.58.030 that are inconsistent with the provisions of chapter 90.58 RCW. [1995 c 382 § 13.]

**36.70A.490 Growth management planning and environmental review fund—Established.** The growth management planning and environmental review fund is hereby established in the state treasury. Moneys may be placed in the fund from the proceeds of bond sales, tax revenues, budget transfers, federal appropriations, gifts, or any other lawful source. Moneys in the fund may be spent only after appropriation. Moneys in the fund shall be used to make grants to local governments for the purposes set forth in RCW 43.21C.240, 43.21C.031, or 36.70A.500. [1995 c 347 § 115.]

**Findings—Purpose—1995 c 347 § 115:** "(1) The legislature finds that:

(a) As of July 23, 1995, twenty-nine counties and two hundred eight cities are conducting comprehensive planning under the growth management act, chapter 36.70A RCW, which together comprise over ninety percent of the state's population;

(b) Comprehensive plans for many of the jurisdictions were due by July 1, 1994, and the remaining jurisdictions must complete plans under due dates ranging from October 1994 to September 1997;

(c) Concurrently with these comprehensive planning activities, local governments must conduct several other planning requirements under the growth management act, such as the adoption of capital facilities plans, urban growth areas, and development regulations;

(d) Local governments must also comply with the state environmental policy act, chapter 43.21C RCW, in the development of comprehensive plans and development regulations;

(e) The combined activities of comprehensive planning and the state environmental policy act present a serious fiscal burden upon local governments; and

(f) Detailed environmental analysis integrated with comprehensive plans, subarea plans, and development regulations will facilitate planning for

and managing growth, allow greater protection of the environment, and benefit both the general public and private property owners.

(2) In order to provide financial assistance to cities and counties planning under chapter 36.70A RCW and to improve the usefulness of plans and integrated environmental analyses, the legislature has created the fund described in RCW 36.70A.490." [1995 c 347 § 114.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**36.70A.500 Growth management planning and environmental review fund—Awarding of grants—Procedures.** (1) The department of community, trade, and economic development shall provide management services for the fund created by RCW 36.70A.490. The department shall establish procedures for fund management. The department shall encourage participation in the grant program by other public agencies. The department shall develop the grant criteria, monitor the grant program, and select grant recipients in consultation with state agencies participating in the grant program through the provision of grant funds or technical assistance.

(2) A grant may be awarded to a county or city that is required to or has chosen to plan under RCW 36.70A.040 and that is qualified pursuant to this section. The grant shall be provided to assist a county or city in paying for the cost of preparing an environmental analysis under chapter 43.21C RCW, that is integrated with a comprehensive plan, subarea plan, plan element, county-wide planning policy, development regulation, monitoring program, or other planning activity adopted under or implementing this chapter that:

(a) Improves the process for project permit review while maintaining environmental quality; or

(b) Encourages use of plans and information developed for purposes of complying with this chapter to satisfy requirements of other state programs.

(3) In order to qualify for a grant, a county or city shall:

(a) Demonstrate that it will prepare an environmental analysis pursuant to chapter 43.21C RCW and subsection (2) of this section that is integrated with a comprehensive plan, subarea plan, plan element, county-wide planning policy, development regulations, monitoring program, or other planning activity adopted under or implementing this chapter;

(b) Address environmental impacts and consequences, alternatives, and mitigation measures in sufficient detail to allow the analysis to be adopted in whole or in part by applicants for development permits within the geographic area analyzed in the plan;

(c) Demonstrate that procedures for review of development permit applications will be based on the integrated plans and environmental analysis;

(d) Include mechanisms to monitor the consequences of growth as it occurs in the plan area and to use the resulting data to update the plan, policy, or implementing mechanisms and associated environmental analysis;

(e) Demonstrate substantial progress towards compliance with the requirements of this chapter. A county or city that is more than six months out of compliance with a requirement of this chapter is deemed not to be making substantial progress towards compliance; and

(f) Provide local funding, which may include financial participation by the private sector.

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(4) In awarding grants, the department shall give preference to proposals that include one or more of the following elements:

(a) Financial participation by the private sector, or a public/private partnering approach;

(b) Identification and monitoring of system capacities for elements of the built environment, and to the extent appropriate, of the natural environment;

(c) Coordination with state, federal, and tribal governments in project review;

(d) Furtherance of important state objectives related to economic development, protection of areas of statewide significance, and siting of essential public facilities;

(e) Programs to improve the efficiency and effectiveness of the permitting process by greater reliance on integrated plans and prospective environmental analysis;

(f) Programs for effective citizen and neighborhood involvement that contribute to greater likelihood that planning decisions can be implemented with community support; and

(g) Programs to identify environmental impacts and establish mitigation measures that provide effective means to satisfy concurrency requirements and establish project consistency with the plans.

(5) If the local funding includes funding provided by other state functional planning programs, including open space planning and watershed or basin planning, the functional plan shall be integrated into and be consistent with the comprehensive plan.

(6) State agencies shall work with grant recipients to facilitate state and local project review processes that will implement the projects receiving grants under this section. [1997 c 429 § 28; 1995 c 347 § 116.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**36.70A.510 General aviation airports.** Adoption and amendment of comprehensive plan provisions and development regulations under this chapter affecting a general aviation airport are subject to RCW 36.70.547. [1996 c 239 § 5.]

**36.70A.520 National historic towns—Designation.** Counties that are required or choose to plan under RCW 36.70A.040 may authorize and designate national historic towns that may constitute urban growth outside of urban growth areas as limited by this section. A national historic town means a town or district that has been designated a national historic landmark by the United States secretary of the interior pursuant to 16 U.S.C. 461 et seq., as amended, based on its significant historic urban features, and which historically contained a mix of residential and commercial or industrial uses.

A national historic town may be designated under this chapter by a county only if:

(1) The comprehensive plan specifically identifies policies to guide the preservation, redevelopment, infill, and development of the town;

(2) The comprehensive plan and development regulations specify a mix of residential, commercial, industrial, tourism-recreation, waterfront, or other historical uses, along

with other uses, infrastructure, and services which promote the economic sustainability of the town and its historic character. To promote historic preservation, redevelopment, and an economically sustainable community, the town also may include the types of uses that existed at times during its history and is not limited to those present at the time of the historic designation. Portions of the town may include urban densities if they reflect density patterns that existed at times during its history;

(3) The boundaries of the town include all of the area contained in the national historic landmark designation, along with any additional limited areas determined by the county as appropriate for transitional uses and buffering. Provisions for transitional uses and buffering must be compatible with the town's historic character and must protect the existing natural and built environment under the requirements of this chapter within and beyond the additional limited areas, including visual compatibility. The comprehensive plan and development regulations must include restrictions that preclude new urban or suburban land uses in the vicinity of the town, including the additional limited areas, except in areas otherwise designated for urban growth under this chapter;

(4) The development regulations provide for architectural controls and review procedures applicable to the rehabilitation, redevelopment, infill, or new development to promote the historic character of the town;

(5) The county finds that the national historic town is consistent with the development regulations established for critical areas; and

(6) On-site and off-site infrastructure impacts are fully considered and mitigated concurrent with development.

A county may allocate a portion of its twenty-year population projection, prepared by the office of financial management, to the national historic town corresponding to the projected number of permanent residents within the national historic town. [2000 c 196 § 1.]

**36.70A.530 Land use development incompatible with military installation not allowed—Revision of comprehensive plans and development regulations.** (1) Military installations are of particular importance to the economic health of the state of Washington and it is a priority of the state to protect the land surrounding our military installations from incompatible development.

(2) Comprehensive plans, amendments to comprehensive plans, development regulations, or amendments to development regulations adopted under this section shall be adopted or amended concurrent with the scheduled update provided in RCW 36.70A.130, except that counties and cities identified in RCW 36.70A.130(4)(a) shall comply with this section on or before December 1, 2005, and shall thereafter comply with this section on a schedule consistent with RCW 36.70A.130(4).

(3) A comprehensive plan, amendment to a plan, a development regulation or amendment to a development regulation, should not allow development in the vicinity of a military installation that is incompatible with the installation's ability to carry out its mission requirements. A city or county may find that an existing comprehensive plan or development regulations are compatible with the installation's ability to carry out its mission requirements.

(4) As part of the requirements of RCW 36.70A.070(1) each county and city planning under RCW 36.70A.040 that has a federal military installation, other than a reserve center, that employs one hundred or more personnel and is operated by the United States department of defense within or adjacent to its border, shall notify the commander of the military installation of the county's or city's intent to amend its comprehensive plan or development regulations to address lands adjacent to military installations to ensure those lands are protected from incompatible development.

(5)(a) The notice provided under subsection (4) of this section shall request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the adoption of a comprehensive plan or an amendment to a plan. The notice shall provide sixty days for a response from the commander. If the commander does not submit a response to such request within sixty days, the local government may presume that implementation of the proposed plan or amendment will not have any adverse effect on the operation of the installation.

(b) When a county or city intends to amend its development regulations to be consistent with the comprehensive plan elements addressed in (a) of this subsection, notice shall be provided to the commander of the military installation consistent with subsection (4) of this section. The notice shall request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the amendment to the development regulations. The notice shall provide sixty days for a response from the commander to the requesting government. If the commander does not submit a response to such request within sixty days, the local government may presume that implementation of the proposed development regulation or amendment will not have any adverse effect on the operation of the installation. [2004 c 28 § 2.]

**Finding—2004 c 28:** "The United States military is a vital component of the Washington state economy. The protection of military installations from incompatible development of land is essential to the health of Washington's economy and quality of life. Incompatible development of land close to a military installation reduces the ability of the military to complete its mission or to undertake new missions, and increases its cost of operating. The department of defense evaluates continued utilization of military installations based upon their operating costs, their ability to carry out missions, and their ability to undertake new missions." [2004 c 28 § 1.]

**36.70A.800 Role of growth strategies commission.** The growth strategies commission created by executive order shall:

(1) Analyze different methods for assuring that county and city comprehensive plans adopted under chapter 36.70A RCW are consistent with the planning goals under RCW 36.70A.020 and with other requirements of chapter 36.70A RCW;

(2) Recommend to the legislature and the governor by October 1, 1990, a specific structure or process that, among other things:

(a) Ensures county and city comprehensive plans adopted under chapter 36.70A RCW are coordinated and comply with planning goals and other requirements under chapter 36.70A RCW;

(b) Requires state agencies to comply with this chapter and to consider and be consistent with county and city com-

prehensive plans in actions by state agencies, including the location, financing, and expansion of transportation systems and other public facilities;

(c) Defines the state role in growth management;

(d) Addresses lands and resources of statewide significance, including to:

(i) Protect these lands and resources of statewide significance by developing standards for their preservation and protection and suggesting the appropriate structure to monitor and enforce the preservation of these lands and resources; and

(ii) Consider the environmental, economic, and social values of the lands and resources with statewide significance;

(e) Identifies potential state funds that may be withheld and incentives that promote county and city compliance with chapter 36.70A RCW;

(f) Increases affordable housing statewide and promotes linkages between land use and transportation;

(g) Addresses vesting of rights; and

(h) Addresses short subdivisions; and

(3) Develop recommendations to provide for the resolution of disputes over urban growth areas between counties and cities, including incorporations and annexations. [1990 1st ex.s. c 17 § 86.]

**36.70A.900 Severability—1990 1st ex.s. c 17.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 1st ex.s. c 17 § 88.]

**36.70A.901 Part, section headings not law—1990 1st ex.s. c 17.** Part and section headings as used in this act do not constitute any part of the law. [1990 1st ex.s. c 17 § 89.]

**36.70A.902 Section headings not law—1991 sp.s. c 32.** Section headings as used in this act do not constitute any part of the law. [1991 sp.s. c 32 § 40.]

## Chapter 36.70B RCW

### LOCAL PROJECT REVIEW

#### Sections

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**36.70B.010 Findings and declaration.** The legislature finds and declares the following:

(1) As the number of environmental laws and development regulations has increased for land uses and development, so has the number of required local land use permits, each with its own separate approval process.

(2) The increasing number of local and state land use permits and separate environmental review processes required by agencies has generated continuing potential for conflict, overlap, and duplication between the various permit and review processes.

(3) This regulatory burden has significantly added to the cost and time needed to obtain local and state land use permits and has made it difficult for the public to know how and when to provide timely comments on land use proposals that require multiple permits and have separate environmental review processes. [1995 c 347 § 401.]

**36.70B.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

(2) "Local government" means a county, city, or town.

(3) "Open record hearing" means a hearing, conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and information, under procedures prescribed by the local government by ordinance or resolution. An open record hearing may be held prior to a local government's decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing has been held on the project permit.

(4) "Project permit" or "project permit application" means any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a

comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

(5) "Public meeting" means an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the local government's decision. A public meeting may include, but is not limited to, a design review or architectural control board meeting, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government's project permit application file. [1995 c 347 § 402.]

**36.70B.030 Project review—Required elements—Limitations.** (1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project's consistency with applicable development regulations, or in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

(2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

(a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;

(b) Density of residential development in urban growth areas; and

(c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by chapter 36.70A RCW.

(3) During project review, the local government or any subsequent reviewing body shall not reexamine alternatives to or hear appeals on the items identified in subsection (2) of this section, except for issues of code interpretation. As part of its project review process, a local government shall provide a procedure for obtaining a code interpretation as provided in RCW 36.70B.110.

(4) Pursuant to RCW 43.21C.240, a local government may determine that the requirements for environmental analysis and mitigation measures in development regulations and other applicable laws provide adequate mitigation for some or all of the project's specific adverse environmental impacts to which the requirements apply.

(5) Nothing in this section limits the authority of a permitting agency to approve, condition, or deny a project as provided in its development regulations adopted under chapter 36.70A RCW and in its policies adopted under RCW 43.21C.060. Project review shall be used to identify specific project design and conditions relating to the character of

development, such as the details of site plans, curb cuts, drainage swales, transportation demand management, the payment of impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts, if applicable.

(6) Subsections (1) through (4) of this section apply only to local governments planning under RCW 36.70A.040. [1995 c 347 § 404.]

**Intent—Findings—1995 c 347 §§ 404 and 405:** "In enacting RCW 36.70B.030 and 36.70B.040, the legislature intends to establish a mechanism for implementing the provisions of chapter 36.70A RCW regarding compliance, conformity, and consistency of proposed projects with adopted comprehensive plans and development regulations. In order to achieve this purpose the legislature finds that:

(1) Given the extensive investment that public agencies and a broad spectrum of the public are making and will continue to make in comprehensive plans and development regulations for their communities, it is essential that project review start from the fundamental land use planning choices made in these plans and regulations. If the applicable regulations or plans identify the type of land use, specify residential density in urban growth areas, and identify and provide for funding of public facilities needed to serve the proposed development and site, these decisions at a minimum provide the foundation for further project review unless there is a question of code interpretation. The project review process, including the environmental review process under chapter 43.21C RCW and the consideration of consistency, should start from this point and should not reanalyze these land use planning decisions in making a permit decision.

(2) Comprehensive plans and development regulations adopted by local governments under chapter 36.70A RCW and environmental laws and rules adopted by the state and federal government have addressed a wide range of environmental subjects and impacts. These provisions typically require environmental studies and contain specific standards to address various impacts associated with a proposed development, such as building size and location, drainage, transportation requirements, and protection of critical areas. When a permitting agency applies these existing requirements to a proposed project, some or all of a project's potential environmental impacts will be avoided or otherwise mitigated. Through the integrated project review process described in subsection (1) of this section, the local government will determine whether existing requirements, including the applicable regulations or plans, adequately analyze and address a project's environmental impacts. RCW 43.21C.240 provides that project review should not require additional studies or mitigation under chapter 43.21C RCW where existing regulations have adequately addressed a proposed project's probable specific adverse environmental impacts.

(3) Given the hundreds of jurisdictions and agencies in the state and the numerous communities and applicants affected by development regulations and comprehensive plans adopted under chapter 36.70A RCW, it is essential to establish a uniform framework for considering the consistency of a proposed project with the applicable regulations or plan. Consistency should be determined in the project review process by considering four factors found in applicable regulations or plans: The type of land use allowed; the level of development allowed, such as units per acre or other measures of density; infrastructure, such as the adequacy of public facilities and services to serve the proposed project; and the character of the proposed development, such as compliance with specific development standards. This uniform approach corresponds to existing project review practices and will not place a burden on applicants or local government. The legislature intends that this approach should be largely a matter of checking compliance with existing requirements for most projects, which are simple or routine, while more complex projects may require more analysis. RCW 43.21C.240 and 36.70B.030 establish this uniform framework and also direct state agencies to consult with local government and the public to develop a better format than the current environmental checklist to meet this objective.

(4) When an applicant applies for a project permit, consistency between the proposed project and applicable regulations or plan should be determined through a project review process that integrates land use and environmental impact analysis, so that governmental and public review of the proposed project as required by this chapter, by development regulations under chapter 36.70A RCW, and by the environmental process under chapter 43.21C RCW run concurrently and not separately.

(5) RCW 36.70B.030 and 36.70B.040 address three related needs with respect to how the project review process should address consistency between a proposed project and the applicable regulations or plan:

(a) A uniform framework for the meaning of consistency;

(b) An emphasis on relying on existing requirements and adopted standards, with the use of supplemental authority as specified by chapter 43.21C RCW to the extent that existing requirements do not adequately address a project's specific probable adverse environmental impacts; and

(c) The identification of three basic land use planning choices made in applicable regulations or plans that, at a minimum, serve as a foundation for project review and that should not be reanalyzed during project permitting." [1995 c 347 § 403.]

**36.70B.040 Determination of consistency.** (1) A proposed project's consistency with a local government's development regulations adopted under chapter 36.70A RCW, or, in the absence of applicable development regulations, the appropriate elements of the comprehensive plan adopted under chapter 36.70A RCW shall be decided by the local government during project review by consideration of:

(a) The type of land use;

(b) The level of development, such as units per acre or other measures of density;

(c) Infrastructure, including public facilities and services needed to serve the development; and

(d) The characteristics of the development, such as development standards.

(2) In deciding whether a project is consistent, the determinations made pursuant to RCW 36.70B.030(2) shall be controlling.

(3) For purposes of this section, the term "consistency" shall include all terms used in this chapter and chapter 36.70A RCW to refer to performance in accordance with this chapter and chapter 36.70A RCW, including but not limited to compliance, conformity, and consistency.

(4) Nothing in this section requires documentation, dictates an agency's procedures for considering consistency, or limits a city or county from asking more specific or related questions with respect to any of the four main categories listed in subsection (1)(a) through (d) of this section.

(5) The department of community, trade, and economic development is authorized to develop and adopt by rule criteria to assist local governments planning under RCW 36.70A.040 to analyze the consistency of project actions. These criteria shall be jointly developed with the department of ecology. [1997 c 429 § 46; 1995 c 347 § 405.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Intent—Findings—1995 c 347 §§ 404 and 405:** See note following RCW 36.70B.030.

**36.70B.050 Local government review of project permit applications required—Objectives.** Not later than March 31, 1996, each local government shall provide by ordinance or resolution for review of project permit applications to achieve the following objectives:

(1) Combine the environmental review process, both procedural and substantive, with the procedure for review of project permits; and

(2) Except for the appeal of a determination of significance as provided in RCW 43.21C.075, provide for no more than one open record hearing and one closed record appeal. [1995 c 347 § 406.]

**36.70B.060 Local governments planning under the growth management act to establish integrated and consolidated project permit process—Required elements.**

(2004 Ed.)

Not later than March 31, 1996, each local government planning under RCW 36.70A.040 shall establish by ordinance or resolution an integrated and consolidated project permit process that may be included in its development regulations. In addition to the elements required by RCW 36.70B.050, the process shall include the following elements:

(1) A determination of completeness to the applicant as required by RCW 36.70B.070;

(2) A notice of application to the public and agencies with jurisdiction as required by RCW 36.70B.110;

(3) Except as provided in RCW 36.70B.140, an optional consolidated project permit review process as provided in RCW 36.70B.120. The review process shall provide for no more than one consolidated open record hearing and one closed record appeal. If an open record predecision hearing is provided prior to the decision on a project permit, the process shall not allow a subsequent open record appeal hearing;

(4) Provision allowing for any public meeting or required open record hearing to be combined with any public meeting or open record hearing that may be held on the project by another local, state, regional, federal, or other agency, in accordance with provisions of RCW \*36.70B.090 and 36.70B.110;

(5) A single report stating all the decisions made as of the date of the report on all project permits included in the consolidated permit process that do not require an open record predecision hearing and any recommendations on project permits that do not require an open record predecision hearing. The report shall state any mitigation required or proposed under the development regulations or the agency's authority under RCW 43.21C.060. The report may be the local permit. If a threshold determination other than a determination of significance has not been issued previously by the local government, the report shall include or append this determination;

(6) Except for the appeal of a determination of significance as provided in RCW 43.21C.075, if a local government elects to provide an appeal of its threshold determinations or project permit decisions, the local government shall provide for no more than one consolidated open record hearing on such appeal. The local government need not provide for any further appeal and may provide an appeal for some but not all project permit decisions. If an appeal is provided after the open record hearing, it shall be a closed record appeal before a single decision-making body or officer;

(7) A notice of decision as required by RCW 36.70B.130 and issued within the time period provided in RCW 36.70B.080 and \*36.70B.090;

(8) Completion of project review by the local government, including environmental review and public review and any appeals to the local government, within any applicable time periods under \*RCW 36.70B.090; and

(9) Any other provisions not inconsistent with the requirements of this chapter or chapter 43.21C RCW. [1995 c 347 § 407.]

**\*Reviser's note:** RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

**36.70B.070 Project permit applications—Determination of completeness—Notice to applicant.** (1) Within twenty-eight days after receiving a project permit applica-

tion, a local government planning pursuant to RCW 36.70A.040 shall mail or provide in person a written determination to the applicant, stating either:

- (a) That the application is complete; or
- (b) That the application is incomplete and what is necessary to make the application complete.

To the extent known by the local government, the local government shall identify other agencies of local, state, or federal governments that may have jurisdiction over some aspect of the application.

(2) A project permit application is complete for purposes of this section when it meets the procedural submission requirements of the local government and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the local government from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.

(3) The determination of completeness may include the following as optional information:

- (a) A preliminary determination of those development regulations that will be used for project mitigation;
- (b) A preliminary determination of consistency, as provided under RCW 36.70B.040; or
- (c) Other information the local government chooses to include.

(4)(a) An application shall be deemed complete under this section if the local government does not provide a written determination to the applicant that the application is incomplete as provided in subsection (1)(b) of this section.

(b) Within fourteen days after an applicant has submitted to a local government additional information identified by the local government as being necessary for a complete application, the local government shall notify the applicant whether the application is complete or what additional information is necessary. [1995 c 347 § 408; 1994 c 257 § 4. Formerly RCW 36.70A.440.]

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**36.70B.080 Development regulations—Requirements—Report on implementation costs.** (1) Development regulations adopted pursuant to RCW 36.70A.040 must establish and implement time periods for local government actions for each type of project permit application and provide timely and predictable procedures to determine whether a completed project permit application meets the requirements of those development regulations. The time periods for local government actions for each type of complete project permit application or project type should not exceed one hundred twenty days, unless the local government makes written findings that a specified amount of additional time is needed to process specific complete project permit applications or project types.

The development regulations must, for each type of permit application, specify the contents of a completed project permit application necessary for the complete compliance with the time periods and procedures.

(2)(a) Counties subject to the requirements of RCW 36.70A.215 and the cities within those counties that have populations of at least twenty thousand must, for each type of permit application, identify the total number of project permit applications for which decisions are issued according to the provisions of this chapter. For each type of project permit application identified, these counties and cities must establish and implement a deadline for issuing a notice of final decision as required by subsection (1) of this section and minimum requirements for applications to be deemed complete under RCW 36.70B.070 as required by subsection (1) of this section.

(b) Counties and cities subject to the requirements of this subsection also must prepare annual performance reports that include, at a minimum, the following information for each type of project permit application identified in accordance with the requirements of (a) of this subsection:

- (i) Total number of complete applications received during the year;
- (ii) Number of complete applications received during the year for which a notice of final decision was issued before the deadline established under this subsection;
- (iii) Number of applications received during the year for which a notice of final decision was issued after the deadline established under this subsection;
- (iv) Number of applications received during the year for which an extension of time was mutually agreed upon by the applicant and the county or city;
- (v) Variance of actual performance, excluding applications for which mutually agreed time extensions have occurred, to the deadline established under this subsection during the year; and
- (vi) The mean processing time and the number standard deviation from the mean.

(c) Counties and cities subject to the requirements of this subsection must:

- (i) Provide notice of and access to the annual performance reports through the county's or city's web site; and
- (ii) Post electronic facsimiles of the annual performance reports through the county's or city's web site. Postings on a county's or city's web site indicating that the reports are available by contacting the appropriate county or city department or official do not comply with the requirements of this subsection.

If a county or city subject to the requirements of this subsection does not maintain a web site, notice of the reports must be given by reasonable methods, including but not limited to those methods specified in RCW 36.70B.110(4).

(3) Nothing in this section prohibits a county or city from extending a deadline for issuing a decision for a specific project permit application for any reasonable period of time mutually agreed upon by the applicant and the local government.

(4) The department of community, trade, and economic development shall work with the counties and cities to review the potential implementation costs of the requirements of subsection (2) of this section. The department, in cooperation with the local governments, shall prepare a report summarizing the projected costs, together with recommendations for state funding assistance for implementation costs, and provide the report to the governor and appropriate commit-

tees of the senate and house of representatives by January 1, 2005. [2004 c 191 § 2; 2001 c 322 § 1; 1995 c 347 § 410; (1995 c 347 § 409 expired July 1, 2000); 1994 c 257 § 3. Formerly RCW 36.70A.065.]

**Findings—Intent—2004 c 191:** "The legislature finds that the timely issuance of project permit decisions by local governments serves the public interest. When these decisions, that are often responses to land use and building permit applications, are issued according to specific and locally established time periods and without unnecessary or inappropriate delays, the public enjoys greater efficiency, consistency, and predictability in the permitting process.

The legislature also finds that full access to relevant performance data produced annually by local governments for each type of permit application affords elected officials, project proponents, and the general public the opportunity to review and compare the permit application and processing performance of jurisdictions. Furthermore, the legislature finds that the review and comparison of this data, and the requirement to provide convenient and direct internet access to germane and consistent reports, will likely foster improved methods for processing applications, and issuing project permit decisions in a timely manner.

The legislature, therefore, intends to continue and clarify the requirements for certain jurisdictions to produce and provide access to annual permitting performance reports." [2004 c 191 § 1.]

**Effective date—1995 c 347 § 410:** "Section 410, chapter 347, Laws of 1995 shall take effect July 1, 2000." [1998 c 286 § 10; 1995 c 347 § 412.]

**Expiration date—1995 c 347 § 409:** "The amendments to RCW 36.70B.080 contained in section 409, chapter 347, Laws of 1995 shall expire July 1, 2000." [1998 c 286 § 9; 1995 c 347 § 411.]

**Severability—1994 c 257:** See note following RCW 36.70A.270.

*Development regulations must provide sufficient land capacity for development: RCW 36.70A.115.*

**36.70B.100 Designation of person or entity to receive determinations and notices.** A local government may require the applicant for a project permit to designate a single person or entity to receive determinations and notices required by this chapter. [1995 c 347 § 414.]

**36.70B.110 Notice of application—Required elements—Integration with other review procedures—Administrative appeals (as amended by 1997 c 396).** (1) Not later than April 1, 1996, a local government planning under RCW 36.70A.040 shall provide a notice of application to the public and the departments and agencies with jurisdiction as provided in this section. If a local government has made a threshold determination (~~(of significance)~~) under chapter 43.21C RCW concurrently with the notice of application, the notice of application (~~(shall)~~ may) be combined with the threshold determination (~~(of significance)~~) and the scoping notice for a determination of significance. Nothing in this section prevents a determination of significance and scoping notice from being issued prior to the notice of application.

(2) The notice of application shall be provided within fourteen days after the determination of completeness as provided in RCW 36.70B.070 and include the following in whatever sequence or format the local government deems appropriate:

(a) The date of application, the date of the notice of completion for the application, and the date of the notice of application;

(b) A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070 or \*36.70B.090;

(c) The identification of other permits not included in the application to the extent known by the local government;

(d) The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing the notice of application, such as a city land use bulletin, the location where the application and any studies can be reviewed;

(e) A statement of the public comment period, which shall be not less than fourteen nor more than thirty days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. A local government may accept public comments at any time prior to the closing of the record of an open

record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit;

(f) The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of the application;

(g) A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency as provided in RCW 36.70B.040; and

(h) Any other information determined appropriate by the local government.

(3) If an open record predecision hearing is required for the requested project permits, the notice of application shall be provided at least fifteen days prior to the open record hearing.

(4) A local government shall use reasonable methods to give the notice of application to the public and agencies with jurisdiction and may use its existing notice procedures. A local government may use different types of notice for different categories of project permits or types of project actions. If a local government by resolution or ordinance does not specify its method of public notice, the local government shall use the methods provided for in (a) and (b) of this subsection. Examples of reasonable methods to inform the public are:

(a) Posting the property for site-specific proposals;

(b) Publishing notice, including at least the project location, description, type of permit(s) required, comment period dates, and location where the complete application may be reviewed, in the newspaper of general circulation in the general area where the proposal is located or in a local land use newsletter published by the local government;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional or neighborhood newspapers or trade journals;

(f) Publishing notice in agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; and

(g) Mailing to neighboring property owners.

(5) A notice of application shall not be required for project permits that are categorically exempt under chapter 43.21C RCW, unless a public comment period or an open record predecision hearing is required.

(6) A local government shall integrate the permit procedures in this section with environmental review under chapter 43.21C RCW as follows:

(a) Except for a threshold determination (~~(of significance)~~), the local government may not issue (~~(its threshold determination, or issue)~~) a decision or a recommendation on a project permit until the expiration of the public comment period on the notice of application.

(b) If an open record predecision hearing is required and the local government's threshold determination requires public notice under chapter 43.21C RCW, the local government shall issue its threshold determination at least fifteen days prior to the open record predecision hearing.

(c) Comments shall be as specific as possible.

(7) A local government may combine any hearing on a project permit with any hearing that may be held by another local, state, regional, federal, or other agency provided that the hearing is held within the geographic boundary of the local government. Hearings shall be combined if requested by an applicant, as long as the joint hearing can be held within the time periods specified in \*RCW 36.70B.090 or the applicant agrees to the schedule in the event that additional time is needed in order to combine the hearings. All agencies of the state of Washington, including municipal corporations and counties participating in a combined hearing, are hereby authorized to issue joint hearing notices and develop a joint format, select a mutually acceptable hearing body or officer, and take such other actions as may be necessary to hold joint hearings consistent with each of their respective statutory obligations.

(8) All state and local agencies shall cooperate to the fullest extent possible with the local government in holding a joint hearing if requested to do so, as long as:

(a) The agency is not expressly prohibited by statute from doing so;

(b) Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule; and

(c) The agency has received the necessary information about the proposed project from the applicant to hold its hearing at the same time as the local government hearing.

(9) A local government is not required to provide for administrative appeals. If provided, an administrative appeal of the project decision, combined with any environmental determinations, shall be filed within fourteen days after the notice of the decision or after other notice that the decision has

been made and is appealable. The local government shall extend the appeal period for an additional seven days, if state or local rules adopted pursuant to chapter 43.21C RCW allow public comment on a determination of nonsignificance issued as part of the appealable project permit decision.

(10) The applicant for a project permit is deemed to be a participant in any comment period, open record hearing, or closed record appeal.

(11) Each local government planning under RCW 36.70A.040 shall adopt procedures for administrative interpretation of its development regulations. [1997 c 396 § 1; 1995 c 347 § 415.]

**\*Reviser's note:** RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

**36.70B.110 Notice of application—Required elements—Integration with other review procedures—Administrative appeals (as amended by 1997 c 429).** (1) Not later than April 1, 1996, a local government planning under RCW 36.70A.040 shall provide a notice of application to the public and the departments and agencies with jurisdiction as provided in this section. If a local government has made a determination of significance under chapter 43.21C RCW concurrently with the notice of application, the notice of application shall be combined with the determination of significance and scoping notice. Nothing in this section prevents a determination of significance and scoping notice from being issued prior to the notice of application. Nothing in this section or this chapter prevents a lead agency, when it is a project proponent or is funding a project, from conducting its review under chapter 43.21C RCW or from allowing appeals of procedural determinations prior to submitting a project permit application.

(2) The notice of application shall be provided within fourteen days after the determination of completeness as provided in RCW 36.70B.070 and, except as limited by the provisions of subsection (4)(b) of this section, shall include the following in whatever sequence or format the local government deems appropriate:

(a) The date of application, the date of the notice of completion for the application, and the date of the notice of application;

(b) A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070 or \*36.70B.090;

(c) The identification of other permits not included in the application to the extent known by the local government;

(d) The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing the notice of application, such as a city land use bulletin, the location where the application and any studies can be reviewed;

(e) A statement of the public comment period, which shall be not less than fourteen nor more than thirty days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. A local government may accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit;

(f) The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of the application;

(g) A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency as provided in RCW (~~36.70B.040~~) 36.70B.030(2); and

(h) Any other information determined appropriate by the local government.

(3) If an open record predecision hearing is required for the requested project permits, the notice of application shall be provided at least fifteen days prior to the open record hearing.

(4) A local government shall use reasonable methods to give the notice of application to the public and agencies with jurisdiction and may use its existing notice procedures. A local government may use different types of notice for different categories of project permits or types of project actions. If a local government by resolution or ordinance does not specify its method of public notice, the local government shall use the methods provided for in (a) and (b) of this subsection. Examples of reasonable methods to inform the public are:

(a) Posting the property for site-specific proposals;

(b) Publishing notice, including at least the project location, description, type of permit(s) required, comment period dates, and location where the notice of application required by subsection (2) of this section and the complete application may be reviewed, in the newspaper of general circula-

tion in the general area where the proposal is located or in a local land use newsletter published by the local government;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional or neighborhood newspapers or trade journals;

(f) Publishing notice in agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; and

(g) Mailing to neighboring property owners.

(5) A notice of application shall not be required for project permits that are categorically exempt under chapter 43.21C RCW, unless ~~((a public comment period or))~~ an open record predecision hearing is required or an open record appeal hearing is allowed on the project permit decision.

(6) A local government shall integrate the permit procedures in this section with its environmental review under chapter 43.21C RCW as follows:

(a) Except for a determination of significance and except as otherwise expressly allowed in this section, the local government may not issue its threshold determination ~~((or issue a decision or a recommendation on a project permit))~~ until the expiration of the public comment period on the notice of application.

(b) If an open record predecision hearing is required ~~((and the local government's threshold determination requires public notice under chapter 43.21C RCW))~~, the local government shall issue its threshold determination at least fifteen days prior to the open record predecision hearing.

(c) Comments shall be as specific as possible.

(d) A local government is not required to provide for administrative appeals of its threshold determination. If provided, an administrative appeal shall be filed within fourteen days after notice that the determination has been made and is appealable. Except as otherwise expressly provided in this section, the appeal hearing on a determination of nonsignificance shall be consolidated with any open record hearing on the project permit.

(7) At the request of the applicant, a local government may combine any hearing on a project permit with any hearing that may be held by another local, state, regional, federal, or other agency ((provided that)), if:

(a) The hearing is held within the geographic boundary of the local government((Hearings shall be combined if requested by an applicant, as long as)); and

(b) The joint hearing can be held within the time periods specified in \*RCW 36.70B.090 or the applicant agrees to the schedule in the event that additional time is needed in order to combine the hearings. All agencies of the state of Washington, including municipal corporations and counties participating in a combined hearing, are hereby authorized to issue joint hearing notices and develop a joint format, select a mutually acceptable hearing body or officer, and take such other actions as may be necessary to hold joint hearings consistent with each of their respective statutory obligations.

(8) All state and local agencies shall cooperate to the fullest extent possible with the local government in holding a joint hearing if requested to do so, as long as:

(a) The agency is not expressly prohibited by statute from doing so;

(b) Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule; and

(c) The agency has received the necessary information about the proposed project from the applicant to hold its hearing at the same time as the local government hearing.

(9) A local government is not required to provide for administrative appeals. If provided, an administrative appeal of the project decision ~~((combined with))~~ and of any environmental determination((s)) issued at the same time as the project decision, shall be filed within fourteen days after the notice of the decision or after other notice that the decision has been made and is appealable. The local government shall extend the appeal period for an additional seven days, if state or local rules adopted pursuant to chapter 43.21C RCW allow public comment on a determination of nonsignificance issued as part of the appealable project permit decision.

(10) The applicant for a project permit is deemed to be a participant in any comment period, open record hearing, or closed record appeal.

(11) Each local government planning under RCW 36.70A.040 shall adopt procedures for administrative interpretation of its development regulations. [1997 c 429 § 48; 1995 c 347 § 415.]

**Reviser's note:** \*(1) RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

(2) RCW 36.70B.110 was amended twice during the 1997 legislative session, each without reference to the other. For rule of construction con-

cerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**36.70B.120 Permit review process.** (1) Each local government planning under RCW 36.70A.040 shall establish a permit review process that provides for the integrated and consolidated review and decision on two or more project permits relating to a proposed project action, including a single application review and approval process covering all project permits requested by an applicant for all or part of a project action and a designated permit coordinator. If an applicant elects the consolidated permit review process, the determination of completeness, notice of application, and notice of final decision must include all project permits being reviewed through the consolidated permit review process.

(2) Consolidated permit review may provide different procedures for different categories of project permits, but if a project action requires project permits from more than one category, the local government shall provide for consolidated permit review with a single open record hearing and no more than one closed record appeal as provided in RCW 36.70B.060. Each local government shall determine which project permits are subject to an open record hearing and a closed record appeal. Examples of categories of project permits include but are not limited to:

(a) Proposals that are categorically exempt from chapter 43.21C RCW, such as construction permits, that do not require environmental review or public notice;

(b) Permits that require environmental review, but no open record predecision hearing; and

(c) Permits that require a threshold determination and an open record predecision hearing and may provide for a closed record appeal to a hearing body or officer or to the local government legislative body.

(3) A local government may provide by ordinance or resolution for the same or a different decision maker or hearing body or officer for different categories of project permits. In the case of consolidated project permit review, the local government shall specify which decision makers shall make the decision or recommendation, conduct the hearing, or decide the appeal to ensure that consolidated permit review occurs as provided in this section. The consolidated permit review may combine an open record predecision hearing on one or more permits with an open record appeal hearing on other permits. In such cases, the local government by ordinance or resolution shall specify which project permits, if any, shall be subject to a closed record appeal. [1995 c 347 § 416.]

**36.70B.130 Notice of decision—Distribution.** A local government planning under RCW 36.70A.040 shall provide a notice of decision that also includes a statement of any threshold determination made under chapter 43.21C RCW and the procedures for administrative appeal, if any. The notice of decision may be a copy of the report or decision on the project permit application. The notice shall be provided to the applicant and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application. The local government shall provide for notice of its decision as provided in RCW 36.70B.110(4), which shall also state that affected

property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. The local government shall provide notice of decision to the county assessor's office of the county or counties in which the property is situated. [1996 c 254 § 1; 1995 c 347 § 417.]

**36.70B.140 Project permits that may be excluded from review.** (1) A local government by ordinance or resolution may exclude the following project permits from the provisions of RCW 36.70B.060 through \*36.70B.090 and 36.70B.110 through 36.70B.130: Landmark designations, street vacations, or other approvals relating to the use of public areas or facilities, or other project permits, whether administrative or quasi-judicial, that the local government by ordinance or resolution has determined present special circumstances that warrant a review process different from that provided in RCW 36.70B.060 through \*36.70B.090 and 36.70B.110 through 36.70B.130.

(2) A local government by ordinance or resolution also may exclude the following project permits from the provisions of RCW 36.70B.060 and 36.70B.110 through 36.70B.130: Lot line or boundary adjustments and building and other construction permits, or similar administrative approvals, categorically exempt from environmental review under chapter 43.21C RCW, or for which environmental review has been completed in connection with other project permits. [1995 c 347 § 418.]

**\*Reviser's note:** RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

**36.70B.150 Local governments not planning under the growth management act may use provisions.** A local government not planning under RCW 36.70A.040 may incorporate some or all of the provisions of RCW 36.70B.060 through \*36.70B.090 and 36.70B.110 through 36.70B.130 into its procedures for review of project permits or other project actions. [1995 c 347 § 419.]

**\*Reviser's note:** RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

**36.70B.160 Additional project review encouraged—Construction.** (1) Each local government is encouraged to adopt further project review provisions to provide prompt, coordinated review and ensure accountability to applicants and the public, including expedited review for project permit applications for projects that are consistent with adopted development regulations and within the capacity of system-wide infrastructure improvements.

(2) Nothing in this chapter is intended or shall be construed to prevent a local government from requiring a preapplication conference or a public meeting by rule, ordinance, or resolution.

(3) Each local government shall adopt procedures to monitor and enforce permit decisions and conditions.

(4) Nothing in this chapter modifies any independent statutory authority for a government agency to appeal a project permit issued by a local government. [1995 c 347 § 420.]

**36.70B.170 Development agreements—Authorized.** (1) A local government may enter into a development agree-

ment with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.

(2) RCW 36.70B.170 through 36.70B.190 and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

(3) For the purposes of this section, "development standards" includes, but is not limited to:

(a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;

(b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(e) Affordable housing;

(f) Parks and open space preservation;

(g) Phasing;

(h) Review procedures and standards for implementing decisions;

(i) A build-out or vesting period for applicable standards; and

(j) Any other appropriate development requirement or procedure.

(4) The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety. [1995 c 347 § 502.]

**Findings—Intent—1995 c 347 §§ 502-506:** "The legislature finds that the lack of certainty in the approval of development projects can result in a waste of public and private resources, escalate housing costs for consumers and discourage the commitment to comprehensive planning which would make maximum efficient use of resources at the least economic cost to the public. Assurance to a development project applicant that upon government approval the project may proceed in accordance with existing policies and regulations, and subject to conditions of approval, all as set forth in a development agreement, will strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development. Further, the lack of public facilities and services is a serious impediment to development of new housing and commercial uses. Project applicants and local governments may include provisions and agreements whereby applicants are reimbursed over time for financing public

facilities. It is the intent of the legislature by RCW 36.70B.170 through 36.70B.210 to allow local governments and owners and developers of real property to enter into development agreements." [1995 c 347 § 501.]

### **36.70B.180 Development agreements—Effect.**

Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement, and may not be subject to an amendment to a zoning ordinance or development standard or regulation or a new zoning ordinance or development standard or regulation adopted after the effective date of the agreement. A permit or approval issued by the county or city after the execution of the development agreement must be consistent with the development agreement. [1995 c 347 § 503.]

**Findings—Intent—1995 c 347 §§ 502-506:** See note following RCW 36.70B.170.

### **36.70B.190 Development agreements—Recording—**

**Parties and successors bound.** A development agreement shall be recorded with the real property records of the county in which the property is located. During the term of the development agreement, the agreement is binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement. [1995 c 347 § 504.]

**Findings—Intent—1995 c 347 §§ 502-506:** See note following RCW 36.70B.170.

### **36.70B.200 Development agreements—Public hearing.**

A county or city shall only approve a development agreement by ordinance or resolution after a public hearing. The county or city legislative body or a planning commission, hearing examiner, or other body designated by the legislative body to conduct the public hearing may conduct the hearing. If the development agreement relates to a project permit application, the provisions of chapter 36.70C RCW shall apply to the appeal of the decision on the development agreement. [1995 c 347 § 505.]

**Findings—Intent—1995 c 347 §§ 502-506:** See note following RCW 36.70B.170.

### **36.70B.210 Development agreements—Authority to**

**impose fees not extended.** Nothing in RCW 36.70B.170 through 36.70B.200 and section 501, chapter 347, Laws of 1995 is intended to authorize local governments to impose impact fees, inspection fees, or dedications or to require any other financial contributions or mitigation measures except as expressly authorized by other applicable provisions of state law. [1995 c 347 § 506.]

**Findings—Intent—1995 c 347 §§ 502-506:** See note following RCW 36.70B.170.

**36.70B.220 Permit assistance staff.** (1) Each county and city having populations of ten thousand or more that plan under RCW 36.70A.040 shall designate permit assistance staff whose function it is to assist permit applicants. An exist-

ing employee may be designated as the permit assistance staff.

(2) Permit assistance staff designated under this section shall:

(a) Make available to permit applicants all current local government regulations and adopted policies that apply to the subject application. The local government shall provide counter copies thereof and, upon request, provide copies according to chapter 42.17 RCW. The staff shall also publish and keep current one or more handouts containing lists and explanations of all local government regulations and adopted policies;

(b) Establish and make known to the public the means of obtaining the handouts and related information; and

(c) Provide assistance regarding the application of the local government's regulations in particular cases.

(3) Permit assistance staff designated under this section may obtain technical assistance and support in the compilation and production of the handouts under subsection (2) of this section from the municipal research council and the department of community, trade, and economic development. [1996 c 206 § 9.]

**Findings—1996 c 206:** See note following RCW 43.05.030.

**36.70B.230 Planning regulations—Copies provided to county assessor.** By July 31, 1997, a local government planning under RCW 36.70A.040 shall provide to the county assessor a copy of the local government's comprehensive plan and development regulations in effect on July 1st of that year and shall thereafter provide any amendments to the plan and regulations that were adopted before July 31st of each following year. [1996 c 254 § 6.]

**36.70B.900 Finding—Severability—Part headings and table of contents not law—1995 c 347.** See notes following RCW 36.70A.470.

## Chapter 36.70C RCW

### JUDICIAL REVIEW OF LAND USE DECISIONS

#### Sections

36.70C.005	Short title.
36.70C.010	Purpose.
36.70C.020	Definitions.
36.70C.030	Chapter exclusive means of judicial review of land use decisions—Exceptions.
36.70C.040	Commencement of review—Land use petition—Procedure.
36.70C.050	Joinder of parties.
36.70C.060	Standing.
36.70C.070	Land use petition—Required elements.
36.70C.080	Initial hearing.
36.70C.090	Expedited review.
36.70C.100	Stay of action pending review.
36.70C.110	Record for judicial review—Costs.
36.70C.120	Scope of review—Discovery.
36.70C.130	Standards for granting relief.
36.70C.140	Decision of the court.
36.70C.900	Finding—Severability—Part headings and table of contents not law—1995 c 347.

**36.70C.005 Short title.** This chapter may be known and cited as the land use petition act. [1995 c 347 § 701.]

**36.70C.010 Purpose.** The purpose of this chapter is to reform the process for judicial review of land use decisions

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made by local jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review. [1995 c 347 § 702.]

**36.70C.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

(a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, but excluding applications for permits or approvals to use, vacate, or transfer streets, parks, and similar types of public property; excluding applications for legislative approvals such as area-wide rezones and annexations; and excluding applications for business licenses;

(b) An interpretative or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property; and

(c) The enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property. However, when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter.

(2) "Local jurisdiction" means a county, city, or incorporated town.

(3) "Person" means an individual, partnership, corporation, association, public or private organization, or governmental entity or agency. [1995 c 347 § 703.]

**36.70C.030 Chapter exclusive means of judicial review of land use decisions—Exceptions.** (1) This chapter replaces the writ of certiorari for appeal of land use decisions and shall be the exclusive means of judicial review of land use decisions, except that this chapter does not apply to:

(a) Judicial review of:

(i) Land use decisions made by bodies that are not part of a local jurisdiction;

(ii) Land use decisions of a local jurisdiction that are subject to review by a quasi-judicial body created by state law, such as the shorelines hearings board, the environmental and land use hearings board, or the growth management hearings board;

(b) Judicial review of applications for a writ of mandamus or prohibition; or

(c) Claims provided by any law for monetary damages or compensation. If one or more claims for damages or compensation are set forth in the same complaint with a land use petition brought under this chapter, the claims are not subject to the procedures and standards, including deadlines, provided in this chapter for review of the petition. The judge who hears the land use petition may, if appropriate, preside at a trial for damages or compensation.

(2) The superior court civil rules govern procedural matters under this chapter to the extent that the rules are consistent with this chapter. [2003 c 393 § 17; 1995 c 347 § 704.]

**Implementation—Effective date—2003 c 393:** See RCW 43.21L.900 and 43.21L.901.

**36.70C.040 Commencement of review—Land use petition—Procedure.** (1) Proceedings for review under this chapter shall be commenced by filing a land use petition in superior court.

(2) A land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served on the following persons who shall be parties to the review of the land use petition:

(a) The local jurisdiction, which for purposes of the petition shall be the jurisdiction's corporate entity and not an individual decision maker or department;

(b) Each of the following persons if the person is not the petitioner:

(i) Each person identified by name and address in the local jurisdiction's written decision as an applicant for the permit or approval at issue; and

(ii) Each person identified by name and address in the local jurisdiction's written decision as an owner of the property at issue;

(c) If no person is identified in a written decision as provided in (b) of this subsection, each person identified by name and address as a taxpayer for the property at issue in the records of the county assessor, based upon the description of the property in the application; and

(d) Each person named in the written decision who filed an appeal to a local jurisdiction quasi-judicial decision maker regarding the land use decision at issue, unless the person has abandoned the appeal or the person's claims were dismissed before the quasi-judicial decision was rendered. Persons who later intervened or joined in the appeal are not required to be made parties under this subsection.

(3) The petition is timely if it is filed and served on all parties listed in subsection (2) of this section within twenty-one days of the issuance of the land use decision.

(4) For the purposes of this section, the date on which a land use decision is issued is:

(a) Three days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available;

(b) If the land use decision is made by ordinance or resolution by a legislative body sitting in a quasi-judicial capacity, the date the body passes the ordinance or resolution; or

(c) If neither (a) nor (b) of this subsection applies, the date the decision is entered into the public record.

(5) Service on the local jurisdiction must be by delivery of a copy of the petition to the persons identified by or pursuant to RCW 4.28.080 to receive service of process. Service on other parties must be in accordance with the superior court civil rules or by first class mail to:

(a) The address stated in the written decision of the local jurisdiction for each person made a party under subsection (2)(b) of this section;

(b) The address stated in the records of the county assessor for each person made a party under subsection (2)(c) of this section; and

(c) The address stated in the appeal to the quasi-judicial decision maker for each person made a party under subsection (2)(d) of this section.

(6) Service by mail is effective on the date of mailing and proof of service shall be by affidavit or declaration under penalty of perjury. [1995 c 347 § 705.]

**36.70C.050 Joinder of parties.** If the applicant for the land use approval is not the owner of the real property at issue, and if the owner is not accurately identified in the records referred to in RCW 36.70C.040(2) (b) and (c), the applicant shall be responsible for promptly securing the joinder of the owners. In addition, within fourteen days after service each party initially named by the petitioner shall disclose to the other parties the name and address of any person whom such party knows may be needed for just adjudication of the petition, and the petitioner shall promptly name and serve any such person whom the petitioner agrees may be needed for just adjudication. If such a person is named and served before the initial hearing, leave of court for the joinder is not required, and the petitioner shall provide the newly joined party with copies of the pleadings filed before the party's joinder. Failure by the petitioner to name or serve, within the time required by RCW 36.70C.040(3), persons who are needed for just adjudication but who are not identified in the records referred to in RCW 36.70C.040(2)(b), or in RCW 36.70C.040(2)(c) if applicable, shall not deprive the court of jurisdiction to hear the land use petition. [1995 c 347 § 706.]

**36.70C.060 Standing.** Standing to bring a land use petition under this chapter is limited to the following persons:

(1) The applicant and the owner of property to which the land use decision is directed;

(2) Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:

(a) The land use decision has prejudiced or is likely to prejudice that person;

(b) That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;

(c) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and

(d) The petitioner has exhausted his or her administrative remedies to the extent required by law. [1995 c 347 § 707.]

**36.70C.070 Land use petition—Required elements.** A land use petition must set forth:

(1) The name and mailing address of the petitioner;

(2) The name and mailing address of the petitioner's attorney, if any;

(3) The name and mailing address of the local jurisdiction whose land use decision is at issue;

(4) Identification of the decision-making body or officer, together with a duplicate copy of the decision, or, if not a written decision, a summary or brief description of it;

(5) Identification of each person to be made a party under RCW 36.70C.040(2) (b) through (d);

(6) Facts demonstrating that the petitioner has standing to seek judicial review under RCW 36.70C.060;

(7) A separate and concise statement of each error alleged to have been committed;

(8) A concise statement of facts upon which the petitioner relies to sustain the statement of error; and

(9) A request for relief, specifying the type and extent of relief requested. [1995 c 347 § 708.]

**36.70C.080 Initial hearing.** (1) Within seven days after the petition is served on the parties identified in RCW 36.70C.040(2), the petitioner shall note, according to the local rules of superior court, an initial hearing on jurisdictional and preliminary matters. This initial hearing shall be set no sooner than thirty-five days and no later than fifty days after the petition is served on the parties identified in RCW 36.70C.040(2).

(2) The parties shall note all motions on jurisdictional and procedural issues for resolution at the initial hearing, except that a motion to allow discovery may be brought sooner. Where confirmation of motions is required, each party shall be responsible for confirming its own motions.

(3) The defenses of lack of standing, untimely filing or service of the petition, and failure to join persons needed for just adjudication are waived if not raised by timely motion noted to be heard at the initial hearing, unless the court allows discovery on such issues.

(4) The petitioner shall move the court for an order at the initial hearing that sets the date on which the record must be submitted, sets a briefing schedule, sets a discovery schedule if discovery is to be allowed, and sets a date for the hearing or trial on the merits.

(5) The parties may waive the initial hearing by scheduling with the court a date for the hearing or trial on the merits and filing a stipulated order that resolves the jurisdictional and procedural issues raised by the petition, including the issues identified in subsections (3) and (4) of this section.

(6) A party need not file an answer to the petition. [1995 c 347 § 709.]

**36.70C.090 Expedited review.** The court shall provide expedited review of petitions filed under this chapter. The matter must be set for hearing within sixty days of the date set for submitting the local jurisdiction's record, absent a showing of good cause for a different date or a stipulation of the parties. [1995 c 347 § 710.]

**36.70C.100 Stay of action pending review.** (1) A petitioner or other party may request the court to stay or suspend an action by the local jurisdiction or another party to implement the decision under review. The request must set forth a statement of grounds for the stay and the factual basis for the request.

(2) A court may grant a stay only if the court finds that:

(a) The party requesting the stay is likely to prevail on the merits;

(b) Without the stay the party requesting it will suffer irreparable harm;

(c) The grant of a stay will not substantially harm other parties to the proceedings; and

(d) The request for the stay is timely in light of the circumstances of the case.

(3) The court may grant the request for a stay upon such terms and conditions, including the filing of security, as are necessary to prevent harm to other parties by the stay. [1995 c 347 § 711.]

**36.70C.110 Record for judicial review—Costs.** (1) Within forty-five days after entry of an order to submit the record, or within such a further time as the court allows or as the parties agree, the local jurisdiction shall submit to the court a certified copy of the record for judicial review of the land use decision, except that the petitioner shall prepare at the petitioner's expense and submit a verbatim transcript of any hearings held on the matter.

(2) If the parties agree, or upon order of the court, the record shall be shortened or summarized to avoid reproduction and transcription of portions of the record that are duplicative or not relevant to the issues to be reviewed by the court.

(3) The petitioner shall pay the local jurisdiction the cost of preparing the record before the local jurisdiction submits the record to the court. Failure by the petitioner to timely pay the local jurisdiction relieves the local jurisdiction of responsibility to submit the record and is grounds for dismissal of the petition.

(4) If the relief sought by the petitioner is granted in whole or in part the court shall equitably assess the cost of preparing the record among the parties. In assessing costs the court shall take into account the extent to which each party prevailed and the reasonableness of the parties' conduct in agreeing or not agreeing to shorten or summarize the record under subsection (2) of this section. [1995 c 347 § 712.]

**36.70C.120 Scope of review—Discovery.** (1) When the land use decision being reviewed was made by a quasi-judicial body or officer who made factual determinations in support of the decision and the parties to the quasi-judicial proceeding had an opportunity consistent with due process to make a record on the factual issues, judicial review of factual issues and the conclusions drawn from the factual issues shall be confined to the record created by the quasi-judicial body or officer, except as provided in subsections (2) through (4) of this section.

(2) For decisions described in subsection (1) of this section, the record may be supplemented by additional evidence only if the additional evidence relates to:

(a) Grounds for disqualification of a member of the body or of the officer that made the land use decision, when such grounds were unknown by the petitioner at the time the record was created;

(b) Matters that were improperly excluded from the record after being offered by a party to the quasi-judicial proceeding; or

(c) Matters that were outside the jurisdiction of the body or officer that made the land use decision.

(3) For land use decisions other than those described in subsection (1) of this section, the record for judicial review may be supplemented by evidence of material facts that were not made part of the local jurisdiction's record.

(4) The court may require or permit corrections of ministerial errors or inadvertent omissions in the preparation of the record.

(5) The parties may not conduct pretrial discovery except with the prior permission of the court, which may be sought by motion at any time after service of the petition. The court shall not grant permission unless the party requesting it makes a prima facie showing of need. The court shall strictly limit discovery to what is necessary for equitable and timely review of the issues that are raised under subsections (2) and (3) of this section. If the court allows the record to be supplemented, the court shall require the parties to disclose before the hearing or trial on the merits the specific evidence they intend to offer. If any party, or anyone acting on behalf of any party, requests records under chapter 42.17 RCW relating to the matters at issue, a copy of the request shall simultaneously be given to all other parties and the court shall take such request into account in fashioning an equitable discovery order under this section. [1995 c 347 § 713.]

**36.70C.130 Standards for granting relief.** (1) The superior court, acting without a jury, shall review the record and such supplemental evidence as is permitted under RCW 36.70C.120. The court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met. The standards are:

(a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts;

(e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or

(f) The land use decision violates the constitutional rights of the party seeking relief.

(2) In order to grant relief under this chapter, it is not necessary for the court to find that the local jurisdiction engaged in arbitrary and capricious conduct. A grant of relief by itself may not be deemed to establish liability for monetary damages or compensation. [1995 c 347 § 714.]

**36.70C.140 Decision of the court.** The court may affirm or reverse the land use decision under review or remand it for modification or further proceedings. If the decision is remanded for modification or further proceedings, the court may make such an order as it finds necessary to preserve the interests of the parties and the public, pending fur-

ther proceedings or action by the local jurisdiction. [1995 c 347 § 715.]

**36.70C.900 Finding—Severability—Part headings and table of contents not law—1995 c 347.** See notes following RCW 36.70A.470.

## Chapter 36.71 RCW

### PEDDLERS' AND HAWKERS' LICENSES

#### Sections

36.71.010	Peddler's license—"Peddler" defined.
36.71.020	Peddler's license—Application for and issuance of license.
36.71.030	Peddler's license—Record of applications.
36.71.040	Peddler's license—Cancellation of license.
36.71.050	Peddler's license—Liability of deposit—Lien on.
36.71.060	Peddler's license—Penalty for peddling without license.
36.71.070	Hawkers, auctioneers, and barterers must procure license—Exceptions.
36.71.080	Hawkers, auctioneers, and barterers must procure license—Issuance of license.
36.71.090	Farmers, gardeners, etc., peddling own produce exempt from license requirements—Exception—Valid direct retail endorsement.

**36.71.010 Peddler's license—"Peddler" defined.** The term "peddler" for the purpose of this chapter includes all persons, both principals and agents, who go from place to place and house to house, carrying for sale and offering for sale or exposal for sale, goods, wares, or merchandise except agricultural, horticultural, or farm products, which they may grow or raise, and except vendors of books, periodicals, or newspapers: PROVIDED, That nothing in this chapter shall apply to peddlers within the limits of any city or town which by ordinance regulates the sale of goods, wares, or merchandise by peddlers. [1963 c 4 § 36.71.010. Prior: 1929 c 110 § 1; 1909 c 214 § 1; RRS § 8353.]

**36.71.020 Peddler's license—Application for and issuance of license.** Every peddler, before commencing business in any county of the state, shall apply in writing and under oath to the appropriate county official of the county in which he proposes to operate for a county license. The application must state the names and residences of the owners or parties in whose interest the business is to be conducted. The applicant at the same time shall file a true statement under oath of the quantity and value of the stock of goods, wares, and merchandise that is in the county for sale or to be kept or exposed for sale in the county, make a special deposit of five hundred dollars, and pay the county license fee as may be fixed under the authority of RCW 36.32.120(3).

The appropriate county official shall thereupon issue to the applicant a peddler's license, authorizing him to do business in the county for the term of one year from the date thereof. Every county license shall contain a copy of the application therefor, shall not be transferable, and shall not authorize more than one person to sell goods as a peddler, either by agent or clerk, or in any other way than his own proper person. [1985 c 91 § 3; 1963 c 4 § 36.71.020. Prior: 1927 c 89 § 1; 1909 c 214 § 3; RRS § 8355.]

**36.71.030 Peddler's license—Record of applications.** The appropriate county official of each county shall keep on

file all applications for peddlers' licenses that are issued. All files and records shall be in convenient form and open to public inspection. [1985 c 91 § 4; 1963 c 4 § 36.71.030. Prior: 1909 c 214 § 4; RRS § 8356.]

**36.71.040 Peddler's license—Cancellation of license.**

Upon the expiration and return of a county license, the appropriate county official shall cancel it, indorse thereon the cancellation, and place it on file. After holding the special deposit of the licensee for a period of ninety days from the date of cancellation, he shall return the deposit or such portion as may remain in his hands after satisfying the claims made against it. [1985 c 91 § 5; 1963 c 4 § 36.71.040. Prior: 1909 c 214 § 5; RRS § 8357.]

**36.71.050 Peddler's license—Liability of deposit—**

**Lien on.** Each deposit made with the county shall be subject to all taxes legally chargeable thereto, to attachment and execution on behalf of the creditors of the licensee whose claims arise in connection with the business done under his license, and the county may be held to answer as trustee in any civil action in contract or tort brought against any licensee, and shall pay over, under order of the court or upon execution, such amount of money as the licensee may be chargeable with upon the final determination of the case. Such deposit shall also be subject to the payment of any and all fines and penalties incurred by the licensee through violations of the provisions of RCW 36.71.010, 36.71.020, 36.71.030, 36.71.040 and 36.71.060, which shall be a lien upon the deposit and shall be collected in the manner provided by law. [1985 c 91 § 6; 1963 c 4 § 36.71.050. Prior: 1909 c 214 § 6; RRS § 8358.]

**36.71.060 Peddler's license—Penalty for peddling without license.** Every peddler who sells or offers for sale or exposes for sale, at public or private sale any goods, wares, or merchandise without a county license, is guilty of a misdemeanor and shall be punished by imprisonment for not less than thirty days nor more than ninety days or by fine of not less than fifty dollars nor more than two hundred dollars or by both. [2003 c 53 § 207; 1963 c 4 § 36.71.060. Prior: 1909 c 214 § 2; RRS § 8354.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**36.71.070 Hawkers, auctioneers, and barterers must procure license—Exceptions.** (1) If any person sells any goods, wares, or merchandise, at auction or public outcry, or barter goods, wares or merchandise from traveling boats, wagons, carts or vehicles of any kind, or from any pack, basket or other package carried on foot without first having obtained a license therefor from the board of county commissioners of the county in which such goods are sold or bartered, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than fifty dollars, and shall stand committed to the county jail of the county in which the conviction is had until such fine and cost of prosecution are paid, or discharged by due course of law: **PROVIDED,** That this section shall not be construed as to apply to any seagoing craft or to administrators or executors

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selling property of deceased persons, or to private individuals selling their household property, or furniture, or farming tools, implements, or livestock, or any produce grown or raised by them, either at public auction or private sale.

(2) Notwithstanding subsection (1) of this section, counties shall not license auctioneers that are licensed by the state under chapter 18.11 RCW. [1984 c 189 § 6; 1963 c 4 § 36.71.070. Prior: 1879 p 130 § 1; 1873 p 437 § 1; RRS § 8341.]

**36.71.080 Hawkers, auctioneers, and barterers must procure license—Issuance of license.**

The county legislative authority may, by its order, direct the appropriate county official to issue a license to any person to do any business designated in RCW 36.71.070 for such sum as may be fixed under the authority of RCW 36.32.120(3). [1985 c 91 § 7; 1963 c 4 § 36.71.080. Prior: 1873 p 438 § 3; RRS § 8342.]

**36.71.090 Farmers, gardeners, etc., peddling own produce exempt from license requirements—Exception—Valid direct retail endorsement.**

(1) It shall be lawful for any farmer, gardener, or other person, without license, to sell, deliver, or peddle any fruits, vegetables, berries, eggs, or any farm produce or edibles raised, gathered, produced, or manufactured by such person and no city or town shall pass or enforce any ordinance prohibiting the sale by or requiring license from the producers and manufacturers of farm produce and edibles as defined in this section. However, nothing in this section authorizes any person to sell, deliver, or peddle, without license, in any city or town, any dairy product, meat, poultry, eel, fish, mollusk, or shellfish where a license is required to engage legally in such activity in such city or town.

(2) It is lawful for an individual in possession of a valid direct retail endorsement, as established in RCW 77.65.510, to sell, deliver, or peddle any legally harvested retail-eligible species, as that term is defined in RCW 77.08.010, that is caught, harvested, or collected under rule of the department of fish and wildlife by such a person at a temporary food service establishment, as that term is defined in RCW 69.06.045, and no city, town, or county may pass or enforce an ordinance prohibiting the sale by or requiring additional licenses or permits from the holder of the valid direct retail endorsement. However, this subsection does not prohibit a city, town, or county from inspecting an individual displaying a direct retail endorsement to verify that the person is in compliance with state board of health and local rules for food service operations. [2003 c 387 § 5; 2002 c 301 § 9; 1984 c 25 § 4; 1963 c 4 § 36.71.090. Prior: 1917 c 45 § 1; 1897 c 62 § 1; RRS § 8343.]

**Finding—Effective date—2002 c 301:** See notes following RCW 77.65.510.

**Chapter 36.72 RCW**

**PRINTING**

Sections

36.72.071	All county officers to use official county newspaper.
36.72.075	Official county newspaper.
36.72.080	Forms for public blanks, compilation of.

36.72.090 Forms for public blanks, compilation of—Material to be provided by state.

**36.72.071 All county officers to use official county newspaper.** All county officers shall cause all legal notices and delinquent tax lists to be advertised in the official county newspaper designated by the county legislative authority. [1977 c 34 § 1.]

**36.72.075 Official county newspaper.** At its first April meeting, the county legislative authority shall let a contract to a legal newspaper qualified under this section to serve as the official county newspaper for the term of one year beginning on the first day of July following. If there be at least one legal newspaper published in the county, the contract shall be let to a legal newspaper published in the county. If there be no legal newspaper published in the county, the county legislative authority shall let the contract to a legal newspaper published in an adjacent county and having general circulation in the county.

When two or more legal newspapers are qualified under the provisions of this section to be the official county newspaper, the county auditor shall advertise, at least five weeks before the meeting at which the county legislative authority shall let the contract for the official county newspaper, for bid proposals to be submitted by interested qualified legal newspapers. Advertisement of the opportunity to bid shall be mailed to all qualified legal newspapers and shall be published once in the official county newspaper. The advertisement may designate the form which notices shall take, and may require that the successful bidder provide a bond for the correct and faithful performance of the contract.

The county legislative authority shall let the contract to the best and lowest responsible bidder, giving consideration to the question of circulation in awarding the contract, with a view to giving publication of notices the widest publicity. [1977 c 34 § 2.]

**36.72.080 Forms for public blanks, compilation of.** The state auditor, with the aid and advice of the attorney general shall compile the forms for all public blanks used in the counties of this state in conformity with the general statutes thereof. The various blanks shall be uniform throughout the state. [1963 c 4 § 36.72.080. Prior: 1897 c 35 § 1; RRS § 4078.]

**36.72.090 Forms for public blanks, compilation of—Material to be provided by state.** The material used in such blank forms and the printing and binding thereof shall be provided for by the state in the same manner and under the same rules and regulations as other public printing is now provided for under the general statutes of this state. [1963 c 4 § 36.72.090. Prior: 1897 c 35 § 2; RRS § 4079.]

## Chapter 36.73 RCW

### TRANSPORTATION BENEFIT DISTRICTS

#### Sections

36.73.010 Intent.  
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36.73.060 Authority to levy property tax.  
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36.73.150 Department of transportation may fund improvement projects.  
36.73.900 Liberal construction.

*Roads and bridges, service districts: Chapter 36.83 RCW.*

**36.73.010 Intent.** The legislature finds that the citizens of the state can benefit by cooperation of the public and private sectors in addressing transportation needs. This cooperation can be fostered through enhanced capability for cities, towns, and counties to make and fund transportation improvements necessitated by economic development.

It is the intent of the legislature to encourage joint efforts by the state, local governments, and the private sector to respond to the need for those transportation improvements on state highways, county roads, and city streets. This goal can be better achieved by allowing cities, towns, and counties to establish transportation benefit districts in order to respond to the special transportation needs and economic opportunities resulting from private sector development for the public good. The legislature also seeks to facilitate the equitable participation of private developers whose developments may generate the need for those improvements in the improvement costs. [1987 c 327 § 1.]

**36.73.020 Establishment of district by county.** The legislative authority of a county may establish one or more transportation benefit districts within the county for the purpose of acquiring, constructing, improving, providing, and funding any city street, county road, or state highway improvement within the district that is (1) consistent with state, regional, and local transportation plans, (2) necessitated by existing or reasonably foreseeable congestion levels attributable to economic growth, and (3) partially funded by local government or private developer contributions, or a combination of such contributions. Such transportation improvements shall be owned by the county of jurisdiction if located in an unincorporated area, by the city of jurisdiction if located in an incorporated area, or by the state in cases where the transportation improvement is or becomes a state highway; and all such transportation improvements shall be administered and maintained as other public streets, roads, and highways. The district may not include any area within the corporate limits of a city unless the city legislative authority has agreed to the inclusion pursuant to chapter 39.34 RCW. The agreement shall specify the area and such powers as may be granted to the benefit district.

The members of the county legislative authority, acting ex officio and independently, shall compose the governing body of the district: PROVIDED, That where a transportation benefit district includes any portion of an incorporated city, town, or another county, the district may be governed as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. The county treasurer shall act as the ex

officio treasurer of the district. The electors of the district shall all be registered voters residing within the district. For purposes of this section, the term "city" means both cities and towns. [1989 c 53 § 1; 1987 c 327 § 2.]

**Severability—1989 c 53:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 53 § 5.]

**36.73.030 Establishment of district by city.** See RCW 35.21.225.

**36.73.040 General powers of district.** A transportation benefit district is a quasi-municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

A transportation benefit district constitutes a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to acquire, hold, and dispose of real and personal property, and to sue and be sued. Public works contract limits applicable to the jurisdiction that established the district shall apply to the district. [1989 c 53 § 3; 1987 c 327 § 4.]

**Severability—1989 c 53:** See note following RCW 36.73.020.

**36.73.050 Establishment of district—Public hearing.**

(1) A city or county legislative authority proposing to establish a transportation benefit district, or to modify the boundaries of an existing district, or to dissolve an existing district, shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days before the hearing, in a newspaper of general circulation within the proposed district. The legislative authority shall make provision for a district to be automatically dissolved when all indebtedness of the district has been retired and anticipated responsibilities have been satisfied. This notice shall be in addition to any other notice required by law to be published. The notice shall, where applicable, specify the functions or activities proposed to be provided or funded, or the additional functions or activities proposed to be provided or funded, by the district. Additional notice of the hearing may be given by mail, by posting within the proposed district, or in any manner the city or county legislative authority deems necessary to notify affected persons. All hearings shall be public and the city or county legislative authority shall hear objections from any person affected by the formation, modification of the boundaries, or dissolution of the district.

(2) Following the hearing held pursuant to subsection (1) of this section, the city or county legislative authority may establish a transportation benefit district, modify the boundaries or functions of an existing district, or dissolve an existing district, if the city or county legislative authority finds the action to be in the public interest and adopts an ordinance providing for the action. The ordinance establishing a district shall specify the functions or activities to be exercised or funded and establish the boundaries of the district. A district

shall include only those areas which can reasonably be expected to benefit from improvements to be funded by the district. Functions or activities proposed to be provided or funded by the district may not be expanded beyond those specified in the notice of hearing, unless additional notices are made, further hearings on the expansion are held, and further determinations are made that it is in the public interest to so expand the functions or activities proposed to be provided or funded.

(3) At any time before the city or county legislative authority establishes a transportation benefit district pursuant to this section, all further proceedings shall be terminated upon the filing of a verified declaration of termination signed by the owners of real property consisting of at least sixty percent of the assessed valuation in the proposed district. [1987 c 327 § 5.]

**36.73.060 Authority to levy property tax.** (1) A transportation benefit district may levy an ad valorem property tax in excess of the one percent limitation upon the property within the district for a one-year period whenever authorized by the voters of the district pursuant to RCW 84.52.052 and Article VII, section 2(a) of the state Constitution.

(2) A district may provide for the retirement of voter-approved general obligation bonds, issued for capital purposes only, by levying bond retirement ad valorem property tax levies in excess of the one percent limitation whenever authorized by the voters of the district pursuant to Article VII, section 2(b) of the state Constitution and RCW 84.52.056. [1987 c 327 § 6.]

**36.73.070 Authority to issue general obligation bonds.**

(1) To carry out the purpose of this chapter, a transportation benefit district may issue general obligation bonds, not to exceed an amount, together with any other outstanding nonvoter-approved general obligation indebtedness, equal to three-eighths of one percent of the value of taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015. A district may additionally issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to one and one-fourth percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, when authorized by the voters of the district pursuant to Article VIII, section 6 of the state Constitution, and to provide for the retirement thereof by excess property tax levies as provided in RCW 36.73.060(2). The district may submit a single proposition to the voters that, if approved, authorizes both the issuance of the bonds and the bond retirement property tax levies.

(2) General obligation bonds with a maturity in excess of forty years shall not be issued. The governing body of the transportation benefit district shall by resolution determine for each general obligation bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, covenants, and form, including registration as to principal and interest, registration

as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. Refunding general obligation bonds may be issued in the same manner as general obligation bonds are issued.

(3) Whenever general obligation bonds are issued to fund specific projects or enterprises that generate revenues, charges, user fees, or special assessments, the transportation benefit district which issues the bonds may specifically pledge all or a portion of the revenues, charges, user fees, or special assessments to refund the general obligation bonds. The district may also pledge any other revenues that may be available to the district. [1987 c 327 § 7.]

**36.73.080 Local improvement districts authorized—Special assessments—Bonds.** (1) A transportation benefit district may form a local improvement district to provide any transportation improvement it has the authority to provide, impose special assessments on all property specially benefited by the transportation improvements, and issue special assessment bonds or revenue bonds to fund the costs of the transportation improvement. Local improvement districts shall be created and assessments shall be made and collected pursuant to chapters 35.43, 35.44, 35.49, 35.50, 35.51, 35.53, and 35.54 RCW.

(2) The governing body of a transportation benefit district shall by resolution establish for each special assessment bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. The maximum term of any special assessment bonds shall not exceed thirty years beyond the date of issue. Special assessment bonds issued pursuant to this section shall not be an indebtedness of the transportation benefit district issuing the bonds, and the interest and principal on the bonds shall only be payable from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund that the transportation benefit district has created. The owner or bearer of a special assessment bond or any interest coupon issued pursuant to this section shall not have any claim against the transportation benefit district arising from the bond or coupon except for the payment from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund the transportation benefit district has created. The district issuing the

special assessment bonds is not liable to the owner or bearer of any special assessment bond or any interest coupon issued pursuant to this section for any loss occurring in the lawful operation of its local improvement guaranty fund. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each special assessment bond issued pursuant to this section.

(3) Assessments shall reflect any credits given by a transportation benefit district for real property or property right donations made pursuant to RCW 47.14.030.

(4) The governing body may establish and pay moneys into a local improvement guaranty fund to guarantee special assessment bonds issued by the transportation benefit district. [1987 c 327 § 8.]

**36.73.090 Printing of bonds.** Where physical bonds are issued pursuant to RCW 36.73.070 or 36.73.080, the bonds shall be printed, engraved, or lithographed on good bond paper and the manual or facsimile signatures of both the treasurer and chairperson of the governing body shall be included on each bond. [1987 c 327 § 9.]

**36.73.100 Use of bond proceeds.** (1) The proceeds of any bond issued pursuant to RCW 36.73.070 or 36.73.080 may be used to pay costs incurred on such bond issue related to the sale and issuance of the bonds. Such costs include payments for fiscal and legal expenses, obtaining bond ratings, printing, engraving, advertising, and other similar activities.

(2) In addition, proceeds of bonds used to fund capital projects may be used to pay the necessary and related engineering, architectural, planning, and inspection costs. [1987 c 327 § 10.]

**36.73.110 Acceptance and use of gifts and grants.** A transportation benefit district may accept and expend or use gifts, grants, and donations. [1987 c 327 § 11.]

**36.73.120 Imposition of fees on building construction or land development—Limitations.** (1) A transportation benefit district may impose a fee or charge on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land only if done in accordance with chapter 39.92 RCW.

(2) Any fee or charge imposed under this section shall be used exclusively for transportation improvements constructed by a transportation benefit district. The fees or charges so imposed must be reasonably necessary as a result of the impact of development, construction, or classification or reclassification of land on identified transportation needs.

(3) When fees or charges are imposed by a district within which there is more than one city or both incorporated and unincorporated areas, the legislative authority for each city in the district and the county legislative authority for the unincorporated area must approve the imposition of such fees or charges before they take effect. [1988 c 179 § 7; 1987 c 327 § 12.]

**Severability—Prospective application—Section captions—1988 c 179:** See RCW 39.92.900 and 39.92.901.

**36.73.130 Power of eminent domain.** A transportation benefit district may exercise the power of eminent domain to obtain property for its authorized purposes in the manner as the city or county legislative authority that established the district. [1987 c 327 § 13.]

**36.73.140 Authority to contract for street and highway improvements.** A transportation benefit district has the same powers as a county or city to contract for street, road, or state highway improvement projects and to enter into reimbursement contracts provided for in chapter 35.72 RCW. [1987 c 327 § 14.]

**36.73.150 Department of transportation may fund improvement projects.** The department of transportation, counties, and cities may give funds to transportation benefit districts for the purposes of financing street, road, or highway improvement projects. [1987 c 327 § 15.]

**36.73.900 Liberal construction.** The rule of strict construction does not apply to this chapter, and this chapter shall be liberally construed to permit the accomplishment of its purposes. [1987 c 327 § 16.]

## Chapter 36.75 RCW

### ROADS AND BRIDGES—GENERAL PROVISIONS

#### Sections

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*Toll roads, bridges, and ferries of state, sale or lease of unneeded property to county: RCW 47.56.253.*

**36.75.010 Definitions.** As used in this title with relation to roads and bridges, the following terms mean:

(1) "Alley," a highway not designed for general travel and primarily used as a means of access to the rear of residences and business establishments;

(2) "Board," the board of county commissioners or the county legislative authority, however organized;

(3) "Center line," the line, marked or unmarked, parallel to and equidistant from the sides of a two-way traffic roadway of a highway except where otherwise indicated by painted lines or markers;

(4) "City street," every highway or part thereof, located within the limits of incorporated cities and towns, except alleys;

(5) "County engineer" includes the county director of public works;

(6) "County road," every highway or part thereof, outside the limits of incorporated cities and towns and which has not been designated as a state highway;

(7) "Department," the state department of transportation;

(8) "Director" or "secretary," the state secretary of transportation or his duly authorized assistant;

(9) "Pedestrian," any person afoot;

(10) "Private road or driveway," every way or place in private ownership and used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons;

(11) "Highway," every way, lane, road, street, boulevard, and every way or place in the state of Washington open as a matter of right to public vehicular travel both inside and outside the limits of incorporated cities and towns;

(12) "Railroad," a carrier of persons or property upon vehicles, other than streetcars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns;

(13) "Roadway," the paved, improved, or proper driving portion of a highway designed or ordinarily used for vehicular travel;

(14) "Sidewalk," property between the curb lines or the lateral lines of a roadway, and the adjacent property, set aside and intended for the use of pedestrians or such portion of private property parallel and in proximity to a highway and dedicated to use by pedestrians;

(15) "State highway," includes every highway as herein defined, or part thereof, that has been designated as a state highway, or branch thereof, by legislative enactment. [1984 c 7 § 26; 1975 c 62 § 1; 1969 ex.s. c 182 § 1; 1963 c 4 § 36.75.010. Prior: 1937 c 187 § 1; RRS § 6450-1.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**Severability—1975 c 62:** "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 c 62 § 52.]

**36.75.020 County roads—County legislative authority as agent of state—Standards.** All of the county roads in each of the several counties shall be established, laid out, constructed, altered, repaired, improved, and maintained by the legislative authority of the respective counties as agents of the state, or by private individuals or corporations who are allowed to perform such work under an agreement with the county legislative authority. Such work shall be done in accordance with adopted county standards under the supervision and direction of the county engineer. [1982 c 145 § 6; 1963 c 4 § 36.75.020. Prior: 1943 c 82 § 1; 1937 c 187 § 2; Rem. Supp. 1943 § 6450-2.]

**36.75.030 State and county cooperation.** The state department of transportation and the governing officials of any county may enter into reciprocal public highway improvement and maintenance agreements, providing for cooperation either in the county assisting the department in the improvement or maintenance of state highways, or the department assisting the county in the improvement or maintenance of county roads, under any circumstance where a necessity appears therefor or where economy in public highway improvement and maintenance will be best served. [1984 c 7 § 27; 1963 c 4 § 36.75.030. Prior: 1939 c 181 § 11; RRS § 6450-2a.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**36.75.035 County may fund improvements to state highways.** A county pursuant to chapter 36.88 RCW, or a service district as provided for in chapter 36.83 RCW, may, with the approval of the state department of transportation, improve or fund the improvement of any state highway within its boundaries. The county may fund improvements under this section by any means authorized by law, except that expenditures of county road funds under chapter 36.82 RCW under this section must be limited to improvements to the state highway system and shall not include maintenance or operations. Nothing in this section shall limit the authority of a county to fund cooperative improvement and maintenance agreements with the department of transportation, authorized by RCW 36.75.030 or 47.28.140. [2002 c 60 § 1; 1985 c 400 § 1.]

*County road improvement districts and service districts may improve state highways: RCW 36.83.010 and 36.88.010.*

**36.75.040 Powers of county commissioners.** The board of county commissioners of each county, in relation to roads and bridges, shall have the power and it shall be its duty to:

(1) Acquire in the manner provided by law property real and personal and acquire or erect structures necessary for the administration of the county roads of such county;

(2) Maintain a county engineering office and keep record of all proceedings and orders pertaining to the county roads of such county;

(3) Acquire land for county road purposes by purchase, gift, or condemnation, and exercise the right of eminent domain as by law provided for the taking of land for public use by counties of this state;

(4) Perform all acts necessary and proper for the administration of the county roads of such county as by law provided;

(5) In its discretion rent or lease any lands, improvements or air space above or below any county road or unused county roads to any person or entity, public or private: PROVIDED, That the said renting or leasing will not interfere with vehicular traffic along said county road or adversely affect the safety of the traveling public: PROVIDED FURTHER, That any such sale, lease or rental shall be by public bid in the manner provided by law: AND PROVIDED FURTHER, That nothing herein shall prohibit any county from granting easements of necessity. [1969 ex.s. c 182 § 15; 1963 c 4 § 36.75.040. Prior: 1937 c 187 § 3; RRS § 6450-3.]

**36.75.050 Powers—How exercised.** The powers and duties vested in or imposed upon the boards with respect to establishing, examining, surveying, constructing, altering, repairing, improving, and maintaining county roads, shall be exercised under the supervision and direction of the county road engineer.

The board shall by resolution, and not otherwise, order the survey, establishment, construction, alteration, or improvement of county roads; the county road engineer shall prepare all necessary maps, plans, and specifications therefor, showing the right of way widths, the alignments, gradients, and standards of construction. [1963 c 4 § 36.75.050. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4.]

**36.75.060 County road districts.** For the purpose of efficient administration of the county roads of each county the board may, but not more than once in each year, form their respective counties, or any part thereof, into suitable and convenient road districts, not exceeding nine in number, and cause a description thereof to be entered upon their records.

Unless the board decides otherwise by majority vote, there shall be at least one road district in each county commissioner's district embracing territory outside of cities and towns and no road district shall extend into more than one county commissioner's district. [1969 ex.s. c 182 § 3; 1963 c 4 § 36.75.060. Prior: 1937 c 187 § 5; RRS § 6450-5.]

**36.75.065 Community revitalization financing—Public improvements.** In addition to other authority that a road district possesses, a road district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a road district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 16.]

**Severability—2001 c 212:** See RCW 39.89.902.

**36.75.070 Highways worked seven years are county roads.** All public highways in this state, outside incorporated cities and towns and not designated as state highways, which have been used as public highways for a period of not less than seven years, where they have been worked and kept up at the expense of the public, are county roads. [1963 c 4 §

36.75.070. Prior: 1955 c 361 § 2; prior: 1945 c 125 § 1, part; 1937 c 187 § 10, part; Rem. Supp. 1945 § 6450-10, part.]

**36.75.080 Highways used ten years are county roads.** All public highways in this state, outside incorporated cities and towns and not designated as state highways which have been used as public highways for a period of not less than ten years are county roads: PROVIDED, That no duty to maintain such public highway nor any liability for any injury or damage for failure to maintain such public highway or any road signs thereon shall attach to the county until the same shall have been adopted as a part of the county road system by resolution of the county commissioners. [1963 c 4 § 36.75.080. Prior: 1955 c 361 § 3; prior: 1945 c 125 § 1, part; 1937 c 187 § 10, part; Rem. Supp. 1945 § 6450-10, part.]

**36.75.090 Abandoned state highways.** All public highways in this state which have been a part of the route of a state highway and have been or may hereafter be no longer necessary as such, if situated outside of the limits of incorporated cities or towns, shall, upon certification thereof by the state department of transportation to the legislative authority of the county in which any portion of the highway is located, become a county road of the county, and if situated within the corporate limits of any city or town shall upon certification thereof by the state department of transportation to the mayor of the city or town in which any portion of the highway is located become a street of the city or town. Upon the certification the secretary of transportation shall execute a deed, which shall be duly acknowledged, conveying the abandoned highway or portion thereof to the county or city as the case may be. [1984 c 7 § 28; 1977 ex.s. c 78 § 4; 1963 c 4 § 36.75.090. Prior: 1955 c 361 § 4; prior: 1953 c 57 § 1; 1945 c 125 § 1, part; 1937 c 187 § 10, part; Rem. Supp. 1945 § 6450-10, part.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**36.75.100 Informalities not fatal.** No informalities in the records in laying out, establishing, or altering any public highways existing on file in the offices of the various county auditors of this state or in the records of the department or the transportation commission, may be construed to invalidate or vacate the public highways. [1984 c 7 § 29; 1963 c 4 § 36.75.100. Prior: 1937 c 187 § 11; RRS § 6450-11.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**36.75.110 True locations to be determined—Survey.** Whenever the board declares by resolution that the true location, course, or width of any county road is uncertain and that the same should be determined, it shall direct the county road engineer to make examination and survey thereof.

This shall embrace an examination and survey of the original petition, report, and field notes on the establishment of such road; a survey of the present traveled roadway; all topography within a reasonable distance and having a bearing on the true location of such road; the distance from the center line of the traveled roadway to the nearest section and quarter section corners; a map of sufficient scale accurately showing the above with field notes thereon; a map on the same scale showing the original field notes, such field notes to be trans-

posed and the same meridian used on both maps. [1963 c 4 § 36.75.110. Prior: 1937 c 187 § 12; RRS § 6450-12.]

**36.75.120 Action to determine true location.** When the true location, course, or width of a county road, which was prior thereto uncertain, has been reported by the examining engineer, the board shall file an action in the superior court of such county for the determination thereof. All persons affected by the determination of the true location, course, or width insofar as the same may vary from the originally established location, course, or width shall be made parties defendant in such action and service had and return made as in the case of civil actions. Upon the hearing the court shall consider the survey, maps, and all data with reference to the investigation of the examining engineer and may demand such further examination as it may deem necessary and any objection of any party defendant may be heard and considered. The court shall determine the true location, course, and width of the road and may in its discretion assess the cost of such action against the county to be paid from the county road fund. [1963 c 4 § 36.75.120. Prior: 1937 c 187 § 13; RRS § 6450-13.]

**36.75.130 Approaches to county roads—Rules regarding construction—Penalty.** (1) No person shall be permitted to build or construct any approach to any county road without first obtaining permission therefor from the board.

(2) The boards of the several counties of the state may adopt reasonable rules for the construction of approaches which, when complied with, shall entitle a person to build or construct an approach from any abutting property to any county road. The rules may include provisions for the construction of culverts under the approaches, the depth of fills over the culverts, and for such other drainage facilities as the board deems necessary. The construction of approaches, culverts, fills, or such other drainage facilities as may be required, shall be under the supervision of the county road engineer, and all such construction shall be at the expense of the person benefited by the construction.

(3) Any person violating this section is guilty of a misdemeanor. [2003 c 53 § 208; 1963 c 4 § 36.75.130. Prior: 1943 c 174 § 1; Rem. Supp. 1943 § 6450-95.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**36.75.160 Power of county commissioners as to roads, bridges, and other structures crossing boundary lines.** The board of county commissioners of any county may erect and construct or acquire by purchase, gift, or condemnation, any bridge, trestle, or any other structure which crosses any stream, body of water, gulch, navigable water, swamp or other topographical formation requiring such structure for the continuation or connection of any county road if such topographical formation constitutes the boundary of a city, town, another county or the state of Washington or another state or a county, city or town of such other state.

The board of such county may join with such city, town, other county, the state of Washington, or other state, or a county, city or town of such other state in paying for, erect-

ing, constructing, acquiring by purchase, gift, or condemnation any such bridge, trestle, or other structure, and the purchase or condemnation of right of way therefor.

The board of any county may construct, maintain, and operate any county road which forms the boundary line between another county within the state or another county in any other state or which through its meandering crosses such boundary; and acquire by purchase or condemnation any lands or rights within this state, either within or without its county, necessary for such boundary road; and enter into joint contracts with authorities of adjoining counties for the construction, operation, and maintenance of such boundary roads. The power of condemnation herein granted may be exercised jointly by two counties in the manner provided in RCW 36.75.170 for bridges, or it may be exercised by a single county in the manner authorized by law. [2000 c 155 § 1; 1963 c 4 § 36.75.160. Prior: 1943 c 82 § 3; 1937 c 187 § 26; Rem. Supp. 1943 § 6450-26.]

**36.75.170 Power of county commissioners as to roads, bridges, and other structures crossing boundary lines—Resolution to acquire or construct.** The board may by original resolution entered upon its minutes declare its intention to pay for and erect or construct, or acquire by purchase, gift, or condemnation, any bridge, trestle, or other structure upon any county road which crosses any stream, body of water, gulch, navigable water, swamp or other topographical formation constituting a boundary, or to join therein with any other county, city or town, or with this state, or with any other state, or with any county, city or town of any other state, in the erection, or construction, or acquisition of any such structure, and declare that the same is a public necessity, and direct the county road engineer to report upon such project, dividing any just proportional cost thereof.

In the event two counties or any county and any city wish to join in paying for the erection or acquisition of any such structure, the resolution provided in this section shall be a joint resolution of the governing authorities of the counties and cities and they shall further, by such resolution, designate an engineer employed by one county to report upon the proposed erection or acquisition. [1963 c 4 § 36.75.170. Prior: 1937 c 187 § 27; RRS § 6450-27.]

**36.75.180 Power of county commissioners as to roads, bridges, and other structures crossing boundary lines—Freeholders' petition to acquire or construct.** Ten or more freeholders of any county may petition the board for the erection and construction or acquisition by purchase, gift, or condemnation of any bridge, trestle, or any other structure in the vicinity of their residence, and upon any county road which crosses any stream, body of water, gulch, navigable waters, swamp or other topographical formation constituting a boundary by joining with any other county, city or town, or the state of Washington, or with any other state or with any county, city or town of any other state, setting forth and describing the location proposed for the erection of such bridge, trestle, or other structure, and stating that the same is a public necessity. The petition shall be accompanied by a bond with the same requirements, conditions, and amount and in the same manner as in case of a freeholders' petition

for the establishing of a county road. Upon the filing of such petition and bond and being satisfied that the petition has been signed by freeholders residing in the vicinity of such proposed bridge, trestle, or other structure, the board shall direct the county road engineer to report upon the project, dividing any just proportional cost thereof.

In the event two counties or any county and any city or town are petitioned to join in paying for the erection or acquisition of such structure, the board of county commissioners of the counties or the board of county commissioners of the county and governing authorities of the city or town shall act jointly in the selection of the engineer who shall report upon such acquisition or erection. [1963 c 4 § 36.75.180. Prior: 1937 c 187 § 28; RRS § 6450-28.]

### **36.75.190 Engineer's report—Hearing—Order.**

Upon report by the examining engineer for the erection and construction upon any county road, or for acquisition by purchase, gift or condemnation of any bridge, trestle, or any other structure crossing any stream, body of water, gulch, navigable water, swamp or other topographical formation, which constitutes a boundary, publication shall be made and joint hearing had upon such report in the same manner and upon the same procedure as in the case of resolution or petition for the laying out and establishing of county roads. If upon the hearing the governing authorities jointly order the erection and construction or acquisition of such bridge, trestle, or other structure, they may jointly acquire land necessary therefor by purchase, gift, or condemnation in the manner as provided for acquiring land for county roads, and shall advertise calls for bids, require contractor's deposit and bond, award contracts, and supervise construction as by law provided and in the same manner as required in the case of the construction of county roads.

Any such bridges, trestles or other structures may be operated free, or may be operated as toll bridges, trestles, or other structures under the provisions of the laws of this state relating thereto. [1963 c 4 § 36.75.190. Prior: 1937 c 187 § 29; RRS § 6450-29.]

**36.75.200 Bridges on city or town streets.** The boards of the several counties may expend funds from the county road fund for the construction, improvement, repair, and maintenance of any bridge upon any city street within any city or town in such county where such city street and bridge are essential to the continuation of the county road system of the county. Such construction, improvement, repair, or maintenance shall be ordered by resolution and proceedings conducted in respect thereto in the same manner as provided for the laying out and establishing of county roads by counties, and for the preparation of maps, plans, and specifications, advertising and award of contracts therefor. [1963 c 4 § 36.75.200. Prior: 1937 c 187 § 30; RRS § 6450-30.]

**36.75.203 Responsibility of city to maintain county road forming a municipal boundary.** If the centerline of a portion of a county road is part of a corporate boundary of a city or town as of May 21, 1985, and that portion of county road has no connection to the county road system, maintenance of all affected portions of the road shall be the respon-

sibility of such city or town after a petition requesting the same has been made to the city or town by the county legislative authority. [1985 c 429 § 2.]

**36.75.205 Street as extension of road in town of less than one thousand.** Whenever any street in any town, having a population of less than one thousand persons, forms an extension of a county road of the county in which such town is located, and where the board of county commissioners of such county and the governing body of such town, prior to the commencement of any work, have mutually agreed and each adopted a resolution setting forth the nature and scope of the work to be performed and the share of the cost or labor which each shall bear, such county may expend county road funds for construction, improvement, repair, or maintenance of such street. [1963 c 4 § 36.75.205. Prior: 1959 c 83 § 1.]

**36.75.207 Agreements for planning, establishment, construction, and maintenance of city streets by counties—Use of county road fund—Payment by city—Contracts, bids.** See RCW 35.77.020 through 35.77.040.

**36.75.210 Roads crossing boundaries.** Whenever a county road is established within any county, and such county road crosses the boundary of the county, the board of the county within which the major portion of the road is located may expend the county road fund of such county in laying out, establishing, constructing, altering, repairing, improving, and maintaining that portion of the road lying outside the county, in the manner provided by law for the expenditure of county funds for the construction, alteration, repair, improvement, and maintenance of county roads within the county.

The board of any county may construct, maintain, and operate any county road which forms the boundary line between another county within the state or another county in any other state or which through its meandering crosses such boundary; and acquire by purchase or condemnation any lands or rights within this state, either within or without its county, necessary for such boundary road; and enter into joint contracts with authorities of adjoining counties for the construction, operation, and maintenance of such boundary roads. The power of condemnation herein granted may be exercised jointly by two counties in the manner provided for bridges, or it may be exercised by a single county in the manner authorized by law. [2000 c 155 § 2; 1963 c 4 § 36.75.210. Prior: 1937 c 187 § 23; RRS § 6450-23. FORMER PART OF SECTION: 1943 c 82 § 3, part; 1937 c 187 § 26, part; Rem. Supp. 1943 § 6450-26, part, now codified in RCW 36.75.160.]

**36.75.220 Connecting road across segment of third county.** Whenever two counties are separated by an intervening portion of a third county not exceeding one mile in width, and each of such counties has constructed or shall construct a county road to the boundary thereof, and the boards of the two counties deem it beneficial to such counties to connect the county roads by the construction and maintenance of a county road across the intervening portion of the third county, it shall be lawful for the boards of the two counties to

expend jointly the county road funds of their respective counties in acquiring right of way for the construction, improvement, repair, and maintenance of such connecting county road and any necessary bridges thereon, in the manner provided by law for the expenditure of county road funds for the construction, improvement, repair, and maintenance of county roads lying within a county. [1963 c 4 § 36.75.220. Prior: 1937 c 187 § 24; RRS § 6450-24.]

**36.75.230 Acquisition of land under RCW 36.75.210 and 36.75.220.** For the purpose of carrying into effect RCW 36.75.210 and 36.75.220 and under the circumstances therein set out the boards may acquire land necessary for the right of way for any portion of a county road lying outside such county or counties by gift or purchase or by condemnation in the manner provided for the taking of property for public use by counties. [1963 c 4 § 36.75.230. Prior: 1937 c 187 § 25, part; RRS § 6450-25, part.]

**36.75.240 Sidewalks and pedestrian paths or walks—Bicycle paths, lanes, routes, and roadways—Standards.** The boards may expend funds credited to the county road fund from any county or road district tax levied for the construction of county roads for the construction of sidewalks, bicycle paths, lanes, routes, and roadways, and pedestrian allocated paths or walks. Bicycle facilities constructed or modified after June 10, 1982, shall meet or exceed the standards of the state department of transportation. [1982 c 55 § 2; 1974 ex.s. c 141 § 7; 1963 c 4 § 36.75.240. Prior: 1937 c 187 § 25, part; RRS § 6450-25, part.]

*Pavement marking standards: RCW 47.36.280.*

**36.75.243 Curb ramps for physically handicapped.** See RCW 35.68.075, 35.68.076.

**36.75.250 State may intervene if maintenance neglected.** If by any agreement with the federal government or any agency thereof or with the state or any agency thereof, a county has agreed to maintain certain county roads or any portion thereof and the maintenance is not being performed to the satisfaction of the federal government or the department, reasonably consistent with original construction, notice thereof may be given by the department to the legislative authority of the county, and if the county legislative authority does not within ten days provide for the maintenance, the department may perform the maintenance, and the state treasurer shall pay the cost thereof on vouchers submitted by the department and deduct the cost thereof from any sums in the motor vehicle fund credited or to be credited to the county in which the county road is located. [1984 c 7 § 30; 1963 c 4 § 36.75.250. Prior: 1937 c 187 § 46; RRS § 6450-46.]

*Severability—1984 c 7: See note following RCW 47.01.141.*

**36.75.255 Street improvements—Provision of supplies or materials.** Any county may assist a street abutter in improving the street serving the abutter's premises by providing asphalt, concrete, or other supplies or materials. The furnishing of supplies or materials or paying to the abutter the cost thereof and the providing of inspectors and other incidental personnel shall not render the street improvements a

public work or improvement subject to competitive bidding. The legislative authority of such county shall approve any such assistance at a public meeting and shall maintain a public register of any such assistance setting forth the value, nature, purpose, date and location of the assistance and the name of the beneficiary. [1983 c 103 § 2.]

**36.75.260 Annual report to secretary of transportation.** Each county legislative authority shall on or before May 31st of each year submit such records and reports to the secretary of transportation, on forms furnished by the department, as are necessary to enable the secretary to compile an annual report on county highway operations. [1999 c 204 § 2; 1984 c 7 § 31; 1977 c 75 § 31; 1963 c 4 § 36.75.260. Prior: 1943 c 82 § 8; 1937 c 187 § 58; Rem. Supp. 1943 § 6450-58.]

*Severability—1984 c 7: See note following RCW 47.01.141.*

**36.75.270 Limitation of type or weight of vehicles authorized—Penalty.** The board of county commissioners of each county may by resolution limit or prohibit classes or types of vehicles on any county road or bridge and may limit the weight of vehicles which may travel thereon. Any such resolution shall be effective for a definite period of time which shall be stated in the resolution. If such resolution is published at least once in a newspaper of general circulation in the county and if signs indicating such closure or limitation of traffic have been posted on such road or bridge, any person violating such resolution shall be guilty of a misdemeanor. [1963 c 4 § 36.75.270. Prior: 1949 c 156 § 8; Rem. Supp. 1949 § 6450-8g.]

*Local restrictions or limitations of weight: RCW 46.44.080.*

**36.75.280 Centralized repair and storage of machinery, equipment, supplies, etc.** All county road machinery, equipment, stores, and supplies, excepting stockpiles and other road building material, shall while not in use be stored and repaired at one centralized point in each county: PROVIDED, That if the geography, topography, distance, or other valid economic considerations require more than one place for storage or repairs, the county commissioners may, by unanimous vote, authorize the same. [1963 c 4 § 36.75.280. Prior: 1949 c 156 § 4; Rem. Supp. 1949 § 6450-8d.]

**36.75.290 General penalty.** It shall be a misdemeanor for any person to violate any of the provisions of this title relating to county roads and bridges unless such violation is by this title or other law of this state declared to be a felony or gross misdemeanor. [1963 c 4 § 36.75.290. Prior: 1943 c 82 § 13, part; 1937 c 187 § 66, part; Rem. Supp. 1943 § 6450-66, part.]

**36.75.300 Primitive roads—Classification and designation.** The legislative authority of each county may by resolution classify and designate portions of the county roads as primitive roads where the designated road portion:

- (1) Is not classified as part of the county primary road system, as provided for in RCW 36.86.070;
- (2) Has a gravel or earth driving surface; and
- (3) Has an average annual daily traffic of one hundred or fewer vehicles.

Any road designated as a primitive road shall be marked with signs indicating that it is a primitive road, as provided in the manual of uniform traffic control devices, at all places where the primitive road portion begins or connects with a highway other than another primitive road. No design or signing or maintenance standards or requirements, other than the requirement that warning signs be placed as provided in this section, apply to primitive roads.

The design of a primitive road, and the location, placing, or failing to place road signs, other than the requirement that warning signs be placed as provided in this section, shall not be considered in any action for damages brought against a county, or against a county employee or county employees, or both, arising from vehicular traffic on the primitive road. [1985 c 369 § 2; 1980 c 45 § 1.]

**Chapter 36.76 RCW**

**ROADS AND BRIDGES—BONDS**

Sections

36.76.080	Bonds authorized—Election.
36.76.090	How to be held—Issuance of bonds.
36.76.100	Notice of election.
36.76.110	Disposition of proceeds—City assistance.
36.76.120	Payment of principal and interest.
36.76.130	Act cumulative.
36.76.140	Toll bridge bonds authorized—Adjoining counties.

**36.76.080 Bonds authorized—Election.** The legislative authority of any county may, whenever a majority thereof so decides, submit to the voters of their county the question whether the legislative authority shall be authorized to issue negotiable road bonds of the county in an amount subject to the limitations on indebtedness provided for in RCW 39.36.020(2), for the purpose of constructing a new road or roads, or improving established roads within the county, or for aiding in so doing, as herein prescribed.

The word "improvement" wherever used in this section and RCW 36.76.090, 36.76.100, 36.76.110, 36.76.120, and 36.76.130 shall embrace any undertaking for any or all of such purposes. The word "road" shall embrace all highways, roads, streets, avenues, bridges, and other public ways.

The provisions of this section and RCW 36.76.090, 36.76.100, 36.76.110, 36.76.120, and 36.76.130 shall apply not only to roads which are or shall be under the general control of the county, but also to all parts of state roads in such county and to all roads which are situated or are to be constructed wholly or partly within the limits of any incorporated city or town therein, provided the county legislative authority finds that they form or will become a part of the public highway system of the county, and will connect the existing roads therein. Such finding may be made by the county legislative authority at any stage of the proceedings before the actual delivery of the bonds.

The constructing or improving of any and all such roads, or the aiding therein, is declared to be a county purpose.

The question of the issuance of bonds for any undertaking which relates to a number of different roads or parts thereof, whether intended to supply the whole expenditure or to aid therein, may be submitted to the voters as a single proposition in all cases where such course is consistent with the provisions of the state Constitution. If the county legislative

authority, in submitting a proposition relating to different roads or parts thereof, finds that such proposition has for its object the furtherance and accomplishment of the construction of a system of public and county highways in such county, and constitutes and has for its object a single purpose, such finding shall be presumed to be correct, and upon the issuance of the bonds the presumption shall become conclusive.

No proposition for bonds shall be submitted which proposes that more than forty percent of the proceeds thereof shall be expended within any city or town or within any number of cities and towns. [1983 c 167 § 90; 1971 c 76 § 2; 1970 ex.s. c 42 § 22; 1963 c 4 § 36.76.080. Prior: 1913 c 25 § 1; RRS § 5592.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**36.76.090 How to be held—Issuance of bonds.** The election shall be held as provided in RCW 39.36.050. If three-fifths of the legal ballots cast on the question of issuing bonds for the improvement contemplated in RCW 36.76.080 are in favor of the bond issue, the county legislative authority must issue the general obligation bonds. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 31; 1983 c 167 § 91; 1970 ex.s. c 56 § 53; 1969 ex.s. c 232 § 29; 1963 c 4 § 36.76.090. Prior: 1913 c 25 § 2; RRS § 5593.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**36.76.100 Notice of election.** The notice of this election shall state which road or roads are to be built or improved. The notice need not describe the road or roads with particularity, but it shall be sufficient either to describe them by termini and with a general statement as to their course, or to use any other appropriate language sufficient to show the purpose intended to be accomplished. The county legislative authority may, at its option, give such other or further notice as it may deem advisable. [1984 c 186 § 32; 1963 c 4 § 36.76.100. Prior: 1913 c 25 § 4; RRS § 5595.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**36.76.110 Disposition of proceeds—City assistance.** When the bonds are sold, the money arising therefrom shall be immediately paid into the treasury of the county, and shall be drawn only for the improvement for which they were issued, under the general direction of the board: PROVIDED, That if the improvement includes in whole or in part the constructing or improving of one or more roads, or any part or parts thereof, within the limits of an incorporated city or town, and if the county commissioners find that the amount of the proceeds of the bonds intended to be expended for the improvements within such corporate limits will probably not be sufficient to defray the entire expense of the improvement therein, and if they further find it to be equitable that the city or town should bear the remainder of the expense, they may postpone any expenditure therefor from

the proceeds of the bonds until the city or town makes provision by ordinance for proceeding with the improvement within its corporate limits at its own expense insofar as concerns the cost thereof over and above the amount of bond proceeds available therefor.

In such case it shall be lawful for the county commissioners to consent, under such general directions as they shall impose, that the proper authorities of the city or town shall have actual charge of making the proposed improvement within the corporate limits. The city or town shall acquire any needed property or rights and do the work by contract or otherwise in accordance with its charter or ordinances, but the same shall be subject to the approval of the county commissioners insofar as concerns any payment therefor from the proceeds of the bonds.

In such case, as the work progresses and money is needed to pay therefor, the county commissioners shall, from time to time, by proper order, specifying the amount and purpose, direct the county treasurer to turn over to the city or town treasurer such part or parts of the proceeds of the bonds as may be justly applicable to such improvement or part thereof within such city or town, and any money so received by the city or town treasurer shall be inviolably applied to the purpose specified. When that portion of the entire improvement which lies within any such city or town can readily be separated into parts, the procedure authorized by this section may be pursued separately as to any one or more of such parts of the general improvement.

Nothing contained in this section shall be construed to render the county liable for any greater part of the expense of any improvement or part thereof within any city or town than the proper amount of the proceeds of such bonds, or to prevent the city or town from raising any part of the cost of any such improvement or part thereof, over and above the amount arising from the proceeds of the bonds, by assessment upon property benefited, or by contribution from any of its general or special funds in accordance with the provisions of the charter or laws governing such city or town. The provisions of this section, other than the direction for the payment into the county treasury of the money arising from the sale of the bonds, need not be complied with until after the issuance of the bonds and the validity of the bonds shall not be dependent upon such compliance. [1963 c 4 § 36.76.110. Prior: 1913 c 25 § 5; RRS § 5596.]

**36.76.120 Payment of principal and interest.** The county legislative authority must ascertain and levy annually a tax sufficient to pay the interest on all such bonds whenever it becomes due and to meet the annual maturities of principal. The county treasurer must pay out of any money accumulated from the taxes levied to pay the interest as aforesaid, the interest upon all such bonds when it becomes due as provided on the bond or, if coupons are attached to a bond, upon presentation at the place of payment of the proper coupon. Any interest payments or coupons so paid must be reported to the county legislative authority at its first meeting thereafter. Whenever interest is payable at any place other than the city in which the county treasurer keeps his office, the county treasurer shall seasonably remit to the state fiscal agent the amount of money required for the payment of any interest which is about to fall due. When any such bonds or any inter-

est is paid, the county treasurer shall suitably and indelibly cancel them. [1984 c 186 § 33; 1983 c 167 § 92; 1963 c 4 § 36.76.120. Prior: 1913 c 25 § 3; RRS § 5594.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**36.76.130 Act cumulative.** \*This act shall not be construed as repealing or affecting any other act relating to the issuance of bonds for road or other purposes, but shall be construed as conferring additional power and authority. [1963 c 4 § 36.76.130. Prior: 1913 c 25 § 7; RRS § 5598.]

**\*Reviser's note:** "This act" [1913 c 25] consists of RCW 36.76.080, 36.76.090, 36.76.100, 36.76.110, 36.76.120, and 36.76.130.

**36.76.140 Toll bridge bonds authorized—Adjoining counties.** The county legislative authority may, by majority vote, and by submission to the voters under the same procedure required in RCW 36.76.090 and 36.76.100, issue general obligation bonds for the purpose of contributing money, or the bonds themselves, to the department to help finance the construction of toll bridges across topographical formations constituting boundaries between the county and an adjoining county, or a toll bridge across topographical formation located wholly within an adjoining county, which in the discretion of the county legislative authority, directly or indirectly benefits the county. The bonds may be transferred to the department to be sold by it for the purposes outlined herein. The bonds may bear interest at a rate or rates as authorized by the county legislative authority. Such indebtedness is subject to the limitations on indebtedness provided for in RCW 39.36.020(2). [1984 c 7 § 32; 1971 c 76 § 3; 1970 ex.s. c 56 § 54; 1969 ex.s. c 232 § 30; 1963 c 4 § 36.76.140. Prior: 1955 c 194 § 1.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

## Chapter 36.77 RCW

### ROADS AND BRIDGES—CONSTRUCTION

#### Sections

36.77.010	Maps, plans, and specifications.
36.77.020	Approval—Call for bids.
36.77.030	Opening of bids—Deposit.
36.77.040	Award of contract—Bond—Low bidder claiming error.
36.77.065	Day labor construction projects or programs—"County road construction budget" defined—Amounts—Violations.
36.77.070	Publication of information on day labor projects—Penalty—Prosecution.
36.77.075	County roads—Small works roster.

**36.77.010 Maps, plans, and specifications.** Whenever it is ordered by resolution of the board that any county road shall be laid out and established and altered, widened, or otherwise constructed or improved, the county road engineer employed by the county shall prepare such maps, plans, and specifications as shall be necessary and sufficient. A copy of such maps, plans, and specifications shall be approved by the board of county commissioners with its approval endorsed thereon, and such copy shall be filed with the clerk of the

board. [1963 c 4 § 36.77.010. Prior: 1959 c 67 § 2; prior: 1937 c 187 § 32, part; RRS § 6450-32, part.]

**36.77.020 Approval—Call for bids.** Upon approval of such maps, plans, and specifications and the filing thereof the board shall, if it determines that the work shall be done by contract, advertise a call for bids upon such construction work by publication in the official county paper and also one trade paper of general circulation in the county, in one issue of each such paper at least once in each week for two consecutive weeks prior to the time set in the call for bids for the opening of bids. All bids shall be submitted under sealed cover before the time set for the opening of bids. [1963 c 4 § 36.77.020. Prior: 1959 c 67 § 3; prior: 1937 c 187 § 32, part; RRS § 6450-32, part.]

**36.77.030 Opening of bids—Deposit.** At the time and place fixed in the call for bids, such bids as have been submitted shall be publicly opened and read. No bid may be considered unless it is accompanied by a bid deposit in the form of a surety bond, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed. [1985 c 369 § 3; 1963 c 4 § 36.77.030. Prior: 1959 c 67 § 4; prior: 1937 c 187 § 32, part; RRS § 6450-32, part.]

**36.77.040 Award of contract—Bond—Low bidder claiming error.** The board shall proceed to award the contract to the lowest and best bidder but may reject any or all bids if in its opinion good cause exists therefor. The board shall require from the successful bidder a contractor's bond in the amount and with the conditions imposed by law. Should the bidder to whom the contract is awarded fail to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and placed in the county road fund and the contract awarded to the next lowest and best bidder. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the board. [1996 c 18 § 4; 1963 c 4 § 36.77.040. Prior: 1959 c 67 § 5; prior: 1937 c 187 § 32, part; RRS § 6450-32, part.]

**36.77.065 Day labor construction projects or programs—"County road construction budget" defined—Amounts—Violations.** The board may cause any county road to be constructed or improved by day labor as provided in this section.

(1) As used in this section, "county road construction budget" means the aggregate total of those costs as defined by the budgeting, accounting, and reporting system for counties and cities and other local governments authorized under RCW 43.09.200 and 43.09.230 as prescribed in the state auditor's budget, accounting, and reporting manual's (BARS) road and street construction accounts 541.00 through 541.90 in effect April 1, 1975: PROVIDED, That such costs shall not include those costs assigned to the preliminary engineer-

ing account 541.11, right of way accounts 541.20 through 541.25, ancillary operations account 541.80, and ferries account 541.81 in the budget, accounting, and reporting manual.

(2) For counties with a population that equals or exceeds fifty thousand people, the total amount of day labor construction programs one county may perform annually shall total no more than the amounts determined in the following manner:

(a) Any county with a total annual county road construction budget of four million dollars or more may accumulate a day labor road construction budget equal to no more than eight hundred thousand dollars or fifteen percent of the county's total annual county road construction budget, whichever is greater.

(b) Any county with a total annual county road construction budget of one million five hundred thousand dollars or more and less than four million dollars may accumulate a day labor road construction budget equal to not more than five hundred twenty-five thousand dollars or twenty percent of the county's total annual county road construction budget, whichever is greater.

(c) Any county with a total annual county road construction budget of five hundred thousand dollars or more and less than one million five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred fifty thousand dollars or thirty-five percent of the county's total annual county road construction budget, whichever is greater.

(d) Any county with a total annual county road construction budget less than five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred fifty thousand dollars: PROVIDED, That any county with a total annual road construction budget of less than five hundred thousand dollars may, by resolution of the board at the time the county road construction budget is adopted, elect to construct or improve county roads by day labor in an amount not to exceed thirty-five thousand dollars on any one project, including labor, equipment, and materials; such election to be in lieu of the two hundred fifty thousand dollar limit provided for in this section, except that any project means a complete project and the division of any project into units of work or classes of work so as to permit construction by day labor is not authorized.

(3) For counties with a population of less than fifty thousand people, the total amount of day labor construction programs one county may perform annually may total no more than the amounts determined in the following manner:

(a) A county with a total annual county road construction budget of four million dollars or more may accumulate a day labor road construction budget equal to not more than eight hundred eighty thousand dollars or twenty-five percent of the county's total annual county road construction budget, whichever is greater;

(b) A county with a total annual county road construction budget of one million five hundred thousand dollars or more and less than four million dollars may accumulate a day labor road construction budget equal to not more than five hundred seventy-seven thousand dollars or thirty percent of the county's total annual county road construction budget, whichever is greater;

(c) A county with a total annual county road construction budget of five hundred thousand dollars or more and less than one million five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred seventy-five thousand dollars or forty-five percent of the county's total annual county road construction budget, whichever is greater;

(d) A county with a total annual county road construction budget less than five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred seventy-five thousand dollars. However, such a county may, by resolution of the board at the time the county road construction budget is adopted, elect instead to construct or improve county roads by day labor in an amount not to exceed thirty-eight thousand five hundred dollars on any one project, including labor, equipment, and materials. That election is in lieu of the two hundred seventy-five thousand dollar limit provided for in this section. As used in this section, "any project" means a complete project, and a county may not divide a project into units of work or classes of work so as to permit construction by day labor.

(4) Any county that adopts a county road construction budget unreasonably exceeding that county's actual road construction expenditures for the same budget year which has the effect of permitting the county to exceed the day labor amounts established in this section is in violation of the county road administration board's standards of good practice under RCW 36.78.020 and is in violation of this section. Any county, whose expenditure for day labor for road construction projects unreasonably exceeds the limits specified in this section, is in violation of the county road administration board's standards of good practice under RCW 36.78.020 and is in violation of this section.

(5) Notwithstanding any other provision in this section, whenever the construction work or improvement is the installation of electrical traffic control devices, highway illumination equipment, electrical equipment, wires, or equipment to convey electrical current, in an amount exceeding ten thousand dollars for any one project including labor, equipment, and materials, such work shall be performed by contract as in this chapter provided. This section means a complete project and does not permit the construction of any project by day labor by division of the project into units of work or classes of work. [2001 c 108 § 1; 1980 c 40 § 1.]

**Effective date—1980 c 40:** "This act shall take effect on January 1, 1981." [1980 c 40 § 3.]

**36.77.070 Publication of information on day labor projects—Penalty—Prosecution.** If the board determines that any construction should be performed by day labor, and the estimated cost of the work exceeds twenty-five hundred dollars, it shall cause to be published in one issue of a newspaper of general circulation in the county, a brief description of the work to be done and the county road engineer's estimate of the cost thereof. At the completion of such construction, the board shall cause to be published in one issue of such a newspaper a similar brief description of the work together with an accurate statement of the true and complete cost of performing such construction by day labor.

Failure to make the required publication shall subject each county commissioner to a fine of one hundred dollars

for which he shall be liable individually and upon his official bond and the prosecuting attorney shall prosecute for violation of the provisions of this section and RCW 36.77.065. [1983 c 3 § 81; 1963 c 4 § 36.77.070. Prior: 1949 c 156 § 9, part; 1943 c 82 § 4, part; 1937 c 187 § 34, part; Rem. Supp. 1949 § 6450-34, part.]

**36.77.075 County roads—Small works roster.** In lieu of the procedure for awarding contracts that is provided in RCW 36.77.020 through 36.77.040, a county may award contracts for public works projects on county roads using the small works roster process under RCW 39.04.155. [2000 c 138 § 208; 1991 c 363 § 81.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

## Chapter 36.78 RCW

### ROADS AND BRIDGES—COUNTY ROAD ADMINISTRATION BOARD

#### Sections

36.78.010	Definitions—"Board."
36.78.020	Definitions—"Standards of good practice."
36.78.030	Board created—Number—Appointment—Terms—Vacancies.
36.78.040	Composition of board—Qualifications of members.
36.78.050	Meetings—Rules and regulations—Election of chair.
36.78.060	Executive director.
36.78.070	Duties of board.
36.78.080	Members to serve without compensation—Reimbursement for travel expenses.
36.78.090	Certificates of good practice—Withholding of motor vehicle tax distribution.
36.78.100	Conditional certificates.
36.78.110	Expenses to be paid from motor vehicle fund—Disbursement procedure.
36.78.121	Maintenance.

#### Board duties

*generally:* RCW 46.68.120.

*motor vehicle fund, distribution of amount to counties—Factors of distribution formula for RCW 46.68.120(4) funds:* RCW 46.68.122.

*population, road cost, money need, computed—Allocation percentage adjustment, when:* RCW 46.68.124.

**36.78.010 Definitions—"Board."** "Board" shall mean the county road administration board created by this chapter. [1965 ex.s. c 120 § 1.]

**36.78.020 Definitions—"Standards of good practice."** "Standards of good practice" shall mean general and uniform practices formulated and adopted by the board relating to the administration of county roads and the safe and efficient movement of people and goods over county roads, which shall apply to engineering, design procedures, maintenance, traffic control, safety, planning, programming, road classification, road inventories, budgeting and accounting procedures, management practices, equipment policies, personnel policies, and effective use of transportation-related information technology. [1993 c 65 § 1; 1991 c 363 § 82; 1965 ex.s. c 120 § 2.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.78.030 Board created—Number—Appointment—Terms—Vacancies.** There is created hereby a county road administration board consisting of nine members who shall be appointed by the executive committee of the Washington state association of counties. Prior to July 1, 1965 the executive committee of the Washington state association of counties shall appoint the first members of the county road administration board: Three members to serve one year; three members to serve two years; and three members to serve three years from July 1, 1965. Upon expiration of the original terms subsequent appointments shall be made by the same appointing authority for three year terms except in the case of a vacancy, in which event the appointment shall be only for the remainder of the unexpired term in which the vacancy has occurred. [1971 ex.s. c 85 § 5; 1965 ex.s. c 120 § 3.]

**36.78.040 Composition of board—Qualifications of members.** Six members of the county road administration board shall be county legislative authority members and three members shall be county engineers. If any member, during the term for which he or she is appointed ceases to be either a member of a county legislative authority or a county engineer, as the case may be, his or her membership on the county road administration board is likewise terminated. Three members of the board shall be from counties with a population of one hundred twenty-five thousand or more. Four members shall be from counties with a population of from twelve thousand to less than one hundred twenty-five thousand. Two members shall be from counties with a population of less than twelve thousand. Not more than one member of the board shall be from any one county. [1991 c 363 § 83; 1965 ex.s. c 120 § 4.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.78.050 Meetings—Rules and regulations—Election of chair.** The board shall meet at least once quarterly and shall from time to time adopt rules and regulations for its own government and as may be necessary for it to discharge its duties and exercise its powers under this chapter. The board shall elect a chair from its own membership who shall hold office for one year. Election as chair does not affect the member's right to vote on all matters before the board. [1993 c 65 § 2; 1965 ex.s. c 120 § 5.]

**36.78.060 Executive director.** The county road administration board shall appoint an executive director who shall be the chief administrative officer of the board and shall be responsible for carrying out the policies adopted by the board. The executive director is exempt from the provisions of state civil service law, chapter 41.06 RCW, and shall serve at the pleasure of the county road administration board. The executive director's salary shall be set by the board. [1990 c 266 § 1; 1965 ex.s. c 120 § 6.]

**36.78.070 Duties of board.** The county road administration board shall:

(1) Establish by rule, standards of good practice for the administration of county roads and the efficient movement of people and goods over county roads;

(2) Establish reporting requirements for counties with respect to the standards of good practice adopted by the board;

(3) Receive and review reports from counties and reports from its executive director to determine compliance with legislative directives and the standards of good practice adopted by the board;

(4) Advise counties on issues relating to county roads and the safe and efficient movement of people and goods over county roads and assist counties in developing uniform and efficient transportation-related information technology resources;

(5) Report annually before the fifteenth day of January, and throughout the year as appropriate, to the state department of transportation and to the chairs of the legislative transportation committee and the house and senate transportation committees, and to other entities as appropriate on the status of county road administration in each county, including one copy to the staff of each of the committees. The annual report shall contain recommendations for improving administration of the county road programs;

(6) Administer the rural arterial program established by chapter 36.79 RCW and the program funded by the county arterial preservation account established by RCW 46.68.090, as well as any other programs provided for in law. [1999 c 269 § 1; 1993 c 65 § 3; 1990 c 266 § 2; 1987 c 505 § 19; 1983 1st ex.s. c 49 § 19; 1977 ex.s. c 235 § 4; 1965 ex.s. c 120 § 7.]

**Effective date—1999 c 269:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 269 § 18.]

**Severability—Effective date—1983 1st ex.s. c 49:** See RCW 36.79.900 and 36.79.901.

**36.78.080 Members to serve without compensation—Reimbursement for travel expenses.** Members of the county road administration board shall receive no compensation for their service on the board, but shall be reimbursed for travel expenses incurred while attending meetings of the board or while engaged on other business of the board when authorized by the board in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 80; 1975 1st ex.s. c 1 § 1; 1969 ex.s. c 182 § 5; 1965 ex.s. c 120 § 8.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**36.78.090 Certificates of good practice—Withholding of motor vehicle tax distribution.** (1) Before May 1st of each year the board shall transmit to the state treasurer certificates of good practice on behalf of the counties which during the preceding calendar year:

(a) Have submitted to the state department of transportation or to the board all reports required by law or regulation of the board; and

(b) Have reasonably complied with provisions of law relating to county road administration and with the standards of good practice as formulated and adopted by the board.

(2) The board shall not transmit to the state treasurer a certificate of good practice on behalf of any county failing to meet the requirements of subsection (1) of this section, but

the board shall in such case and before May 1st, notify the county and the state treasurer of its reasons for withholding the certificate.

(3) The state treasurer, upon receiving a notice that a certificate of good practice will not be issued on behalf of a county, or that a previously issued certificate of good practice has been revoked, shall, effective the first day of the month after that in which notice is received, withhold from such county its share of motor vehicle fuel taxes distributable pursuant to RCW 46.68.120 until the board thereafter issues on behalf of such county a certificate of good practice or a conditional certificate. After withholding or revoking a certificate of good practice with respect to any county, the board may thereafter at any time issue such a certificate or a conditional certificate when the board is satisfied that the county has complied or is diligently attempting to comply with the requirements of subsection (1) of this section.

(4) The board may, upon notice and a hearing, revoke a previously issued certificate of good practice or substitute a conditional certificate therefor when, after issuance of a certificate of good practice, any county fails to meet the requirements of subsection (1) (a) and (b) of this section, but the board shall in such case notify the county and the state treasurer of its reasons for the revocation or substitution.

(5) Motor vehicle fuel taxes withheld from any county pursuant to this section shall not be distributed to any other county, but shall be retained in the motor vehicle fund to the credit of the county originally entitled thereto. Whenever the state treasurer receives from the board a certificate of good practice issued on behalf of such county he shall distribute to such county all of the funds theretofore retained in the motor vehicle fund to the credit of such county. [1984 c 7 § 33; 1977 ex.s. c 257 § 1; 1965 ex.s. c 120 § 9.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**36.78.100 Conditional certificates.** Whenever the board finds that a county has failed to submit the reports required by RCW 36.78.090, or has failed to comply with provisions of law relating to county road administration or has failed to meet the standards of good practice as formulated and adopted by the board, the board may in lieu of withholding or revoking a certificate of good practice issue and transmit to the state treasurer on behalf of such county a conditional certificate which will authorize the continued distribution to such county all or a designated portion of its share of motor vehicle fuel taxes. The issuance of such a conditional certificate shall be upon terms and conditions as shall be deemed by the board to be appropriate. In the event a county on whose behalf a conditional certificate is issued fails to comply with the terms and conditions of such certificate, the board may forthwith cancel or modify such certificate notifying the state treasurer thereof. In such case the state treasurer shall thereafter withhold from such county all or the designated portion of its share of the motor vehicle fuel taxes as provided in RCW 36.78.090. [1977 ex.s. c 257 § 2; 1965 ex.s. c 120 § 10.]

**36.78.110 Expenses to be paid from motor vehicle fund—Disbursement procedure.** All expenses incurred by the board including salaries of employees shall be paid upon

voucher forms provided by the office of financial management or pursuant to a regular payroll signed by the chairman and the executive director of the board. All expenses of the board shall be paid out of that portion of the motor vehicle fund allocated to the counties and withheld for use by the department of transportation and the county road administration board under the provisions of RCW 46.68.120(1), as now or hereafter amended. [1990 c 266 § 3; 1979 c 151 § 42; 1965 ex.s. c 120 § 11.]

**36.78.121 Maintenance.** The county road administration board, or its successor entity, shall establish a standard of good practice for maintenance of transportation system assets. This standard must be implemented by all counties no later than December 31, 2007. The board shall develop a model maintenance management system for use by counties. The board shall develop rules to assist the counties in the implementation of this system. Counties shall annually submit their maintenance plans to the board. The board shall compile the county data regarding maintenance management and annually submit it to the transportation commission or its successor entity. [2003 c 363 § 307.]

**Finding—Intent—2003 c 363:** See note following RCW 35.84.060.

**Part headings not law—Severability—2003 c 363:** See notes following RCW 47.28.241.

## Chapter 36.79 RCW ROADS AND BRIDGES—RURAL ARTERIAL PROGRAM

### Sections

36.79.010	Definitions.
36.79.020	Rural arterial trust account.
36.79.030	Apportionment of rural arterial trust account funds—Regions established.
36.79.040	Apportionment of rural arterial trust account funds—Apportionment formula.
36.79.050	Apportionment of rural arterial trust account funds—Establishment of apportionment percentages.
36.79.060	Powers and duties of board.
36.79.070	Board may contract with department of transportation for staff services and facilities.
36.79.080	Six-year program for rural arterial improvements—Selection of priority improvement projects.
36.79.090	Six-year program for rural arterial improvements—Review and revision by board.
36.79.100	Rural arterial improvements—Coordination with municipal and state projects.
36.79.110	Coordination of transportation improvement board and county road administration board.
36.79.120	Rural arterial trust account—Matching funds.
36.79.130	Recommended budget for expenditures from rural arterial trust account—Inclusion in transportation budget.
36.79.140	Expenditures from rural arterial trust account—Approval by board.
36.79.150	Allocation of funds to rural arterial projects—Subsequent application for increased allocation—Withholding of funds for noncompliance.
36.79.160	Payment of rural arterial trust account funds.
36.79.170	County may appeal decision of board—Hearing.
36.79.900	Severability—1983 1st ex.s. c 49.
36.79.901	Effective date—1983 1st ex.s. c 49.

**36.79.010 Definitions.** The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Rural arterial program" means improvement projects on those county roads in rural areas classified as rural arterials and collectors in accordance with the federal

functional classification system and the construction of replacement bridges funded by the federal bridge replacement program on access roads in rural areas.

(2) "Rural area" means every area of the state outside of areas designated as urban areas by the state transportation commission with the approval of the secretary of the United States department of transportation in accordance with federal law.

(3) "Board" means the county road administration board created by RCW 36.78.030. [1997 c 81 § 1; 1988 c 26 § 1; 1983 1st ex.s. c 49 § 1.]

**36.79.020 Rural arterial trust account.** There is created in the motor vehicle fund the rural arterial trust account. All moneys deposited in the motor vehicle fund to be credited to the rural arterial trust account shall be expended for (1) the construction and improvement of county rural arterials and collectors, (2) the construction of replacement bridges funded by the federal bridge replacement program on access roads in rural areas, and (3) those expenses of the board associated with the administration of the rural arterial program. [1997 c 81 § 2; 1988 c 26 § 2; 1983 1st ex.s. c 49 § 2.]

**36.79.030 Apportionment of rural arterial trust account funds—Regions established.** For the purpose of apportioning rural arterial trust account funds, the state is divided into five regions as follows:

(1) The Puget Sound region includes those areas within the counties of King, Pierce, and Snohomish.

(2) The northwest region includes those areas within the counties of Clallam, Jefferson, Island, Kitsap, San Juan, Skagit, and Whatcom.

(3) The northeast region includes those areas within the counties of Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, and Whitman.

(4) The southeast region includes those areas within the counties of Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla, and Yakima.

(5) The southwest region includes those areas within the counties of Clark, Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Skamania, Thurston, and Wahkiakum. [1983 1st ex.s. c 49 § 3.]

**36.79.040 Apportionment of rural arterial trust account funds—Apportionment formula.** Funds available for expenditure by the board pursuant to RCW 36.79.020 shall be apportioned to the five regions for expenditure upon county arterials in rural areas in the following manner:

(1) One-third in the ratio which the land area of the rural areas of each region bears to the total land area of all rural areas of the state;

(2) Two-thirds in the ratio which the mileage of county arterials and collectors in rural areas of each region bears to the total mileage of county arterials and collectors in all rural areas of the state.

The board shall adjust the schedule for apportionment of such funds to the five regions in the manner provided in this section before the commencement of each fiscal biennium. [1997 c 81 § 3; 1983 1st ex.s. c 49 § 4.]

**36.79.050 Apportionment of rural arterial trust account funds—Establishment of apportionment percentages.** At the beginning of each fiscal biennium, the board shall establish apportionment percentages for the five regions defined in RCW 36.79.030 in the manner prescribed in RCW 36.79.040 for that biennium. The apportionment percentages shall be used once each calendar quarter by the board to apportion funds credited to the rural arterial trust account that are available for expenditure for rural arterial and collector projects and for construction of replacement bridges funded by the federal bridge replacement program on access roads in rural areas. The funds so apportioned shall remain apportioned until expended on construction projects in accordance with rules of the board. Within each region, funds shall be allocated by the board to counties for the construction of specific rural arterial and collector projects and construction of replacement bridges funded by the federal bridge replacement program on access roads in rural areas in accordance with the procedures set forth in this chapter. [1997 c 81 § 4; 1988 c 26 § 3; 1983 1st ex.s. c 49 § 5.]

**36.79.060 Powers and duties of board.** The board shall:

(1) Adopt rules necessary to implement the provisions of this chapter relating to the allocation of funds in the rural arterial trust account to counties;

(2) Adopt reasonably uniform design standards for county rural arterials and collectors that meet the requirements for trucks transporting commodities. [1998 c 245 § 31; 1997 c 81 § 5; 1988 c 26 § 4; 1983 1st ex.s. c 49 § 6.]

**36.79.070 Board may contract with department of transportation for staff services and facilities.** The board may contract with the department of transportation to furnish any necessary staff services and facilities required in the administration of the rural arterial program. The cost of such services that are attributable to the rural arterial program, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060 of the members and all other lawful expenses of the board that are attributable to the rural arterial program, shall be paid from the rural arterial trust account in the motor vehicle fund. [1983 1st ex.s. c 49 § 7.]

**36.79.080 Six-year program for rural arterial improvements—Selection of priority improvement projects.** In preparing their respective six-year programs relating to rural arterial improvements, counties shall select specific priority improvement projects for each functional class of arterial based on the rating of each arterial section proposed to be improved in relation to other arterial sections within the same functional class, taking into account the following:

- (1) Its structural ability to carry loads imposed upon it;
- (2) Its capacity to move traffic at reasonable speeds;
- (3) Its adequacy of alignment and related geometrics;
- (4) Its accident experience; and
- (5) Its fatal accident experience.

The six-year construction programs shall remain flexible and subject to annual revision as provided in RCW 36.81.121. [1983 1st ex.s. c 49 § 8.]

**36.79.090 Six-year program for rural arterial improvements—Review and revision by board.** Upon receipt of a county's revised six-year program, the board as soon as practicable shall review and may revise the construction program as it relates to rural arterials and the construction of replacement bridges funded by the federal bridge replacement program on access roads in rural areas for which rural arterial trust account moneys are requested as necessary to conform to (1) the priority rating of the proposed project, based upon the factors in RCW 36.79.080, in relation to proposed projects in all other rural arterial construction programs submitted by the counties and within each region; and (2) the amount of rural arterial trust account funds that the board estimates will be apportioned to the region. [1988 c 26 § 5; 1983 1st ex.s. c 49 § 10.]

**36.79.100 Rural arterial improvements—Coordination with municipal and state projects.** Whenever a rural arterial enters a city or town, the proper city or town and county officials shall jointly plan the improvement of the arterial in their respective long-range plans. Whenever a rural arterial connects with and will be substantially affected by a programmed construction project on a state highway, the proper county officials shall jointly plan the development of such arterial with the department of transportation district administrator. The board shall adopt rules encouraging the system development of county-city arterials in rural areas and rural arterials with state highways. [1983 1st ex.s. c 49 § 9.]

**36.79.110 Coordination of transportation improvement board and county road administration board.** The county road administration board and the transportation improvement board shall jointly adopt rules to assure coordination of their respective programs especially with respect to projects proposed by the group of incorporated cities outside the boundaries of federally approved urban areas, and to encourage the system development of county-city arterials in rural areas. [1988 c 167 § 7; 1983 1st ex.s. c 49 § 11.]

**Savings—Severability—1988 c 167:** See notes following RCW 47.26.121.

**36.79.120 Rural arterial trust account—Matching funds.** Counties receiving funds from the rural arterial trust account for construction of arterials and the construction of replacement bridges funded by the federal bridge replacement program on access roads in rural areas shall provide such matching funds as established by rules recommended by the board, subject to review, revision, and final approval by the state transportation commission. Matching requirements shall be established after appropriate studies by the board, taking into account financial resources available to counties to meet arterial needs. [1988 c 26 § 6; 1983 1st ex.s. c 49 § 12.]

**36.79.130 Recommended budget for expenditures from rural arterial trust account—Inclusion in transportation budget.** Not later than November 1st of each even-numbered year the board shall prepare and present to the state transportation commission a recommended budget for expenditures from the rural arterial trust account during the ensuing

biennium. The budget shall contain an estimate of the revenues to be credited to the rural arterial trust account.

The state transportation commission shall review the budget as recommended, revise the budget as it deems proper, and include the budget as revised as a separate section of the transportation budget which it shall submit to the governor pursuant to chapter 43.88 RCW. [1983 1st ex.s. c 49 § 13.]

**36.79.140 Expenditures from rural arterial trust account—Approval by board.** At the time the board reviews the six-year program of each county each even-numbered year, it shall consider and shall approve for inclusion in its recommended budget, as required by RCW 36.79.130, the portion of the rural arterial construction program scheduled to be performed during the biennial period beginning the following July 1st. Subject to the appropriations actually approved by the legislature, the board shall as soon as feasible approve rural arterial trust account funds to be spent during the ensuing biennium for preliminary proposals in priority sequence as established pursuant to RCW 36.79.090. Only those counties that during the preceding twelve months have spent all revenues collected for road purposes only for such purposes, including removal of barriers to fish passage and accompanying streambed and stream bank repair as specified in RCW 36.82.070, and including traffic law enforcement, as are allowed to the state by Article II, section 40 of the state Constitution are eligible to receive funds from the rural arterial trust account, except that: (1) Counties with a population of less than eight thousand are exempt from this eligibility restriction; (2) counties expending revenues collected for road purposes only on other governmental services after authorization from the voters of that county under RCW 84.55.050 are also exempt from this eligibility restriction; and (3) this restriction shall not apply to any moneys diverted from the road district levy under chapter 39.89 RCW. The board shall authorize rural arterial trust account funds for the construction project portion of a project previously authorized for a preliminary proposal in the sequence in which the preliminary proposal has been completed and the construction project is to be placed under contract. At such time the board may reserve rural arterial trust account funds for expenditure in future years as may be necessary for completion of preliminary proposals and construction projects to be commenced in the ensuing biennium.

The board may, within the constraints of available rural arterial trust funds, consider additional projects for authorization upon a clear and conclusive showing by the submitting county that the proposed project is of an emergent nature and that its need was unable to be anticipated at the time the six-year program of the county was developed. The proposed projects shall be evaluated on the basis of the priority rating factors specified in RCW 36.79.080. [2001 c 221 § 2; 2001 c 212 § 26; 1997 c 81 § 6; 1991 c 363 § 84; 1990 c 42 § 104; 1984 c 113 § 1; 1983 1st ex.s. c 49 § 14.]

**Reviser's note:** This section was amended by 2001 c 212 § 26 and by 2001 c 221 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Purpose—Intent—2001 c 221:** "The legislature recognizes that projects that remove impediments to fish passage can greatly increase access

to spawning and rearing habitat for depressed, threatened, and endangered fish stocks. Although counties are authorized to use county road funds to replace culverts and other barriers to fish passage, and may conduct streambed and stream bank restoration and stabilization work in conjunction with removal of these fish barriers, counties are reluctant to spend county road funds beyond the county right-of-way because it is unclear whether the use of road funds for this purpose is authorized. The purpose of this act is to clarify that streambed and stream bank restoration and stabilization activities conducted in conjunction with removal of existing barriers to fish passage within county rights-of-way constitute a county road purpose even if this work extends beyond the county right-of-way. The legislature intends this act to be permissive legislation. Nothing in this act is intended to create or impose a legal duty upon counties for salmon recovery work beyond the county right-of-way." [2001 c 221 § 1.]

**Severability—2001 c 212:** See RCW 39.89.902.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**36.79.150 Allocation of funds to rural arterial projects—Subsequent application for increased allocation—Withholding of funds for noncompliance.** (1) Whenever the board approves a rural arterial project it shall determine the amount of rural arterial trust account funds to be allocated for such project. The allocation shall be based upon information contained in the six-year plan submitted by the county seeking approval of the project and upon such further investigation as the board deems necessary. The board shall adopt reasonable rules pursuant to which rural arterial trust account funds allocated to a project may be increased upon a subsequent application of the county constructing the project. The rules adopted by the board shall take into account, but shall not be limited to, the following factors: (a) The financial effect of increasing the original allocation for the project upon other rural arterial projects either approved or requested; (b) whether the project for which an additional allocation is requested can be reduced in scope while retaining a usable segment; (c) whether the original cost of the project shown in the applicant's six-year program was based upon reasonable engineering estimates; and (d) whether the requested additional allocation is to pay for an expansion in the scope of work originally approved.

(2) The board shall not allocate funds, nor make payments under RCW 36.79.160, to any county or city identified by the governor under RCW 36.70A.340. [1991 sp.s. c 32 § 31; 1983 1st ex.s. c 49 § 15.]

**Section headings not law—1991 sp.s. c 32:** See RCW 36.70A.902.

**36.79.160 Payment of rural arterial trust account funds.** (1) Upon completion of a preliminary proposal, the county submitting the proposal shall submit to the board its voucher for payment of the trust account share of the cost. Upon the completion of an approved rural arterial construction project, the county constructing the project shall submit to the board its voucher for the payment of the trust account share of the cost. The chairman of the board or his designated agent shall approve such voucher when proper to do so, for payment from the rural arterial trust account to the county submitting the voucher.

(2) The board may adopt rules providing for the approval of payments of funds in the rural arterial trust account to a county for costs of preliminary proposal, and costs of construction of an approved project from time to time as work progresses. These payments shall at no time exceed the rural arterial trust account share of the costs of construction incurred to the date of the voucher covering the payment. [1983 1st ex.s. c 49 § 17.]

struction of an approved project from time to time as work progresses. These payments shall at no time exceed the rural arterial trust account share of the costs of construction incurred to the date of the voucher covering the payment. [1983 1st ex.s. c 49 § 17.]

**36.79.170 County may appeal decision of board—Hearing.** The legislative body of any county feeling aggrieved by any action or decision of the board with respect to this chapter may appeal to the secretary of transportation by filing a notice of appeal within ninety days after the action or decision of the board. The notice shall specify the action or decision of which complaint is made. The secretary shall fix a time for a hearing on the appeal at the earliest convenient time and shall notify the county auditor and the chairman of the board by certified mail at least twenty days before the date of the hearing. At the hearing the secretary shall receive evidence from the county filing the appeal and from the board. After the hearing the secretary shall make such order as in the secretary's judgment is just and proper. [1983 1st ex.s. c 49 § 18.]

**36.79.900 Severability—1983 1st ex.s. c 49.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 49 § 32.]

**36.79.901 Effective date—1983 1st ex.s. c 49.** This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983. [1983 1st ex.s. c 49 § 33.]

## Chapter 36.80 RCW

### ROADS AND BRIDGES—ENGINEER

#### Sections

36.80.010	Employment of road engineer.
36.80.015	Office at county seat.
36.80.020	Qualifications—Bond.
36.80.030	Duties of engineer.
36.80.040	Records to be kept.
36.80.050	Highway plat book.
36.80.060	Engineer to maintain records of expenditures for equipment, etc.—Inventory.
36.80.070	Plans and specifications to be prepared.
36.80.080	Cost-audit examination by state auditor—Expense.

*County engineer defined for diking, drainage, or sewerage improvement district purposes: RCW 85.08.010.*

*Diking or drainage improvement district, engineer as supervisor: RCW 85.20.050.*

#### *Duties relating to*

*agreements on planning, establishing, constructing, etc., of city streets: RCW 35.77.020, 35.77.030.*

*diking, drainage and sewerage improvement districts: Chapters 85.08, 85.16 RCW.*

*flood control zone districts: Chapter 86.15 RCW.*

**36.80.010 Employment of road engineer.** The county legislative authority of each county shall employ a county road engineer on either a full-time or part-time basis, or may contract with another county for the engineering services of a county road engineer from such other county. [2002 c 9 § 1;

1997 c 147 § 1; 1991 c 363 § 85; 1984 c 11 § 1; 1980 c 93 § 1; 1969 ex.s. c 182 § 6; 1963 c 4 § 36.80.010. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4, part.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.80.015 Office at county seat.** The county road engineer shall keep his office at the county seat in such room or rooms as are provided by the county, and he shall be furnished with all necessary cases and other suitable articles, and also with all blank books and blanks necessary to the proper discharge of his official duties. The records and books in the county road engineer's office shall be public records, and shall at all proper times be open to the inspection and examination of the public. [1963 c 4 § 36.80.015. Prior: 1955 c 9 § 1; prior: 1895 c 77 § 10; RRS § 4148.]

**36.80.020 Qualifications—Bond.** He shall be a registered and licensed professional civil engineer under the laws of this state, duly qualified and experienced in highway and road engineering and construction. He shall serve at the pleasure of the board.

Before entering upon his employment, every county road engineer shall give an official bond to the county in such amount as the board shall determine, conditioned upon the fact that he will faithfully perform all the duties of his employment and account for all property of the county entrusted to his care. [1969 ex.s. c 182 § 7; 1963 c 4 § 36.80.020. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4, part.]

**36.80.030 Duties of engineer.** The county road engineer shall examine and certify to the board all estimates and all bills for labor, materials, provisions, and supplies with respect to county roads, prepare standards of construction of roads and bridges, and perform such other duties as may be required by order of the board.

He shall have supervision, under the direction of the board, of establishing, laying out, constructing, altering, improving, repairing, [and] maintaining all county roads of the county. [1969 ex.s. c 182 § 8; 1963 c 4 § 36.80.030. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4, part.]

**36.80.040 Records to be kept.** The office of county engineer shall be an office of record; the county road engineer shall record and file in his or her office, all matters concerning the public roads, highways, bridges, ditches, or other surveys of the county, with the original papers, documents, petitions, surveys, repairs, and other papers, in order to have the complete history of any such road, highway, bridge, ditch, or other survey; and shall number each construction or improvement project. The county engineer is not required to retain and file financial documents retained and filed in other departments in the county. [1995 c 194 § 8; 1969 ex.s. c 182 § 9; 1963 c 4 § 36.80.040. Prior: 1907 c 160 § 4; RRS § 4147.]

[Title 36 RCW—page 236]

**36.80.050 Highway plat book.** He shall keep a highway plat book in his office in which he shall have accurately platted all public roads and highways established by the board. [1963 c 4 § 36.80.050. Prior: 1907 c 160 § 2; RRS § 4149.]

**36.80.060 Engineer to maintain records of expenditures for equipment, etc.—Inventory.** The county road engineer shall maintain in his office complete and accurate records of all expenditures for (1) administration, (2) bond and warrant retirement, (3) maintenance, (4) construction, (5) purchase and operation of road equipment, and (6) purchase or manufacture of materials and supplies, and shall maintain a true and complete inventory of all road equipment. The state auditor, with the advice and assistance of the county road administration board, shall prescribe forms and types of records to be maintained by the county road engineers. [1969 ex.s. c 182 § 10; 1963 c 4 § 36.80.060. Prior: 1949 c 156 § 2; Rem. Supp. 1949 § 6450-8b.]

**36.80.070 Plans and specifications to be prepared.** All road construction work, except minor construction work, which by its nature does not require plans and specifications, whether performed pursuant to contract or by day labor, shall be in accordance with plans and specifications prepared therefor by or under direct supervision of the county road engineer. [1969 ex.s. c 182 § 11; 1963 c 4 § 36.80.070. Prior: 1949 c 156 § 3; Rem. Supp. 1949 § 6450-8c.]

**36.80.080 Cost-audit examination by state auditor—Expense.** The state auditor shall annually make a cost-audit examination of the books and records of the county road engineer and make a written report thereon to the county legislative authority. The expense of the examination shall be paid from the county road fund. [1995 c 301 § 69; 1985 c 120 § 3; 1984 c 7 § 34; 1963 c 4 § 36.80.080. Prior: 1957 c 146 § 1.]

**Effective date—1985 c 120 § 3:** "Section 3 of this act shall take effect July 1, 1987." [1985 c 120 § 4.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

## Chapter 36.81 RCW

### ROADS AND BRIDGES—ESTABLISHMENT

#### Sections

36.81.010	Resolution of intention and necessity.
36.81.020	Freeholders' petition—Bond.
36.81.030	Deeds and waivers.
36.81.040	Action on petition.
36.81.050	Engineer's report.
36.81.060	Survey map, field notes and profiles.
36.81.070	Notice of hearing on report.
36.81.080	Hearing—Road established by resolution.
36.81.090	Expense of proceedings.
36.81.100	County road on or over dikes.
36.81.110	County road on or over dikes—Condemnation for dike roads.
36.81.121	Perpetual advanced six-year plans for coordinated transportation program, expenditures—Nonmotorized transportation—Railroad right-of-way.
36.81.122	Provisions for bicycle paths, lanes, routes, roadways and improvements to be included in annual revision or extension of comprehensive road programs—Exception.
36.81.130	Procedure specified for establishment, construction, and maintenance.
36.81.140	Columbia Basin project road systems—Establishment by plat.

*Alternate date for budget hearing: RCW 36.40.071.*

*Bicycles; pavement marking standards: RCW 47.36.280.*

*State highways in urban areas, allocation of funds, planning, bond issue, etc.: Chapter 47.26 RCW.*

*Urban arterials, planning, construction by cities and towns, transportation improvement board, funds, bond issue, etc.: Chapter 47.26 RCW.*

**36.81.010 Resolution of intention and necessity.** The board may by original resolution entered upon its minutes declare its intention to establish any county road in the county and declare that it is a public necessity and direct the county road engineer to report upon such project. [1963 c 4 § 36.81.010. Prior: 1937 c 187 § 19; RRS § 6450-19.]

**36.81.020 Freeholders' petition—Bond.** Ten or more freeholders of any county may petition the board for the establishment of a county road in the vicinity of their residence, setting forth and describing the general course and terminal points of the proposed improvement and stating that the same is a public necessity. The petition must be accompanied by a bond in the penal sum of three hundred dollars, payable to the county, executed by one or more persons as principal or principals, with two or more sufficient sureties, conditioned that the petitioners will pay into the county road fund of the county all costs and expenses incurred by the county in examining and surveying the proposed road and in the proceedings thereon in case the road is not established by reason of its being impracticable or there not being funds therefor. [1963 c 4 § 36.81.020. Prior: 1937 c 187 § 20, part; RRS § 6450-20, part.]

**36.81.030 Deeds and waivers.** The board may require the petitioners to secure deeds and waivers of damages for the right of way from the landowners, and, in such case, before an examination or survey by the county road engineer is ordered, such deeds and waivers shall be filed with the board. [1963 c 4 § 36.81.030. Prior: 1937 c 187 § 20, part; RRS § 6450-20, part.]

**36.81.040 Action on petition.** Upon the filing of the petition and bond and being satisfied that the petition has been signed by freeholders residing in the vicinity of the proposed road, the board shall direct the county road engineer to report upon the project. [1963 c 4 § 36.81.040. Prior: 1937 c 187 § 20, part; RRS § 6450-20, part.]

**36.81.050 Engineer's report.** Whenever directed by the board to report upon the establishment of a county road the engineer shall make an examination of the road and if necessary a survey thereof. After examination, if the engineer deems the road to be impracticable, he shall so report to the board without making any survey, or he may examine or examine and survey any other practicable route which would serve such purpose. Whenever he considers any road as proposed or modified as practicable, he shall report thereon in writing to the board giving his opinion: (1) As to the necessity of the road; (2) as to the proper terminal points, general course and length thereof; (3) as to the proper width of right of way therefor; (4) as to the estimated cost of construction, including all necessary bridges, culverts, clearing, grubbing, drainage, and grading; (5) and such other facts as he may

deem of importance to be considered by the board. [1963 c 4 § 36.81.050. Prior: 1937 c 187 § 21, part; RRS § 6450-21, part.]

**36.81.060 Survey map, field notes and profiles.** The county road engineer shall file with his report a correctly prepared map of the road as surveyed, which map must show the tracts of land over which the road passes, with the names, if known, of the several owners thereof, and he shall file therewith his field notes and profiles of such survey. [1963 c 4 § 36.81.060. Prior: 1937 c 187 § 21, part; RRS § 6450-21, part.]

**36.81.070 Notice of hearing on report.** The board shall fix a time and place for hearing the report of the engineer and cause notice thereof to be published once a week for two successive weeks in the county official newspaper and to be posted for at least twenty days at each termini of the proposed road.

The notice shall set forth the termini of the road as set out in the resolution of the board, or the freeholders' petition, as the case may be, and shall state that all persons interested may appear and be heard at such hearing upon the report and recommendation of the engineer either to proceed or not to proceed with establishing the road. [1963 c 4 § 36.81.070. Prior: 1937 c 187 § 22, part; RRS § 6450-22, part.]

**36.81.080 Hearing—Road established by resolution.** On the day fixed for the hearing or any day to which the hearing has been adjourned, upon proof to its satisfaction made by affidavit of due publication and posting of the notice of hearing, the board shall consider the report and any and all evidence relative thereto, and if the board finds that the proposed county road is a public necessity and practicable it may establish it by proper resolution. [1963 c 4 § 36.81.080. Prior: 1937 c 187 § 22, part; RRS § 6450-22, part.]

**36.81.090 Expense of proceedings.** The cost and expense of the road, together with cost of proceedings thereon and of right of way and any quarries or other land acquired therefor, and the maintenance of the road shall be paid out of the county road fund. When the costs are assessed against the principals on the bond given in connection with a petition for the improvement, the county auditor shall file a cost bill with the county treasurer who shall proceed to collect it. [1963 c 4 § 36.81.090. Prior: (i) 1937 c 187 § 22, part; RRS § 6450-22, part. (ii) 1937 c 187 § 20, part; RRS § 6450-20, part.]

**36.81.100 County road on or over dikes.** The board of any county may establish county roads over, across or along any dike maintained by any diking, or diking and drainage, district in the manner provided by law for establishing county roads over or across private property, and shall determine and offer the amount of damages, if any, to the district and to the owners of the land upon which the dike is constructed and maintained: PROVIDED, That every such county road must be so constructed, maintained, and used as not to impair the use of the dike. [1963 c 4 § 36.81.100. Prior: 1937 c 187 § 15; RRS § 6450-15.]

**36.81.110 County road on or over dikes—Condemnation for dike roads.** If any offer of damages to any diking, or diking and drainage, district is not accepted in the manner provided by law, it shall be deemed rejected, and the board by order, shall direct condemnation proceedings to procure the right of way to be instituted in the superior court of the county by the prosecuting attorney in the manner provided by law for the taking of private property for public use, and to that end the board may institute and maintain in the name of the county such proceedings against the diking, or diking and drainage, district and the owners of any land on which the dike is located and that have failed to accept the offer of damages made by the board: PROVIDED, That no taxes or assessments shall be charged or collected by any diking, or diking and drainage, district for any county road as provided in this section. [1963 c 4 § 36.81.110. Prior: 1937 c 187 § 16; RRS § 6450-16.]

**36.81.121 Perpetual advanced six-year plans for coordinated transportation program, expenditures—Nonmotorized transportation—Railroad right-of-way.**

(1) At any time before adoption of the budget, the legislative authority of each county, after one or more public hearings thereon, shall prepare and adopt a comprehensive transportation program for the ensuing six calendar years. If the county has adopted a comprehensive plan pursuant to chapter 35.63 or 36.70 RCW, the inherent authority of a charter county derived from its charter, or chapter 36.70A RCW, the program shall be consistent with this comprehensive plan.

The program shall include proposed road and bridge construction work and other transportation facilities and programs deemed appropriate, and for those counties operating ferries shall also include a separate section showing proposed capital expenditures for ferries, docks, and related facilities. Copies of the program shall be filed with the county road administration board and with the state secretary of transportation not more than thirty days after its adoption by the legislative authority. The purpose of this section is to assure that each county shall perpetually have available advanced plans looking to the future for not less than six years as a guide in carrying out a coordinated transportation program. The program may at any time be revised by a majority of the legislative authority but only after a public hearing thereon.

(2) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a county will expend its moneys, including funds made available pursuant to chapter 47.30 RCW, for nonmotorized transportation purposes.

(3) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a county shall act to preserve railroad right-of-way in the event the railroad ceases to operate in the county's jurisdiction.

(4) The six-year plan for each county shall specifically set forth those projects and programs of regional significance for inclusion in the transportation improvement program within that region. [1997 c 188 § 1. Prior: 1994 c 179 § 2; 1994 c 158 § 8; 1990 1st ex.s. c 17 § 58; 1988 c 167 § 8; 1983 1st ex.s. c 49 § 20; prior: 1975 1st ex.s. c 215 § 2; 1975 1st ex.s. c 21 § 3; 1967 ex.s. c 83 § 26; 1963 c 4 § 36.81.121; prior: 1961 c 195 § 1.]

**Captions not law—Severability—Effective date—1994 c 158:** See RCW 47.80.902 through 47.80.904.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**Savings—Severability—1988 c 167:** See notes following RCW 47.26.121.

**Severability—Effective date—1983 1st ex.s. c 49:** See RCW 36.79.900 and 36.79.901.

**Severability—Effective dates—1967 ex.s. c 83:** See RCW 47.26.900 and 47.26.910.

*Highways, roads, streets in urban areas, urban arterials, development: Chapter 47.26 RCW.*

*Long range arterial construction planning, counties and cities to prepare data: RCW 47.26.170.*

**36.81.122 Provisions for bicycle paths, lanes, routes, roadways and improvements to be included in annual revision or extension of comprehensive road programs—**

**Exception.** The annual revision and extension of comprehensive road programs pursuant to RCW 36.81.121 shall include consideration of and, wherever reasonably practicable, provisions for bicycle paths, lanes, routes, and roadways: PROVIDED, That no provision need be made for such a path, lane, route, or roadway where the cost of establishing it would be excessively disproportionate to the need or probable use. [1974 ex.s. c 141 § 9.]

**36.81.130 Procedure specified for establishment, construction, and maintenance.**

The laying out, construction, and maintenance of all county roads shall hereafter be in accordance with the following procedure:

On or before the first Monday in October of each year each county road engineer shall file with the county legislative authority a recommended plan for the laying out, construction, maintenance, and special maintenance of county roads for the ensuing fiscal year. Such recommended plan need not be limited to but shall include the following items: Recommended projects, including capital expenditures for ferries, docks, and related facilities, and their priority; the estimated cost of all work, including labor and materials for each project recommended; a statement as to whether such work is to be done by the county forces or by publicly advertised contract; a list of all recommended repairs to and purchases of road equipment, together with the estimated costs thereof. Amounts to be expended for maintenance and special maintenance shall be recommended, but details of these proposed expenditures shall not be made. The recommended plan shall conform as nearly as practicable to the county's long range road program.

After filing of the road engineer's recommended plan, the county legislative authority shall consider the same. Revisions and changes may be made until a plan which is agreeable to a majority of the members of the county legislative authority has been adopted: PROVIDED, That such revisions shall conform as nearly as practicable to the county's long range road program. Any appropriations contained in the county road budget shall be void unless the county's road plan was adopted prior to such appropriation.

The final road plan for the fiscal year shall not thereafter be changed except by unanimous vote of the county legislative authority. [1991 c 363 § 86; 1975 1st ex.s. c 21 § 4; 1963

c 4 § 36.81.130. Prior: 1949 c 156 § 7; Rem. Supp. 1949 § 6450-8f.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.81.140 Columbia Basin project road systems—Establishment by plat.** When plats or blocks of farm units have been or are filed under the provisions of chapter 89.12 RCW which contain a system of county roads, or when a supplemental plat of a system of county roads to serve such a plat is filed in connection therewith, the filing period and formal approval by the board of county commissioners shall constitute establishment as county roads: PROVIDED, That the board of county commissioners have obtained the individual rights-of-way by deed or as otherwise provided by law. [1963 c 4 § 36.81.140. Prior: 1953 c 199 § 1.]

## Chapter 36.82 RCW

### ROADS AND BRIDGES—FUNDS—BUDGET

#### Sections

36.82.010	"County road fund" created.
36.82.020	County road fund—Limitation upon expenditures.
36.82.040	General tax levy for road fund—Exceptions.
36.82.050	Receipts from motor vehicle fund to road fund.
36.82.060	Federal reimbursement to road fund.
36.82.070	Purpose for which road fund can be used.
36.82.075	Use of county road funds in cooperative agreement with conservation district.
36.82.080	Purpose for which road fund can be used—Payment of bond or warrant interest and principal.
36.82.090	Anticipation warrants against road fund.
36.82.100	Purchases of road material extraction equipment—Sale of surplus materials.
36.82.110	Voluntary contributions for improvements to county roads—Standards.
36.82.120	Purchases of road material extraction equipment—Proceeds to road fund.
36.82.140	Forest roads may be maintained from road fund.
36.82.145	Bicycle paths, lanes, routes, etc., may be constructed, maintained or improved from county road fund—Standards.
36.82.160	County road budget—Road budget to be prepared—Estimates of expenditures.
36.82.170	County road budget—Budget as adopted filed with department of transportation.
36.82.180	County road budget—Preliminary supplemental budget.
36.82.190	County road budget—Notice of hearing on supplemental budget.
36.82.200	County road budget—Hearing, adoption, supplemental budget.
36.82.210	Disposition of fines and forfeitures for violations.

*Bicycles; pavement marking standards: RCW 47.36.280.*

*Employee safety award program, funds affected: RCW 36.32.460.*

**36.82.010 "County road fund" created.** There is created in each county of the state a county fund to be known as the "county road fund." Any funds which accrue to any county for use upon county roads, shall be credited to and deposited in the county road fund. [1969 ex.s. c 182 § 12; 1963 c 4 § 36.82.010. Prior: 1943 c 82 § 2, part; 1937 c 187 § 6, part; Rem. Supp. 1943 § 6450-6, part.]

**36.82.020 County road fund—Limitation upon expenditures.** Any funds accruing to and to be deposited in the county road fund arising from any levy in any road district shall be expended for proper county road purposes. [1991 c 363 § 87; 1963 c 4 § 36.82.020. Prior: 1943 c 82 § 2, part; 1937 c 187 § 6, part; Rem. Supp. 1943 § 6450-6, part.]

(2004 Ed.)

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.82.040 General tax levy for road fund—Exceptions.** For the purpose of raising revenue for establishing, laying out, constructing, altering, repairing, improving, and maintaining county roads, bridges, and wharves necessary for vehicle ferriage and for other proper county purposes, the board shall annually at the time of making the levy for general purposes make a uniform tax levy throughout the county, or any road district thereof, of not to exceed two dollars and twenty-five cents per thousand dollars of assessed value of the last assessed valuation of the taxable property in the county, or road district thereof, unless other law of the state requires a lower maximum levy, in which event such lower maximum levy shall control. All funds accruing from such levy shall be credited to and deposited in the county road fund except that revenue diverted under RCW 36.33.220 shall be placed in a separate and identifiable account within the county current expense fund and except that revenue diverted under chapter 39.89 RCW shall be expended as provided under chapter 39.89 RCW. [2001 c 212 § 27; 1973 1st ex.s. c 195 § 41; 1971 ex.s. c 25 § 2; 1963 c 4 § 36.82.040. Prior: 1937 c 187 § 7; RRS § 6450-7.]

**Severability—2001 c 212:** See RCW 39.89.902.

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**Severability—1971 ex.s. c 25:** See note following RCW 36.33.220.

**36.82.050 Receipts from motor vehicle fund to road fund.** Any funds accruing to the credit of any county from the motor vehicle fund shall be paid monthly to the county treasurer and deposited in the county road fund. [1963 c 4 § 36.82.050. Prior: 1937 c 187 § 8, part; RRS § 6450-8, part.]

**36.82.060 Federal reimbursement to road fund.** Any funds accruing to any county by way of reimbursement by the federal government for expenditures made from the county road fund of such county for any proper county road purpose shall be credited to and deposited in the county road fund. [1963 c 4 § 36.82.060. Prior: 1937 c 187 § 8, part; RRS § 6450-8, part.]

**36.82.070 Purpose for which road fund can be used.** Any money paid to any county road fund may be used for the construction, alteration, repair, improvement, or maintenance of county roads and bridges thereon and for wharves necessary for ferriage of motor vehicle traffic, and for ferries, and for the acquiring, operating, and maintaining of machinery, equipment, quarries, or pits for the extraction of materials, and for the cost of establishing county roads, acquiring rights-of-way therefor, and expenses for the operation of the county engineering office, and for any of the following programs when directly related to county road purposes: (1) Insurance; (2) self-insurance programs; and (3) risk management programs; and for any other proper county road purpose. Such expenditure may be made either independently or in conjunction with the state or any city, town, or tax district within the county. County road purposes also include the removal of barriers to fish passage related to county roads, and include but are not limited to the following activities

associated with the removal of these barriers: Engineering and technical services; stream bank stabilization; streambed restoration; the placement of weirs, rock, or woody debris; planting; and channel modification. County road funds may be used beyond the county right-of-way for activities clearly associated with removal of fish passage barriers that are the responsibility of the county. Activities related to the removal of barriers to fish passage performed beyond the county right-of-way must not exceed twenty-five percent of the total cost of activities related to fish barrier removal on any one project, and the total annual cost of activities related to the removal of barriers to fish passage performed beyond the county rights-of-way must not exceed one-half of one percent of a county's annual road construction budget. The use of county road funds beyond the county right-of-way for activities associated with the removal of fish barriers is permissive, and wholly within the discretion of the county legislative authority. The use of county road funds beyond the county right-of-way for such activities does not create or impose a legal duty upon a county for salmon recovery work beyond the county right-of-way. [2001 c 221 § 3; 1997 c 189 § 1; 1963 c 4 § 36.82.070. Prior: 1943 c 82 § 5, part; 1937 c 187 § 53, part; Rem. Supp. 1943 § 6450-53, part.]

**Removal of fish barriers—2001 2nd sp.s. c 14:** "Notwithstanding the limitations of RCW 36.82.070 and 2001 c 221 s 3, county road funds may be used during this biennium beyond the county right-of-way for activities clearly associated with removal of fish passage barriers that are the responsibility of the county in the amount deemed appropriate by the county." [2001 2nd sp.s. c 14 § 609.]

**Purpose—Intent—2001 c 221:** See note following RCW 36.79.140.

**36.82.075 Use of county road funds in cooperative agreement with conservation district.** Whenever a county legislative authority enters into a cooperative agreement with a conservation district as provided in chapter 89.08 RCW, the agreement may specify that the county will participate in the cost of any project which can be anticipated to result in a substantial reduction of the amount of soil deposited in a specifically described roadside ditch normally maintained by the county. The amount of participation by the county through the county road fund shall not exceed fifty percent of the project cost and shall be limited to those engineering and construction costs incurred during the initial construction or reconstruction of the project. [1985 c 369 § 9.]

**36.82.080 Purpose for which road fund can be used—Payment of bond or warrant interest and principal.** The payment of interest or principal on general obligation county road bonds, or retirement of registered warrants both as to principal and interest when such warrants have been issued for a proper county road purpose, are declared to be a proper county road purpose. [1979 ex.s. c 30 § 4; 1963 c 4 § 36.82.080. Prior: 1943 c 82 § 5, part; 1937 c 187 § 53, part; Rem. Supp. 1943 § 6450-53, part.]

**36.82.090 Anticipation warrants against road fund.** The board may expend funds from the county road fund or register warrants against the county road fund in anticipation of funds to be paid to the county from the motor vehicle fund. [1963 c 4 § 36.82.090. Prior: 1943 c 82 § 6; 1937 c 187 § 54; Rem. Supp. 1943 § 6450-54.]

**36.82.100 Purchases of road material extraction equipment—Sale of surplus materials.** The boards of the several counties may purchase and operate, out of the county road fund, rock crushing, gravel, or other road building material extraction equipment.

Any crushed rock, gravel, or other road building material extracted and not directly used or needed by the county in the construction, alteration, repair, improvement, or maintenance of its roads may be sold at actual cost of production by the board to the state or any other county, city, town, or other political subdivision to be used in the construction, alteration, repair, improvement, or maintenance of any state, county, city, town or other proper highway, road or street purpose: PROVIDED, That in counties of less than twelve thousand five hundred population as determined by the 1950 federal census, the boards of commissioners, during such times as the crushing, loading or mixing equipment is actually in operation, or from stockpiles, may sell at actual cost of production such surplus crushed rock, gravel, or other road building material to any other person for private use where the place of contemplated use of such crushed rock, gravel or other road building material is more than fifteen miles distant from the nearest private source of such materials within the county, distance being computed by the closest traveled route: AND PROVIDED FURTHER, That the purchaser presents, at or before the time of delivery to him, a treasurer's receipt for payment for such surplus crushed rock, gravel, or any other road building material. [1963 c 4 § 36.82.100. Prior: 1953 c 172 § 1; 1937 c 187 § 44, part; RRS § 6450-44, part.]

**36.82.110 Voluntary contributions for improvements to county roads—Standards.** Upon voluntary contribution and payment by any person for the actual cost thereof, such person or legislative authority upon the approval of maps, plans, specifications and guaranty bonds as may be required, may place crushed rock gravel or other road building material or make improvements upon any county road. Such work shall be done in accordance with adopted county standards under the supervision of and direction of the county engineer. [1982 c 145 § 7; 1963 c 4 § 36.82.110. Prior: 1937 c 187 § 44, part; RRS § 6450-44, part.]

**36.82.120 Purchases of road material extraction equipment—Proceeds to road fund.** All proceeds from the sale or placing of any crushed rock, gravel or other road building material shall be deposited in the county road fund to be expended under the same provisions as are by law imposed upon the funds used to produce the crushed rock, gravel, or other road building material extracted and sold. [1963 c 4 § 36.82.120. Prior: 1937 c 187 § 44, part; RRS § 6450-44, part.]

**36.82.140 Forest roads may be maintained from road fund.** The board may maintain any forest roads within its county and expend for the maintenance thereof funds accruing to the county road fund. [1963 c 4 § 36.82.140. Prior: 1937 c 187 § 45; RRS § 6450-45.]

**36.82.145 Bicycle paths, lanes, routes, etc., may be constructed, maintained or improved from county road**

**fund—Standards.** Any funds deposited in the county road fund may be used for the construction, maintenance, or improvement of bicycle paths, lanes, routes, and roadways, and for improvements to make existing streets and roads more suitable and safe for bicycle traffic. Bicycle facilities constructed or modified after June 10, 1982, shall meet or exceed the standards of the state department of transportation. [1982 c 55 § 3; 1974 ex.s. c 141 § 8.]

**36.82.160 County road budget—Road budget to be prepared—Estimates of expenditures.** Each county legislative authority, with the assistance of the county road engineer, shall prepare and file with the county auditor on or before the second Monday in August in each year, detailed and itemized estimates of all expenditures required in the county for the ensuing fiscal year. In the preparation and adoption of the county road budget the legislative authority shall determine and budget sums to become available for the following county road purposes: (1) Administration; (2) bond and warrant retirement; (3) maintenance; (4) construction; (5) operation of equipment rental and revolving fund; and (6) such other items relating to the county road budget as may be required by the county road administration board; and the respective amounts as adopted for these several items in the final budget for the ensuing calendar year shall not be altered or exceeded except as by law provided. [1991 c 363 § 88; 1969 ex.s. c 182 § 14; 1963 c 4 § 36.82.160. Prior: 1949 c 156 § 6, part; 1943 c 82 § 7, part; 1937 c 187 § 56, part; Rem. Supp. 1949 § 6450-56, part.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.82.170 County road budget—Budget as adopted filed with department of transportation.** Upon the final adoption of the county road budgets of the several counties, the county legislative authorities shall file a copy thereof in the office of the department of transportation. [1984 c 7 § 36; 1963 c 4 § 36.82.170. Prior: 1949 c 156 § 6, part; 1943 c 82 § 7, part; 1937 c 187 § 56, part; Rem. Supp. 1949 § 6450-56, part.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**36.82.180 County road budget—Preliminary supplemental budget.** If any funds are paid to any county from the motor vehicle fund in excess of the amount estimated by the department of transportation and the excess funds have not been included by the county legislative authority in the then current county road budget or if funds become available from other sources upon a matching basis or otherwise and it is impracticable to adhere to the provisions of the county road budget, the legislative authority may by unanimous consent, consider and adopt a preliminary supplemental budget covering the excess funds for the remainder of the current fiscal year. [1984 c 7 § 37; 1963 c 4 § 36.82.180. Prior: 1949 c 156 § 6, part; 1943 c 82 § 7, part; 1937 c 187 § 56, part; Rem. Supp. 1949 § 6450-56, part.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**36.82.190 County road budget—Notice of hearing on supplemental budget.** The county legislative authority shall

then publish a notice setting day of hearing for the adoption of the final supplemental budget covering the excess funds, designating the time and place of hearing and that anyone may appear thereat and be heard for or against any part of the preliminary supplemental budget. The notice shall be published once a week for two consecutive weeks immediately following the adoption of the preliminary supplemental budget in the official newspaper of the county. The county legislative authority shall provide a sufficient number of copies of the preliminary supplemental budget to meet reasonable public demands and they shall be available not later than two weeks immediately preceding the hearing. [1985 c 469 § 50; 1963 c 4 § 36.82.190. Prior: 1949 c 156 § 6, part; 1943 c 82 § 7, part; 1937 c 187 § 56, part; Rem. Supp. 1949 § 6450-56, part.]

**36.82.200 County road budget—Hearing, adoption, supplemental budget.** The board shall hold such hearing at the time and place designated in the notice, and it may be continued from day to day until concluded but not to exceed a total of five days. Upon the conclusion of the hearing the board shall fix and determine the supplemental budget and by resolution adopt it as finally determined and enter it in detail in the official minutes of the board, a copy of which supplemental budget shall be forwarded to the director. [1995 c 301 § 70; 1963 c 4 § 36.82.200. Prior: 1949 c 156 § 6, part; 1943 c 82 § 7, part; 1937 c 187 § 56, part; Rem. Supp. 1949 § 6450-56, part.]

**36.82.210 Disposition of fines and forfeitures for violations.** All fines and forfeitures collected for violation of any of the provisions of chapters 36.75, and 36.77 to 36.87 RCW, inclusive, when the violation thereof occurred outside of any incorporated city or town shall be distributed and paid into the proper funds for the following purposes: One-half shall be paid into the county road fund of the county in which the violation occurred; one-fourth into the state fund for the support of state parks and parkways; and one-fourth into the highway safety fund: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

All fines and forfeitures collected for the violation of any of such provisions when the violation thereof occurred inside any incorporated city or town shall be distributed and paid into the proper funds for the following purposes: One-half shall be paid into the city street fund of such incorporated city or town for the construction and maintenance of city streets; one-fourth into the state fund for the support of state parks and parkways; and one-fourth into the highway safety fund: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 211; 1969 ex.s. c 199 § 21; 1963 c 4 § 36.82.210. Prior: 1949 c 75 § 2; 1937 c 187 § 67; Rem. Supp. 1949 § 6450-67.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

## Chapter 36.83 RCW

## ROADS AND BRIDGES—SERVICE DISTRICTS

## Sections

36.83.010	Service districts authorized—Bridge and road improvements—Powers—Governing body.
36.83.020	Establishment—Notice, hearing—Termination of proceedings—Modification of boundaries—Dissolution.
36.83.030	Excess ad valorem property taxes authorized.
36.83.040	General obligation bonds, excess property tax levies authorized—Limitations.
36.83.050	Local improvement districts authorized—Assessments—Special assessment bonds and revenue bonds—Limitations.
36.83.060	Bonds—Form.
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36.83.100	Commissioners—Appointment—Terms—Vacancies—Compensation—Powers.
36.83.110	Election to retain commissioners—Referendum petition.
36.83.120	Removal of commissioner.
36.83.130	Improvements—Ownership.
36.83.140	Local service district fund.
36.83.900	Liberal construction.

*Transportation benefit districts: Chapter 36.73 RCW.*

**36.83.010 Service districts authorized—Bridge and road improvements—Powers—Governing body.** The legislative authority of a county may establish one or more service districts within the county for the purpose of providing and funding capital and maintenance costs for any bridge or road improvement or for providing and funding capital costs for any state highway improvement a county or a road district has the authority to provide. A service district may not include any area within the corporate limits of a city or town unless the city or town governing body adopts a resolution approving inclusion of the area within its limits. A service district is a quasi municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

A service district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to acquire, hold, and dispose of real and personal property, and to sue and be sued. All projects constructed by a service district pursuant to the provisions of this chapter shall be competitively bid and contracted.

A board of three commissioners appointed by the county legislative authority or county executive pursuant to this chapter shall be the governing body of a service district. The county treasurer shall act as the ex officio treasurer of the service district. The electors of a service district are all registered voters residing within the district. [1996 c 292 § 1; 1985 c 400 § 2; 1983 c 130 § 1.]

*County may fund improvements to state highways: RCW 36.75.035.*

**36.83.020 Establishment—Notice, hearing—Termination of proceedings—Modification of boundaries—Dissolution.** (1) A county legislative authority proposing to establish a service district shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days prior to the hearing, in a newspaper of general circulation within the proposed service district. This

notice shall be in addition to any other notice required by law to be published. The notice shall specify the functions or activities proposed to be provided or funded by the service district. Additional notice of the hearing may be given by mail, posting within the proposed service district, or in any manner the county legislative authority deems necessary to notify affected persons. All hearings shall be public and the county legislative authority shall hear objections from any person affected by the formation, modification of the boundaries, or dissolution of the service district.

(2) Following the hearing held pursuant to subsection (1) of this section, the county legislative authority may establish a service district if the county legislative authority finds the action to be in the public interest and adopts an ordinance or resolution providing for the establishment of the service district. The legislation establishing a service district shall specify the functions or activities to be exercised or funded and establish the boundaries of the service district. Functions or activities proposed to be provided or funded by the service district may not be expanded beyond those specified in the notice of hearing, except as provided in subsection (4) of this section.

(3) At any time prior to the county legislative authority establishing a service district pursuant to this section, all further proceedings shall be terminated upon the filing of a verified declaration of termination signed by a majority of the registered voters of the proposed service district.

(4) With the approval of the county legislative authority, the governing body of a service district may modify the boundaries of, expand or otherwise modify the functions of, or dissolve the service district after providing notice and conducting a public hearing or hearings in the manner provided in subsection (1) of this section. The governing body must make a determination that the proposed action is in the public interest and adopt a resolution providing for the action. [1996 c 292 § 2; 1983 c 130 § 2.]

**36.83.030 Excess ad valorem property taxes authorized.** (1) A service district may levy an ad valorem property tax, in excess of the one percent limitation, upon the property within the district for a one-year period whenever authorized by the voters of the district pursuant to RCW 84.52.052 and Article VII, section 2(a) of the state Constitution.

(2) A service district may provide for the retirement of voter approved general obligation bonds, issued for capital purposes only, by levying bond retirement ad valorem property tax levies, in excess of the one percent limitation, whenever authorized by the voters of the district pursuant to Article VII, section 2(b) of the state Constitution and RCW 84.52.056. [1983 c 130 § 3.]

**36.83.040 General obligation bonds, excess property tax levies authorized—Limitations.** (1) To carry out the purpose of this chapter, a service district may issue general obligation bonds, not to exceed an amount, together with any other outstanding nonvoter approved general obligation indebtedness, equal to three-eighths of one percent of the value of taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015. A service district may additionally issue general obligation

bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to one and one-fourth percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, when authorized by the voters of the service district pursuant to Article VIII, section 6 of the state Constitution, and to provide for the retirement thereof by excess property tax levies as provided in RCW 36.83.030(2). The service district may submit a single proposition to the voters which, if approved, authorizes both the issuance of the bonds and the bond retirement property tax levies.

(2) General obligation bonds with a maturity in excess of forty years shall not be issued. The governing body of the service district shall by resolution determine for each general obligation bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. Refunding general obligation bonds may be issued in the same manner as general obligation bonds are issued.

(3) Whenever general obligation bonds are issued to fund specific projects or enterprises that generate revenues, charges, user fees, or special assessments, the service district which issues the bonds may specifically pledge all or a portion of the revenues, charges, user fees, or special assessments to refund the general obligation bonds. [1983 c 130 § 4.]

**36.83.050 Local improvement districts authorized—Assessments—Special assessment bonds and revenue bonds—Limitations.** (1) A service district may form a local improvement district or utility local improvement district to provide any local improvement it has the authority to provide, impose special assessments on all property specially benefited by the local improvements, and issue special assessment bonds or revenue bonds to fund the costs of the local improvement. Improvement districts shall be created and assessments shall be made and collected pursuant to chapters 35.43, 35.44, 35.49, 35.50, 35.53, and 35.54 RCW.

(2) The governing body of a service district shall by resolution establish for each special assessment bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership

may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. The maximum term of any special assessment bonds shall not exceed thirty years beyond the date of issue. Special assessment bonds issued pursuant to this section shall not be an indebtedness of the service district issuing the bonds, and the interest and principal on the bonds shall only be payable from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund that the service district has created. The owner or bearer of a special assessment bond or any interest coupon issued pursuant to this section shall not have any claim against the service district arising from the bond or coupon except for the payment from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund the service district has created. The service district issuing the special assessment bonds is not liable to the owner or bearer of any special assessment bond or any interest coupon issued pursuant to this section for any loss occurring in the lawful operation of its local improvement guaranty fund. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each special assessment bond issued pursuant to this section.

(3) The governing body may establish and pay moneys into a local improvement guaranty fund to guarantee special assessment bonds issued by the service district.

(4) The governing body of a service district shall provide for the payment of both the special assessments which are imposed and a portion of the utility income from the utility improvement into a special fund established for the payment of the revenue bonds to defray the cost of the utility local improvement district whenever it desires to create a utility local improvement district and issue revenue bonds to fund the local improvement. [1983 c 130 § 5.]

**36.83.060 Bonds—Form.** Where physical bonds are issued pursuant to RCW 36.83.040 or 36.83.050, the bonds shall be printed, engraved, or lithographed on good bond paper and the manual or facsimile signatures of both the treasurer and chairperson of the governing body shall be included on each bond. [1983 c 130 § 6.]

**36.83.070 Bonds—Use of proceeds.** (1) The proceeds of any bond issued pursuant to RCW 36.83.040 or 36.83.050 may be used to pay costs incurred on such bond issue related to the sale and issuance of the bonds. Such costs include payments for fiscal and legal expenses, obtaining bond ratings, printing, engraving, advertising, and other similar activities.

(2) In addition, proceeds of bonds used to fund capital projects may be used to pay the necessary and related engineering, architectural, planning, and inspection costs. [1983 c 130 § 7.]

**36.83.080 Gifts, grants, and donations.** A service district may accept and expend or use gifts, grants, and donations. [1983 c 130 § 8.]

**36.83.090 Eminent domain.** A service district may exercise the power of eminent domain to obtain property for its authorized purposes in the manner counties exercise the powers of eminent domain. [1983 c 130 § 9.]

**36.83.100 Commissioners—Appointment—Terms—Vacancies—Compensation—Powers.** If the county legislative authority establishes a road and bridge service district, it shall promptly appoint three persons who are residents of the territory included in that service district to serve as the commissioners of the service district. For counties having an elected executive, the executive shall appoint those commissioners subject to confirmation by the legislative authority of the county. The commissioners first appointed shall be designated to serve for terms of one, two, and three years, respectively, from the date of their appointment. Thereafter, service district commissioners shall be appointed for a term of office of five years. Vacancies must be filled for any unexpired term in the same manner as the original appointment. No member of the legislative authority of the county in which a service district is created may be a commissioner of that service district, except that, if the boundaries of the service district are included within or coterminous with the boundaries of a county commissioner or council district, the county commissioner or councilmember elected from that commissioner or council district may be appointed to serve as a commissioner of the service district. A commissioner shall hold office until his or her successor has been appointed and qualified, unless sooner removed from office for cause in accordance with this chapter or removed by referendum in accordance with RCW 36.83.110. A certificate of the appointment or reappointment of any commissioner must be filed with the county auditor, and such certificate is conclusive evidence of the due and proper appointment of the commissioner. The commissioners of the service district shall receive no compensation for their services, in any capacity, but are entitled to reimbursement for reasonable and necessary expenses, including travel expenses, incurred in the discharge of their duties.

The powers of each service district are vested in the commissioners of the service district. Two commissioners constitute a quorum of the service district for the purpose of conducting its business and exercising its powers and for all other purposes. The commissioners of the service district shall organize itself and select its chair, vice-chair, and secretary, who shall serve one-year terms but may be selected for additional terms. When the office of any officer becomes vacant, the commissioners of the service district shall select a new officer from among the commissioners for the balance of the term of office. [1996 c 292 § 3.]

**36.83.110 Election to retain commissioners—Referendum petition.** Any registered voter residing within the boundaries of the road and bridge service district may file a referendum petition to call an election to retain any or all commissioners. Any referendum petition to call such election shall be filed with the county auditor no later than one year before the end of a commissioner's term. Within ten days of the filing of a petition, the county auditor shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a ques-

tion: "Shall (name of commissioner) be retained as a road and bridge service district commissioner?" and the question shall be posed separately for each commissioner. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than twenty-five percent of the registered voters residing within the boundaries of the service district and file the signed petitions with the county auditor. Each petition form shall contain the ballot title. The county auditor shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the county auditor shall submit the referendum measure to the registered voters residing in the service district in a special election no later than one hundred twenty days after the signed petition has been filed with the county auditor. The special election may be conducted by mail ballot as provided for in \*chapter 29.36 RCW.

The office of any commissioner for whom there is not a majority vote to retain shall be declared vacant. [1996 c 292 § 4.]

**\*Reviser's note:** Chapter 29.36 RCW was recodified as chapter 29A.40 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**36.83.120 Removal of commissioner.** For neglect of duty or misconduct in office, a commissioner of a service district may be removed by the county legislative authority after conducting a hearing. The commissioner must be given a copy of the charges at least ten days prior to the hearing and must have an opportunity to be heard in person or by counsel. If a commissioner is removed, a record of the proceedings, together with the charges and findings, must be filed in the office of the county auditor. [1996 c 292 § 5.]

**36.83.130 Improvements—Ownership.** Any road or bridge improvements financed in whole by funds of a service district, including but not limited to proceeds of bonds issued by a service district, shall be owned by that service district. Improvements financed jointly by a service district and the county or city within which the improvements are located may be owned jointly by the service district and that county or city pursuant to an interlocal agreement. [1996 c 292 § 6.]

**36.83.140 Local service district fund.** If a service district is formed, there shall be created in the office of the county treasurer, as ex officio treasurer of the service district, a local service district fund with such accounts as the treasurer may find convenient or as the state auditor or the governing body of the service district may direct, into which shall be deposited all revenues received by or on behalf of the service district from tax levies, gifts, donations and any other source. The fund shall be designated "(name of county) (road/bridge) service district No. . . . fund." [1996 c 292 § 7.]

**36.83.900 Liberal construction.** The rule of strict construction does not apply to this chapter, and this chapter shall be liberally construed to permit the accomplishment of its purposes. [1983 c 130 § 10.]

## Chapter 36.85 RCW

## ROADS AND BRIDGES—RIGHTS-OF-WAY

## Sections

36.85.010	Acquisition—Condemnation.
36.85.020	Aviation site not exempt from condemnation.
36.85.030	Acceptance of federal grants over public lands.
36.85.040	Acceptance of federal grants over public lands—Prior acceptances ratified.

**36.85.010 Acquisition—Condemnation.** Whenever it is necessary to secure any lands for a right-of-way for any county road or for the drainage thereof or to afford unobstructed view toward any intersection or point of possible danger to public travel upon any county road or for any borrow pit, gravel pit, quarry, or other land for the extraction of material for county road purposes, or right-of-way for access thereto, the board may acquire such lands on behalf of the county by gift, purchase, or condemnation. When the board so directs, the prosecuting attorney of the county shall institute proceedings in condemnation to acquire such land for a county road in the manner provided by law for the condemnation of land for public use by counties. All cost of acquiring land for right-of-way or for other purposes by purchase or condemnation shall be paid out of the county road fund of the county and chargeable against the project for which acquired. [1963 c 4 § 36.85.010. Prior: 1937 c 187 § 9; RRS § 6450-9.]

**36.85.020 Aviation site not exempt from condemnation.** Whenever any county has established a public highway, which, in whole or in part, abuts upon and adjoins any aviation site in such county, no property shall be exempt from condemnation for such highway by reason of the same having been or being dedicated, appropriated, or otherwise reduced or held to public use. [1963 c 4 § 36.85.020. Prior: 1925 ex.s. c 41 § 1; RRS § 905-2.]

**36.85.030 Acceptance of federal grants over public lands.** The boards in their respective counties may accept the grant of rights-of-way for the construction of public highways over public lands of the United States, not reserved for public uses, contained in section 2477 of the Revised Statutes of the United States. Such rights-of-way shall henceforward not be less than sixty feet in width unless a lesser width is specified by the United States. Acceptance shall be by resolution of the board spread upon the records of its proceedings: PROVIDED, That nothing herein contained shall be construed to invalidate the acceptance of such grant by general public use and enjoyment, heretofore or hereafter had. [1963 c 4 § 36.85.030. Prior: 1937 c 187 § 17; RRS § 6450-17.]

**36.85.040 Acceptance of federal grants over public lands—Prior acceptances ratified.** Prior action of boards purporting to accept the grant of rights-of-way under section 2477 of the Revised Statutes of the United States for the construction of public highways over public lands of the United States, as provided in RCW 36.85.030, is hereby approved, ratified and confirmed and all such public highways shall be deemed duly laid out county roads and boards of county commissioners may at any time by recorded resolution cause any of such county roads to be opened and improved for public

(2004 Ed.)

travel. [1963 c 4 § 36.85.040. Prior: 1937 c 187 § 18; RRS § 6450-18.]

## Chapter 36.86 RCW

## ROADS AND BRIDGES—STANDARDS

## Sections

36.86.010	Standard width of right-of-way prescribed.
36.86.020	Minimum standards of construction.
36.86.030	Amendment of standards—Filing.
36.86.040	Uniform standard for signs, signals, guideposts—Railroad grade crossings.
36.86.050	Monuments at government survey corners.
36.86.060	Restrictions on use of oil at intersections or entrances to county roads.
36.86.070	Classification of roads in accordance with designations under federal functional classification system.
36.86.080	Application of design standards to construction and reconstruction.
36.86.090	Logs dumped on right-of-way—Removal—Confiscation.
36.86.100	Railroad grade crossings—Obstructions.

**36.86.010 Standard width of right-of-way prescribed.** From and after April 1, 1937, the width of thirty feet on each side of the center line of county roads, exclusive of such additional width as may be required for cuts and fills, is the necessary and proper right-of-way width for county roads, unless the board of county commissioners, shall, in any instance, adopt and designate a different width. This shall not be construed to require the acquisition of increased right-of-way for any county road already established and the right-of-way for which has been secured. [1963 c 4 § 36.86.010. Prior: 1937 c 187 § 14; RRS § 6450-14.]

**36.86.020 Minimum standards of construction.** In the case of roads, the minimum width between shoulders shall be fourteen feet with eight feet of surfacing, and in the case of bridges, which includes all decked structures, the minimum standard shall be for H-10 loading in accordance with the standards of the state department of transportation. When the standards have been prepared by the county road engineer, they shall be submitted to the county legislative authority for approval, and when approved shall be used for all road and bridge construction and improvement in the county. [1984 c 7 § 38; 1963 c 4 § 36.86.020. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4, part.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**36.86.030 Amendment of standards—Filing.** Road and bridge standards may be amended from time to time by resolution of the county legislative authority, but no standard may be approved by the legislative authority with any minimum requirement less than that specified in this chapter. Two copies of the approved standards shall be filed with the department of transportation for its use in examinations of county road work. [1984 c 7 § 39; 1963 c 4 § 36.86.030. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4, part.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**36.86.040 Uniform standard for signs, signals, guideposts—Railroad grade crossings.** The county legislative

authority shall erect and maintain upon the county roads such suitable and proper signs, signals, signboards, and guideposts and appropriate stop, caution, warning, restrictive, and directional signs and markings as it deems necessary or as may be required by law. All such markings shall be in accordance with the uniform state standard of color, design, erection, and location adopted and designed by the Washington state department of transportation. In respect to existing and future railroad grade crossings over county roads the legislative authority shall install and maintain standard, nonmechanical railroad approach warning signs on both sides of the railroad upon the approaches of the county road. All such signs shall be located a sufficient distance from the crossing to give adequate warning to persons traveling on county roads. [1984 c 7 § 40; 1963 c 4 § 36.86.040. Prior: 1955 c 310 § 1; 1937 c 187 § 37; RRS § 6450-37.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**36.86.050 Monuments at government survey corners.** The board and the road engineer, at the time of establishing, constructing, improving, or paving any county road, shall fix permanent monuments at the original positions of all United States government monuments at township corners, section corners, quarter section corners, meander corners, and witness markers, as originally established by the United States government survey, whenever any such original monuments or markers fall within the right-of-way of any county road, and shall aid in the reestablishment of any such corners, monuments, or markers destroyed or obliterated by the construction of any county road heretofore established, by permitting inspection of the records in the office of the board and the county engineering office. [1963 c 4 § 36.86.050. Prior: 1937 c 187 § 36; RRS § 6450-36.]

**36.86.060 Restrictions on use of oil at intersections or entrances to county roads.** No oil or other material shall be used in the treatment of any county road or private road or driveway, of such consistency, viscosity or nature or in such quantities and in such proximity to the entrance to or intersection with any state highway or county road, the roadway of which is surfaced with cement concrete or asphaltic concrete, that such oil or other material is or will be tracked by vehicles thereby causing a coating or discoloration of such cement concrete or asphaltic concrete roadway. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1963 c 4 § 36.86.060. Prior: 1937 c 187 § 43; RRS § 6450-43.]

**36.86.070 Classification of roads in accordance with designations under federal functional classification system.** From time to time the legislative authority of each county shall classify and designate as the county primary road system such county roads as are designated rural minor collector, rural major collector, rural minor arterial, rural principal arterial, urban collector, urban minor arterial, and urban principal arterial in the federal functional classification system. [1982 c 145 § 2; 1963 c 4 § 36.86.070. Prior: 1949 c 165 § 1; Rem. Supp. 1949 § 6450-8h.]

**36.86.080 Application of design standards to construction and reconstruction.** Upon the adoption of uniform design standards the legislative authority of each county shall apply the same to all new construction within, and as far as practicable and feasible to reconstruction of old roads comprising, the county primary road system. No deviation from such design standards as to such primary system may be made without the approval of the state aid engineer for the department of transportation. [1982 c 145 § 3; 1963 c 4 § 36.86.080. Prior: 1949 c 165 § 4; Rem. Supp. 1949 § 6450-8k.]

**36.86.090 Logs dumped on right-of-way—Removal—Confiscation.** Logs dumped on any county road right-of-way or in any county road drainage ditch due to hauling equipment failure, or for any other reason, shall be removed within ten days. Logs remaining within any county road right-of-way for a period of thirty days shall be confiscated and removed or disposed of as directed by the boards of county commissioners in the respective counties. Confiscated logs may be sold by the county commissioners and the proceeds thereof shall be deposited in the county road fund. [1963 c 4 § 36.86.090. Prior: 1951 c 143 § 1.]

**36.86.100 Railroad grade crossings—Obstructions.** Each railroad company shall keep its right of way clear of all brush and timber in the vicinity of a railroad grade crossing with a county road for a distance of one hundred feet from the crossing in such a manner as to permit a person upon the road to obtain an unobstructed view in both directions of an approaching train. The county legislative authority shall cause brush and timber to be cleared from the right of way of county roads in the proximity of a railroad grade crossing for a distance of one hundred feet from the crossing in such a manner as to permit a person traveling upon the road to obtain an unobstructed view in both directions of an approaching train. It is unlawful to erect or maintain a sign, signboard, or billboard within a distance of one hundred feet from the point of intersection of the road and railroad grade crossing located outside the corporate limits of any city or town unless, after thirty days notice to the Washington utilities and transportation commission and the railroad operating the crossing, the county legislative authority determines that it does not obscure the sight distance of a person operating a vehicle or train approaching the grade crossing.

When a person who has erected or who maintains such a sign, signboard, or billboard or when a railroad company permits such brush or timber in the vicinity of a railroad grade crossing with a county road or permits the surface of a grade crossing to become inconvenient or dangerous for passage and who has the duty to maintain it, fails, neglects, or refuses to remove or cause to be removed such brush, timber, sign, signboard, or billboard, or maintain the surface of the crossing, the utilities and transportation commission upon complaint of the county legislative authority or upon complaint of any party interested, or upon its own motion, shall enter upon a hearing in the manner now provided for hearings with respect to railroad-highway grade crossings, and make and enforce proper orders for the removal of the brush, timber, sign, signboard or billboard, or maintenance of the crossing. Nothing in this section prevents the posting or maintaining

thereon of highway or road signs or traffic devices giving directions or distances for the information of the public when the signs conform to the "Manual for Uniform Traffic Control Devices" issued by the state department of transportation. The county legislative authority shall inspect highway grade crossings and make complaint of the violation of any provisions of this section. [1983 c 19 § 1; 1963 c 4 § 36.86.100. Prior: 1955 c 310 § 6.]

*Railroad crossings, obstructions: RCW 47.32.140.*

## Chapter 36.87 RCW

### ROADS AND BRIDGES—VACATION

#### Sections

36.87.010	Resolution of intention to vacate.
36.87.020	County road frontage owners' petition—Bond, cash deposit, or fee.
36.87.030	County road frontage owners' petition—Action on petition.
36.87.040	Engineer's report.
36.87.050	Notice of hearing on report.
36.87.060	Hearing.
36.87.070	Expense of proceeding.
36.87.080	Majority vote required.
36.87.090	Vacation of road unopened for five years—Exceptions.
36.87.100	Classification of roads for which public expenditures made—Compensation of county.
36.87.110	Classification of roads for which no public expenditures made—Compensation of county.
36.87.120	Appraised value as basis for compensation—Appraisal costs.
36.87.130	Vacation of roads abutting bodies of water prohibited unless for public purposes or industrial use.
36.87.140	Retention of easement for public utilities and services.
36.87.900	Severability—1969 ex.s. c 185.

**36.87.010 Resolution of intention to vacate.** When a county road or any part thereof is considered useless, the board by resolution entered upon its minutes, may declare its intention to vacate and abandon the same or any portion thereof and shall direct the county road engineer to report upon such vacation and abandonment. [1969 ex.s. c 185 § 1; 1963 c 4 § 36.87.010. Prior: 1937 c 187 § 48; RRS § 6450-48.]

**36.87.020 County road frontage owners' petition—Bond, cash deposit, or fee.** Owners of the majority of the frontage on any county road or portion thereof may petition the county legislative authority to vacate and abandon the same or any portion thereof. The petition must show the land owned by each petitioner and set forth that such county road is useless as part of the county road system and that the public will be benefited by its vacation and abandonment. The legislative authority may (1) require the petitioners to make an appropriate cash deposit or furnish an appropriate bond against which all costs and expenses incurred in the examination, report, and proceedings pertaining to the petition shall be charged; or (2) by ordinance or resolution require the petitioners to pay a fee adequate to cover such costs and expenses. [1991 c 363 § 89; 1985 c 369 § 4; 1963 c 4 § 36.87.020. Prior: 1937 c 187 § 49, part; RRS § 6450-49, part.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.87.030 County road frontage owners' petition—Action on petition.** On the filing of the petition and bond

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and on being satisfied that the petition has been signed by petitioners residing in the vicinity of the county road or portion thereof, the board shall direct the county road engineer to report upon such vacation and abandonment. [1963 c 4 § 36.87.030. Prior: 1937 c 187 § 49, part; RRS § 6450-49, part.]

**36.87.040 Engineer's report.** When directed by the board the county road engineer shall examine any county road or portion thereof proposed to be vacated and abandoned and report his opinion as to whether the county road should be vacated and abandoned, whether the same is in use or has been in use, the condition of the road, whether it will be advisable to preserve it for the county road system in the future, whether the public will be benefited by the vacation and abandonment, and all other facts, matters, and things which will be of importance to the board, and also file his cost bill. [1963 c 4 § 36.87.040. Prior: 1937 c 187 § 50; RRS § 6450-50.]

**36.87.050 Notice of hearing on report.** Notice of hearing upon the report for vacation and abandonment of a county road shall be published at least once a week for two consecutive weeks preceding the date fixed for the hearing, in the county official newspaper and a copy of the notice shall be posted for at least twenty days preceding the date fixed for hearing at each termini of the county road or portion thereof proposed to be vacated or abandoned. [1963 c 4 § 36.87.050. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

**36.87.060 Hearing.** (1) On the day fixed for the hearing, the county legislative authority shall proceed to consider the report of the engineer, together with any evidence for or objection against such vacation and abandonment. If the county road is found useful as a part of the county road system it shall not be vacated, but if it is not useful and the public will be benefited by the vacation, the county legislative authority may vacate the road or any portion thereof. Its decision shall be entered in the minutes of the hearing.

(2) As an alternative, the county legislative authority may appoint a hearing officer to conduct a public hearing to consider the report of the engineer and to take testimony and evidence relating to the proposed vacation. Following the hearing, the hearing officer shall prepare a record of the proceedings and a recommendation to the county legislative authority concerning the proposed vacation. Their decision shall be made at a regular or special public meeting of the county legislative authority. [1985 c 369 § 5; 1963 c 4 § 36.87.060. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

**36.87.070 Expense of proceeding.** If the county legislative authority has required the petitioners to make a cash deposit or furnish a bond, upon completion of the hearing, it shall certify all costs and expenses incurred in the proceedings to the county treasurer and, regardless of its final decision, the county legislative authority shall recover all such costs and expenses from the bond or cash deposit and release any balance to the petitioners. [1985 c 369 § 6; 1963 c 4 §

36.87.070. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

**36.87.080 Majority vote required.** No county road shall be vacated and abandoned except by majority vote of the board properly entered, or by operation of law, or judgment of a court of competent jurisdiction. [1969 ex.s. c 185 § 2; 1963 c 4 § 36.87.080. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

**36.87.090 Vacation of road unopened for five years—Exceptions.** Any county road, or part thereof, which remains unopen for public use for a period of five years after the order is made or authority granted for opening it, shall be thereby vacated, and the authority for building it barred by lapse of time: PROVIDED, That this section shall not apply to any highway, road, street, alley, or other public place dedicated as such in any plat, whether the land included in such plat is within or without the limits of an incorporated city or town, or to any land conveyed by deed to the state or to any county, city or town for highways, roads, streets, alleys, or other public places. [1963 c 4 § 36.87.090. Prior: 1937 c 187 § 52; RRS § 6450-52.]

**36.87.100 Classification of roads for which public expenditures made—Compensation of county.** Any board of county commissioners may, by ordinance, classify all county roads for which public expenditures were made in the acquisition, improvement or maintenance of the same, according to the type and amount of expenditures made and the nature of the county's property interest in the road; and may require persons benefiting from the vacation of county roads within some or all of the said classes to compensate the county as a condition precedent to the vacation thereof. [1969 ex.s. c 185 § 4.]

**36.87.110 Classification of roads for which no public expenditures made—Compensation of county.** Any board of county commissioners may, by ordinance, separately classify county roads for which no public expenditures have been made in the acquisition, improvement or maintenance of the same, according to the nature of the county's property interest in the road; and may require persons benefiting from the vacation of county roads within some or all of the said classes to compensate the county as a condition precedent to the vacation thereof. [1969 ex.s. c 185 § 5.]

**36.87.120 Appraised value as basis for compensation—Appraisal costs.** Any ordinance adopted pursuant to this chapter may require that compensation for the vacation of county roads within particular classes shall equal all or a percentage of the appraised value of the vacated road as of the effective date of the vacation. Costs of county appraisals of roads pursuant to such ordinances shall be deemed expenses incurred in vacation proceedings, and shall be paid in the manner provided by RCW 36.87.070. [1969 ex.s. c 185 § 6.]

**36.87.130 Vacation of roads abutting bodies of water prohibited unless for public purposes or industrial use.**

No county shall vacate a county road or part thereof which abuts on a body of salt or fresh water unless the purpose of the vacation is to enable any public authority to acquire the vacated property for port purposes, boat moorage or launching sites, or for park, viewpoint, recreational, educational or other public purposes, or unless the property is zoned for industrial uses. [1969 ex.s. c 185 § 7.]

**36.87.140 Retention of easement for public utilities and services.** Whenever a county road or any portion thereof is vacated the legislative body may include in the resolution authorizing the vacation a provision that the county retain an easement in respect to the vacated land for the construction, repair, and maintenance of public utilities and services which at the time the resolution is adopted are authorized or are physically located on a portion of the land being vacated: PROVIDED, That the legislative body shall not convey such easement to any public utility or other entity or person but may convey a permit or franchise to a public utility to effectuate the intent of this section. The term "public utility" as used in this section shall include utilities owned, operated, or maintained by every gas company, electrical company, telephone company, telegraph company, and water company whether or not such company is privately owned or owned by a governmental entity. [1975 c 22 § 1.]

**36.87.900 Severability—1969 ex.s. c 185.** If any provision of this act, or its application to any person, property or road is held invalid, the validity of the remainder of the act, or the application of the provision to other persons, property or roads shall not be affected. [1969 ex.s. c 185 § 8.]

## Chapter 36.88 RCW

### COUNTY ROAD IMPROVEMENT DISTRICTS

#### Sections

36.88.010	Districts authorized—Purposes.
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*Assessments and charges against state lands: Chapter 79.44 RCW.*

*Deferral of special assessments: Chapter 84.38 RCW.*

*Local improvements, supplemental authority: Chapter 35.51 RCW.*

**36.88.010 Districts authorized—Purposes.** All counties have the power to create county road improvement districts for the acquisition of rights of way and improvement of

county roads, existing private roads that will become county roads as a result of this improvement district process and, with the approval of the state department of transportation, state highways; for the construction or improvement of necessary drainage facilities, bulkheads, retaining walls, and other appurtenances therefor, bridges, culverts, sidewalks, curbs and gutters, escalators, or moving sidewalks; and for the draining or filling of drainage potholes or swamps. Such counties have the power to levy and collect special assessments against the real property specially benefited thereby for the purpose of paying the whole or any part of the cost of such acquisition of rights of way, construction, or improvement. [1985 c 400 § 3; 1985 c 369 § 7; 1965 c 60 § 1; 1963 c 84 § 1; 1963 c 4 § 36.88.010. Prior: 1959 c 134 § 1; 1951 c 192 § 1.]

**Reviser's note:** This section was amended by 1985 c 369 § 7 and by 1985 c 400 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

*County may fund improvements to state highways: RCW 36.75.035.*

**36.88.015 Additional purposes.** All counties have the power to create county road improvement districts for the construction, installation, improvement, operation, and maintenance of street and road lighting systems for any county roads, and subject to the approval of the state department of transportation, for state highways, and for safeguards to protect the public from hazards of open canals, flumes, or ditches, and the counties have the power to levy and collect special assessments against the real property specially benefited thereby for the purpose of paying the whole or any part of the cost of the construction, installation, or improvement together with the expense of furnishing electric energy, maintenance, and operation. [1984 c 7 § 41; 1965 c 60 § 2; 1963 c 84 § 2; 1963 c 4 § 36.88.015. Prior: 1959 c 75 § 4; 1953 c 152 § 1.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**36.88.020 Formation of district—How initiated.** County road improvement districts may be initiated either by resolution of the board of county commissioners or by petition signed by the owners according to the records of the office of the county auditor of property to an aggregate amount of the majority of the lineal frontage upon the contemplated improvement and of the area within the limits of the county road improvement district to be created therefor. [1963 c 4 § 36.88.020. Prior: 1951 c 192 § 2.]

**36.88.030 Formation of district—By resolution of intention—Procedure.** In case the board of county commissioners shall desire to initiate the formation of a county road improvement district by resolution, it shall first pass a resolution declaring its intention to order such improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed road improvement district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, notifying the owners of property therein to appear at a meeting of the board at the time specified in such resolution, and directing the county

road engineer to submit to the board at or prior to the date fixed for such hearing a diagram or print showing thereon the lots, tracts and parcels of land and other property which will be specially benefited thereby and the estimated amount of the cost and expense of such improvement to be borne by each lot, tract or parcel of land or other property, and also designating thereon all property which is being purchased under contract from the county. The resolution of intention shall be published in at least two consecutive issues of a newspaper of general circulation in such county, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board of county commissioners.

Notice of the adoption of the resolution of intention shall be given each owner or reputed owner of any lot, tract or parcel of land or other property within the proposed improvement district by mailing said notice to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer at the address shown thereon at least fifteen days before the date fixed for the public hearing. The notice shall refer to the resolution of intention and designate the proposed improvement district by number. Said notice shall also set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract or parcel, the date and place of the hearing before the board of county commissioners, and shall contain the directions hereinafter provided for voting upon the formation of the proposed improvement district.

The clerk of the board shall prepare and mail, together with the notice above referred to, a ballot for each owner or reputed owner of any lot, tract or parcel of land within the proposed improvement district. This ballot shall contain the following proposition:

"Shall . . . . . county road improvement district No. . . . . be formed?  
Yes . . . . .   
No . . . . . "

and, in addition, shall contain appropriate spaces for the signatures of the property owners, and a description of their property, and shall have printed thereon the direction that all ballots must be signed to be valid and must be returned to the clerk of the board of county commissioners not later than five o'clock p.m. of a day which shall be one week after the date of the public hearing.

The notice of adoption of the resolution of intention shall also contain the above directions, and, in addition thereto, shall state the rules by which the election shall be governed. [1970 ex.s. c 66 § 2; 1963 c 84 § 3; 1963 c 4 § 36.88.030. Prior: 1951 c 192 § 3.]

**36.88.035 Notice must contain statement that assessments may vary from estimates.** Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a county road improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 5.]

**36.88.040 Formation of district—By resolution of intention—Election—Rules.** The election provided herein for cases where the improvement is initiated by resolution shall be governed by the following rules: (1) All ballots must be signed by the owner or reputed owner of property within the proposed district according to the records of the county auditor; (2) each ballot must be returned to the clerk of the board not later than one week after the public hearing; (3) each property owner shall have one vote for each full dollar of estimated assessment against his property as determined by the preliminary estimates and assessment roll; (4) the valid ballots shall be tabulated and a majority of the votes cast shall determine whether the formation of the district shall be approved or rejected. [1963 c 4 § 36.88.040. Prior: 1951 c 192 § 4.]

**36.88.050 Formation of district—By petition—Procedure.** In case any such road improvement shall be initiated by petition, such petition shall set forth the nature and territorial extent of such proposed improvement, and the fact that the signers thereof are the owners, according to the records of the county auditor of property to an aggregate amount of a majority of the lineal frontage upon the improvement to be made and of the area within the limits of the assessment district to be created therefor.

Upon the filing of such petition the board shall determine whether the same shall be sufficient and whether the property within the proposed district shall be sufficiently developed and if the board shall find the district to be sufficiently developed and the petition to be sufficient, it shall proceed to adopt a resolution setting forth the nature and territorial extent of the improvement petitioned for, designating the number of the proposed improvement district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, notifying the owners of property therein to appear at a meeting of the board at the time specified in such resolution, and directing the county road engineer to submit to the board at or prior to the date fixed for such hearing a diagram or print showing thereon the lots, tracts and parcels of land and other property which will be specially benefited thereby and the estimated amount of the cost and expense of such improvement to be borne by each lot, tract or parcel of land or other property, and also designating thereon all property which is being purchased under contract from the county. The resolution of intention shall be published in at least two consecutive issues of a newspaper of general circulation in such county, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board of county commissioners.

Notice of the adoption of the resolution of intention shall be given each owner or reputed owner of any lot, tract or parcel of land or other property within the proposed improvement district by mailing said notice to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer at the address shown thereon at least fifteen days before the date fixed for the public hearing. The notice shall refer to the resolution of intention and designate the proposed improvement district by number. Said notice shall also set forth the nature of the proposed improvement, the total esti-

mated cost, the proportion of total cost to be borne by assessments, the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract or parcel, the date and place of the hearing before the board of county commissioners, and the fact that property owners may withdraw their names from the petition or add their names thereto at any time prior to five o'clock p.m. of the day before the hearing. [1963 c 4 § 36.88.050. Prior: 1951 c 192 § 5.]

**36.88.060 Formation of district—Hearing—Resolution creating district.** Whether the improvement is initiated by petition or resolution the board shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing, the board may make such changes in the boundaries of the district or such modifications in the plans for the proposed improvement as shall be deemed necessary: PROVIDED, That the board may neither so alter the improvement as to increase the estimated cost by an amount greater than ten percent above that stated in the notice, nor increase the proportionate share of the cost to be borne by assessments from the proportion stated in the notice, nor change the boundaries of the district to include property not previously included therein without first passing a new resolution of intention and giving a new notice to property owners, in the manner and form and within the time herein provided for the original notice.

At said hearing, the board shall select the method of assessment, ascertain whether the plan of improvement or construction is feasible and whether the benefits to be derived therefrom by the property within the proposed district, together with the amount of any county road fund participation, exceed the costs and expense of the formation of the proposed district and the contemplated construction or improvement and shall make a written finding thereon. In case the proceedings have been initiated by petition, the board shall find whether the petition including all additions thereto or withdrawals therefrom made prior to five o'clock p.m. of the day before the hearing is sufficient within the boundaries of the district so established at said hearing by the board. If said petition shall be found insufficient the board shall by resolution declare the proceedings terminated. In case the proceedings have been initiated by resolution if the board shall find the improvement to be feasible, it shall continue the hearing until a day not more than fifteen days after the date for returning ballots for the purpose of determining the results of said balloting.

After the hearing the board may proceed to adopt a resolution creating the district and ordering the improvement. Such resolution shall establish such district as the ". . . . county road improvement district No. . . ." Such resolution shall describe the nature and territorial extent of the improvement to be made and the boundaries of the improvement district, shall describe the method of assessment to be used, shall declare the estimated cost and the proportion thereof to be borne by assessments, and shall contain a finding as to the result of the balloting by property owners in case the improvement shall have been initiated by resolution.

Upon the adoption of the resolution establishing the district, the board shall have jurisdiction to proceed with the improvement. The board's findings on the sufficiency of petitions or on the results of the balloting shall be conclusive

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upon all persons. [1963 c 84 § 4; 1963 c 4 § 36.88.060. Prior: 1951 c 192 § 6.]

**36.88.062 Formation of district—Committee or hearing officer may conduct hearings—Report to legislative authority.** In lieu of the county legislative authority holding the hearing under RCW 36.88.060 to create the road improvement district, the county legislative authority may adopt an ordinance providing for a committee of the county legislative authority or an officer to conduct the hearings. The committee or hearing officer shall report recommendations on the resolution to the full county legislative authority for final action, which need not hold a hearing on the proposed assessment role and shall either adopt or reject the recommendations. [1994 c 71 § 3.]

**36.88.065 Formation of district—Alternative method.** If the county legislative authority desires to initiate the formation of a county road improvement district by resolution, it may elect to follow either the procedure set forth in chapter 35.43 RCW or the procedure set forth in RCW 36.88.030, and shall indicate the procedure selected in the resolution of intention. [1985 c 369 § 10.]

**36.88.070 Diagram only preliminary determination.** The diagram or print herein directed to be submitted to the board shall be in the nature of a preliminary determination upon the method, and estimated amounts, of assessments to be levied upon the property specially benefited by such improvement and shall in no case be construed as being binding or conclusive as to the amount of any assessments which may ultimately be levied. [1963 c 4 § 36.88.070. Prior: 1951 c 192 § 7.]

**36.88.072 Waivers of protest—Recording—Limits on enforceability.** If an owner of property enters into an agreement with a county waiving the property owner's right under RCW 36.88.030, 36.88.040, 36.88.050, 36.88.060, and 36.88.065 to protest formation of a road improvement district, the agreement must specify the improvements to be financed by the district and shall set forth the effective term of the agreement, which shall not exceed ten years. The agreement must be recorded with the auditor of the county in which the property is located. It is against public policy and void for an owner, by agreement, as a condition imposed in connection with proposed property development, or otherwise, to waive rights to object to the property owner's individual assessment (including the determination of special benefits allocable to the property), or to appeal to the superior court the decision of the county council affirming the final assessment roll. [1988 c 179 § 12.]

**Severability—Prospective application—Section captions—1988 c 179:** See RCW 39.92.900 and 39.92.901.

**36.88.074 Preformation expenditures.** The county engineer or other designated official may contract with owners of real property to provide for payment by the owners of the cost of the preparation of engineering plans, surveys, studies, appraisals, legal services, and other expenses associated with improvements to be financed in whole or in part by

a local improvement district (not including the cost of actual construction of such improvements), that the owners elect to undertake. The contract may provide for reimbursement to the owner of such costs from the proceeds of bonds issued by the district after formation of a district under this chapter, from assessments paid to the district as appropriate, or by a credit in the amount of such costs against future assessments assessed against such property. Such reimbursement shall be made to the owner of the property at the time of reimbursement. The contract shall also provide that such costs shall not be reimbursed to the owner if a district to construct the specified improvements (as the project may be amended) is not formed within six years of the date of the contract. The contract shall provide that any preformation work shall be conducted only under the direction of the county engineer or other appropriate county authority. [1988 c 179 § 13.]

**Severability—Prospective application—Section captions—1988 c 179:** See RCW 39.92.900 and 39.92.901.

**36.88.076 Credits for other assessments.** A county ordering a road improvement upon which special assessments on property specifically benefited by the improvements are levied and collected, may provide as part of the ordinance creating the road improvement district that moneys paid or the cost of facilities constructed by a property owner in the district in satisfaction of obligations under chapter 39.92 RCW, shall be credited against assessments due from the owner of such property at the time the credit is made, if those moneys paid or facilities constructed directly defray the cost of the specified improvements under the district and if credit for such amounts is reflected in the final assessment roll confirmed for the district. [1988 c 179 § 14.]

**Severability—Prospective application—Section captions—1988 c 179:** See RCW 39.92.900 and 39.92.901.

**36.88.078 Assessment reimbursement accounts.** A county ordering a road improvement upon which special assessments on property specifically benefited by the improvement are levied and collected, may provide as part of the ordinance creating the road improvement district that the payment of an assessment levied for the district on underdeveloped properties may be made by owners of other properties within the district if they so elect, subject to terms of reimbursement set forth in the ordinance. The terms for reimbursement shall require the owners of underdeveloped properties on whose behalf payments of assessments have been made to reimburse all such assessment payments to the party who made them when those properties are developed or redeveloped, together with interest at a rate specified in the ordinance. The ordinance may provide that reimbursement shall be made on a one-time, lump sum basis, or may provide that reimbursement shall be made over a period not to exceed five years. The ordinance may provide that reimbursement shall be made no later than the time of dissolution of the district, or may provide that no reimbursement is due if the underdeveloped properties are not developed or redeveloped before the dissolution of the district. Reimbursement amounts due from underdeveloped properties under this section are liens upon the underdeveloped properties in the same manner and with like effect as assessments made under this chapter. For the purposes of this section, "underdeveloped properties" may

include those properties that, in the discretion of the county legislative authority, (1) are undeveloped or are not developed to their highest and best use, and (2) are likely to be developed or redeveloped before the dissolution of the district. [1988 c 179 § 15.]

**Severability—Prospective application—Section captions—1988 c 179:** See RCW 39.92.900 and 39.92.901.

**36.88.080 Property included in district—Method of assessment—Assessment limited by benefit.** Every resolution ordering any improvement mentioned in this chapter, payment for which shall be in whole or in part by special assessments shall establish a road improvement district which shall embrace as near as may be all the property specially benefited by such improvement and the board shall apply thereto such method of assessment as shall be deemed most practical and equitable under the conditions prevailing: PROVIDED, That no assessment as determined by the board of commissioners shall be levied which shall be greater than the special benefits derived from the improvements. [1963 c 84 § 5; 1963 c 4 § 36.88.080. Prior: 1951 c 192 § 8.]

**36.88.085 Exemption of farm and agricultural land from special benefit assessments.** See RCW 84.34.300 through 84.34.380 and 84.34.922.

**36.88.090 Assessment roll—Hearing—Notice—Objections—New hearing.** Whenever the assessment roll for any county road improvement district has been prepared, such roll shall be filed with the clerk of the county legislative authority. The county legislative authority shall thereupon by resolution set the date for hearing upon such roll before a board of equalization and direct the clerk to give notice of such hearing and the time and place thereof.

Such notice shall specify such time and place of hearing on such roll and shall notify all persons who may desire to object thereto to make such objection in writing and to file the same with the clerk of the county legislative authority at or prior to the date fixed for such hearing; and that at the time and place fixed and at such other times as the hearing may be continued to, the county legislative authority will sit as a board of equalization for the purpose of considering such roll and at such hearing will consider such objections made thereto, or any part thereof, and will correct, revise, raise, lower, change, or modify such roll or any part thereof, or set aside such roll in order that such assessment be made de novo as to such body shall appear just and equitable and then proceed to confirm the same by resolution.

Notice of the time and place of hearing under such assessment roll shall be given to the owner or reputed owner of the property whose name appears thereon, by mailing a notice thereof at least fifteen days before the date fixed for the hearing to such owner or reputed owner at the address of such owner as shown on the tax rolls of the county treasurer; and in addition thereto such notice shall be published at least two times in a newspaper of general circulation in the county. At least fifteen days must elapse between the date of the first publication of the notice and the date fixed for such hearing. However, mosquito control districts are only required to give notice by publication.

The board of equalization, at the time fixed for hearing objections to the confirmation of the roll, or at such time or times as the hearing may be adjourned to, has power to correct, revise, raise, lower, change, or modify the roll or any part thereof, and to set aside the roll in order that the assessment be made de novo as to the board appears equitable and just, and then shall confirm the same by resolution. All objections shall be in writing and filed with the board and shall state clearly the grounds objected to, and objections not made within the time and in the manner described in this section shall be conclusively presumed to have been waived.

Whenever any such roll is amended so as to raise any assessments appearing thereon, or to include property subject to assessment which has been omitted from the assessment roll for any reason, a new hearing, and a new notice of hearing upon such roll, as amended, shall be given as in the case of an original hearing. At the conclusion of such hearing the board may confirm the same or any portion thereof by resolution and certify the same to the treasurer for collection. Whenever any property has been entered originally on such roll, and the assessment upon such property shall not be raised, no objections to it may be considered by the board or by any court on appeal, unless such objections are made in writing at or prior to the date fixed for the original hearing upon such roll. [1985 c 369 § 8; 1972 ex.s. c 62 § 1; 1963 c 4 § 36.88.090. Prior: 1951 c 192 § 9.]

**36.88.095 Assessment roll—Committee or officer may conduct hearing—Recommendations to legislative authority—Appeals.** In lieu of the county legislative authority holding the hearing on assessment roll under RCW 36.88.090 as the board of equalization, the county legislative authority may adopt an ordinance providing for a committee of the county legislative authority or an officer to conduct the hearing on the assessment roll as the board of equalization.

A committee or an officer that sits as a board of adjustment [equalization] shall conduct a hearing on the proposed assessment roll and shall make recommendations to the full county legislative authority, which need not hold a hearing on the proposed assessment roll and shall either adopt or reject the recommendations. The ordinance shall provide for an appeal procedure by which a property owner may protest his or her assessment that is proposed by the committee or officer to the full county legislative authority and the full county legislative authority may reject or accept any appealed protested assessment and if accepted shall modify the assessment roll accordingly. [1994 c 71 § 4.]

**36.88.100 Appeal—Reassessment.** The decision of the board upon any objections made within the time and in the manner herein prescribed may be reviewed by the superior court upon an appeal taken thereto in the manner provided for taking appeals from objections in local improvement districts of cities and towns.

The board shall have the same powers of reassessment and shall proceed to make such reassessments in the same manner and subject to the same limitations as are provided by law for the making of reassessments in local improvement districts of cities and towns. [1963 c 4 § 36.88.100. Prior: 1951 c 192 § 10.]

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**36.88.110 Assessment roll—Conclusive.** Whenever any assessment roll for construction or improvements shall have been confirmed by the board, as provided in this chapter, the regularity, validity and correctness of the proceedings relating to such construction or improvement and to the assessment therefor, including the action of the board on such assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objection to such roll in the manner and within the time provided in this chapter, and not appealing from the action of the board in confirming such assessment roll in the manner and within the time provided in this chapter. No proceedings of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment or for the sale of any property to pay such assessment or any certificate of delinquency issued therefor or the foreclosure of any lien issued therefor, but this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds that the property about to be sold does not appear upon the assessment roll, or that the assessment has been paid. [1963 c 4 § 36.88.110. Prior: 1951 c 192 § 11.]

**36.88.120 Assessment is lien on property—Superiority.** The charge on the respective lots, tracts, parcels of land and other property for the purpose of special assessment to pay the cost and expense in whole or in part of any construction or improvement authorized in this chapter, when assessed, and the assessment roll confirmed by the board shall be a lien upon the property assessed from the time said assessment rolls shall be placed in the hands of the county treasurer for collection. Said liens shall be paramount and superior to any other lien or encumbrance whatsoever, theretofore or thereafter created, except a lien for general taxes. [1963 c 4 § 36.88.120. Prior: 1951 c 192 § 12.]

**36.88.130 County treasurer—Duties.** The county treasurer is hereby designated as the treasurer of all county road improvement districts created hereunder, and shall collect all road improvement district assessments, and the duties and responsibilities herein imposed upon him shall be among the duties and responsibilities of his office for which his bond is given as county treasurer. [1963 c 4 § 36.88.130. Prior: 1951 c 192 § 13.]

**36.88.140 Payment of assessment—Delinquent assessments—Penalties—Lien foreclosure.** The county legislative authority shall prescribe by resolution within what time such assessment or installments thereof shall be paid, and shall provide for the payment and collection of interest and the rate of interest to be charged on that portion of any assessment which remains unpaid over thirty days after such date. Assessments or installments thereof which are delinquent, shall bear, in addition to such interest, such penalty not less than five percent as shall be prescribed by resolution. Interest and penalty shall be included in and shall be a part of the assessment lien. All liens acquired by the county hereunder shall be foreclosed by the appropriate county officers in the same manner and subject to the same rights of redemption provided by law for the foreclosure of liens held by cities or

towns against property in local improvement districts. [1981 c 156 § 11; 1970 ex.s. c 66 § 3; 1963 c 4 § 36.88.140. Prior: 1951 c 192 § 14.]

**36.88.145 Property donations—Credit against assessments.** The county legislative authority may give credit for all or any portion of any property donation against an assessment, charge, or other required financial contribution for transportation improvements within a county road improvement district. The credit granted is available against any assessment, charge, or other required financial contribution for any transportation purpose that uses the donated property. [1987 c 267 § 11.]

**Severability—1987 c 267:** See RCW 47.14.910.

*Right of way donations: Chapter 47.14 RCW.*

**36.88.150 Payment of assessment—Record of.** Whenever before the sale of any property the amount of any assessment thereon, with interest, penalty, costs and charges accrued thereon, shall be paid to the treasurer, he shall thereon mark the same paid with the date of payment thereof on the assessment roll. [1963 c 4 § 36.88.150. Prior: 1951 c 192 § 15.]

**36.88.160 District fund—Purposes—Bond redemptions.** All moneys collected by the treasurer upon any assessments under this chapter shall be kept as a separate fund to be known as ". . . . ., county road improvement district No. . . . . fund." Such funds shall be used for no other purpose than the payment of costs and expense of construction and improvement in such district and the payment of interest or principal of warrants and bonds drawn or issued upon or against said fund for said purposes. Whenever after payment of the costs and expenses of the improvement there shall be available in the local improvement district fund a sum, over and above the amount necessary to meet the interest payments next accruing on outstanding bonds, sufficient to retire one or more outstanding bonds the treasurer shall forthwith call such bond or bonds for redemption as determined in the bond authorizing ordinance. [2003 c 139 § 3; 1963 c 4 § 36.88.160. Prior: 1951 c 192 § 16.]

**Effective date—2003 c 139:** See note following RCW 35.45.180.

**36.88.170 Foreclosed property—Held in trust for district.** Whenever any property shall be bid in by any county or be stricken off to any county under and by virtue of any proceeding for enforcement of the assessment provided in this chapter said property shall be held in trust by said county for the fund of the improvement district for the creation of which fund said assessment was levied and for the collection of which assessment said property was sold: PROVIDED, Such county may at any time after the procuring of a deed pay in to such fund the amount of the delinquent assessment for which said property was sold and all accrued interest and interest to the time of the next call for bonds or warrants issued against such assessment fund at the rate provided thereon, and thereupon shall take and hold said property discharged of such trust: PROVIDED FURTHER, That property deeded to any county and which shall become a part of the trust being exercised by the said county for the benefit

of any local improvement district fund of the said county, shall be exempt from taxation for general, state, county and municipal purposes during the period that it is so held. [1963 c 4 § 36.88.170. Prior: 1951 c 192 § 17.]

**36.88.180 Foreclosed property—Sale or lease—Disposition of proceeds.** Any county may at any time after a deed is issued to it under and by virtue of any proceeding mentioned in this chapter, lease or sell or convey any such property at public or private sale for such price and on such terms as may be determined by resolution of the board, and all proceeds resulting from such sale shall ratably belong to and be paid into the fund of the county road improvement district or districts concerned after first reimbursing any fund or funds having advanced any money on account of said property. [1963 c 4 § 36.88.180. Prior: 1951 c 192 § 18.]

**36.88.190 Improvement bonds, warrants authorized.** (1) The county legislative authority may provide for the payment of the whole or any portion of the cost and expense of any duly authorized road improvement by bonds and/or warrants of the improvement district which bonds shall be issued and sold as herein provided, but no bonds shall be issued in excess of the cost and expense of the project nor shall they be issued prior to twenty days after the thirty days allowed for the payment of assessments without penalty or interest.

(2) Notwithstanding subsection (1) of this section, such bonds and warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 93; 1963 c 4 § 36.88.190. Prior: 1951 c 192 § 19.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**36.88.200 Improvement bonds—Form, contents, execution.** (1) Such bonds shall be numbered from one upwards consecutively, shall be in such denominations as may be provided by the county legislative authority in the resolution authorizing their issuance, shall mature on or before a date not to exceed twenty-two years from and after their date, shall bear interest at such rate or rates as authorized by the legislative authority payable annually or semiannually as may be provided by the legislative authority, shall be signed by the chairman of the legislative authority and attested by the county auditor, shall have the seal of the county affixed thereto, and shall be payable at the office of the county treasurer or elsewhere as may be designated by the legislative authority. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. In lieu of any signatures required in this section, the bonds and any coupons may bear the printed or engraved facsimile signatures of said officials.

Such bonds shall refer to the improvement for which they are issued and to the resolution creating the road improvement district therefor.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 94; 1980 c 100 § 5; 1970 ex.s. c 56 § 55; 1969 ex.s. c 232 § 73; 1963 c 4 § 36.88.200. Prior: 1951 c 192 § 20.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**36.88.210 Improvement bonds—Issuance—Sale—Deposit of proceeds.** (1) The bonds issued under the provisions of this chapter may be issued to the contractor or sold by the county legislative authority as authorized by the resolution directing their issuance at not less than their par value and accrued interest to the date of delivery. No bonds shall be sold except at public sale upon competitive bids and a notice calling for bids shall be published once a week for two consecutive weeks in the official newspaper of the county. Such notice shall specify a place and designate a day and hour subsequent to the date of last publication thereof when sealed bids will be received and publicly opened for the purchase of said bonds. The proceeds of all sales of bonds shall be deposited in the county road improvement district fund and applied to the cost and expense of the district.

(2) Notwithstanding subsection (1) of this section, such bonds may be sold in accordance with chapter 39.46 RCW. [1983 c 167 § 95; 1963 c 4 § 36.88.210. Prior: 1951 c 192 § 21.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**36.88.220 Improvement bonds—Guaranty fund.** All counties may establish a fund for the purpose of guaranteeing to the extent of such fund and in the manner hereinafter provided, the payment of its road improvement district bonds and warrants issued to pay for any road improvement ordered under this chapter. If the county legislative authority shall determine to establish such fund it shall be designated ". . . . county road improvement guaranty fund" and from moneys available for road purposes such county shall deposit annually in said guaranty fund such sums as may be necessary to establish and maintain a balance therein equal to at least five percent of the outstanding obligations guaranteed thereby and to make necessary provision in its annual budget therefor. The moneys held in the guaranty fund may be invested in accordance with the laws relating to county investments. [1997 c 393 § 7; 1967 ex.s. c 145 § 63; 1963 c 4 § 36.88.220. Prior: 1959 c 134 § 2; 1951 c 192 § 22.]

**Severability—1967 ex.s. c 145:** See RCW 47.98.043.

**36.88.230 Improvement bonds—Guaranty fund in certain counties—Operation.** Whenever there shall be paid out of a guaranty fund any sum on account of principal or interest of a road improvement district bond or warrant, the county, as trustee for the fund, shall be subrogated to all the rights of the owner of the bond or any interest coupon or warrant so paid, and the proceeds thereof, or of the assessment underlying the same, shall become part of the guaranty fund. There shall also be paid into each guaranty fund the interest received from investment of the fund, as well as any surplus remaining in any local improvement fund guaranteed hereunder after the payment of all outstanding bonds or warrants payable primarily out of such road improvement fund. Warrants drawing interest at a rate or rates not to exceed the rate determined by the county legislative authority shall be issued, as other warrants are issued by the county, against a guaranty

fund to meet any liability accruing against it, and at the time of making its annual budget and tax levy the county shall provide from funds available for road purposes for the deposit in the guaranty fund of a sum sufficient with other resources of such fund to pay warrants so issued during the preceding fiscal year. As among the several issues of bonds or warrants guaranteed by the fund no preference shall exist, but defaulted bonds, interest payments, and warrants shall be purchased out of the fund in the order of their presentation.

Every county establishing a guaranty fund for road improvement district bonds or warrants shall prescribe by resolution appropriate rules and regulations for the maintenance and operation of the guaranty fund not inconsistent herewith. So much of the money of a guaranty fund as is necessary may be used to purchase underlying bonds or warrants guaranteed by the fund, or to purchase certificates of delinquency for general taxes on property subject to local improvement assessments, or to purchase such property at tax foreclosures, for the purpose of protecting the guaranty fund. Said fund shall be subrogated to the rights of the county, and the county, acting on behalf of said fund, may foreclose the lien of general tax certificates of delinquency and purchase the property at the foreclosure sale for the account of said fund. Whenever the legislative authority of any county shall so cause a lien of general tax certificates of delinquency to be foreclosed and the property to be so purchased at a foreclosure sale, the court costs and costs of publication and expenses for clerical work and/or other expense incidental thereto, shall be chargeable to and payable from the guaranty fund. After so acquiring title to real property, a county may lease or sell and convey the same at public or private sale for such price and on such terms as may be determined by resolution of the county legislative body, and all proceeds resulting from such sales shall belong to and be paid into the guaranty fund. [1997 c 393 § 8; 1983 c 167 § 96; 1981 c 156 § 12; 1963 c 4 § 36.88.230. Prior: 1951 c 192 § 23.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**36.88.235 Improvement bonds—Guaranty fund assets may be transferred to county general fund—When.**

(1) Any county maintaining a local improvement guaranty fund under this chapter, upon certification by the county treasurer that the local improvement guaranty fund has sufficient funds currently on hand to meet all valid outstanding obligations of the fund and all other obligations of the fund reasonably expected to be incurred in the near future, may by ordinance transfer assets from such fund to its general fund. The net cash of the local improvement guaranty fund may be reduced by such transfer to an amount not less than five percent of the net outstanding obligations guaranteed by such fund.

(2) If, at any time within five years of any transfer of assets from the local improvement guaranty fund to the general fund of the county, the net cash of the local improvement guaranty fund is reduced below the minimum amount specified in subsection (1) of this section, the county shall, to the extent of the amount transferred, pay valid claims against the local improvement guaranty fund as a general obligation of the county. In addition, such county shall pay all reasonable costs of collection necessarily incurred by the holders of

valid claims against the local improvement guaranty fund. [1991 c 245 § 12.]

**36.88.240 Improvement bonds—Repayment restricted to special funds—Remedies of bond owner—Notice of restrictions.** The owner of any bond or warrant issued under the provisions of this chapter shall not have any claim therefor against the county by which the same is issued, except for payment from the special assessments made for the improvement for which said bond or warrant was issued and except as against the improvement guaranty fund of such county, and the county shall not be liable to any owner of such bond or warrant for any loss to the guaranty fund occurring in the lawful operation thereof by the county. The remedy of the owner of a bond, or warrant in case of nonpayment, shall be confined to the enforcement of any assessments made in such road improvement district and to the guaranty fund. In case the bonds are guaranteed in accordance herewith a copy of the foregoing part of this section shall be plainly written, printed or engraved on each bond issued and guaranteed hereunder. [1983 c 167 § 97; 1963 c 4 § 36.88.240. Prior: 1951 c 192 § 24.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**36.88.250 Improvement bonds—Remedies of bond owners—Enforcement.** If the board fails to cause any bonds to be paid when due or to promptly collect any assessments when due, the owner of any of the bonds may proceed in his own name to collect the assessments and foreclose the lien thereof in any court of competent jurisdiction and shall recover in addition to the amount of the bonds outstanding in his name, interest thereon at five percent per annum, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court. Any number of owners of bonds for any single project may join as plaintiffs and any number of the owners of property upon which the assessments are liens may be joined as defendants in the same suit. [1963 c 4 § 36.88.250. Prior: 1951 c 192 § 25.]

**36.88.260 Assessment where bonds issued—Payment in installments.** In all cases where the board shall issue bonds to pay the cost and expense of any county road improvement district and shall provide that the whole or any part of the cost and expense shall be assessed against the lots, tracts, parcels of land, and other property therein, the resolution levying such assessment shall provide that the sum charged thereby against each lot, tract, or parcel of land or any portion of said sum may be paid during the thirty day period provided for in RCW 36.88.270 and that thereafter the sum remaining unpaid may be paid in equal annual installments, the number of which installments shall be less by two than the number of years which the bonds issued to pay for the improvement may run. Interest upon all unpaid installments shall be charged at a rate fixed by said resolution. Each year such installments together with interest due thereon shall be collected in the manner provided in the resolution for the collection of the assessments. [1963 c 4 § 36.88.260. Prior: 1951 c 192 § 26.]

**36.88.270 Assessment where bonds issued—Payment in cash—Notice of assessment.** The owner of any lot, tract, or parcel of land, or other property charged with any such assessments may redeem the same from all or any portion of the liability for the cost and expense of such improvement by paying the entire assessment or any portion thereof charged against such lot, tract, or parcel of land without interest within thirty days after notice to him of such assessment, which notice shall be given as follows: The county treasurer shall, as soon as the assessment roll has been placed in his hands for collection, publish a notice for two consecutive daily or weekly issues in the official newspaper of the county in which the district is located, which notice shall state that the assessment roll is in his hands for collection and that any assessment thereon or any portion of such assessment may be paid at any time within thirty days from the date of the first publication of said notice without penalty interest or costs. [1963 c 4 § 36.88.270. Prior: 1951 c 192 § 27.]

**36.88.280 Assessment where bonds issued—Payment in cash during installment period—Duties of county treasurer—Use of funds.** The owners of any lot, tract, or parcel of land may save the same from all liability for the unpaid amount of the assessment, at any time after the thirty-day period herein provided for their payment without interest, by paying the entire amount or all installments on said assessment together with all interest due to the date of maturity of any installment next falling due. All such payments shall be made to the county treasurer whose duty it shall be to collect all assessments under this chapter and all sums so paid or collected shall be applied solely to the payment of the cost and expense of the district and payment of principal and/or interest of any bonds issued. [1963 c 4 § 36.88.280. Prior: 1951 c 192 § 28.]

**36.88.290 Limitation of actions.** An action to collect any special assessment or installment thereof for road improvements, or to enforce the lien of any such assessment or installment, whether such action be brought by the county or by the holder of any certificate of delinquency, or by any other person having the right to bring such action, shall be commenced within ten years after such assessment shall have become delinquent or within ten years after the last installment of any such assessment shall have become delinquent, when said special assessment is payable in installments.

Actions to set aside or cancel any deed issued after midnight, June 6, 1951, upon the sale of property for road improvement assessments, or for the recovery of property sold for delinquent road improvement assessments must be brought within three years from and after date of the issuance of such deed. [1963 c 4 § 36.88.290. Prior: 1951 c 192 § 29.]

**36.88.295 Refunding bonds—Limitations.** The legislative authority of any county may issue and sell bonds to refund outstanding road improvement district or consolidated road improvement district bonds issued after June 7, 1984, on the earliest date such outstanding bonds may be redeemed following the date of issuance of such refunding bonds. Such refunding shall be subject to the following:

(1) The refunding shall result in a net interest cost savings after paying the costs and expenses of the refunding, and

the principal amount of the refunding bonds may not exceed the principal balance of the assessment roll or rolls pledged to pay the bonds being refunded at the time of the refunding.

(2) The refunding bonds shall be paid from the same local improvement fund or bond redemption fund as the bonds being refunded.

(3) The costs and expenses of the refunding shall be paid from the proceeds of the refunding bonds, or the same road improvement district fund or bond redemption fund for the bonds being refunded, except the county may advance such costs and expenses to such fund pending the receipt of assessment payments available to reimburse such advances.

(4) The last maturity of refunding bonds shall be no later than one year after the last maturity of bonds being refunded.

(5) The refunding bonds may be exchanged for the bonds being refunded or may be sold in the same manner permitted at the time of sale for road improvement district bonds.

(6) All other provisions of law applicable to the refunded bonds shall apply to the refunding bonds. [1984 c 186 § 67.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**36.88.300 District costs and expenses—What to include.** Whenever any district is organized hereunder, there shall be included in the cost and expense thereof: (1) The cost of all of the construction or improvement authorized in the district, including that portion of the construction or improvement within the limits of any street or road intersection, space or spaces; (2) the estimated costs and expenses of all engineering and surveying necessary to be done by the county engineer or under his direction or by such other engineer as may be employed by the county commissioners; (3) the cost of all advertising, mailing, and publishing of all notices; (4) the cost of legal services and any other expenses incurred by the county for the district or in the formation thereof, or by the district in connection with such construction or improvement and in the financing thereof, including the issuance of any bonds. [1963 c 4 § 36.88.300. Prior: 1951 c 192 § 30.]

**36.88.305 District costs and expenses—Credit or reduction of assessments.** At its option, a county may include the value of right of way or property that is donated or given to the county for purposes of an improvement to be financed by a road improvement district, together with the costs of acquiring other rights of way or property for the improvement that was not donated or given to the county, in the costs of the improvement and credit or reduce the assessments imposed on benefited property for the value of the right of way or property that the owner of the benefited property donated or gave to the county for the improvement. [1991 c 363 § 90.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.88.310 Acquisition of property—Eminent domain.** All land, premises or property necessary for right-of-way or other purposes in the construction or improvement of any county road, including bridges, sidewalks, curbs and gutters and the drainage facilities therefor, under this chapter may be acquired by the county acting through its board of

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county commissioners, either by gift, purchase or by condemnation. In the event of any exercise of the power of eminent domain, the procedure shall be the same as is provided by law for the securing of right-of-way for county roads. The title to all property acquired for any construction or improvement under this chapter shall be taken in the name of the county. The county commissioners in any eminent domain action brought to secure any property for construction or improvement under this chapter may pay any final judgment entered in such action with county road funds and take possession of the particular property condemned. In the event of any such payment the county commissioners may require that the county road fund be reimbursed out of the particular county road improvement fund of the district for which the property was acquired. [1963 c 4 § 36.88.310. Prior: 1951 c 192 § 31.]

**36.88.320 Construction or improvement—Supervision—Contracts—Standards.** All construction or improvement performed under this chapter shall be under the direction of the board of county commissioners, acting by and through the county road engineer, or such other engineer as the board of county commissioners shall designate. Contracts let and/or work performed upon all construction or improvement hereunder shall be in accordance with the laws pertaining to work upon county roads. The construction and improvement standards of the respective counties for engineering and performance of work, shall apply to all construction or improvement under this chapter. [1963 c 4 § 36.88.320. Prior: 1951 c 192 § 32.]

**36.88.330 Warrants—Issuance—Priority—Acceptance.** The board may provide by resolution for the issuance of warrants in payment of the costs and expenses of any project, payable out of the county road improvement fund. The warrants shall be redeemed either in cash or by bonds for the same project authorized by the resolution.

All warrants issued against any such improvement fund shall be claims and liens against said fund prior and superior to any right, lien or claim of any surety upon the bond given to the county by or for the contract to secure the performance of his contract or to secure the payment of persons who have performed work thereon, furnished materials therefor, or furnished provisions and supplies for the carrying on of the work.

The county treasurer may accept warrants against any county road improvement fund upon such conditions as the board may prescribe in payment of: (1) Assessments levied to supply that fund in due order of priority; (2) judgments rendered against property owners who have become delinquent in the payment of assessments to that fund; and (3) certificates of purchase in cases where property of delinquents has been sold under execution or at tax sale for failure to pay assessments levied to supply that fund. [1980 c 100 § 6; 1963 c 4 § 36.88.330. Prior: 1951 c 192 § 33.]

**36.88.340 Participation of county road fund—Arrangements with other public agencies, private utilities.** Except as they may establish continuing guaranty fund requirements, the board of county commissioners shall be the

sole judges as to the extent of county road fund participation in any project under this chapter and the decisions of the board shall be final; the said board may receive grants from or contract with any other county, municipal corporation, public agency or the state or federal government in order to effect any construction or improvement hereunder, including the construction, installation, improvement, operation, maintenance of and furnishing electric energy for any street and road lighting system, and to effect the construction, installation, improvement, operation and maintenance of and furnishing electric energy for any such street and road lighting system, may contract with any private utility corporation. [1963 c 4 § 36.88.340. Prior: 1953 c 152 § 2; 1951 c 192 § 34.]

**36.88.350 Maintenance—Expense.** After the completion of any construction or improvement under this chapter, all maintenance thereof shall be performed by the county at the expense of the county road fund, excepting furnishing electric energy for and operating and maintaining street and road lighting systems: PROVIDED, That maintenance of canal protection improvements may, at the option of the board of commissioners of the county, be required of the irrigation, drainage, flood control, or other district, agency, person, corporation, or association maintaining the canal or ditch. If such option is exercised reimbursement must be made by the county for all actual costs of such maintenance. [1963 c 4 § 36.88.350. Prior: 1959 c 75 § 8; 1953 c 152 § 3; 1951 c 192 § 35.]

**36.88.360 State, county, school, municipal corporation lands—Assessment—Recipients of notices, ballots.** Lands owned by the state, county, school district or any municipal corporation may be assessed and charged for road improvements authorized under this chapter in the same manner and subject to the same conditions as provided by law for assessments against such property for local improvements in cities and towns.

All notices and ballots provided for herein affecting state lands shall be sent to the department of natural resources whose designated agent is hereby authorized to sign petitions or ballots on behalf of the state. In the case of counties or municipal or quasi municipal bodies notices and ballots shall be sent to the legislative authority of said counties or municipality and petitions or ballots shall be signed by the officer duly empowered to act by said legislative authority. [1963 c 4 § 36.88.360. Prior: 1951 c 192 § 36.]

**36.88.370 Signatures on petitions, ballots, objections—Determining sufficiency.** Wherever herein petitions, ballots or objections are required to be signed by the owners of property, the following rules shall govern the sufficiency thereof: (1) The signature of the record owner as determined by the records of the county auditor shall be sufficient without the signature of his or her spouse; (2) in the case of mortgaged property, the signature of the mortgagor shall be sufficient; (3) in the case of property purchased on contract the signature of the contract purchaser shall be deemed sufficient; (4) any officer of a corporation owning land in the district duly authorized to execute deeds or

encumbrances on behalf of the corporation may sign on behalf of such corporation: PROVIDED, That there shall be attached to the ballot or petition a certified excerpt from the bylaws showing such authority; (5) if any property in the district stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator or guardian as the case may be shall be equivalent to the signature of the owner of the property. [1963 c 84 § 6; 1963 c 4 § 36.88.370. Prior: 1951 c 192 § 37.]

**36.88.375 Consolidated road improvement districts—Establishment—Bonds.** For the purpose of issuing bonds only, the governing body of any county may authorize the establishment of consolidated road improvement districts. The road improvements within such consolidated districts need not be adjoining, vicinal, or neighboring. If the governing body orders the creation of such consolidated road improvement districts, the money received from the installment payments of the principal of and interest on assessments levied within original road improvement districts shall be deposited in a consolidated road improvement district bond redemption fund to be used to redeem outstanding consolidated road improvement district bonds. The issuance of bonds of a consolidated road improvement district shall not change the number of assessment installments in the original road improvement districts, but such bonds shall run two years longer than the longest assessment installment of such original districts. [1981 c 313 § 19.]

**Reviser's note:** 1981 c 313 § 19 directed that this section be placed in chapter 36.89 RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 36.88 RCW.

**Severability—1981 c 313:** See note following RCW 36.94.020.

**36.88.380 Safeguarding open canals or ditches—Assessments and benefits.** Whenever a county road improvement district is established for the safeguarding of open canals or ditches as authorized by RCW 36.88.015 the rate of assessment per square foot in the district may be determined by any one of the methods provided in chapter 35.44 RCW for similar improvements in cities or towns, and the land specially benefited by such improvements shall be the same as provided in chapter 35.43 RCW for similar improvements in cities or towns. [1963 c 4 § 36.88.380. Prior: 1959 c 75 § 5.]

**36.88.390 Safeguarding open canals or ditches—Authority.** Every county shall have the right of entry upon every irrigation, drainage, or flood control canal or ditch right of way within its boundaries for all purposes necessary to safeguard the public from the hazards of open canals or ditches, including the right to clean such canals or ditches to prevent their flooding adjacent lands, and the right to cause to be constructed and maintained on such rights of way or adjacent thereto safeguards as authorized by RCW 36.88.015: PROVIDED, That such safeguards must not unreasonably interfere with maintenance of the canal or ditch or with the operation thereof. [1963 c 4 § 36.88.390. Prior: 1959 c 75 § 6.]

**36.88.400 Safeguarding open canals or ditches—Installation and construction—Costs.** Any county, estab-

lishing a road improvement district for canal protection, notwithstanding any laws to the contrary, may require the district, agency, person, corporation, or association, public or private, which operates and maintains the canal or ditch to supervise the installation and construction of safeguards, and must make reimbursement to said operator for all actual costs incurred and expended. [1963 c 4 § 36.88.400. Prior: 1959 c 75 § 7.]

**36.88.410 Underground electric and communication facilities, installation or conversion to—Declaration of public interest and purpose.** It is hereby found and declared that the conversion of overhead electric and communication facilities to underground facilities and the initial underground installation of such facilities is substantially beneficial to the public safety and welfare, is in the public interest and is a public purpose, notwithstanding any resulting incidental private benefit to any electric or communication utility affected by such conversion or installation. [1971 ex.s. c 103 § 1; 1967 c 194 § 1.]

**Severability—1967 c 194:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 194 § 9.]

*Cities and towns, conversion of overhead electric and communication facilities to underground facilities: Chapter 35.96 RCW.*

**36.88.420 Underground electric and communication facilities, installation or conversion to—Definitions.** As used in RCW 36.88.410 through 36.88.480, unless specifically defined otherwise, or unless the context indicates otherwise:

"Conversion area" means that area in which existing overhead electric and communication facilities are to be converted to underground facilities pursuant to the provisions of RCW 36.88.410 through 36.88.480.

"Electric utility" means any publicly or privately owned utility engaged in the business of furnishing electric energy to the public in all or part of the conversion area and includes electrical companies as defined by RCW 80.04.010 and public utility districts.

"Communication utility" means any utility engaged in the business of affording telephonic, telegraphic, cable television or other communication service to the public in all or part of the conversion area and includes telephone companies and telegraph companies as defined by RCW 80.04.010. [1967 c 194 § 2.]

**36.88.430 Underground electric and communication facilities, installation or conversion to—Powers of county relating to—Contracts—County road improvement districts—Special assessments.** Every county shall have the power to contract with electric and communication utilities, as hereinafter provided, for any or all of the following purposes:

- (1) The conversion of existing overhead electric facilities to underground facilities.
- (2) The conversion of existing overhead communication facilities to underground facilities.

(3) The conversion of existing street and road lighting facilities to ornamental street and road lighting facilities to be served from underground electrical facilities.

(4) The initial installation, in accordance with the limitations set forth in RCW 36.88.015, or [of] ornamental street and road lighting facilities to be served from underground electrical facilities.

(5) The initial installation of underground electric and communication facilities.

(6) Any combination of the improvements provided for in this section.

To provide funds to pay the whole or any part of the cost of any such conversion or initial installation, together with the expense of furnishing electric energy, maintenance and operation to any ornamental street lighting facilities served from underground electrical facilities, every county shall have the power to create county road improvement districts and to levy and collect special assessments against the real property specially benefited by such conversion or initial installation. For the purpose of ascertaining the amount to be assessed against each lot or parcel of land within any county road improvement district established pursuant to RCW 36.88.410 through 36.88.480, in addition to other methods provided by law for apportioning special benefits, the county commissioners may apportion all or part of the special benefits accruing on a square footage basis or on a per lot basis.

That portion of the assessments levied in any county road improvement district to pay part of the cost of the initial installation of underground electric and communication facilities shall not exceed the cost of such installation, less the estimated cost of constructing overhead facilities providing equivalent service. [1971 ex.s. c 103 § 2; 1967 c 194 § 3.]

**36.88.440 Underground electric and communication facilities, installation or conversion to—Contracts with electric and communication utilities—Authorized—Provisions.** Every county shall have the power to contract with electric and communication utilities for the conversion of existing overhead electric and communication facilities to underground facilities, for the conversion of existing street and road lighting facilities to ornamental street and road lighting facilities to be served from underground electrical facilities[,] for the initial installation of ornamental street and road lighting facilities to be served from underground electrical facilities and for the initial installation of underground electric and communication facilities. Such contracts may provide, among other provisions, any of the following:

(1) For the supplying and approval by the electric and communication utilities of plans and specifications for such conversion or installation;

(2) For the payment to the electric and communication utilities for any work performed or services rendered by it in connection with the conversion project or installation;

(3) For the payment to the electric and communication utilities for the value of the overhead facilities removed pursuant to the conversion;

(4) For ownership of the underground facilities and the ornamental street and road lighting facilities by the electric and communication utilities. [1971 ex.s. c 103 § 3; 1967 c 194 § 4.]

**36.88.450 Underground electric and communication facilities, installation or conversion to—Notice to owners to convert service lines to underground—Objections—Hearing—Time limitation for conversion.** When service from the underground electric and communication facilities is available in all or part of a conversion area, the county shall mail a notice to the owners of all structures or improvements served from the existing overhead facilities in the area, which notice shall state that:

- (1) Service from the underground facilities is available;
- (2) All electric and communication service lines from the existing overhead facilities within the area to any structure or improvement must be disconnected and removed within one hundred twenty days after the date of the mailing of the notice;
- (3) Should such owner fail to convert such service lines from overhead to underground within one hundred twenty days after the date of the mailing of the notice, the county will order the electric and communication utilities to disconnect and remove the service lines;
- (4) Should the owner object to the disconnection and removal of the service lines he may file his written objections thereto with the secretary of the board of county commissioners within one hundred twenty days after the date of the mailing of the notice and failure to so object within such time will constitute a waiver of his right thereafter to object to such disconnection and removal.

If the owner of any structure or improvement served from the existing overhead electric and communication facilities within a conversion area shall fail to convert to underground the service lines from such overhead facilities to such structure or improvement within one hundred twenty days after the mailing to him of the notice, the county shall order the electric and communication utilities to disconnect and remove all such service lines: PROVIDED, That if the owner has filed his written objections to such disconnection and removal with the secretary of the board of county commissioners within one hundred twenty days after the mailing of said notice then the county shall not order such disconnection and removal until after the hearing on such objections.

Upon the timely filing by the owner of objections to the disconnection and removal of the service lines, the board of county commissioners shall conduct a hearing to determine whether the removal of all or any part of the service lines is in the public benefit. The hearing shall be held at such time as the board of county commissioners may establish for hearings on such objections and shall be held in accordance with the regularly established procedure set by the board. The determination reached by the board of county commissioners shall be final in the absence of an abuse of discretion. [1967 c 194 § 5.]

**36.88.460 Underground electric and communication facilities, installation or conversion to—Utility conversion guaranty fund—Establishment authorized—Purpose—Deposits—Investments.** Every county may establish a fund for the purpose of guaranteeing to the extent of such fund and in the manner hereinafter provided, the payment of its county road improvement district bonds and warrants issued to pay for the underground conversion of electric and communication facilities and the underground conversion or installation

of ornamental road and street lighting facilities ordered under this chapter. If the board of county commissioners shall determine to establish such fund it shall be designated ". . . . utility conversion guaranty fund" and from moneys available such county shall deposit annually in said guaranty fund such sums as may be necessary to establish and maintain a balance therein equal to at least five percent of the outstanding obligations guaranteed thereby and to make necessary provision in its annual budget therefor. The moneys held in the guaranty fund may be invested in certificates, notes, or bonds of the United States of America, or in state, county, municipal or school district bonds, or in warrants of taxing districts of the state; provided, only, that such bonds and warrants shall be general obligations. [1967 c 194 § 6.]

**36.88.470 Underground electric and communication facilities, installation or conversion to—Utility conversion guaranty fund—Operation.** Whenever there shall be paid out of the guaranty fund any sum on account of principal or interest of a county road improvement district bond or warrant, the county, as trustee for the fund, shall be subrogated to all the rights of the owner of the bond or any interest coupon or warrant so paid, and the proceeds thereof, or of the assessment underlying the same, shall become part of the guaranty fund. There shall also be paid into each guaranty fund the interest received from investments of the fund, as well as any surplus remaining in any county road improvement fund guaranteed hereunder after the payment of all outstanding bonds or warrants payable primarily out of such utility conversion county road improvement district fund. Warrants drawing interest at a rate or rates not to exceed the rate determined by the county legislative authority shall be issued, as other warrants are issued by the county, against the guaranty fund to meet any liability accruing against it, and at the time of making its annual budget and tax levy the county shall provide from funds available for the deposit in the guaranty fund of a sum sufficient with other resources of such fund to pay warrants so issued during the preceding fiscal year. As among the several issues of bonds or warrants guaranteed by the fund no preference shall exist, but defaulted bonds, interest payments, and warrants shall be purchased out of the fund in the order of their presentation.

Every county establishing a guaranty fund for utility conversion road improvement district bonds or warrants shall prescribe by resolution appropriate rules and regulations for the maintenance and operation of such guaranty fund not inconsistent herewith. So much of the money of a guaranty fund as is necessary may be used to purchase underlying bonds or warrants guaranteed by the fund, or to purchase certificates of delinquency for general taxes on property subject to local improvement assessments, or to purchase such property at tax foreclosures, for the purpose of protecting the guaranty fund. The fund shall be subrogated to the rights of the county and the county, acting on behalf of the fund, may foreclose the lien of general tax certificates of delinquency and purchase the property at the foreclosure sale for the account of said fund. Whenever the legislative authority of any county shall so cause a lien of general tax certificates of delinquency to be foreclosed and the property to be so purchased at a foreclosure sale, the court costs and costs of publication and expenses for clerical work and/or other expense

incidental thereto, shall be chargeable to and payable from the guaranty fund. After so acquiring title to real property, a county may lease or sell and convey the same at public or private sale for such price and on such terms as may be determined by resolution of the county legislative authority, and all proceeds resulting from such sales shall belong to and be paid into the guaranty fund. [1983 c 167 § 98; 1981 c 156 § 13; 1967 c 194 § 7.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**36.88.480 Underground electric and communication facilities, installation or conversion to—Applicability of general provisions relating to county road improvement districts.** Unless otherwise provided in RCW 36.88.410 through 36.88.480, the general provisions relating to county road improvement districts shall apply to local improvements authorized by RCW 36.88.410 through 36.88.480. [1967 c 194 § 8.]

**36.88.485 Underground electric and communication facilities, installation or conversion to—Recording of underground utility installations.** All installations of underground utilities made on and after August 9, 1971 shall be recorded on an "as constructed" map and filed with the county engineer of the county in which the underground utilities are installed. [1971 ex.s. c 103 § 4.]

### Chapter 36.89 RCW

#### HIGHWAYS—OPEN SPACES—PARKS—OTHER PUBLIC FACILITIES—STORM WATER CONTROL

##### Sections

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*Assessments and charges against state lands: Chapter 79.44 RCW.*

**36.89.010 Definitions.** The words "governmental agency" as used in this chapter mean the United States of (2004 Ed.)

America, the state or any agency, subdivision, taxing district or municipal or quasi municipal corporation thereof.

The word "highways" as used in this chapter means all public roads, streets, expressways, parkways, scenic drives, bridges and other public ways, including without limitation, traffic control facilities, special lanes, turnouts or structures in, upon, over or under such public ways for exclusive or nonexclusive use by public transit vehicles, and landscaping, visual and sound buffers between such public ways and adjacent properties.

The words "open space, park, recreation and community facilities" as used in this chapter mean any public facility, improvement, development, property or right or interest therein for public park, recreational, green belt, arboretum, multi-purpose community center (as defined in RCW 35.59.010), museum, zoo, aquarium, auditorium, exhibition, athletic, historic, scenic, viewpoint, aesthetic, ornamental or natural resource preservation purposes.

The words "public health and safety facilities" as used in this chapter mean any public facility, improvement, development, property or right or interest therein, made, constructed or acquired for the purpose of protecting life from disease or injury, enforcing the criminal and civil laws or protecting property from damage caused by breach of law, including but not limited to public hospitals, health laboratories, public health clinics or service centers, custodial, correction or rehabilitation facilities, courtrooms, crime laboratories, law enforcement equipment and facilities, training facilities for specialized personnel, facilities for the collection, storage, retrieval or communication of information, and mobile, support or administrative facilities, all as necessary for the foregoing purpose, or any combination of the facilities herein described.

The words "storm water control facilities" as used in this chapter mean any facility, improvement, development, property or interest therein, made, constructed or acquired for the purpose of controlling, or protecting life or property from, any storm, waste, flood or surplus waters wherever located within the county, and shall include but not be limited to the improvements and authority described in RCW 86.12.020 and chapters 86.13 and 86.15 RCW.

The word "county" as used in this chapter shall mean any county of the state of Washington. [1970 ex.s. c 30 § 1; 1967 c 109 § 1.]

**36.89.020 Purpose.** The legislature finds that the open spaces, park, recreation and community facilities, public health and safety facilities, storm water control facilities and highways within any county of this state, whether located partly or wholly within or without the cities and towns of such county are of general benefit to all of the residents of such county. The open spaces, park, recreation and community facilities within such county provide public recreation, aesthetic, conservation and educational opportunities and other services and benefits accessible to all of the residents of such county. The public health and safety facilities within such county provide protection to life and property throughout the county, are functionally inter-related and affect the health, safety and welfare of all the residents of such county. The storm water control facilities within such county provide protection from storm water damage for life and property

throughout the county, generally require planning and development over the entire drainage basins, and affect the prosperity, interests and welfare of all the residents of such county. The highways within such county, whether under the general control of the county or the state or within the limits of any incorporated city or town, provide an inter-connected system for the convenient and efficient movement of people and goods within such county. The use of general county funds for the purpose of acquisition, development, construction, or improvement of open space, park, recreation and community facilities, public health and safety facilities, storm water control facilities, or highways or to participate with any governmental agency to perform such purposes within such county pursuant to this chapter is hereby declared to be a strictly county purpose. [1970 ex.s. c 30 § 2; 1967 c 109 § 2.]

**36.89.030 Authority to establish, acquire, develop, construct, and improve highways, open spaces, parks, etc.** Counties are authorized to establish, acquire, develop, construct, and improve open space, park, recreation, and community facilities, public health and safety facilities, storm water control facilities, and highways or any of them pursuant to the provisions of this chapter within and without the cities and towns of the county and for such purposes have the power to acquire lands, buildings and other facilities by gift, grant, purchase, condemnation, lease, devise, and bequest, to construct, improve, or maintain buildings, structures, and facilities necessary for such purposes, and to use and develop for such purposes the air rights over and the subsurface rights under any highway. The approval of the state department of transportation shall be first secured for such use and development of any state highway. For visual or sound buffer purposes the county shall not acquire by condemnation less than an owner's entire interest or right in the particular real property to be so acquired if the owner objects to the taking of a lesser interest or right. [1984 c 7 § 42; 1970 ex.s. c 30 § 3; 1967 c 109 § 3.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

*Acquisition of interests in land for conservation, protection, preservation, or open space purposes by counties:* RCW 64.04.130.

*Flood control, county powers:* RCW 86.12.020.

**36.89.040 Issuance of general obligation bonds—Proposition submitted to voters.** To carry out the purposes of this chapter counties shall have the power to issue general obligation bonds within the limitations now or hereafter prescribed by the Constitution and laws of this state. Such general obligation bonds shall be issued and sold as provided in chapter 39.46 RCW.

The question of issuance of bonds for any undertaking which relates to a number of different highways or parts thereof, whether situated wholly or partly within the limits of any city or town within the county, and whether such bonds are intended to supply the whole expenditure or to participate therein, may be submitted to the voters of the county as a single proposition. If the county legislative authority in submitting a proposition relating to different highways or parts thereof declare that such proposition has for its object the furtherance and accomplishment of the construction of a system

of connected public highways within such county and constitutes a single purpose, such declaration shall be presumed to be correct and upon the issuance of the bonds the presumption shall become conclusive.

The question of the issuance of bonds for any undertaking which relates to a number of different open spaces, park, recreation and community facilities, whether situated wholly or partly within the limits of any city or town within the county, and whether such bonds are intended to supply the whole expenditure or to participate therein may be submitted to the voters as a single proposition. If the county legislative authority in submitting a proposition relating to different open spaces, park, recreation and community facilities declare that such proposition has for its object the furtherance, accomplishment or preservation of an open space, park, recreation and community facilities system available to, and for the benefit of, all the residents of such county and constitutes a single purpose, such declaration shall be presumed to be correct and upon the issuance of the bonds the presumption shall become conclusive.

The question of the issuance of bonds for any undertaking which relates to a number of different public health and safety facilities, whether situated wholly or partly within the limits of any city or town within the county, and whether such bonds are intended to supply the whole expenditure or to participate therein may be submitted to the voters as a single proposition. If the county legislative authority in submitting a proposition relating to different public health and safety facilities declare that such proposition has for its object the furtherance or accomplishment of a system of public health and safety facilities for the benefit of all the residents of such county and constitutes a single purpose, such declaration shall be presumed to be correct and upon the issuance of the bonds the presumption shall become conclusive.

The question of the issuance of bonds for any undertaking which relates to a number of different storm water control facilities, whether situated wholly or partly within the limits of any city or town within the county, and whether such bonds are intended to supply the whole expenditure or to participate therein may be submitted to the voters as a single proposition. If the county legislative authority in submitting a proposition relating to different storm water control facilities declares that such proposition has for its object the furtherance, accomplishment or preservation of a storm water control facilities system for the benefit of all the residents of such county and constitutes a single purpose, such declaration shall be presumed to be correct and upon the issuance of the bonds the presumption shall become conclusive.

Elections shall be held as provided in RCW 39.36.050. [1984 c 186 § 34; 1983 c 167 § 99; 1970 ex.s. c 30 § 4; 1967 c 109 § 4.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**36.89.042 Issuance of general obligation bonds—Payment from revenue—Additional method.** In issuing general obligation bonds at any time after February 20, 1970 for the purpose of providing all or part of the cost and expense of planning and design, establishing, acquiring, developing, constructing or improving the county capital pur-

poses authorized by this chapter and RCW 86.12.020, the board of county commissioners may provide that such bonds also be made payable from any otherwise unpledged revenue which may be derived from the ownership or operation of any such properties or facilities. [1970 ex.s. c 30 § 6.]

**36.89.050 Participation by other governmental agencies.** A county may finance, acquire, construct, develop, improve, maintain and operate any open space, park, recreation and community facilities, public health and safety facilities, storm water control facilities and highways authorized by this chapter either solely or in conjunction with one or more governmental agencies. Any governmental agency is authorized to participate in such financing, acquisition, construction, development, improvement, use, maintenance and operation and to convey, dedicate or lease any lands, properties or facilities to any county for the purposes provided in this chapter and RCW 86.12.020, on such terms as may be fixed by agreement between the respective governing commissions or legislative bodies without submitting the matter to a vote of the electors unless the provisions of general law applicable to the incurring of public indebtedness shall require such submission.

No county shall proceed under the authority of this chapter to construct or improve any storm water control facility or highway or part thereof lying within the limits of a city or town except with the prior consent of such city or town. By agreement between their respective legislative bodies, cities, towns and counties may provide that upon completion of any storm water control facility or highway or portion thereof constructed pursuant to this chapter within any city or town, the city or town shall accept the same for maintenance and operation and that such storm water control facility or highway or portion thereof shall thereupon become a part of the respective storm water control facility or highway system of the city or town.

A county may transfer to any other governmental agency the ownership, operation and maintenance of any open space, park, recreation and community facility acquired by the county pursuant to this chapter, which lies wholly or partly within such governmental agency, pursuant to an agreement entered into between the legislative bodies of the county and such governmental agency: PROVIDED, That such transfer shall be subject to the condition that either such facility shall continue to be used for the same purposes or that other equivalent facilities within the county shall be conveyed to the county in exchange therefor. [1970 ex.s. c 30 § 5; 1967 c 109 § 5.]

**36.89.060 Powers and authority are supplemental.** The powers and authority conferred upon governmental agencies under the provisions of this chapter, shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of such governmental agencies. [1967 c 109 § 6.]

**36.89.062 Power and authority of counties are supplemental.** The power and authority conferred upon counties by this chapter and RCW 86.12.020 shall be in addition and

supplemental to those already granted and shall not limit any other powers or authority of such counties. [1970 ex.s. c 30 § 13.]

**36.89.080 Storm water control facilities—Rates and charges—Limitations—Use.** (1) Subject to subsections (2) and (3) of this section, any county legislative authority may provide by resolution for revenues by fixing rates and charges for the furnishing of service to those served or receiving benefits or to be served or to receive benefits from any storm water control facility or contributing to an increase of surface water runoff. In fixing rates and charges, the county legislative authority may in its discretion consider:

- (a) Services furnished or to be furnished;
- (b) Benefits received or to be received;
- (c) The character and use of land or its water runoff characteristics;
- (d) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user;
- (e) Income level of persons served or provided benefits under this chapter, including senior citizens and disabled persons; or
- (f) Any other matters which present a reasonable difference as a ground for distinction.

(2) The rate a county may charge under this section for storm water control facilities shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(3) Rates and charges authorized under this section may not be imposed on lands taxed as forest land under chapter 84.33 RCW or as timber land under chapter 84.34 RCW.

(4) The service charges and rates collected shall be deposited in a special fund or funds in the county treasury to be used only for the purpose of paying all or any part of the cost and expense of maintaining and operating storm water control facilities, all or any part of the cost and expense of planning, designing, establishing, acquiring, developing, constructing and improving any of such facilities, or to pay or secure the payment of all or any portion of any issue of general obligation or revenue bonds issued for such purpose. [2003 c 394 § 3; 1998 c 74 § 1; 1995 c 124 § 1; 1970 ex.s. c 30 § 7.]

*Sewerage, water, and drainage systems: Chapter 36.94 RCW.*

**36.89.085 Storm water control facilities—Public property subject to rates and charges.** Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for storm water control facilities to the same extent private persons and private property are subject to such rates and charges that are imposed by counties pursuant to RCW 36.89.080. In setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property. [1986 c 278 § 57; 1983 c 315 § 3.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Severability—1983 c 315:** See note following RCW 90.03.500.

*Flood control zone districts—Storm water control improvements: Chapter 86.15 RCW.*

*Rates and charges for storm water control facilities—Limitations—Definitions: RCW 90.03.500 through 90.03.525. See also RCW 35.67.025, 35.92.021, and 36.94.145.*

**36.89.090 Storm water control facilities—Lien for delinquent charges.** The county shall have a lien for delinquent service charges, including interest thereon, against any property against which they were levied for storm water control facilities, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. Such lien shall be effective and shall be enforced and foreclosed in the same manner as provided for sewerage liens of cities and towns by RCW 35.67.200 through 35.67.290: PROVIDED, That a county may, by resolution or ordinance, adopt all or any part of the alternative interest rate, lien, and foreclosure procedures as set forth in RCW 36.89.092 through 36.89.094 or by RCW 36.94.150. [1991 c 36 § 1; 1987 c 241 § 1; 1970 ex.s. c 30 § 8.]

**36.89.092 Storm water control facilities—Alternative interest rate on delinquent charges.** Any county may provide, by resolution or ordinance, that delinquent storm water service charges bear interest at a rate of twelve percent per annum, computed on a monthly basis, in lieu of the interest rate provided for in RCW 35.67.200. [1987 c 241 § 2.]

**36.89.093 Storm water control facilities—Alternative procedures for lien on delinquent charges.** Any county may, by resolution or ordinance, provide that the storm water service charge lien shall be effective for a total not to exceed one year's delinquent service charges without the necessity of any writing or recording of the lien with the county auditor, in lieu of the provisions provided for in RCW 35.67.210. [1987 c 241 § 3.]

**36.89.094 Storm water control facilities—Alternative foreclosure procedures on lien on delinquent charges.** Any county may, by resolution or ordinance, provide that an action to foreclose a storm water service charge lien may be commenced after three years from the date storm water service charges become delinquent, in lieu of the provisions provided for in RCW 35.67.230. [1987 c 241 § 4.]

**36.89.100 Storm water control facilities—Revenue bonds.** (1) Any county legislative authority may authorize the issuance of revenue bonds to finance any storm water control facility. Such bonds may be issued by the county legislative authority in the same manner as prescribed in RCW 36.67.510 through 36.67.570. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

Each revenue bond shall state on its face that it is payable from a special fund, naming such fund and the resolution creating the fund.

Revenue bond principal, interest, and all other related necessary expenses shall be payable only out of the appropriate special fund or funds. Revenue bonds shall be payable from the revenues of the storm water control facility being

financed by the bonds, a system of these facilities and, if so provided, from special assessments, installments thereof, and interest and penalties thereon, levied in one or more utility local improvement districts authorized by \*this 1981 act.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 100; 1981 c 313 § 20; 1970 ex.s. c 30 § 9.]

**\*Reviser's note:** For codification of "this 1981 act" [1981 c 313], see Codification Tables, Volume 0.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Severability—1981 c 313:** See note following RCW 36.94.020.

**36.89.110 Storm water control facilities—Utility local improvement districts—Assessments.** A county may create utility local improvement districts for the purpose of levying and collecting special assessments on property specially benefited by one or more storm water control facilities. The provisions of RCW 36.94.220 through 36.94.300 concerning the formation of utility local improvement districts and the fixing, levying, collecting and enforcing of special assessments apply to utility local improvement districts authorized by this section. [1981 c 313 § 21.]

**Severability—1981 c 313:** See note following RCW 36.94.020.

**36.89.120 Storm water control facilities—Annexation, incorporation of area by city or town—Imposition of rates and charges by county.** Whenever a city or town annexes an area, or a city or town incorporates an area, and the county has issued revenue bonds or general obligation bonds to finance storm water control facilities that are payable in whole or in part from rates or charges imposed in the area, the county shall continue imposing all portions of the rates or charges that are allocated to payment of the debt service on bonds in that area after the effective date of the annexation or official date of the incorporation until: (1) The debt is retired; (2) any debt that is issued to refinance the underlying debt is retired; or (3) the city or town reimburses the county amount that is sufficient to retire that portion of the debt borne by the annexed or incorporated area. The county shall construct all facilities included in the storm water plan intended to be financed by the proceeds of such bonds. If the county provides storm water management services to the city or town by contract, the contract shall consider the value of payments made by property owners to the county for the payment of debt service.

The provisions of this section apply whether or not the bonds finance facilities that are geographically located within the area that is annexed or incorporated. [1993 c 361 § 1.]

**36.89.130 Cooperative watershed management.** In addition to the authority provided in RCW 36.89.030, a county may, as part of maintaining a system of storm water control facilities, participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 10.]

**Finding—Intent—2003 c 327:** See note following RCW 39.34.190.

**36.89.900 Effective date—1967 c 109.** This chapter shall take effect on June 9, 1967. [1967 c 109 § 9.]

**36.89.910 Severability—1967 c 109.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 109 § 7.]

**36.89.911 Severability—1970 ex.s. c 30.** If any provision of this 1970 amendatory act or its application to any person or circumstance is held invalid, the remainder of this 1970 amendatory act or the application of the provision to other persons or circumstances shall not be affected. [1970 ex.s. c 30 § 12.]

**Chapter 36.90 RCW**

**SOUTHWEST WASHINGTON FAIR**

Sections

- 36.90.010 Control of property.
- 36.90.020 Fair commission abolished—Rights, duties, and obligations devolved upon Lewis county commissioners—Property vested in Lewis county.
- 36.90.030 Administration of fair—Appointment of designee or commission—Organization of commission—Funds.
- 36.90.040 Fair deemed county and district fair and agricultural fair.
- 36.90.050 Acquisition, improvement, control of property.
- 36.90.070 Conveyance of property to Lewis county for fair purposes.

**36.90.010 Control of property.** The property of the Southwest Washington Fair Association including the buildings and structures thereon, as constructed or as may be built or constructed from time to time, or any alterations or additions thereto, shall be under the jurisdiction of Lewis county. That property will be under the management and control of the board of county commissioners of Lewis county or that board's designee. [1998 c 107 § 1; 1973 1st ex.s. c 97 § 1; 1963 c 4 § 36.90.010. Prior: 1913 c 47 § 2; RRS § 2746.]

**Severability—1973 1st ex.s. c 97:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 97 § 8.]

**36.90.020 Fair commission abolished—Rights, duties, and obligations devolved upon Lewis county commissioners—Property vested in Lewis county.** The southwest Washington fair commission heretofore established and authorized under the provisions of this chapter is abolished and all rights, duties and obligations of such commission is devolved upon the board of county commissioners of Lewis county and title to or all interest in real estate, choses in action and all other assets, including but not limited to assignable contracts, cash, deposits in county funds (including any interest or premiums thereon), equipment, buildings, facilities, and appurtenances thereto held as of the date of passage of this 1973 amendatory act by or for the commission shall, on \*the effective date of this 1973 amendatory act vest in Lewis county. [1973 1st ex.s. c 97 § 2; 1963 c 4 § 36.90.020. Prior: 1959 c 34 § 1; 1913 c 47 § 3; RRS § 2747; prior: 1909 c 237 § 4.]

(2004 Ed.)

**\*Reviser's note:** "the effective date of this 1973 amendatory act" [1973 1st ex.s. c 97] was July 16, 1973.

**Severability—1973 1st ex.s. c 97:** See note following RCW 36.90.010.

**36.90.030 Administration of fair—Appointment of designee or commission—Organization of commission—Funds.** The board of county commissioners in the county of Lewis as administrators of all property relating to the southwest Washington fair may elect to appoint either (1) a designee, whose operation and funds the board may control and oversee, to carry out the board's duties and obligations as set forth in RCW 36.90.020, or (2) a commission of citizens to advise and assist in carrying out such fair. The chairman of the board of county commissioners of Lewis county may elect to serve as chairman of any such commission. Such commission may elect a president and secretary and define their duties and fix their compensation, and provide for the keeping of its records. The commission may also designate the treasurer of Lewis county as fair treasurer. The funds relating to fair activities shall be kept separate and apart from the funds of Lewis county, but shall be deposited in the regular depositories of Lewis county and all interest earned thereby shall be added to and become a part of the funds. Fair funds shall be audited as are other county funds. [1998 c 107 § 2; 1973 1st ex.s. c 97 § 3; 1963 c 4 § 36.90.030. Prior: 1913 c 47 § 4; RRS § 2748.]

**Severability—1973 1st ex.s. c 97:** See note following RCW 36.90.010.

**36.90.040 Fair deemed county and district fair and agricultural fair.** The southwest Washington fair shall be deemed a county and district fair for the purposes of chapter 15.76 RCW as well as an agricultural fair for the purpose of receiving allocations of funds under RCW 15.76.140 through 15.76.165. [1973 1st ex.s. c 97 § 4; 1963 c 4 § 36.90.040. Prior: 1913 c 47 § 5; RRS § 2749.]

**Severability—1973 1st ex.s. c 97:** See note following RCW 36.90.010.

**36.90.050 Acquisition, improvement, control of property.** The Lewis county board of county commissioners may acquire by gift, exchange, devise, lease, or purchase, real property for southwest Washington fair purposes and may construct and maintain temporary or permanent improvements suitable and necessary for the purpose of holding and maintaining the southwest Washington fair. Any such property deemed surplus by the board may be (1) sold at private sale after notice in a local publication of general circulation, or (2) exchanged for other property after notice in a local publication of general circulation, under Lewis county property management regulations. [1998 c 107 § 3; 1973 1st ex.s. c 97 § 5; 1963 c 4 § 36.90.050. Prior: 1959 c 34 § 2.]

**Severability—1973 1st ex.s. c 97:** See note following RCW 36.90.010.

**36.90.070 Conveyance of property to Lewis county for fair purposes.** Upon payment to the state of Washington by Lewis county of the sum of one dollar, which sum shall be deposited in the general fund when received by the treasurer of the state of Washington, such treasurer is authorized and directed to certify to the governor and secretary of state that such payment has been made on the following described property presently utilized for southwest Washington fair

purposes situated in Lewis county, Washington: "Beginning at the intersection of the south line of section Seventeen (17) Township Fourteen (14) North of Range Two (2) West of W.M. with the West right-of-way line of the Somerville consent Road, and running thence North 15 degrees 20 feet East along the West line of said Road, Eleven Hundred Forty-four (1144) feet, thence North 2 degrees 33 feet West along the said west line Seventy-four and four-tenths (74.4) feet, thence west on a line parallel with the said south line of said Section Seventeen (17) Eleven Hundred Sixty-seven and two tenths (1167.2) feet to within one hundred fifty (150) feet to the Center line of the Northern Pacific Railroad, thence south 16 degrees 20 feet West on a line parallel with and one hundred fifty (150) feet distant Easterly from the Center line of the Northern Pacific Railroad Eleven Hundred and Thirty-five and seven-tenths (1135.7) feet, thence East on a line parallel with and Eighty-seven and three-tenths (87.3) feet north of the south line of said section seventeen (17) eight hundred fifty-seven (857) feet, thence south 74 degrees 40 feet East three hundred thirty (330) feet to the point of beginning, containing thirty (30) acres in Section Seventeen (17) Township Fourteen (14) North of Range Two (2) West of W.M." and the governor is thereby authorized and directed forthwith to execute and the secretary of state is authorized and directed to attest to a deed conveying said lands to Lewis county, Washington. The office of the attorney general and the commissioner of public lands shall offer any necessary assistance in carrying out such conveyance. [1973 1st ex.s. c 97 § 6.]

**Severability—1973 1st ex.s. c 97:** See note following RCW 36.90.010.

### Chapter 36.92 RCW

#### COUNTY CENTRAL SERVICES DEPARTMENT

##### Sections

36.92.010	Purpose.
36.92.020	Definitions.
36.92.030	County central services department—Created—Supervisor.
36.92.040	Central services fund.
36.92.050	Comprehensive data processing use plan—Utilization of equipment.
36.92.060	Appointment of assistants.
36.92.070	Charges for services—Duties of county treasurer.
36.92.080	Services limited to department.
36.92.900	Severability—1967 ex.s. c 103.

**36.92.010 Purpose.** The purpose of this chapter is to provide county officials of each county with a modern approach to the common problems encountered by said officers in accounting, record keeping, and problem solving, thereby effectuating economies in county government.

It is further the intent of this chapter that the constitutional autonomy of the various county officers be preserved while providing such officials with a centralized department to perform ministerial functions for them on the most modern and efficient machines available. [1967 ex.s. c 103 § 2.]

**36.92.020 Definitions.** As used in this chapter, the following words shall have the meanings ascribed herein:

(1) "Services department" shall mean the county central services department, established in accordance with the provisions of this chapter.

(2) "Board" shall mean the board of county commissioners.

(3) "Automatic data processing" or "ADP" shall mean that method of processing information using mechanical or electronic machines, guided by predetermined instructions to produce information in usable form, and shall include but not be limited to electronic accounting machines, electronic data processing machines, and computers.

(4) "Electronic accounting machines" or "EAM" shall mean that method of ADP utilizing punch cards or unit record equipment.

(5) "Electronic data processing" or "EDP" shall include that system which comprises a combination of equipment or unites to provide input of source data, storage and processing of data and output in predetermined form, including a central processing unit (CPU) or main frame.

(6) "Computer" shall mean any device that is capable of solving problems and supplying results by accepting data and performing prescribed operations. It shall include analog or digital, general purpose or special purpose computers.

(7) "Copy" or "micro-copy" shall mean photographic, photostatic, photomechanical or other copy process.

It is the intent of this chapter that the definitions contained in subsections (3) through (7) of this section shall be construed in the broadest possible interpretation in order that new and modern equipment and methods as they become available shall be included therein. [1967 ex.s. c 103 § 3.]

**36.92.030 County central services department—Created—Supervisor.** By resolution, the board of county commissioners may create a county central services department which shall be organized and function as any other department of the county. When a board creates a central services department, it shall also provide for the appointment of a supervisor to be the administrative head of such department, subject to the supervision and control of the board, and to serve at the pleasure of the board. The supervisor shall receive such salary as may be prescribed by the board. In addition, the supervisor shall be reimbursed for traveling and other actual and necessary expenses incurred by him in the performance of his official duties. [1967 ex.s. c 103 § 4.]

**36.92.040 Central services fund.** When a central services department is created, the board shall establish a central services fund for the payment of all costs of conducting those services for which such department was organized and annually budget therefor. It may make transfers into the central services fund from the current expense fund and receive funds for such purposes from other departments and recipients of such services. [1967 ex.s. c 103 § 5.]

**36.92.050 Comprehensive data processing use plan—Utilization of equipment.** Services departments created pursuant to this chapter shall initially draw a comprehensive data processing use plan. It shall establish levels of service to be performed by the department and shall establish levels of service required by using agencies. Before proceeding with purchase, lease or acquisition of the data processing equipment, the comprehensive data processing use plan shall be adopted by the board.

When established by the board, the services department may perform the service functions relating to accounting,

record keeping, and micro-copy by the utilization of automatic data processing and micro-copy equipment.

In relation to said equipment the services department shall perform any ministerial services authorized by the board and requested by the various officers and departments of the county. In this connection, it is the intent of this chapter that the services department be authorized to utilize such equipment to the highest degree consistent with the purposes of this chapter and not inconsistent with constitutional powers and duties of such officers.

The services department is also authorized to utilize such equipment for the purpose of problem solving when such problem solving is of a ministerial rather than a discretionary nature. [1967 ex.s. c 103 § 6.]

**36.92.060 Appointment of assistants.** The supervisor shall have the authority to appoint, subject to the approval of the board, such clerical and other assistants as may be required and authorized for the proper discharge of the functions of the services department. [1967 ex.s. c 103 § 7.]

**36.92.070 Charges for services—Duties of county treasurer.** The board of county commissioners shall fix the terms and charges for services rendered by the central services department pursuant to this chapter, which amounts shall be credited as income to the appropriate account within the central services fund and charged on a monthly basis against the account of the recipient for whom such services were performed. Moneys derived from the activities of the central services department shall be disbursed from the central services fund by the county treasurer by warrants on vouchers duly authorized by the board. [1967 ex.s. c 103 § 8.]

**36.92.080 Services limited to department.** When a board of county commissioners creates a central services department pursuant to RCW 36.92.030, the ministerial services to be performed by such department in connection with automatic data processing shall not thereafter be performed by any other officer or employee of said county. [1967 ex.s. c 103 § 9.]

**36.92.900 Severability—1967 ex.s. c 103.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 103 § 10.]

**Chapter 36.93 RCW**

**LOCAL GOVERNMENTAL ORGANIZATION—  
BOUNDARIES—REVIEW BOARDS**

Sections

- 36.93.010 Purpose.
- 36.93.020 Definitions.
- 36.93.030 Creation of boundary review boards in counties with populations of two hundred ten thousand or more—Creation in other counties.
- 36.93.040 Dates upon which boards in counties with populations of less than two hundred ten thousand deemed established.
- 36.93.051 Appointment of board—Members—Terms—Qualifications.

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- 36.93.061 Boards in counties with populations of less than one million—Members—Terms—Qualifications.
- 36.93.063 Selection of board members—Procedure—Commencement of term—Vacancies.
- 36.93.067 Effect of failure to make appointment.
- 36.93.070 Chairman, vice chairman, chief clerk—Powers and duties of board and chief clerk—Meetings—Hearings—Counsel—Compensation.
- 36.93.080 Expenditures—Remittance of costs to counties.
- 36.93.090 Filing notice of proposed actions with board.
- 36.93.093 Copy of notice of intention by water-sewer district to be sent officials.
- 36.93.100 Review of proposed actions by board—Procedure.
- 36.93.105 Actions not subject to review by board.
- 36.93.110 When review not necessary.
- 36.93.116 Simultaneous consideration of incorporation and annexation of territory.
- 36.93.120 Fees.
- 36.93.130 Notice of intention—Contents.
- 36.93.140 Pending actions not affected.
- 36.93.150 Review of proposed actions—Actions and determinations of board—Disapproval, effect.
- 36.93.153 Review of proposed incorporation in county with boundary review board.
- 36.93.155 Annexation approval—Other action not authorized.
- 36.93.157 Decisions to be consistent with growth management act.
- 36.93.160 Hearings—Notice—Record—Subpoenas—Decision of board—Appellate review.
- 36.93.170 Factors to be considered by board—Incorporation proceedings exempt from state environmental policy act.
- 36.93.180 Objectives of boundary review board.
- 36.93.185 Objectives of boundary review board—Water-sewer district annexations, mergers—Territory not adjacent to district.
- 36.93.190 Decision of board not to affect existing franchises, permits, codes, ordinances, etc., for ten years.
- 36.93.200 Rules and regulations—Adoption procedure.
- 36.93.210 Rules and regulations—Filing—Permanent register.
- 36.93.220 Provisions of prior laws superseded by chapter.
- 36.93.230 Power to disband boundary review board.
- 36.93.800 Application of chapter to merged special purpose districts.
- 36.93.900 Effective date—1967 c 189.
- 36.93.910 Severability—1967 c 189.

**36.93.010 Purpose.** The legislature finds that in metropolitan areas of this state, experiencing heavy population growth, increased problems arise from rapid proliferation of municipalities and haphazard extension of and competition to extend municipal boundaries. These problems affect adversely the quality and quantity and cost of municipal services furnished, the financial integrity of certain municipalities, the consistency of local regulations, and many other incidents of local government. Further, the competition among municipalities for unincorporated territory and the disorganizing effect thereof on land use, the preservation of property values and the desired objective of a consistent comprehensive land use plan for populated areas, makes it appropriate that the legislature provide a method of guiding and controlling the creation and growth of municipalities in metropolitan areas so that such problems may be avoided and that residents and businesses in those areas may rely on the logical growth of local government affecting them. [1967 c 189 § 1.]

**36.93.020 Definitions.** As used herein:

- (1) "Governmental unit" means any incorporated city or town, metropolitan municipal corporation, or any special purpose district as defined in this section.
- (2) "Special purpose district" means any water-sewer district, fire protection district, drainage improvement district, flood control zone district, irrigation district, metropolitan park district,

drainage district, or public utility district engaged in water distribution.

(3) "Board" means a boundary review board created by or pursuant to this chapter. [1999 c 153 § 44; 1979 ex.s. c 30 § 5; 1967 c 189 § 2.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**36.93.030 Creation of boundary review boards in counties with populations of two hundred ten thousand or more—Creation in other counties.** (1) There is hereby created and established in each county with a population of two hundred ten thousand or more a board to be known and designated as a "boundary review board".

(2) A boundary review board may be created and established in any other county in the following manner:

(a) The county legislative authority may, by majority vote, adopt a resolution establishing a boundary review board; or

(b) A petition seeking establishment of a boundary review board signed by qualified electors residing in the county equal in number to at least five percent of the votes cast in the county at the last county general election may be filed with the county auditor.

Upon the filing of such a petition, the county auditor shall examine the same and certify to the sufficiency of the signatures thereon. No person may withdraw his or her name from a petition after it has been filed with the auditor. Within thirty days after the filing of such petition, the county auditor shall transmit the same to the county legislative authority, together with his or her certificate of sufficiency.

After receipt of a valid petition for the establishment of a boundary review board, the county legislative authority shall submit the question of whether a boundary review board should be established to the electorate at the next county primary or county general election which occurs more than forty-five days from the date of receipt of the petition. Notice of the election shall be given as provided in \*RCW 29.27.080 and shall include a clear statement of the proposal to be submitted.

If a majority of the persons voting on the proposition shall vote in favor of the establishment of the boundary review board, such board shall thereupon be deemed established. [1991 c 363 § 91; 1969 ex.s. c 111 § 1; 1967 c 189 § 3.]

**\*Reviser's note:** RCW 29.27.080 was recodified as RCW 29A.52.350 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.52.350 was subsequently repealed by 2004 c 271 § 193.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.93.040 Dates upon which boards in counties with populations of less than two hundred ten thousand deemed established.** For the purposes of this chapter, each county with a population of less than two hundred ten thousand shall be deemed to have established a boundary review board on and after the date a proposition for establishing the same has been approved at an election as provided for in RCW 36.93.030, or on and after the date of adoption of a resolution of the county legislative authority establishing the

same as provided for in RCW 36.93.030. [1991 c 363 § 92; 1967 c 189 § 4.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.93.051 Appointment of board—Members—Terms—Qualifications.** The boundary review board in each county with a population of one million or more shall consist of eleven members chosen as follows:

(1) Three persons shall be appointed by the governor;

(2) Three persons shall be appointed by the county appointing authority;

(3) Three persons shall be appointed by the mayors of the cities and towns located within the county; and

(4) Two persons shall be appointed by the board from nominees of special districts in the county.

The governor shall designate one initial appointee to serve a term of two years, and two initial appointees to serve terms of four years, if the appointments are made in an odd-numbered year, or one initial appointee to serve a term of one year, and two initial appointees to serve terms of three years, if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of February in the year the appointment was made.

The county appointing authority shall designate one of its initial appointees to serve a term of two years, and two of its initial appointees to serve terms of four years, if the appointments are made in an odd-numbered year, or one of its initial appointees to serve a term of one year, and two of its initial appointees to serve terms of three years, if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of February in the year the appointment was made.

The mayors making the initial city and town appointments shall designate two of their initial appointees to serve terms of two years, and one of their initial appointees to serve a term of four years, if the appointments are made in an odd-numbered year, or two of their initial appointees to serve terms of one year, and one of their initial appointees to serve a term of three years, if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of February in the year the appointment was made.

The board shall make two initial appointments from the nominees of special districts, with one appointee serving a term of four years and one initial appointee serving a term of two years, if the appointments are made in an odd-numbered year, or one initial appointee serving a term of three years and one initial appointee serving a term of one year if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of March in the year in which the appointment is made.

After the initial appointments, all appointees shall serve four-year terms.

No appointee may be an official or employee of the county or a governmental unit in the county, or a consultant or advisor on a contractual or regular retained basis of the county, any governmental unit in the county, or any agency or association thereof. [1991 c 363 § 93; 1989 c 84 § 17.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.93.061 Boards in counties with populations of less than one million—Members—Terms—Qualifications.** The boundary review board in each county with a population of less than one million shall consist of five members chosen as follows:

- (1) Two persons shall be appointed by the governor;
- (2) One person shall be appointed by the county appointing authority;
- (3) One person shall be appointed by the mayors of the cities and towns located within the county; and
- (4) One person shall be appointed by the board from nominees of special districts in the county.

The governor shall designate one initial appointee to serve a term of two years, and one initial appointee to serve a term of four years, if the appointments are made in an odd-numbered year, or one initial appointee to serve a term of one year, and one initial appointee to serve a term of three years, if the appointments are made in an even-numbered year, with the length of a term being calculated from the first day of February in the year that the appointment was made.

The initial appointee of the county appointing authority shall serve a term of two years, if the appointment is made in an odd-numbered year, or a term of one year, if the appointment is made in an even-numbered year. The initial appointee by the mayors shall serve a term of four years, if the appointment is made in an odd-numbered year, or a term of three years, if the appointment is made in an even-numbered year. The length of the term shall be calculated from the first day in February in the year the appointment was made.

The board shall make one initial appointment from the nominees of special districts to serve a term of two years if the appointment is made in an odd-numbered year, or a term of one year if the appointment is made in an even-numbered year, with the length of the term being calculated from the first day of March in the year in which the appointment is made.

After the initial appointments, all appointees shall serve four-year terms.

No appointee may be an official or employee of the county or a governmental unit in the county, or a consultant or advisor on a contractual or regular retained basis of the county, any governmental unit in the county, or any agency or association thereof. [1991 c 363 § 94; 1989 c 84 § 18.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.93.063 Selection of board members—Procedure—Commencement of term—Vacancies.** The executive of the county shall make the appointments under RCW 36.93.051 and 36.93.061 for the county, if one exists, or otherwise the county legislative authority shall make the appointments for the county.

The mayors of all cities and towns in the county shall meet on or before the last day of January in each odd-numbered year to make such appointments for terms to commence on the first day of February in that year. The date of the meeting shall be called by the mayor of the largest city or town in the county, and the mayor of the largest city or town in the county who attends the meeting shall preside over the meeting. Selection of each appointee shall be by simple majority vote of those mayors who attend the meeting.

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Any special district in the county may nominate a person to be appointed to the board on or before the last day of January in each odd-numbered year that the term for this position expires. The board shall make its appointment of a nominee or nominees from the special districts during the month of February following the date by which such nominations are required to be made.

The county appointing authority and the mayors of cities and towns within the county shall make their initial appointments for newly created boards within sixty days of the creation of the board or shall make sufficient additional appointments to increase a five-member board to an eleven-member board within sixty days of the date the county obtains a population of one million or more. The board shall make its initial appointment or appointments of board members from the nominees of special districts located within the county within ninety days of the creation of the board or shall make an additional appointment of a board member from the nominees of special districts located within the county within ninety days of the date the county obtains a population of one million or more.

The term of office for all appointees other than the appointee from the special districts shall commence on the first day of February in the year in which the term is to commence. The term of office for the appointee from nominees of special districts shall commence on the first day of March in the year in which the term is to commence.

Vacancies on the board shall be filled by appointment of a person to serve the remainder of the term in the same manner that the person whose position is vacant was filled. [1991 c 363 § 95; 1989 c 84 § 19.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.93.067 Effect of failure to make appointment.** Whenever appointments under RCW 36.93.051 through \*36.93.065 have not been made by the appointing authority, the size of the board shall be considered to be reduced by one member for each position that remains vacant or unappointed. [1989 c 84 § 21.]

\***Reviser's note:** RCW 36.93.065 was repealed by 1999 c 124 § 1.

**36.93.070 Chairman, vice chairman, chief clerk—Powers and duties of board and chief clerk—Meetings—Hearings—Counsel—Compensation.** The members of each boundary review board shall elect from its members a chairman, vice chairman, and shall employ a nonmember as chief clerk, who shall be the secretary of the board. The board shall determine its own rules and order of business and shall provide by resolution for the time and manner of holding all regular or special meetings: PROVIDED, That all meetings shall be subject to chapter 42.30 RCW. The board shall keep a journal of its proceedings which shall be a public record. A majority of all the members shall constitute a quorum for the transaction of business.

The chief clerk of the board shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas to any public officer or employee ordering him to testify before the board and produce public records, papers, books or documents. The chief clerk may invoke the

aid of any court of competent jurisdiction to carry out such powers.

The board by rule may provide for hearings by panels of members consisting of not less than five board members, the number of hearing panels and members thereof, and for the impartial selection of panel members. A majority of a panel shall constitute a quorum thereof.

At the request of the board, the state attorney general, or at the board's option, the county prosecuting attorney, shall provide counsel for the board.

The planning departments of the county, other counties, and any city, and any state or regional planning agency shall furnish such information to the board at its request as may be reasonably necessary for the performance of its duties.

Each member of the board shall be compensated from the county current expense fund at the rate of fifty dollars per day, or a major portion thereof, for time actually devoted to the work of the boundary review board. Each board of county commissioners shall provide such funds as shall be necessary to pay the salaries of the members and staff, and such other expenses as shall be reasonably necessary. [1997 c 77 § 1; 1987 c 477 § 1; 1967 c 189 § 7.]

**36.93.080 Expenditures—Remittance of costs to counties.** Expenditures by the board shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. The department of community, trade, and economic development shall on a quarterly basis remit to each county one-half of the actual costs incurred by the county for the operation of the boundary review board within individual counties as provided for in this chapter. However, in the event no funds are appropriated to the said agency for this purpose, this shall not in any way affect the operation of the boundary review board. [1995 c 399 § 44; 1985 c 6 § 7; 1969 ex.s. c 111 § 4; 1967 c 189 § 8.]

**36.93.090 Filing notice of proposed actions with board.** Whenever any of the following described actions are proposed in a county in which a board has been established, the initiators of the action shall file within one hundred eighty days a notice of intention with the board: PROVIDED, That when the initiator is the legislative body of a governmental unit, the notice of intention may be filed immediately following the body's first acceptance or approval of the action. The board may review any such proposed actions pertaining to:

(1) The: (a) Creation, incorporation, or change in the boundary, other than a consolidation, of any city, town, or special purpose district; (b) consolidation of special purpose districts, but not including consolidation of cities and towns; or (c) dissolution or disincorporation of any city, town, or special purpose district, except that a board may not review the dissolution or disincorporation of a special purpose district which was dissolved or disincorporated pursuant to the provisions of chapter 36.96 RCW: PROVIDED, That the change in the boundary of a city or town arising from the annexation of contiguous city or town owned property held for a public purpose shall be exempted from the requirements of this section; or

(2) The assumption by any city or town of all or part of the assets, facilities, or indebtedness of a special purpose district which lies partially within such city or town; or

(3) The establishment of or change in the boundaries of a mutual water and sewer system or separate sewer system by a water-sewer district pursuant to RCW 57.08.065 or \*chapter 57.40 RCW; or

(4) The extension of permanent water or sewer service outside of its existing service area by a city, town, or special purpose district. The service area of a city, town, or special purpose district shall include all of the area within its corporate boundaries plus, (a) for extensions of water service, the area outside of the corporate boundaries which it is designated to serve pursuant to a coordinated water system plan approved in accordance with RCW 70.116.050; and (b) for extensions of sewer service, the area outside of the corporate boundaries which it is designated to serve pursuant to a comprehensive sewerage plan approved in accordance with chapter 36.94 RCW and RCW 90.48.110. [1996 c 230 § 1608; 1995 c 131 § 1; 1987 c 477 § 2; 1985 c 281 § 28; 1982 c 10 § 7. Prior: 1981 c 332 § 9; 1981 c 45 § 2; 1979 ex.s. c 5 § 12; 1971 ex.s. c 127 § 1; 1969 ex.s. c 111 § 5; 1967 c 189 § 9.]

**\*Reviser's note:** Chapter 57.40 RCW was repealed and/or decodified in its entirety.

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**Effective date—1995 c 131:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 24, 1995]." [1995 c 131 § 2.]

**Severability—1985 c 281:** See RCW 35.10.905.

**Severability—1982 c 10:** See note following RCW 6.13.080.

**Severability—1981 c 332:** See note following RCW 35.13.165.

**Legislative declaration—"District" defined—1981 c 45:** "It is declared to be the public policy of the state of Washington to provide for the orderly growth and development of those areas of the state requiring public water service or sewer service and to secure the health and welfare of the people residing therein. The growth of urban population and the movement of people into suburban areas has required the performance of such services by water districts and sewer districts and the development of such districts has created problems of conflicting jurisdiction and potential double taxation.

It is the purpose of this act to reduce the duplication of service and the conflict among jurisdictions by establishing the principle that the first in time is the first in right where districts overlap and by encouraging the consolidation of districts. It is also the purpose of this act to prevent the imposition of double taxation upon the same property by establishing a general classification of property which will be exempt from property taxation by a district when such property is within the jurisdiction of an established district duly authorized to provide service of like character.

Unless the context clearly requires otherwise, as used in this act, the term "district" means either a water district organized under Title 57 RCW or a sewer district organized under Title 56 RCW or a merged water and sewer district organized pursuant to chapter 57.40 or 56.36 RCW." [1981 c 45 § 1.]

**Severability—1981 c 45:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 45 § 14.]

**Severability—1979 ex.s. c 5:** See RCW 36.96.920.

*Consolidation of cities and towns—Role of boundary review board: RCW 35.10.450.*

**36.93.093 Copy of notice of intention by water-sewer district to be sent officials.** Whenever a water-sewer district files with the board a notice of intention as required by RCW 36.93.090, the board shall send a copy of such notice of inten-

tion to the legislative authority of the county wherein such action is proposed to be taken and one copy to the state department of ecology. [1999 c 153 § 45; 1971 ex.s. c 127 § 2.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**36.93.100 Review of proposed actions by board—Procedure.** The board shall review and approve, disapprove, or modify any of the actions set forth in RCW 36.93.090 when any of the following shall occur within forty-five days of the filing of a notice of intention:

(1) Three members of a five-member boundary review board or five members of a boundary review board in a county with a population of one million or more files a request for review: PROVIDED, That the members of the boundary review board shall not be authorized to file a request for review of the following actions:

(a) The incorporation of any special district or change in the boundary of any city, town, or special purpose district;

(b) The extension of permanent water service outside of its existing corporate boundaries by a city, town, or special purpose district if (i) the extension is through the installation of water mains of six inches or less in diameter or (ii) the county legislative authority for the county in which the proposed extension is to be built is required or chooses to plan under RCW 36.70A.040 and has by a majority vote waived the authority of the board to initiate review of all other extensions; or

(c) The extension of permanent sewer service outside of its existing corporate boundaries by a city, town, or special purpose district if (i) the extension is through the installation of sewer mains of eight inches or less in diameter or (ii) the county legislative authority for the county in which the proposed extension is to be built is required or chooses to plan under RCW 36.70A.040 and has by a majority vote waived the authority of the board to initiate review of all other extensions;

(2) Any governmental unit affected, including the governmental unit for which the boundary change or extension of permanent water or sewer service is proposed, or the county within which the area of the proposed action is located, files a request for review of the specific action;

(3) A petition requesting review is filed and is signed by:

(a) Five percent of the registered voters residing within the area which is being considered for the proposed action (as determined by the boundary review board in its discretion subject to immediate review by writ of certiorari to the superior court); or

(b) An owner or owners of property consisting of five percent of the assessed valuation within such area;

(4) The majority of the members of boundary review boards concur with a request for review when a petition requesting the review is filed by five percent of the registered voters who deem themselves affected by the action and reside within one-quarter mile of the proposed action but not within the jurisdiction proposing the action.

If a period of forty-five days shall elapse without the board's jurisdiction having been invoked as set forth in this section, the proposed action shall be deemed approved.

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If a review of a proposal is requested, the board shall make a finding as prescribed in RCW 36.93.150 within one hundred twenty days after the filing of such a request for review. If this period of one hundred twenty days shall elapse without the board making a finding as prescribed in RCW 36.93.150, the proposal shall be deemed approved unless the board and the person who submitted the proposal agree to an extension of the one hundred twenty day period. [1994 c 216 § 13; 1992 c 162 § 1; 1991 c 363 § 96; 1989 c 84 § 3; 1987 c 477 § 3; 1983 c 76 § 1; 1982 c 220 § 1; 1967 c 189 § 10.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1982 c 220:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 220 § 9.]

### **36.93.105 Actions not subject to review by board.**

The following actions shall not be subject to potential review by a boundary review board:

(1) Annexations of territory to a water-sewer district pursuant to RCW 36.94.410 through 36.94.440;

(2) Revisions of city or town boundaries pursuant to RCW 35.21.790 or 35A.21.210;

(3) Adjustments to city or town boundaries pursuant to RCW 35.13.340; and

(4) Adjustments to city and town boundaries pursuant to RCW 35.13.300 through 35.13.330. [1999 c 153 § 46; 1989 c 84 § 4; 1984 c 147 § 5.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**36.93.110 When review not necessary.** Where an area proposed for annexation is less than ten acres and less than two million dollars in assessed valuation, the chairman of the review board may by written statement declare that review by the board is not necessary for the protection of the interest of the various parties, in which case the board shall not review such annexation. [1987 c 477 § 4; 1973 1st ex.s. c 195 § 42; 1967 c 189 § 11.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

### **36.93.116 Simultaneous consideration of incorporation and annexation of territory.**

A boundary review board may simultaneously consider the proposed incorporation of a city or town, and the proposed annexation of a portion of the territory included in the proposed incorporation, if the resolution or petition initiating the annexation is adopted or filed ninety or fewer days after the petition proposing the incorporation was filed. [1994 c 216 § 9.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**36.93.120 Fees.** A fee of fifty dollars shall be paid by all initiators and in addition if the jurisdiction of the review board is invoked pursuant to RCW 36.93.100, the person or entity seeking review, except for the boundary review board itself, shall pay to the county treasurer and place in the county current expense fund the fee of two hundred dollars. [1987 c 477 § 5; 1969 ex.s. c 111 § 6; 1967 c 189 § 12.]

**36.93.130 Notice of intention—Contents.** The notice of intention shall contain the following information:

- (1) The nature of the action sought;
- (2) A brief statement of the reasons for the proposed action;
- (3) The legal description of the boundaries proposed to be created, abolished or changed by such action: PROVIDED, That the legal description may be altered, with concurrence of the initiators of the proposed action, if a person designated by the county legislative authority as one who has expertise in legal descriptions makes a determination that the legal description is erroneous; and
- (4) A county assessor's map on which the boundaries proposed to be created, abolished or changed by such action are designated: PROVIDED, That at the discretion of the boundary review board a map other than the county assessor's map may be accepted. [1987 c 477 § 6; 1969 ex.s. c 111 § 7; 1967 c 189 § 13.]

**36.93.140 Pending actions not affected.** Actions described in RCW 36.93.090 which are pending July 1, 1967, or actions in counties with populations of less than two hundred ten thousand which are pending on the date of the creation of a boundary review board therein, shall not be affected by the provisions of this chapter. Actions shall be deemed pending on and after the filing of sufficient petitions initiating the same with the appropriate public officer, or the performance of an official act initiating the same. [1991 c 363 § 97; 1967 c 189 § 14.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.93.150 Review of proposed actions—Actions and determinations of board—Disapproval, effect.** The board, upon review of any proposed action, shall take such of the following actions as it deems necessary to best carry out the intent of this chapter:

- (1) Approve the proposal as submitted.
- (2) Subject to RCW 35.02.170, modify the proposal by adjusting boundaries to add or delete territory. However, any proposal for annexation of territory to a town shall be subject to RCW 35.21.010 and the board shall not add additional territory, the amount of which is greater than that included in the original proposal. Any modifications shall not interfere with the authority of a city, town, or special purpose district to require or not require preannexation agreements, covenants, or petitions. A board shall not modify the proposed incorporation of a city with an estimated population of seven thousand five hundred or more by removing territory from the proposal, or adding territory to the proposal, that constitutes ten percent or more of the total area included within the proposal before the board. However, a board shall remove territory in the proposed incorporation that is located outside of an urban growth area or is annexed by a city or town, and may remove territory in the proposed incorporation if a petition or resolution proposing the annexation is filed or adopted that has priority over the proposed incorporation, before the area is established that is subject to this ten percent restriction on removing or adding territory. A board shall not modify the proposed incorporation of a city with a population of seven thousand five hundred or more to reduce the territory in such

a manner as to reduce the population below seven thousand five hundred.

(3) Determine a division of assets and liabilities between two or more governmental units where relevant.

(4) Determine whether, or the extent to which, functions of a special purpose district are to be assumed by an incorporated city or town, metropolitan municipal corporation, or another existing special purpose district.

(5) Disapprove the proposal except that the board shall not have jurisdiction: (a) To disapprove the dissolution or disincorporation of a special purpose district which is not providing services but shall have jurisdiction over the determination of a division of the assets and liabilities of a dissolved or disincorporated special purpose district; (b) over the division of assets and liabilities of a special purpose district that is dissolved or disincorporated pursuant to chapter 36.96 RCW; nor (c) to disapprove the incorporation of a city with an estimated population of seven thousand five hundred or more, but the board may recommend against the proposed incorporation of a city with such an estimated population.

Unless the board disapproves a proposal, it shall be presented under the appropriate statute for approval of a public body and, if required, a vote of the people. A proposal that has been modified shall be presented under the appropriate statute for approval of a public body and if required, a vote of the people. If a proposal, other than that for a city, town, or special purpose district annexation, after modification does not contain enough signatures of persons within the modified area, as are required by law, then the initiating party, parties or governmental unit has thirty days after the modification decision to secure enough signatures to satisfy the legal requirement. If the signatures cannot be secured then the proposal may be submitted to a vote of the people, as required by law.

The addition or deletion of property by the board shall not invalidate a petition which had previously satisfied the sufficiency of signature provisions of RCW 35.13.130 or 35A.14.120. When the board, after due proceedings held, disapproves a proposed action, such proposed action shall be unavailable, the proposing agency shall be without power to initiate the same or substantially the same as determined by the board, and any succeeding acts intended to or tending to effectuate that action shall be void, but such action may be reinitiated after a period of twelve months from date of disapproval and shall again be subject to the same consideration.

The board shall not modify or deny a proposed action unless there is evidence on the record to support a conclusion that the action is inconsistent with one or more of the objectives under RCW 36.93.180. Every such determination to modify or deny a proposed action shall be made in writing pursuant to a motion, and shall be supported by appropriate written findings and conclusions, based on the record. [1994 c 216 § 15; 1990 c 273 § 1; 1987 c 477 § 7; 1979 ex.s. c 5 § 13; 1975 1st ex.s. c 220 § 10; 1969 ex.s. c 111 § 8; 1967 c 189 § 15.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**Severability—1990 c 273:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 273 § 3.]

**Severability—1979 ex.s. c 5:** See RCW 36.96.920.

**Legislative finding, intent—1975 1st ex.s. c 220:** See note following RCW 35.02.170.

**36.93.153 Review of proposed incorporation in county with boundary review board.** The proposed incorporation of any city or town that includes territory located in a county in which a boundary review board exists shall be reviewed by the boundary review board and action taken as described under RCW 36.93.150. [1994 c 216 § 10.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**36.93.155 Annexation approval—Other action not authorized.** Boundary review board approval, or modification and approval, of a proposed annexation by a city, town, or special purpose district shall authorize annexation as approved and shall not authorize any other annexation action. [1989 c 84 § 16.]

**36.93.157 Decisions to be consistent with growth management act.** The decisions of a boundary review board located in a county that is required or chooses to plan under RCW 36.70A.040 must be consistent with RCW 36.70A.020, 36.70A.110, and 36.70A.210. [1992 c 162 § 2.]

**36.93.160 Hearings—Notice—Record—Subpoenas—Decision of board—Appellate review.** (1) When the jurisdiction of the boundary review board has been invoked, the board shall set the date, time and place for a public hearing on the proposal. The board shall give at least thirty days' advance written notice of the date, time and place of the hearing to the governing body of each governmental unit having jurisdiction within the boundaries of the territory proposed to be annexed, formed, incorporated, disincorporated, dissolved or consolidated, or within the boundaries of a special district whose assets and facilities are proposed to be assumed by a city or town, and to the governing body of each city within three miles of the exterior boundaries of the area and to the proponent of the change. Notice shall also be given by publication in any newspaper of general circulation in the area of the proposed boundary change at least three times, the last publication of which shall be not less than five days prior to the date set for the public hearing. Notice shall also be posted in ten public places in the area affected for five days when the area is ten acres or more. When the area affected is less than ten acres, five notices shall be posted in five public places for five days. Notice as provided in this subsection shall include any territory which the board has determined to consider adding in accordance with RCW 36.93.150(2).

(2) A verbatim record shall be made of all testimony presented at the hearing and upon request and payment of the reasonable costs thereof, a copy of the transcript of the testimony shall be provided to any person or governmental unit.

(3) The chairman upon majority vote of the board or a panel may direct the chief clerk of the boundary review board to issue subpoenas to any public officer to testify, and to compel the production by him of any records, books, documents, public records or public papers.

(4) Within forty days after the conclusion of the final hearing on the proposal, the board shall file its written decision, setting forth the reasons therefor, with the board of county commissioners and the clerk of each governmental

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unit directly affected. The written decision shall indicate whether the proposed change is approved, rejected or modified and, if modified, the terms of the modification. The written decision need not include specific data on every factor required to be considered by the board, but shall indicate that all standards were given consideration. Dissenting members of the board shall have the right to have their written dissents included as part of the decision.

(5) Unanimous decisions of the hearing panel or a decision of a majority of the members of the board shall constitute the decision of the board and shall not be appealable to the whole board. Any other decision shall be appealable to the entire board within ten days. Appeals shall be on the record, which shall be furnished by the appellant, but the board may, in its sole discretion, permit the introduction of additional evidence and argument. Decisions shall be final and conclusive unless within thirty days from the date of the action a governmental unit affected by the decision or any person owning real property or residing in the area affected by the decision files in the superior court a notice of appeal.

The filing of the notice of appeal within the time limit shall stay the effective date of the decision of the board until such time as the appeal shall have been adjudicated or withdrawn. On appeal the superior court shall not take any evidence other than that contained in the record of the hearing before the board.

(6) The superior court may affirm the decision of the board or remand the case for further proceedings; or it may reverse the decision if any substantial rights may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions, or
- (b) In excess of the statutory authority or jurisdiction of the board, or
- (c) Made upon unlawful procedure, or
- (d) Affected by other error of law, or
- (e) Unsupported by material and substantial evidence in view of the entire record as submitted, or
- (f) Clearly erroneous.

An aggrieved party may seek appellate review of any final judgment of the superior court in the manner provided by law as in other civil cases. [1994 c 216 § 16; 1988 c 202 § 40; 1987 c 477 § 8; 1971 c 81 § 97; 1969 ex.s. c 111 § 9; 1967 c 189 § 16.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**Severability—1988 c 202:** See note following RCW 2.24.050.

*General corporate powers—Towns, restrictions as to area:* RCW 35.21.010.

**36.93.170 Factors to be considered by board—Incorporation proceedings exempt from state environmental policy act.** In reaching a decision on a proposal or an alternative, the board shall consider the factors affecting such proposal, which shall include, but not be limited to the following:

- (1) Population and territory; population density; land area and land uses; comprehensive plans and zoning, as adopted under chapter 35.63, 35A.63, or 36.70 RCW; comprehensive plans and development regulations adopted under chapter 36.70A RCW; applicable service agreements entered into under chapter 36.115 or 39.34 RCW; applicable interlo-

cal annexation agreements between a county and its cities; per capita assessed valuation; topography, natural boundaries and drainage basins, proximity to other populated areas; the existence and preservation of prime agricultural soils and productive agricultural uses; the likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years; location and most desirable future location of community facilities;

(2) Municipal services; need for municipal services; effect of ordinances, governmental codes, regulations and resolutions on existing uses; present cost and adequacy of governmental services and controls in area; prospects of governmental services from other sources; probable future needs for such services and controls; probable effect of proposal or alternative on cost and adequacy of services and controls in area and adjacent area; the effect on the finances, debt structure, and contractual obligations and rights of all affected governmental units; and

(3) The effect of the proposal or alternative on adjacent areas, on mutual economic and social interests, and on the local governmental structure of the county.

The provisions of chapter 43.21C RCW, State Environmental Policy, shall not apply to incorporation proceedings covered by chapter 35.02 RCW. [1997 c 429 § 39; 1989 c 84 § 5; 1986 c 234 § 33; 1982 c 220 § 2; 1979 ex.s. c 142 § 1; 1967 c 189 § 17.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Severability—1982 c 220:** See note following RCW 36.93.100.

*Incorporation proceedings exempt from state environmental policy act: RCW 43.21C.220.*

**36.93.180 Objectives of boundary review board.** The decisions of the boundary review board shall attempt to achieve the following objectives:

(1) Preservation of natural neighborhoods and communities;

(2) Use of physical boundaries, including but not limited to bodies of water, highways, and land contours;

(3) Creation and preservation of logical service areas;

(4) Prevention of abnormally irregular boundaries;

(5) Discouragement of multiple incorporations of small cities and encouragement of incorporation of cities in excess of ten thousand population in heavily populated urban areas;

(6) Dissolution of inactive special purpose districts;

(7) Adjustment of impractical boundaries;

(8) Incorporation as cities or towns or annexation to cities or towns of unincorporated areas which are urban in character; and

(9) Protection of agricultural and rural lands which are designated for long term productive agricultural and resource use by a comprehensive plan adopted by the county legislative authority. [1989 c 84 § 6; 1981 c 332 § 10; 1979 ex.s. c 142 § 2; 1967 c 189 § 18.]

**Severability—1981 c 332:** See note following RCW 35.13.165.

**36.93.185 Objectives of boundary review board—Water-sewer district annexations, mergers—Territory not adjacent to district.** The proposal by a water-sewer district to annex territory that is not adjacent to the district shall not be deemed to be violative of the objectives of a boundary

review board solely due to the fact that the territory is not adjacent to the water-sewer district. The proposed consolidation or merger of two or more water-sewer districts that are not adjacent to each other shall not be deemed to be violative of the objectives of a boundary review board solely due to the fact that the districts are not adjacent. [1999 c 153 § 47; 1989 c 308 § 13.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**36.93.190 Decision of board not to affect existing franchises, permits, codes, ordinances, etc., for ten years.**

For a period of ten years from the date of the final decision, no proceeding, approval, action, or decision on a proposal or an alternative shall be deemed to cancel any franchise or permit theretofore granted by the authorities governing the territory to be annexed, nor shall it be deemed to supersede the application as to any territory to be annexed, of such construction codes and ordinances (including but not limited to fire, electrical, and plumbing codes and ordinances) as shall have been adopted by the authorities governing the territory to be annexed and in force at the time of the decision. [1967 c 189 § 19.]

**36.93.200 Rules and regulations—Adoption procedure.**

Each review board shall adopt rules governing the formal and informal procedures prescribed or authorized by this chapter. Such rules may state the qualifications of persons for practice before the board. Such rules shall also include rules of practice before the board, together with forms and instructions.

To assist interested persons dealing with it, each board shall so far as deemed practicable supplement its rules with descriptive statements of its procedures.

Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the board shall file notice thereof with the clerk of the court of the county in which the board is located. So far as practicable, the board shall also publish or otherwise circulate notice of its intended action and afford interested persons opportunity to submit data or views either orally or in writing. Such notice shall include (1) a statement of the time, place, and nature of public rule-making proceedings, (2) reference to the authority under which the rule is proposed, and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

This paragraph shall not apply to interpretative rules, general statements of policy, or rules of internal board organization, procedure or practice. [1967 c 189 § 20.]

**36.93.210 Rules and regulations—Filing—Permanent register.**

Each board shall file forthwith with the clerk of the court a certified copy of all rules and regulations adopted. The clerk shall keep a permanent register of such rules open to public inspection. [1967 c 189 § 21.]

**36.93.220 Provisions of prior laws superseded by chapter.**

Whenever a review board has been created pursuant to the terms of this chapter, the provisions of law relating to city annexation review boards set forth in chapter 35.13

RCW and the powers granted to the boards of county commissioners to alter boundaries of proposed annexations or incorporations shall not be applicable. [1967 c 189 § 22.]

### 36.93.230 Power to disband boundary review board.

When a county and the cities and towns within the county have adopted a comprehensive plan and consistent development regulations pursuant to the provisions of chapter 36.70A RCW, the county may, at the discretion of the county legislative authority, disband the boundary review board in that county. [1991 sp.s. c 32 § 22.]

**Section headings not law—1991 sp.s. c 32:** See RCW 36.70A.902.

**36.93.800 Application of chapter to merged special purpose districts.** This chapter does not apply to the merger of irrigation districts authorized under RCW 87.03.530(2) and 87.03.845 through 87.03.855 or to the merger of a drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district into an irrigation district authorized by RCW 87.03.720 through 87.03.745 and 85.08.830 through 85.08.890. [1996 c 313 § 2; 1993 c 235 § 10.]

**36.93.900 Effective date—1967 c 189.** The effective date of this chapter is July 1, 1967. [1967 c 189 § 24.]

**36.93.910 Severability—1967 c 189.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 c 189 § 23.]

## Chapter 36.94 RCW

### SEWERAGE, WATER, AND DRAINAGE SYSTEMS

#### Sections

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*Assessments and charges against state lands: Chapter 79.44 RCW.*

*Deferral of special assessments: Chapter 84.38 RCW.*

*Storm water control facilities: RCW 36.89.080 through 36.89.110.*

*Water-sewer district activities to be approved—Criteria for approval by county legislative authority: RCW 57.02.040.*

**36.94.010 Definitions.** As used in this chapter:

(1) A "system of sewerage" means and may include any or all of the following:

(a) Sanitary sewage collection, treatment, and/or disposal facilities and services, including without limitation on-site or off-site sanitary sewerage facilities, inspection services and maintenance services for private or public on-site systems, or any other means of sewage treatment and disposal approved by the county;

(b) Combined sanitary sewage disposal and storm or surface water drains and facilities;

(c) Storm or surface water drains, channels, and facilities;

(d) Outfalls for storm drainage or sanitary sewage and works, plants, and facilities for storm drainage or sanitary sewage treatment and disposal, and rights and interests in property relating to the system;

(e) Combined water and sewerage systems;

(f) Point and nonpoint water pollution monitoring programs that are directly related to the sewerage facilities and programs operated by a county;

(g) Public restroom and sanitary facilities;

(h) The facilities and services authorized in RCW 36.94.020; and

(i) Any combination of or part of any or all of such facilities.

(2) A "system of water" means and includes:

(a) A water distribution system, including dams, reservoirs, aqueducts, plants, pumping stations, transmission and lateral distribution lines and other facilities for distribution of water;

(b) A combined water and sewerage system;

(c) Any combination of or any part of any or all of such facilities.

(3) A "sewerage and/or water general plan" means a general plan for a system of sewerage and/or water for the county which shall be an element of the comprehensive plan established by the county pursuant to RCW 36.70.350(6) and/or chapter 35.63 RCW, if there is such a comprehensive plan.

(a) A sewerage general plan shall include the general location and description of treatment and disposal facilities, trunk and interceptor sewers, pumping stations, monitoring and control facilities, channels, local service areas and a general description of the collection system to serve those areas, a description of on-site sanitary sewerage system inspection services and maintenance services, and other facilities and services as may be required to provide a functional and implementable plan, including preliminary engineering to assure feasibility. The plan may also include a description of the regulations deemed appropriate to carrying out surface drainage plans.

(b) A water general plan shall include the general location and description of water resources to be utilized, wells, treatment facilities, transmission lines, storage reservoirs, pumping stations, and monitoring and control facilities as may be required to provide a functional and implementable plan.

(c) Water and/or sewerage general plans shall include preliminary engineering in adequate detail to assure technical feasibility and, to the extent then known, shall further discuss the methods of distributing the cost and expense of the system and shall indicate the economic feasibility of plan implementation. The plans may also specify local or lateral facilities and services. The sewerage and/or water general plan does not mean the final engineering construction or financing plans for the system.

(4) "Municipal corporation" means and includes any city, town, metropolitan municipal corporation, any public utility district which operates and maintains a sewer or water system, any sewer, water, diking, or drainage district, any diking, drainage, and sewerage improvement district, and any irrigation district.

(5) A "private utility" means and includes all utilities, both public and private, which provide sewerage and/or water service and which are not municipal corporations within the definition of this chapter. The ownership of a private utility may be in a corporation, nonprofit or for profit, in a cooperative association, in a mutual organization, or in individuals.

(6) "Board" means one or more boards of county commissioners and/or the legislative authority of a home rule charter county. [1997 c 447 § 10; 1981 c 313 § 14; 1979 ex.s. c 30 § 6; 1971 ex.s. c 96 § 1; 1967 c 72 § 1.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**Severability—1981 c 313:** See note following RCW 36.94.020.

**Construction—1971 ex.s. c 96:** "This 1971 amendatory act shall apply to any existing and future sewerage and/or water plans or amendments thereto and implementations thereof and shall not be deemed to be prospective only." [1971 ex.s. c 96 § 12.]

**Severability—1971 ex.s. c 96:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 96 § 13.]

**36.94.020 Purpose—Powers.** The construction, operation, and maintenance of a system of sewerage and/or water is a county purpose. Subject to the provisions of this chapter, every county has the power, individually or in conjunction with another county or counties to adopt, provide for, accept, establish, condemn, purchase, construct, add to, operate, and maintain a system or systems of sanitary and storm sewers, including outfalls, interceptors, plants, and facilities and services necessary for sewerage treatment and disposal, and/or system or systems of water supply within all or a portion of the county. However, counties shall not have power to condemn sewerage and/or water systems of any municipal corporation or private utility.

Such county or counties shall have the authority to control, regulate, operate, and manage such system or systems and to provide funds therefor by general obligation bonds, revenue bonds, local improvement district bonds, utility local improvement district or local improvement district assessments, and in any other lawful fiscal manner. Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement

of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

A county shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using county employees unless the on-site system is connected by a publicly owned collection system to the county's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of a state or local health officer to carry out their responsibilities under any other applicable law.

A county may, as part of a system of sewerage established under this chapter, provide for, finance, and operate any of the facilities and services and may exercise the powers expressly authorized for county storm water, flood control, pollution prevention, and drainage services and activities under chapters 36.89, 86.12, 86.13, and 86.15 RCW. A county also may provide for, finance, and operate the facilities and services and may exercise any of the powers authorized for aquifer protection areas under chapter 36.36 RCW; for lake management districts under chapter 36.61 RCW; for diking districts, and diking, drainage, and sewerage improvement districts under chapters 85.05, 85.08, 85.15, 85.16, and 85.18 RCW; and for shellfish protection districts under chapter 90.72 RCW. However, if a county by reference to any of those statutes assumes as part of its system of sewerage any powers granted to such areas or districts and not otherwise available to a county under this chapter, then (1) the procedures and restrictions applicable to those areas or districts apply to the county's exercise of those powers, and (2) the county may not simultaneously impose rates and charges under this chapter and under the statutes authorizing such areas or districts for substantially the same facilities and services, but must instead impose uniform rates and charges consistent with RCW 36.94.140. By agreement with such an area or district that is not part of a county's system of sewerage, a county may operate that area's or district's services or facilities, but a county may not dissolve any existing area or district except in accordance with any applicable provisions of the statute under which that area or district was created. [1997 c 447 § 11; 1981 c 313 § 1; 1967 c 72 § 2.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**Severability—1981 c 313:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 313 § 23.]

**36.94.030 Adoption of sewerage and/or water general plan as element of comprehensive plan.** Whenever the

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county legislative authority deems it advisable and necessary for the public health and welfare of the inhabitants of the county to establish, purchase, acquire, and construct a system of sewerage and/or water, or make any additions and betterments thereto, or extensions thereof, the board shall adopt a sewerage and/or water general plan for a system of sewerage and/or water for all or a portion of the county as deemed necessary by the board. If the county has adopted a comprehensive plan for a physical development of the county pursuant to chapter 36.70 RCW and/or chapter 35.63 RCW, then the sewerage and/or water general plan shall be adopted as an element of that comprehensive plan pursuant to the applicable statute. [1981 c 313 § 15; 1967 c 72 § 3.]

**Severability—1981 c 313:** See note following RCW 36.94.020.

**36.94.040 Incorporation of provisions of comprehensive plan in general plan.** The sewerage and/or water general plan must incorporate the provisions of existing comprehensive plans relating to sewerage and water systems of cities, towns, municipalities, and private utilities, to the extent they have been implemented. [1990 1st ex.s. c 17 § 33; 1967 c 72 § 4.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**36.94.050 Review committee—Composition—Submission of plan or amendment to.** Prior to the adoption of or amendment of the sewerage and/or water general plan, the county legislative authority (or authorities) shall submit the plan or amendment to a review committee. The review committee shall consist of:

(1) A representative of each city with a population of ten thousand or more within or adjoining the area selected by the mayor thereof (if there are no such cities within the plan area, then one representative chosen by the mayor of the city with the largest population within the plan area);

(2) One representative chosen at large by a majority vote of the executive officers of the other cities or towns within or adjoining the area;

(3) A representative chosen by the executive officer or the chair of the board, as the case may be, of each of the other municipal corporations and private utilities serving one thousand or more sewer and/or water customers located within the area;

(4) One representative chosen at large by a majority vote of the executive officers and chairs of the boards, as the case may be, of the other remaining municipal corporations within the area;

(5) A representative of each county legislative authority within the planned area, selected by the chair of each board or county executive, as the case may be; and

(6) In counties where there is a metropolitan municipal corporation operating a sewerage and/or water system in the area, the chair of its council or such person as the chair designates.

If the legislative authority rejects the plan pursuant to RCW 36.94.090, the review committee shall be deemed to be dissolved; otherwise the review committee shall continue in existence to review amendments to the plan. Vacancies on the committee shall be filled in the same manner as the original appointment to that position.

Instead of a review committee for each plan area, the county legislative authority or authorities may create a review committee for the entire county or counties, and the review committee shall continue in existence until dissolved by the county legislative authority or authorities. [1994 c 81 § 74; 1981 c 313 § 16; 1971 ex.s. c 96 § 2; 1967 c 72 § 5.]

**Severability—1981 c 313:** See note following RCW 36.94.020.

**Construction—Severability—1971 ex.s. c 96:** See notes following RCW 36.94.010.

**36.94.060 Review committee—Chairman, secretary—Rules—Quorum—Compensation of members.** The members of each review committee shall elect from its members a chairman and a secretary. The committee shall determine its own rules and order of business and shall provide by resolution for the time and manner of its proceedings which shall be a public record. A majority of all the members shall constitute a quorum for the transaction of business.

Each member of the committee shall be compensated from the county current expense fund at the rate of twenty-five dollars per day, or a major portion thereof, for time actually devoted to the work of the committee in reviewing any proposed sewerage and/or water general plan or amendments to a plan. Each board of county commissioners shall provide such funds as shall be necessary to pay the compensation of the members and such other expenses as shall be reasonably necessary. Such payments shall be reimbursed to the counties advancing the funds from moneys acquired from the construction or operation of a sewerage and/or water system. [1971 ex.s. c 96 § 3; 1967 c 72 § 6.]

**Construction—Severability—1971 ex.s. c 96:** See notes following RCW 36.94.010.

**36.94.070 Review committee—Review of plan or amendments thereto—Report.** The committee shall review the sewerage and/or water general plan or amendments thereto and shall report to the board or boards of county commissioners within ninety days their approval or any suggested amendments, deletions, or additions. If the committee shall fail to report within the time, the plan or amendments thereto shall be deemed approved. If the committee submits a report, the board shall consider and review the committee's report and may adopt any recommendations suggested therein. [1971 ex.s. c 96 § 4; 1967 c 72 § 7.]

**Construction—Severability—1971 ex.s. c 96:** See notes following RCW 36.94.010.

**36.94.080 Hearing by board—Notice—Filing general plan.** Before final action thereon the board shall conduct a public hearing on the plan after ten days published notice of hearing is given pursuant to RCW 36.32.120(7). The notice must set out the full official title of the proposed resolution adopting the plan and a statement describing the general intent and purpose of the plan. The notice shall also include the day, hour and place of hearing and must be given by publication in the newspaper in which legal notices of the county are printed. Ten days prior to the hearing, three copies of the sewerage and/or water general plan shall be filed with the clerk of the board. The copies shall be open to public inspection. [1967 c 72 § 8.]

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**36.94.090 Adoption, amendment or rejection of plan.**

At the hearing, the board may adopt the plan, or amend and adopt the plan, or reject any part or all of the plan. [1967 c 72 § 9.]

**36.94.100 Submission of plan or amendments thereto to certain state departments—Approval.** Prior to the commencement of actual work on any plan or amendment thereto approved by the board, it must be submitted for written approval to the Washington department of social and health services and to the Washington department of ecology. [1971 ex.s. c 96 § 5; 1967 c 72 § 10.]

**Construction—Severability—1971 ex.s. c 96:** See notes following RCW 36.94.010.

**36.94.110 Adherence to plan—Procedure for amendment.** After adoption of the sewerage and/or water general plan, all municipal corporations and private utilities within the plan area shall abide by and adhere to the plan for the future development of their systems. Whenever the governing authority of any county or counties or any municipal corporation deems it to be for the public interest to amend the sewerage and/or water general plan for such county or counties, notice shall be filed with the board or boards of county commissioners. Upon such notice, the board or boards shall initiate consideration of any amendment requested relating to the plan and proceed as provided in this chapter for the adoption of an original plan. [1967 c 72 § 11.]

**36.94.120 Establishment of department for administration of system—Personnel merit system.** The board shall establish a department in county government for the purpose of establishing, operating and maintaining the system or systems of sewerage and/or water. In the department, the board shall establish and provide for the operation and maintenance of a personnel merit system for the employment, classification, promotion, demotion, suspension, transfer, layoff and discharge of its appointive officers and employees, solely on the basis of merit and fitness, without regard to political influence or affiliation. Such merit system shall not apply to the chief administrative officer of the department and, if the sewer and/or water utility is a division of a department having other functions, the chief administrative officer of such utility. [1971 ex.s. c 96 § 6; 1967 c 72 § 12.]

**Construction—Severability—1971 ex.s. c 96:** See notes following RCW 36.94.010.

**36.94.130 Adoption of rules and regulations.** The board of county commissioners may adopt by resolution reasonable rules and regulations governing the construction, maintenance, operation, use, connection and service of the system of sewerage and/or water. [1967 c 72 § 13.]

**36.94.140 Authority of county to operate system—Rates and charges, fixing of—Factors to be considered—Assistance for low-income persons.** (1) Every county, in the operation of a system of sewerage and/or water, shall have full jurisdiction and authority to manage, regulate, and control it. Except as provided in subsection (3) of this section, every county shall have full jurisdiction and authority to fix, alter, regulate, and control the rates and charges for the

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service and facilities to those to whom such service and facilities are available, and to levy charges for connection to the system.

(2) The rates for availability of service and facilities, and connection charges so charged must be uniform for the same class of customers or service and facility. In classifying customers served, service furnished or made available by such system of sewerage and/or water, or the connection charges, the county legislative authority may consider any or all of the following factors:

(a) The difference in cost of service to the various customers within or without the area;

(b) The difference in cost of maintenance, operation, repair and replacement of the various parts of the systems;

(c) The different character of the service and facilities furnished various customers;

(d) The quantity and quality of the sewage and/or water delivered and the time of its delivery;

(e) Capital contributions made to the system or systems, including, but not limited to, assessments;

(f) The cost of acquiring the system or portions of the system in making system improvements necessary for the public health and safety;

(g) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and

(h) Any other matters which present a reasonable difference as a ground for distinction.

(3) The rate a county may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) A county may provide assistance to aid low-income persons in connection with services provided under this chapter.

(5) The service charges and rates shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for the efficient and proper operation of the system. [2003 c 394 § 4; 1997 c 447 § 12; 1995 c 124 § 2; 1990 c 133 § 2; 1975 1st ex.s. c 188 § 2; 1967 c 72 § 14.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**Findings—1990 c 133:** "The legislature finds the best interests of the citizens of the state are served if:

(1) Customers served by public water systems are assured of an adequate quantity and quality of water supply at reasonable rates;

(2) There is improved coordination between state agencies engaged in water system planning and public health regulation and local governments responsible for land use regulation and public health and safety;

(3) Public water systems in violation of health and safety standards adopted under RCW 43.20.050 remain in operation and continue providing water service providing that public health is not compromised, assuming a suitable replacement purveyor is found and deficiencies are corrected in an expeditious manner consistent with public health and safety; and

(4) The state address[es], in a systematic and comprehensive fashion,

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new operating requirements which will be imposed on public water systems under the federal Safe Drinking Water Act." [1990 c 133 § 1.]

**Severability—1990 c 133:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 133 § 12.]

**Severability—1975 1st ex.s. c 188:** See RCW 36.94.921.

**36.94.145 Public property subject to rates and charges for storm water control facilities.** Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for storm water control facilities to the same extent private persons and private property are subject to such rates and charges that are imposed by counties pursuant to RCW 36.94.140. In setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property. [1986 c 278 § 58; 1983 c 315 § 4.]

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Severability—1983 c 315:** See note following RCW 90.03.500.

*Flood control zone districts—Storm water control improvements: Chapter 86.15 RCW.*

*Rates and charges for storm water control facilities—Limitations—Definitions: RCW 90.03.500 through 90.03.525. See also RCW 35.67.025, 35.92.021, and 36.89.085.*

**36.94.150 Lien for delinquent charges.** All counties operating a system of sewerage and/or water shall have a lien for delinquent connection charges and charges for the availability of sewerage and/or water service, together with interest fixed by resolution at eight percent per annum from the date due until paid. Penalties of not more than ten percent of the amount due may be imposed in case of failure to pay the charges at times fixed by resolution. The lien shall be for all charges, interest, and penalties and shall attach to the premises to which the services were available. The lien shall be superior to all other liens and encumbrances, except general taxes and local and special assessments of the county.

The county department established in RCW 36.94.120 shall certify periodically the delinquencies to the auditor of the county at which time the lien shall attach.

Upon the expiration of sixty days after the attachment of the lien, the county may bring suit in foreclosure by civil action in the superior court of the county where the property is located. Costs associated with the foreclosure of the lien, including but not limited to advertising, title report, and personnel costs, shall be added to the lien upon filing of the foreclosure action. In addition to the costs and disbursements provided by statute, the court may allow the county a reasonable attorney's fee. The lien shall be foreclosed in the same manner as the foreclosure of real property tax liens. [1997 c 393 § 9; 1975 1st ex.s. c 188 § 3; 1967 c 72 § 15.]

**Severability—1975 1st ex.s. c 188:** See RCW 36.94.921.

**36.94.160 Tax on gross revenues authorized.** The county shall have the power to levy a tax on the system of sewerage and/or water operated by the county or counties as authorized by this chapter, not to exceed eight percent per annum, on the gross revenues, to be paid to the county's gen-

eral fund for payment of all costs of planning, financing, construction and operation of the system. [1967 c 72 § 16.]

**36.94.170 Authority of municipal corporations—Relinquishment of.** The primary authority to construct, operate and maintain a system of sewerage and/or water within the boundaries of a municipal corporation which lies within the area of the county's sewerage and/or water general plan shall remain with such municipal corporation. A county, after it has adopted and received the necessary approvals of its sewer and/or water general plan under the provisions of chapter 36.94 RCW may construct, own, operate and maintain a system of sewerage and/or water within the boundaries of a city or town with the written consent of such city or town and within any other municipal corporation provided such municipal corporation (1) has the legislative authority to operate such a utility; and (2)(a) has given its written consent to the county to operate therein; or (b) after adoption of a comprehensive plan or an amendment thereto for the area involved, the municipal corporation has not within twelve months after receiving notice by the county of its intention to serve that area held a formation hearing for a utility local improvement district.

Prior to exercising any authority granted in this section, the county shall compensate such municipal corporation for its reasonable costs, expenses and obligations actually incurred or contracted which are directly related to and which benefit the area which the county proposes to serve. The county may contract with a municipal corporation to furnish such utility service within any municipal corporation.

Except in the case of annexations provided for in RCW 36.94.180, once a county qualifies under this section to serve within a municipal corporation, no municipal corporation may construct or operate a competing utility in the same territory to be served by the county if the county proceeds within a reasonable period of time with the construction of its proposed facilities including the sale of any bonds to finance the same.

As may be permitted by other statutes, a city or town may provide water or sewer service outside of its corporate limits, but such service may not conflict with the county plan or any county, sewer or water facilities installed or being installed.

A county proposing to exercise any authority granted in this section shall give written notice of such intention to the municipal corporation involved and to the boundary review board, if any, of such county. Within sixty days of the filing of such notice of intention, review by the boundary review board of the proposed action may be requested as provided by the provisions of RCW 36.93.100 through 36.93.180. In the event of such review, the board shall consider the factors set forth in this section in addition to the factors and objectives set forth in RCW 36.93.170 and 36.93.180. [1971 ex.s. c 96 § 7; 1967 c 72 § 17.]

**Construction—Severability—1971 ex.s. c 96:** See notes following RCW 36.94.010.

**36.94.180 Transfer of system upon annexation or incorporation of area.** In the event of the annexation to a city or town of an area, or incorporation of an area, in which a county is operating a sewerage and/or water system, the

property, facilities, and equipment of such sewerage and/or water system lying within the annexed or incorporated area may be transferred to the city or town if such transfer will not materially affect the operation of any of the remaining county system, subject to the assumption by the city or town of the county's obligations relating to such property, facilities, and equipment, under the procedures specified in, and pursuant to the authority contained in, chapter 35.13A RCW. [1986 c 234 § 34; 1983 c 3 § 82; 1971 ex.s. c 96 § 8; 1967 c 72 § 18.]

**Construction—Severability—1971 ex.s. c 96:** See notes following RCW 36.94.010.

**36.94.190 Contracts with other entities.** Every county in furtherance of the powers granted by this chapter shall be authorized to contract with the federal government, the state of Washington, or any city or town, within or without the county, and with any other county, and with any municipal corporation as defined herein or with any other municipal corporation created under the laws of the state of Washington and not limited as defined in RCW 36.94.010, or political subdivision, and with any person, firm or corporation in and for the establishment, maintenance and operation of all or a portion of a system or systems of sewerage and/or water supply.

The state and such city, town, person, firm, corporation, municipal corporation and any other municipal corporation created under the laws of the state of Washington and not limited as defined in RCW 36.94.010, and political subdivision, is authorized to contract with a county or counties for such purposes. [1967 c 72 § 19.]

**36.94.200 Indebtedness—Bonds.** The legislative authority of any county is hereby authorized for the purpose of carrying out the lawful powers granted by this chapter to contract indebtedness and to issue and sell general obligation bonds pursuant to and in the manner provided for general county bonds in chapters 36.67 and 39.46 RCW and other applicable statutes; and to issue revenue bonds pursuant to and in the manner provided for revenue bonds in chapter 36.67 RCW and other applicable statutes. The county legislative authority may also issue local improvement district bonds in the manner provided for cities and towns. [1984 c 186 § 35; 1983 c 167 § 101; 1981 c 313 § 2; 1967 c 72 § 20.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Severability—1981 c 313:** See note following RCW 36.94.020.

**36.94.210 Pledge for payment of principal and interest on revenue or general obligation bonds.** The board of county commissioners of any county in adopting and establishing a system of sewerage and/or water may set aside into a special fund and pledge to the payment of the principal and interest due on any county revenue bonds or general obligation bonds any sums or amounts which may accrue from the collection of rates and charges for the private and public use of the system or systems. [1975 1st ex.s. c 188 § 4; 1967 c 72 § 21.]

**Severability—1975 1st ex.s. c 188:** See RCW 36.94.921.

**36.94.220 Local improvement districts and utility local improvement districts—Establishment—Special assessments.** (1) A county shall have the power to establish utility local improvement districts and local improvement districts within the area of a sewerage and/or water general plan and to levy special assessments under a mode of annual installments extending over a period not exceeding twenty years on all property specially benefited by any local improvement on the basis of the special benefits to pay in whole or in part the damages or costs of any improvements ordered in such county.

(2) Utility local improvement districts and local improvement districts may include territory within a city or town only with the written consent of the city or town, but if the local district is formed before such area is included within the city or town, no such consent shall be necessary. Utility local improvement districts and local improvement districts used to provide sewerage disposal systems may include territory within a water-sewer district providing sewerage disposal systems only with the written consent of such a water-sewer district, but if the local district is formed before such area is included within such a water-sewer district, no consent is necessary. Utility local improvement districts and local improvement districts used to provide water systems may include territory within a water-sewer district providing water systems only with the written consent of such a water-sewer district, but if the local district is formed before such area is included within such a water-sewer district, no consent is necessary.

(3) The levying, collection, and enforcement of all public assessments hereby authorized shall be in the manner now and hereafter provided by law for the levying, collection, and enforcement of local improvement assessments by cities and towns, insofar as the same shall not be inconsistent with the provisions of this chapter. In addition, the county shall file the preliminary assessment roll at the time and in the manner prescribed in RCW 35.50.005. The duties devolving upon the city or town treasurer under such laws are imposed upon the county treasurer for the purposes of this chapter. The mode of assessment shall be in the manner to be determined by the county legislative authority by ordinance or resolution. As an alternative to equal annual assessment installments of principal provided for cities and towns, a county legislative authority may provide for the payment of such assessments in equal annual installments of principal and interest. Assessments in any local district may be made on the basis of special benefits up to but not in excess of the total cost of any sewerage and/or water improvement made with respect to that local district and the share of any general sewerage and/or water facilities allocable to that district. In utility local improvement districts, assessments shall be deposited into the revenue bond fund or general obligation bond fund established for the payment of bonds issued to pay such costs which bond payments are secured in part by the pledge of assessments, except pending the issuance and sale of such bonds, assessments may be deposited in a fund for the payment of such costs. In local improvement districts, assessments shall be deposited into a fund for the payment of such costs and local improvement bonds issued to finance the same or into the local improvement guaranty fund as provided by applicable statute. [1999

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c 153 § 48; 1981 c 313 § 3; 1975 1st ex.s. c 188 § 5; 1971 ex.s. c 96 § 9; 1967 c 72 § 22.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**Severability—1981 c 313:** See note following RCW 36.94.020.

**Severability—1975 1st ex.s. c 188:** See RCW 36.94.921.

**Construction—Severability—1971 ex.s. c 96:** See notes following RCW 36.94.010.

*Local improvements, supplemental authority:* Chapter 35.51 RCW.

**36.94.225 Exemption of farm and agricultural land from special benefit assessments.** See RCW 84.34.300 through 84.34.380 and 84.34.922.

**36.94.230 Local improvement districts and utility local improvement districts—Initiation of district by resolution or petition—Publication—Notice to property owners—Contents.** Utility local improvement districts and local improvement districts to carry out all or any portion of the general plan, or additions and betterments thereof, may be initiated either by resolution of the county legislative authority or by petition signed by the owners according to the records of the office of the county assessor of at least fifty-one percent of the area of land within the limits of the local district to be created.

In case the county legislative authority desires to initiate the formation of a local district by resolution, it shall first pass a resolution declaring its intention to order such improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed local district, describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, and fixing a date, time, and place for a public hearing on the formation of the proposed local district.

In case any such local district is initiated by petition, such petition shall set forth the nature and territorial extent of such proposed improvement and the fact that the signers thereof are the owners according to the records of the county assessor of at least fifty-one percent of the area of land within the limits of the local district to be created. Upon the filing of such petition with the clerk of the county legislative authority, the authority shall determine whether the same is sufficient, and the authority's determination thereof shall be conclusive upon all persons. No person may withdraw his or her name from said petition after the filing thereof with the clerk of the county legislative authority. If the county legislative authority finds the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the nature and territorial extent of said improvement, designating the number of the proposed local district, describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed local district, and fixing a date, time, and place for a public hearing on the formation of the proposed local district.

Notice of the adoption of the resolution of intention, whether adopted on the initiative of the board or pursuant to a petition of the property owners, shall be published in at least

two consecutive issues of a newspaper of general circulation in the proposed local district, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the county legislative authority. Notice of the adoption of the resolution of intention shall also be given each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed local district by mailing said notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer at the address shown thereon. The notice shall refer to the resolution of intention and designate the proposed local district by number. Said notice shall also set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract, or parcel, the date, time, and place of the hearing before the county legislative authority; and in the case of improvements initiated by resolution, said notice shall also state that all persons desiring to object to the formation of the proposed district must file their written protests with the clerk of the county legislative authority before the time fixed for said public hearing. [2002 c 168 § 2; 1981 c 313 § 4; 1971 ex.s. c 96 § 10; 1967 c 72 § 23.]

**Severability—1981 c 313:** See note following RCW 36.94.020.

**Construction—Severability—1971 ex.s. c 96:** See notes following RCW 36.94.010.

**36.94.232 Local improvement districts and utility local improvement districts—Notice must contain statement that assessments may vary from estimates.** Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district or utility local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 6.]

**36.94.235 Local improvement districts and utility local improvement districts—Sanitary sewer or potable water facilities—Notice to certain property owners.** Whenever it is proposed that a local improvement district or utility local improvement district finance sanitary sewers or potable water facilities, additional notice of the public hearing on the proposed improvement district shall be mailed to the owners of any property located outside of the proposed improvement district that would be required as a condition of federal housing administration loan qualification, at the time of notice, to be connected to the specific sewer or water facilities installed by the local improvement district. The notice shall include information about this restriction. [1987 c 315 § 3.]

**36.94.240 Local improvement districts and utility local improvement districts—Hearing—Improvement ordered—Divestment of power to order, time limitation—Assessment roll.** Whether the improvement is initiated by petition or resolution, the county legislative authority shall conduct a public hearing at the time and place desig-

nated in the notice to the property owners. At this hearing the authority shall hear objections from any person affected by the formation of the local district and may make such changes in the boundaries of the district or such modifications in plans for the proposed improvement as are deemed necessary: PROVIDED, That the authority may not change the boundaries of the district to include property not previously included therein without first passing a new resolution of intention and giving a new notice to property owners in the manner and form and within the time herein provided for the original notice.

After said hearing the county legislative authority has jurisdiction to overrule protests and proceed with any such improvement initiated by petition or resolution: PROVIDED, That the jurisdiction of the authority to proceed with any improvement initiated by resolution shall be divested by protests filed with the clerk of the authority prior to said public hearing signed by the owners, according to the records of the county auditor, of at least forty percent of the area of land within the proposed local district. No action whatsoever may be maintained challenging the jurisdiction or authority of the county to proceed with the improvement and creating the local district or in any way challenging the validity thereof or any proceedings relating thereto unless that action is served and filed no later than thirty days after the date of passage of the resolution ordering the improvement and creating the local district.

If the county legislative authority finds that the district should be formed, it shall by resolution order the improvement, adopt detailed plans of the local district and declare the estimated cost thereof, acquire all necessary land therefor, pay all damages caused thereby, and commence in the name of the county such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards as may be necessary to entitle the county to proceed with the work. The county legislative authority shall proceed with the work and file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property situated within the local district in proportion to the special benefits to be derived by the property therein from the improvement. [1981 c 313 § 5; 1971 ex.s. c 96 § 11; 1967 c 72 § 24.]

**Severability—1981 c 313:** See note following RCW 36.94.020.

**Construction—Severability—1971 ex.s. c 96:** See notes following RCW 36.94.010.

**36.94.250 Local improvement districts and utility local improvement districts—Notice of filing roll—Hearing on protests.** Before the approval of the roll a notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the local district, stating that the roll is on file and open to inspection in the office of the county legislative authority, and fixing the time, not less than fifteen or more than forty-five days from the date of the first publication of the notice, within which protests must be filed with the clerk against any assessments shown thereon, and fixing a time when a hearing will be held on the protests. The hearing shall be held before the county legislative authority, or the county legislative authority may direct that the hearing shall be held before either a committee of the legislative authority or a designated officer. The notice shall also

be given by mailing at least fifteen days before the hearing, a similar notice to the owners or reputed owners of the land in the local district as they appear on the books of the treasurer of the county. [1981 c 313 § 17; 1967 c 72 § 25.]

**Severability—1981 c 313:** See note following RCW 36.94.020.

**36.94.260 Local improvement districts and utility local improvement districts—Hearing on protests—Order—Appeal.** (1) At such hearing on a protest to an assessment, or any adjournment thereof, the county legislative authority or committee or officer shall sit as a board of equalization. If the protest is heard by the county legislative authority, it shall have power to correct, revise, raise, lower, change, or modify such roll, or any part thereof, and to set aside such roll, and order that such assessment be made de novo, as shall appear equitable and just. If the protest is heard by a committee or officer, the committee or officer shall make recommendations to the county legislative authority which shall either adopt or reject the recommendations of the committee or officer. If a hearing is held before such a committee or officer, it shall not be necessary to hold a hearing on the assessment roll before such legislative authority: **PROVIDED,** That any county providing for an officer to hear such protests shall adopt an ordinance providing for an appeal from a decision made by the officer that any person protesting his or her assessment may make to the legislative authority. The county legislative authority shall, in all instances, approve the assessment roll by ordinance or resolution.

(2) In the event of any assessment being raised a new notice similar to such first notice shall be given, after which final approval of such roll may be made by the county legislative authority or committee or officer. Whenever any property has been entered originally upon such roll and the assessment upon any such property shall not be raised, no objection thereto may be considered by the county legislative authority or committee or officer or by any court on appeal unless such objection be made in writing at, or prior, to the date fixed for the original hearing upon such roll. [1981 c 313 § 18; 1967 c 72 § 26.]

**Severability—1981 c 313:** See note following RCW 36.94.020.

**36.94.270 Local improvement districts and utility local improvement districts—Enlarged local district may be formed.** If any portion of the system after its installation in such local district is not adequate for the purpose for which it was intended, or that for any reason changes, alterations, or betterments are necessary in any portion of the system after its installation, then such district, with boundaries which may include one or more existing local districts, may be created in the same manner as is provided herein for the creation of local districts. Upon the organization of such local district as provided for in this section the plan of the improvement and the payment of the cost of the improvement shall be carried out in the same manner as is provided herein for the carrying out of and the paying for the improvement in the utility local improvement districts or local improvement districts previously provided for in this chapter. [1981 c 313 § 6; 1967 c 72 § 27.]

**Severability—1981 c 313:** See note following RCW 36.94.020.

**36.94.280 Local improvement districts and utility local improvement districts—Conclusiveness of roll when approved—Adjustments to assessments if other funds become available.** Whenever any assessment roll for local improvements has been confirmed by the county legislative authority, the regularity, validity and correctness of the proceedings relating to the improvement and to the assessment therefor, including the action of the county legislative authority upon the assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding by any person not filing written objections to the assessment roll in the manner and within the time provided in this chapter, and not appealing from the action of the county legislative authority in confirming the assessment roll in the manner and within the time in this chapter provided. No proceedings of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any assessment, or the sale of any property to pay an assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor: **PROVIDED,** That this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds:

(1) That the property about to be sold does not appear upon the assessment roll, or

(2) That the assessment has been paid.

If federal, local, or state funds become available for a local improvement after the assessment roll has been confirmed by the county legislative authority, the funds may be used to lower the assessments on a uniform basis. Any adjustments to the assessments because of the availability of federal or state funds may be made on the next annual payment. [1985 c 397 § 10; 1967 c 72 § 28.]

**Severability—1985 c 397:** See RCW 35.51.901.

**36.94.290 Local improvement districts and utility local improvement districts—Appellate review.** The decision of the board of county commissioners upon any objections made within the time and in the manner herein prescribed, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the clerk of the board of county commissioners and with the clerk of the superior court within ten days after the resolution confirming such assessment roll shall have become published, and such notice shall describe the property and set forth the objections of such appellant to such assessment. Within the ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of said court, a transcript consisting of the assessment roll and his objections thereto, together with the resolution confirming such assessment roll and the record of the board of county commissioners with reference to said assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by such clerk of the board of county commissioners and by him certified to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of

appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with sureties thereon as provided by law for appeals in civil cases, shall be filed conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all costs to which the county is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three days after such transcript is filed in the superior court, as aforesaid, the appellant shall give written notice to the clerk of the board of county commissioners that such transcript is filed. Said notice shall state a time, not less than three days from the service thereof, when the appellant will call up the said cause for hearing. The superior court shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury, and such cause shall have preference over all civil causes pending in said court, except proceedings under an act relating to eminent domain in such county and actions of forcible entry and detainer. The judgment of the court shall confirm, correct, modify or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have the custody of the assessment roll, and he shall modify and correct such assessment roll in accordance with such decision. Appellate review of the judgment of the superior court may be sought as in other cases. However, review must be sought within fifteen days after the date of the entry of the judgment of such superior court. The supreme court or the court of appeals on such appeal may correct, change, modify, confirm or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision. [1988 c 202 § 41; 1971 c 81 § 98; 1967 c 72 § 29.]

**Rules of court:** *Cf. RAP 18.22.*

**Severability—1988 c 202:** See note following RCW 2.24.050.

**36.94.300 Local improvement districts and utility local improvement districts—Segregation of special assessment—Fee—Costs.** Whenever any land against which there has been levied any special assessment by a county shall have been sold in part or subdivided, the board of county commissioners of such county shall have the power to order a segregation of the assessment.

Any person desiring to have such a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the board of county commissioners which levied the assessment. If the board determines that a segregation should be made, they shall by resolution order the county treasurer to make segregation on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the

amount of the assessment chargeable to each part. A certified copy of the resolution shall be delivered to the county treasurer who shall proceed to make the segregation ordered upon being tendered a fee of three dollars for each tract of land for which a segregation is to be made. In addition to such charge the board of county commissioners may require as a condition to the order of segregation that the person seeking it pay the county the reasonable engineering and clerical costs incident to making the segregation. [1967 c 72 § 30.]

**36.94.305 Service fees for sewers not constructed within ten years after voter approval—Credit against future assessments, service charges.** See RCW 35.43.260.

**36.94.310 Transfer of system from municipal corporation to county—Authorized.** Subject to the provisions of RCW 36.94.310 through 36.94.350 a municipal corporation may transfer to the county within which all of its territory lies, all or part of the property constituting its system of sewerage, system of water or combined water and sewerage system, together with any of its other real or personal property used or useful in connection with the operation, maintenance, repair, replacement, extension, or financing of that system, and the county may acquire such property on such terms as may be mutually agreed upon by the governing body of the municipal corporation and the legislative authority of the county, and approved by the superior court for such county. [1975 1st ex.s. c 188 § 7.]

**Severability—1975 1st ex.s. c 188:** See RCW 36.94.921.

**36.94.320 Transfer of system from municipal corporation to county—Assumption of indebtedness.** In consideration of a transfer of property by a municipal corporation to a county in the manner provided in RCW 36.94.310 through 36.94.350, a county may assume and agree to pay or provide for the payment of all or part of the indebtedness of a municipal corporation including the payment and retirement of outstanding general obligation and revenue bonds issued by a municipal corporation. Until the indebtedness of a municipal corporation thus assumed by a county has been discharged, all property within the municipal corporation and the owners and occupants of that property, shall continue to be liable for taxes, special assessments, and other charges legally pledged to pay such indebtedness. The county may assume the obligation of causing the payment of such indebtedness, collecting such taxes, assessments, and charges and observing and performing the other contractual obligations of the municipal corporation. The legislative authority of the county may act in the same manner as the governing body of the municipal corporation for the purpose of certifying the amount of any property tax to be levied and collected therein, and may cause service and other charges and assessments to be collected from such property or owners or occupants thereof, enforce such collection and perform all other acts necessary to insure performance of the contractual obligations of the municipal corporation in the same manner and by the same means as if the property of the municipal corporation had not been acquired by the county.

When a county assumes the obligation of paying indebtedness of a municipal corporation and if property taxes or

assessments have been levied and service and other charges have accrued for such purpose but have not been collected by the municipal corporation prior to such assumption, the same when collected shall belong and be paid to the county and be used by such county so far as necessary for payment of the indebtedness of the municipal corporation existing and unpaid on the date such county assumed that indebtedness. Any funds received by the county which have been collected for the purpose of paying any bonded or other indebtedness of the municipal corporation shall be used for the purpose for which they were collected and for no other purpose until such indebtedness has been paid and retired or adequate provision has been made for such payment and retirement. No transfer of property as provided in \*this amendatory act shall derogate from the claims or rights of the creditors of the municipal corporation or impair the ability of the municipal corporation to respond to its debts and obligations. [1975 1st ex.s. c 188 § 8.]

**\*Reviser's note:** For codification of "this amendatory act" [1975 1st ex.s. c 188], see Codification Tables, Volume 0.

**Severability—1975 1st ex.s. c 188:** See RCW 36.94.921.

**36.94.330 Transfer of system from municipal corporation to county—Transfer agreement.** The governing body of a municipal corporation proposing to transfer all or part of its property to a county in the manner provided by RCW 36.94.310 through 36.94.350 and the legislative authority of a county proposing to accept such property, and to assume if it so agrees any indebtedness of the municipal corporation in consideration of such transfer, shall adopt resolutions or ordinances authorizing respectively the execution of a written agreement setting forth the terms and conditions upon which they have agreed and finding the transfer and acquisition of property pursuant to such agreement to be in the public interest and conducive to the public health, safety, welfare, or convenience. Such written agreement may include provisions, by way of description and not by way of limitation, for the rights, powers, duties, and obligations of such municipal corporation and county with regard to the use and ownership of property, the providing of services, the maintenance and operation of facilities, the allocation of costs, the financing and construction of new facilities, the application and use of assets, the disposition of liabilities and indebtedness, the performance of contractual obligations, and any other matters relating to the proposed transfer of property, which may be preceded by an interim period of operation by the county of the property and facilities subsequently to be transferred to that county. The agreement may provide for a period of time during which the municipal corporation may continue to exercise certain rights, privileges, powers, and functions authorized to it by law including the ability to promulgate rules and regulations, to levy and collect special assessments, rates, charges, service charges and connection fees, and to adopt and carry out the provisions of a comprehensive plan, and amendments thereto, for a system of improvements and to issue general obligation bonds or revenue bonds in the manner provided by law, or the agreement may provide for the exercise for a period of time of all or some of such rights, privileges, powers, and functions by the county. The agreement may provide that either party thereto may authorize, issue and sell, in the manner provided by law,

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revenue bonds to provide funds for new water or sewer improvements or to refund or advance refund any water revenue, sewer revenue or combined water and sewer revenue bonds outstanding of either or both such parties. The agreement may provide that either party thereto may authorize and issue, in the manner provided by law, general obligation or revenue bonds of like amounts, terms, conditions and covenants as the outstanding bonds of either or both such parties and such new bonds may be substituted or exchanged for such outstanding bonds to the extent permitted by law. [1975 1st ex.s. c 188 § 9.]

**Severability—1975 1st ex.s. c 188:** See RCW 36.94.921.

**36.94.340 Transfer of system from municipal corporation to county—Petition for court approval of transfer—Hearing—Decree.** When a municipal corporation and a county have entered into a written agreement providing for the transfer to such county of all or part of the property of such municipal corporation, proceedings may be initiated in the superior court for that county by the filing of a petition to which there shall be attached copies of the agreement of the parties and of the resolutions of the governing body of the municipal corporation and the legislative authority of the county authorizing its execution. Such petition shall ask that the court approve and direct the proposed transfer of property, and any assumption of indebtedness agreed to in consideration thereof by the county, after finding such transfer and acquisition of property to be in the public interest and conducive to the public health, safety, welfare, or convenience. Such petition shall be signed by the members of the legislative authority of the county or chief administrative officer of the municipal corporation and the chairman of the legislative authority of the county, respectively, upon authorization by the governing body of the municipal corporation and the legislative authority of the county.

Within thirty days after the filing of the petition of the parties with copies of their agreement and the resolutions authorizing its execution attached thereto, the court shall by order fix a date for a hearing on the petition not less than twenty nor more than ninety days after the entry of such order which also shall prescribe the form and manner of notice of such hearing to be given. After considering the petition and such evidence as may be presented at the hearing thereon, the court may determine by decree that the proposed transfer of property is in the public interest and conducive to the public health, safety, welfare, or convenience, approve the agreement of the parties and direct that such transfer be accomplished in accordance with that agreement at the time and in the manner prescribed by the court decree. [1975 1st ex.s. c 188 § 10.]

**Severability—1975 1st ex.s. c 188:** See RCW 36.94.921.

**36.94.350 Transfer of system from municipal corporation to county—Dissolution of municipal corporation.** In the event the agreement of the parties provides for the transfer to the county of all the property of the municipal corporation or all such property except bond redemption funds in the possession of the county treasurer from which outstanding bonds of the municipal corporation are payable, and the agreement also provides for the assumption and payment

by the county of all the indebtedness of the municipal corporation including the payment and retirement of all its outstanding bonds, and if the petition of the parties so requests, the court in the decree approving and directing the transfer of property, or in a subsequent decree, may dissolve the municipal corporation effective as of the time of transfer of property or at such time thereafter as the court may determine and establish. [1975 1st ex.s. c 188 § 11.]

**Severability—1975 1st ex.s. c 188:** See RCW 36.94.921.

**36.94.360 Transfer of system from municipal corporation to county—RCW 36.94.310 through 36.94.350 deemed alternative method.** The provisions of RCW 36.94.310 through 36.94.350 shall be deemed to provide an alternative method for the doing of the things therein authorized and shall not be construed as imposing any additional conditions upon the exercise of any other powers vested in municipal corporations or counties. [1975 1st ex.s. c 188 § 12.]

**Severability—1975 1st ex.s. c 188:** See RCW 36.94.921.

**36.94.370 Waiver or delay of collection of tap-in charges, connection or hookup fees for low income persons.** Whenever a county waives or delays collection of tap-in charges, connection fees or hookup fees for low income persons, or class of low income persons, to connect to a system of sewerage or a system of water, the waiver or delay shall be pursuant to a program established by ordinance. [1980 c 150 § 2.]

**36.94.380 Local improvement bonds—Local improvement guaranty fund—Payments—Assessments—Certificates of delinquency.** Every county adopting a water and/or sewerage general plan is hereby authorized to create a fund for the purpose of guaranteeing, to the extent of such fund, and in the manner hereinafter provided, the payment of all of its local improvement bonds issued, subsequent to May 19, 1981, to pay for any water or sewerage local improvement within its confines. Such fund shall be designated ". . . . County Local Improvement Guaranty Fund" and shall be established by resolution of the county legislative authority. For the purpose of maintaining such fund, every county, after the establishment thereof, shall at all times set aside and pay into such a fund such proportion of the monthly gross revenues of the water and/or sewerage system of such county as the legislative authority thereof may direct by resolution. This proportion may be varied from time to time as the county legislative authority deems expedient or necessary, except that under the existence of the conditions set forth in subsections (1) and (2) of this section, the proportion must be as therein specified.

(1) Whenever any bonds of any local improvement district have been guaranteed under RCW 36.94.380 through 36.94.400 and the guaranty fund does not have a cash balance equal to five percent of all bonds originally guaranteed under this chapter (excluding issues which have been retired in full), then five percent of the gross monthly revenues derived from all water and sewer users in the territory included in that local improvement district (but not necessarily from users in other parts of the county as a whole) may be set aside and

paid into the guaranty fund. Whenever, under the requirements of this subsection, the cash balance accumulates so that it is equal to five percent of all bonds guaranteed, or to the full amount of all bonds guaranteed, outstanding and unpaid (which amount might be less than five percent of the original total guaranteed), then no further moneys need be set aside and paid into the guaranty fund so long as that condition continues.

(2) Whenever any warrants issued against the guaranty fund, as provided in this section, remain outstanding and uncalled for lack of funds for six months from the date of issuance thereof; or whenever any coupons or bonds guaranteed under this chapter have been matured for six months and have not been redeemed either in cash or by issuance and delivery of warrants upon the guaranty fund, then five percent of the gross monthly revenues (or such portion thereof as the county legislative authority determines will be sufficient to retire those warrants or redeem those coupons or bonds in the ensuing six months) derived from all water and/or sewer users in the county shall be set aside and paid into the guaranty fund. Whenever under the requirements of this subsection all such warrants, coupons, or bonds have been redeemed, no further income need be set aside and paid into the guaranty fund under the requirements of this subsection until and unless other warrants remain outstanding and unpaid for six months or other coupons or bonds default.

(3) For the purpose of complying with the requirements of setting aside and paying into the local improvement guaranty fund a proportion of the monthly gross revenues of the water supply and/or sewerage system of any county, that county shall bind and obligate itself to maintain and operate such system and further bind and obligate itself to establish, maintain, and collect such rates for water as will provide gross revenues sufficient to maintain and operate such systems and to make necessary provision for the local improvement guaranty fund as specified by this section, and the county shall alter its rates for water or sewer service from time to time and shall vary the same in different portions of its territory to comply with those requirements.

(4) Whenever any coupon or bond guaranteed by RCW 36.94.380 through 36.94.400 matures and there is not sufficient funds in the appropriate local improvement district bond redemption fund to pay the coupon or bond, then the county treasurer shall pay the coupon or bond from the local improvement guaranty fund of the county; if there is not sufficient funds in the guaranty fund to pay the coupon or bond, then it may be paid by issuance and delivery of a warrant upon the local improvement guaranty fund.

(5) Whenever the cash balance in the local improvement guaranty fund is insufficient for the required purposes, warrants drawing interest of a rate fixed by the county legislative authority may be issued by the county auditor against the fund to meet any liability accrued against it and must be issued upon demand of the holders of any maturing coupons and/or bonds guaranteed by RCW 36.94.380 through 36.94.400, or to pay for any certificates of delinquency for delinquent installments of assessments as provided in subsection (6) of this section. Guaranty fund warrants shall be a first lien in their order of issuance upon the gross revenues set aside and paid into the guaranty fund.

(6) Within twenty days after the date of delinquency of any annual installment of assessments levied for the purpose of paying the local improvement bonds of any county guaranteed under the provisions of this chapter, the county treasurer shall compile a statement of all installments delinquent, together with the amount of accrued interest and penalty appurtenant to each of those installments. Thereupon the county treasurer shall forthwith purchase certificates of delinquency for all such delinquent installments. Payment for all such certificates of delinquency shall be made from the local improvement guaranty fund, and if there is not sufficient moneys in the fund to pay for such certificates of delinquency, the county treasurer shall accept the local improvement guaranty fund warrants in payment therefor. All such certificates of delinquency shall be issued in the name of the local improvement guaranty fund, and all guaranty fund warrants issued in payment therefor shall be issued in the name of the appropriate local improvement district fund. Whenever any market is available and the county legislative authority so directs, the county treasurer shall sell any certificates of delinquency belonging to the local improvement guaranty fund, but any such sale may not be for less than face value thereof plus accrued interest from the date of issuance to date of sale.

Such certificates of delinquency, as above provided, shall be issued by the county treasurer, shall bear interest at the rate of eight percent per annum, shall be in each instance for the face value of the delinquent installment, plus accrued interest to date of issuance of certificate of delinquency, plus a penalty of five percent of such face value, and shall set forth the:

- (a) Description of the property assessed;
- (b) Date the installment of the assessment became delinquent; and
- (c) Name of the owner or reputed owner, if known.

Such certificates of delinquency may be redeemed by the owners of the property assessed at any time up to two years from the date of foreclosure of such certificate of delinquency.

If any certificate of delinquency is not redeemed by the second occurring first day of January subsequent to its issuance, the county treasurer shall then proceed to foreclose such certificate of delinquency in the manner specified for the foreclosure of the lien of local improvement assessments, pursuant to the laws applicable to cities or towns; and if no redemption is made within the succeeding two years the treasurer shall execute and deliver a deed conveying fee simple title to the property described in the foreclosed certificate of delinquency. [1981 c 313 § 7.]

**Severability—1981 c 313:** See note following RCW 36.94.020.

**36.94.390 Local improvement bonds—Local improvement guaranty fund—Subrogation—Interest—Purchase of real property at foreclosure sales.** Whenever there is paid out of a guaranty fund any sum on account of principal or interest upon the local improvement bond, or on account of purchase of certificates of delinquency, the county, as trustee for the fund, shall be subrogated to all rights of the holder of the bonds, or interest coupons, or delinquent assessment installments, so paid; and the proceeds

thereof, or of the assessment or assessments underlying the same, shall become a part of the guaranty fund. There shall also be paid into each guaranty fund the interest received from the bank deposits of the fund, as well as any surplus remaining in the local improvement funds guaranteed under this chapter, after the payment of all outstanding bonds payable primarily out of such local improvement funds. As among the several issues of bonds guaranteed by the fund, no preference exists, but defaulted interest coupons and/or bonds shall be purchased out of the fund in the order of their presentation.

The legislative authority of every county operating under the provisions of RCW 36.94.380 through 36.94.400 shall by resolution prescribe appropriate rules for the guaranty fund, not inconsistent with this chapter. So much of the money of a guaranty fund as is necessary and is not required for other purposes under the terms of RCW 36.94.380 through 36.94.400 may, at the discretion of the county legislative authority, be used to purchase property at county tax foreclosure sales or from the county after foreclosure in cases where such property is subject to unpaid local improvement assessments securing bonds guaranteed under this chapter and such purchase is deemed necessary for the purpose of protecting the guaranty fund. In such cases the fund shall be subrogated to all rights of the county. After so acquiring title to real property, the county may lease or resell and convey the property in the manner that county property is authorized to be leased or resold and for such prices and on such terms as may be determined by resolution of the county legislative authority. Any provision of law to the contrary notwithstanding, all proceeds resulting from such resales belong to and shall be paid into the guaranty fund. [1981 c 313 § 8.]

**Severability—1981 c 313:** See note following RCW 36.94.020.

**36.94.400 Local improvement bonds—Local improvement guaranty fund—Claims by bondholders—Transfer of cash balance to water and/or sewer maintenance fund.** Neither the holder nor the owner of any local improvement bonds guaranteed under the provisions of RCW 36.94.380 through 36.94.400 has any claim therefor against the county by which the bonds are issued, except for payment from the special assessments made for the improvement for which the local improvement bonds were issued, and except as against the local improvement guaranty fund of the county; and the county is not liable to any holder or owner of such local improvement bond for any loss to the guaranty fund occurring in the lawful operation thereof by the county. The remedy of the holder or owner of a local improvement bond, in the case of nonpayment, is confined to the enforcement of the assessment and to the guaranty fund. A copy of the foregoing part of this section shall be plainly written, printed, or engraved on each local improvement bond guaranteed by RCW 36.94.380 through 36.94.400. The establishment of a local improvement guaranty fund by any county shall not be deemed at variance from any water and/or sewerage general plan or amendment thereto heretofore adopted by such county.

If any local improvement guaranty fund authorized under RCW 36.94.380 through 36.94.400 at any time has a cash balance, and the obligations guaranteed thereby have all

been paid off, then such balance shall be transferred to the water and/or sewer maintenance fund of the county. [1981 c 313 § 9.]

**Severability—1981 c 313:** See note following RCW 36.94.020.

**36.94.410 Transfer of system from county to water-sewer district.** A system of sewerage, system of water or combined water and sewerage systems operated by a county under the authority of this chapter may be transferred from that county to a water-sewer district in the same manner as is provided for the transfer of those functions from a water-sewer district to a county in RCW 36.94.310 through 36.94.340. [1999 c 153 § 51; 1984 c 147 § 1.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

*Actions not subject to review by boundary review board: RCW 36.93.105.*

**36.94.420 Transfer of system from county to water-sewer district—Annexation—Hearing—Public notice—Operation of system.** If so provided in the transfer agreement, the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water-sewer district acquiring the system. The county shall provide notice of the hearing by the county legislative authority on the ordinance executing the transfer agreement under RCW 36.94.330 as follows: (1) By mailed notice to all rate-payers served by the system at least fifteen days prior to the hearing; and (2) by notice in a newspaper of general circulation once at least fifteen days prior to the hearing.

In the event of an annexation under this section resulting from the transfer of a system of sewerage, a system of water, or combined water and sewer systems from a county to a water-sewer district, the water-sewer district shall operate the system or systems under the provisions of Title 57 RCW. [1999 c 153 § 52; 1996 c 230 § 1609; 1985 c 141 § 1; 1984 c 147 § 2.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**36.94.430 Transfer of system from county to water-sewer district—Alternative method.** The provisions of RCW 36.94.410 and 36.94.420 provide an alternative method of accomplishing the transfer permitted by those sections and do not impose additional conditions upon the exercise of powers vested in water-sewer districts and counties. [1999 c 153 § 49; 1984 c 147 § 3.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**36.94.440 Transfer of system from county to water-sewer district—Decree by superior court.** If the superior court finds that the transfer agreement authorized by RCW 36.94.410 is legally correct and that the interests of the owners of related indebtedness are protected, then the court by decree shall direct that the transfer be accomplished in accordance with the agreement. [1984 c 147 § 4.]

**36.94.450 Water conservation programs—Issuance of revenue bonds.** A county engaged in the sale or distribu-

tion of water may issue revenue bonds, or other evidence of indebtedness in the manner provided by this chapter for the purpose of defraying the cost of financing programs for the conservation or more efficient use of water. The bonds or other evidence of indebtedness shall be deemed to be for capital purposes. [1992 c 25 § 2.]

**36.94.460 Water conservation programs—Counties authorized to provide assistance to water customers.** Any county engaged in the sale or distribution of water is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures that are provided water service by the county in financing the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or more efficient use of water in the structures under a water conservation plan adopted by the county if the cost per unit of water saved or conserved by the use of the fixtures, systems, and equipment is less than the cost per unit of water supplied by the next least costly new water source available to the county to meet future demand. Except where otherwise authorized, assistance shall be limited to:

(1) Providing an inspection of the structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation fixtures, systems, and equipment for which financial assistance will be approved and the estimated life cycle savings to the water system and the consumer that are likely to result from the installation of the fixtures, systems, or equipment;

(2) Providing a list of businesses that sell and install the fixtures, systems, and equipment within or in close proximity to the service area of the county, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize the fixtures, systems, and equipment in accordance with the prevailing national standards;

(3) Arranging to have approved conservation fixtures, systems, and equipment installed by a private contractor whose bid is acceptable to the owner of the structure and verifying the installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation fixtures, systems, and equipment. The fixtures, systems, and equipment shall be purchased or installed by a private business, the owner, or the utility.

Pay back shall be in the form of incremental additions to the utility bill, billed either together with [the] use charge or separately. Loans shall not exceed one hundred twenty months in length. [1992 c 25 § 3.]

**36.94.470 Storm or surface water drains or facilities—Annexation, incorporation of area by city or town—Imposition of rates and charges by county.** Whenever a city or town annexes an area, or a city or town incorporates an area, and the county has issued revenue bonds or general obligation bonds to finance storm or surface water drains or facilities that are payable in whole or in part from rates or charges imposed in the area, the county shall continue imposing all portions of the rates or charges that are allocated to

payment of the debt service on bonds in that area after the effective date of the annexation or official date of the incorporation until: (1) The debt is retired; (2) any debt that is issued to refinance the underlying debt is retired; or (3) the city or town reimburses the county amount that is sufficient to retire that portion of the debt borne by the annexed or incorporated area. The county shall construct all facilities included in the storm water plan intended to be financed by the proceeds of such bonds. If the county provides storm water management services to the city or town by contract, the contract shall consider the value of payments made by property owners to the county for the payment of debt service.

The provisions of this section apply whether or not the bonds finance facilities that are geographically located within the area that is annexed or incorporated. [1993 c 361 § 2.]

**36.94.480 Assumption of substandard water system—Limited immunity from liability.** A county assuming responsibility for a water system that is not in compliance with state or federal requirements for public drinking water systems, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements for public drinking water systems, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the county has submitted and is complying with a plan and schedule of improvements approved by the department of health. This immunity shall expire on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith. [1994 c 292 § 7.]

**Findings—Intent—1994 c 292:** See note following RCW 57.04.050.

**36.94.490 Cooperative watershed management.** In addition to the authority provided in RCW 36.94.020, a county may, as part of maintaining a system of sewerage and/or water, participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 9.]

**Finding—Intent—2003 c 327:** See note following RCW 39.34.190.

**36.94.900 Declaration of purpose.** This chapter is hereby declared to be necessary for the public peace, health, safety and welfare and declared to be a county purpose and that the bonds and special assessments authorized hereby are found to be for a public purpose. [1967 c 72 § 33.]

**36.94.910 Authority—Liberal construction of chapter—Modification of inconsistent acts.** This chapter shall be complete authority for the establishment, construction and operation and maintenance of a system or systems of sewerage and/or water hereby authorized, and shall be liberally construed to accomplish its purpose. Any act inconsistent herewith shall be deemed modified to conform with the pro-

visions of this chapter for the purpose of this chapter only. [1967 c 72 § 31.]

**36.94.920 Severability—1967 c 72.** If any portion of this chapter as now or hereafter amended, or its application to any person or circumstances, is held invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof not adjudged to be invalid or unconstitutional, and its application to other persons or circumstances shall not be affected. [1967 c 72 § 32.]

**36.94.921 Severability—1975 1st ex.s. c 188.** If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances shall not be affected. [1975 1st ex.s. c 188 § 13.]

## Chapter 36.95 RCW

### TELEVISION RECEPTION IMPROVEMENT DISTRICTS

#### Sections

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36.95.210	District may not be formed to operate certain translator stations.
36.95.900	Severability—1971 ex.s. c 155.

**36.95.010 Purpose.** The purposes of a television reception improvement district, hereinafter referred to in this chapter as "district", shall be to serve the public interest, convenience, and necessity in the construction, maintenance, and operation of television and FM radio translator stations, including appropriate electric or electronic devices for increasing television program distribution, but said purposes are not meant to include the construction or operation of television cable systems, commonly known and referred to as cable TV systems or CATV. [1985 c 76 § 1; 1971 ex.s. c 155 § 1.]

**36.95.020 Boundaries—Territory excluded.** A district's boundary may include any part or all of any county and may include any part or all of any incorporated area located within the county. A district's boundary may not include any territory already being served by a cable TV system (CATV)

unless on August 9, 1971, there is a translator station retransmitting television signals to such territory. [1991 c 363 § 98; 1971 ex.s. c 155 § 2.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.95.030 Petition to form—Contents.** A petition to form a district may be presented to the board of county commissioners and such petition shall include: (1) A description of the purposes of the petition; (2) a description of the purposes and powers of the proposed district; (3) a description of the boundaries of the proposed district; and (4) the signatures of more than fifty percent of the registered voters residing within the boundaries of the proposed district. [1971 ex.s. c 155 § 3.]

**36.95.040 Notice of text of petition, meeting where will be considered.** If the board of county commissioners, with the assistance of other appropriate county officers, finds the petition filed under RCW 36.95.030 satisfies the requirements of that section, it shall cause the text of the petition to be published once a week for at least three consecutive weeks in a newspaper of general circulation within the county where the petition is presented. With the publication of the petition there shall be published a notice of the time, date, and place of the public meeting of the county commissioners when the petition will be considered, stating that persons interested may appear and be heard. [1971 ex.s. c 155 § 4.]

**36.95.050 Resolution creating district.** If after the public meeting or meetings on the petition, the board of county commissioners finds that creation of the proposed district would serve the public interest, the board shall adopt a resolution granting the petition and creating the district. Prior to adoption however, the board may amend the petition in the interest of carrying out the purposes of this chapter. [1971 ex.s. c 155 § 5.]

**36.95.060 District board—Duties—How constituted—Quorum—Officers—Filling vacancies.** The business of the district shall be conducted by the board of the television reception improvement district, hereinafter referred to as the "board". The board shall be constituted as provided under either subsection (1) or (2) of this section.

(1) The board of a district having boundaries different from the county's shall have either three, five, seven, or nine members, as determined by the board of county commissioners at the time the district is created. Each member shall reside within the boundaries of the district and shall be appointed by the board of county commissioners for a term of three years, or until his or her successor has qualified, except that the board of county commissioners shall appoint one of the members of the first board to a one-year term and two to two-year terms. There is no limit upon the number of terms to which a member may be reappointed after his or her first appointment. A majority of the members of the board shall constitute a quorum for the transaction of business, but the majority vote of the board members shall be necessary for any action taken by the board. The board shall elect from among its members a chairman and such other officers as

may be necessary. In the event a seat on the board is vacated prior to the expiration of the term of the member appointed to such seat, the board of county commissioners shall appoint a person to complete the unexpired term.

(2) Upon the creation of a district having boundaries identical to those of the county (a county-wide district), the county commissioners shall be the members of the board of the district and shall have all the powers and duties of the board as provided under the other sections of this chapter. The county commissioners shall be reimbursed pursuant to the provisions of RCW 36.95.070, and shall conduct the business of the district according to the regular rules and procedures applicable to meetings of the board of county commissioners. [1992 c 150 § 1; 1971 ex.s. c 155 § 6.]

**36.95.070 District board—Reimbursement of members for expenses.** Members of the board shall receive no compensation for their services, but shall be reimbursed from district funds for any actual and necessary expenses incurred by them in the performance of their official duties. [1971 ex.s. c 155 § 7.]

**36.95.080 List of television set owners.** The board shall, on or before the first day of July of any given year, ascertain and prepare a list of all persons believed to own television sets within the district and deliver a copy of such list to the county treasurer. [1988 c 222 § 1; 1981 c 52 § 1; 1971 ex.s. c 155 § 8.]

**36.95.090 County budget provisions applicable to district—Financing budget.** The provisions of chapter 36.40 RCW, relating to budgets, shall apply to the district. The budget of the district shall be financed by an excise tax imposed by the board, and described in RCW 36.95.100. [1971 ex.s. c 155 § 9.]

**36.95.100 Tax levied—Maximum—Exemptions.** The tax provided for in RCW 36.95.090 and this section shall not exceed sixty dollars per year per television set, and no person shall be taxed for more than one television set, except that a motel or hotel or any person owning in excess of five television sets shall pay at a rate of one-fifth of the annual tax rate imposed for each of the first five television sets and one-tenth of such rate for each additional set thereafter. An owner of a television set within the district shall be exempt from paying any tax on such set under this chapter: (1) If either (a) his television set does not receive at least a class grade B contour signal retransmitted by the television translator station or other similar device operated by the district, as such class is defined under regulations of the Federal Communications Commission as of August 9, 1971, or (b) he is currently subscribing to and receiving the services of a community antenna system (CATV) to which his television set is connected; and (2) if he filed a statement with the board claiming his grounds for exemption. Space for such statement shall be provided for in the tax notice which the treasurer shall send to taxpayers in behalf of the district. [1981 c 52 § 2; 1975 c 11 § 1; 1971 ex.s. c 155 § 10.]

**36.95.110 Liability for delinquent tax and costs.** Any person owing the excise tax provided for under this chapter and who fails to pay the same within sixty days after the board or the county treasurer has sent the tax bill to him, shall be deemed to be delinquent. Such person shall be liable for all costs to the county or district attributable to collecting the tax but no such excise tax or costs, nor any judgment based thereon, shall be deemed to create a lien against real property. [1981 c 52 § 3; 1971 ex.s. c 155 § 11.]

**36.95.120 Prorating tax.** The board may adopt rules providing for prorating of tax bills for persons who have not owned a television set within the district for a full tax year. [1971 ex.s. c 155 § 12.]

**36.95.130 District board—Powers generally.** In addition to other powers provided for under this chapter, the board shall have the following powers:

(1) To perform all acts necessary to assure that the purposes of this chapter will be carried out fairly and efficiently;

(2) To acquire, build, construct, repair, own, maintain, and operate any necessary stations retransmitting visual and aural signals intended to be received by the general public, relay stations, pick-up stations, or any other electrical or electronic system necessary: PROVIDED, That the board shall have no power to originate programs;

(3) To make contracts to compensate any owner of land or other property for the use of such property for the purposes of this chapter;

(4) To make contracts with the United States, or any state, municipality, or any department or agency of those entities for carrying out the general purposes for which the district is formed;

(5) To acquire by gift, devise, bequest, lease, or purchase real and personal property, tangible or intangible, including lands, rights of way, and easements, necessary or convenient for its purposes;

(6) To make contracts of any lawful nature (including labor contracts or those for employees' benefits), employ engineers, laboratory personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this chapter;

(7) To contract indebtedness or borrow money and to issue warrants or bonds to be paid from district revenues: PROVIDED, That the bonds, warrants, or other obligations may be in any form, including bearer or registered as provided in RCW 39.46.030: PROVIDED FURTHER, That such warrants and bonds may be issued and sold in accordance with chapter 39.46 RCW;

(8) To prescribe tax rates for the providing of services throughout the area in accordance with the provisions of this chapter; and

(9) To apply for, accept, and be the holder of any permit or license issued by or required under federal or state law. [1985 c 76 § 2; 1983 c 167 § 102; 1980 c 100 § 2; 1971 ex.s. c 155 § 13.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**36.95.140 Signals district may utilize.** A district may translate or retransmit only those signals which originate

from commercial and educational FM radio stations and commercial and educational television stations which directly provide, within some portion of the state of Washington, a class A grade or class B grade contour, as such classes are defined under regulations of the Federal Communications Commission as of August 9, 1971. [1985 c 76 § 3; 1971 ex.s. c 155 § 14.]

**36.95.150 Claims against district board—Procedure upon allowance.** Any claim against the district shall be presented to the board. Upon allowance of the claim, the board shall submit a voucher, signed by the chairman and one other member of the board, to the county auditor for the issuance of a warrant in payment of said claim. This procedure for payment of claims shall apply to the reimbursement of board members for their actual and necessary expenses incurred by them in the performance of their official duties. [1971 ex.s. c 155 § 15.]

**36.95.160 District treasurer—Duties—District warrants.** The treasurer of the county in which a district is located shall be ex officio treasurer of the district. The treasurer shall collect the excise tax provided for under this chapter and shall send notice of payment due to persons owing the tax: PROVIDED, That districts with fewer than twelve hundred persons subject to the excise tax and levying an excise tax of forty dollars or more per television set per year shall have the option of having the district (1) send the tax notices bimonthly, and (2) collect the excise taxes which shall then be forwarded to the county treasurer for deposit in the district account. There shall be deposited with him all funds of the district. All district payments shall be made by him from such funds upon warrants issued by the county auditor, except the sums to be paid out of any bond fund for principal and interest payments on bonds. All warrants shall be paid in the order of issuance. The treasurer shall report monthly to the board, in writing, the amount in the district fund or funds. [1983 c 167 § 103; 1981 c 52 § 4; 1971 ex.s. c 155 § 16.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**36.95.180 Costs of county officers reimbursed.** The board shall reimburse the county auditor, assessor, and treasurer for the actual costs of services performed by them in behalf of the district. [1971 ex.s. c 155 § 18.]

**36.95.190 Penalty for false statement as to tax exemption.** Any person who shall knowingly make a false statement for exemption from the tax provided under this chapter shall be guilty of a misdemeanor. [1971 ex.s. c 155 § 19.]

**36.95.200 Dissolution of district by resolution—Disposition of property.** If the board of county commissioners finds, following a public hearing or hearings, that the continued existence of a district would no longer serve the purposes of this chapter, it may by resolution order the district dissolved. If there is any property owned by the district at the time of dissolution, the board of county commissioners shall have such property sold pursuant to the provisions of chapter

36.34 RCW, as now law or hereafter amended. The proceeds from such sale shall be applied to the county current expense fund. [1971 ex.s. c 155 § 20.]

**36.95.210 District may not be formed to operate certain translator stations.** No television reception improvement district may be formed to operate and maintain any translator station presently or previously owned, operated or maintained by a television broadcaster. [1971 ex.s. c 155 § 21.]

**36.95.900 Severability—1971 ex.s. c 155.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 155 § 22.]

### Chapter 36.96 RCW

#### DISSOLUTION OF INACTIVE SPECIAL PURPOSE DISTRICTS

##### Sections

36.96.010	Definitions.
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36.96.090	Filing of annual statement by special purpose districts—Duties of county auditor.
36.96.800	Alternative dissolution procedure—Drainage and drainage improvement districts—Conditions.
36.96.900	Chapter not exclusive.
36.96.910	Savings—1979 ex.s. c 5.
36.96.920	Severability—1979 ex.s. c 5.

**36.96.010 Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Special purpose district" means every municipal and quasi-municipal corporation other than counties, cities, and towns. Such special purpose districts shall include, but are not limited to, water-sewer districts, fire protection districts, port districts, public utility districts, county park and recreation service areas, flood control zone districts, diking districts, drainage improvement districts, and solid waste collection districts, but shall not include industrial development districts created by port districts, and shall not include local improvement districts, utility local improvement districts, and road improvement districts;

(2) "Governing authority" means the commission, council, or other body which directs the affairs of a special purpose district;

(3) "Inactive" means that a special purpose district, other than a public utility district, is characterized by either of the following criteria:

(a) Has not carried out any of the special purposes or functions for which it was formed within the preceding consecutive five-year period; or

(b) No election has been held for the purpose of electing a member of the governing body within the preceding consecutive seven-year period or, in those instances where members of the governing body are appointed and not elected, where no member of the governing body has been appointed within the preceding seven-year period.

A public utility district is inactive when it is characterized by both criteria (a) and (b) of this subsection. [1999 c 153 § 50; 1979 ex.s. c 5 § 1.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**36.96.020 County auditor to notify county legislative authority of inactive special purpose districts.** On or before June 1st of 1980, and on or before June 1st of every year thereafter, each county auditor shall search available records and notify the county legislative authority if any special purpose districts located wholly or partially within the county appear to be inactive. Each county auditor shall also provide in the notifications made in 1982 and thereafter a list of all special purpose districts located wholly or partially within the county which, for three consecutive years before the notification, have failed to file statements with the county auditor as required in RCW 36.96.090. If the territory of any special purpose district is located within more than one county, the legislative authorities of all other counties within whose boundaries such a special purpose district lies shall also be notified by the county auditor. However, the authority to dissolve such a special purpose district as provided by this chapter shall rest solely with the legislative authority of the county which contains the greatest geographic portion of such special purpose district. [1979 ex.s. c 5 § 2.]

**36.96.030 Determination of inactive special purpose districts—Public hearing—Notice.** (1) Upon receipt of notice from the county auditor as provided in RCW 36.96.020, the county legislative authority within whose boundaries all or the greatest portion of such special purpose district lies shall hold one or more public hearings on or before September 1st of the same year to determine whether or not such special purpose district or districts meet either of the criteria for being "inactive" as provided in RCW 36.96.010: PROVIDED, That if such a special purpose district is a public utility district, the county legislative authority shall determine whether or not the public utility district meets both criteria of being "inactive" as provided in RCW 36.96.010. In addition, at any time a county legislative authority may hold hearings on the dissolution of any special purpose district that appears to meet the criteria of being "inactive" and dissolve such a district pursuant to the proceedings provided for in RCW 36.96.030 through 36.96.080.

(2) Notice of such public hearings shall be given by publication at least once each week for not less than three successive weeks in a newspaper that is in general circulation within the boundaries of the special purpose district or districts. Notice of such hearings shall also be mailed to each member of the governing authority of such special purpose districts, if such members are known, and to all persons known to have claims against any of the special purpose districts. Notice of such public hearings shall be posted in at least three conspicuous places within the boundaries of each special purpose

district that is a subject of such hearings. Whenever a county legislative authority that is conducting such a public hearing on the dissolution of one or more of a particular kind of special purpose district is aware of the existence of an association of such special purpose districts, it shall also mail notice of the hearing to the association. In addition, whenever a special purpose district that lies in more than one county is a subject of such a public hearing, notice shall also be mailed to the legislative authorities of all other counties within whose boundaries the special purpose district lies. All notices shall state the purpose, time, and place of such hearings, and that all interested persons may appear and be heard. [1979 ex.s. c 5 § 3.]

**36.96.040 Dissolution of inactive special purpose district by county legislative authority—Written findings.** After such hearings, the county legislative authority shall make written findings whether each of the special purpose districts that was a subject of the hearings meets each of the criteria of being "inactive." Whenever a special purpose district other than a public utility district has been found to meet a criterion of being inactive, or a public utility district has been found to meet both criteria of being inactive, the county legislative authority shall adopt an ordinance dissolving the special purpose district if it also makes additional written findings detailing why it is in the public interest that the special purpose district be dissolved, and shall provide a copy of the ordinance to the county treasurer. Except for the purpose of winding up its affairs as provided by this chapter, a special purpose district that is so dissolved shall cease to exist and the authority and obligation to carry out the purposes for which it was created shall cease thirty-one days after adoption of the dissolution ordinance. [2001 c 299 § 12; 1979 ex.s. c 5 § 4.]

**36.96.050 Application for writ of prohibition or mandamus by interested party—Procedure.** The action of the county legislative authority dissolving a special purpose district pursuant to RCW 36.96.040 shall be final and conclusive unless within thirty days of the adoption of the ordinance an interested party makes application to a court of competent jurisdiction for a writ of prohibition or writ of mandamus. At the hearing upon such a writ, the applicant shall have the full burden of demonstrating that the particular special purpose district, other than a public utility district, does not meet either of the criteria of being inactive or that it is not in the public interest that the special purpose district be dissolved: PROVIDED, That where the particular special purpose district subject to the dissolution proceedings is a public utility district, the applicant shall have the full burden of demonstrating that the public utility district either does not meet both the criteria of being inactive or that it is not in the public interest to dissolve the public utility district. [1979 ex.s. c 5 § 5.]

**36.96.060 Dissolution of inactive special purpose district by county legislative authority—Powers and duties.** For the sole and exclusive purpose of winding up the affairs of a dissolved special purpose district, the county legislative authority, acting as a board of trustees, shall have the same

powers and duties as the governing authority of the dissolved special purpose district including the following:

(1) To exchange, sell, or otherwise dispose of all property, real and personal, of the dissolved special purpose district; and

(2) To settle all obligations of such special purpose district. Such powers and duties shall commence upon the effective date of dissolution and shall continue thereafter until such time as the affairs of the dissolved special purpose district have been completely wound up. [1979 ex.s. c 5 § 6.]

**36.96.070 Dissolved special purpose district—Disposition of property.** Any moneys or funds of the dissolved special purpose district and any moneys or funds received by the board of trustees from the sale or other disposition of any property of the dissolved special purpose district shall be used, to the extent necessary, for the payment or settlement of any outstanding obligations of the dissolved special purpose district. Any remaining moneys or funds shall be used to pay the county legislative authority for all costs and expenses incurred in the dissolution and liquidation of the dissolved special purpose district. Thereafter, any remaining moneys, funds, or property shall become that of the county in which the dissolved special purpose district was located. However, if the territory of the dissolved special purpose district was located within more than one county, the remaining moneys, funds, and personal property shall be apportioned and distributed to each county in the proportion that the geographical area of the dissolved special purpose district within the county bears to the total geographical area of the dissolved special purpose district, and any remaining real property or improvements to real property shall be transferred to the county within whose boundaries it lies. A county to which real property or improvements to real property are transferred under this section does not have an obligation to use the property or improvements for the purposes for which the dissolved special purpose district used the property or improvements and the county does not assume the obligations or liabilities of the dissolved special purpose district as a result of the transfer. [2001 c 299 § 13; 1979 ex.s. c 5 § 7.]

**36.96.080 Dissolved special purpose district—Satisfaction of outstanding obligations.** If the proceeds from the sale of any property of the special district together with any moneys or funds of the special purpose district are insufficient to satisfy the outstanding obligations of the special purpose district, the county legislative authority, acting as a board of trustees, shall exercise any and all powers conferred upon it to satisfy such outstanding obligations: PROVIDED, That in no case shall the board of trustees be obligated to satisfy such outstanding obligations from county moneys, funds, or other sources of revenue unless it would have been so obligated before initiation of the dissolution proceedings under this chapter. [1979 ex.s. c 5 § 8.]

**36.96.090 Filing of annual statement by special purpose districts—Duties of county auditor.** (1) Every special purpose district shall file a statement with the auditor of each county in which it lies on or before December 31st of every year, beginning in the year 1979. The initial statement filed

by each special purpose district shall contain the following information:

(a) The name of the special purpose district and a general description of its location and geographical area within the county and within any other county;

(b) The statutes under which the special purpose district operates;

(c) The name, address, telephone number, and remaining term of office of each member of its governing authority; and

(d) The functions that the special purpose district is then presently performing and the purposes for which it was created.

Subsequent annual statements need only identify the special purpose district and any of the above detailed information that has changed in the last year.

(2) Each county auditor, on or before January 31, 1980, and on or before January 31st each year thereafter, shall forward to the state auditor a summation of the information contained in the statements required to be filed in subsection (1) of this section together with information of each special purpose district located wholly or partially within the county that has been dissolved during the preceding year. [1979 ex.s. c 5 § 9.]

**36.96.800 Alternative dissolution procedure—Drainage and drainage improvement districts—Conditions.** As an alternative to this chapter a drainage district or drainage improvement district located within the boundaries of a county storm drainage and surface water management utility, and which is not currently imposing assessments, may be dissolved by ordinance of the county legislative authority. If the alternative dissolution procedure in this section is used the following shall apply:

(1) The county storm drainage and surface water management utility shall assume responsibility for payment or settlement of outstanding debts of the dissolved drainage district or drainage improvement district.

(2) All assets, including money, funds, improvements, or property, real or personal, shall become assets of the county in which the dissolved drainage district or drainage improvement district was located.

(3) Notwithstanding RCW 85.38.220, the county storm drainage and surface water management utility may determine how to best manage, operate, maintain, improve, exchange, sell, or otherwise dispose of all property, real and personal, of the dissolved drainage district or drainage improvement district. [1991 c 28 § 1.]

**36.96.900 Chapter not exclusive.** The provisions of this chapter to dissolve inactive special purpose districts shall not be exclusive, and shall be in addition to any other method or methods provided by law to dissolve a special purpose district. [1979 ex.s. c 5 § 10.]

**36.96.910 Savings—1979 ex.s. c 5.** The enactment of this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on September 1, 1979. [1979 ex.s. c 5 § 11.]

**36.96.920 Severability—1979 ex.s. c 5.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 5 § 15.]

## Chapter 36.100 RCW

### PUBLIC FACILITIES DISTRICTS

#### Sections

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*Changes in tax law—Liability: RCW 82.08.064, 82.14.055, and 82.32.430.*

*Sales and use tax for public facilities districts: RCW 82.14.048.*

*Sales and use tax imposed by public facilities districts for regional centers: RCW 82.14.390.*

**36.100.010 Public facilities districts—Creation—Approval of taxes by election—Corporate powers—Property transfer.** (1) A public facilities district may be created in any county and shall be coextensive with the boundaries of the county.

(2) A public facilities district shall be created upon adoption of a resolution providing for the creation of such a district by the county legislative authority in which the proposed district is located.

(3) A public facilities district is a municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(4) No taxes authorized under this chapter may be assessed or levied unless a majority of the voters of the public facilities district has approved such tax at a general or special election. A single ballot proposition may both validate the imposition of the sales and use tax under RCW 82.14.048 and the excise tax under RCW 36.100.040.

(5) A public facilities district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including,

but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(6) A public facilities district may enter into contracts with a county for the purpose of exercising any powers of a community renewal agency under chapter 35.81 RCW.

(7) The county legislative authority or the city council may transfer property to the public facilities district created under this chapter. No property that is encumbered with debt or that is in need of major capital renovation may be transferred to the district without the agreement of the district and revenues adequate to retire the existing indebtedness. [2002 c 218 § 26; 1995 3rd sp.s. c 1 § 301; 1995 1st sp.s. c 14 § 1; 1995 c 396 § 1; 1989 1st ex.s. c 8 § 1; 1988 ex.s. c 1 § 11.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**Severability—1995 1st sp.s. c 14:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 1st sp.s. c 14 § 12.]

**Effective dates—1995 1st sp.s. c 14:** "(1) Sections 1 through 9 and 11 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995.

(2) Sections 10 and 12 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 14, 1995]." [1995 1st sp.s. c 14 § 13.]

**Severability—1995 c 396:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 396 § 19.]

**36.100.020 Governance—Board of directors.** (1) A public facilities district shall be governed by a board of directors consisting of five or seven members as provided in this section. If the largest city in the county has a population that is at least forty percent of the total county population, the board of directors of the public facilities district shall consist of five members selected as follows: (a) Two members appointed by the county legislative authority to serve for four-year staggered terms; (b) two members appointed by the city council of the largest city in the county to serve for four-year staggered terms; and (c) one person to serve for a four-year term who is selected by the other directors. If the largest city in the county has a population of less than forty percent of the total county population, the county legislative authority shall establish in the resolution creating the public facilities district whether the board of directors of the public facilities district has either five or seven members, and the county legislative authority shall appoint the members of the board of directors to reflect the interests of cities and towns in the county, as well as the unincorporated area of the county. However, if the county has a population of one million or more, the largest city in the county has a population of less than forty percent of the total county population, and the county operates under a county charter, which provides for an elected county executive, three members shall be appointed by the governor and the remaining members shall be appointed by the county executive subject to confirmation by the county legislative authority. Of the members appointed by the governor, the speaker of the house of representatives

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and the majority leader of the senate shall each recommend to the governor a person to be appointed to the board.

(2) At least one member on the board of directors shall be representative of the lodging industry in the public facilities district before the public facilities district imposes the excise tax under RCW 36.100.040.

(3) Members of the board of directors shall serve four-year terms of office, except that two of the initial five board members or three of the initial seven board members shall serve two-year terms of office.

(4) A vacancy shall be filled in the same manner as the original appointment was made and the person appointed to fill a vacancy shall serve for the remainder of the unexpired term of the office for the position to which he or she was appointed.

(5) A director appointed by the governor may be removed from office by the governor. Any other director may be removed from office by action of at least two-thirds of the members of the legislative authority which made the appointment. [1995 3rd sp.s. c 1 § 302; 1995 1st sp.s. c 14 § 2; 1995 c 396 § 2; 1989 1st ex.s. c 8 § 2; 1988 ex.s. c 1 § 12.]

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**Severability—Effective dates—1995 1st sp.s. c 14:** See notes following RCW 36.100.010.

**Severability—1995 c 396:** See note following RCW 36.100.010.

**36.100.030 Facilities—Agreements—Fees.** (1) A public facilities district is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate (a) sports facilities, entertainment facilities, convention facilities, or regional centers as defined in RCW 35.57.020, and (b) for districts formed after January 1, 2000, recreational facilities other than ski areas, together with contiguous parking facilities. The taxes that are provided for in this chapter may only be imposed for these purposes.

(2) A public facilities district may enter into agreements under chapter 39.34 RCW for the joint provision and operation of such facilities and may enter into contracts under chapter 39.34 RCW where any party to the contract provides and operates such facilities for the other party or parties to the contract.

(3) Notwithstanding the establishment of a career, civil, or merit service system, a public facilities district may contract with a public or private entity for the operation or management of its public facilities.

(4) A public facilities district is authorized to use the supplemental alternative public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of any of its public facilities.

(5) A public facilities district may impose charges and fees for the use of its facilities, and may accept and expend or use gifts, grants, and donations. [2003 c 376 § 1; 1999 c 165 § 16; 1995 1st sp.s. c 14 § 3; 1995 c 396 § 3; 1989 1st ex.s. c 8 § 3; 1988 ex.s. c 1 § 13.]

**Severability—1999 c 164:** See RCW 35.57.900.

**Severability—Effective dates—1995 1st sp.s. c 14:** See notes following RCW 36.100.010.

**Severability—1995 c 396:** See note following RCW 36.100.010.

**36.100.035 Additional powers and restrictions on district that constructs baseball stadium.** In addition to other powers and restrictions on a public facilities district, the following shall apply to a public facilities district, located in a county with a population of one million or more, that constructs a baseball stadium:

(1) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the authority to determine the stadium site;

(2) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the authority to establish the overall scope of the stadium project, including, but not limited to, the stadium itself, associated parking facilities, associated retail and office development that are part of the stadium facility, and ancillary services or facilities;

(3) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the final authority to make the final determination of the stadium design and specifications;

(4) The public facilities district shall have the authority to contract with the baseball team that will use the stadium to obtain architectural, engineering, environmental, and other professional services related to the stadium site and design options, environmental study requirements, and obtaining necessary permits for the stadium facility;

(5) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the authority to establish the project budget and bidding specifications and requirements on the stadium project;

(6) The public facilities district, in consultation with the professional baseball team that will use the stadium and the county in which the public facilities district is located, shall have the authority to structure the financing of the stadium facility project; and

(7) The public facilities district shall consult with the house of representatives executive rules committee and the senate facilities and operations committee before selecting a name for the stadium.

As used in this section, "stadium" and "baseball stadium" mean a "baseball stadium" as defined in RCW 82.14.0485. [1995 3rd sp.s. c 1 § 303.]

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**36.100.036 Donated moneys for baseball stadium.** A public facilities district may accept and expend moneys that may be donated for the purpose of a baseball stadium as defined in RCW 82.14.0485. [1995 3rd sp.s. c 1 § 304.]

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**36.100.037 Baseball stadium construction agreement.** The public facilities district, the county, and the city with the largest population in the county shall enter into an agreement regarding the construction of a baseball stadium as defined in RCW 82.14.0485. The agreement shall address, but not be limited to:

(1) Expedited permit processing for the design and construction of the project;

(2) Expedited environmental review processing;

(3) Expedited processing of requests for street, right of way, or easement vacations necessary for the construction of the project; and

(4) Other items deemed necessary for the design and construction of the project. [1995 3rd sp.s. c 1 § 308.]

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**36.100.040 Lodging tax authorized.** A public facilities district may impose an excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on any premises having fewer than forty lodging units. However, if a public facilities district has not imposed such an excise tax prior to December 31, 1995, the public facilities district may only impose the excise tax if a ballot proposition authorizing the imposition of the tax has been approved by a simple majority vote of voters of the public facilities district voting on the proposition.

The rate of the tax shall not exceed two percent and the proceeds of the tax shall only be used for the acquisition, design, construction, remodeling, maintenance, equipping, reequipping, repairing, and operation of its public facilities. This excise tax shall not be imposed until the district has approved the proposal to acquire, design, and construct the public facilities.

A public facilities district may not impose the tax authorized in this section if, after the tax authorized in this section was imposed, the effective combined rate of state and local excise taxes, including sales and use taxes and excise taxes on lodging, imposed on the sale of or charge made for furnishing of lodging in any jurisdiction in the public facilities district exceeds eleven and one-half percent. [2002 c 178 § 5; 1995 c 396 § 4; 1989 1st ex.s. c 8 § 4; 1988 ex.s. c 1 § 14.]

**Retroactive application—Effective date—2002 c 178:** See notes following RCW 67.28.180.

**Severability—1995 c 396:** See note following RCW 36.100.010.

**36.100.050 Ad valorem property tax.** (1) A public facilities district may levy an ad valorem property tax, in excess of the one percent limitation, upon the property within the district for a one-year period to be used for operating or capital purposes whenever authorized by the voters of the district pursuant to RCW 84.52.052 and Article VII, section 2(a) of the state Constitution.

(2) A public facilities district may provide for the retirement of voter-approved general obligation bonds, issued for capital purposes only, by levying bond retirement ad valorem property tax levies, in excess of the one percent limitation, whenever authorized by the voters of the district pursuant to Article VII, section 2(b) of the state Constitution and RCW 84.52.056. [1988 ex.s. c 1 § 15.]

**36.100.060 General obligation bonds—Termination, reauthorization of excise tax.** (1) To carry out the purpose of this chapter, a public facilities district may issue general obligation bonds, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness, equal to one-half of one percent of the value of taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015. A facilities district

additionally may issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to one and one-fourth percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, when authorized by the voters of the public facilities district pursuant to Article VIII, section 6 of the state Constitution, and to provide for the retirement thereof by excess property tax levies as provided in this chapter.

(2) General obligation bonds may be issued with a maturity of up to thirty years, and shall be issued and sold in accordance with the provisions of chapter 39.46 RCW.

(3) The general obligation bonds may be payable from the operating revenues of the public facilities district in addition to the tax receipts of the district.

(4) The excise tax imposed pursuant to RCW 36.100.040 shall terminate upon final payment of all bonded indebtedness for its public facilities, except that the excise tax may be reauthorized by a public vote, in the same manner as originally authorized, for funding of additional public facilities or a regional center. [1999 c 165 § 15; 1995 1st sp.s. c 14 § 4; 1995 c 396 § 5; 1989 1st ex.s. c 8 § 5; 1988 ex.s. c 1 § 16.]

**Severability—1999 c 164:** See RCW 35.57.900.

**Severability—Effective dates—1995 1st sp.s. c 14:** See notes following RCW 36.100.010.

**Severability—1995 c 396:** See note following RCW 36.100.010.

**36.100.070 Acquisition and transfer of real and personal property.** A public facilities district may acquire and transfer real and personal property by lease, sublease, purchase, or sale. [1988 ex.s. c 1 § 17.]

**36.100.080 Direct or collateral attack barred after thirty days.** No direct or collateral attack on any public facilities district purported to be authorized or created in conformance with this chapter may be commenced more than thirty days after creation by the county legislative authority. [1995 1st sp.s. c 14 § 5.]

**Severability—Effective dates—1995 1st sp.s. c 14:** See notes following RCW 36.100.010.

**36.100.090 Tax deferral—New public facilities.** (1) The governing board of a public facilities district may apply for deferral of taxes on the construction of buildings, site preparation, and the acquisition of related machinery and equipment for a new public facility. Application shall be made to the department of revenue in a form and manner prescribed by the department of revenue. The application shall contain information regarding the location of the public facility, estimated or actual costs, time schedules for completion and operation, and other information required by the department of revenue. The department of revenue shall approve the application within sixty days if it meets the requirements of this section.

(2) The department of revenue shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on the public facility. The use of the certificate shall be governed by rules established by the department of revenue.

(3) The public facilities district shall begin paying the deferred taxes in the fifth year after the date certified by the department of revenue as the date on which the public facility is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax.

(4) The department of revenue may authorize an accelerated repayment schedule upon request of the public facilities district.

(5) Interest shall not be charged on any taxes deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this section. The debt for deferred taxes is not extinguished by insolvency or other failure of the public facilities district.

(6) Applications and any other information received by the department of revenue under this section are not confidential and are subject to disclosure. Chapter 82.32 RCW applies to the administration of this section.

(7) As used in this section, "public facility" means a baseball stadium with a retractable roof or canopy and natural turf. [1995 1st sp.s. c 14 § 6.]

**Severability—Effective dates—1995 1st sp.s. c 14:** See notes following RCW 36.100.010.

**36.100.100 Ex officio treasurer.** The treasurer of the county in which a public facilities district is located shall be the ex officio treasurer of the district. [1995 c 396 § 7.]

**Severability—1995 c 396:** See note following RCW 36.100.010.

**36.100.110 Travel, expense reimbursement policy—Required.** The board of directors of the public facilities district shall adopt a resolution that may be amended from time to time that shall establish the basic requirements governing methods and amounts of reimbursement payable to such district officials and employees for travel and other business expenses incurred on behalf of the district. The resolution shall, among other things, establish procedures for approving such expenses; the form of the travel and expense voucher; and requirements governing the use of credit cards issued in the name of the district. The resolution may also establish procedures for payment of per diem to board members. The state auditor shall, as provided by general law, cooperate with the public facilities district in establishing adequate procedures for regulating and auditing the reimbursement of all such expenses. [1995 c 396 § 8.]

**Severability—1995 c 396:** See note following RCW 36.100.010.

**36.100.120 Travel, expense reimbursement policy—Limitations.** The board of directors of the public facilities district may authorize payment of actual and necessary expenses of officers and employees for lodging, meals, and travel-related costs incurred in attending meetings or conferences on behalf of the public facilities district and strictly in the public interest and for public purposes. Officers and employees may be advanced sufficient sums to cover their anticipated expenses in accordance with rules adopted by the state auditor, which shall substantially conform to the proce-

dures provided in RCW 43.03.150 through 43.03.210. [1995 c 396 § 9.]

**Severability—1995 c 396:** See note following RCW 36.100.010.

**36.100.130 Board of directors—Compensation.** Each member of the board of directors of the public facilities district may receive compensation of fifty dollars per day for attending meetings or conferences on behalf of the district, not to exceed three thousand dollars per year. A director may waive all or a portion of his or her compensation under this section as to a month or months during his or her term of office, by a written waiver filed with the public facilities district. The compensation provided in this section is in addition to reimbursement for expenses paid to the directors by the public facilities district. [1995 c 396 § 10.]

**Severability—1995 c 396:** See note following RCW 36.100.010.

**36.100.140 Liability insurance.** The board of directors of the public facilities district may purchase liability insurance with such limits as the directors may deem reasonable for the purpose of protecting and holding personally harmless district officers and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1995 c 396 § 11.]

**Severability—1995 c 396:** See note following RCW 36.100.010.

**36.100.150 Costs of defense.** Whenever an action, claim, or proceeding is instituted against a person who is or was an officer or employee of the public facilities district arising out of the performance of duties for or employment with the district, the public facilities district may grant a request by the person that the attorney of the district's choosing be authorized to defend the claim, suit, or proceeding, and the costs of defense, attorneys' fees, and obligation for payments arising from the action may be paid from the district's funds. Costs of defense or judgment or settlement against the person shall not be paid in a case where the court has found that the person was not acting in good faith or within the scope of employment with or duties for the public facilities district. [1995 c 396 § 12.]

**Severability—1995 c 396:** See note following RCW 36.100.010.

**36.100.160 Expenditure of funds—Purposes.** The board of directors of the public facilities district shall have authority to authorize the expenditure of funds for the public purposes of preparing and distributing information to the general public and promoting, advertising, improving, developing, operating, and maintaining facilities of the district. Nothing contained in this section may be construed to authorize preparation and distribution of information to the general public for the purpose of influencing the outcome of a district election. [1995 c 396 § 13.]

**Severability—1995 c 396:** See note following RCW 36.100.010.

**36.100.170 Employees—Benefits.** The public facilities district shall have authority to create and fill positions, fix wages, salaries, and bonds therefor, pay costs involved in securing or arranging to secure employees, and establish benefits for employees, including holiday pay, vacations or vaca-

tion pay, retirement benefits, medical, life, accident, or health disability insurance, as approved by the board. Public facilities district board members, at their own expense, shall be entitled to medical, life, accident, or health disability insurance. Insurance for employees and board members shall not be considered compensation. District coverage for the board is not to exceed that provided public facilities district employees. [1995 c 396 § 14.]

**Severability—1995 c 396:** See note following RCW 36.100.010.

**36.100.180 Service provider agreements.** The public facilities district may secure services by means of an agreement with a service provider. The public facilities district shall publish notice, establish criteria, receive and evaluate proposals, and negotiate with respondents under requirements set forth by district resolution. [1995 c 396 § 15.]

**Severability—1995 c 396:** See note following RCW 36.100.010.

**36.100.190 Purchases and sales—Procedures.** In addition to provisions contained in chapter 39.04 RCW, the public facilities district is authorized to follow procedures contained in RCW 43.19.1906 and 43.19.1911 for all purchases, contracts for purchase, and sales. [1995 c 396 § 16.]

**Severability—1995 c 396:** See note following RCW 36.100.010.

**36.100.200 Revenue bonds—Limitations.** (1) A public facilities district may issue revenue bonds to fund revenue generating facilities, or portions of facilities, which it is authorized to provide or operate. Whenever revenue bonds are to be issued, the board of directors of the district shall create or have created a special fund or funds from which, along with any reserves created pursuant to RCW 39.44.140, the principal and interest on such revenue bonds shall exclusively be payable. The board may obligate the district to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues from the public improvements, projects, or facilities, and all related additions, that are funded by the revenue bonds. This amount or proportion shall be a lien and charge against these revenues, subject only to operating and maintenance expenses. The board shall have due regard for the cost of operation and maintenance of the public improvements, projects, or facilities, or additions, that are funded by the revenue bonds, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion, if any, of the revenue so previously pledged. The board may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(2) Revenue bonds issued pursuant to this section shall not be an indebtedness of the district issuing the bonds, and the interest and principal on the bonds shall only be payable from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The owner or bearer of a revenue bond or any interest coupon issued pursuant to this section shall not have any claim against the district arising from the bond or coupon except for payment from the revenues lawfully pledged to meet the principal and interest requirements and

any reserves created pursuant to RCW 39.44.140. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each bond issued pursuant to this section.

(3) Revenue bonds with a maturity in excess of thirty years shall not be issued. The board of directors of the district shall by resolution determine for each revenue bond issue the amount, date, form, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, and covenants including the refunding of existing revenue bonds. Facsimile signatures may be used on the bonds and any coupons. Refunding revenue bonds may be issued in the same manner as revenue bonds are issued. [1995 c 396 § 17.]

**Severability—1995 c 396:** See note following RCW 36.100.010.

*Alternative authority to issue revenue bonds: RCW 39.46.150, 39.46.160.*

*Funds for reserve purposes may be included in issue amount: RCW 39.44.140.*

**36.100.210 Tax on admissions.** A public facility district may levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid by the person who pays an admission charge to a regional center, as defined in RCW 35.57.020. This includes a tax on persons who are admitted free of charge or at reduced rates if other persons pay a charge or a regular higher charge for the same privileges or accommodations.

The term "admission charge" includes:

- (1) A charge made for season tickets or subscriptions;
- (2) A cover charge, or a charge made for use of seats and tables reserved or otherwise, and other similar accommodations;
- (3) A charge made for food and refreshment if free entertainment, recreation, or amusement is provided;
- (4) A charge made for rental or use of equipment or facilities for purposes of recreation or amusement; if the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge;
- (5) Automobile parking charges if the amount of the charge is determined according to the number of passengers in the automobile. [1999 c 165 § 17.]

**Severability—1999 c 164:** See RCW 35.57.900.

**36.100.220 Tax on vehicle parking charges.** A public facility district may levy and fix a tax on any vehicle parking charges imposed at any parking facility that is owned or leased by the public facility district as part of a regional center, as defined in RCW 35.57.020. No county or city or town within which the regional center is located may impose a tax of the same or similar kind on any vehicle parking charges at the facility. For the purposes of this section, "vehicle parking charges" means only the actual parking charges exclusive of taxes and service charges and the value of any other benefit conferred. The tax authorized under this section shall be at the rate of not more than ten percent. [1999 c 165 § 18.]

**Severability—1999 c 164:** See RCW 35.57.900.

**36.100.900 Severability—1988 ex.s. c 1.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 ex.s. c 1 § 27.]

## Chapter 36.102 RCW

### STADIUM AND EXHIBITION CENTERS

#### Sections

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**36.102.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Design" includes architectural, engineering, and other related professional services.

(2) "Develop" means, generally, the process of planning, designing, financing, constructing, owning, operating, and leasing a project such as a stadium and exhibition center.

(3) "Permanent seat license" means a transferable license sold to a third party that, subject to certain conditions, restrictions, and limitations, entitles the third party to purchase a season ticket to professional football games of the professional football team played in the stadium and exhibition center for so long as the team plays its games in that facility.

(4) "Preconstruction" includes negotiations, including negotiations with any team affiliate, planning, studies, design, and other activities reasonably necessary before constructing a stadium and exhibition center.

(5) "Professional football team" means a team that is a member of the national football league or similar professional football association.

(6) "Public stadium authority operation" means the formation and ongoing operation of the public stadium authority, including the hiring of employees, agents, attorneys, and other contractors, and the acquisition and operation of office facilities.

(7) "Site acquisition" means the purchase or other acquisition of any interest in real property including fee simple interests and easements, which property interests constitute the site for a stadium and exhibition center.

(8) "Site preparation" includes demolition of existing improvements, environmental remediation, site excavation, shoring, and construction and maintenance of temporary traffic and pedestrian routing.

(9) "Stadium and exhibition center" means an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, together with associated parking facilities and other ancillary facilities.

(10) "Team affiliate" means a professional football team that will use the stadium and exhibition center, and any affiliate of the team designated by the team. An "affiliate of the team" means any person or entity that controls, is controlled by, or is under common control with the team. [1997 c 220 § 101 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.020 Public stadium authority—Creation—Powers and duties—Transfer of property.** (1) A public stadium authority may be created in any county that has entered into a letter of intent relating to the development of a stadium and exhibition center under chapter 220, Laws of 1997 with a team affiliate or an entity that has a contractual right to become a team affiliate.

(2) A public stadium authority shall be created upon adoption of a resolution providing for the creation of such an authority by the county legislative authority in which the proposed authority is located.

(3) A public stadium authority shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(4) The legislative authority of the county in which the public stadium authority is located, or the council of any city located in that county, may transfer property to the public stadium authority created under this chapter. Property encumbered by debt may be transferred by a county legislative authority or a city council to a public stadium authority created to develop a stadium and exhibition center under RCW 36.102.050, but obligation for payment of the debt may not be transferred. [1997 c 220 § 102 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.030 Public stadium authority—Board of directors—Appointment—Terms—Vacancy—Removal.**

(1) A public stadium authority shall be governed by a board of directors consisting of seven members appointed by the governor. The speaker of the house of representatives, the minority leader of the house of representatives, the majority leader of the senate, and the minority leader of the senate shall each recommend to the governor a person to be appointed to the board.

(2) Members of the board of directors shall serve four-year terms of office, except that three of the initial seven board members shall serve two-year terms of office. The governor shall designate the initial terms of office for the initial members who are appointed.

(3) A vacancy shall be filled in the same manner as the original appointment was made and the person appointed to fill a vacancy shall serve for the remainder of the unexpired term of the office for the position to which he or she was appointed.

(4) A director appointed by the governor may be removed from office by the governor. [1997 c 220 § 103 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.040 Public stadium authority advisory committee—Appointment—Review and comment on proposed lease agreement.**

(1) There is created a public stadium authority advisory committee comprised of five members. The advisory committee consists of: The director of the office of financial management, who shall serve as chair; two members appointed by the house of representatives, one each appointed by the speaker of the house of representatives and the minority leader of the house of representatives; and two members appointed by the senate, one each appointed by the majority leader of the senate and the minority leader of the senate.

(2) The advisory committee, prior to the final approval of any lease with the master tenant or sale of stadium naming rights, shall review and comment on the proposed lease agreement or sale of stadium naming rights. [1997 c 220 § 104 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.050 Public stadium authority—Powers and duties—Acquisition, construction, ownership, remodeling, maintenance, equipping, reequipping, repairing, and operation of stadium and exhibition center—Contracts and agreements regarding ownership and operation—Employees unclassified—Supplemental public works contracting procedures—Charges and fees—Gifts, grants, and donations—Prevailing wage and women and**

**minority-business participation.** (1) The public stadium authority is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a stadium and exhibition center as defined in RCW 36.102.010.

(2) The public stadium authority may enter into agreements under chapter 39.34 RCW for the joint provision and operation of a stadium and exhibition center and may enter into contracts under chapter 39.34 RCW where any party to the contract provides and operates the stadium and exhibition center for the other party or parties to the contract.

(3) Any employees of the public stadium authority shall be unclassified employees not subject to the provisions of chapter 41.06 RCW and a public stadium authority may contract with a public or private entity for the operation or management of the stadium and exhibition center.

(4) The public stadium authority is authorized to use the alternative supplemental public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of a stadium and exhibition center.

(5) The public stadium authority may impose charges and fees for the use of the stadium and exhibition center, and may accept and expend or use gifts, grants, and donations.

(6) The public stadium authority shall comply with the prevailing wage requirements of chapter 39.12 RCW and goals established for women and minority-business participation for the county. [1997 c 220 § 105 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.060 Public stadium authority—Powers and duties—Site—Project scope—Design and specification—Use of professional services—Budget—Financing structure—Development agreement—Lease agreement—Profit-sharing discussion—Master tenant funds for Olympics and world cup—Stadium scheduling—Super Bowl acquisition—Mitigation—Demolition filming—Permanent seat licenses.** In addition to other powers and restrictions on a public stadium authority, the following apply to a public stadium authority created to develop a stadium and exhibition center under RCW 36.102.050:

(1) The public stadium authority, in consultation with the team affiliate, shall have the authority to determine the stadium and exhibition center site;

(2) The public stadium authority, in consultation with the team affiliate, shall have the authority to establish the overall scope of the stadium and exhibition center project, including, but not limited to, stadium and exhibition center itself, associated exhibition facilities, associated parking facilities, associated retail and office development that are part of the stadium and exhibition center, and ancillary services and facilities;

(3) The public stadium authority, in consultation with the team affiliate, shall have the authority to make the final determination of the stadium and exhibition center overall design and specification;

(4) The public stadium authority shall have the authority to contract with a team affiliate for the provision of architectural, engineering, environmental, and other professional services related to the stadium and exhibition center site, design options, required environmental studies, and necessary permits for the stadium and exhibition center;

(5) The public stadium authority, in consultation with the team affiliate, shall have the authority to establish the project budget on the stadium and exhibition center project;

(6) The public stadium authority, in consultation with the team affiliate, shall have the authority to make recommendations to the state finance committee regarding the structure of the financing of the stadium and exhibition center project;

(7) The public stadium authority shall have the authority to enter into a development agreement with a team affiliate whereby the team affiliate may control the development of the stadium and exhibition center project, consistent with subsections (1) through (6) of this section, in consideration of which the team affiliate assumes the risk of costs of development that are in excess of the project budget established under subsection (5) of this section. Under the development agreement, the team affiliate shall determine bidding specifications and requirements, and other aspects of development. Under the development agreement, the team affiliate shall determine procurement procedures and other aspects of development, and shall select and engage an architect or architects and a contractor or contractors for the stadium and exhibition center project, provided that the construction, alterations, repairs, or improvements of the stadium and exhibition center shall be subject to the prevailing wage requirements of chapter 39.12 RCW and all phases of the development shall be subject to the goals established for women and minority-business participation for the county where the stadium and exhibition center is located. The team affiliate shall, to the extent feasible, hire local residents and in particular residents from the areas immediately surrounding the stadium and exhibition center during the construction and ongoing operation of the stadium and exhibition center;

(8) The public stadium authority shall have the authority to enter into a long-term lease agreement with a team affiliate whereby, in consideration of the payment of fair rent and assumption of operating and maintenance responsibilities, risk, legal liability, and costs associated with the stadium and exhibition center, the team affiliate becomes the sole master tenant of the stadium and exhibition center. The master tenant lease agreement must require the team affiliate to publicly disclose, on an annual basis, an audited profit and loss financial statement. The team affiliate shall provide a guarantee, security, or a letter of credit from a person or entity with a net worth in excess of one hundred million dollars that guarantees a maximum of ten years' payments of fair rent under the lease in the event of the bankruptcy or insolvency of the team affiliate. The master tenant shall have the power to sublease and enter into use, license, and concession agreements with various users of the stadium and exhibition center including the professional football team, and the master tenant has the right to name the stadium and exhibition center, subject to RCW 36.102.080. The master tenant shall meet goals, established by the county where the stadium and exhibition center is located, for women and minority employment for the operation of the stadium and exhibition center. Except as provided in subsection (10) of this section, the master tenant shall have the right to retain revenues derived from the operation of the stadium and exhibition center, including revenues from the sublease and uses, license and concession agreements, revenues from suite licenses, concessions, advertising, long-term naming rights subject to RCW 36.102.080,

and parking revenue. If federal law permits interest on bonds issued to finance the stadium and exhibition center to be treated as tax exempt for federal income tax purposes, the public stadium authority and the team affiliate shall endeavor to structure and limit the amounts, sources, and uses of any payments received by the state, the county, the public stadium authority, or any related governmental entity for the use or in respect to the stadium and exhibition center in such a manner as to permit the interest on those bonds to be tax exempt. As used in this subsection, "fair rent" is solely intended to cover the reasonable operating expenses of the public stadium authority and shall be not less than eight hundred fifty thousand dollars per year with annual increases based on the consumer price index;

(9) Subject to RCW 43.99N.020(2)(b)(ix), the public stadium authority may reserve the right to discuss profit sharing from the stadium and exhibition center from sources that have not been identified at the time the long-term lease agreement is executed;

(10) The master tenant may retain an amount to cover the actual cost of preparing the stadium and exhibition center for activities involving the Olympic Games and world cup soccer. Revenues derived from the operation of the stadium and exhibition center for activities identified in this subsection that exceed the master tenant's actual costs of preparing, operating, and restoring the stadium and exhibition center must be deposited into the tourism development and promotion account created in RCW 43.330.094;

(11) The public stadium authority, in consultation with a public facilities district that is located within the county, shall work to eliminate the use of the stadium and exhibition center for events during the same time as events are held in the baseball stadium as defined in RCW 82.14.0485;

(12) The public stadium authority, in consultation with the team affiliate, must work to secure the hosting of a Super Bowl, if the hosting requirements are changed by the national football league or similar professional football association;

(13) The public stadium authority shall work with surrounding areas to mitigate the impact of the construction and operation of the stadium and exhibition center;

(14) The public stadium authority, in consultation with the office of financial management, shall negotiate filming rights of the demolition of the existing domed stadium on the stadium and exhibition center site. All revenues derived from the filming of the demolition of the existing domed stadium shall be deposited into the film and video promotion account created in RCW 43.330.092; and

(15) The public stadium authority shall have the authority, upon the agreement of the team affiliate, to sell permanent seat licenses, and the team affiliate may act as the sales agent for this purpose. [1997 c 220 § 106 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.070 Deferral of taxes—Application by public stadium authority—Department of revenue approval—Repayment—Schedules—Interest—Debt for taxes—Information not confidential.** (1) The governing board of a public stadium authority may apply for deferral of taxes on the construction of buildings, site preparation, and the acquisition of related machinery and equipment for a stadium and exhibition center. Application shall be made to the depart-

ment of revenue in a form and manner prescribed by the department of revenue. The application shall contain information regarding the location of the stadium and exhibition center, estimated or actual costs, time schedules for completion and operation, and other information required by the department of revenue. The department of revenue shall approve the application within sixty days if it meets the requirements of this section.

(2) The department of revenue shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on the public facility.

(3) The public stadium authority shall begin paying the deferred taxes in the fifth year after the date certified by the department of revenue as the date on which the stadium and exhibition center is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax.

(4) The department of revenue may authorize an accelerated repayment schedule upon request of the public stadium authority.

(5) Interest shall not be charged on any taxes deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this section. The debt for deferred taxes is not extinguished by insolvency or other failure of the public stadium authority.

(6) The repayment of deferred taxes and interest, if any, shall be deposited into the stadium and exhibition center account created in RCW 43.99N.060 and used to retire bonds issued under RCW 43.99N.020 to finance the construction of the stadium and exhibition center.

(7) Applications and any other information received by the department of revenue under this section are not confidential and are subject to disclosure. Chapter 82.32 RCW applies to the administration of this section. [1997 c 220 § 201 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.080 Naming rights—Use of revenues.** Revenues from the sales of naming rights of a stadium and exhibition center developed under RCW 36.102.050 may only be used for costs associated with capital improvements associated with modernization and maintenance of the stadium and exhibition center. The sales of naming rights are subject to the reasonable approval of the public stadium authority. [1997 c 220 § 107 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.090 Donated moneys.** A public stadium authority may accept and expend moneys that may be donated for the purpose of a stadium and exhibition center. [1997 c 220 § 108 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.100 Construction agreements—Property assembly—Demolition of existing structures.** (1) The public stadium authority, the county, and the city, if any, in which the stadium and exhibition center is to be located shall enter into one or more agreements regarding the construction

of a stadium and exhibition center. The agreements shall address, but not be limited to:

- (a) Expedited permit processing for the design and construction of the stadium and exhibition center project;
  - (b) Expedited environmental review processing;
  - (c) Expedited processing of requests for street, right of way, or easement vacations necessary for the construction of the stadium and exhibition center project; and
  - (d) Other items deemed necessary for the design and construction of the stadium and exhibition center project.
- (2) The county shall assemble such real property and associated personal property as the public stadium authority and the county mutually determine to be necessary as a site for the stadium and exhibition center. Property that is necessary for this purpose that is owned by the county on or after July 17, 1997, shall be contributed to the authority, and property that is necessary for this purpose that is acquired by the county on or after July 17, 1997, shall be conveyed to the authority. Property that is encumbered by debt may be transferred by the county to the authority, but obligation for payment of the debt may not be transferred.

(3) A new exhibition facility of at least three hundred twenty-five thousand square feet, with adequate on-site parking, shall be constructed and operational before any domed stadium in the county is demolished or rendered unusable. Demolition of any existing structure and construction of the stadium and exhibition center shall be reasonably executed in a manner that minimizes impacts, including access and parking, upon existing facilities, users, and neighborhoods. No county or city may exercise authority under any landmarks preservation statute or ordinance in order to prevent or delay the demolition of any existing domed stadium at the site of the stadium and exhibition center. [1997 c 220 § 109 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.110 Property acquisition and sale.** A public stadium authority may acquire and transfer real and personal property by lease, sublease, purchase, or sale. [1997 c 220 § 110 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.120 Public stadium authority board of directors—Travel and business expenses—Resolution on payment and procedures—Operating budget report.** (1) The board of directors of the public stadium authority shall adopt a resolution that may be amended from time to time that shall establish the basic requirements governing methods and amounts of reimbursement payable to such authority and employees for travel and other business expenses incurred on behalf of the authority. The resolution shall, among other things, establish procedures for approving such expenses; the form of the travel and expense voucher; and requirements governing the use of credit cards issued in the name of the authority. The resolution may also establish procedures for payment of per diem to board members. The state auditor shall, as provided by general law, cooperate with the public stadium authority in establishing adequate procedures for regulating and auditing the reimbursement of all such expenses.

(2) The board of directors shall transmit a copy of the adopted annual operating budget of the public stadium

authority to the governor and the majority leader and minority leader of the house of representatives and the senate. The budget information shall include, but is not limited to a statement of income and expenses of the public stadium authority. [1997 c 220 § 111 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.130 Public stadium authority officers and employees—Expenses.** The board of directors of the public stadium authority may authorize payment of actual and necessary expenses of officers and employees for lodging, meals, and travel-related costs incurred in attending meetings or conferences on behalf of the public stadium authority and strictly in the public interest and for public purposes. Officers and employees may be advanced sufficient sums to cover their anticipated expenses in accordance with rules adopted by the state auditor, which shall substantially conform to the procedures provided in RCW 43.03.150 through 43.03.210. [1997 c 220 § 112 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.140 Public stadium authority board of directors—Compensation—Waiver.** Each member of the board of directors of the public stadium authority may receive compensation of fifty dollars per day for attending meetings or conferences on behalf of the authority, not to exceed three thousand dollars per year. A director may waive all or a portion of his or her compensation under this section as to a month or months during his or her term of office, by a written waiver filed with the public stadium authority. The compensation provided in this section is in addition to reimbursement for expenses paid to the directors by the public stadium authority. [1997 c 220 § 113 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.150 Public stadium authority—Liability insurance.** The board of directors of the public stadium authority may purchase liability insurance with such limits as the directors may deem reasonable for the purpose of protecting and holding personally harmless authority officers and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1997 c 220 § 114 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.160 Public stadium authority—Defense of suit, claim, or proceeding against officer or employee—Costs—Attorneys' fees—Obligation—Exception.** Whenever an action, claim, or proceeding is instituted against a person who is or was an officer or employee of the public stadium authority arising out of the performance of duties for or employment with the authority, the public stadium authority may grant a request by the person that the attorney of the authority's choosing be authorized to defend the claim, suit, or proceeding, and the costs of defense, attorneys' fees, and obligation for payments arising from the action may be paid from the authority's funds. Costs of defense or judgment or settlement against the person shall not be paid in a case where the court has found that the person was not acting in good

faith or within the scope of employment with or duties for the public stadium authority. [1997 c 220 § 115 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.170 Information preparation and distribution.** The board of directors of the public stadium authority shall have authority to authorize the expenditure of funds for the public purposes of preparing and distributing information to the general public about the stadium and exhibition center. [1997 c 220 § 116 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.180 Public stadium authority—Employee positions—Wages and benefits—Insurance of employees, board members.** The public stadium authority shall have authority to create and fill positions, fix wages and salaries, pay costs involved in securing or arranging to secure employees, and establish benefits for employees, including holiday pay, vacations or vacation pay, retirement benefits, medical, life, accident, or health disability insurance, as approved by the board. Public stadium authority board members, at their own expense, shall be entitled to medical, life, accident, or health disability insurance. Insurance for employees and board members shall not be considered compensation. Authority coverage for the board is not to exceed that provided public stadium authority employees. [1997 c 220 § 117 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.190 Public stadium authority—Securing services—Service provider agreement—Resolutions setting procedures.** The public stadium authority may secure services by means of an agreement with a service provider. The public stadium authority shall publish notice, establish criteria, receive and evaluate proposals, and negotiate with respondents under requirements set forth by authority resolution. [1997 c 220 § 118 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.200 Public stadium authority—Confidentiality of financial information.** The public stadium authority may refuse to disclose financial information on the master tenant, concessioners, the team affiliate, or subleasee under RCW 42.17.310. [1997 c 220 § 119 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.800 Referendum only measure for taxes for stadium and exhibition center—Limiting legislation upon failure to approve—1997 c 220.** The referendum on this act is the only measure authorizing, levying, or imposing taxes for a stadium and exhibition center that may be put to a public vote. Should the act fail to be approved at the special election on or before June 20, 1997, the legislature shall not pass other legislation to build or finance a stadium and exhibition center, as defined in RCW 36.102.010, for the team affiliate. [1997 c 220 § 604 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.801 Legislation as opportunity for voter's decision—Not indication of legislators' personal vote on referendum proposal—1997 c 220.** The legislature neither

affirms nor refutes the value of this proposal, and by this legislation simply expresses its intent to provide the voter of the state of Washington an opportunity to express the voter's decision. It is also expressed that many legislators might personally vote against this proposal at the polls, or they might not. [1997 c 220 § 605 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.802 Contingency—Null and void—Team affiliate's agreement for reimbursement for election—1997 c 220.** Notwithstanding any other provision of this act, this act shall be null and void in its entirety unless the team affiliate as defined in RCW 36.102.010 enters into an agreement with the secretary of state to reimburse the state and the counties for the full cost of the special election to be held on or before June 20, 1997. [1997 c 220 § 606 (Referendum Bill No. 48, approved June 17, 1997).]

**Reviser's note:** The team affiliate entered into an agreement with the secretary of state on May 14, 1997, for reimbursement of the full cost of the special election.

**Effective date—1997 c 220 §§ 606 and 607:** "Sections 606 and 607 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 26, 1997]." [1997 c 220 § 608.]

**36.102.803 Referendum—Submittal—Explanatory statement—Voters' pamphlet—Voting procedures—Canvassing and certification—Reimbursement of counties for costs—No other elections on stadium and exhibition center—1997 c 220.** (1) The secretary of state shall submit sections 101 through 604, chapter 220, Laws of 1997 to the people for their adoption and ratification, or rejection, at a special election to be held in this state on or before June 20, 1997, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation. The special election shall be limited to submission of this act to the people.

(2) The attorney general shall prepare the explanatory statement required by \*RCW 29.81.020 and transmit that statement regarding the referendum to the secretary of state no later than the last Monday of April before the special election.

(3) The secretary of state shall prepare and distribute a voters' pamphlet addressing this referendum measure following the procedures and requirements of \*\*chapter 29.81 RCW, except that the secretary of state may establish different deadlines for the appointment of committees to draft arguments for and against the referendum, for submitting arguments for and against the referendum, and for submitting rebuttal statements of arguments for and against the referendum. The voters' pamphlet description of the referendum measure shall include information to inform the public that ownership of the KingDome may be transferred to the public stadium authority and that the KingDome will be demolished in order to accommodate the new football stadium.

(4) A county auditor may conduct the voting at this special election in all precincts of the county by mail using the procedures set forth in \*\*\*RCW 29.36.121 through 29.36.139.

(5) Notwithstanding the provisions of \*\*\*\*RCW 29.62.020, the county canvassing board in each county shall

canvass and certify the votes cast at this special election in that county to the secretary of state no later than the seventh day following the election. Notwithstanding the provisions of \*\*\*RCW 29.62.120, the secretary of state shall canvass and certify the returns from the counties no later than the ninth day following the special election.

(6) The secretary of state shall reimburse each county for the cost of conducting the special election in that county in the same manner as state primary and general election costs are reimbursed under \*\*\*RCW 29.13.047 (1) and (3).

(7) No other state, county, or local election shall be required or held on any proposition related to or affecting the stadium and exhibition center defined in RCW 36.102.010. [1997 c 220 § 607 (Referendum Bill No. 48, approved June 17, 1997).] Referendum Bill No. 48 was approved by the electorate at the June 17, 1997, election.

**Reviser's note:** \*(1) RCW 29.81.020 was repealed by 1999 c 260 § 13.

\*\* (2) Chapter 29.81 RCW was recodified as chapter 29A.32 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

\*\*\* (3) RCW 29.36.121, 29.36.124, 29.36.126, and 29.36.130 were recodified as RCW 29.38.020, 29.38.040, 29.38.050, and 29.38.060, respectively, pursuant to 2001 c 241 § 25. RCW 29.36.122 and 29.36.139 were repealed by 2001 c 241 § 24. RCW 29.38.020, 29.38.040, 29.38.050, and 29.38.060 were subsequently recodified as RCW 29A.48.020, 29A.48.040, 29A.48.050, and 29A.48.060, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004.

\*\*\*\* (4) RCW 29.62.020, 29.62.120, and 29.13.047 were recodified as RCW 29A.60.160, 29A.60.250, and 29A.04.420, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Effective date—1997 c 220 §§ 606 and 607:** See note following RCW 36.102.802.

**36.102.900 Part headings not law—1997 c 220.** Part headings used in this act are not any part of the law. [1997 c 220 § 601 (Referendum Bill No. 48, approved June 17, 1997).]

**36.102.901 Severability—1997 c 220.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 220 § 602 (Referendum Bill No. 48, approved June 17, 1997).]

### Chapter 36.105 RCW

## COMMUNITY COUNCILS FOR UNINCORPORATED AREAS OF ISLAND COUNTIES

### Sections

36.105.010	Purpose.
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**36.105.010 Purpose.** Voters of the unincorporated areas of the state are authorized to establish community councils as provided in this chapter.

It is the purpose of this chapter to provide voters of unincorporated areas in counties with a population of over thirty

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thousand that are made up entirely of islands with direct input on the planning and zoning of their community by establishing a governmental mechanism to adopt proposed community comprehensive plans and proposed community zoning ordinances that are consistent with an overall guide and framework adopted by the county legislative authority. In addition, it is the purpose of this chapter to have community councils serve as forums for the discussion of local issues. [1991 c 363 § 99.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.105.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Community" means a portion of the unincorporated area for which a community council has been established and which is located in a county with a population of over thirty thousand that is made up entirely of islands.

(2) "Community comprehensive plan" means a comprehensive plan adopted by a community council.

(3) "Community council" means the governing body established under this chapter to adopt community comprehensive plans and community zoning ordinances for a community.

(4) "Community zoning ordinances" means the zoning ordinances adopted by a community council to implement a community comprehensive plan. [1991 c 363 § 100.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.105.030 Minimum requirements.** A community for which a community council is created may include only unincorporated territory located in a single county with a population of over thirty thousand that is made up entirely of islands and not included within a city or town. A community council must have at least one thousand persons residing within the community when the community council is created or, where the community only includes an entire island, at least three hundred persons must reside on the island when the community council is created. Any portion of such a community that is annexed by a city or town, or is incorporated as a city or town, shall be removed from the community upon the effective date of the annexation or the official date of the incorporation. [1991 c 363 § 101.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.105.040 Creation.** (1) The process to create a community council shall be initiated by the filing of petitions with the county auditor of the county in which the community is located which: (a) Call for the creation of a community council; (b) set forth the boundaries for the community; (c) indicate the number of community councilmembers, which shall be five, seven, nine, or eleven; and (d) contain signatures of voters residing within the community equal in number to at least ten percent of the voters residing in the community who voted at the last state general election. The county auditor shall determine if the petitions contain a sufficient number of valid signatures and certify the sufficiency of the petitions within fifteen days of when the petitions were filed. If the

petitions are certified as having sufficient valid signatures, the county auditor shall transmit the petitions and certificate to the county legislative authority.

(2) The county legislative authority shall hold a public hearing within the community on the creation of the proposed community council no later than sixty days after the petitions and certificate of sufficiency were transmitted to the county legislative authority. Notice of the public hearing shall be published in a newspaper of general circulation in the community for at least once a week for two consecutive weeks, with the last date of publication no more than ten days prior to the date of the public hearing. At least ten days before the public hearing, additional notice shall be posted conspicuously in at least five places within the proposed community in a manner designed to attract public attention.

(3) After receiving testimony on the creation of the proposed community council, the county legislative authority may alter the boundaries of the community, but the boundaries may not be altered to reduce the number of persons living within the community by more than ten percent or below the minimum number of residents who must reside within the community at the time of the creation of the community council. If territory is added to the community, another public hearing on the proposal shall be held.

(4) The county legislative authority shall call a special election within the community to determine whether the proposed community council shall be created, and to elect the initial community councilmembers, at the next state general election occurring seventy-five or more days after the initial public hearing on the creation of the proposed community council. The community council shall be created if the ballot proposition authorizing the creation of the community is approved by a simple majority vote of the voters voting on the proposition. [1991 c 363 § 102.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.105.050 Election of initial community councilmembers.** The initial members of the community council shall be elected at the same election as the ballot proposition is submitted authorizing the creation of the community council. However, the election of the initial community councilmembers shall be null and void if the ballot proposition authorizing the creation of the community council is not approved.

No primary election shall be held to nominate candidates for initial council positions. The initial community council shall consist of the candidate for each council position who receives the greatest number of votes for that council position. Staggering of terms of office shall be accomplished by having the majority of the winning candidates who receive the greatest number of votes being elected to four-year terms of office, and the remaining winning candidates being elected to two-year terms of office, if the election was held in an even-numbered year, or the majority of the winning candidates who receive the greatest number of votes being elected to three-year terms of office, and the remaining winning candidates being elected to one-year terms of office, if the election was held in an odd-numbered year, with the term computed from the first day of January in the year following the

election. Initial councilmembers shall take office immediately when qualified in accordance with \*RCW 29.01.135.

However, where the county operates under a charter providing for the election of members of the county legislative authority in odd-numbered years, the terms of office of the initial councilmembers shall be four years and two years, if the election of the initial councilmembers was held on an odd-numbered year, or three years and one year, if the election of the initial councilmembers was held on an even-numbered year. [1991 c 363 § 103.]

**\*Reviser's note:** RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.105.060 Community councilmembers—Election—Terms.** Community councilmembers shall be elected to staggered four-year terms until their successors are elected and qualified. Each council position shall be numbered separately. Candidates shall run for specific council positions. The number of council positions shall be five, seven, nine, or eleven, as specified in the petition calling for the creation of the community council.

Community councilmembers shall be nominated and elected at nonpartisan elections pursuant to general election laws, except the elections shall be held in even-numbered years, unless the county operates under a charter and members of the county legislative authority are elected in odd-numbered years, in which case, community councilmembers shall be elected in odd-numbered years.

The provisions of this section apply to the election and terms of office of the initial community councilmembers, except as provided in RCW 36.105.050.

A councilmember shall lose his or her council position if his or her primary residence no longer is located within the community. Vacancies on a community council shall be filled by action of the remaining councilmembers. [1991 c 363 § 104.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.105.070 Responsibility of county legislative authority.** (1) Within ninety days of the election at which a community council is created, the county legislative authority shall adopt an ordinance establishing policies and conditions and designating portions or components of the county comprehensive plan and zoning ordinances that serve as an overall guide and framework for the development of proposed community comprehensive plans and proposed community zoning ordinances. The conditions and policies shall conform with the requirements of chapter 36.70A RCW.

(2) Proposed community comprehensive plans and proposed community zoning ordinances that are adopted by a community council shall be submitted to the county legislative authority for its review of the consistency of the proposed plans and proposed ordinances with the ordinance adopted under subsection (1) of this section. The county legislative authority shall either approve the proposed plans and proposed ordinances as adopted, or refer the proposed plans and proposed ordinances back to the community council with written findings specifying the inconsistencies, within ninety

days after they were submitted. The county comprehensive plan, or subarea plan and comprehensive plan, and zoning ordinances shall remain in effect in the community until the proposed community comprehensive plans and proposed community zoning ordinances have been approved as provided in this subsection.

(3) Each proposed amendment to approved community comprehensive plans or approved community zoning ordinances that is adopted by a community council shall be submitted to the county legislative authority for its review of the consistency of the amendment with the ordinance adopted under subsection (1) of this section. The county legislative authority shall either approve the proposed amendment as adopted or refer the proposed amendment back to the community council with written findings specifying the inconsistencies within ninety days after the proposed amendment was submitted. The unamended community comprehensive plans and unamended community zoning ordinances shall remain in effect in the community until the proposed amendment has been approved as provided in this subsection.

(4) If the county legislative authority amends the ordinance it adopted under subsection (1) of this section, a community council shall be given at least one hundred twenty days to amend its community comprehensive plans and community zoning ordinances to be consistent with this amended ordinance. However, the county legislative authority may amend the community comprehensive plans and community zoning ordinances to achieve consistency with this amended ordinance. Nothing in this subsection shall preclude a community council from subsequently obtaining approval of its proposed community comprehensive plans and proposed community zoning ordinances.

(5) Approved community comprehensive plans and approved community zoning ordinances shall be enforced by the county as if they had been adopted by the county legislative authority. All quasi-judicial actions and permits relating to these plans and ordinances shall be made and decided by the county legislative authority or otherwise as provided by the county legislative authority.

(6) The county shall provide administrative and staff support for each community council within its boundaries. [1991 c 363 § 105.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.105.080 Powers.** A community council shall adopt proposed community comprehensive plans and proposed community zoning ordinances as provided in RCW 36.105.070. Community councils shall not have the authority to take quasi-judicial actions nor to decide permit applications. In addition, a community council shall serve as a forum for the discussion of local issues.

Community councils are subject to chapter 42.30 RCW, the open public meetings act. [1991 c 363 § 106.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.105.090 Annexation.** A community council may provide for the annexation of adjacent unincorporated areas to the community that are not included within another community for which a community council has been established.

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Annexations shall be initiated by either resolution of the community council proposing the annexation or petition of voters residing in the adjacent area, which petition: (a) Requests the annexation; (b) sets forth the boundaries of the area proposed to be annexed; and (c) contains signatures of voters residing within the area that is proposed to be annexed equal in number to at least ten percent of the voters residing in that area who voted at the last state general election. Annexation petitions shall be filed with the county auditor who shall determine if the petitions contain a sufficient number of valid signatures, certify the sufficiency of the petitions, and notify the community council of the sufficiency of the petitions within fifteen days of when the petitions are submitted.

A ballot proposition authorizing the annexation shall be submitted to the voters of the area that is proposed to be annexed at a primary or general election in either an odd-numbered or even-numbered year, if the community council initiated the annexation by resolution or if the community council concurs in an annexation that was initiated by the submission of annexation petitions containing sufficient valid signatures. The annexation shall occur if the ballot proposition authorizing the creation of the community is approved by a simple majority vote of the voters voting on the proposition. The county's comprehensive plan, and where applicable to the county's subarea plan, and zoning ordinances shall continue in effect in the annexed area until proposed amendments to the approved community comprehensive plans and approved community zoning ordinance have been approved that apply to the annexed area. [1991 c 363 § 107.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**36.105.100 Dissolution.** A community council shall be dissolved if the population of the community is reduced to less than five hundred persons, or less than two hundred persons if the community only includes an entire island.

At the next general election at which community councilmembers would be elected, occurring at least four years after the creation or reestablishment of a community, a ballot proposition shall be submitted to the voters of the community on whether the community shall be reestablished. If reestablished, the newly elected members of the community council and the retained members of the community council shall constitute the members of the community council. [1991 c 363 § 108.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

## Chapter 36.110 RCW

### JAIL INDUSTRIES PROGRAM

#### Sections

36.110.010	Finding—Purpose, intent.
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- 36.110.140 Education and training.
- 36.110.150 Department of corrections to provide staff assistance.
- 36.110.160 Technical training assistance.
- 36.110.900 Severability—1993 c 285.

**36.110.010 Finding—Purpose, intent.** Cities and counties have a significant interest in ensuring that inmates in their jails are productive citizens after their release in the community. The legislature finds that there is an expressed need for cities and counties to uniformly develop and coordinate jail industries technical information and program and public safety standards statewide. It further finds that meaningful jail work industries programs that are linked to formal education and adult literacy training can significantly reduce recidivism, the rising costs of corrections, and criminal activities. It is the purpose and intent of the legislature, through this chapter, to establish a statewide jail industries program designed to promote inmate rehabilitation through meaningful work experience and reduce the costs of incarceration. The legislature recognizes that inmates should have the responsibility for contributing to the cost of their crime through the wages earned while working in jail industries programs and that such income shall be used to offset the costs of implementing and maintaining local jail industries programs and the costs of incarceration. [1993 c 285 § 1.]

**36.110.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the statewide jail industries board of directors.

(2) "City" means any city, town, or code city.

(3) "Cost accounting center" means a specific industry program operated under the private sector prison industry enhancement certification program as specified in 18 U.S.C. Sec. 1761.

(4) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior, district, or municipal court of the state of Washington for payment of restitution to a victim, a statutorily imposed crime victims compensation fee, court costs, a county or interlocal drug fund, court appointed attorneys' fees and costs of defense, fines, and other legal financial obligations that are assessed as a result of a felony or misdemeanor conviction.

(5) "Free venture employer model industries" means an agreement between a city or county and a private sector business or industry or nonprofit organization to produce goods or services to both public and private sectors utilizing jail inmates whose compensation and supervision are provided by the private sector business or entity.

"Free venture customer model industries" means an agreement between a city or county and a private sector business or industry, or nonprofit organization to provide Washington state manufacturers or businesses with products or services currently produced, provided, or assembled by out-of-state or foreign suppliers utilizing jail inmates whose compensation and supervision are provided by the incarcerating facility or local jurisdiction.

(6) "Jail inmate" means a preconviction or postconviction resident of a city or county jail who is determined to be eligible to participate in jail inmate work programs according to the eligibility criteria of the work program.

(7) "Private sector prison industry enhancement certification program" means that program authorized by the United States justice assistance act of 1984, 18 U.S.C. Sec. 1761.

(8) "Tax reduction industries" means those industries as designated by a city or county owning and operating such an industry to provide work training and employment opportunities for jail inmates, in total confinement, which reduce public support costs. The goods and services of these industries may be sold to public agencies, nonprofit organizations, and private contractors when the goods purchased will be ultimately used by a public agency or nonprofit organization. Surplus goods from these operations may be donated to government and nonprofit organizations. [1995 c 154 § 1; 1993 c 285 § 2.]

**36.110.030 Board of directors established—Membership.** A statewide jail industries board of directors is established. The board shall consist of the following members:

(1) One sheriff and one police chief, to be selected by the Washington association of sheriffs and police chiefs;

(2) One county commissioner or one county councilmember to be selected by the Washington state association of counties;

(3) One city official to be selected by the association of Washington cities;

(4) Two jail administrators to be selected by the Washington state jail association, one of whom shall be from a county or a city with an established jail industries program;

(5) One prosecuting attorney to be selected by the Washington association of prosecuting attorneys;

(6) One administrator from a city or county corrections department to be selected by the Washington correctional association;

(7) One county clerk to be selected by the Washington association of county clerks;

(8) Three representatives from labor to be selected by the governor. The representatives may be chosen from a list of nominations provided by statewide labor organizations representing a cross-section of trade organizations;

(9) Three representatives from business to be selected by the governor. The representatives may be chosen from a list of nominations provided by statewide business organizations representing a cross-section of businesses, industries, and all sizes of employers;

(10) The governor's representative from the employment security department;

(11) One member representing crime victims, to be selected by the governor;

(12) One member representing on-line law enforcement officers, to be selected by the governor;

(13) One member from the department of community, trade, and economic development to be selected by the governor;

(14) One member representing higher education, vocational education, or adult basic education to be selected by the governor; and

(15) The governor's representative from the correctional industries division of the state department of corrections shall be an ex officio member for the purpose of coordination and cooperation between prison and jail industries and to further a positive relationship between state and local government offender programs. [1995 c 399 § 45; 1993 c 285 § 3.]

**36.110.050 Local advisory groups.** The board shall require a city or a county that establishes a jail industries program to develop a local advisory group, or to use an existing advisory group of the appropriate composition, to advise and guide jail industries program operations. Such an advisory group shall include an equal number of representatives from labor and business. Representation from a sheltered workshop, as defined in RCW 82.04.385, and a crime victim advocacy group, if existing in the local area, should also be included.

A local advisory group shall have among its tasks the responsibility of ensuring that a jail industry has minimal negative impact on existing private industries or the labor force in the locale where the industry operates and that a jail industry does not negatively affect employment opportunities for people with developmental disabilities contracted through the operation of sheltered workshops as defined in RCW 82.04.385. In the event a conflict arises between the local business community or labor organizations concerning new jail industries programs, products, services, or wages, the city or county must use the arbitration process established pursuant to RCW 36.110.060. [1993 c 285 § 5.]

**36.110.060 Board of directors—Duties.** The board, in accordance with chapter 34.05 RCW, shall:

(1) Establish an arbitration process for resolving conflicts arising among the local business community and labor organizations concerning new industries programs, products, services, or wages;

(2) Encourage the development of the collection and analysis of jail industries program data, including long-term tracking information on offender recidivism;

(3) Determine, by applying established federal guidelines and criteria, whether a city or a county jail free venture industries program complies with the private sector prison industry enhancement certification program. In so doing, also determine if that industry should be designated as a cost accounting center for the purposes of the federal certification program; and

(4) Provide technical assistance with product marketing. [1993 c 285 § 6.]

**36.110.070 Board of directors may receive funds, establish fee schedule.** The board may receive funds from local, county, state, or federal sources and may receive grants to support its activities. The board may establish a reasonable schedule of suggested fees that will support statewide efforts to promote and facilitate jail industries that would be presented to cities and counties that have established jail industries programs. [1993 c 285 § 7.]

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**36.110.080 Board of directors—Meetings—Terms—Compensation.** The board shall initially convene at the call of the representative of the correctional industries division of the state department of corrections, together with the jail administrator selected from a city or a county with an established jail industries program, no later than six months after July 25, 1993. Subsequent meetings of the board shall be at the call of the board chairperson. The board shall meet at least twice a year.

The board shall elect a chairperson and other such officers as it deems appropriate. However, the chairperson may not be the representative of the correctional industries division of the state department of corrections nor any representative from a state executive branch agency.

Members of the board shall serve terms of three years each on a staggered schedule to be established by the first board. For purposes of initiating a staggered schedule of terms, some members of the first board may initially serve two years and some members may initially serve four years.

The members of the board shall serve without compensation but may be reimbursed for travel expenses from funds acquired under this chapter. [1993 c 285 § 8.]

**36.110.085 Board of directors—Immunity.** Any member serving in their official capacity on the Washington state jail industries board, in either an appointed or advisory capacity, or either their employer or employers, or other entity that selected the members to serve, are immune from a civil action based upon an act performed in good faith. [1995 c 154 § 5.]

**36.110.090 City or county special revenue funds.** A city or a county that implements a jail industries program may establish a separate fund for the operation of the program. This fund shall be a special revenue fund with continuing authority to receive income and pay expenses associated with the jail industries program. [1993 c 285 § 9.]

**36.110.100 Comprehensive work programs.** Cities and counties participating in jail industries are authorized to provide for comprehensive work programs using jail inmate workers at worksites within jail facilities or at such places within the city or county as may be directed by the legislative authority of the city or county, as similarly provided under RCW 36.28.100. [1993 c 285 § 10.]

**36.110.110 Deductions from offenders' earnings.** When an offender is employed in a jail industries program for which pay is allowed, deductions may be made from these earnings for court-ordered legal financial obligations as directed by the court in reasonable amounts that do not unduly discourage the incentive to work. These deductions shall be disbursed as directed in RCW 9.94A.760.

In addition, inmates working in jail industries programs shall contribute toward costs to develop, implement, and operate jail industries programs. This amount shall be a reasonable amount that does not unduly discourage the incentive to work. The amount so deducted shall be deposited in the jail industries special revenue fund.

Upon request of the offender, family support may also be deducted and disbursed to a designated family member. [1993 c 285 § 11.]

**36.110.120 Free venture industries, tax reduction industries—Employment status of inmates—Insurance coverage.** (1) A jail inmate who works in a free venture industry or a tax reduction industry shall be considered an employee of that industry only for the purpose of the Washington industrial safety and health act, chapter 49.17 RCW, as long as the public safety is not compromised, and for eligibility for industrial insurance benefits under Title 51 RCW, as provided in this section.

(2) For jail inmates participating in free venture employer model industries, the private sector business or industry or the nonprofit organization that is party to the agreement, shall provide industrial insurance coverage under Title 51 RCW. Local jurisdictions shall not be responsible for obligations under Title 51 RCW in a free venture employer model industry except as provided in RCW 36.110.130.

(3) For jail inmates participating in free venture customer model industries, the incarcerating entity or jurisdiction, the private sector business or industry, or the nonprofit organization that is party to the agreement, shall provide industrial insurance coverage under Title 51 RCW dependent upon how the parties to the agreement choose to finalize the agreement.

(4) For jail inmates incarcerated and participating in tax reduction industries:

(a) Local jurisdictions that are self-insured may elect to provide medical aid benefits coverage only under chapter 51.36 RCW through the state fund.

(b) Local jurisdictions, to include self-insured jurisdictions, may elect to provide industrial insurance coverage under Title 51 RCW through the state fund.

(5) If industrial insurance coverage under Title 51 RCW is provided for inmates under this section, eligibility for benefits for either the inmate or the inmate's dependents or beneficiaries for temporary total disability or permanent total disability under RCW 51.32.090 or 51.32.060, respectively, shall not take effect until the inmate is discharged from custody by order of a court of appropriate jurisdiction. Nothing in this section shall be construed to confer eligibility for any industrial insurance benefits to any jail inmate who is not employed in a free venture industry or a tax reduction industry. [1995 c 154 § 2; 1993 c 285 § 12.]

**36.110.130 Free venture industry agreements—Effect of failure.** In the event of a failure such as a bankruptcy or dissolution, of a private sector business, industry, or nonprofit organization engaged in a free venture industry agreement, responsibility for obligations under Title 51 RCW shall be borne by the city or county responsible for establishment of the free venture industry agreement, as if the city or county had been the employing agency. To ensure that this obligation can be clearly identified and accomplished, and to provide accountability for purposes of the department of labor and industries, a free venture jail industry agreement entered into by a city or county and private sector business, industry, or nonprofit organization should be filed under a

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separate master business application, establishing a new and separate account with the department of labor and industries, and not be reported under an existing account for parties to the agreement. [1995 c 154 § 3; 1993 c 285 § 13.]

**36.110.140 Education and training.** To the extent possible, jail industries programs shall be augmented by education and training to improve worker literacy and employability skills. Such education and training may include, but is not limited to, basic adult education, work towards a certificate of educational competence following successful completion of the general educational development test, vocational and preemployment work maturity skills training, and apprenticeship classes. [1993 c 285 § 14.]

**36.110.150 Department of corrections to provide staff assistance.** Until sufficient funding is secured by the board to adequately provide staffing, basic staff assistance shall be provided, to the extent possible, by the department of corrections. [1993 c 285 § 15.]

**36.110.160 Technical training assistance.** Technical training assistance shall be provided to local jurisdictions by the board at the jurisdiction's request. To facilitate and promote the development of local jail industries programs, this training and technical assistance may include the following: (1) Delivery of statewide jail industry implementation workshops for administrators of jail industries programs; (2) development of recruitment and education programs for local business and labor to gain their participation; (3) ongoing staff assistance regarding local jail industries issues, such as sound business management skills, development of a professional business plan, responding to questions regarding risk management, industrial insurance, and similar matters; and (4) provision of guidelines and assistance for the coordination of basic educational programs and jail industries as well as other technical skills required by local jails in the implementation of safe, productive, and effective jail industries programs. [1995 c 154 § 4.]

**36.110.900 Severability—1993 c 285.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 285 § 17.]

## Chapter 36.115 RCW SERVICE AGREEMENTS

### Sections

36.115.010	Purpose.
36.115.020	Definitions.
36.115.030	Coordination—Consistency.
36.115.040	Geographic area covered—Contents—When effective.
36.115.050	Matters included.
36.115.060	Procedure for establishment—Counties affected.
36.115.070	Legislative intent.
36.115.080	Duties, requirements, authorities under growth management act not altered.

**36.115.010 Purpose.** The purpose of chapter 266, Laws of 1994 is to establish a flexible process by which local gov-

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ernments enter into service agreements that will establish which jurisdictions should provide various local government services and facilities within specified geographic areas and how those services and facilities will be financed. [1994 c 266 § 1.]

**36.115.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "City" means a city or town, including a city operating under Title 35A RCW.

(2) "Governmental service" includes a service provided by local government, and any facilities and equipment related to the provision of such services, including but not limited to utility services, health services, social services, law enforcement services, fire prevention and suppression services, community development activities, environmental protection activities, economic development activities, and transportation services and facilities, but shall not include the generation, conservation, or distribution of electrical energy nor maritime shipping activities.

(3) "Regional service" means a governmental service established by agreement among local governments that delineates the government entity or entities responsible for the service provision and allows for that delivery to extend over jurisdictional boundaries.

(4) "Local government" means a county, city, or special district.

(5) "Service agreement" means an agreement among counties, cities, and special districts established pursuant to this chapter.

(6) "Special district" means a municipal or quasi-municipal corporation in the state, other than a county, city, or school district. [1994 c 266 § 2.]

**36.115.030 Coordination—Consistency.** A service agreement addressing children and family services shall enhance coordination and shall be consistent with the comprehensive plan developed under chapter 7, Laws of 1994 sp. sess. [1994 c 266 § 3.]

**36.115.040 Geographic area covered—Contents—When effective.** (1) Agreements among local governments concerning one or more governmental service should be established for a designated geographic area as provided in this section.

(2) A service agreement must describe: (a) The governmental service or services addressed by the agreement; (b) the geographic area covered by the agreement; (c) which local government or local governments are to provide each of the governmental services addressed by the agreement within the geographic area covered by the agreement; and (d) the term of the agreement, if any.

(3) A service agreement becomes effective when approved by: (a) The county legislative authority of each county that includes territory located within the geographic area covered by the agreement; (b) the governing body or bodies of at least a simple majority of the total number of cities that includes territory located within the geographic area covered by the agreement, which cities include at least sev-

enty-five percent of the total population of all cities that includes territory located within the geographic area covered by the agreement; and (c) for each governmental service addressed by the agreement, the governing body or bodies of at least a simple majority of the special districts that include territory located within the geographic area covered by the agreement and which provide the governmental service within such territory. The participants may agree to use another formula. An agreement pursuant to this section shall be effective upon adoption by the county legislative authority following a public hearing.

(4) A service agreement may cover a geographic area that includes territory located in more than a single county. [1994 c 266 § 4.]

**36.115.050 Matters included.** A service agreement may include, but is not limited to, any or all of the following matters:

(1) A dispute resolution arrangement;

(2) How joint land-use planning and development regulations by the county and a city or cities, or by two or more cities, may be established, made binding, and enforced;

(3) How common development standards between the county and a city or cities, or between two or more cities, may be established, made binding, and enforced;

(4) How capital improvement plans of the county, cities, and special districts shall be coordinated;

(5) How plans and policies adopted under chapter 36.70A RCW will be implemented by the service agreement;

(6) A transfer of revenues between local governments in relationship to their obligations for providing governmental services;

(7) The designation of additional area-wide governmental services to be provided by the county. [1994 c 266 § 5.]

**36.115.060 Procedure for establishment—Counties affected.** (1) The county legislative authority of every county with a population of one hundred fifty thousand or more shall convene a meeting on or before March 1, 1995, to develop a process for the establishment of service agreements. Invitations to attend this meeting shall be sent to the governing body of each city located in the county, and to the governing body of each special district located in the county that provides one or more of the governmental services as defined in RCW 36.115.020(2).

The legislative authorities of counties of less than one hundred fifty thousand population may utilize this chapter by adopting a resolution stating their intent to do so. In that case or in the case of counties whose populations reach one hundred fifty thousand after March 1, 1995, this meeting shall be convened no later than sixty days after the date the county adopts its resolution of intention or was certified by the office of financial management as having a population of one hundred fifty thousand or more.

(2) On or before January 1, 1997, a service agreement must be adopted in each county under this chapter or a progress report must be submitted to the appropriate committees of the legislature.

(3) In other counties that choose to utilize this chapter or whose population reaches one hundred fifty thousand, the

service agreement must be adopted two years after the initial meeting provided for in subsection (1) of this section is convened or a progress report must be submitted to the appropriate committees of the legislature. [1994 c 266 § 6.]

**36.115.070 Legislative intent.** It is the intent of the legislature to permit the creation of a flexible process to establish service agreements and to recognize that local governments possess broad authority to shape a variety of government service agreements to meet their local needs and circumstances. However, it is noted that in general, cities are the unit of local government most appropriate to provide urban governmental services and counties are the unit of local government most appropriate to provide regional governmental services.

The process to establish service agreements should assure that all directly affected local governments, and Indian tribes at their option, are allowed to be heard on issues relevant to them. [1994 c 266 § 7.]

**36.115.080 Duties, requirements, authorities under growth management act not altered.** Nothing contained in this chapter alters the duties, requirements, and authorities of cities and counties contained in chapter 36.70A RCW. [1994 c 266 § 8.]

### Chapter 36.120 RCW

#### REGIONAL TRANSPORTATION INVESTMENT DISTRICTS

##### Sections

36.120.010	Findings.
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36.120.030	Planning committee formation.
36.120.040	Planning committee duties.
36.120.050	Taxes, fees, and tolls.
36.120.060	Project selection—Performance criteria.
36.120.070	Submission of plan to the voters.
36.120.080	Formation—Certification.
36.120.090	Governing board—Composition.
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36.120.120	Treasurer.
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36.120.160	Ownership of improvements.
36.120.170	Dissolution of district.
36.120.180	Findings—Regional models—Grants.
36.120.190	Joint ballot measure.
36.120.200	Regional transportation investment district account.
36.120.900	Captions and subheadings not law—2002 c 56.
36.120.901	Severability—2002 c 56.

**36.120.010 Findings.** The legislature finds that:

(1) The capacity of many of Washington state's transportation facilities have failed to keep up with the state's growth, particularly in major urban regions;

(2) The state cannot by itself fund, in a timely way, many of the major capacity and other improvements required on highways of statewide significance in the state's largest urbanized area;

(3) Providing a transportation system that provides efficient mobility for persons and freight requires a shared partnership and responsibility between the state, local, and regional governments and the private sector; and

(4) Timely construction and development of significant transportation improvement projects can best be achieved through enhanced funding options for governments at the county and regional levels, using already existing tax authority to address roadway and multimodal needs and new authority for regions to address critical transportation projects of statewide significance. [2002 c 56 § 101.]

**36.120.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the governing body of a regional transportation investment district.

(2) "Department" means the Washington state department of transportation.

(3) "Highway of statewide significance" means an existing or proposed state route or federal interstate designated as a highway of statewide significance by the transportation commission, its successor entity, or the legislature.

(4) "Lead agency" means a public agency that by law can plan, design, and build a transportation project and has been so designated by the district.

(5) "Regional transportation investment district" or "district" means a municipal corporation whose boundaries are coextensive with two or more contiguous counties and that has been created by county legislative authorities and a vote of the people under this chapter to implement a regional transportation investment plan.

(6) "Regional transportation investment district planning committee" or "planning committee" means the advisory committee created under RCW 36.120.030 to create and propose to county legislative authorities a regional transportation investment plan to develop, finance, and construct transportation projects.

(7) "Regional transportation investment plan" or "plan" means a plan to develop, construct, and finance a transportation project or projects.

(8) "Transportation project" means:

(a) A capital improvement or improvements to a highway that has been designated, in whole or in part, as a highway of statewide significance, including an extension, that:

(i) Adds a lane or new lanes to an existing state or federal highway; or

(ii) Repairs or replaces a lane or lanes damaged by an event declared an emergency by the governor before January 1, 2002.

(b) A capital improvement or improvements to all or a portion of a highway of statewide significance, including an extension, and may include the following associated multimodal capital improvements:

(i) Approaches to highways of statewide significance;

(ii) High-occupancy vehicle lanes;

(iii) Flyover ramps;

(iv) Park and ride lots;

(v) Bus pullouts;

(vi) Vans for vanpools;

(vii) Buses; and

(viii) Signalization, ramp metering, and other transportation system management improvements.

(c) A capital improvement or improvements to all or a portion of a city street, county road, or existing highway or

the creation of a new highway that intersects with a highway of statewide significance, if all of the following conditions are met:

(i) The project is included in a plan that makes highway improvement projects that add capacity to a highway or highways of statewide significance;

(ii) The secretary of transportation determines that the project would better relieve traffic congestion than investing that same money in adding capacity to a highway of statewide significance;

(iii) Matching money equal to one-third of the total cost of the project is provided by local entities, including but not limited to a metropolitan planning organization, county, city, port, or private entity in which a county participating in a plan is located. Local entities may use federal grants to meet this matching requirement;

(iv) In no case may the cumulative regional transportation investment district contribution to all projects constructed under this subsection (8)(c) exceed ten percent of the revenues generated by the district;

(v) In no case may the cumulative regional transportation investment district contribution to all projects constructed under this subsection (8)(c) exceed one billion dollars; and

(vi) The specific projects are included within the plan and submitted as part of the plan to a vote of the people.

(d) Operations, preservation, and maintenance are excluded from this definition and may not be included in a regional transportation investment plan.

(9) "Weighted vote" means a vote that reflects the population each board or planning committee member represents relative to the population represented by the total membership of the board or planning committee. Population will be determined using the federal 2000 census or subsequent federal census data. [2002 c 56 § 102.]

**36.120.030 Planning committee formation.** Regional transportation investment district planning committees are advisory entities that are created, convened, and empowered as follows:

(1) A county with a population over one million five hundred thousand persons and any adjoining counties with a population over five hundred thousand persons may create a regional transportation investment district and shall convene a regional transportation investment district planning committee.

(2) The members of the legislative authorities participating in planning under this chapter shall serve as the district planning committee. Members of the planning committee receive no compensation, but may be reimbursed for travel and incidental expenses as the planning committee deems appropriate.

The secretary of transportation, or the appropriate regional administrator of the department, as named by the secretary, shall serve on the committee as a nonvoting member.

(3) A regional transportation investment district planning committee may be entitled to state funding, as appropriated by the legislature, for start-up funding to pay for salaries, expenses, overhead, supplies, and similar expenses ordinarily and necessarily incurred in selecting transportation projects and funding for those transportation projects under this chap-

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ter. Upon creation of a regional transportation investment district, the district shall within one year reimburse the state for any sums advanced for these start-up costs from the state.

(4) The planning committee shall conduct its affairs and formulate a regional transportation investment plan as provided under RCW 36.120.040, except that it shall elect an executive board of seven members to discharge the duties of the planning committee and formulate a regional transportation investment plan, subject to the approval of the full committee.

(5) At its first meeting, a regional transportation investment district planning committee may elect officers and provide for the adoption of rules and other operating procedures.

(6) Governance of and decisions by a regional transportation investment district planning committee must be by a sixty-percent weighted majority vote of the total membership.

(7) The planning committee may dissolve itself at any time by a two-thirds weighted majority vote of the total membership of the planning committee. [2002 c 56 § 103.]

**36.120.040 Planning committee duties.** (1) A regional transportation investment district planning committee shall adopt a regional transportation investment plan providing for the development, construction, and financing of transportation projects. The planning committee may consider the following factors in formulating its plan:

(a) Land use planning criteria;

(b) The input of cities located within a participating county; and

(c) The input of regional transportation planning organizations in which a participating county is located. A regional transportation planning organization in which a participating county is located shall review its adopted regional transportation plan and submit, for the planning committee's consideration, its list of transportation improvement priorities.

(2) The planning committee may coordinate its activities with the department, which shall provide services, data, and personnel to assist in this planning as desired by the planning committee. In addition, the planning committee may coordinate with affected cities, towns, and other local governments that engage in transportation planning.

(3) The planning committee shall:

(a) Conduct public meetings that are needed to assure active public participation in the development of the plan;

(b) Adopt a plan proposing the:

(i) Creation of a regional transportation investment district; and

(ii) Construction of transportation projects to improve mobility within each county. Operations, maintenance, and preservation of facilities or systems may not be part of the plan;

(c) Recommend sources of revenue authorized by RCW 36.120.050 and a financing plan to fund selected transportation projects. The overall plan of the district must leverage the district's financial contributions so that the federal, state, local, and other revenue sources continue to fund major congestion relief and transportation capacity improvement projects in each county and the district. A combination of local, state, and federal revenues may be necessary to pay for

transportation projects, and the planning committee shall consider all of these revenue sources in developing a plan.

(4) The plan must use tax revenues and related debt for projects that generally benefit a participating county in proportion to the general level of tax revenues generated within that participating county. This equity principle applies to all modifications to the plan, appropriation of contingency funds not identified within the project estimate, and future phases of the plan. During implementation of the plan, the board shall retain the flexibility to manage distribution of revenues, debt, and project schedules so that the district may effectively implement the plan. Nothing in this section should be interpreted to prevent the district from pledging district-wide tax revenues for payment of any contract or debt entered into under RCW 36.120.130.

(5) Before adopting the plan, the planning committee, with assistance from the department, shall work with the lead agency to develop accurate cost forecasts for transportation projects. This project costing methodology must be integrated with revenue forecasts in developing the plan and must at a minimum include estimated project costs in constant dollars as well as year of expenditure dollars, the range of project costs reflected by the level of project design, project contingencies, identification of mitigation costs, the range of revenue forecasts, and project and plan cash flow and bond analysis. The plan submitted to the voters must provide cost estimates for each project, including reasonable contingency costs. Plans submitted to the voters must provide that the maximum amount possible of the funds raised will be used to fund projects in the plan, including environmental improvements and mitigation, and that administrative costs be minimized. If actual revenue exceeds actual plan costs, the excess revenues must be used to retire any outstanding debt associated with the plan.

(6) If a county opts not to adopt the plan or participate in the regional transportation investment district, but two or more contiguous counties do choose to continue to participate, then the planning committee may, within ninety days, redefine the regional transportation investment plan and the ballot measure to be submitted to the people to reflect elimination of the county, and submit the redefined plan to the legislative authorities of the remaining counties for their decision as to whether to continue to adopt the redefined plan and participate. This action must be completed within sixty days after receipt of the redefined plan.

(7) Once adopted, the plan must be forwarded to the participating county legislative authorities to initiate the election process under RCW 36.120.070. The planning committee shall at the same time provide notice to each city and town within the district, the governor, the chairs of the transportation committees of the legislature, the secretary of transportation, and each legislator whose legislative district is partially or wholly within the boundaries of the district.

(8) If the ballot measure is not approved, the planning committee may redefine the selected transportation projects, financing plan, and the ballot measure. The county legislative authorities may approve the new plan and ballot measure, and may then submit the revised proposition to the voters at the next election or a special election. If no ballot measure is approved by the voters by the third vote, the planning committee is dissolved. [2003 c 194 § 1; 2002 c 56 § 104.]

**36.120.050 Taxes, fees, and tolls.** (1) A regional transportation investment district planning committee may, as part of a regional transportation investment plan, recommend the imposition of some or all of the following revenue sources, which a regional transportation investment district may impose upon approval of the voters as provided in this chapter:

(a) A regional sales and use tax, as specified in RCW 82.14.430, of up to 0.5 percent of the selling price, in the case of a sales tax, or value of the article used, in the case of a use tax, upon the occurrence of any taxable event in the regional transportation investment district;

(b) A local option vehicle license fee, as specified under RCW 82.80.100, of up to one hundred dollars per vehicle registered in the district. As used in this subsection, "vehicle" means motor vehicle as defined in RCW 46.04.320. Certain classes of vehicles, as defined under chapter 46.04 RCW, may be exempted from this fee;

(c) A parking tax under RCW 82.80.030;

(d) A local motor vehicle excise tax under RCW 81.100.060 and chapter 81.104 RCW;

(e) A local option fuel tax under RCW 82.80.120;

(f) An employer excise tax under RCW 81.100.030; and

(g) Vehicle tolls on new or reconstructed facilities. Unless otherwise specified by law, the department shall administer the collection of vehicle tolls on designated facilities, and the state transportation commission, or its successor, shall be the tolling authority.

(2) Taxes, fees, and tolls may not be imposed without an affirmative vote of the majority of the voters within the boundaries of the district voting on a ballot proposition as set forth in RCW 36.120.070. Revenues from these taxes and fees may be used only to implement the plan as set forth in this chapter. A district may contract with the state department of revenue or other appropriate entities for administration and collection of any of the taxes or fees authorized in this section.

(3) Existing statewide motor vehicle fuel and special fuel taxes, at the distribution rates in effect on January 1, 2001, are not intended to be altered by this chapter. [2003 c 350 § 4; 2002 c 56 § 105.]

**36.120.060 Project selection—Performance criteria.**

(1) The planning committee shall consider the following criteria for selecting transportation projects to improve corridor performance:

(a) Reduced level of congestion and improved safety;

(b) Improved travel time;

(c) Improved air quality;

(d) Increases in daily and peak period person and vehicle trip capacity;

(e) Reductions in person and vehicle delay;

(f) Improved freight mobility; and

(g) Cost-effectiveness of the investment.

(2) These criteria represent only minimum standards that must be considered in selecting transportation improvement projects. The board shall also consider rules and standards for benchmarks adopted by the transportation commission or its successor. [2002 c 56 § 106.]

**36.120.070 Submission of plan to the voters.** Two or more contiguous county legislative authorities, upon receipt of the regional transportation investment plan under RCW 36.120.040, may certify the plan to the ballot, including identification of the tax options necessary to fund the plan. County legislative authorities may draft a ballot title, give notice as required by law for ballot measures, and perform other duties as required to put the plan before the voters of the proposed district for their approval or rejection as a single ballot measure that both approves formation of the district and approves the plan. Counties may negotiate interlocal agreements necessary to implement the plan. The electorate will be the voters voting within the boundaries of the participating counties. A simple majority of the total persons voting on the single ballot measure to approve the plan, establish the district, and approve the taxes and fees is required for approval. [2002 c 56 § 107.]

**36.120.080 Formation—Certification.** If the voters approve the plan, including creation of a regional transportation investment district and imposition of taxes and fees, the district will be declared formed. The county election officials of participating counties shall, within fifteen days of the final certification of the election results, publish a notice in a newspaper or newspapers of general circulation in the district declaring the district formed, and mail copies of the notice to the governor, the secretary of transportation, and the executive director of the regional transportation planning organization in which any part of the district is located. A party challenging the procedure or the formation of a voter-approved district must file the challenge in writing by serving the prosecuting attorney of the participating counties and the attorney general within thirty days after the final certification of the election. Failure to challenge within that time forever bars further challenge of the district's valid formation. [2002 c 56 § 108.]

**36.120.090 Governing board—Composition.** (1) The governing board of a district consists of the members of the legislative authority of each member county, acting ex officio and independently. The secretary of transportation or the appropriate regional administrator of the department, as named by the secretary, shall also serve as a nonvoting member of the board. The governing board may elect an executive board of seven members to discharge the duties of the governing board subject to the approval of the full governing board.

(2) A sixty-percent majority of the weighted votes of the total board membership is required to submit to the counties a modified plan under RCW 36.120.140 or any other proposal to be submitted to the voters. The counties may, with majority vote of each county legislative authority, submit a modified plan or proposal to the voters. [2002 c 56 § 109.]

**36.120.100 Governing board—Organization.** The board shall adopt rules for the conduct of business. The board shall adopt bylaws to govern district affairs, which may include:

- (1) The time and place of regular meetings;
- (2) Rules for calling special meetings;

(3) The method of keeping records of proceedings and official acts;

(4) Procedures for the safekeeping and disbursement of funds; and

(5) Any other provisions the board finds necessary to include. [2002 c 56 § 110.]

**36.120.110 Governing board—Powers and duties—**

**Intent.** (1) The governing board of the district is responsible for the execution of the voter-approved plan. The board shall:

(a) Impose taxes and fees authorized by district voters;

(b) Enter into agreements with state, local, and regional agencies and departments as necessary to accomplish district purposes and protect the district's investment in transportation projects;

(c) Accept gifts, grants, or other contributions of funds that will support the purposes and programs of the district;

(d) Monitor and audit the progress and execution of transportation projects to protect the investment of the public and annually make public its findings;

(e) Pay for services and enter into leases and contracts, including professional service contracts;

(f) Hire no more than ten employees, including a director or executive officer, a treasurer or financial officer, a project manager or engineer, a project permit coordinator, and clerical staff; and

(g) Exercise other powers and duties as may be reasonable to carry out the purposes of the district.

(2) It is the intent of the legislature that existing staff resources of lead agencies be used in implementing this chapter. A district may coordinate its activities with the department, which shall provide services, data, and personnel to assist as desired by the regional transportation investment district. Lead agencies for transportation projects that are not state facilities shall also provide staff support for the board.

(3) A district may not acquire, hold, or dispose of real property.

(4) A district may not own, operate, or maintain an ongoing facility, road, or transportation system.

(5) A district may accept and expend or use gifts, grants, or donations.

(6) It is the intent of the legislature that administrative and overhead costs of a regional transportation investment district be minimized. For transportation projects costing up to fifty million dollars, administrative and overhead costs may not exceed three percent of the total construction and design project costs per year. For transportation projects costing more than fifty million dollars, administrative and overhead costs may not exceed three percent of the first fifty million dollars in costs, plus an additional one-tenth of one percent of each additional dollar above fifty million. These limitations apply only to the district, and do not limit the administration or expenditures of the department.

(7) A district may use the design-build procedure for transportation projects developed by it. As used in this section "design-build procedure" means a method of contracting under which the district contracts with another party for that party to both design and build the structures, facilities, and other items specified in the contract. The requirements and limitations of RCW 47.20.780 and 47.20.785 do not apply to

the transportation projects under this chapter. [2002 c 56 § 111.]

**36.120.120 Treasurer.** The regional transportation investment district, by resolution, shall designate a person having experience in financial or fiscal matters as treasurer of the district. The district may designate the treasurer of a county within which the district is located to act as its treasurer. Such a treasurer has all of the powers, responsibilities, and duties the county treasurer has related to investing surplus funds. The district shall require a bond with a surety company authorized to do business in this state in an amount and under the terms and conditions the district, by resolution, from time to time finds will protect the district against loss. The district shall pay the premium on the bond.

In addition to the account established in RCW 36.120.200, the treasurer may establish a special account, into which may be paid district funds. The treasurer may disburse district funds only on warrants issued by the district upon orders or vouchers approved by the district.

If the treasurer of the district is the treasurer of a county, all district funds must be deposited with a county depository under the same restrictions, contracts, and security as provided for county depositories. If the treasurer of the district is some other person, all funds must be deposited in a bank or banks authorized to do business in this state qualified for insured deposits under any federal deposit insurance act as the district, by resolution, designates.

The district may provide and require a reasonable bond of any other person handling moneys or securities of the district, but the district shall pay the premium on the bond. [2002 c 56 § 112.]

**36.120.130 Indebtedness—Bonds—Limitation.**

(1)(a) Notwithstanding RCW 39.36.020(1), the district may at any time contract indebtedness or borrow money for district purposes and may issue general obligation bonds or other evidences of indebtedness, secured by the pledge of one or more of the taxes, tolls, charges, or fees authorized to be imposed by the district, in an amount not exceeding, together with any existing indebtedness of the district not authorized by the voters, one and one-half percent of the value of the taxable property within the boundaries of the district.

(b) With the assent of three-fifths of the voters voting at an election, a district may contract indebtedness or borrow money for district purposes and may issue general obligation bonds or other evidences of indebtedness as long as the total indebtedness of the district does not exceed five percent of the value of the taxable property within the district, including indebtedness authorized under (a) of this subsection. The bonds shall be issued and sold in accordance with chapter 39.46 RCW.

(2) The district may at any time issue revenue bonds or other evidences of indebtedness, secured by the pledge of one or more of the revenues authorized to be collected by the district, to provide funds to carry out its authorized functions without submitting the matter to the voters of the district. These obligations shall be issued and sold in accordance with chapter 39.46 RCW.

(3) The district may enter into agreements with the lead agencies or the state of Washington, when authorized by the plan, to pledge taxes or other revenues of the district for the purpose of paying in part or whole principal and interest on bonds issued by the lead agency or the state of Washington. The agreements pledging revenues and taxes shall be binding for their terms, but not to exceed thirty years, and no tax pledged by an agreement may be eliminated or modified if it would impair the pledge made in any agreement.

(4) Once construction of projects in the plan has been completed, revenues collected by the district may only be used for the following purposes: (a) Payment of principal and interest on outstanding indebtedness of the district; (b) to make payments required under a pledging agreement; and (c) to make payments for maintenance and operations of toll facilities as may be required by toll bond covenants. [2003 c 372 § 1; 2002 c 56 § 113.]

**36.120.140 Transportation project or plan modification—Accountability.** (1) The board may modify the plan to change transportation projects or revenue sources if:

(a) Two or more participating counties adopt a resolution to modify the plan; and

(b) The counties submit to the voters in the district a ballot measure that redefines the scope of the plan, its projects, its schedule, its costs, or the revenue sources. If the voters fail to approve the redefined plan, the district shall continue to work on and complete the plan, and the projects in it, that was originally approved by the voters. If the voters approve the redefined plan, the district shall work on and complete the projects under the redefined plan.

(2) The board may modify the plan to change transportation projects within a participating county if:

(a) A majority of the board approves the change;

(b) The modifications are limited to projects within the county;

(c) The county submits to the voters in the county a ballot measure that redefines:

(i) Projects;

(ii) Scopes of projects; or

(iii) Costs; and

(iv) The financial plan for the county;

(d) The proposed modifications maintain the equity of the plan and does [do] not increase the total level of plan expenditure for the county.

If the voters fail to approve the modified plan, the district shall continue to work on and complete the plan, and the projects in it, that was originally approved by the voters. If the voters approve the redefined plan, the district shall work on and complete the projects under the redefined plan.

(3) If a transportation project cost exceeds its original cost by more than twenty percent as identified in the plan:

(a) The board shall, in coordination with the county legislative authorities, submit to the voters in the district or county a ballot measure that redefines the scope of the transportation project, its schedule, or its costs. If the voters fail to approve the redefined transportation project, the district shall terminate work on that transportation project, except that the district may take reasonable steps to use, preserve, or connect any improvement already constructed. The remainder of any funds that would otherwise have been expended on the termi-

nated transportation project must first be used to retire any outstanding debt attributable to the plan and then may be used to implement the remainder of the plan.

(b) Alternatively, upon adoption of a resolution by two or more participating counties:

(i) The counties shall submit to the voters in the district a ballot measure that redefines the scope of the plan, its transportation projects, its schedule, or its costs. If the voters fail to approve the redefined plan, the district shall terminate work on that plan, except that the district may take reasonable steps to use, preserve, or connect any improvement already constructed. The remainder of any funds must be used to retire any outstanding debt attributable to the plan; or

(ii) The counties may elect to have the district continue the transportation project without submitting an additional ballot proposal to the voters.

(4) To assure accountability to the public for the timely construction of the transportation improvement project or projects within cost projections, the district shall issue a report, at least annually, to the public and copies of the report to newspapers of record in the district. In the report, the district shall indicate the status of transportation project costs, transportation project expenditures, revenues, and construction schedules. The report may also include progress towards meeting the performance criteria provided under this chapter. [2003 c 194 § 2; 2002 c 56 § 114.]

**36.120.150 Department of transportation—Role.** (1) The department shall designate an office or division of dedicated staff and services whose primary responsibility is to coordinate the design, preliminary engineering, permitting, financing, and construction of transportation projects under consideration by a regional transportation investment district planning committee or that are part of a regional transportation investment plan being implemented by a regional transportation investment district.

(2) All of the powers granted the department under Title 47 RCW relating to highway construction may, at the request of a regional transportation investment district, be used to implement a regional transportation investment plan and construct transportation projects. [2002 c 56 § 115.]

**36.120.160 Ownership of improvements.** Any improvement to a state facility constructed under this chapter becomes and remains the property of this state. [2002 c 56 § 116.]

**36.120.170 Dissolution of district.** Within thirty days of the completion of the construction of the transportation project or series of projects forming the regional transportation investment plan, the district shall terminate day-to-day operations and exist solely as a limited entity that oversees the collection of revenue and the payment of debt service or financing still in effect, if any. The district shall accordingly adjust downward its employees, administration, and overhead expenses. Any taxes, fees, or tolls imposed under an approved plan terminate when the financing or debt service on the transportation project or series of transportation projects constructed is completed and paid, thirty days from which point the district shall dissolve itself and cease to exist.

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If there is no debt outstanding, then the district shall dissolve within thirty days from completion of construction of the transportation project or series of transportation projects forming the regional transportation investment plan. Notice of dissolution must be published in newspapers of general circulation within the district at least three times in a period of thirty days. Creditors must file claims for payment of claims due within thirty days of the last published notice or the claim is extinguished. [2002 c 56 § 117.]

**36.120.180 Findings—Regional models—Grants.** The legislature finds that regional solutions to the state's transportation needs are of paramount concern. The legislature further recognizes that different areas of the state will need the flexibility to fashion local solutions to their transportation problems, and that regional transportation systems may evolve over time. Areas of the state outside of King, Snohomish, and Pierce counties are eligible for grants from the state of no more than two hundred thousand dollars each to study and develop regional transportation models. Regions receiving these grants shall:

(1) Develop a model that can be used within their region to select, fund, and administer regional transportation solutions;

(2) Adopt a county resolution approving the model proposed;

(3) Form interlocal agreements among counties as appropriate;

(4) Report to the transportation committees in the senate and house of representatives, petitioning the legislature to grant them authority to implement their proposed model. [2002 c 56 § 118.]

**36.120.190 Joint ballot measure.** At the option of the planning committee, and with the explicit approval of the regional transit authority, the participating counties may choose to impose any remaining high capacity transportation taxes under chapter 81.104 RCW that have not otherwise been used by a regional transit authority and submit to the voters a common ballot measure that creates the district, approves the regional transportation investment plan, implements the taxes, and implements any remaining high capacity transportation taxes within the boundaries of the regional transportation investment district. Collection and expenditures of any high capacity transportation taxes implemented under this section must be determined by agreement between the participating counties or district and the regional transit authority electing to submit high capacity transportation taxes to the voters under a common ballot measure as provided in this section. If the measure fails, all such unused high capacity transportation taxes revert back to and remain with the regional transit authority. A project constructed with this funding is not considered a "transportation project" under RCW 36.120.020. [2002 c 56 § 201.]

**36.120.200 Regional transportation investment district account.** The regional transportation investment district account is created in the custody of the state treasurer. The purpose of this account is to act as an account into which may be deposited state money, if any, that may be used in

conjunction with district money to fund transportation projects. Additionally, the district may deposit funds into this account for disbursement, as appropriate, on transportation projects. Nothing in this section requires any state matching money. All money deposited in the regional transportation investment district account will be used for design, right of way acquisition, capital acquisition, and construction, or for the payment of debt service associated with these activities, for regionally funded transportation projects developed under this chapter. Only the district may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW. An appropriation is not required for expenditures from this account. [2002 c 56 § 401.]

**36.120.900 Captions and subheadings not law—2002 c 56.** Captions and subheadings used in this act are not part of the law. [2002 c 56 § 501.]

**36.120.901 Severability—2002 c 56.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2002 c 56 § 503.]

## Chapter 36.900 RCW CONSTRUCTION

### Sections

- 36.900.010 Continuation of existing law.
- 36.900.020 Title, chapter, section headings not part of law.
- 36.900.030 Invalidity of part of title not to affect remainder.
- 36.900.040 Repeals and saving.

**36.900.010 Continuation of existing law.** The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1963 c 4 § 36.98.010. Formerly RCW 36.98.010.]

**36.900.020 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1963 c 4 § 36.98.020. Formerly RCW 36.98.020.]

**36.900.030 Invalidity of part of title not to affect remainder.** If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1963 c 4 § 36.98.030. Formerly RCW 36.98.030.]

**Severability—1967 ex.s. c 144:** "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, shall not be affected." [1967 ex.s. c 144 § 21.]

**36.900.040 Repeals and saving.** See 1963 c 4 § 36.98.040.

# Title 37

## FEDERAL AREAS—INDIANS

### Chapters

- 37.04** General cession of jurisdiction.
- 37.08** Jurisdiction in special cases.
- 37.12** Indians and Indian lands—Jurisdiction.
- 37.14** Indian cultural facility bond issue.
- 37.16** Acquisition of lands for permanent military installations.

*Daylight saving time—Prohibition not applicable to federal areas:* RCW 1.20.050.

*Excise taxes—Extension of excises to federal areas:* Chapter 82.52 RCW.

*Federal employees classified as resident students:* RCW 28B.15.014.

*Federal forest reserve funds, distribution of:* RCW 28A.520.010, 28A.520.020.

*San Juan Island national historical park, donation of state lands:* Chapter 94, Laws of 1967 (uncodified).

*School districts—Agreements with other governmental entities for transportation of students or the public, or for other noncommon school purposes—Limitations:* RCW 28A.160.120.

### Chapter 37.04 RCW

#### GENERAL CESSION OF JURISDICTION

##### Sections

- 37.04.010 Consent given to acquisition of land by United States.
- 37.04.020 Concurrent jurisdiction ceded—Reverter.
- 37.04.030 Reserved jurisdiction of state.
- 37.04.040 Previous cessions of jurisdiction saved.
- 37.04.050 Concurrent jurisdiction—Governor authorized to accept—Procedures.

*Authority of federal government over federal areas:* State Constitution Art. 25.

*Taxation of federal agencies and instrumentalities:* State Constitution Art. 7 § 3 (Amendment 19).

**37.04.010 Consent given to acquisition of land by United States.** The consent of this state is hereby given to the acquisition by the United States, or under its authority, by purchase, lease, condemnation, or otherwise, of any land acquired, or to be acquired, in this state by the United States, from any individual, body politic or corporate, as sites for forts, magazines, arsenals, dockyards, and other needful buildings or for any other purpose whatsoever. The evidence of title to such land shall be recorded as in other cases. [1939 c 126 § 1; RRS § 8108-1.]

**37.04.020 Concurrent jurisdiction ceded—Reverter.** Concurrent jurisdiction with this state in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States for all purposes for which the land was acquired; but the jurisdiction so ceded shall continue no longer than the United States shall be the owner of such lands, and if the purposes of any grant to or acquisition by the United States shall cease, or the United States shall for five consecutive years fail to use any such land for the purposes of the grant or acquisition, the jurisdiction hereby

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ceded over the same shall cease and determine, and the right and title thereto shall revest in this state. The jurisdiction ceded shall not vest until the United States shall acquire title of record to such land. [1939 c 126 § 2; RRS § 8108-2.]

**37.04.030 Reserved jurisdiction of state.** The state of Washington hereby expressly reserves such jurisdiction and authority over land acquired or to be acquired by the United States as aforesaid as is not inconsistent with the jurisdiction ceded to the United States by virtue of such acquisition. [1939 c 126 § 3; RRS § 8108-3.]

**37.04.040 Previous cessions of jurisdiction saved.** Sections 8108 and 8109, Remington's Revised Statutes [1891 pp 31, 32 §§ 1, 2], and all other acts and parts of acts inconsistent with the provisions of this chapter are hereby repealed: PROVIDED, That jurisdiction heretofore ceded to the United States over any land within this state by any previous act of the legislature shall continue according to the terms of the respective cessions: PROVIDED FURTHER, That if jurisdiction so ceded by any previous act of the legislature has not been affirmatively accepted by the United States, or if the United States has failed or ceased to use any such land for the purposes for which acquired, jurisdiction thereover shall be governed by the provisions of this chapter. [1939 c 126 § 4; RRS § 8108-4.]

**37.04.050 Concurrent jurisdiction—Governor authorized to accept—Procedures.** (1) Upon the filing of a legally adequate notice with the governor by the secretary or administrator of any agency of the United States of America owning or having exclusive jurisdiction over certain property, the governor is authorized and directed to accept such jurisdiction as is necessary to establish concurrent jurisdiction between the United States and the state of Washington over the property as described in such notice and to the extent and periods of time authorized in such notice. The acquisition of such concurrent jurisdiction shall become effective upon filing the documents signifying such acceptance in the office of the secretary of state of the state of Washington.

(2) The authorization contained in subsection (1) of this section shall not be exclusive, shall not affect any existing jurisdiction or concurrent jurisdiction by the state over federal property, and shall be in addition to any other method or methods of assuming jurisdiction or concurrent jurisdiction over federal property. [1979 ex.s. c 49 § 1.]

### Chapter 37.08 RCW

#### JURISDICTION IN SPECIAL CASES

##### Sections

- 37.08.180 Jurisdiction ceded.
- 37.08.200 Rainier National Park.

37.08.210	Olympic National Park.
37.08.220	National forests, establishment, consolidation, extension of.
37.08.230	Migratory bird preserves.
37.08.240	Lake Washington ship canal.
37.08.250	Additional right-of-way.
37.08.260	Auburn general depot.
37.08.270	Cession of jurisdiction.
37.08.280	Veterans hospitals.

**37.08.180 Jurisdiction ceded.** Jurisdiction ceded when acquisition of land for permanent military installations, see RCW 37.16.180.

**37.08.200 Rainier National Park.** Exclusive jurisdiction shall be, and the same is hereby ceded to the United States over and within all the territory that is now or may hereafter be included in that tract of land in the state of Washington, set aside for the purposes of a national park, and known as the Rainier National Park; saving, however, to the said state, the right to serve civil or criminal process within the limits of the aforesaid park, in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state, but outside of said park; and saving further to the said state the right to tax persons and corporations, their franchises and property on the lands included in said park: PROVIDED, HOWEVER, This jurisdiction shall not vest until the United States through the proper officer, notifies the governor of this state that they assume police or military jurisdiction over said park. [1901 c 92 § 1; RRS § 8110.]

**37.08.210 Olympic National Park.** Exclusive jurisdiction shall be, and the same is hereby ceded to the United States over and within all the territory that is now or hereafter included in that tract of land in the state of Washington, set aside for the purposes of a national park, and known as the Olympic National Park; saving, however, to the said state, the right to serve civil and criminal process within the limits of the aforesaid park, in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state, but outside of said park; and saving further to the said state the right to tax persons and corporations, their franchises and property on the lands included in said park: PROVIDED, HOWEVER, This jurisdiction shall not vest until the United States, through the proper officer, notifies the governor of this state that they assume police or military jurisdiction over said park: AND PROVIDED FURTHER, That full jurisdiction over a strip of land two hundred fifty feet wide, being one hundred twenty-five feet wide on each side of the now existing center line of primary state highway No. 9 together with existing pit sites and stockpile sites within said park shall be retained by the state of Washington. [1945 c 114 § 1; 1941 c 51 § 1; 1939 c 170 § 1; Rem. Supp. 1945 § 8110-1.]

**37.08.220 National forests, establishment, consolidation, extension of.** The legislature of the state of Washington hereby consents to the acquisition by the United States by purchase or gift of such lands in the state of Washington as in the opinion of the government of the United States may be needed for the establishment, consolidation and extension of national forests in this state under the provisions of the act of

congress approved March 1, 1911, and entitled: "An act to enable any state to cooperate with any other state or states or with the United States for the protection of the watersheds of navigable streams and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers," as amended: PROVIDED, The state of Washington shall retain a concurrent jurisdiction with the United States in and over lands so acquired so far that civil processes in all cases, and such criminal processes as may issue under the authority of the state of Washington against any person charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this consent had not been granted: PROVIDED FURTHER, That before any acquirement of lands be made under the provisions of this section, such acquisition shall be approved by the department of natural resources: AND FURTHER PROVIDED, That the state of Washington shall retain concurrent jurisdiction to tax persons and corporations and their property and transaction on such lands so acquired. [1988 c 128 § 8; 1935 c 58 § 1; RRS § 9663-23.]

*County may convey forest lands to United States: RCW 36.34.210.*

**37.08.230 Migratory bird preserves.** Consent of the state of Washington is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water, or of land and water, in the state of Washington, as the United States may deem necessary for the establishment of migratory-bird reservations in accordance with the act of congress approved February 18, 1929, entitled "An Act to more effectively meet the obligations of the United States under the migratory bird treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes," reserving, however, to the state of Washington full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress. [1933 c 159 § 1; no RRS.]

**37.08.240 Lake Washington ship canal.** That in aid of the construction, maintenance and operation of a ship canal, by the United States of America, to connect the waters of Lakes Union and Washington, in King county, with Puget Sound, together with all necessary and convenient locks, landways, spillways, buildings, power plant and other proper appurtenances, there be and hereby is granted by this state to said United States the right to place, construct, maintain, and operate, such ship canal, landways, spillways, buildings, power plant and other proper appurtenances, upon, along, through and over any and all lands belonging to and waters of this state in said King county, within such limits as shall be defined by the plans and specifications for such improvement as the same shall be approved by the United States secretary of war, and the right to raise the waters of Salmon Bay and the right to lower the waters of Lake Washington, in prosecution of such improvement, and this state hereby releases the

United States from all liability to damages to this state, its successors or assigns, that shall or might arise from such lowering or raising of waters, or otherwise from such improvement. But nothing in this section contained shall operate as an assumption of nor create any liability on the part of the state, for any damages which may result to any person, company or corporation. [1901 c 6 § 1; RRS § 8120.]

**37.08.250 Additional right-of-way.** That a right-of-way of not exceeding five hundred feet in width is hereby granted to the United States of America through any lands or shorelands belonging to the state of Washington, or to the University of Washington, and lying in King county between Lakes Union and Washington, or in or adjoining either of them, the southern boundary of such right-of-way on the upland to be coincident with the southern boundary of the lands now occupied by the University of Washington adjacent to the present right-of-way of said canal; the width and definite location of such right-of-way before the same is taken possession of by said United States shall be plainly and completely platted and a plat thereof approved by the secretary of war of the United States filed with the department of natural resources: PROVIDED, That nothing in this section contained shall be construed to repeal or impair any right, interest, privilege or grant expressed or intended in the act of the legislature of the state of Washington approved February 8, 1901, entitled, "An Act relative to and in aid of the construction, maintenance and operation by the United States of America of a ship canal with proper locks and appurtenances to connect the waters of Lakes Union and Washington in King county with Puget Sound and declaring an emergency." [1988 c 128 § 9; 1907 c 216 § 1; RRS § 8121.]

**37.08.260 Auburn general depot.** Concurrent jurisdiction shall be, and the same is hereby ceded to the United States over and within all the land comprising the Auburn General Depot area, being 570.08 acres, more or less, situate in King county, state of Washington; saving, however, to the state the right to serve civil and criminal process within the limits of the aforesaid area in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state, but outside of said area. The metes and bounds description of the land over which jurisdiction is ceded hereby is as follows:

A parcel of land in sections 24 and 25, Township 21 North, Range 4 East, Willamette Meridian, King County, as follows: Beginning at a point on the west line of the Northern Pacific Railway right-of-way which point is S 89°16'55" W, 423.65 feet and N 2°12'33" W, 20 feet from the southeast corner of section 25, thence S 89°16'55" W, 1548.93 feet along the north right-of-way line of Ellingson Road to a point, thence N 0°10'45" E, 1298.11 feet to a point, thence S 89°31'28" W, 638.25 feet to the east right-of-way line of Greenhalgh Road, thence N 0°08'47" E, 1351.31 feet along said east right-of-way line to its intersection with the north right-of-way line of Algona Road, thence S 89°46'07" W, 1724.35 feet along said north right-of-way line to a point on the easterly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad, thence N 0°04'38" W, 1223.74 feet along said right-of-way to a point of spiral curve, thence

along a spiral curve whose central angle is 1°36'14" and whose long chord bears N 0°27'20" E, 158.51 feet, thence along a circular curve to the right, whose radius bears S 88°28'24" E, 2822.01 feet, through a central angle of 21°16'24" for a distance of 1047.78 feet to a point of spiral, thence along a spiral curve whose central angle is 1°36'14", and whose long chord bears N 23°51'42" E, 158.51 feet, thence N 24°24'15" E, 3088.12 feet to a point of spiral curve, thence along a spiral whose central angle is 1°35'51", and whose long chord bears N 23°51'55" E, 161.51 feet to point of circular curve, thence along a circular curve, to the left, whose radius bears N 67°11'36" W, 2908.01 feet, through a central angle of 20°58'46" for a distance of 1064.80 feet, thence along a spiral curve to the left, whose central angle is 1°35'51", and whose long chord bears N 0°45'10" E, 161.51 feet, thence N 0°13'47" E, 1148.81 feet to the centerline of the Chicago, Milwaukee, St. Paul and Pacific Railroad and Northern Pacific crossover track being a point in a curve, thence along centerline of said crossover track on a curve to the left in a southeasterly direction, from a radius which bears N 63°36'26" E, 351.28 feet, through a central angle of 26°50'13" for a distance of 164.54 feet, thence S 53°13'47" E, 1840.78 feet along said centerline, thence along a curve to the right in a southeasterly direction, from a radius which bears S 36°46'13" W, 386.60 feet, through a central angle of 10°26'06" for a distance of 70.41 feet to the intersection of the westerly right-of-way line of county road No. 76, thence \*S 2°12'33" E, 6596.21 feet along the westerly right-of-way line of county road No. 76 to the East-West centerline of said section 25, thence N 89°46'02" E, 60.04 feet to the westerly right-of-way line of the Northern Pacific Railway Company, thence S 2°12'33" E, 2605.01 feet to point of beginning. The jurisdiction ceded hereby does not extend to any existing perimeter railroad or county road right-of-way. [1951 c 40 § 1.]

**\*Reviser's note:** In the third from the last course, the "2" in the description "S 2°12'33" E" was by typographical error omitted from the session laws. The digit is inserted by the reviser after verification from original sources.

**37.08.270 Cession of jurisdiction.** Cession of jurisdiction, lease or conveyances to United States for flood control, navigation and allied purposes, see RCW 36.34.220-36.34.240.

**37.08.280 Veterans hospitals.** Upon the filing of an appropriate notice thereof with the governor by the administrator of veterans affairs, an agency of the United States of America, pursuant to the provisions of section 302 of Public Law 93-82 (87 Stat. 195; 38 U.S.C. Sec. 5007), the governor is hereby authorized and directed to accept such legislative jurisdiction as is necessary to establish concurrent jurisdiction between the United States and the state of Washington to all land comprising the veterans hospital located at Vancouver in Clark county, Washington; the veterans administration hospital located at Walla Walla in Walla Walla county, Washington, and the veterans administration hospital located at American Lake in Pierce county, Washington. The acquisition of such concurrent jurisdiction shall become effective upon filing the documents signifying such acceptance in the office of the secretary of state. [1975 1st ex.s. c 142 § 1.]

## Chapter 37.12 RCW

## INDIANS AND INDIAN LANDS—JURISDICTION

## Sections

37.12.010	Assumption of criminal and civil jurisdiction by state.
37.12.021	Assumption of criminal and civil jurisdiction by state—Resolution of request—Proclamation by governor, 1963 act.
37.12.030	Effective date for assumption of jurisdiction—Criminal causes.
37.12.040	Effective date for assumption of jurisdiction—Civil causes.
37.12.050	State's jurisdiction limited by federal law.
37.12.060	Chapter limited in application.
37.12.070	Tribal ordinances, customs, not inconsistent with law applicable in civil causes.
37.12.100	Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Intent.
37.12.110	Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Definitions.
37.12.120	Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Proclamation by governor.
37.12.130	Quileute, Chehalis, Swinomish, and Colville Indian reservations—Retrocession of criminal jurisdiction—Savings.
37.12.140	Quileute, Chehalis, Swinomish, and Colville Indian reservations—Retrocession of criminal jurisdiction—Short title.
37.12.150	Retrocession of federal jurisdiction over lands excluded from Olympic National Park.

*Alienation of land by Indians: Chapter 64.20 RCW.*

*Annexation of federal areas by first class city: RCW 35.13.185.*

*Compact with the United States: State Constitution Art. 26 § 2.*

*Daylight saving time—Prohibition not applicable to federal areas: RCW 1.20.050.*

*Qualifications of voters: State Constitution Art. 6 § 1 (Amendment 63).*

**37.12.010 Assumption of criminal and civil jurisdiction by state.** The state of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions of RCW 37.12.021 have been invoked, except for the following:

- (1) Compulsory school attendance;
- (2) Public assistance;
- (3) Domestic relations;
- (4) Mental illness;
- (5) Juvenile delinquency;
- (6) Adoption proceedings;
- (7) Dependent children; and
- (8) Operation of motor vehicles upon the public streets, alleys, roads and highways:

PROVIDED FURTHER, That Indian tribes that petitioned for, were granted and became subject to state jurisdiction pursuant to this chapter on or before March 13, 1963 shall remain subject to state civil and criminal jurisdiction as if \*chapter 36, Laws of 1963 had not been enacted. [1963 c 36 § 1; 1957 c 240 § 1.]

**\*Reviser's note:** Chapter 36, Laws of 1963, which became effective on March 13, 1963, amended RCW 37.12.010, 37.12.030, 37.12.040, and 37.12.060, repealed RCW 37.12.020, and enacted a new section codified herein as RCW 37.12.021.

**37.12.021 Assumption of criminal and civil jurisdiction by state—Resolution of request—Proclamation by governor, 1963 act.** Whenever the governor of this state shall receive from the majority of any tribe or the tribal council or other governing body, duly recognized by the Bureau of Indian Affairs, of any Indian tribe, community, band or group in this state a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction of the state of Washington to the full extent authorized by federal law, he shall issue within sixty days a proclamation to the effect that such jurisdiction shall apply to all Indians and all Indian territory, reservations, country, and lands of the Indian body involved to the same extent that this state exercises civil and criminal jurisdiction or both elsewhere within the state: PROVIDED, That jurisdiction assumed pursuant to this section shall nevertheless be subject to the limitations set forth in RCW 37.12.060. [1963 c 36 § 5.]

**37.12.030 Effective date for assumption of jurisdiction—Criminal causes.** Upon March 13, 1963 the state of Washington shall assume jurisdiction over offenses as set forth in RCW 37.12.010 committed by or against Indians in the lands prescribed in RCW 37.12.010 to the same extent that this state has jurisdiction over offenses committed elsewhere within this state, and such criminal laws of this state shall have the same force and effect within such lands as they have elsewhere within this state. [1963 c 36 § 2; 1957 c 240 § 3.]

**37.12.040 Effective date for assumption of jurisdiction—Civil causes.** Upon March 13, 1963 the state of Washington shall assume jurisdiction over civil causes of action as set forth in RCW 37.12.010 between Indians or to which Indians are parties which arise in the lands prescribed in RCW 37.12.010 to the same extent that this state has jurisdiction over other civil causes of action and, except as otherwise provided in this chapter, those civil laws of this state that are of general application to private persons or private property shall have the same force and effect within such lands as they have elsewhere within this state. [1963 c 36 § 3; 1957 c 240 § 4.]

**37.12.050 State's jurisdiction limited by federal law.** The jurisdiction assumed pursuant to this chapter shall be subject to the limitations and provisions of the federal act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session). [1957 c 240 § 5.]

**37.12.060 Chapter limited in application.** Nothing in this chapter shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights and tidelands, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest

therein; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to Indian land grants, hunting, trapping, or fishing or the control, licensing, or regulation thereof. [1963 c 36 § 4; 1957 c 240 § 6.]

**37.12.070 Tribal ordinances, customs, not inconsistent with law applicable in civil causes.** Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to this section. [1957 c 240 § 7.]

**37.12.100 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Intent.** It is the intent of the legislature to authorize a procedure for the retrocession, to the Quileute Tribe, Chehalis Tribe, Swinomish Tribe, Skokomish Tribe, Muckleshoot Tribe, Tulalip Tribes, and the Colville Confederated Tribes of Washington and the United States, of criminal jurisdiction over Indians for acts occurring on tribal lands or allotted lands within the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, or Colville Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States.

RCW 37.12.100 through 37.12.140 in no way expand the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, or Colville tribe's criminal or civil jurisdiction, if any, over non-Indians or fee title property. RCW 37.12.100 through 37.12.140 shall have no effect whatsoever on water rights, hunting and fishing rights, the established pattern of civil jurisdiction existing on the lands of the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, or Colville Indian reservation, the established pattern of regulatory jurisdiction existing on the lands of the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, or Colville Indian reservation, taxation, or any other matter not specifically included within the terms of RCW 37.12.100 through 37.12.140. [1995 c 202 § 1; 1995 c 177 § 1; 1994 c 12 § 1; 1988 c 108 § 1; 1986 c 267 § 2.]

**Reviser's note:** This section was amended by 1995 c 177 § 1 and by 1995 c 202 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1986 c 267:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 267 § 8.]

**37.12.110 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Definitions.** Unless the context clearly requires otherwise, the following definitions apply throughout RCW 37.12.100 through 37.12.140:

(1) "Colville reservation" or "Colville Indian reservation," "Quileute reservation" or "Quileute Indian reserva-

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tion," "Chehalis reservation" or "Chehalis Indian reservation," "Swinomish reservation" or "Swinomish Indian reservation," "Skokomish reservation" or "Skokomish Indian reservation," "Muckleshoot reservation" or "Muckleshoot Indian reservation," or "Tulalip reservation" or "Tulalip Indian reservation" means all tribal lands or allotted lands lying within the reservation of the named tribe and held in trust by the United States or subject to a restriction against alienation imposed by the United States, but does not include those lands which lie north of the present Colville Indian reservation which were included in original reservation boundaries created in 1872 and which are referred to as the "diminished reservation."

(2) "Indian tribe," "tribe," "Colville tribes," or "Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip tribe" means the confederated tribes of the Colville reservation or the tribe of the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip reservation.

(3) "Tribal court" means the trial and appellate courts of the Colville tribes or the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip tribe. [1995 c 202 § 2; 1995 c 177 § 2; 1994 c 12 § 2; 1988 c 108 § 2; 1986 c 267 § 3.]

**Reviser's note:** This section was amended by 1995 c 177 § 2 and by 1995 c 202 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1986 c 267:** See note following RCW 37.12.100.

**37.12.120 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Proclamation by governor.** Whenever the governor receives from the confederated tribes of the Colville reservation or the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip tribe a resolution expressing their desire for the retrocession by the state of all or any measure of the criminal jurisdiction acquired by the state pursuant to RCW 37.12.021 over lands of that tribe's reservation, the governor may, within ninety days, issue a proclamation retroceding to the United States the criminal jurisdiction previously acquired by the state over such reservation. However, the state of Washington shall retain jurisdiction as provided in RCW 37.12.010. The proclamation of retrocession shall not become effective until it is accepted by an officer of the United States government in accordance with 25 U.S.C. Sec. 1323 (82 Stat. 78, 79) and in accordance with procedures established by the United States for acceptance of such retrocession of jurisdiction. The Colville tribes and the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, and Tulalip tribes shall not exercise criminal or civil jurisdiction over non-Indians. [1995 c 202 § 3; 1995 c 177 § 3; 1994 c 12 § 3; 1988 c 108 § 3; 1986 c 267 § 4.]

**Reviser's note:** This section was amended by 1995 c 177 § 3 and by 1995 c 202 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1986 c 267:** See note following RCW 37.12.100.

**37.12.130 Quileute, Chehalis, Swinomish, and Colville Indian reservations—Retrocession of criminal**

**jurisdiction—Savings.** An action or proceeding which has been filed with any court or agency of the state or local government preceding the effective date of retrocession of jurisdiction under RCW 37.12.100 through 37.12.140 shall not abate by reason of the retrocession or determination of jurisdiction. [1986 c 267 § 6.]

**Severability—1986 c 267:** See note following RCW 37.12.100.

**37.12.140 Quileute, Chehalis, Swinomish, and Colville Indian reservations—Retrocession of criminal jurisdiction—Short title.** RCW 37.12.100 through 37.12.140 may be known and cited as the Indian reservation criminal jurisdiction retrocession act. [1988 c 108 § 4; 1986 c 267 § 1.]

**Severability—1986 c 267:** See note following RCW 37.12.100.

**37.12.150 Retrocession of federal jurisdiction over lands excluded from Olympic National Park.** The state of Washington hereby accepts retrocession from the United States of the jurisdiction which the United States acquired over those lands excluded from the boundaries of the Olympic National Park by 16 U.S.C. Sec. 251e. The lands restored to the Quileute Indian Reservation by Public Law 94-578 shall be subject to the same Washington state and tribal jurisdiction as all other lands within the Quileute Reservation. [1988 c 108 § 5.]

## Chapter 37.14 RCW

### INDIAN CULTURAL FACILITY BOND ISSUE

#### Sections

37.14.010	General obligation bonds—Authorized—Issuance, sale, terms, etc.
37.14.020	Anticipation notes—Proceeds of bonds and notes.
37.14.030	Administration of proceeds.
37.14.040	Retirement of bonds from Indian cultural center construction bond redemption fund—Source—Remedies of bond holders.
37.14.050	Legal investment for public funds.
37.14.900	Severability—1975-'76 2nd ex.s. c 128.

**37.14.010 General obligation bonds—Authorized—Issuance, sale, terms, etc.** Solely for the purpose of providing a matching grant for the planning, design, acquisition, construction, furnishing, equipping, remodeling, and landscaping of a regional Indian cultural, educational, tourist, and economic development facility designated as the "people's lodge," the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one million dollars or so much thereof as shall be required to finance that portion of the grant by the state for said project as is set forth by appropriation from the Indian cultural center construction account in the state treasury for such purposes, to be paid and discharged within thirty years of the date of issuance in accordance with Article VIII, section 1 of the Constitution of the state of Washington. All earnings of investments of balances in the Indian cultural center construction account shall be credited to the general fund.

If one hundred fifteen thousand dollars or more in additional federal and/or private funding is not secured within five years of September 1, 1979, and applied toward the completion of the "people's lodge," ownership of the property

and/or facility developed with the proceeds of the bonds issued under this section shall be transferred to the state. Expenditure of these bond proceeds shall be conditioned on prior approval by the director of general administration of any real estate acquisitions and of construction plans for any building and/or grounds projects. The director's approval shall be based on a finding that any real estate to be acquired is appraised at or above the purchase price, that any construction plans for building and/or grounds projects provide for completion of any facilities contemplated therein, and that there are funds in an amount sufficient to finish the project so that it is fully operational for its intended uses.

The state finance committee is authorized to prescribe the form of such bonds, the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof.

Each such bond and bond anticipation note shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds. [1985 c 57 § 20; 1983 1st ex.s. c 54 § 7; 1979 ex.s. c 246 § 1; 1975-'76 2nd ex.s. c 128 § 1.]

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**Severability—1983 1st ex.s. c 54:** See RCW 43.83.196.

**37.14.020 Anticipation notes—Proceeds of bonds and notes.** At the time the state finance committee determines to issue such bonds authorized in RCW 37.14.010 or a portion thereof, it may issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of the bonds, which notes shall be designated as "anticipation notes". The proceeds from the sale of bonds and notes authorized by this chapter shall be deposited in the Indian cultural center construction account of the general fund hereby created in the state treasury and shall be used exclusively for the purposes specified in this chapter and for the payment of expenses incurred in the issuance and sale of such bonds and notes: PROVIDED, Such portion of the proceeds of the sale of such bonds as may be required for the payment of the principal and interest on such anticipation notes as have been issued, shall be deposited in the bond redemption fund created in RCW 37.14.040. [1975-'76 2nd ex.s. c 128 § 2.]

**37.14.030 Administration of proceeds.** The principal proceeds from the sale of the bonds authorized in this chapter and deposited in the Indian cultural center construction account in the general fund shall be administered by the executive director of the arts commission. [1975-'76 2nd ex.s. c 128 § 3.]

**37.14.040 Retirement of bonds from Indian cultural center construction bond redemption fund—Source—Remedies of bond holders.** The Indian cultural center construction bond redemption fund of 1976 is hereby created in the state treasury, which fund shall be exclusively devoted to

the payment of interest on and retirement of the bonds and notes authorized by this chapter.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements, and on July 1st of each year the state treasurer shall deposit such amount in the Indian cultural center construction bond redemption fund of 1976 from any general state revenues received in the state treasury and certified by the state treasurer to be general state revenues.

The owner and holder of each of the bonds or the trustee for any of the bonds, by mandamus or other appropriate proceeding, may require and compel the transfer and payment of funds as directed herein. [1975-'76 2nd ex.s. c 128 § 4.]

**37.14.050 Legal investment for public funds.** The bonds authorized by this chapter shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1975-'76 2nd ex.s. c 128 § 5.]

**37.14.900 Severability—1975-'76 2nd ex.s. c 128.** If any provision of this 1976 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 128 § 6.]

## Chapter 37.16 RCW

### ACQUISITION OF LANDS FOR PERMANENT MILITARY INSTALLATIONS

#### Sections

37.16.180 Jurisdiction ceded.

**Reviser's note:** Chapter 4, Laws of 1917, herein codified as chapter 37.16 RCW, is discussed in *State ex rel. Board of Commissioners v. Clausen*, 95 Wash. 214, 163 Pac. 744 (1917), where it is considered in conjunction with 1917 c 3, a special act authorizing (and directing) Pierce county to condemn property and issue bonds in payment of awards therefor in order to secure the location of Camp (now Fort) Lewis in that county. In prior compilations, Remington omitted 1917 c 4, and Pierce omitted all but section 22, ceding the state's jurisdiction to the United States. 1917 c 4 appears to have been a general act and for that reason was codified herein. Most of the sections in this chapter were subsequently repealed by 1971 c 76 § 6.

*Appropriation authorized in aid of federal or state improvement:* RCW 8.08.090.

*Condemnation for military purposes:* RCW 8.04.170, 8.04.180.

*Eminent domain by counties:* Chapter 8.08 RCW.

*Joint armory sites:* RCW 36.64.050.

*Lease or conveyance to the state or to United States for military, housing and other purposes:* RCW 36.34.250.

*Leases to United States for national defense:* RCW 79.13.090.

*Long term leases to United States by counties:* RCW 36.34.310.

*Tide and shore land grants to United States:* RCW 79.94.410 through 79.94.440.

*Transfer of property to state or United States for military purposes or housing projects:* RCW 36.34.260.

**37.16.180 Jurisdiction ceded.** Pursuant to the Constitution and laws of the United States, and especially to paragraph seventeen of section eight of article one of such Constitution, the consent of the legislature of the state of Washington is hereby given to the United States to acquire by

donation from any county acting under the provisions of this chapter, title to all the lands herein intended to be referred to, to be evidenced by the deed or deeds of such county, signed by the chairman of its board of county commissioners and attested by the clerk of such board under the seal of such board, and the consent of the state of Washington is hereby given to the exercise by the congress of the United States of exclusive legislation in all cases whatsoever, over such tracts or parcels of land so conveyed to it: PROVIDED, Upon such conveyance being concluded, a sufficient description by metes and bounds and an accurate plat or map of each such tract or parcel of land be filed in the auditor's office of the county in which such lands are situated, together with copies of the orders, deeds, patents, or other evidences in writing of the title of the United States: AND PROVIDED, That all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state against any person charged with crime in cases arising outside of such reservation, may be served and executed thereon in the same mode and manner and by the same officers as if the consent herein given had not been made. [1917 c 4 § 22; no RRS. Formerly RCW 37.08.180.]

*General cession of jurisdiction:* Chapter 37.04 RCW.

*Jurisdiction in special cases:* Chapter 37.08 RCW.

# Title 38

## MILITIA AND MILITARY AFFAIRS

### Chapters

- 38.04** General provisions.
- 38.08** Powers and duties of governor.
- 38.10** Emergency management assistance compact.
- 38.12** Militia officers and advisory council.
- 38.14** Washington state guard.
- 38.16** Enlistments and reserves.
- 38.20** Armories and rifle ranges.
- 38.24** Claims and compensation.
- 38.32** Offenses—Punishment.
- 38.36** Trial procedure.
- 38.38** Washington code of military justice.
- 38.40** Miscellaneous provisions.
- 38.44** Enrollment of persons.
- 38.48** State and national defense.
- 38.52** Emergency management.

*Explosives, manufacture, sale or storage: Chapter 70.74 RCW.*

*Limitation on members of the legislature holding office in the state—Exception: State Constitution Art. 2 § 14.*

*Microfilming of records to provide continuity of civil government: Chapter 40.10 RCW.*

*Military subordinate to civil power: State Constitution Art. 1 § 18.*

*National guard conditional scholarship program: Chapter 28B.103 RCW.*

*Quartering soldiers in residences: State Constitution Art. 1 § 31.*

*Right to bear arms: State Constitution Art. 1 § 24.*

*Special act relating to aerospace science and modeling center at Camp Murray: 1969 ex.s. c 85.*

**SPECIAL ACTS RELATING TO ARMORIES:** *The following special or temporary acts relating to particular armories are not codified herein:*

- (1) 1959 c 181; 1961 c 135; 1963 c 146, *Seattle*.
- (2) 1967 c 37, *Prosser*.
- (3) 1967 c 43, *Centralia*.
- (4) 1967 c 44, *Chewelah*.
- (5) 1967 c 214, *Stevens County*.
- (6) 1967 c 224, *Tacoma and Pierce County*.
- (7) 1967 c 226, *Yakima*.
- (8) 1969 ex.s. c 22, *Kirkland*.

*Special legislation: State Constitution Art. 2 § 28(2).*

*Standing army in time of peace prohibited: State Constitution Art. 1 § 31.*

*State flag furnished to armed forces: RCW 1.20.010.*

*State militia: State Constitution Art. 10.*

*Veterans and veterans' affairs: Title 73 RCW.*

### Chapter 38.04 RCW GENERAL PROVISIONS

#### Sections

- 38.04.010 General definitions.
- 38.04.020 "Officer," "enlisted men," "enlisted persons" defined—Convictions and punishments.
- 38.04.030 Composition of the militia.
- 38.04.040 Composition of organized militia.

*Acknowledgments and powers of attorney of military personnel: Chapter 73.20 RCW.*

*Military personnel classified as resident students: RCW 28B.15.014.*

(2004 Ed.)

**38.04.010 General definitions.** When used in this title, the following words, terms, phrases shall have the following meaning:

The word "militia" shall mean the military forces provided for in the Constitution and laws of the state of Washington.

The term "organized militia" shall be the general term to include both state and national guard and whenever used applies equally to all such organizations.

The term "national guard" shall mean that part of the military force of the state that is organized, equipped and federally recognized under the provisions of the national defense act of the United States, and, in the event the national guard is called into federal service or in the event the state guard or any part or individual member thereof is called into active state service by the commander-in-chief, the term shall also include the "Washington state guard" or any temporary organization set up in times of emergency to replace either the "national guard" or "state guard" while in actual service of the United States.

The term "state guard" shall mean that part of the military forces of the state that is organized, equipped, and recognized under the provisions of the State Defense Forces Act of the United States (32 U.S.C. Sec. 109, as amended).

The term "active state service" or "active training duty" shall be construed to be any service on behalf of the state, or at encampments whether ordered by state or federal authority or any other duty requiring the entire time of any organization or person except when called or drafted into the federal service by the president of the United States.

The term "inactive duty" shall include periods of drill and such other training and service not requiring the entire time of the organization or person, as may be required under state or federal laws, regulations, or orders, including travel to and from such duty.

The terms "in service of United States" and "not in service of United States" as used herein shall be understood to mean the same as such terms when used in the national defense act of congress and amendments thereto.

The term "military" refers to any or all of the armed forces.

The term "armory" refers to any state-owned building, warehouse, vehicle storage compound, organizational maintenance shop or other facility and the lands appurtenant thereto used by the Washington national guard for the storage and maintenance of arms or military equipment or the administration or training of the organized militia.

The term "member" refers to a soldier or airman of the organized militia. [1991 c 43 § 1; 1989 c 19 § 1; 1963 c 220 § 133; 1943 c 130 § 12; Rem. Supp. 1943 § 8603-12. Prior: 1917 c 107 §§ 1, part, 3, part; 1909 c 134 § 10, part; 1895 c 108 § 10, part.]

**Short title:** "This act shall be known as the Military Code of the state of Washington." [1943 c 130 § 1.]

**Severability—1943 c 130:** "If any provisions of this act or the application thereof to any person or circumstances is held invalid for any reason, such determination shall not affect other provisions or applications of the act which can be given effect without the invalid provisions, and to this end, the provisions of this act are declared to be severable." [1943 c 130 § 95.]

*Martial law:* RCW 38.08.030.

**38.04.020 "Officer," "enlisted men," "enlisted persons" defined—Convictions and punishments.** Whenever used in this title, the word "officer" shall be understood to designate commissioned and warrant officers, and the words "enlisted men" or "enlisted persons" shall be understood to designate members of the organized militia of Washington other than commissioned or warrant officers. The convictions and punishments mentioned unless otherwise specifically designated, shall be understood to be respectively convictions and punishments by military courts. [1989 c 19 § 2; 1943 c 130 § 80; Rem. Supp. 1943 § 8603-80. Prior: 1917 c 107 § 60.]

**38.04.030 Composition of the militia.** The militia of the state of Washington shall consist of all able bodied citizens of the United States and all other able bodied persons who have declared their intention to become citizens of the United States, residing within this state, who shall be more than eighteen years of age, and shall include all persons who are members of the national guard and the state guard, and said militia shall be divided into two classes, the organized militia and the unorganized militia. [1989 c 19 § 3; 1973 1st ex.s. c 154 § 55; 1963 c 74 § 1; 1943 c 130 § 2; Rem. Supp. 1943 § 8603-2. Prior: 1917 c 107 § 1; 1909 c 134 § 2; 1895 c 108 § 2.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

*Militia—Who liable to military duty:* State Constitution Art. 10 § 1.

**38.04.040 Composition of organized militia.** The organized militia of Washington shall consist of the commissioned officers, warrant officers, enlisted persons, organizations, staffs, corps, and departments of the regularly commissioned, warranted and enlisted militia of the state, organized and maintained pursuant to law. Its numerical strength, composition, distribution, organization, arms, uniforms, equipment, training and discipline shall be prescribed by the governor in conformity with, and subject to the limitations imposed by the laws and regulations of the United States and the laws of this state: PROVIDED, HOWEVER, That the minimum enlisted strength of the organized militia of this state shall never be less than two thousand. The organized militia may include persons residing outside the state of Washington. [1989 c 19 § 4; 1943 c 130 § 4; Rem. Supp. 1943 § 8603-4. Prior: 1917 c 107 § 3. Cf. 1909 c 108 § 10, part; 1895 c 108 § 10, part.]

## Chapter 38.08 RCW

### POWERS AND DUTIES OF GOVERNOR

#### Sections

38.08.010	Conformance with federal laws.
38.08.020	Governor as commander-in-chief—Adjutant general executive head.
38.08.030	Proclamation of complete or limited martial law.
38.08.040	Governor may order out organized militia.

38.08.050	Governor may order out unorganized militia.
38.08.060	Governor's decision final.
38.08.070	Personal staff for governor.
38.08.090	Governor to promulgate rules.
38.08.100	Compacts with other states for guarding boundaries.
38.08.500	National guard mutual assistance counter-drug activities compact.

*Commander-in-chief:* State Constitution Art. 3 § 8.

*Commander-in-chief may order enrollment:* RCW 38.44.010.

*Militia—Organization—Discipline—Officers—Power to call out:* State Constitution Art. 10 § 2.

**38.08.010 Conformance with federal laws.** The governor shall cause the organized militia of this state at all times to conform to all federal laws and regulations as are now or may hereafter from time to time become operative and applicable, notwithstanding anything in the laws of this state to the contrary. Except as and when otherwise specifically provided by federal laws, the organized militia of Washington, or any part thereof, shall be subject to call for United States service at such times, in such manner, and in such numbers as may from time to time be prescribed by the United States.

In conformity with the provisions of federal statutes, officers and enlisted persons of the organized militia called or drafted into federal service by order or proclamation of the president of the United States, shall upon release from federal service revert to their former status, grade and rank, as members of the organized militia of Washington, and shall continue to serve in the organized militia of Washington until separated therefrom in the manner provided by law. [1989 c 19 § 5; 1943 c 130 § 5; Rem. Supp. 1943 § 8603-5. Prior: 1921 c 75 § 1; 1917 c 107 § 4; 1909 c 134 § 93; 1895 c 108 § 170.]

**38.08.020 Governor as commander-in-chief—Adjutant general executive head.** The militia of the state not in the service of the United States shall be governed and its affairs administered pursuant to law, by the governor, as commander-in-chief, through the adjutant general's department, of which the adjutant general shall be the executive head. [1961 c 210 § 1; 1943 c 130 § 3; Rem. Supp. 1943 § 8603-3. Prior: 1917 c 107 § 2; 1909 c 134 §§ 13, 14; 1895 c 108 § 13.]

*Governor commander-in-chief:* State Constitution Art. 3 § 8.

**38.08.030 Proclamation of complete or limited martial law.** The governor may by proclamation declare the county or city in which troops are serving, or any specific portion thereof, to be under either complete or limited martial law to the extent, in his or her opinion, that the reestablishment or maintenance of law and order may be promoted.

"Complete martial law" is the subordination of all civil authority to the military;

"Limited military law" is a partial subordination of civil authority by the setting up of an additional police power vested in the military force which shall have the right to try all persons apprehended by it in such area by a military tribunal or turn such offender over to civil authorities within five days for further action, during which time the writ of habeas corpus shall be suspended in behalf of such person. [1989 c 19 § 6; 1943 c 130 § 8; Rem. Supp. 1943 § 8603-8.]

**38.08.040 Governor may order out organized militia.**

In event of war, insurrection, rebellion, invasion, tumult, riot, mob, or organized body acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state, or the United States, or in case of the imminent danger of the occurrence of any of said events, or at the lawful request of competent state or local authority in support of enforcement of controlled substance statutes, or whenever responsible civil authorities shall, for any reason, fail to preserve law and order, or protect life or property, or the governor believes that such failure is imminent, or in event of public disaster, the governor shall have power to order the organized militia of Washington, or any part thereof, into active service of the state to execute the laws, and to perform such duty as the governor shall deem proper. [1993 c 263 § 1; 1989 c 19 § 7; 1943 c 130 § 6; Rem. Supp. 1943 § 8603-6. Prior: 1917 c 107 § 7; 1913 c 66 § 2; 1909 c 134 § 15.]

**38.08.050 Governor may order out unorganized militia.**

In event of, or imminent danger of, war, insurrection, rebellion, invasion, tumult, riot, resistance to law or process or breach of the peace, if the governor shall have ordered into active service all of the available forces of the organized militia of Washington and shall consider them insufficient in number to properly accomplish the purpose, he or she may then in addition order out the unorganized militia or such portion thereof as he may deem necessary, and cause them to perform such military duty as the circumstances may require. [1989 c 19 § 8; 1943 c 130 § 9; Rem. Supp. 1943 § 8603-9. Prior: 1917 c 107 § 9; 1909 c 134 § 17; 1903 c 155 § 15; 1895 c 108 § 112.]

**38.08.060 Governor's decision final.** Whenever any portion of the militia is ordered to duty by the governor, the decision of the governor shall be final, incontrovertible, and unimpeachable.

Whenever any portion of the militia has been ordered out by the governor, it shall be deemed that local law and order and the enforcement thereof has failed, and that the militia shall become an additional police power, retaining its separate entity and operating at all times as a military organization under military command, to cooperate with existing peace forces wherever possible, for the reestablishment of law and order and for the protection of life and property. [1943 c 130 § 7; Rem. Supp. 1943 § 8603-7.]

**38.08.070 Personal staff for governor.** Whenever the governor shall desire the attendance of a personal staff upon any occasion, he or she shall detail therefor officers from the active list of the organized militia of Washington; the officers detailed shall attend in uniform and shall constitute the personal staff of the governor for that occasion, reverting upon completion of such duty to their regular assignments. [1989 c 19 § 9; 1943 c 130 § 15; Rem. Supp. 1943 § 8603-15. Prior: 1917 c 107 § 6; 1909 c 134 § 14. Cf. 1895 c 108 § 13, part.]

**38.08.090 Governor to promulgate rules.** The governor, through the adjutant general, shall promulgate in orders such rules and amendments not inconsistent with law as the

governor may deem necessary for the organization, maintenance and training of the militia, and the acquisition, use, issue or disposal of military property. The governor's regulatory powers herein with respect to military property shall include reasonable authority to make regulations controlling the use and temporary disposal of military property including real property for civic purposes where consistent with federal law and regulations, in a manner similar to the law pertaining to the use of armories. The adopted regulations shall have the same force and effect as if enacted. [1989 c 19 § 10; 1969 ex.s. c 86 § 1; 1943 c 130 § 92; Rem. Supp. 1943 § 8603-92. Prior: 1917 c 107 § 123; 1909 c 134 § 94; 1895 c 108 § 171.]

*Commander-in-chief authorized to make rules for specific armories (special or temporary acts not codified in this title):*

- (1) 1907 c 55 § 11, Armories at Seattle, Spokane and Tacoma;
- (2) 1909 c 68 § 10, Armory at Bellingham;
- (3) 1913 c 67 § 9, Armory at North Yakima;
- (4) 1917 c 108 § 9, Armory at Walla Walla;
- (5) 1917 c 109 § 9, Armory at Aberdeen;
- (6) 1917 c 166 § 9, Armory at Everett.

**38.08.100 Compacts with other states for guarding boundaries.**

The governor, with consent of congress, is authorized to enter into compacts and agreements with governors of bordering states concerning guarding and patrol of bridges crossing the common boundaries of said states, and for the patrol of said common boundaries. In any such compact or agreement the governor is authorized to permit militia of any bordering state to enter into areas of this state adjacent to said border, or to send militia of this state into areas of any bordering state adjacent to the common boundary as may be necessary to provide effective protection. [1951 c 253 § 1.]

**38.08.500 National guard mutual assistance counter-drug activities compact.**

(1) The governor, with the consent of congress, is authorized to enter into compacts and agreements for the deployment of the national guard with governors of other states concerning drug interdiction, counter-drug, and demand reduction activities. Article 1, section 10 of the Constitution of the United States permits a state to enter into a compact or agreement with another state, subject to the consent of congress. Congress, through enactment of Title 4 of the U.S.C. Section 112, encourages the states to enter such compacts for cooperative effort and mutual assistance.

(2) The compact language contained in this subsection is intended to deal comprehensively with the supportive relationships between states in utilizing national guard assets in counter-drug activities.

NATIONAL GUARD MUTUAL ASSISTANCE  
COUNTER-DRUG ACTIVITIES COMPACT

ARTICLE I  
PURPOSE

The purposes of this compact are to:

(a) Provide for mutual assistance and support among the party states in the utilization of the national guard in drug interdiction, counter-drug, and demand reduction activities.

(b) Permit the national guard of this state to enter into mutual assistance and support agreements, on the basis of need, with one or more law enforcement agencies operating within this state, for activities within this state, or with a

national guard of one or more other states, whether said activities are within or without this state in order to facilitate and coordinate efficient, cooperative enforcement efforts directed toward drug interdiction, counter-drug activities, and demand reduction.

(c) Permit the national guard of this state to act as a receiving and a responding state as defined within this compact and to ensure the prompt and effective delivery of national guard personnel, assets, and services to agencies or areas that are in need of increased support and presence.

(d) Permit and encourage a high degree of flexibility in the deployment of national guard forces in the interest of efficiency.

(e) Maximize the effectiveness of the national guard in those situations that call for its utilization under this compact.

(f) Provide protection for the rights of national guard personnel when performing duty in other states in counter-drug activities.

(g) Ensure uniformity of state laws in the area of national guard involvement in interstate counter-drug activities by incorporating said uniform laws within the compact.

## ARTICLE II

### ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any two states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states.

## ARTICLE III

### MUTUAL ASSISTANCE AND SUPPORT

(a) As used in this article:

(1) "Drug interdiction and counter-drug activities" means the use of national guard personnel, while not in federal service, in any law enforcement support activities that are intended to reduce the supply or use of illegal drugs in the United States. These activities include, but are not limited to:

(i) Providing information obtained during either the normal course of military training or operations or during counter-drug activities, to federal, state, or local law enforcement officials that may be relevant to a violation of any federal or state law within the jurisdiction of such officials;

(ii) Making available any equipment, including associated supplies or spare parts, base facilities, or research facilities of the national guard to any federal, state, or local civilian law enforcement official for law enforcement purposes, in accordance with other applicable law or regulation;

(iii) Providing available national guard personnel to train federal, state, or local civilian law enforcement in the operation and maintenance of equipment, including equipment made available above, in accordance with other applicable law;

(iv) Providing available national guard personnel to operate and maintain equipment provided to federal, state, or local law enforcement officials pursuant to activities defined and referred to in this compact;

(v) Operation and maintenance of equipment and facilities of the national guard or law enforcement agencies used for the purposes of drug interdiction and counter-drug activities;

(vi) Providing available national guard personnel to operate equipment for the detection, monitoring, and communication of the movement of air, land, and sea traffic, to facilitate communications in connection with law enforcement programs, to provide transportation for civilian law enforcement personnel, and to operate bases of operations for civilian law enforcement personnel;

(vii) Providing available national guard personnel, equipment, and support for administrative, interpretive, analytic, or other purposes;

(viii) Providing available national guard personnel and equipment to aid federal, state, and local officials and agencies otherwise involved in the prosecution or incarceration of individuals processed within the criminal justice system who have been arrested for criminal acts involving the use, distribution, or transportation of controlled substances as defined in 21 U.S.C. Sec. 801 et seq., or otherwise by law, in accordance with other applicable law.

(2) "Demand reduction" means providing available national guard personnel, equipment, support, and coordination to federal, state, local, and civic organizations, institutions and agencies for the purposes of the prevention of drug abuse and the reduction in the demand for illegal drugs.

(3) "Requesting state" means the state whose governor requested assistance in the area of counter-drug activities.

(4) "Responding state" means the state furnishing assistance, or requested to furnish assistance, in the area of counter-drug activities.

(5) "Law enforcement agency" means a lawfully established federal, state, or local public agency that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, game, immigration, postal, customs, or controlled substances laws.

(6) "Official" means the appointed, elected, designated, or otherwise duly selected representative of an agency, institution, or organization authorized to conduct those activities for which support is requested.

(7) "Mutual assistance and support agreement" or "agreement" means an agreement between the national guard of this state and one or more law enforcement agencies or between the national guard of this state and the national guard of one or more other states, consistent with the purposes of this compact.

(8) "Party state" refers to a state that has lawfully enacted this compact.

(9) "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(b) Upon the request of a governor of a party state for assistance in the area of interdiction and counter-drug, and demand reduction activities, the governor of a responding state shall have authority under this compact to send without the borders of his or her state and place under the temporary operational control of the appropriate national guard or other military authorities of the requesting state, for the purposes of providing such requested assistance, all or any part of the national guard forces of his or her state as he or she may deem

necessary, and the exercise of his or her discretion in this regard shall be conclusive.

(c) The governor of a party state may, within his or her discretion, withhold the national guard forces of his or her state from such use and recall any forces or part or member thereof previously deployed in a requesting state.

(d) The national guard of this state is hereby authorized to engage in interdiction and counter-drug activities and demand reduction.

(e) The adjutant general of this state, in order to further the purposes of this compact, may enter into a mutual assistance and support agreement with one or more law enforcement agencies of this state, including federal law enforcement agencies operating within this state, or with the national guard of one or more other party states to provide personnel, assets, and services in the area of interdiction and counter-drug activities and demand reduction. However, no such agreement may be entered into with a party that is specifically prohibited by law from performing activities that are the subject of the agreement.

(f) The agreement must set forth the powers, rights, and obligations of the parties to the agreement, where applicable, as follows:

- (1) Its duration;
- (2) The organization, composition, and nature of any separate legal entity created thereby;
- (3) The purpose of the agreement;
- (4) The manner of financing the agreement and establishing and maintaining its budget;
- (5) The method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
- (6) Provision for administering the agreement, which may include creation of a joint board responsible for such administration;
- (7) The manner of acquiring, holding, and disposing of real and personal property used in this agreement, if necessary;
- (8) The minimum standards for national guard personnel implementing the provisions of this agreement;
- (9) The minimum insurance required of each party to the agreement, if necessary;
- (10) The chain of command or delegation of authority to be followed by national guard personnel acting under the provisions of the agreement;
- (11) The duties and authority that the national guard personnel of each party state may exercise; and
- (12) Any other necessary and proper matters.

Agreements prepared under the provisions of this section are exempt from any general law pertaining to intergovernmental agreements.

(g) As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the office of the attorney general of Washington. The attorney general of the state of Washington may delegate his or her approval authority to the appropriate attorney for the Washington national guard subject to those conditions which he or she decides are appropriate. The delegation must be in writing and is subject to the following:

(1) The attorney general, or his or her agent as stated above, shall approve an agreement submitted to him or her

under this part unless he or she finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Washington. If the attorney general disapproves an agreement, he or she shall provide a written explanation to the adjutant general of the Washington national guard; and

(2) If the attorney general, or his or her authorized agent as stated above, does not disapprove an agreement within thirty days after its submission to him or her, it is considered approved by him or her.

(h) Whenever national guard forces of any party state are engaged in the performance of duties, in the area of drug interdiction, counter-drug, and demand reduction activities, pursuant to orders, they shall not be held personally liable for any acts or omissions which occur during the performance of their duty.

#### ARTICLE IV RESPONSIBILITIES

(a) Nothing in this compact shall be construed as a waiver of any benefits, privileges, immunities, or rights otherwise provided for national guard personnel performing duty pursuant to Title 32 of the United States Code nor shall anything in this compact be construed as a waiver of coverage provided for under the Federal Tort Claims Act. In the event that national guard personnel performing counter-drug activities do not receive rights, benefits, privileges, and immunities otherwise provided for national guard personnel as stated above, the following provisions shall apply:

(1) Whenever national guard forces of any responding state are engaged in another state in carrying out the purposes of this compact, the members thereof so engaged shall have the same powers, duties, rights, privileges, and immunities as members of national guard forces of the requesting state. The requesting state shall save and hold members of the national guard forces of responding states harmless from civil liability, except as otherwise provided herein, for acts or omissions that occur in the performance of their duty while engaged in carrying out the purposes of this compact, whether responding forces are serving the requesting state within the borders of the responding state or are attached to the requesting state for purposes of operational control.

(2) Subject to the provisions of paragraphs (3), (4), and (5) of this Article, all liability that may arise under the laws of the requesting state or the responding states, on account of or in connection with a request for assistance or support, shall be assumed and borne by the requesting state.

(3) Any responding state rendering aid or assistance pursuant to this compact shall be reimbursed by the requesting state for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid, and for the cost of the materials, transportation, and maintenance of national guard personnel and equipment incurred in connection with such request, provided that nothing herein contained shall prevent any responding state from assuming such loss, damage, expense, or other cost.

(4) Unless there is a written agreement to the contrary, each party state shall provide, in the same amounts and manner as if they were on duty within their state, for pay and allowances of the personnel of its national guard units while engaged without the state pursuant to this compact and while

going to and returning from such duty pursuant to this compact.

(5) Each party state providing for the payment of compensation and death benefits to injured members and the representatives of deceased members of its national guard forces in case such members sustain injuries or are killed within their own state shall provide for the payment of compensation and death benefits in the same manner and on the same terms in the event such members sustain injury or are killed while rendering assistance or support pursuant to this compact. Such benefits and compensation shall be deemed items of expense reimbursable pursuant to paragraph (3) of this Article.

(b) Officers and enlisted personnel of the national guard performing duties subject to proper orders pursuant to this compact shall be subject to and governed by the provisions of their home state code of military justice whether they are performing duties within or without their home state. In the event that any national guard member commits, or is suspected of committing, a criminal offense while performing duties pursuant to this compact without his or her home state, he or she may be returned immediately to his or her home state and said home state shall be responsible for any disciplinary action to be taken. However, nothing in this section shall abrogate the general criminal jurisdiction of the state in which the offense occurred.

#### ARTICLE V DELEGATION

Nothing in this compact shall be construed to prevent the governor of a party state from delegating any of his or her responsibilities or authority respecting the national guard, provided that such delegation is otherwise in accordance with law. For purposes of this compact, however, the governor shall not delegate the power to request assistance from another state.

#### ARTICLE VI LIMITATIONS

Nothing in this compact shall:

(a) Authorize or permit national guard units or personnel to be placed under the operational control of any person not having the national guard rank or status required by law for the command in question.

(b) Deprive a properly convened court of jurisdiction over an offense or a defendant merely because of the fact that the national guard, while performing duties pursuant to this compact, was utilized in achieving an arrest or indictment.

#### ARTICLE VII CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of the United States or of any state or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby.

If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [1993 c 263 § 2.]

### Chapter 38.10 RCW EMERGENCY MANAGEMENT ASSISTANCE COMPACT

#### Sections

38.10.010 Emergency management assistance compact.  
38.10.900 Severability—2001 c 288.

**38.10.010 Emergency management assistance compact.** The emergency management assistance compact is enacted and entered into by this state with all other states legally joining the compact in the form substantially as follows:

#### ARTICLE I PURPOSES AND AUTHORITIES

This compact is made and entered into by and between the participating party states which enact this compact. For the purposes of this agreement, the term "states" means the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state or states, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' national guard forces, either in accordance with the national guard mutual assistance compact, or by mutual agreement between states.

#### ARTICLE II GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to the emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or

available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

### ARTICLE III PARTY STATE RESPONSIBILITIES

(1) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, as is practical, shall:

(a) Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack;

(b) Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

(c) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

(d) Assist in warning communities adjacent to or crossing the state boundaries;

(e) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;

(f) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness;

(g) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the responsibilities listed in this compact.

(2) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

(a) A description of the emergency services function for which assistance is needed, such as, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

(b) The amount and type of personnel, equipment, materials, and supplies needed, and a reasonable estimate of the length of time they will be needed;

(c) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(3) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

### ARTICLE IV LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms of this compact. However, it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for the state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers except that of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercise or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state or states, whichever is longer.

### ARTICLE V LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

### ARTICLE VI LIABILITY

Officers or employees of a party state rendering aid in another state under this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state under this compact shall be liable on account of

any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article may not include willful misconduct, gross negligence, or recklessness.

#### ARTICLE VII SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party to this compact, this instrument contains elements of a broad base common to all states, and nothing in this compact shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

#### ARTICLE VIII COMPENSATION

Each party state shall provide for payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid under this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

#### ARTICLE IX REIMBURSEMENT

Any party state rendering aid in another state under this compact shall be reimbursed by the party state receiving the aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with the requests. However, any aiding party state may assume in whole or in part the loss, damage, expense, or other cost, or may loan equipment or donate services to the receiving party state without charge or cost; and any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses may not be reimbursable under this article.

#### ARTICLE X EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuation might occur. The plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting evacuees, the number of evacuees to be received in different areas, the manner in

which food, clothing, housing, and medical care will be provided, the registration of evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of the evacuees.

#### ARTICLE XI IMPLEMENTATION

(1) This compact shall become operative immediately upon its enactment into law by any two states. After the first enactment, this compact shall become effective as to any other state upon its enactment by such state.

(2) Any party state may withdraw from this compact by enacting a statute repealing the compact, but no withdrawal may take effect until thirty days after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. This action may not relieve the withdrawing state from obligations assumed under this compact before the effective date of withdrawal.

(3) Duly authenticated copies of this compact and such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states, and with the federal emergency management agency and other appropriate agencies of the United States government.

#### ARTICLE XII ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the national guard of a state at any place outside that state in any emergency for which the president is authorized by law to call into federal service the militia, or for any purpose for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under 18 U.S.C. Sec. 1385. [2001 c 288 § 1.]

**38.10.900 Severability—2001 c 288.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2001 c 288 § 2.]

### Chapter 38.12 RCW

#### MILITIA OFFICERS AND ADVISORY COUNCIL

##### Sections

- 38.12.010 Adjutant general—Bond.
- 38.12.015 Department organized into separate divisions—Army national guard—Air national guard—Assistant adjutants general.
- 38.12.020 Powers and duties.

38.12.030	Adjutant general and assistant adjutants general—How chosen—Annual salaries—Members of judiciary eligible to serve in guard.
38.12.060	Officers to be commissioned by the governor.
38.12.070	Examining board.
38.12.095	Appointment or promotion of commissioned officers to be made by officer promotion board—Exceptions.
38.12.105	Criteria and guidelines for promotion of commissioned officers.
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38.12.150	Officer to take oath.
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38.12.180	Retirement of officers.
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*Militia—Organization—Discipline—Officers—Power to call out: State Constitution Art. 10 § 2.*

**38.12.010 Adjutant general—Bond.** The governor, with the advice and consent of the senate, shall appoint an adjutant general who shall be chief of staff to the governor, and may be removed by the governor at will. The adjutant general shall appoint the civilian employees and other personnel of the department and may remove any of them in accordance with applicable law.

The expenses of the adjutant general's department, necessary to the military service, shall be audited, allowed, and paid as other military expenditures.

The adjutant general must execute an official bond running to the state in the penal sum of twenty thousand dollars conditioned for the faithful performance of his or her duties. The bond shall be submitted to the attorney general for approval, and when approved shall be filed in the office of the secretary of state. The cost of the bond shall be paid by the state.

The adjutant general may obtain and pay for, from funds appropriated for military purposes, a surety bond or bonds running to the state covering such officers of the organized militia responsible to the state for money or military property, as may be advisable to insure proper accountability. The bond or bonds shall be approved and filed in the same manner as the adjutant general's bond. [1989 c 19 § 11; 1981 c 338 § 3; 1957 c 250 § 2. Prior: 1943 c 130 § 16, part; 1917 c 107 § 11, part; 1913 c 66 § 4, part; 1909 c 134 § 27, part; 1901 c 78 § 4, part; 1895 c 108 § 38, part; Rem. Supp. 1943 § 8603-16, part.]

**38.12.015 Department organized into separate divisions—Army national guard—Air national guard—Assistant adjutants general.** The adjutant general's department shall be organized into separate divisions for the Washington army national guard and the Washington air national guard. Each division may have a general officer at its head who will be referred to as the assistant adjutant general for the Washington army national guard and the assistant adjutant general for the Washington air national guard. [1961 c 210 § 2.]

**38.12.020 Powers and duties.** The adjutant general shall:

(1) Keep rosters of all active, reserve, and retired officers of the militia, and all other records, and papers required to be

kept and filed therein, and shall submit to the governor such reports of the operations and conditions of the organized militia as the governor may require.

(2) Cause the military law, and such other military publications as may be necessary for the military service, to be prepared and distributed at the expense of the state, to the departments and units of the organized militia.

(3) Keep just and true accounts of all moneys received and disbursed by him or her.

(4) Attest all commissions issued to military officers of this state.

(5) Make out and transmit all militia reports, returns, and communications prescribed by acts of congress or by direction of the department of defense and the national guard bureau.

(6) Have a seal, and all copies, orders, records, and papers in his or her office, duly certified and authenticated under the seal, shall be evidence in all cases in like manner as if the originals were produced. The seal now used in the office of the adjutant general shall be the seal of his or her office and shall be delivered by him or her to the successor. All orders issued from his or her office shall be authenticated with the seal.

(7) Make such regulations pertaining to the preparation of reports and returns and to the use, maintenance, care, and preservation of property in possession of the state for military purposes, whether belonging to the state or to the United States, as in his or her opinion the conditions demand.

(8) Attend to the care, preservation, safekeeping, and repairing of the arms, ordinance, accoutrements, equipment, and all other military property belonging to the state, or issued to the state by the United States for military purposes, and keep accurate accounts thereof. Any property of the state military department which, after proper inspection, is found unsuitable or no longer needed for use of the state military forces, shall be disposed of in such manner as the governor shall direct and the proceeds thereof used for replacements in kind or by other needed authorized military supplies, and the adjutant general may execute the necessary instruments of conveyance to effect such sale or disposal.

(9) Issue the military property as the necessity of service requires and make purchases for that purpose. No military property shall be issued or loaned to persons or organizations other than those belonging to the militia, except as permitted by applicable state or federal law.

(10) Keep on file in his office the reports and returns of military units, and all other writings and papers required to be transmitted to and preserved at the general headquarters of the state militia.

(11) Keep all records of volunteers commissioned or enlisted for all wars or insurrections, and of individual claims of citizens for service rendered in these wars or insurrections, and he or she shall also be the custodian of all records, relics, trophies, colors, and histories relating to such wars now in possession of, or which may be acquired by the state.

(12) Establish and maintain as part of his or her office a bureau of records of the services of the organized militia of the state, and upon request furnish a copy thereof or extract therefrom, attested under seal of his or her office, and such attested copy shall be prima facie proof of service, birthplace, and citizenship.

(13) Keep a record of all real property owned or used by the state for military purposes, and in connection therewith he or she shall have sole power to execute all leases to acquire the use of real property by the state for military purposes, or lease it to other agencies for use for authorized activities. The adjutant general shall also have full power to execute and grant easements for rights of way for construction, operation, and maintenance of utility service, water, sewage, and drainage for such realty. [1989 c 19 § 12; 1977 c 75 § 32; 1957 c 250 § 3. Prior: 1943 c 130 § 16, part; 1917 c 107 § 11, part; 1913 c 66 § 4, part; 1909 c 134 § 27, part; 1901 c 78 § 4, part; 1895 c 108 § 38, part; Rem. Supp. 1943 § 8603-16, part.]

**38.12.030 Adjutant general and assistant adjutants general—How chosen—Annual salaries—Members of judiciary eligible to serve in guard.** Whenever a vacancy has occurred, or is about to occur in the office of the adjutant general, the governor shall order to active service for that position from the active list of the Washington army national guard or Washington air national guard an officer not below the rank of a field grade officer who has had at least ten years service as an officer on the active list of the Washington army national guard or the Washington air national guard during the fifteen years next prior to such detail. The officer so detailed shall during the continuance of his or her service as the adjutant general hold the rank of a general officer.

Whenever a vacancy has occurred, or is about to occur, in the offices of assistant adjutants general for the Washington army national guard or the Washington air national guard, the adjutant general with the concurrence of the governor may appoint an officer of the army national guard or the air national guard, who has had at least ten years service in the active list of his respective branch during the fifteen years next prior to such detail. The officer so detailed, may during the continuance of his service as assistant adjutant general hold the rank of a general officer.

If, by reason of the call or draft of officers of the Washington army national guard and/or air national guard into federal service, there is no officer of the Washington national guard available for detail as the adjutant general or as an assistant adjutant general who possesses the requisite qualifications, the governor may appoint any officer or former officer of the organized militia of Washington as acting adjutant general or as an acting assistant adjutant general. If the officers on detail as the adjutant general or as assistant adjutants general are appointed, called, or drafted into the military service of the United States by order or proclamation of the president, they shall be granted leaves of absence by the governor, and are entitled, upon release from federal service, to return to their former status as adjutant general or as assistant adjutants general of Washington, and during the period that they are in federal service, the duties of these offices shall be performed by an acting adjutant general and acting assistant adjutants general, appointed by the governor, as provided in this section, who shall receive the same pay provided for the adjutant general and/or assistant adjutants general respectively, during the period of such assignments.

The adjutant general shall receive an annual salary equal to the base pay of a major general in the United States army. The assistant adjutant general for the Washington army national guard and the assistant adjutant general for the

Washington air national guard shall each receive an annual salary equal to the base pay of an officer of equivalent grade in the United States army or United States air force but not to exceed that of a brigadier general. So long as a member of the judiciary of the state of Washington is available for judicial work at such times and under such conditions as may be set forth by local rules and custom, that member may serve as an active member of the national guard or air national guard. [1989 c 19 § 13; 1983 c 218 § 1; 1965 ex.s. c 100 § 1; 1961 c 210 § 3; 1943 c 130 § 21; Rem. Supp. 1943 § 8603-21. Prior: 1921 c 75 § 2; 1917 c 107 § 14; 1909 c 134 § 31, part; 1895 c 108 § 42, part.]

**38.12.060 Officers to be commissioned by the governor.** All commissioned and warrant officers of the organized militia of Washington shall be appointed and commissioned or warranted by the governor only as hereinafter provided. No person shall be so appointed and commissioned or warranted unless he or she shall be a citizen of the United States and of this state and more than eighteen years of age. Every commissioned and warranted officer shall hold office under his or her commission or warrant until he or she shall have been regularly appointed and commissioned or warranted to another rank or office, or until he or she shall have been regularly retired, discharged, dismissed or placed in the reserve. [1989 c 19 § 14; 1971 ex.s. c 292 § 41; 1943 c 130 § 19; Rem. Supp. 1943 § 8603-19. Prior: 1917 c 107 § 12, part; 1909 c 134 § 31, part; 1895 c 108 § 42, part.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**38.12.070 Examining board.** No person shall be appointed and commissioned or warranted to any office in the organized militia of Washington unless he or she shall have been examined and adjudged qualified therefor by an examining board, appointed by the adjutant general, and whose report shall have been approved by the authority appointing the board. The composition, appointment and procedure of examining boards and the nature and scope of examinations shall be as prescribed by the laws or regulations of the United States or those of this state. Whenever a commissioned officer shall have been examined for promotion pursuant to this section and shall have been adjudged not qualified therefor, upon approval by the authority appointing the board of its report to that effect such officer may be honorably discharged, retired or placed in the reserve as the governor shall direct. [1989 c 19 § 15; 1943 c 130 § 20; Rem. Supp. 1943 § 8603-20. Prior: 1917 c 107 § 13; 1909 c 134 § 32; 1895 c 108 § 53.]

**38.12.095 Appointment or promotion of commissioned officers to be made by officer promotion board—Exceptions.** Whenever a commissioned officer is to be appointed or promoted either to fill a vacancy in the organized militia (Washington army national guard, Washington air national guard and the Washington state guard) or for any other reason, the officer to be appointed or promoted shall be selected by the officer promotion board. This selection in no way will change the powers of the governor under RCW 38.12.060. This section in no way applies to appointments or promotions to adjutant general or assistant adjutant general,

to the appointment of officers to the rank of captain, lieutenant, or warrant officer, or to the promotion of second lieutenants, first lieutenants, or warrant officers. [1989 c 19 § 16; 1974 ex.s. c 34 § 1.]

**38.12.105 Criteria and guidelines for promotion of commissioned officers.** All promotions of commissioned officers in the organized militia will be made on a best-qualified basis. The officer promotion board will select the best-qualified officer for each promotion from among those officers fully qualified for promotion. To be promoted, the selected officer must also meet the requirements of RCW 38.12.070. In no event will seniority be the sole guideline for selecting the officer to be promoted. The officer promotion board will, in determining the best qualified officer, consider the overall qualifications of an officer and not just the qualifications for one position. [1974 ex.s. c 34 § 2.]

**38.12.115 Officer promotion board—Meetings—Powers and duties.** The officer promotion board will meet from time to time as directed by the adjutant general. The board will select the best qualified officer for each promotion to be made in the organized militia, and will do any other act pertaining thereto directed by the adjutant general or allowed or directed by statute. [1989 c 19 § 17; 1974 ex.s. c 34 § 3.]

**38.12.125 Officer promotion board—Composition.** The officer promotion board shall be composed as follows:

(1) For promotions or appointments of army national guard officers, the board will consist of the adjutant general, the assistant adjutant general army, and the five commanders senior in grade and date of rank in that grade in the Washington army national guard. If the board is selecting an officer for promotion to the rank of colonel, any member of the board who is a lieutenant colonel will be automatically disqualified and will not be replaced. If the board is selecting an officer for promotion to the rank of brigadier general, any member of the board who is a lieutenant colonel or who is a colonel will be automatically disqualified and will not be replaced.

(2) For promotions or appointments of air national guard officers, the board will consist of the adjutant general, the assistant adjutant general air, and the five commanders senior in grade and date of rank in that grade in the Washington air national guard. If the board is selecting an officer for promotion to the rank of colonel, any member of the board who is a lieutenant colonel will be automatically disqualified and will not be replaced. If the board is selecting an officer for promotion to the rank of brigadier general, any member of the board who is a lieutenant colonel or who is a colonel will be automatically disqualified and will not be replaced.

(3) For promotions or appointments of state guard officers, the board will consist of the adjutant general, the assistant adjutant general army, and the five officers senior in grade and in date of rank in that grade in the state guard. If the board is selecting an officer for promotion to the rank of colonel, any member of the board who is a lieutenant colonel will be automatically disqualified and will not be replaced. If the board is selecting an officer for promotion to the rank of brigadier general, any member of the board who is a lieutenant

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colonel or who is a colonel will be automatically disqualified and will not be replaced. [1989 c 19 § 18; 1974 ex.s. c 34 § 4.]

**38.12.135 Officer promotion board—Official acts—Approval requirements—Rules.** To be an official act of the officer promotion board, an act of that board must be approved by not less than four of the members of the board: PROVIDED, HOWEVER, That if the board consists of less than four officers, the approval of the board shall be unanimous.

An action of an officer promotion board may be an official act of the board without a meeting if all members of the board approve in writing the act in question.

The adjutant general will from time to time fix the rules under which the board will operate. [1974 ex.s. c 34 § 5.]

**38.12.150 Officer to take oath.** Every officer, duly commissioned or warranted shall within such time as may be provided by law or by regulations, take the oath of office prescribed by law, and give bond, if required. In case of neglect or refusal so to do, the officer shall be considered to have resigned such office and a new appointment may be made as provided by law. [1989 c 19 § 19; 1943 c 130 § 29; Rem. Supp. 1943 § 8603-29. Prior: 1917 c 107 § 26; 1909 c 134 § 36, part; 1895 c 108 § 51.]

**38.12.160 Oath, form of.** The oath of office for commissioned and warrant officers in the organized militia of Washington shall be substantially as follows: "I, . . . . , do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the state of Washington, against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the president of the United States and of the governor of the state of Washington, that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of . . . . in the organized militia of the state of Washington upon which I am about to enter, so help me God." [1943 c 130 § 30; Rem. Supp. 1943 § 8603-30. Prior: 1917 c 107 § 27; 1909 c 134 § 37.]

*Subversive activities: Chapter 9.81 RCW.*

**38.12.170 Termination of officers' membership—Review of retention potential.** The governor may terminate the membership of any commissioned or warrant officer of the organized militia of Washington for any of the following reasons:

- (1) Conviction of an infamous crime;
- (2) Absence from his or her command for more than thirty days without proper leave;
- (3) Sentence of dismissal by court martial, duly approved;
- (4) Upon muster out of the organization to which the officer is then assigned;
- (5) Acceptance of the resignation of the officer, but no officer may be discharged or his or her resignation accepted while under arrest or against whom military charges have been preferred, or until he or she has turned over to his or her

successor or satisfactorily accounted for all state and federal moneys and military property for which he or she is accountable or responsible;

(6) Removal of his or her actual residence to such distance from the station of his or her command as to render it impracticable for him or her to perform the duties of his or her office;

(7) Incompetence or unfitness for military service as determined by the duly approved findings of a board of officers appointed for that purpose by the adjutant general.

The adjutant general shall annually appoint and convene qualitative retention boards to review the military personnel records of officers who have completed three or more years service in the Washington state guard to determine their retention potential and acceptability for continuation in an active status. In the conduct of the reviews, the regulation issued by the adjutant general to implement this provision shall conform to the extent practicable to that governing the army national guard. [1989 c 19 § 20; 1984 c 198 § 1; 1943 c 130 § 31; 1925 ex.s. c 72 § 1; Rem. Supp. 1943 § 8603-31. Prior: 1917 c 107 § 28; 1909 c 134 § 39; 1895 c 108 § 63.]

**38.12.180 Retirement of officers.** Commissioned officers of the organized militia of Washington shall be retired by order of the commander-in-chief with the rank respectively held by them at the time of such retirement for the following reasons:

(1) Unfitness for military service by reason of permanent physical disability.

(2) Upon request after at least five years continuous service as an officer in the organized militia of Washington.

Commissioned officers of the state guard shall upon reaching the age of sixty-four years be retired.

Retired officers shall draw no pay or allowance from the state unless recalled to service.

Retired officers are subject, with their consent, to temporary detail on active state service by the commander-in-chief, and while on such duty shall receive the same pay and allowances as officers of like rank on the active list. [1989 c 19 § 21; 1984 c 198 § 2; 1943 c 130 § 33; Rem. Supp. 1943 § 8603-33. Prior: 1909 c 134 § 40; 1895 c 108 § 66.]

**38.12.200 Uniform allowance to officers.** Every commissioned officer of the organized militia of Washington shall, within sixty days from the date of the order whereby he or she shall have been appointed, provide at the officer's own expense the uniform and equipment prescribed by the governor for his or her rank and assignment.

There shall be audited and may be paid, at the option of the adjutant general, to each properly uniformed and equipped officer of the active list of the organized militia of Washington, not in federal service an initial uniform allowance of one hundred dollars and annually thereafter for each twelve months state service an additional uniform allowance of fifty dollars, subject to such regulations as the commander-in-chief may prescribe to be audited and paid upon presentation of proper voucher. [1991 c 43 § 2; 1989 c 19 § 22; 1982 c 93 § 1; 1943 c 130 § 37; Rem. Supp. 1943 § 8603-37. Prior: 1923 c 49 § 1; 1917 c 107 § 32; 1909 c 134 § 49; 1903 c 155 § 11; 1901 c 78 § 8; 1895 c 108 § 76.]

## Chapter 38.14 RCW WASHINGTON STATE GUARD

### Sections

38.14.006	Availability and composition of state guard.
38.14.012	Federal military service.
38.14.018	Pay of state guard members.
38.14.024	Equipment and supplies.
38.14.030	Training.
38.14.036	Qualifications for appointment of officers.

**38.14.006 Availability and composition of state guard.** The Washington state guard will be available to serve, at the call of the governor in the place of the national guard of the state of Washington under the provisions of this title when the national guard is in the service of the United States, or when otherwise ordered to active state service by the governor. The Washington state guard shall consist of commissioned and warrant officers and enlisted persons commissioned, warranted, or enlisted under the provisions of this title. Persons enlisted under RCW 38.16.015 shall be enrolled in accordance with regulations promulgated by the adjutant general. [1989 c 19 § 23.]

**38.14.012 Federal military service.** No member of the Washington state guard shall by reason of such membership be exempt from federal military service under the laws of the United States. [1989 c 19 § 24.]

**38.14.018 Pay of state guard members.** Members of the Washington state guard shall serve without pay except when on active state service with the state as defined in RCW 38.04.010, or when serving on inactive duty as defined in RCW 38.04.010 under orders of the governor specifically authorizing pay. When ordered to active state service or when serving on inactive duty in a pay status, members of the Washington state guard will be paid as prescribed for members of the national guard in RCW 38.24.050, except longevity adjustments for pay will be based solely on total service with the Washington state guard. [1989 c 19 § 25.]

**38.14.024 Equipment and supplies.** The governor may obtain from the federal government such arms and other equipment and supplies as may be available for issue, donation or loan for the use of the Washington state guard. When such property is provided by the federal government, it will be utilized, maintained, and disposed of in accordance with federal requirements and with property rules and regulations promulgated under the provisions of RCW 38.08.090. [1989 c 19 § 26.]

**38.14.030 Training.** Members of the Washington state guard may participate in such training opportunities as may be available from the federal government and as approved by the adjutant general. Where required as a condition of such participation, the military department may reimburse the federal government for the costs of such training. [1989 c 19 § 27.]

**38.14.036 Qualifications for appointment of officers.** The adjutant general shall establish by regulation qualifica-

tions for appointment of commissioned and warrant officers in the Washington state guard. [1989 c 19 § 28.]

### Chapter 38.16 RCW

#### ENLISTMENTS AND RESERVES

##### Sections

38.16.010	Period of enlistment in national guard.
38.16.015	Period of enlistment in state guard.
38.16.020	Discharge of enlisted persons.
38.16.030	Inactive national guard.
38.16.040	State guard reserve.
38.16.050	Appointment of members of the committee for employer support of the guard and reserve to civil affairs unit.

#### 38.16.010 Period of enlistment in national guard.

The period of enlistment in the Washington national guard shall conform to the laws and regulations of the United States department of defense governing such enlistments including the term of such enlistments and the maximum and minimum age of enlistment. [1989 c 19 § 29; 1943 c 130 § 35; Rem. Supp. 1943 § 8603-35. Prior: 1917 c 107 § 30; 1909 c 134 § 41; 1895 c 108 § 57.]

#### 38.16.015 Period of enlistment in state guard.

The period of enlistment in the Washington state guard shall be set by regulation by the adjutant general: **PROVIDED**, That no original enlistment may be consummated unless the term thereof can be completed before the applicant attains the age of sixty-four. [1989 c 19 § 30.]

#### 38.16.020 Discharge of enlisted persons.

An enlisted person discharged from service in the organized militia of Washington shall receive a notice of discharge in writing in such form and classification as is or shall be prescribed by law or regulations, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as may be prescribed by competent authority. [1989 c 19 § 31; 1943 c 130 § 36; Rem. Supp. 1943 § 8603-36. Prior: 1917 c 107 § 31; 1909 c 134 § 45, part; 1895 c 108 § 67, part.]

#### 38.16.030 Inactive national guard.

The inactive national guard of this state shall respectively be organized by the governor in regulations in conformance with the laws, rules and regulations of the United States. It shall consist of such organizations, officers and enlisted men as the governor shall prescribe. No commissioned officer shall be transferred or furloughed to the inactive national guard without the officer's written consent, except as otherwise expressly provided by law. Any officer of the inactive national guard may be restored to the active list by order of the governor, subject to the same examination as in the case of an original appointment to his or her rank, and in such event his or her service in the inactive national guard shall not be counted in computing total length of service for relative seniority. [1991 c 43 § 3; 1989 c 19 § 32; 1943 c 130 § 34; Rem. Supp. 1943 § 8603-34. Prior: 1917 c 107 § 29.]

#### 38.16.040 State guard reserve.

In order to afford the utmost protection to the state of Washington and to the lives

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and property of citizens thereof, in times of emergency or anticipation thereof, the governor, through the state military department may provide for the organization and training of state guard reserve companies in communities not allocated a federally recognized or authorized state guard unit. [1943 c 130 § 86; Rem. Supp. 1943 § 8603-86.]

#### 38.16.050 Appointment of members of the committee for employer support of the guard and reserve to civil affairs unit.

To assist the state of Washington in the event of mobilization of state and federal military forces in the state, and notwithstanding other provisions of the state military law and other regulations governing appointment and promotion of officers and enlisted personnel of the Washington state guard, members of the Washington committee for employer support of the guard and reserve may be appointed to serve in a civil affairs unit of the Washington state guard. The rank shall be determined by the adjutant general. [1988 c 288 § 17.]

### Chapter 38.20 RCW

#### ARMORIES AND RIFLE RANGES

##### Sections

38.20.010	Regulations governing armories.
38.20.020	City may acquire armory site.
38.20.030	Counties may expend moneys for armory site.
38.20.040	Rental of property, armories, and small arms ranges.
38.20.050	Small arms ranges.

**ESTABLISHMENT OF ARMORIES:** *The following special or temporary acts relating to the establishment of armories are not codified herein:*

- (1) 1907 c 55, *Armories at Seattle, Spokane and Tacoma;*
- (2) 1909 c 68, *Armory at Bellingham;*
- (3) 1913 c 67, *Armory at North Yakima;*
- (4) 1917 c 108, 1919 c 19, *Armory at Walla Walla;*
- (5) 1917 c 109, 1919 c 20, *Armory at Aberdeen;*
- (6) 1917 c 166, 1919 c 21, *Armory at Everett;*
- (7) 1939 c 152, *Armory at Olympia;*
- (8) 1939 c 215, *Naval and marine corps reserve armory at Seattle;*
- (9) 1941 c 236, *Naval and marine corps reserve armory at Tacoma;*
- (10) 1953 c 277 §§ 1, 2 and 3, *Armory at Spokane.*

*Explosives, manufacture, sale or storage: Chapter 70.74 RCW.*

*Joint armory sites: RCW 36.64.050.*

*Militia—Public arms: State Constitution Article 10 § 4.*

*State, county and municipal indebtedness—Powers extended in certain cases: State Constitution Article 8 § 2.*

**38.20.010 Regulations governing armories.** Except as provided in this section, state-owned armories shall be used strictly for military purposes.

(1) One room, together with the necessary furniture, heat, light, and janitor service, may be set aside for the exclusive use of bona fide veterans' organizations subject to the direction of the officer in charge. Members of these veterans' organizations and their auxiliaries shall have access to the room and its use at all times.

(2) A bona fide veterans' organization may use any state armory for athletic and social events without payment of rent whenever the armory is not being used by the organized militia. The adjutant general may require the veterans' organization to pay the cost of heating, lighting, or other miscellaneous expenses incidental to this use.

(3) The adjutant general may, during an emergency, permit transient lodging of service personnel in armories.

(4) The adjutant general may, upon the recommendation of the executive head or governing body of a county, city or town, permit transient lodging of anyone in armories. The adjutant general may require the county, city or town to pay no more than the actual cost of staffing, heating, lighting and other miscellaneous expenses incidental to this use.

(5) Civilian rifle clubs affiliated with the National Rifle Association of America are permitted to use small arms ranges in the armories at least one night each week under regulations prescribed by the adjutant general.

(6) State-owned armories shall be available, at the discretion of the adjutant general, for use for casual civic purposes, and amateur and professional sports and theatricals upon payment of fixed rental charges and compliance with regulations of the state military department. Children attending primary and high schools have a preferential right to use these armories.

The adjutant general shall prepare a schedule of rental charges, including a cleaning deposit, and utility costs for each state-owned armory which may not be waived except for activities sponsored by the organized militia or activities provided for in subsection (4) of this section. The rental charges derived from armory rentals less the cleaning deposit shall be paid into the state general fund. [1989 c 19 § 33; 1985 c 295 § 1; 1983 c 268 § 1; 1975 1st ex.s. c 121 § 1; 1973 1st ex.s. c 154 § 56; 1963 c 149 § 1; 1949 c 125 § 1; 1947 c 204 § 1; 1943 c 130 § 93; Rem. Supp. 1949 § 8603-93. Prior: 1923 c 49 § 5; 1917 c 8 § 1; 1909 c 134 § 97; 1907 c 55 § 11; 1903 c 115 §§ 19, 20.]

**Effective date—1975 1st ex.s. c 121:** "The effective date of this act shall be July 1, 1977." [1975 1st ex.s. c 121 § 2.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**SPECIAL ACTS RELATING TO ARMORIES:** *The following special or temporary acts relating to particular armories are not codified herein:*

- (1) 1959 c 181; 1961 c 135; 1963 c 146, Seattle
- (2) 1967 c 37, Prosser
- (3) 1967 c 43, Centralia
- (4) 1967 c 44, Chewelah
- (5) 1967 c 214, Stevens County
- (6) 1967 c 224, Tacoma and Pierce County
- (7) 1967 c 226, Yakima
- (8) 1969 ex.s. c 22, Kirkland.

**38.20.020 City may acquire armory site.** Any city in the state of Washington in which a unit of the national guard is stationed, or is to be stationed, is hereby authorized and empowered to acquire a site for an armory by gift or purchase, and to construct an armory thereon, and to issue and sell its general obligation bonds for said purposes, within the debt limits prescribed by the Constitution, with full power to sell or lease the same to the state of Washington or to the United States. [1933 ex.s. c 16 § 1; RRS § 8598-1.]

**38.20.030 Counties may expend moneys for armory site.** Any county of the state of Washington is hereby authorized and empowered to appropriate money for the purchase of an armory site whenever the legislature of this state shall appropriate money for or authorize the construction of an armory therein. [1907 c 55 § 3 1/2; No RRS.]

**38.20.040 Rental of property, armories, and small arms ranges.** All armories and small arms ranges and all property, real or personal, used by the national guard and not owned by the state of Washington or the United States, shall be leased or rented to the state upon such terms and conditions as shall be approved by the commander-in-chief. [1989 c 19 § 34; 1909 c 134 § 98; RRS § 8599.]

**38.20.050 Small arms ranges.** Under the direction of the governor, the adjutant general shall, at the expense and in the name of the state, buy or lease, establish, equip, maintain and control such small arms ranges and issue such ammunition, transportation and supplies as may be necessary to provide each unit of the organized militia of Washington with adequate means and opportunity for thorough instruction in small arms practice. [1989 c 19 § 35; 1943 c 130 § 91; Rem. Supp. 1943 § 8603-91. Prior: 1917 c 107 § 120; 1909 c 134 § 92; 1895 c 108 § 168.]

## Chapter 38.24 RCW

### CLAIMS AND COMPENSATION

#### Sections

38.24.010	Payment of military claims.
38.24.020	Audit and payment of awards.
38.24.050	Pay of officers and enlisted personnel.
38.24.060	Employment and reemployment rights upon return from militia duty.

**38.24.010 Payment of military claims.** All bills, claims and demands for military purposes shall be certified or verified and audited in the manner prescribed by regulations promulgated by the governor and shall be paid by the state treasurer from funds available for that purpose. In all cases where the organized militia, or any part of the organized militia, is called into the service of the state to execute or enforce the laws or in case of war, riot, insurrection, invasion, breach of the peace, public disaster, or the imminent danger of the occurrence of any of these events, warrants for allowed pay and expenses for such services or compensation for injuries or death shall be drawn upon the general fund of the state treasury and paid out of any moneys in said fund not otherwise appropriated. All such warrants shall be the obligation of the state and shall bear interest at the legal rate from the date of their presentation for payment. [1991 c 43 § 4; 1989 c 19 § 36; 1973 c 106 § 14; 1943 c 130 § 42; Rem. Supp. 1943 § 8603-42. Prior: 1917 c 107 § 36; 1909 c 134 § 56, part; 1895 c 108 § 91, part.]

**38.24.020 Audit and payment of awards.** All compensation shall be payable in monthly installments and shall be audited and paid as any other claim against the military department and shall be payable from the general fund out of any moneys not otherwise appropriated. [1943 c 130 § 41; Rem. Supp. 1943 § 8603-41. Prior: 1917 c 107 § 35; 1909 c 134 § 56, part; 1895 c 108 § 41, part.]

**38.24.050 Pay of officers and enlisted personnel.** Commissioned officers, warrant officers, and enlisted personnel of the organized militia of Washington, while in active state service or inactive duty, are entitled to and shall receive

the same amount of pay and allowances from the state of Washington as provided by federal laws and regulations for commissioned officers, warrant officers, and enlisted personnel of the United States army only if federal pay and allowances are not authorized. For periods of such active state service, commissioned officers, warrant officers, and enlisted personnel of the organized militia of Washington shall receive either such pay and allowances or an amount equal to one and one-half of the federal minimum wage, whichever is greater.

The value of articles issued to any member and not returned in good order on demand, and legal fines or forfeitures, may be deducted from the member's pay.

If federal pay and allowances are not authorized, all members detailed to serve on any board or commission ordered by the governor, or on any court-martial ordered by proper authority, may, at the discretion of the adjutant general, be paid a sum equal to one day's active state service for each day actually employed on the board or court or engaged in the business thereof, or in traveling to and from the same; and in addition thereto travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended when such duty is at a place other than the city or town of his residence.

Necessary transportation, quartermasters' stores, and subsistence for troops when ordered on active state service may be contracted for and paid for as are other military bills. [1989 c 19 § 37; 1984 c 198 § 3; 1975-'76 2nd ex.s. c 34 § 81; 1974 ex.s. c 46 § 1; 1943 c 130 § 43; Rem. Supp. 1943 § 8603-43. Prior: 1925 c 28 § 2, part; 1919 c 137 § 1, part; 1917 c 107 § 37, part; 1915 c 47 § 1, part; 1913 c 66 § 10, part; 1909 c 134 § 157, part; 1907 c 122 § 5, part; 1903 c 155 § 13, part; 1901 c 78 § 11, part; 1895 c 108 § 89, part.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**38.24.060 Employment and reemployment rights upon return from militia duty.** All members of the organized militia of Washington who are called to active state service or inactive duty shall, upon return from such duty, have those rights accorded under RCW 73.16.031, 73.16.035, 73.16.041, 73.16.051, and 73.16.061. [1989 c 19 § 38; 1984 c 198 § 4; 1974 ex.s. c 46 § 2.]

## Chapter 38.32 RCW OFFENSES—PUNISHMENT

### Sections

38.32.010	Offenses against laws of this state by members on duty status.
38.32.020	Offenses under Washington code of military justice.
38.32.030	Exemptions while on duty.
38.32.070	Member removed from state, request for discharge.
38.32.080	Penalty for failure to obey call.
38.32.090	Penalty for physician making false certificate.
38.32.100	Buying and receiving military property.
38.32.120	Authority of commanding officer.
38.32.140	Sentence to confinement.

*Militia—Organization—Discipline—Officers—Power to call out: State Constitution Art. 10 § 2.*

**38.32.010 Offenses against laws of this state by members on duty status.** Any member of the organized militia on duty status as provided in RCW 38.38.624, or within state

armories, committing offenses against the laws of the state, shall be promptly arrested by the military authorities and turned over to the civil authorities of the county or city in which the offense was committed. [1989 c 19 § 39; 1963 c 220 § 134; 1943 c 130 § 82; Rem. Supp. 1943 § 8603-82.]

**38.32.020 Offenses under Washington code of military justice.** Offenses under chapter 38.38 RCW committed while on inactive duty or active state service as defined in RCW 38.04.010 may be tried and punished as provided under chapter 38.38 RCW after this duty or service has terminated, and if found guilty the accused shall be punished accordingly. Any member of the organized militia on "inactive duty" or "active state service," as defined in RCW 38.04.010, committing any offense under chapter 38.38 RCW, where the offense charged is also made an offense by the civil law of this state, may, in the discretion of the officer whose duty it is to approve the charge, be turned over to the proper civil authorities for trial.

Any member of the organized militia on "inactive duty" or "active state service," as defined in RCW 38.04.010, committing any offense under chapter 38.38 RCW, may, if such offense is committed upon a military reservation of the United States within this state, be turned over to the civil authorities for trial as provided by federal law. [1989 c 19 § 40; 1963 c 220 § 135; 1943 c 130 § 81; Rem. Supp. 1943 § 8603-81.]

**38.32.030 Exemptions while on duty.** No person belonging to the military forces of this state shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from any place at which he may be required to attend military duty. Any members of the organized militia parading, or performing any duty according to the law shall have the right of way in any street or highway through which they may pass and while on field duty shall have the right to enter upon, cross or occupy any uninclosed lands, or any inclosed lands where no damage will be caused thereby: PROVIDED, That the carriage of the United States mail and legitimate functions of the police and fire departments shall not be interfered with thereby. [1943 c 130 § 45; Rem. Supp. 1943 § 8603-45. Prior: 1917 c 107 § 40; 1909 c 134 § 66; 1895 c 108 § 103.]

**38.32.070 Member removed from state, request for discharge.** If any member is known to have removed from the state, and, through ignorance or neglect, has failed to apply for discharge, the discharge may be requested by his or her immediate commanding officer. [1989 c 19 § 41; 1963 c 220 § 136; 1943 c 130 § 84; Rem. Supp. 1943 § 8603-84. Cf. 1917 c 107 § 83.]

**38.32.080 Penalty for failure to obey call.** Any member of the militia who shall have been ordered out for either state or federal service and who shall refuse or wilfully or negligently fail to report at the time and place and to the officer designated in the order or to the representative or successor of such officer, shall be deemed guilty of desertion, and shall suffer such penalty as a general court martial may direct, unless he or she shall produce a sworn certificate from

a licensed physician of good standing that he or she was physically unable to appear at the time and place designated. Any person chargeable with desertion under this section may be taken by force and compelled to serve. [1989 c 19 § 42; 1943 c 130 § 10; Rem. Supp. 1943 § 8603-10. Prior: 1917 c 107 § 10; 1909 c 134 § 21; 1895 c 108 § 114.]

**38.32.090 Penalty for physician making false certificate.** Any physician who shall knowingly make and deliver a false certificate of physical disability concerning any member of the militia who shall have been ordered out or summoned for active service is guilty of perjury under chapter 9A.72 RCW and, upon conviction, as an additional penalty, shall forfeit forever his or her license and right to practice in this state. [2003 c 53 § 209; 1989 c 19 § 43; 1943 c 130 § 11; Rem. Supp. 1943 § 8603-11. Prior: 1909 c 134 § 22.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**38.32.100 Buying and receiving military property.** Any person who shall purchase or receive in pawn or pledge any military property of the state or of the United States shall be guilty of a gross misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for not more than six months or both such fine and imprisonment. [1943 c 130 § 87; Rem. Supp. 1943 § 8603-87. Cf. 1917 c 107 § 68.]

**38.32.120 Authority of commanding officer.** (1) The commanding officer at any drill, parade, encampment or other duty may place in arrest for the time of such drill, parade, encampment or other duty any person or persons who shall trespass on the camp grounds, parade grounds, rifle range or armory, or in any way or manner interrupt or molest the orderly discharge of duty of those on duty, or who shall disturb or prevent the passage of troops going to or returning from any regularly ordered tour of duty; and may prohibit and prevent the sale or use of all spirituous liquors, wines, ale or beer, or holding of huckster or auction sales, and all gambling therein, and remove disorderly persons beyond the limits of such parade or encampment, or within a distance of two miles therefrom, and the commanding officer shall have full authority to abate as common nuisances all disorderly places, and bar all unauthorized sales within such limits.

(2) Any person violating this section, or any order issued in pursuance thereof, is guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars, or imprisoned not more than thirty days, or both such fine and imprisonment.

(3) No license or renewal thereof shall be issued or granted to any person, firm or corporation for the sale of intoxicating or spirituous liquors within a distance of three hundred feet from any armory used by the state of Washington for military purposes, without the approval of the adjutant general. [2003 c 53 § 210; 1989 c 19 § 44; 1963 c 220 § 137; 1943 c 130 § 52; Rem. Supp. 1943 § 8603-52. Prior: 1937 c 51 § 1; 1909 c 134 § 62; 1895 c 108 § 99.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**38.32.140 Sentence to confinement.** All military courts of the organized militia of Washington shall have power to sentence to confinement in lieu of fines authorized to be imposed: PROVIDED, That such sentence of confinement shall not exceed one day for each dollar of fine authorized. [1943 c 130 § 61; 1917 c 107 § 53; Rem. Supp. 1943 § 8603-61.]

## Chapter 38.36 RCW TRIAL PROCEDURE

### Sections

38.36.120 Fees and mileage.

**38.36.120 Fees and mileage.** Fees and mileage allowed for the service of process and for civilian witnesses shall be the same as in civil actions. All expenditures necessary to carry the provisions of chapter 130, Laws of 1943, into effect are hereby authorized to be incurred, and paid out of the appropriations for the maintenance of the organized militia of Washington. [1943 c 130 § 78; Rem. Supp. 1943 § 8603-78. Prior: 1917 c 107 § 59; 1909 c 134 § 90.]

*Juror expense payments:* RCW 2.36.150.

*Travel expense in lieu of mileage in certain cases:* RCW 2.40.030.

*Witness fees and mileage:* RCW 2.40.010.

## Chapter 38.38 RCW WASHINGTON CODE OF MILITARY JUSTICE

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 38.38.880 Delegation of authority by the governor.  
 38.38.884 Uniformity of interpretation.  
 38.38.888 Short title.

**Reviser's note:** Article numbers in this chapter parallel equivalent sections in the federal Uniform Code of Military Justice and do not constitute part of the law.

## PART I—GENERAL PROVISIONS

**38.38.004 [Art. 1] Definitions.** In this chapter, unless the context otherwise requires:

- (1) "Organized militia" means the national guard of the state, as defined in section 101(3) of title 32, United States Code, and any other military force organized under the laws of the state of Washington.
- (2) "Officer" means commissioned or warrant officer.
- (3) "Commissioned officer" includes a commissioned warrant officer.
- (4) "Commanding officer" includes only commissioned officers in command of a unit.
- (5) "Superior commissioned officer" means a commissioned officer superior in rank or command.
- (6) "Enlisted member" means a person in an enlisted grade.
- (7) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.
- (8) "Rank" means the order of precedence among members of the organized militia.
- (9) The term "active state service" or "active training duty" shall be construed to be any service on behalf of the state, or at encampments whether ordered by state or federal

authority or any other duty requiring the entire time of any organization or person except when called or drafted into the federal service by the president of the United States.

The term "inactive duty" shall include periods of drill and such other training and service not requiring the entire time of the organization or person, as may be required under state or federal laws, regulations, or orders, including travel to and from such duty.

(10) "Military court" means a court-martial or a court of inquiry.

(11) "Military judge" means the presiding officer of a general or special court-martial detailed in accordance with RCW 38.38.256.

(12) "State judge advocate" means the commissioned officer responsible for supervising the administration of the military justice in the organized militia.

(13) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any person who has an interest other than an official interest in the prosecution of the accused.

(14) "Military" refers to any or all of the armed forces.

(15) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.

(16) "May" is used in a permissive sense. The words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.

(17) "Shall" is used in an imperative sense.

(18) "Code" means this chapter.

(19) "A month's pay" or fraction thereof shall be calculated based upon a member's basic pay entitlement as if the member were serving for a thirty-day period. [1989 c 48 § 1; 1963 c 220 § 1.]

**Effective date—1963 c 220:** "This act shall take effect on July 1, 1963." [1963 c 220 § 140.] For codification of 1963 c 220, see Codification Tables, Volume 0.

**38.38.008 [Art. 2] Persons subject to this code.** This code applies to all members of the organized militia who are not in federal service. [1989 c 48 § 2; 1963 c 220 § 2.]

**38.38.012 [Art. 3] Jurisdiction to try certain personnel.** No person who has deserted from the organized militia may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service. [1989 c 48 § 3; 1989 c 11 § 9; 1963 c 220 § 3.]

**Reviser's note:** This section was amended by 1989 c 11 § 9 and by 1989 c 48 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1989 c 11:** See note following RCW 9A.56.220.

**38.38.016 [Art. 4] Dismissal of commissioned officer.** (1) If any commissioned officer, dismissed by order of the governor, makes a written application for trial by court-martial, setting forth, under oath, that he or she has been wrongfully dismissed, the governor, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which the officer was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on

those charges, and the officer shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which the officer is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal, the chief of staff to the governor or adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issue.

(2) If the governor fails to convene a general court-martial within six months from the presentation of an application for trial under this code, the chief of staff to the governor or adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issue.

(3) If a discharge is substituted for a dismissal under this code, the governor alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the governor, that former officer would have attained had the officer not been dismissed. The reappointment of such a former officer may be made only if a vacancy is available under applicable tables of organization. All time between the dismissal and the reappointment shall be considered as actual service for all purposes.

(4) If an officer is discharged from the organized militia by administrative action or by board proceedings under law, or is dropped from the rolls by order of the governor, the officer has no right to trial under this section. [1989 c 48 § 4; 1963 c 220 § 4.]

**38.38.020 [Art. 5] Territorial applicability of the code.** (1) This code applies throughout the state. It also applies to all persons otherwise subject to this code while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while those units are serving outside the state with the same jurisdiction and powers as to persons subject to this code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state. [1989 c 48 § 5; 1963 c 220 § 5.]

**38.38.024 [Art. 6] Judge advocates and legal officers.** (1) The governor, on the recommendation of the adjutant general, shall appoint an officer of the organized militia as state judge advocate. To be eligible for appointment, an officer must be a member of the bar of the highest court of the state and must have been a member of the bar of the state for at least five years.

(2) The adjutant general may appoint as many assistant state judge advocates as he or she considers necessary. To be eligible for appointment, assistant state judge advocates must be officers of the organized militia and members of the bar of the highest court of the state.

(3) The state judge advocate or assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(4) Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice; and the staff judge advocate of any command is entitled to communicate directly with the staff judge advocate of a superior or subordinate command, or with the state judge advocate.

(5) No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense, in any case may later act as staff judge advocate to any reviewing authority upon the same case. [1989 c 48 § 6; 1963 c 220 § 6.]

## PART II—APPREHENSION AND RESTRAINT

**38.38.064 [Art. 7] Apprehension.** (1) Apprehension is the taking of a person into custody.

(2) Any person authorized by this code, or by regulations issued under it, to apprehend persons subject to this code, any marshal of a court-martial appointed pursuant to the provisions of this code, and any peace officer authorized to do so by law, may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(3) Commissioned officers, warrant officers, and non-commissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this code and to apprehend persons subject to this code who take part therein. [1989 c 48 § 7; 1963 c 220 § 7.]

**38.38.068 [Art. 8] Apprehension of deserters.** Any civil officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the state of Washington organized militia and deliver the offender into the custody of the state of Washington organized militia. If an offender is apprehended outside of the state of Washington, the return to the area must be in accordance with normal extradition procedures or reciprocal agreement. [1989 c 48 § 8; 1963 c 220 § 8.]

**38.38.072 [Art. 9] Imposition of restraint.** (1) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing the person to remain within certain specified limits. Confinement is the physical restraint of a person.

(2) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code or through any person authorized by this code to apprehend persons. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of the officer's command or subject to the officer's authority into arrest or confinement.

(3) A commissioned officer or a warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority the officer is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

(4) No person may be ordered apprehended or into arrest or confinement except for probable cause.

(5) This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified. [1989 c 48 § 9; 1963 c 220 § 9.]

**38.38.076 [Art. 10] Restraint of persons charged with offenses.** Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform the person of the specific wrong of which he or she is accused and to try the person or to dismiss the charges and release the person. [1989 c 48 § 10; 1963 c 220 § 10.]

**38.38.080 [Art. 10a] Confinement in jails.** Persons confined other than in a guard house, whether before, during or after trial by a military court, shall be confined in civil jails, penitentiaries, or prisons designated by the governor or by such person as the governor may authorize to act. [1989 c 48 § 11; 1963 c 220 § 11.]

**38.38.084 [Art. 11] Reports and receiving of prisoners.** (1) No provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail, penitentiary, or prison designated under RCW 38.38.080, may refuse to receive or keep any prisoner committed to his or her charge, when the committing person furnishes a statement, signed by the committing person, of the offense charged against the prisoner.

(2) Every commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or of any other jail, penitentiary, or prison designated under RCW 38.38.080, to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he or she is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against the prisoner, and the name of the person who ordered or authorized the commitment. [1989 c 48 § 12; 1963 c 220 § 12.]

**38.38.088 [Art. 13] Punishment prohibited before trial.** Subject to RCW 38.38.488, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against the person, nor shall the arrest or confinement imposed upon the person be any more rigorous than the circumstances require to insure his or her presence, but the person may be subjected to minor punishment during

that period for infractions of discipline. [1989 c 48 § 13; 1963 c 220 § 13.]

**38.38.092 [Art. 14] Delivery of offenders to civil authorities.** (1) Under such regulations as may be prescribed under this code a person subject to this code who is on active state service or inactive duty who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(2) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for the offense shall, upon the request of competent military authority, be returned to military custody for the completion of the sentence. [1989 c 48 § 14; 1963 c 220 § 14.]

### PART III—NONJUDICIAL PUNISHMENT

**38.38.132 [Art. 15] Commanding officer's nonjudicial punishment—Suspension—Appeal.** (1) Under such regulations as the governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the organized militia under this section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the governor, a commanding officer exercising general court-martial jurisdiction or an officer of general rank in command may delegate powers under this section to a principal assistant.

(2) Subject to subsection (1) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(a) Upon officers of his or her command:

(i) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive duty or drill days;

(ii) If imposed by an officer exercising general court-martial jurisdiction or an officer of general rank in command:

(A) Forfeiture of up to thirty days' pay, but not more than fifteen days' pay per month;

(B) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive drill or duty days;

(C) Detention of up to forty-five days' pay, but not more than fifteen days' pay per month;

(b) Upon other personnel of his or her command:

(i) If imposed upon a person attached to or embarked in a vessel, confinement for not more than three consecutive days;

(ii) Forfeiture of not more than seven days' pay;

(iii) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(iv) Extra duties, including fatigue or other duties for not more than fourteen duty or drill days, which need not be consecutive, and for not more than two hours per day, holidays included;

(v) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days;

(vi) Detention of not more than fourteen days' pay;

(vii) If imposed by an officer of the grade of major or above:

(A) The punishment authorized in subsection (2)(b)(i) of this section;

(B) Forfeiture of up to thirty days' pay, but not more than fifteen days' pay per month;

(C) Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(D) Extra duties, including fatigue or other duties, for not more than fourteen drill or duty days, which need not be consecutive, and for not more than two hours per day, holidays included;

(E) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days;

(F) Detention of up to forty-five days' pay, but not more than fifteen days' pay per month.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. Extra duties and restriction may not be combined to run consecutively in the maximum amount impossible for each. Whenever any such punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment.

(3) An officer in charge may impose upon enlisted members assigned to the unit of which the officer is in charge such of the punishment authorized under subsection (2)(b) of this section as the governor may specifically prescribe by regulation.

(4) The officer who imposes the punishment authorized in subsection (2) of this section, or a successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (2) of this section, whether or not executed. In addition, the officer may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and

property affected. The officer may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating extra duties to restriction, the restriction shall not be longer than the number of hours of extra duty that may have been imposed. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(5) A person punished under this section who considers the punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (4) of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

- (a) Forfeiture of more than seven days' pay;
  - (b) Reduction of one or more pay grades from the fourth or a higher pay grade;
  - (c) Extra duties for more than ten days;
  - (d) Restriction for more than ten days; or
  - (e) Detention of more than fourteen days' pay;
- the authority who is to act on the appeal shall refer the case to a judge advocate for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (2) of this section.

(6) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) The governor may by regulation prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing. [1991 c 43 § 5; 1989 c 48 § 15; 1963 c 220 § 15.]

#### PART IV—COURTS-MARTIAL JURISDICTION

**38.38.172 [Art. 16] Courts-martial of organized militia not in federal service—Composition—Jurisdiction—Powers and proceedings.** (1) In the organized militia not in federal service, there are general, special, and summary courts-martial constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures provided for those courts.

(2) The three kinds of courts-martial are:

(a) General courts-martial, consisting of a military judge and not less than five members, or only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court

composed only of a military judge and the military judge approves;

(b) Special courts-martial, consisting of not less than three members, or a military judge and not less than three members, or only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in (a) of this subsection so requests; and

(c) Summary courts-martial, consisting of one commissioned officer. [1989 c 48 § 16; 1963 c 220 § 16.]

**38.38.176 [Art. 17] Jurisdiction of courts-martial in general.** Each force of the organized militia has court-martial jurisdiction over all persons subject to this code. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the governor. [1989 c 48 § 17; 1963 c 220 § 17.]

**38.38.180 [Art. 18] Jurisdiction of general courts-martial.** Subject to RCW 38.38.176, general courts martial have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under such limitations as the governor may prescribe, adjudge any of the following punishments:

- (1) A fine of not more than two hundred dollars;
  - (2) Forfeiture of pay and allowances;
  - (3) A reprimand;
  - (4) Dismissal or dishonorable discharge;
  - (5) Reduction of a noncommissioned officer to the ranks;
- or
- (6) Any combination of these punishments. [1963 c 220 § 18.]

**38.38.184 [Art. 19] Jurisdiction of special courts-martial—Dishonorable discharge.** Subject to RCW 38.38.176, special courts-martial have jurisdiction to try persons subject to this code for any offense for which they may be punished under this code. A special court-martial has the same powers of punishment as a general court-martial, except that a fine imposed by a special court-martial may not be more than one hundred dollars for a single offense. A dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under RCW 38.38.260 was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed. [1989 c 48 § 18; 1963 c 220 § 19.]

**38.38.188 [Art. 20] Jurisdiction of summary courts-martial.** (1) Subject to RCW 38.38.176, summary courts-martial have jurisdiction to try persons subject to this code, except officers for any offense made punishable by this code.

(2) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if the person objects thereto, unless

under RCW 38.38.132 the person has been permitted and has elected to refuse punishment under that section. If objection to trial by summary court-martial is made by an accused who has been permitted to refuse punishment under RCW 38.38.132, trial shall be ordered by special or general court-martial, as may be appropriate.

(3) A summary court-martial may sentence to a fine of not more than twenty-five dollars for a single offense, to forfeiture of pay and allowances, and to reduction of a noncommissioned officer to the ranks. [1989 c 48 § 19; 1963 c 220 § 20.]

**38.38.192 Sentences of dismissal or dishonorable discharge to be approved by the governor.** In the organized militia not in federal service, no sentence of dismissal or dishonorable discharge may be executed until it is approved by the governor. [1963 c 220 § 21.]

**38.38.196 Complete record of proceedings and testimony if dishonorable discharge or dismissal adjudged.** A dishonorable discharge or dismissal may not be adjudged by any court-martial unless a complete record of the proceedings and testimony before the court has been made. [1989 c 48 § 20; 1963 c 220 § 22.]

**38.38.200 Confinement instead of fine.** In the organized militia not in federal service, a court-martial may, instead of imposing a fine, sentence to confinement for not more than one day for each dollar of the authorized fine. [1989 c 48 § 21; 1963 c 220 § 23.]

#### PART V—APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

**38.38.240 [Art. 22] Who may convene general courts-martial.** In the organized militia not in federal service, general courts-martial may be convened by the president or by the governor, or by the commanding general of the national guard of the District of Columbia. [1989 c 48 § 22; 1963 c 220 § 24.]

**38.38.244 [Art. 23] Special courts-martial of organized militia not in federal service—Who may convene.** (1) In the organized militia not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court shall be convened by superior competent authority.

(2) A special court-martial may not try a commissioned officer. [1989 c 48 § 23; 1963 c 220 § 25.]

**38.38.248 [Art. 24] Summary courts-martial of organized militia not in federal service—Who may convene.** (1) In the organized militia not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squad-

ron, detached company, or other detachment, may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.

(2) When only one commissioned officer is present with a command or detachment the commissioned officer shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him or her. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable. [1989 c 48 § 24; 1963 c 220 § 26.]

**38.38.252 [Art. 25] Who may serve on courts-martial.** (1) Any commissioned officer of or on duty with the organized militia is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(2) Any warrant officer of or on duty with the organized militia is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(3)(a) Any enlisted member of the organized militia who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before such courts for trial, but shall serve as a member of a court only if, before the conclusion of a session called by the military judge under RCW 38.38.380(1) prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(b) In this section, the word "unit" means any regularly organized body of the organized militia not larger than a company, a squadron, or a body corresponding to one of them.

(4)(a) When it can be avoided, no person subject to this code may be tried by a court-martial any member of which is junior to the person in rank or grade.

(b) When convening a court-martial, the convening authority shall detail as members thereof such members as, in his or her opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member is eligible to serve as a member of a general or special court-martial when the member is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(c) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the governor may prescribe, the convening authority may

delegate his or her authority under this subsection to the staff judge advocate or to any other principal assistant. [1989 c 48 § 25; 1963 c 220 § 27.]

**38.38.256 [Art. 26] Military judge of a general or special court-martial.** (1) A military judge shall be detailed to each general court-martial. Subject to regulations of the governor, a military judge may be detailed to any special court-martial. The governor shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he or she has been detailed.

(2) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a federal court or a member of the bar of the highest court of a state and who is certified to be qualified for duty as a military judge by the state judge advocate.

(3) The military judge of a general court-martial shall be designated by the state judge advocate or a designee for detail in accordance with regulations prescribed under subsection (1) of this section. Unless the court-martial was convened by the governor, neither the convening authority nor any member of the staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he or she is assigned and directly responsible to the state judge advocate or designee, and may perform duties of a judicial or nonjudicial nature other than those relating to the primary duty as a military judge of a general court-martial when such duties are assigned by or with the approval of the state judge advocate or designee.

(4) No person is eligible to act as military judge in a case if the person is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(5) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may the military judge vote with the members of the court. [1989 c 48 § 26; 1963 c 220 § 28.]

**38.38.260 [Art. 27] Detail of trial counsel and defense counsel.** (1)(a) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The governor shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(b) No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who

has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(2) Trial counsel or defense counsel detailed for a general court-martial:

(a) Must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a federal court or of the highest court of a state, or must be a member of the bar of a federal court or of the highest court of a state; and

(b) Must be certified as competent to perform such duties by the state judge advocate.

(3) In the case of a special court-martial:

(a) The accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under subsection (2) of this section unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(b) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(c) If the trial counsel is a judge advocate or a member of the bar of a federal court or the highest court of a state, the defense counsel detailed by the convening authority must be one of the foregoing. [1991 c 43 § 6; 1989 c 48 § 27; 1963 c 220 § 29.]

**38.38.264 [Art. 28] Detail or employment of reporters and interpreters.** Under such regulations as the governor may prescribe, the convening authority of a general or special court martial or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court. Under like regulations the convening authority of a military court may detail or employ interpreters who shall interpret for the court. [1963 c 220 § 30.]

**38.38.268 [Art. 29] Absent and additional members.** (1) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(2) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(3) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is

reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.

(4) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of RCW 38.38.172(2) (a) or (b), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides. [1989 c 48 § 28; 1963 c 220 § 31.]

#### PART VI—PRETRIAL PROCEDURE

**38.38.308 [Art. 30] Charges and specifications.** (1) Charges and specifications shall be signed by a person subject to this code under oath before a person authorized by this code to administer oaths and shall state:

(a) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(b) That they are true in fact to the best of his or her knowledge and belief.

(2) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him or her as soon as practicable. [1989 c 48 § 29; 1963 c 220 § 32.]

**38.38.312 [Art. 31] Compulsory self-incrimination prohibited.** (1) No person subject to this code may compel persons to incriminate themselves or to answer any question the answer to which may tend to incriminate them.

(2) No person subject to this code may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing the person of the nature of the accusation and advising that the person does not have to make any statement regarding the offense of which he or she is accused or suspected and that any statement made by the person may be used as evidence against him or her in a trial by court-martial.

(3) No person subject to this code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade the person.

(4) No statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against the person in a trial by court-martial. [1989 c 48 § 30; 1963 c 220 § 33.]

**38.38.316 [Art. 32] Investigation.** (1) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(2) The accused shall be advised of the charges against him or her and of the right to be represented at that investigation by counsel. The accused has a right to be represented at that investigation as provided in RCW 38.38.376 and in regulations prescribed under that section.

At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him or her if they are available and to present anything the person may desire in his or her own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(3) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (2) hereof, no further investigation of that charge is necessary under this section unless it is demanded by the accused after being informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his or her own behalf.

(4) The requirements of this section are binding on all persons administering this code but failure to follow them does not divest a military court of jurisdiction. [1989 c 48 § 31; 1963 c 220 § 34.]

**38.38.320 [Art. 33] Forwarding of charges.** When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the governor. If that is not practicable, the officer shall report in writing to the governor the reasons for delay. [1989 c 48 § 32; 1963 c 220 § 35.]

**38.38.324 [Art. 34] Advice of state judge advocate and reference for trial.** (1) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the state judge advocate for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he or she has found that the charge alleges an offense under this code, is warranted by evidence indicated in the report of the investigation under RCW 38.38.316, if there is such a report, and the court-martial would have jurisdiction over the accused and the offense.

(2) The advice of the staff judge advocate under subsection (1) of this section with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate:

(a) Expressing conclusions with respect to each matter set forth in subsection (1) of this section; and

(b) Recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the state judge advocate shall accompany the specification.

(3) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made. [1989 c 48 § 33; 1963 c 220 § 36.]

**38.38.328 [Art. 35] Service of charges.** The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his or her objection, be brought to trial or be required to participate by himself or counsel in a session called by a military judge under RCW 38.38.380(1), in a general court-martial within a period of five days after the service of the charges upon him or her, or before a special court-martial within a period of three days after the service of the charges upon him or her. [1989 c 48 § 34; 1963 c 220 § 37.]

#### PART VII—TRIAL PROCEDURE

**38.38.368 [Art. 36] Governor may prescribe rules.** The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the governor by regulations, which shall, so far as the governor considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the state, but which may not be contrary to or inconsistent with this code. [1989 c 48 § 35; 1963 c 220 § 38.]

**38.38.372 [Art. 37] Unlawfully influencing action of court.** (1) No authority convening a general, special, or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his or her functions in the conduct of the proceeding. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to judicial acts. The foregoing provisions of this section shall not apply with respect to (a) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or (b) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(2) In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole

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or in part for the purpose of determining whether a member of the organized militia is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the organized militia, or in determining whether a member of the organized militia should be retained on active duty, no person subject to this chapter may, in preparing any such report (a) consider or evaluate the performance of duty of any such member of a court-martial, or (b) give a less favorable rating or evaluation of any member of the organized militia because of the zeal with which such member, as counsel, represented any accused before a court-martial. [1989 c 48 § 36; 1963 c 220 § 39.]

**38.38.376 [Art. 38] Duties of trial counsel and defense counsel.** (1) The trial counsel of a general or special court-martial shall prosecute in the name of the state, and shall, under the direction of the court, prepare the record of the proceedings.

(2) The accused has the right to be represented in his or her defense before a general or special court-martial by civilian counsel if provided by the accused, or by military counsel of his or her own selection if reasonably available as defined in regulations of the governor, or by the defense counsel detailed under RCW 38.38.260. Should the accused have civilian counsel of his or her own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as associate counsel; otherwise they shall be excused by the military judge or president of a special court-martial.

(3) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters the defense counsel feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he or she considers appropriate and assist the accused in the submission of any matter under RCW 38.38.536.

(4) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when qualified to be a trial counsel as required by RCW 38.38.260, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(5) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when qualified to be the defense counsel as required by RCW 38.38.260, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused. [1989 c 48 § 37; 1963 c 220 § 40.]

**38.38.380 [Art. 39] Sessions.** (1) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to RCW 38.38.328, call the court into session without the presence of the members for the purpose of:

(a) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(b) Hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(c) Holding the arraignment and receiving the pleas of the accused; and

(d) Performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to RCW 38.38.368 and which does not require the presence of the members of the court.

These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(2) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in cases in which a military judge has been detailed to the court, the military judge. [1989 c 48 § 38; 1963 c 220 § 41.]

**38.38.384 [Art. 40] Continuances.** The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time and as often as may appear to be just. [1989 c 48 § 39; 1963 c 220 § 42.]

**38.38.388 [Art. 41] Challenges.** (1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge or, if none, the court shall determine the relevance and validity of challenges for cause and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause. [1989 c 48 § 40; 1963 c 220 § 43.]

**38.38.392 [Art. 42] Oaths.** (1) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the governor. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by a judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate, or other person, is detailed to that duty.

(2) Each witness before a court-martial shall be examined on oath. [1989 c 48 § 41; 1963 c 220 § 44.]

**38.38.396 [Art. 43] Statute of limitations.** (1) A person charged with desertion or absence without leave in time of war, or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

(2) Except as otherwise provided in this section, a person charged with desertion in time of peace or with the offense punishable under RCW 38.38.784 is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(3) Except as otherwise provided in this section, a person charged with any offense is not liable to be tried by court-martial or punished under RCW 38.38.132 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under RCW 38.38.132.

(4) Periods in which the accused was absent from territory in which the state has the authority to apprehend the accused, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section. [1989 c 48 § 42; 1963 c 220 § 45.]

**38.38.400 [Art. 44] Former jeopardy.** (1) No person may, without the person's consent, be tried a second time in any military court of the state for the same offense.

(2) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

(3) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this section. [1989 c 48 § 43; 1963 c 220 § 46.]

**38.38.404 [Art. 45] Pleas of the accused.** (1) If an accused arraigned before a court-martial makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

(2) With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty. [1991 c 43 § 7; 1989 c 48 § 44; 1963 c 220 § 47.]

**38.38.408 [Art. 46] Opportunity to obtain witnesses and other evidence.** (1) The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the governor may prescribe.

(2) The president of a special court-martial, military judge, or a summary court officer may:

(a) Issue a warrant for the arrest of any accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(b) Issue subpoenas duces tecum and other subpoenas;

(c) Enforce by attachment the attendance of witnesses and the production of books and papers; and

(d) Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the state.

(3) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and shall be executed by civil officers as prescribed by the laws of the state. [1989 c 48 § 45; 1963 c 220 § 48.]

**38.38.412 [Art. 47] Refusal to appear or testify—Penalty.** (1) Any person not subject to this code who:

(a) Has been duly subpoenaed to appear as a witness or to produce books and records before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court;

(b) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the superior court of the state; and

(c) Wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce; is guilty of an offense against the state.

(2) Any person who commits an offense named in subsection (1) of this section shall be tried before the superior court of this state having jurisdiction and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be punished by a fine of not more than five hundred dollars, or imprisonment for not more than six months, or both.

(3) The prosecuting attorney in any such court, upon the certification of the facts by the military court, commission, court of inquiry, or board, shall prosecute any person violating this section. [1989 c 48 § 46; 1963 c 220 § 49.]

**38.38.416 Contempts.** A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for thirty days or a fine of one hundred dollars, or both. [1963 c 220 § 50.]

**38.38.420 [Art. 49] Depositions.** (1) At any time after charges have been signed, as provided in RCW 38.38.308, any party may take oral or written depositions unless a military judge or court-martial without a military judge hearing the case, or if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges

forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(3) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(4) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence before any court-martial or in any proceeding before a court of inquiry, if it appears:

(a) That the witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing;

(b) That the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonavailability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(c) That the present whereabouts of the witness is unknown. [1989 c 48 § 47; 1963 c 220 § 51.]

**38.38.424 [Art. 50] Admissibility of records of courts of inquiry.** (1) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(2) Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(3) Such testimony may also be read in evidence before a court of inquiry or a military board. [1963 c 220 § 52.]

**38.38.428 [Art. 51] Voting, rulings, instructions.** (1) Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(2) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental

responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change a ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a vote as provided in RCW 38.38.432, beginning with the junior in rank.

(3) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

(a) That the accused must be presumed to be innocent until guilt is established by legal and competent evidence beyond reasonable doubt;

(b) That in the case being considered, if there is reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;

(c) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree to which there is no reasonable doubt; and

(d) That the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the state.

(4) Subsections (1), (2), and (3) of this section do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein. [1989 c 48 § 48; 1963 c 220 § 53.]

**38.38.432 [Art. 52] Number of votes required.** (1) No person may be convicted of an offense, except as provided in RCW 38.38.404(2) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(2) All sentences shall be determined by the concurrence of two-thirds of the members present at the time that the vote is taken.

(3) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty, or to reconsider a sentence with a view towards decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused. [1989 c 48 § 49; 1963 c 220 § 54.]

**38.38.436 [Art. 53] Court to announce action.** A court martial shall announce its findings and sentence to the parties as soon as determined. [1963 c 220 § 55.]

**38.38.440 [Art. 54] Record of trial.** (1) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.

(2) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner required by such regulations as the governor may prescribe.

(3)(a) A complete record of the proceedings and testimony shall be prepared:

(i) In each general court-martial case in which the sentence adjudged includes a dismissal, a discharge, or, if the sentence adjudged does not include a discharge, any other punishment which exceeds that which may otherwise be adjudged by a special court-martial; and

(ii) In each special court-martial case in which the sentence adjudged includes a dishonorable discharge.

(b) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations of the governor.

(4) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated. [1989 c 48 § 50; 1963 c 220 § 56.]

## PART VIII—SENTENCES

**38.38.480 [Art. 55] Cruel and unusual punishments prohibited.** Punishment by flogging, or by branding, marking or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited. [1963 c 220 § 57.]

**38.38.484 [Art. 56] Maximum limits—Reduction in pay grade.** (1) The punishment which a court-martial may direct for an offense may not exceed limits prescribed by this code.

(2) Unless otherwise provided in regulations to be prescribed by the governor, a court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes a dishonorable discharge reduces that member to pay grade E-1, effective on the date of that approval.

(3) If the sentence of a member who is reduced in pay grade under subsection (2) of this section is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (2) of this section, the rights and privileges of which the member was deprived because of that

reduction shall be restored and the member is entitled to the pay and allowances to which the member would have been entitled for the period the reduction was in effect, had he or she not been so reduced. [1989 c 48 § 51; 1963 c 220 § 58.]

**38.38.488 [Art. 57] Effective date of sentences.** (1) No forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under RCW 38.38.536.

(2) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is ordered to be executed by the convening authority, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement. Regulations prescribed by the governor may provide that sentences of confinement may not be executed until approved by designated officers.

(3) All other sentences of courts-martial are effective on the date ordered executed.

(4) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his or her jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may, in his or her sole discretion, defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his or her jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned. [1989 c 48 § 52; 1963 c 220 § 59.]

**38.38.492 [Art. 58] Execution of confinement.** (1) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the organized militia or in any jail, penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the state or of any political subdivision thereof.

(2) The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(3) The keepers, officers, and wardens of city or county jails and of other jails, penitentiaries, or prisons designated by the governor, or by such person as the governor may authorize to act under RCW 38.38.080, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. No such keeper, officer, or warden may require payment of any fee or charge for so receiving or confining a person. [1989 c 48 § 53; 1963 c 220 § 60.]

(2004 Ed.)

## PART IX—REVIEW OF COURTS-MARTIAL

**38.38.532 Execution of sentence—Suspension of sentence.** Except as provided in RCW 38.38.196 and 38.38.556, a court-martial sentence, unless suspended, may be ordered executed by the convening authority when approved by him or her. The convening authority shall approve the sentence or such part, amount, or commuted form of the sentence as he or she sees fit, and may suspend the execution of the sentence as approved by him or her. [1989 c 48 § 54; 1963 c 220 § 61.]

**38.38.536 Initial action on the record.** After a trial by court martial the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or by the governor. [1963 c 220 § 62.]

**38.38.540 [Art. 60] Initial action on the record—General court-martial records.** The convening authority shall refer the record of each general court-martial to the staff judge advocate, who shall submit a written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. [1989 c 48 § 55; 1963 c 220 § 63.]

**38.38.544 [Art. 61] Reconsideration and revision.** (1) If a specification before a court martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(2) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

(a) For reconsideration of a finding of not guilty, or a ruling which amounts to a finding of not guilty;

(b) For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this code; or

(c) For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory. [1963 c 220 § 64.]

**38.38.548 [Art. 62] Rehearings.** (1) If the convening authority disapproves the findings and sentence of a court martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(2) Each rehearing shall take place before a court martial composed of members not members of the court martial which first heard the case. Upon a rehearing the accused may

not be tried for any offense of which he was found not guilty by the first court martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. [1963 c 220 § 65.]

**38.38.552 [Art. 63] Approval by the convening authority.** In acting on the findings and sentence of a court martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence. [1963 c 220 § 66.]

**38.38.556 [Art. 64] Review of records—Disposition.**

(1) If the convening authority is the governor, the governor's action on the review of any record of trial is final.

(2) In all other cases not covered by subsection (1), if the sentence of a special court-martial as approved by the convening authority includes a dishonorable discharge, whether or not suspended, the entire record shall be sent to the appropriate staff judge advocate of the state force concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the staff judge advocate shall then be sent to the state judge advocate for review.

(3) All other special and summary court-martial records shall be sent to the judge advocate of the appropriate force of the organized militia and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations of the governor.

(4) The state judge advocate shall review the record of trial in each case sent for review as provided under subsection (2) of this section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the state judge advocate is limited to questions of jurisdiction.

(5) The state judge advocate shall take final action in any case reviewable by the state judge advocate.

(6) In a case reviewable by the state judge advocate under this section, the state judge advocate may act only with respect to the findings and sentence as approved by the convening authority. The state judge advocate may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the state judge advocate finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the state judge advocate may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the state judge advocate sets aside the findings and sentence, the state judge advocate may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the state judge advocate sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.

(7) In a case reviewable by the state judge advocate under this section, the state judge advocate shall instruct the convening authority to act in accordance with the state judge advocate's decision on the review. If the state judge advocate has ordered a rehearing but the convening authority finds a rehearing impracticable, the state judge advocate may dismiss the charges.

(8) The state judge advocate may order one or more boards of review each composed of not less than three commissioned officers of the organized militia, each of whom must be a member of the bar of the highest court of the state. Each board of review shall review the record of any trial by special court-martial, including a sentence to a dishonorable discharge, referred to it by the state judge advocate. Boards of review have the same authority on review as the state judge advocate has under this section. [1989 c 48 § 56; 1963 c 220 § 67.]

**38.38.560 [Art. 65] Error of law—Lesser included offense.** (1) A finding or sentence of a court martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(2) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm so much of the finding as includes a lesser included offense. [1963 c 220 § 68.]

**38.38.564 [Art. 66] Review counsel.** (1) Upon the final review of a sentence of a general court-martial, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate, and before the state judge advocate.

(2) Upon the request of an accused entitled to be so represented, the state judge advocate shall appoint a lawyer who is a member of the organized militia and who has the qualifications prescribed in RCW 38.38.260, if available, to represent the accused before the reviewing authority, before the staff judge advocate, and before the state judge advocate, in the review of cases specified in subsection (1) of this section.

(3) If provided by the accused, an accused entitled to be so represented may be represented by civilian counsel before the reviewing authority, before the staff judge advocate, and before the state judge advocate. [1991 c 43 § 8; 1989 c 48 § 57; 1963 c 220 § 69.]

**38.38.568 [Art. 67] Vacation of suspension.** (1) Before the vacation of the suspension of a special court-martial sentence, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if the probationer so desires.

(2) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the governor in cases involving a general court-martial sentence and to the commanding officer of the force of the organized militia of which the probationer is a member in all other cases covered by subsection (1) of this section. If the governor or commanding officer vacates the

suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(3) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence. [1989 c 48 § 58; 1963 c 220 § 70.]

**38.38.572 [Art. 68] Petition for a new trial.** At any time within two years after approval by the convening authority of a court-martial sentence which extends to dismissal or dishonorable discharge, the accused may petition the governor for a new trial on ground of newly discovered evidence or fraud on the court-martial. [1989 c 48 § 59; 1963 c 220 § 71.]

**38.38.576 [Art. 69] Remission and suspension.** (1) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

(2) The governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court martial. [1963 c 220 § 72.]

**38.38.580 [Art. 70] Restoration.** (1) Under such regulations as the governor may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or rehearing.

(2) If a previously executed sentence of dishonorable discharge is not imposed on a new trial, the governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(3) If a previously executed sentence of dismissal is not imposed on a new trial, the governor shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the governor alone to such commissioned grade and with such rank as in the opinion of the governor that former officer would have attained had he not been dismissed. The reappointment of such a former officer may be made if a position vacancy is available under applicable tables of organization. All time between the dismissal and reappointment shall be considered as service for all purposes. [1989 c 48 § 60; 1963 c 220 § 73.]

**38.38.584 [Art. 71] Finality of proceedings, findings and sentences.** The proceedings, findings and sentences of courts martial as reviewed and approved, as required by this code, and all dismissals and discharges carried into execution under sentences by courts martial following review and approval, as required by this code, are final and conclusive. Orders publishing the proceedings of courts martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided in RCW 38.38.572. [1963 c 220 § 74.]

(2004 Ed.)

## PART X—PUNITIVE ARTICLES

**38.38.624 [Art. 72] Persons to be tried or punished.** No person may be tried or punished for any offense provided for in RCW 38.38.628 through 38.38.800, unless it was committed while he was in a duty status. [1963 c 220 § 75.]

**38.38.628 [Art. 73] Principals.** Any person subject to this code who:

- (1) Commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or
- (2) Causes an act to be done which if directly performed by him would be punishable by this code; is a principal. [1963 c 220 § 76.]

**38.38.632 [Art. 74] Accessory after the fact.** Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court martial may direct. [1963 c 220 § 77.]

**38.38.636 [Art. 75] Conviction of lesser included offense.** An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein. [1963 c 220 § 78.]

**38.38.640 [Art. 76] Attempts.** (1) An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending, even though failing to effect its commission, is an attempt to commit that offense.

(2) Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court martial may direct, unless otherwise specifically prescribed.

(3) Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated. [1963 c 220 § 79.]

**38.38.644 [Art. 77] Conspiracy.** Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court martial may direct. [1963 c 220 § 80.]

**38.38.648 [Art. 78] Solicitation.** (1) Any person subject to this code who solicits or advises another or others to desert in violation of RCW 38.38.660 or mutiny in violation of RCW 38.38.696 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court martial may direct.

(2) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of RCW 38.38.716 or sedition in violation of RCW 38.38.696 shall, if the offense solicited or advised is committed, be punished with the punishment

provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court martial may direct. [1963 c 220 § 81.]

**38.38.652 [Art. 79] Fraudulent enlistment, appointment, or separation.** Any person who:

(1) Procures his or her own enlistment or appointment in the organized militia by knowingly false representation or deliberate concealment as to qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his or her own separation from the organized militia by knowingly false representation or deliberate concealment as to eligibility for that separation;

shall be punished as a court-martial may direct. [1989 c 48 § 61; 1963 c 220 § 82.]

**38.38.656 [Art. 80] Unlawful enlistment, appointment, or separation.** Any person subject to this code who effects an enlistment or appointment in or a separation from the organized militia of any person who is known to the person to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct. [1989 c 48 § 62; 1963 c 220 § 83.]

**38.38.660 [Art. 81] Desertion.** (1) Any member of the organized militia who:

(a) Without authority goes or remains absent from the member's unit, organization, or place of duty with intent to remain away therefrom permanently;

(b) Quits the member's unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(c) Without being regularly separated from one of the organized militia enlists or accepts an appointment in the same or another one of the organized militia, or in one of the armed forces of the United States, without fully disclosing the fact that he or she has not been regularly separated; is guilty of desertion.

(2) Any commissioned officer of the organized militia who, after tender of a resignation and before notice of its acceptance, quits his or her post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(3) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct. [1989 c 48 § 63; 1963 c 220 § 84.]

**38.38.664 [Art. 82] Absence without leave.** Any person subject to this code who, without authority:

(1) Fails to go to his appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court martial may direct. [1963 c 220 § 85.]

**38.38.668 [Art. 83] Missing movement.** Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court martial may direct. [1963 c 220 § 86.]

**38.38.672 [Art. 84] Contempt towards officials.** Any person subject to this code who uses contemptuous words against the president, the governor, or the governor of any other state, territory, commonwealth, or possession in which that person may be serving, shall be punished as a court martial may direct. [1963 c 220 § 87.]

**38.38.676 [Art. 85] Disrespect towards superior commissioned officer.** Any person subject to this code who behaves with disrespect towards his superior commissioned officer shall be punished as a court martial may direct. [1963 c 220 § 88.]

**38.38.680 [Art. 86] Assaulting or wilfully disobeying superior commissioned officer.** Any person subject to this code who:

(1) Strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) Wilfully disobeys a lawful command of his superior commissioned officer;

shall be punished as a court martial may direct. [1963 c 220 § 89.]

**38.38.684 Insubordinate conduct toward warrant officer or noncommissioned officer.** Any warrant officer or enlisted member who:

(1) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of the officer's office;

(2) Wilfully disobeys the lawful order of a warrant officer or noncommissioned officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of the officer's office;

shall be punished as a court-martial may direct. [1989 c 48 § 64; 1963 c 220 § 90.]

**38.38.688 [Art. 88] Failure to obey order or regulation.** Any person subject to this code who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the organized militia which it is the person's duty to obey, fails to obey the order; or

(3) Is derelict in the performance of the person's duties; shall be punished as a court-martial may direct. [1989 c 48 § 65; 1963 c 220 § 91.]

**38.38.692 [Art. 89] Cruelty and maltreatment.** Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his

orders shall be punished as a court martial may direct. [1963 c 220 § 92.]

**38.38.696 [Art. 90] Mutiny or sedition.** (1) Any person subject to this code who:

(a) With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(b) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(c) Fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(2) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court martial may direct. [1963 c 220 § 93.]

**38.38.700 [Art. 91] Resistance, breach of arrest, and escape.** Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court martial may direct. [1963 c 220 § 94.]

**38.38.704 [Art. 92] Releasing prisoner without proper authority.** Any person subject to this code who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court martial may direct, whether or not the prisoner was committed in strict compliance with law. [1963 c 220 § 95.]

**38.38.708 [Art. 93] Unlawful detention of another.** Any person subject to this code who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court martial may direct. [1963 c 220 § 96.]

**38.38.712 [Art. 94] Noncompliance with procedural rules.** Any person subject to this code who:

(1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code; or

(2) Knowingly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before, during, or after trial of an accused; shall be punished as a court martial may direct. [1963 c 220 § 97.]

**38.38.716 [Art. 95] Misbehavior before the enemy.** Any person subject to this code who before or in the presence of the enemy:

(1) Runs away;

(2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is the person's duty to defend;

(3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) Casts away arms or ammunition;

(5) Is guilty of cowardly conduct;

(6) Quits a place of duty to plunder or pillage;

(7) Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the organized militia;

(8) Wilfully fails to do his or her utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is the person's duty so to encounter, engage, capture, or destroy; or

(9) Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to the state, or to any other state, when engaged in battle; shall be punished as a court-martial may direct. [1989 c 48 § 66; 1963 c 220 § 98.]

**38.38.720 [Art. 96] Subordinate compelling surrender.** Any person subject to this code who compels or attempts to compel the commander of any of the organized militia of the state, or of any other state, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct. [1989 c 48 § 67; 1963 c 220 § 99.]

**38.38.724 [Art. 97] Improper use of countersign.** Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court martial may direct. [1963 c 220 § 100.]

**38.38.728 [Art. 98] Forcing a safeguard.** Any person subject to this code who forces a safeguard shall be punished as a court martial may direct. [1963 c 220 § 101.]

**38.38.732 [Art. 99] Captured or abandoned property.** (1) All persons subject to this code shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(2) Any person subject to this code who:

(a) Fails to carry out the duties prescribed in subsection (1) hereof;

(b) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(c) Engages in looting or pillaging; shall be punished as a court martial may direct. [1963 c 220 § 102.]

**38.38.736 [Art. 100] Aiding the enemy.** Any person subject to this code who:

(1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall be punished as a court martial may direct. [1963 c 220 § 103.]

**38.38.740 [Art. 101] Misconduct of a prisoner.** Any person subject to this code who, while in the hands of the enemy in time of war:

(1) For the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court martial may direct. [1963 c 220 § 104.]

**38.38.744 [Art. 102] False official statements.** Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court martial may direct. [1963 c 220 § 105.]

**38.38.748 [Art. 103] Military property—Loss, damage, destruction, or wrongful disposition.** Any person subject to this code who, without proper authority:

(1) Sells or otherwise disposes of;

(2) Wilfully or through neglect damages, destroys, or loses; or

(3) Wilfully or through neglect suffers to be damaged, destroyed, sold or wrongfully disposed of; any military property of the United States or of the state shall be punished as a court martial may direct. [1963 c 220 § 106.]

**38.38.752 [Art. 104] Property other than military property—Waste, spoilage, or destruction.** Any person subject to this code who, while in a duty status, wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongfully destroys or damages any property other than military property of the United States or of the state shall be punished as a court martial may direct. [1963 c 220 § 107.]

**38.38.756 [Art. 105] Improper hazarding of vessel.** (1) Any person subject to this code who wilfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the organized militia shall be punished as a court-martial may direct.

(2) Any person subject to this code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the organized militia shall be pun-

ished as a court-martial may direct. [1989 c 48 § 68; 1963 c 220 § 108.]

**38.38.760 [Art. 106] Drunken or reckless driving.** Any person subject to this code who operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court martial may direct. [1963 c 220 § 109.]

**38.38.764 [Art. 107] Drunk on duty—Sleeping on post—Leaving post before relief.** Any person subject to this code who is found drunk on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court martial may direct. [1963 c 220 § 110.]

**38.38.768 [Art. 108] Dueling.** Any person subject to this code who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court martial may direct. [1963 c 220 § 111.]

**38.38.772 [Art. 109] Malingering.** Any person subject to this code who for the purpose of avoiding work, duty or service in the organized militia:

(1) Feigns illness, physical disablement, mental lapse or derangement; or

(2) Intentionally inflicts self-injury; shall be punished as a court-martial may direct. [1989 c 48 § 69; 1963 c 220 § 112.]

**38.38.776 [Art. 110] Riot or breach of peace.** Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court martial may direct. [1963 c 220 § 113.]

**38.38.780 [Art. 111] Provoking speeches or gestures.** Any person subject to this code who uses provoking or reproachful words or gestures toward any other person subject to this code shall be punished as a court martial may direct. [1963 c 220 § 114.]

**38.38.784 [Art. 112] Perjury.** Any person subject to this code who in a judicial proceeding or in a course of justice conducted under this code wilfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court martial may direct. [1963 c 220 § 115.]

**38.38.788 [Art. 113] Frauds against the government.** Any person subject to this code:

(1) Who, knowing it to be false or fraudulent:

(a) Makes any claim against the United States, the state, or any officer thereof; or

(b) Presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the state, or any officer thereof;

(2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state, or any officer thereof:

(a) Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(b) Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(c) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) Who, having charge, possession, custody, or control of any money, or other property of the United States or the state, furnished or intended for the armed forces of the United States or the organized militia, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which the person receives a certificate or receipt; or

(4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the organized militia, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state; shall, upon conviction, be punished as a court-martial may direct. [1989 c 48 § 70; 1963 c 220 § 116.]

**38.38.792 [Art. 114] Larceny and wrongful appropriation.** (1) Any person subject to this code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind:

(a) With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(b) With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(2) Any person found guilty of larceny or wrongful appropriation shall be punished as a court martial may direct. [1963 c 220 § 117.]

**38.38.796 [Art. 115] Conduct unbecoming an officer and a gentleman.** Any commissioned officer who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court martial may direct. [1963 c 220 § 118.]

**38.38.800 [Art. 116] General article.** Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the organized militia, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. However, cognizance may not be taken of, and jurisdiction may not be extended to, the crimes of murder, manslaughter, rape, robbery, maiming, sodomy, arson, extortion, assault,

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burglary, or housebreaking, jurisdiction of which is reserved to civil courts. [1989 c 48 § 71; 1963 c 220 § 119.]

#### PART XI—MISCELLANEOUS PROVISIONS

**38.38.840 [Art. 117] Courts of inquiry.** (1) Courts of inquiry to investigate any matter may be convened by the governor or by any other person designated by the governor for that purpose, whether or not the persons involved have requested such an inquiry: PROVIDED, That upon the request of the officer involved such an inquiry shall be instituted as hereinabove set forth.

(2) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(3) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code or employed in the state military department, who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(4) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(5) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(6) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(7) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(8) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel. [1989 c 48 § 72; 1963 c 220 § 120.]

**38.38.844 [Art. 118] Authority to administer oaths.** (1) The following members of the organized militia may administer oaths for the purposes of military administration, including military justice, and affidavits may be taken for those purposes before persons having the general powers of a notary public:

(a) The state judge advocate and all assistant state judge advocates;

(b) All law specialists;

(c) All summary courts-martial;

(d) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;

(e) The military judge, president, trial counsel, and assistant trial counsel for all general and special courts-martial;

(f) The president and the counsel for the court of any court of inquiry;

(g) All officers designated to take a deposition;

(h) All persons detailed to conduct an investigation; and

(i) All other persons designated by regulations of the governor.

(2) Officers of the organized militia may not be authorized to administer oaths as provided in this section unless they are on active state service or inactive duty for training in or with those forces under orders of the governor as prescribed in this code.

(3) The signature without seal of any such person, together with the title of the person's office, is prima facie evidence of the person's authority. [1989 c 48 § 73; 1963 c 220 § 121.]

**38.38.848 [Art. 119] Sections to be explained.** RCW 38.38.008, 38.38.012, 38.38.064 through 38.38.132, 38.38.252, 38.38.260, 38.38.372, 38.38.480, 38.38.624 through 38.38.792, and 38.38.848 through 38.38.860 shall be carefully explained to every enlisted member at the time of the member's enlistment or transfer or induction into, or at the time of the member's order to duty in or with any of the organized militia or within thirty days thereafter. They shall also be explained annually to each unit of the organized militia. A complete text of this code and of the regulations prescribed by the governor thereunder shall be made available to any member of the organized militia, upon request, for personal examination. [1989 c 48 § 74; 1963 c 220 § 122.]

**38.38.852 [Art. 120] Complaints of wrongs.** Members of the organized militia who believe themselves wronged by their commanding officer, and who, upon due application to that commanding officer, are refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the governor or adjutant general. The governor or adjutant general shall examine the complaint and take proper measures for redressing the wrong complained of. [1989 c 48 § 75; 1963 c 220 § 123.]

**38.38.856 [Art. 121] Redress of injuries to property.** (1) Whenever complaint is made to any commanding officer that wilful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the organized militia, the commanding officer may, subject to such regulations as the governor may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by the commanding officer shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (3) of this section, on any disbursing officer for the payment by the disbursing officer to the injured parties of the damages so assessed and approved.

(2) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may

be paid to the injured parties from the military funds of the units of the organized militia to which the offenders belonged.

(3) Any person subject to this code who is accused of causing wilful damage to property has the right to be represented by counsel, to summon witnesses in the person's behalf, and to cross-examine those appearing against him or her. The person has the right of appeal to the next higher commander. [1989 c 48 § 76; 1963 c 220 § 124.]

**38.38.860 [Art. 122] Execution of process and sentence.** In the organized militia not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state. [1989 c 48 § 77; 1963 c 220 § 125.]

**38.38.864 [Art. 123] Process of military courts.** (1) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenae and subpoenae duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the state and the witnesses, books and records sought are also so located.

(2) Process and mandates may be issued by summary courts-martial, or the military judge of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by regulations issued under this code.

(3) All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this code, no such officer may demand or require payment of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith. [1989 c 48 § 78; 1963 c 220 § 126.]

**38.38.868 [Art. 124] Payment of fines and disposition thereof.** Fines imposed by a military court may be paid to it or to an officer executing its process. The amount of such a fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due the person, until the fine is liquidated. Any sum so deducted shall be turned in to the military court which imposed the fine. Notwithstanding any other law, the officer collecting a fine or penalty imposed by a military court upon an officer or enlisted person shall pay it within thirty days to the state treasurer. Such a fine becomes a part of, is credited to, and may be spent from, the military fund of the organization or detachment to which the officer or enlisted person who paid the fine belonged. The treasurer of the state shall then report the amount thereof designating the organization or detachment to which it belongs, to the adjutant general of the state, and shall pay it over to the organization or detachment on request of its commanding officer. [1989 c 48 § 79; 1963 c 220 § 127.]

**38.38.872 [Art. 125] Immunity for action of military courts.** No accused may bring an action or proceeding

against the convening authority or a member of a military court or officer or person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court. [1963 c 220 § 128.]

**38.38.876 [Art. 126] Presumption of jurisdiction.** The jurisdiction of the military courts and boards established by this code shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding. [1963 c 220 § 129.]

**38.38.880 [Art. 127] Delegation of authority by the governor.** The governor may delegate any authority vested in him under this code, and may provide for the subdelegation of any such authority, except the power given him by RCW 38.38.192 and 38.38.240. [1963 c 220 § 130.]

**38.38.884 [Art. 128] Uniformity of interpretation.** This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and, so far as practical, to make that law uniform with the law of the United States. [1963 c 220 § 131.]

**38.38.888 [Art. 129] Short title.** This chapter may be cited as the "Washington code of military justice." [1963 c 220 § 132.]

## Chapter 38.40 RCW

### MISCELLANEOUS PROVISIONS

#### Sections

38.40.010	Liability of officers and enlisted persons on duty.
38.40.020	Not liable for exercise of judgment.
38.40.025	Liability of state for federal activities.
38.40.030	Compensation for death or disability.
38.40.040	Interference with employment—Penalty.
38.40.050	Discharge from employment—Penalty.
38.40.060	Military leaves for public employees.
38.40.100	Notice for duty.
38.40.110	Employment or membership in other organizations—Discrimination prohibited—Penalty—Civil cause of action.
38.40.120	Authorized military organizations.
38.40.130	Corporations may be formed.
38.40.150	Property to remain public property.

*Acknowledgments and powers of attorney:* Chapter 73.20 RCW.

*Acquisitions of lands for permanent military installations:* Chapter 37.16 RCW.

*Common carriers—Special exceptions on carriage of property, government freight, etc.:* RCW 81.28.080.

#### Eminent domain

*condemnation for military purposes:* RCW 8.04.170, 8.04.180.

*notice where military land is involved:* RCW 8.28.030.

#### Evidence

*proof of missing in action, capture by enemy, etc.:* RCW 5.40.030.

*written finding of presumed death as prima facie evidence:* RCW 5.40.020.

*Federal areas and jurisdiction:* Title 37 RCW.

*Gas bombs:* RCW 70.74.310.

*Joint armory sites:* RCW 36.64.050.

*Juries—Persons exempt:* RCW 2.36.080.

*Mental illness hospitalization*

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*authority over patient—Federal agencies, private establishments:* RCW 71.02.490.

*commitment to veterans administration or other federal agency—General provision:* RCW 73.36.165.

#### Militia

*privilege from arrest:* State Constitution Art. 10 § 5.

*soldiers' home:* State Constitution Art. 10 § 3.

*Personal exemptions—Pension money exempt:* RCW 6.15.020.

*Residence, contingencies affecting:* State Constitution Art. 6 § 4.

*Soldiers' and veterans' homes:* Chapter 72.36 RCW.

*Statute of limitations tolled—As to person in military service of United States:* RCW 4.16.220.

*Tide and shore land grants to United States:* RCW 79.94.410 through 79.94.440.

*Unlawful firearms—Exception:* RCW 9.41.190.

*Veterans and veterans' affairs:* Title 73 RCW.

*Veterans' rehabilitation council:* Chapter 43.61 RCW.

*Voter, when privileged from military duty:* State Constitution Art. 6 § 5.

**38.40.010 Liability of officers and enlisted persons on duty.** Members of the militia ordered into active service of the state by any proper authority shall not be liable civilly or criminally for any act or acts done by them while on such duty nor shall any action lie against any officer or enlisted person for any acts done by the officer or enlisted person in line of duty by virtue of any order which may thereafter be held invalid by any civil court. When a suit or proceeding shall be commenced in any court by any person against any officer or enlisted person of the militia for any act done by such officer or enlisted person in his or her official capacity or in the discharge of any duty, or against any person acting under the authority or order of such officer or by virtue of any warrant issued pursuant to law, the defendant may require the person prosecuting or instituting the proceeding to give security for the payment of all costs that may be awarded to the defendant, and the defendant in all cases may make a general denial and, under such general denial, give all other or any special defense matter in evidence. In case the plaintiff shall be nonsuited or the verdict or judgment be in favor of the defendant, treble costs shall be assessed against the plaintiff. The defendant in such action shall be defended by the attorney general at the expense of the state, but private counsel may also be employed by the defendant. The venue of all such actions shall be Thurston county and the state of Washington shall be in all cases a necessary party defendant. [1989 c 19 § 45; 1943 c 130 § 13; Rem. Supp. 1943 § 8603-13. Cf. 1909 c 134 § 25, part; 1895 c 108 § 173, part.]

**38.40.020 Not liable for exercise of judgment.** The commanding officer of any of the military forces of the state of Washington engaged under the order of proper authority in the suppression of insurrection, the dispersion of a mob, the protection of life or property, or the enforcement of the laws, shall exercise discretion as to the propriety of the means to be used in controlling or dispersing of any mob or other unlawful assembly and, if he or she exercises his or her honest judgment thereon, he or she shall not be liable in either a civil or criminal action for any act done in line of duty. [1989 c 19 § 46; 1943 c 130 § 14; Rem. Supp. 1943 § 8603-14. Cf. 1909 c 134 § 25, part; 1895 c 108 § 173, part.]

**38.40.025 Liability of state for federal activities.** Neither the state of Washington, its officers, employees, or agents, nor any member of the militia may be held liable in any civil action for damages arising out of any of the activities of the military forces of the state of Washington while engaged in activities during which the officers, employees, agents, or members are considered employees of the federal government under the federal tort claims act, 26 U.S.C. Sec. 2671 et seq. [1987 c 26 § 2.]

**Legislative declaration—1987 c 26:** "The legislature recognizes that Congress has established comprehensive administrative programs to compensate members of the military forces for injuries they may incur while performing training for national defense." [1987 c 26 § 1.]

**Severability—1987 c 26:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 26 § 3.]

**38.40.030 Compensation for death or disability.** If any member of the organized militia is injured, incapacitated, or otherwise disabled while in active state service or inactive duty as a member of the organized militia, he or she shall receive from the state of Washington just and reasonable relief in the amount to be determined as provided in this section, including necessary medical care. If the member dies from disease contracted or injury received or is killed while in active state service or inactive duty under order of the governor, then the dependents of the deceased shall receive such compensation as may be allowed as provided in this section. If the United States or any agent thereof, in accordance with any federal statute or regulation, furnishes monetary assistance, benefits, or other temporary or permanent relief to militia members or to their dependents for injuries arising out of and occurring in the course of their activities as militia members, but not including Social Security benefits, then the amount of compensation which any militia member or his or her dependents are otherwise entitled to receive from the state of Washington as provided in this section shall be reduced by the amount of monetary assistance, benefits, or other temporary or permanent relief the militia member or his or her dependents have received and will receive from the United States or any agent thereof as a result of his or her injury. All claims arising under this section shall be inquired into by a board of three officers, at least one being a medical officer, to be appointed by the adjutant general. The board has the same power to take evidence, administer oaths, issue subpoenas, compel witnesses to attend and testify and produce books and papers, and punish their failure to do so as is possessed by a general court martial. The amount of compensation or benefits payable shall conform as nearly as possible to the general schedule of payments and awards provided under the workers' compensation law in effect in the state of Washington at the time the disability or death occurred. The findings of the board shall be reviewed by the adjutant general and submitted to the governor for final approval. The reviewing officer or the governor may return the proceedings for revision or for the taking of further testimony. The action of the board when finally approved by the governor is final and conclusive and constitutes the fixed award for the injury or loss and is a debt of the state of Washington. [1989 c 19 § 47; 1987 c 185 § 5; 1984 c 198 § 5; 1943 c 130 § 40; Rem. Supp. 1943 § 8603-40.]

[Title 38 RCW—page 38]

Prior: 1923 c 49 § 3; 1917 c 107 § 38; 1909 c 134 § 60; 1895 c 108 § 92.]

**Intent—Severability—1987 c 185:** See notes following RCW 51.12.130.

*Workers' compensation: Title 51 RCW.*

**38.40.040 Interference with employment—Penalty.** A person, who either alone, or with another, wilfully deprives a member of the organized militia of Washington of his or her employment or prevents such member being employed, or obstructs or annoys said member or his or her employer in their trade, business or employment, because he or she is such member, or dissuades any person from enlisting in said organized militia by threat or injury to him or her in their employment, trade or business, in case he or she shall so enlist, shall be guilty of a gross misdemeanor and on conviction thereof shall be fined in a sum not exceeding five hundred dollars, or imprisonment in the county jail not more than six months, or by both such fine and imprisonment. [1989 c 19 § 48; 1943 c 130 § 46; Rem. Supp. 1943 § 8603-46. Prior: 1917 c 107 § 41; 1909 c 134 § 67; 1895 c 108 § 104, part.]

**38.40.050 Discharge from employment—Penalty.** No member of the organized militia of Washington shall be discharged by his or her employer by reason of the performance of any military duties upon which he or she may be ordered. When any member of the organized militia of Washington is ordered upon active state service or inactive duty which takes the member from his or her employment the member may apply upon the termination of such duty to be restored to his or her position and employment, and if the tour of duty shall have continued for a period not longer than three months, any employer or the officer or manager of any firm or corporation having authority to reemploy such member and failing to do so shall be guilty of a gross misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five hundred dollars, or imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment. [1989 c 19 § 49; 1943 c 130 § 48; Rem. Supp. 1943 § 8603-48. Prior: 1917 c 107 § 43; 1909 c 134 § 69; 1895 c 108 § 104, part.]

**38.40.060 Military leaves for public employees.** Every officer and employee of the state or of any county, city, or other political subdivision thereof who is a member of the Washington national guard or of the army, navy, air force, coast guard, or marine corps reserve of the United States, or of any organized reserve or armed forces of the United States shall be entitled to and shall be granted military leave of absence from such employment for a period not exceeding fifteen days during each year beginning October 1st and ending the following September 30th. Such leave shall be granted in order that the person may report for active duty, when called, or take part in active training duty in such manner and at such time as he or she may be ordered to active duty or active training duty. Such military leave of absence shall be in addition to any vacation or sick leave to which the officer or employee might otherwise be entitled, and shall not involve any loss of efficiency rating, privileges, or pay. During the period of military leave, the officer or employee shall

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receive from the state, or the county, city, or other political subdivision, his or her normal pay. [2001 c 71 § 1; 1991 c 25 § 1; 1989 c 19 § 50; 1957 c 236 § 1; 1939 c 113 § 1.]

**Effective date—2001 c 71:** "This act takes effect October 1, 2001." [2001 c 71 § 2.]

**Application—1991 c 25:** "This act applies to all public employees and officers who reported for active duty or active training duty, under RCW 38.40.060, on or after August 2, 1990." [1991 c 25 § 2.]

**38.40.100 Notice for duty.** Orders for duty may be oral or written. Officers and enlisted persons may be warned for duty as follows: Either by stating the substance of the order, or by reading the order to the person warned, or by delivering a copy of such order to such person, or by leaving a copy of such order at his or her last known place of abode or business, with some person of suitable age and discretion, or by sending a copy of such order or notice containing the substance thereof, to such person by mail, directed to his or her last known place of abode or business. Orders may be transmitted by telegraph or telephone. Such warning may be given by any officer or authorized enlisted person. The officer or enlisted person giving such warning shall, when required, make a return thereof, containing the names of persons warned and the time, place and manner of warning. Such returns shall be verified on oath and shall be prima facie evidence, on the trial of any person returned as a delinquent, of the facts therein stated. [1989 c 19 § 51; 1943 c 130 § 53; Rem. Supp. 1943 § 8603-53. Prior: 1909 c 134 § 65; 1895 c 108 § 102.]

**38.40.110 Employment or membership in other organizations—Discrimination prohibited—Penalty—Civil cause of action.** No club, society, association, corporation, employer, or organization shall by any constitution, rule, bylaws, resolution, vote or regulation, or otherwise, discriminate against or refuse to hire, employ, or reemploy any member of the organized militia of Washington because of his or her membership in said organized militia. Any person or persons, club, society, association, employer, corporation, or organization, violating or aiding, abetting, or assisting in the violation of any provision of this section shall be guilty of a misdemeanor and on conviction thereof shall be fined in any sum not exceeding one hundred dollars and in addition thereto shall forfeit the right to do business for a period of thirty days. Any person who has been discriminated against in violation of this section shall have a civil cause of action for damages. [1991 c 43 § 9; 1989 c 19 § 52; 1943 c 130 § 47; Rem. Supp. 1943 § 8603-47. Prior: 1917 c 107 § 42; 1909 c 134 § 68.]

**38.40.120 Authorized military organizations.** No organized body other than the recognized militia organizations of this state, armed forces of the United States, students of educational institutions where military science is a prescribed part of the course of instruction or bona fide veterans organizations shall associate themselves together as a military company or organize or parade in public with firearms: PROVIDED, That nothing herein shall be construed to prevent authorized parades by the organized militia of another state or armed forces of foreign countries. Any person participating in any such unauthorized organization shall be guilty of a misdemeanor. [1989 c 19 § 53; 1943 c 130 § 54; Rem.

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Supp. 1943 § 8603-54. Prior: 1909 c 249 § 294; 1903 c 135 § 1.]

**38.40.130 Corporations may be formed.** The officers, or the officers and enlisted persons of any regiment, battalion, company or similar unit of the organized militia of Washington, or the officers and enlisted persons of any two or more companies or similar units of the organized militia of the state of Washington, located at the same station, are hereby authorized to organize themselves into a corporation for social purposes and for the purpose of holding, acquiring and disposing of such property, real and personal, as such military organizations may possess or acquire. Such corporations shall not be required to pay any filing or license fee to the state.

The dissolution or disbandment of any such unit as a military organization shall not in itself terminate the existence of the corporation, but the existence of the same may continue for the period limited in its articles of incorporation for the benefit of such corporation.

Upon the dissolution or disbandment of any such unit which shall not have incorporated, and which shall at the time of such dissolution or disbandment possess any funds or property, the title to such funds or property shall immediately vest in the state of Washington, and the adjutant general shall take possession thereof and dispose of the same to the best interest of the organized militia of Washington. [1989 c 19 § 54; 1943 c 130 § 49; Rem. Supp. 1943 § 8603-49. Prior: 1923 c 49 § 4; 1917 c 107 § 44; 1915 c 19 § 1; 1909 c 134 § 71; 1895 c 108 §§ 123, 124.]

**38.40.150 Property to remain public property.** All property issued to organizations and members of the organized militia of Washington shall be and remain public property. [1943 c 130 § 38; Rem. Supp. 1943 § 8603-38. Prior: 1917 c 107 § 33; 1909 c 134 § 51; 1895 c 108 § 78.]

## Chapter 38.44 RCW

### ENROLLMENT OF PERSONS

#### Sections

38.44.010	Commander-in-chief may order enrollment.
38.44.020	Notice of enrollment.
38.44.030	Exemptions.
38.44.040	Penalties for dereliction or false certificate.
38.44.050	Compensation of enrolling officer.
38.44.060	Examination of records.

*Militia—Exemption from military duty: State Constitution Art. 10 § 6.*

**38.44.010 Commander-in-chief may order enrollment.** Whenever the commander-in-chief shall deem it necessary, in event of, or imminent danger of war, insurrection, rebellion, invasion, tumult, riot, resistance to law or process, breach of the peace, public disaster, or the imminent occurrence of any of these events, the commander-in-chief may order an enrollment by counties of all persons subject to military duty, designating the county assessor or some other person for each county to act as county enrolling officer. Each county enrolling officer may appoint such assistant or assistants as may be authorized by the commander-in-chief. In each county the enrollment shall include every sane able bod-

ied inhabitant not under sentence for a felony, who is more than eighteen and less than forty-five years of age. The enrollment shall be made in triplicate and shall state the name, residence, age, occupation and previous or existing military or naval service of each person enrolled. When complete the rolls shall be verified under oath by the enrolling officer, who shall immediately thereupon file one copy with the adjutant general of the state and another with the county auditor, retaining the third copy for himself or herself. [1989 c 19 § 55; 1973 1st ex.s. c 154 § 57; 1909 c 134 § 4; 1895 c 108 § 4; RRS § 8456.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**38.44.020 Notice of enrollment.** Persons making an enrollment under this chapter shall, at the time of making same, serve a notice of such enrollment upon each person enrolled, by delivering such notice to the enrollee personally or by leaving it with some person of suitable age and discretion at his or her place of business or residence, or by mailing such notice to him or her at the enrollee's last known place of residence, and shall make a return under oath of such service to accompany the copy of the enrollment filed with the adjutant general. The return shall be prima facie evidence of the facts therein. [1991 c 43 § 10; 1989 c 19 § 56; 1909 c 134 § 5; 1895 c 108 § 5; RRS § 8457.]

**38.44.030 Exemptions.** Whenever an enrollment shall have been ordered under this chapter, the commanding officers of existing organizations of militia, and the chiefs of all police and fire departments shall make and deliver to the enrolling officer of the county in which such organization and departments are stationed, verified lists in triplicate of the members of their respective commands and departments, and the enrolling officer shall mark "Exempt" opposite the names of all persons so listed, attaching one copy of each such list to each copy of the enrollment. The enrolling officer shall also mark "Exempt" opposite the names of all federal, state and county officers. All other persons claiming exemption must within fifteen days after service upon them of the notice of enrollment make a written verified claim in duplicate of such exemption and file the same in the office of the county auditor, who shall within five days thereafter forward one copy thereof with remarks and recommendations to the adjutant general. Upon the expiration of the time within which any claim of exemption may be filed and received by the adjutant general, the latter shall notify the county auditor of the decision in each case where exemption has been claimed, and the county auditor shall write upon the roll opposite the name of each person whose claim of exemption has been allowed by the adjutant general, the word "Exempt." All those on the roll not marked "Exempt" shall be subject to military duty. [1991 c 43 § 11; 1989 c 19 § 57; 1909 c 134 § 6; 1895 c 108 § 6, part; RRS § 8458.]

**38.44.040 Penalties for dereliction or false certificate.** If any officer or person, who becomes charged under this chapter with any duty relating to an enrollment of persons subject to military duty, refuses or neglects to perform the same within the time and substantially in the manner required by law, or if he or she shall knowingly make any false certifi-

cate, or if, when acting as county or assistant enrolling officer, he or she shall knowingly or willfully omit from the roll any person required by this chapter to be enrolled he or she shall thereby forfeit not less than one hundred nor more than five hundred dollars, to be sued for in the name of the state of Washington by the prosecuting attorney of the county in which such offense shall occur, the amount of the penalty to be determined by the court, and, when recovered, to be paid into the general fund of the state. [1991 c 43 § 12; 1989 c 19 § 58; 1909 c 134 § 7; RRS § 8459.]

**38.44.050 Compensation of enrolling officer.** Each county enrolling officer shall be allowed the sum of five cents per name enrolled and served with notice of enrollment by the enrolling officer or assistants, to be audited and paid as other military bills out of any moneys in the general fund appropriated to the military department, and from such allowance the enrolling officer must pay the assistant or assistants. [1991 c 43 § 13; 1989 c 19 § 59; 1909 c 134 § 8; RRS § 8460.]

**38.44.060 Examination of records.** All civil officers in each county, city and town shall allow persons authorized under this chapter to make enrollments, at all proper times, to examine their records and take copies thereof or information therefrom. It shall be the duty of every person, under the penalties provided in RCW 38.44.040, upon application of any person legally authorized to make an enrollment, truthfully to state all of the facts within his or her knowledge concerning any individual of whom the enroller shall make inquiry. In event of a violation of this section the enroller shall report the facts to the prosecuting attorney, who shall at once proceed to enforce the penalty. [1991 c 43 § 14; 1989 c 19 § 60; 1909 c 134 § 9; 1895 c 108 § 6, part; RRS § 8461.]

## Chapter 38.48 RCW

### STATE AND NATIONAL DEFENSE

#### Sections

38.48.050 Acceptance of national defense facilities act.

**Reviser's note:** The following acts, which appear to have been of limited duration, are omitted from RCW:

- (1) 1941 c 200, 1943 c 191; RRS §§ 8607-7 through 8607-15; Act in aid of national defense;
- (2) 1943 c 93; Authorizing sale or lease of tools and equipment to federal agencies;
- (3) 1943 c 200; Washington state war council; and
- (4) 1945 c 211; Armory drill pay for active state guard.

**38.48.050 Acceptance of national defense facilities act.** The legislature hereby expresses its intention to secure to this state the benefits of the act of congress entitled the "National Defense Facilities Act" (10 U.S.C. Sec. 2231, et seq., as amended), and the state military department shall be charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of congress for the acquisition, construction, expansion, rehabilitation or conversion of facilities necessary for the administration and training of units of the state military department and reserve components of the armed forces of the United States. The provisions of the said

act of congress are hereby accepted by this state and this state will observe and comply with the requirements thereof. [1989 c 19 § 61; 1953 c 181 § 1; 1953 c 277 § 4.]

**Chapter 38.52 RCW**

**EMERGENCY MANAGEMENT**

Sections

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*Hazardous materials incidents, handling and liability: RCW 70.136.010 through 70.136.070.*

**38.52.005 State military department to administer emergency management program—Local organizations authorized to change name.** The department shall administer the comprehensive emergency management program of the state of Washington as provided for in this chapter. All local organizations, organized and performing emergency management functions pursuant to RCW 38.52.070, may change their name and be called the . . . . . department/division of emergency management. [1995 c 391 § 1; 1986 c 266 § 22; 1984 c 38 § 1; 1972 ex.s. c 6 § 1.]

**Effective date—1995 c 391:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 391 § 18.]

**Transfer of powers and duties of department of emergency management and office of archaeology and historic preservation—Construction of statutory references:** "The department of emergency management and the office of archaeology and historic preservation are hereby abolished and their powers, duties, and functions are hereby transferred to the department of community development. All references to the director of emergency management or the department of emergency management and the office of archaeology and historic preservation in the Revised Code of Washington shall be construed to mean the director or department of community development." [1986 c 266 § 1.]

**Severability—1986 c 266:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 266 § 138.]

**38.52.010 Definitions.** As used in this chapter:

(1) "Emergency management" or "comprehensive emergency management" means the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards,

whether natural, technological, or human caused, and to provide support for search and rescue operations for persons and property in distress. However, "emergency management" or "comprehensive emergency management" does not mean preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

(2) "Local organization for emergency services or management" means an organization created in accordance with the provisions of this chapter by state or local authority to perform local emergency management functions.

(3) "Political subdivision" means any county, city or town.

(4) "Emergency worker" means any person, including but not limited to an architect registered under chapter 18.08 RCW or a professional engineer registered under chapter 18.43 RCW, who is registered with a local emergency management organization or the department and holds an identification card issued by the local emergency management director or the department for the purpose of engaging in authorized emergency management activities or is an employee of the state of Washington or any political subdivision thereof who is called upon to perform emergency management activities.

(5) "Injury" as used in this chapter shall mean and include accidental injuries and/or occupational diseases arising out of emergency management activities.

(6)(a) "Emergency or disaster" as used in all sections of this chapter except RCW 38.52.430 shall mean an event or set of circumstances which: (I) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, or (ii) reaches such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.

(b) "Emergency" as used in RCW 38.52.430 means an incident that requires a normal police, coroner, fire, rescue, emergency medical services, or utility response as a result of a violation of one of the statutes enumerated in RCW 38.52.430.

(7) "Search and rescue" means the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person who becomes lost, injured, or is killed while outdoors or as a result of a natural, technological, or human caused disaster, including instances involving searches for downed aircraft when ground personnel are used. Nothing in this section shall affect appropriate activity by the department of transportation under chapter 47.68 RCW.

(8) "Executive head" and "executive heads" means the county executive in those charter counties with an elective office of county executive, however designated, and, in the case of other counties, the county legislative authority. In the case of cities and towns, it means the mayor in those cities and towns with mayor-council or commission forms of government, where the mayor is directly elected, and it means the city manager in those cities and towns with council manager forms of government. Cities and towns may also designate an executive head for the purposes of this chapter by ordinance.

(9) "Director" means the adjutant general.

(10) "Local director" means the director of a local organization of emergency management or emergency services.

(11) "Department" means the state military department.

(12) "Emergency response" as used in RCW 38.52.430 means a public agency's use of emergency services during an emergency or disaster as defined in subsection (6)(b) of this section.

(13) "Expense of an emergency response" as used in RCW 38.52.430 means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, but shall only include those costs directly arising from the response to the particular incident. Reasonable costs shall include the costs of providing police, coroner, fire fighting, rescue, emergency medical services, or utility response at the scene of the incident, as well as the salaries of the personnel responding to the incident.

(14) "Public agency" means the state, and a city, county, municipal corporation, district, town, or public authority located, in whole or in part, within this state which provides or may provide fire fighting, police, ambulance, medical, or other emergency services.

(15) "Incident command system" means: (a) An all-hazards, on-scene functional management system that establishes common standards in organization, terminology, and procedures; provides a means (unified command) for the establishment of a common set of incident objectives and strategies during multiagency/multijurisdiction operations while maintaining individual agency/jurisdiction authority, responsibility, and accountability; and is a component of the national interagency incident management system; or (b) an equivalent and compatible all-hazards, on-scene functional management system.

(16) "Radio communications service company" has the meaning ascribed to it in RCW 82.14B.020. [2002 c 341 § 2; 1997 c 49 § 1; 1995 c 391 § 2. Prior: 1993 c 251 § 5; 1993 c 206 § 1; 1986 c 266 § 23; 1984 c 38 § 2; 1979 ex.s. c 268 § 1; 1975 1st ex.s. c 113 § 1; 1974 ex.s. c 171 § 4; 1967 c 203 § 1; 1953 c 223 § 2; 1951 c 178 § 3.]

**Severability—Effective date—2002 c 341:** See notes following RCW 38.52.501.

**Effective date—1995 c 391:** See note following RCW 38.52.005.

**Finding—Intent—1993 c 251:** See note following RCW 38.52.430.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.020 Declaration of policy and purpose.** (1) Because of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destructiveness as defined in RCW 38.52.010(6), and in order to insure that preparations of this state will be adequate to deal with such disasters, to insure the administration of state and federal programs providing disaster relief to individuals, and further to insure adequate support for search and rescue operations, and generally to protect the public peace, health, and safety, and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary:

(a) To provide for emergency management by the state, and to authorize the creation of local organizations for emergency management in the political subdivisions of the state;

(b) To confer upon the governor and upon the executive heads of the political subdivisions of the state the emergency powers provided herein;

(c) To provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to cooperate with the federal government with respect to the carrying out of emergency management functions;

(d) To provide a means of compensating emergency management workers who may suffer any injury, as herein defined, or death; who suffer economic harm including personal property damage or loss; or who incur expenses for transportation, telephone or other methods of communication, and the use of personal supplies as a result of participation in emergency management activities; and

(e) To provide programs, with intergovernmental cooperation, to educate and train the public to be prepared for emergencies.

(2) It is further declared to be the purpose of this chapter and the policy of the state that all emergency management functions of this state and its political subdivisions be coordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies of other states and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster that may occur. [1986 c 266 § 24; 1984 c 38 § 3; 1979 ex.s. c 268 § 2; 1975 1st ex.s. c 113 § 2; 1974 ex.s. c 171 § 5; 1967 c 203 § 2; 1953 c 223 § 1; 1951 c 178 § 2.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.030 Director—Comprehensive emergency management plan—Statewide enhanced 911 emergency communications network—State coordinator of search and rescue operations—State program for emergency assistance—State coordinator for radioactive and hazardous waste emergency response programs.** (1) The director may employ such personnel and may make such expenditures within the appropriation therefor, or from other funds made available for purposes of emergency management, as may be necessary to carry out the purposes of this chapter.

(2) The director, subject to the direction and control of the governor, shall be responsible to the governor for carrying out the program for emergency management of this state. The director shall coordinate the activities of all organizations for emergency management within the state, and shall maintain liaison with and cooperate with emergency management agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this chapter, as may be prescribed by the governor.

(3) The director shall develop and maintain a comprehensive, all-hazard emergency plan for the state which shall include an analysis of the natural, technological, or human caused hazards which could affect the state of Washington, and shall include the procedures to be used during emergencies for coordinating local resources, as necessary, and the resources of all state agencies, departments, commissions, and boards. The comprehensive emergency management plan shall direct the department in times of state emergency to administer and manage the state's emergency operations center. This will include representation from all appropriate

state agencies and be available as a single point of contact for the authorizing of state resources or actions, including emergency permits. The comprehensive emergency management plan must specify the use of the incident command system for multiagency/multijurisdiction operations. The comprehensive, all-hazard emergency plan authorized under this subsection may not include preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack. This plan shall be known as the comprehensive emergency management plan.

(4) In accordance with the comprehensive emergency management plans and the programs for the emergency management of this state, the director shall procure supplies and equipment, institute training programs and public information programs, and shall take all other preparatory steps, including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need.

(5) The director shall make such studies and surveys of the industries, resources, and facilities in this state as may be necessary to ascertain the capabilities of the state for emergency management, and shall plan for the most efficient emergency use thereof.

(6) The emergency management council shall advise the director on all aspects of the communications and warning systems and facilities operated or controlled under the provisions of this chapter.

(7) The director, through the state enhanced 911 coordinator, shall coordinate and facilitate implementation and operation of a statewide enhanced 911 emergency communications network.

(8) The director shall appoint a state coordinator of search and rescue operations to coordinate those state resources, services and facilities (other than those for which the state director of aeronautics is directly responsible) requested by political subdivisions in support of search and rescue operations, and on request to maintain liaison with and coordinate the resources, services, and facilities of political subdivisions when more than one political subdivision is engaged in joint search and rescue operations.

(9) The director, subject to the direction and control of the governor, shall prepare and administer a state program for emergency assistance to individuals within the state who are victims of a natural, technological, or human caused disaster, as defined by RCW 38.52.010(6). Such program may be integrated into and coordinated with disaster assistance plans and programs of the federal government which provide to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of assistance to individuals affected by a disaster. Further, such program may include, but shall not be limited to, grants, loans, or gifts of services, equipment, supplies, materials, or funds of the state, or any political subdivision thereof, to individuals who, as a result of a disaster, are in need of assistance and who meet standards of eligibility for disaster assistance established by the department of social and health services: PROVIDED, HOWEVER, That nothing herein shall be construed in any manner inconsistent with the provisions of Article VIII, section 5 or section 7 of the Washington state Constitution.

(10) The director shall appoint a state coordinator for radioactive and hazardous waste emergency response programs. The coordinator shall consult with the state radiation control officer in matters relating to radioactive materials. The duties of the state coordinator for radioactive and hazardous waste emergency response programs shall include:

(a) Assessing the current needs and capabilities of state and local radioactive and hazardous waste emergency response teams on an ongoing basis;

(b) Coordinating training programs for state and local officials for the purpose of updating skills relating to emergency mitigation, preparedness, response, and recovery;

(c) Utilizing appropriate training programs such as those offered by the federal emergency management agency, the department of transportation and the environmental protection agency; and

(d) Undertaking other duties in this area that are deemed appropriate by the director. [1997 c 49 § 2; 1995 c 269 § 1201. Prior: 1991 c 322 § 20; 1991 c 54 § 2; 1986 c 266 § 25; 1984 c 38 § 4; 1975 1st ex.s. c 113 § 3; 1973 1st ex.s. c 154 § 58; 1967 c 203 § 3; 1951 c 178 § 4.]

**Effective date—1995 c 269:** See note following RCW 9.94A.850.

**Part headings not law—Severability—1995 c 269:** See notes following RCW 13.40.005.

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.

**Referral to electorate—1991 c 54:** "Sections 1 through 6 and 9 through 16 of this act shall be submitted to the people for their adoption and ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof. The ballot title for this act shall be: "Shall enhanced 911 emergency telephone dialing be provided throughout the state and be funded by a tax on telephone lines?" [1991 c 54 § 17.]

**Reviser's note:** "This act," chapter 54, Laws of 1991, was adopted and ratified by the people at the November 5, 1991, general election (Referendum Bill No. 42).

**Severability—1986 c 266:** See note following RCW 38.52.005.

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

*Hazardous and radioactive wastes: Chapters 70.98, 70.99, 70.105, 70.136 RCW.*

**38.52.037 Comprehensive state mine rescue plan—Submittal to legislature.** The department shall consult with appropriate local, state, federal, and private sector officials in developing a comprehensive state mine rescue plan. The plan shall identify mine rescue resources, set forth a framework for a coordinated response to mine rescue emergencies, identify shortfalls, and recommend solutions.

The draft of the comprehensive state mine rescue plan and a schedule for submittal of the final plan shall be submitted to the legislature on January 13, 1986. [1986 c 266 § 26; 1985 c 459 § 6.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**Severability—1985 c 459:** See note following RCW 79.14.510.

**38.52.040 Emergency management council—Members—Ad hoc committees—Function as state emergency response commission—Rules review.** (1) There is hereby created the emergency management council (hereinafter called the council), to consist of not more than seventeen members who shall be appointed by the governor. The membership of the council shall include, but not be limited to, rep-

resentatives of city and county governments, sheriffs and police chiefs, the Washington state patrol, the military department, the department of ecology, state and local fire chiefs, seismic safety experts, state and local emergency management directors, search and rescue volunteers, medical professions who have expertise in emergency medical care, building officials, and private industry. The representatives of private industry shall include persons knowledgeable in emergency and hazardous materials management. The council members shall elect a chairman from within the council membership. The members of the council shall serve without compensation, but may be reimbursed for their travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(2) The emergency management council shall advise the governor and the director on all matters pertaining to state and local emergency management. The council may appoint such ad hoc committees, subcommittees, and working groups as are required to develop specific recommendations for the improvement of emergency management practices, standards, policies, or procedures. The council shall ensure that the governor receives an annual assessment of statewide emergency preparedness including, but not limited to, specific progress on hazard mitigation and reduction efforts, implementation of seismic safety improvements, reduction of flood hazards, and coordination of hazardous materials planning and response activities. The council or a subcommittee thereof shall periodically convene in special session and serve during those sessions as the state emergency response commission required by P.L. 99-499, the emergency planning and community right-to-know act. When sitting in session as the state emergency response commission, the council shall confine its deliberations to those items specified in federal statutes and state administrative rules governing the coordination of hazardous materials policy. The council shall review administrative rules governing state and local emergency management practices and recommend necessary revisions to the director. [1995 c 269 § 1202; 1988 c 81 § 18; 1984 c 38 § 5; 1979 ex.s. c 57 § 8; 1975-'76 2nd ex.s. c 34 § 82; 1974 ex.s. c 171 § 6; 1951 c 178 § 5.]

**Effective date—1995 c 269:** See note following RCW 9.94A.850.

**Part headings not law—Severability—1995 c 269:** See notes following RCW 13.40.005.

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**38.52.050 Governor's general powers and duties.** (1) The governor, through the director, shall have general supervision and control of the emergency management functions in the department, and shall be responsible for the carrying out of the provisions of this chapter, and in the event of disaster beyond local control, may assume direct operational control over all or any part of the emergency management functions within this state.

(2) In performing his or her duties under this chapter, the governor is authorized to cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of this state and of the nation.

(3) In performing his or her duties under this chapter and to effect its policy and purpose, the governor is further authorized and empowered:

(a) To make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of this chapter within the limits of the authority conferred upon him herein, with due consideration of the plans of the federal government;

(b) On behalf of this state, to enter into mutual aid arrangements with other states and territories, or provinces of the Dominion of Canada and to coordinate mutual aid inter-local agreements between political subdivisions of this state;

(c) To delegate any administrative authority vested in him under this chapter, and to provide for the subdelegation of any such authority;

(d) To appoint, with the advice of local authorities, metropolitan or regional area coordinators, or both, when practicable;

(e) To cooperate with the president and the heads of the armed forces, the emergency management agency of the United States, and other appropriate federal officers and agencies, and with the officers and agencies of other states in matters pertaining to the emergency management of the state and nation. [1997 c 49 § 3; 1986 c 266 § 27; 1984 c 38 § 6; 1974 ex.s. c 171 § 7; 1951 c 178 § 6.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.070 Local organizations and joint local organizations authorized—Establishment, operation—Emergency powers, procedures.** (1) Each political subdivision of this state is hereby authorized and directed to establish a local organization or to be a member of a joint local organization for emergency management in accordance with the state comprehensive emergency management plan and program: PROVIDED, That a political subdivision proposing such establishment shall submit its plan and program for emergency management to the state director and secure his or her recommendations thereon, and verification of consistency with the state comprehensive emergency management plan, in order that the plan of the local organization for emergency management may be coordinated with the plan and program of the state. Local comprehensive emergency management plans must specify the use of the incident command system for multiagency/multijurisdiction operations. No political subdivision may be required to include in its plan provisions for the emergency evacuation or relocation of residents in anticipation of nuclear attack. If the director's recommendations are adverse to the plan as submitted, and, if the local organization does not agree to the director's recommendations for modification to the proposal, the matter shall be referred to the council for final action. The director may authorize two or more political subdivisions to join in the establishment and operation of a joint local organization for emergency management as circumstances may warrant, in which case each political subdivision shall contribute to the cost of emergency management upon such fair and equitable basis as may be determined upon by the executive heads of the constituent subdivisions. If in any case the executive heads cannot agree upon the proper division of cost the matter shall be referred to the council for arbitration and its deci-

sion shall be final. When two or more political subdivisions join in the establishment and operation of a joint local organization for emergency management each shall pay its share of the cost into a special pooled fund to be administered by the treasurer of the most populous subdivision, which fund shall be known as the . . . . emergency management fund. Each local organization or joint local organization for emergency management shall have a director who shall be appointed by the executive head of the political subdivision, and who shall have direct responsibility for the organization, administration, and operation of such local organization for emergency management, subject to the direction and control of such executive officer or officers. In the case of a joint local organization for emergency management, the director shall be appointed by the joint action of the executive heads of the constituent political subdivisions. Each local organization or joint local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this chapter.

(2) In carrying out the provisions of this chapter each political subdivision, in which any disaster as described in RCW 38.52.020 occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested under this section in the light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to, budget law limitations, requirements of competitive bidding and publication of notices, provisions pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditures of public funds. [1997 c 49 § 4; 1986 c 266 § 28; 1984 c 38 § 7; 1974 ex.s. c 171 § 9; 1951 c 178 § 8.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.080 Outside aid—Rights and liabilities—Claims.** (1) Whenever the employees of any political subdivision are rendering outside aid pursuant to the authority contained in RCW 38.52.070 such employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivisions in which they are normally employed.

(2) The political subdivision in which any equipment is used pursuant to this section shall be liable for any loss or damage thereto and shall pay any expense incurred in the operation and maintenance thereof. No claim for such loss, damage, or expense shall be allowed unless, within sixty days after the same is sustained or incurred, an itemized notice of such claim under oath is served by mail or otherwise upon the executive head of such political subdivision where the equipment was used. The term "employee" as used in this section

shall mean, and the provisions of this section shall apply with equal effect to, volunteer auxiliary employees, and emergency workers.

(3) The foregoing rights, privileges, and obligations shall also apply in the event such aid is rendered outside the state, provided that payment or reimbursement in such case shall or may be made by the state or political subdivision receiving such aid pursuant to a reciprocal mutual aid agreement or compact with such state or by the federal government. [1984 c 38 § 8; 1974 ex.s. c 171 § 10; 1951 c 178 § 9.]

**38.52.091 Mutual aid and interlocal agreements—Requirements.** (1) The director of each local organization for emergency management may, in collaboration with other public and private agencies within this state, develop or cause to be developed mutual aid arrangements for reciprocal emergency management aid and assistance in case of disaster too great to be dealt with unassisted. Such arrangements must be consistent with the state emergency management plan and program, and in time of emergency it is the duty of each local organization for emergency management to render assistance in accordance with the provisions of such mutual aid arrangements. The adjutant general shall maintain and distribute a mutual aid and interlocal agreement handbook.

(2) The adjutant general and the director of each local organization for emergency management may, subject to the approval of the governor, enter into mutual aid arrangements with emergency management agencies or organizations in other states for reciprocal emergency management aid and assistance in case of disaster too great to be dealt with unassisted. All such arrangements must contain the language and provisions in subsection (3) of this section.

(3) Mutual aid and interlocal agreements must include the following:

#### Purpose

The purpose must state the reason the mutual aid or interlocal agreement or compact is coordinated, the parties to the agreement or compact, and the assistance to be provided.

#### Authorization

Article I, section 10 of the Constitution of the United States permits a state to enter into an agreement or compact with another state, subject to the consent of Congress. Congress, through enactment of Title 50 U.S.C. Sections 2281(g), 2283 and the Executive Department, by issuance of Executive Orders No. 10186 of December 1, 1950, encourages the states to enter into emergency, disaster and civil defense mutual aid agreements or pacts.

#### Implementation

The conditions that guide the agreement or compacts may include, but are not limited to:

(a) A statement of which authority or authorities are authorized to request and receive assistance and the conditions that must exist for the request or receipt of assistance.

(b) A statement of how the requests for assistance may be made, what documentation of the request is required, the specifics of any details included in the request, and the required approval for the request.

(c) A statement of the direction and control relationship between the personnel and equipment provided by the jurisdiction to the requester and the requirements of the requester to coordinate the activities of the jurisdiction providing the assets.

(d) A statement of the circumstances by which the assisting jurisdiction may withdraw support from the requester and the method by which this is to be communicated.

#### General Fiscal Provisions

The terms of reimbursement must be stated defining the relationship between the requesting jurisdiction and the aiding jurisdiction, when reimbursement will be made, and details of the claim for reimbursement. The provisions may include statements that discuss but are not limited to:

(a) A statement of what costs are incurred by the requesting jurisdiction.

(b) A statement of what costs and compensation benefits are made to individuals from the aiding jurisdiction by the requesting jurisdiction.

#### Privileges and Immunities

The conditions and immunities that are enjoyed by the individuals from the aiding jurisdiction to the requesting jurisdiction must be stated. These provisions may include but are not limited to:

(a) A statement of the privileges and immunities from liability and the law an employee of a supporting jurisdiction enjoys while supporting the requesting jurisdiction.

(b) A statement of the privileges and immunities from liability and the law a volunteer from a supporting jurisdiction enjoys while supporting the requesting jurisdiction.

(c) A statement on the use of the national guard between the requesting and supporting jurisdictions.

(d) A hold harmless agreement between the signatory jurisdictions.

(e) The precedence this agreement takes with existing agreements.

(f) A time line by which information required by the agreement is exchanged and updated annually.

(g) The time in which the agreement becomes effective.

(h) The time and conditions when a signatory may withdraw and render the agreement ineffective. [1997 c 195 § 1.]

**38.52.100 Appropriations—Acceptance of funds, services, etc.** (1) Each political subdivision shall have the power to make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such political subdivision for the payment of expenses of its local organization for emergency management.

(2) Whenever the federal government or any agency or officer thereof shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of emergency management, the state, acting through the governor, or such political subdivision, acting with the consent of the governor and through its executive head, may accept such offer and upon such acceptance the governor of the state or executive head of such political subdivision may authorize any officer of the state or of the polit-

ical subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(3) Whenever any person, firm, or corporation shall offer to the state or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for the purposes of emergency management, the state, acting through the governor, or such political subdivision, acting through its executive head, may accept such offer and upon such acceptance the governor of the state or executive head of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer. [1984 c 38 § 10; 1974 ex.s. c 171 § 12; 1951 c 178 § 12.]

**38.52.105 Disaster response account.** The disaster response account is created in the state treasury. Moneys may be placed in the account from legislative appropriations and transfers, federal appropriations, or any other lawful source. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for support of state agency and local government disaster response and recovery efforts. During the 2001-03 biennium, funds from the account may also be used for costs associated with national security preparedness activities. [2002 c 371 § 903; 1997 c 251 § 1.]

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Effective date—1997 c 251:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 1997]." [1997 c 251 § 2.]

**38.52.106 Nisqually earthquake account.** The Nisqually earthquake account is created in the state treasury. Moneys may be placed in the account from tax revenues, budget transfers or appropriations, federal appropriations, gifts, or any other lawful source. Moneys in the account may be spent only after appropriation. Moneys in the account shall be used only to support state and local government disaster response and recovery efforts associated with the Nisqually earthquake. During the 2003-2005 fiscal biennium, the legislature may transfer moneys from the Nisqually earthquake account to the disaster response account for fire suppression and mobilization costs. [2003 1st sp.s. c 25 § 913; 2002 c 371 § 904; 2001 c 5 § 2.]

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Nisqually earthquake emergency declaration—2001 c 5:** "The legislature declares an emergency caused by a natural disaster, known as the Nisqually earthquake, which occurred on February 28, 2001, as proclaimed by the governor and the president of the United States." [2001 c 5 § 1.]

**Effective date—2001 c 5:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2001]." [2001 c 5 § 6.]

(2004 Ed.)

**38.52.110 Use of existing services and facilities—Impressment of citizenry.** (1) In carrying out the provisions of this chapter, the governor and the executive heads of the political subdivisions of the state are directed to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the state, political subdivisions, and all other municipal corporations thereof including but not limited to districts and quasi municipal corporations organized under the laws of the state of Washington to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and facilities to the governor and to the emergency management organizations of the state upon request notwithstanding any other provision of law.

(2) The governor, the chief executive of counties, cities and towns and the emergency management directors of local political subdivisions appointed in accordance with this chapter, in the event of a disaster, after proclamation by the governor of the existence of such disaster, shall have the power to command the service and equipment of as many citizens as considered necessary in the light of the disaster proclaimed: PROVIDED, That citizens so commandeered shall be entitled during the period of such service to all privileges, benefits and immunities as are provided by this chapter and federal and state emergency management regulations for registered emergency workers. [1984 c 38 § 11; 1974 ex.s. c 171 § 13; 1971 ex.s. c 8 § 1; 1955 c 210 § 1; 1951 c 178 § 13.]

**38.52.120 Political activity prohibited.** No organization for emergency management established under the authority of this chapter shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes. [1984 c 38 § 12; 1974 ex.s. c 171 § 14; 1951 c 178 § 14.]

**38.52.140 Status of civil service employee preserved.** Any civil service employee of the state of Washington or of any political subdivision thereof while on leave of absence and on duty with any emergency management agency authorized under the provisions of this chapter shall be preserved in his civil service status as to seniority and retirement rights so long as he regularly continues to make the usual contributions incident to the retention of such beneficial rights as if he were not on leave of absence. [1984 c 38 § 13; 1974 ex.s. c 171 § 16; 1951 c 178 § 16.]

**38.52.150 Orders, rules, regulations—Enforcement—Availability—Penalty.** (1) It shall be the duty of every organization for emergency management established pursuant to this chapter and of the officers thereof to execute and enforce such orders, rules, and regulations as may be made by the governor under authority of this chapter. Each such organization shall have available for inspection at its office all orders, rules, and regulations made by the governor, or under his or her authority.

(2)(a) Except as provided in (b) of this subsection, every violation of any rule, regulation, or order issued under the authority of this chapter is a misdemeanor.

(b) A second offense hereunder the same is a gross misdemeanor. [2003 c 53 § 211; 1984 c 38 § 14; 1974 ex.s. c 171 § 17; 1951 c 178 § 18.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**38.52.160 Matching funds from political subdivision may be required.** The emergency management agency is hereby authorized to require of any political subdivision to which funds are allocated under this chapter for any project, use or activity that such subdivision shall provide matching funds in equal amounts with respect to such project, use or activity. [1984 c 38 § 15; 1974 ex.s. c 171 § 18; 1951 c 178 § 19.]

**38.52.170 Plan for federal area.** Whenever the director finds that it will be in the interest of the emergency management of this state or of the United States, the director may, with the approval of the governor, agree with the federal government, or any agency thereof carrying on activities within this state, upon a plan of emergency management applicable to a federally owned area, which plan may or may not conform to all of the other provisions of this chapter with the view to integrating federally owned areas into the comprehensive plan and program of the emergency management of this state. Such plan may confer upon persons carrying out such plan any or all of the rights, powers, privileges and immunities granted employees or representatives of the state and/or its political subdivisions by this chapter. The plan of emergency management authorized under this section may not include preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack. [1986 c 266 § 30; 1984 c 38 § 16; 1974 ex.s. c 171 § 19; 1951 c 178 § 20.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.180 Liability for property damage, bodily injury, death—Immunity—Assumption by state—Indemnification.** (1) There shall be no liability on the part of anyone including any person, partnership, corporation, the state of Washington or any political subdivision thereof who owns or maintains any building or premises which have been designated by a local organization for emergency management as a shelter from destructive operations or attacks by enemies of the United States for any injuries sustained by any person while in or upon said building or premises, as a result of the condition of said building or premises or as a result of any act or omission, or in any way arising from the designation of such premises as a shelter, when such person has entered or gone upon or into said building or premises for the purpose of seeking refuge therein during destructive operations or attacks by enemies of the United States or during tests ordered by lawful authority, except for an act of wilful negligence by such owner or occupant or his servants, agents, or employees.

(2) All legal liability for damage to property or injury or death to persons (except an emergency worker, regularly enrolled and acting as such), caused by acts done, or attempted, under the color of this chapter in a bona fide attempt to comply therewith shall be the obligation of the state of Washington. Suits may be instituted and maintained

against the state for the enforcement of such liability, or for the indemnification of persons appointed and regularly enrolled as emergency workers while actually engaged in emergency management duties, or as members of any agency of the state or political subdivision thereof engaged in emergency management activity, or their dependents, for damage done to their private property, or for any judgment against them for acts done in good faith in compliance with this chapter: PROVIDED, That the foregoing shall not be construed to result in indemnification in any case of wilful misconduct, gross negligence or bad faith on the part of any agent of emergency management: PROVIDED, That should the United States or any agency thereof, in accordance with any federal statute, rule or regulation, provide for the payment of damages to property and/or for death or injury as provided for in this section, then and in that event there shall be no liability or obligation whatsoever upon the part of the state of Washington for any such damage, death, or injury for which the United States government assumes liability.

(3) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency worker who shall, in the course of performing his duties as such, practice such professional, mechanical or other skill during an emergency described in this chapter.

(4) The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the workers' compensation law, or under any pension or retirement law, nor the right of any such person to receive any benefits or compensation under any act of congress. [1987 c 185 § 7; 1984 c 38 § 17; 1974 ex.s. c 171 § 20; 1971 ex.s. c 8 § 2; 1953 c 145 § 1; 1951 c 178 § 11.]

**Intent—Severability—1987 c 185:** See notes following RCW 51.12.130.

**38.52.190 Compensation for injury or death—Chapter exclusive.** Except as provided in this chapter, an emergency worker and his dependents shall have no right to receive compensation from the state, from the agency, from the local organization for emergency management with which he is registered, or from the county or city which has empowered the local organization for emergency management to register him and direct his activities, for an injury or death arising out of and occurring in the course of his activities as an emergency worker. [1984 c 38 § 18; 1974 ex.s. c 171 § 21; 1953 c 223 § 3.]

**38.52.195 Exemption from liability while providing construction, equipment or work.** Notwithstanding any other provision of law, no person, firm, corporation, or other entity acting under the direction or control of the proper authority to provide construction, equipment, or work as provided for in RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220 and 38.52.390 while complying with or attempting to comply with RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220 and 38.52.390 or any rule or regulation promulgated pursuant to the provisions of RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220 and 38.52.390 shall be liable for the death of or any injury to persons or damage to property as a result of any such activity: PROVIDED, That

said exemption shall only apply where all of the following conditions occur:

(1) Where, at the time of the incident the worker is performing services as an emergency worker, and is acting within the course of his duties as an emergency worker;

(2) Where, at the time of the injury, loss, or damage, the organization for emergency management which the worker is assisting is an approved organization for emergency management;

(3) Where the injury, loss, or damage is proximately caused by his service either with or without negligence as an emergency worker;

(4) Where the injury, loss, or damage is not caused by the intoxication of the worker; and

(5) Where the injury, loss, or damage is not due to wilful misconduct or gross negligence on the part of a worker. [1984 c 38 § 19; 1974 ex.s. c 171 § 22; 1971 ex.s. c 8 § 7.]

**38.52.1951 Application of exemption from liability for architects and engineers.** For purposes of the liability of an architect or engineer serving as a volunteer emergency worker, the exemption from liability provided under RCW 38.52.195 extends to all damages, so long as the conditions specified in RCW 38.52.195 (1) through (5) occur. [1993 c 206 § 2.]

**38.52.198 Emergency care, rescue, assistance, or recovery services in mine rescue or recovery work—Immunity from liability.** No person engaged in mine rescue or recovery work who, in good faith, renders emergency care, rescue, assistance, or recovery services at the scene of any emergency at or in a mine in this state or who employs, sponsors, or represents any person rendering emergency care, rescue, assistance, or recovery services shall be liable for any civil damages as a result of any act or omission by any person in rendering emergency care, rescue, assistance, or recovery service. [1985 c 459 § 9.]

**Severability—1985 c 459:** See note following RCW 79.14.510.

**38.52.200 Liability for compensation is in lieu of other liability—Exception.** Liability for the compensation provided by this chapter, as limited by the provisions thereof, is in lieu of any other liability whatsoever to an emergency worker or his dependents or any other person on the part of the state, the agency, the local organization for emergency management with which the emergency worker is registered, and the county or city which has empowered the local organization for emergency management to register him and direct his activities, for injury or death arising out of and in the course of his activities while on duty as an emergency worker: PROVIDED, That nothing in this chapter shall limit or bar the liability of the state or its political subdivisions engaged in proprietary functions as distinguished from governmental functions that may exist by reason of injury or death sustained by an emergency worker. [1984 c 38 § 20; 1974 ex.s. c 171 § 23; 1953 c 223 § 9.]

**38.52.205 Claims arising from emergency management related activities—Filing—Contents.** All claims against the state for property damages or indemnification

therefor arising from emergency management related activities will be presented to and filed with the director of financial management. Contents of all such claims shall conform to the tort claim filing requirements found in RCW 4.92.100 as now or hereafter amended. [1984 c 38 § 21; 1979 c 151 § 43; 1977 ex.s. c 144 § 6; 1974 ex.s. c 171 § 24; 1971 ex.s. c 8 § 4.]

**38.52.207 Claims arising from emergency management related activities—Filing—Consideration, adjustment, settlement, etc., by director—Effect.** The director, with the approval of the attorney general, may consider, ascertain, adjust, determine, compromise and settle property loss or damage claims arising out of conduct or circumstances for which the state of Washington would be liable in law for money damages of two thousand dollars or less. The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant; and upon the state of Washington, unless procured by fraud, and shall constitute a complete release of any claim against the state of Washington. A request for administrative settlement shall not preclude a claimant from filing court action pending administrative determination, or limit the amount recoverable in such a suit, or constitute an admission against interest of either the claimant or the state. [1986 c 266 § 31; 1984 c 38 § 22; 1974 ex.s. c 171 § 25; 1971 ex.s. c 8 § 5.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.210 Compensation boards—Established.** (1) In each local organization for emergency management established by the legislative authority of the county in accordance with the provisions of RCW 38.52.070, there is hereby created and established a compensation board for the processing of claims as provided in this chapter. The compensation board shall be composed of: (a) The county executive if the county has an elected county executive or, if it does not, one member of the county legislative authority selected by the authority. The executive or the member will serve as the chair of the compensation board; (b) the county director of emergency services; (c) the prosecuting attorney; (d) the emergency services coordinator for medical and health services; and (e) the county auditor who will serve as secretary of the compensation board.

(2) In each local organization for emergency management established by cities and towns in accordance with RCW 38.52.070, there is hereby created and established a compensation board for the processing of claims as provided in this chapter. The compensation board shall be composed of the mayor; the city director of emergency management; one councilmember or commissioner selected by the council or the commission; the city attorney or corporation counsel; and the local coordinator of medical and health services. The councilmember or commissioner so selected shall serve as the chair of the compensation board and the city director of emergency management shall serve as secretary of the board. [1986 c 266 § 32; 1984 c 38 § 23; 1981 c 213 § 6; 1974 ex.s. c 171 § 26; 1953 c 223 § 4.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.220 Compensation boards—Meetings—Claims not necessitating board meeting.** Said compensation board shall meet on the call of its chairman on a regular monthly meeting day when there is business to come before it. The chairman shall be required to call a meeting on any monthly meeting day when any claim for compensation under this chapter has been submitted to the board: PROVIDED, That as to claims involving amounts of two thousand dollars or less, the local organization director shall submit recommendations directly to the state without convening a compensation board. [1984 c 38 § 24; 1971 ex.s. c 8 § 3; 1953 c 223 § 5.]

**38.52.230 Compensation boards—Attendance of witnesses, oaths, rules—Members uncompensated.** The compensation board, in addition to other powers herein granted, shall have the power to compel the attendance of witnesses to testify before it on all matters connected with the operation of this chapter and its chairman or any member of said board may administer oath to such witnesses; to make all necessary rules and regulations for its guidance in conformity with the provisions of this chapter: PROVIDED, HOWEVER, That no compensation or emoluments shall be paid to any member of said board for any duties performed as a member of said compensation board. [1953 c 223 § 6.]

**38.52.240 Compensation boards—Duties as to compensation applications.** The compensation board shall hear and decide all applications for compensation under this chapter. The board shall submit its recommendations to the director on such forms as he or she may prescribe. In case the decision of the director is different from the recommendation of the compensation board, the matter shall be submitted to the state emergency management council for action. [1986 c 266 § 33; 1984 c 38 § 25; 1974 ex.s. c 171 § 27; 1953 c 223 § 7.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.250 Compensation boards—Quorum—Transmittal of minutes, claims—Appeal to department.** A majority of the compensation board shall constitute a quorum, and no business shall be transacted when a majority is not present, and no claim shall be allowed when a majority of the board has not voted favorably thereon.

The board shall send a copy of the minutes of all meetings to the department with copies of all material pertaining to each claim submitted and noting the action of the board on each claim. Appeals may be made by the emergency worker from any action by the board within one year by writing to the department. [1986 c 266 § 34; 1984 c 38 § 26; 1974 ex.s. c 171 § 28; 1953 c 223 § 8.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.260 When compensation furnished.** Compensation shall be furnished to an emergency worker either within or without the state for any injury arising out of and occurring in the course of his activities as an emergency worker, and for the death of any such worker if the injury proximately causes death, in those cases where the following conditions occur:

(1) Where, at the time of the injury the emergency worker is performing services as an emergency worker, and is acting within the course of his duties as an emergency worker.

(2) Where, at the time of the injury the local organization for emergency management with which the emergency worker is registered is an approved local organization for emergency management.

(3) Where the injury is proximately caused by his service as an emergency worker, either with or without negligence.

(4) Where the injury is not caused by the intoxication of the injured emergency worker.

(5) Where the injury is not intentionally self-inflicted. [1984 c 38 § 27; 1974 ex.s. c 171 § 29; 1953 c 223 § 10.]

**38.52.270 Minors entitled to benefits.** Emergency workers who are minors shall have the same rights as adults for the purpose of receiving benefits under the provisions of this chapter, but this provision shall not prevent the requirements that a guardian be appointed to receive and administer such benefits until the majority of such minor. Work as an emergency worker shall not be deemed as employment or in violation of any of the provisions of chapter 49.12 RCW. [1984 c 38 § 28; 1974 ex.s. c 171 § 30; 1953 c 223 § 11.]

**38.52.280 Compensation and benefits limited by appropriation.** No compensation or benefits shall be paid or furnished to emergency workers or their dependents pursuant to the provisions of this chapter except from money appropriated for the purpose of this chapter. [1984 c 38 § 29; 1974 ex.s. c 171 § 31; 1953 c 223 § 12.]

**38.52.290 Applicability of workers' compensation law.** Insofar as not inconsistent with the provisions of this chapter, the maximum amount payable to a claimant shall be not greater than the amount allowable for similar disability under the workers' compensation act, chapter 51.32 RCW as amended by chapter 289, Laws of 1971 ex.sess., and any amendments thereto. "Employee" as used in said title shall include an emergency worker when liability for the furnishing of compensation and benefits exists pursuant to the provisions of this chapter and as limited by the provisions of this chapter. Where liability for compensation and benefits exists, such compensation and benefits shall be provided in accordance with the applicable provisions of said sections of chapter 51.32 RCW and at the maximum rate provided therein, subject, however, to the limitations set forth in this chapter. [1987 c 185 § 8; 1984 c 38 § 30; 1974 ex.s. c 171 § 32; 1971 ex.s. c 289 § 71; 1953 c 223 § 13.]

**Intent—Severability—1987 c 185:** See notes following RCW 51.12.130.

**Severability—Effective dates—1971 ex.s. c 289:** See RCW 51.98.060 and 51.98.070.

**38.52.300 Right of action against third party.** If the injury to an emergency worker is due to the negligence or wrong of another not on emergency duty, the injured worker, or if death results from the injury, the surviving spouse, children, parents or dependents, as the case may be, shall elect whether to take under this chapter or seek a remedy against such other, such election to be in advance of any suit under

this chapter; and if the surviving spouse takes under this chapter, the cause of action against such other shall be assigned to the department; if the other choice is made, the compensation under this chapter shall be only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated for such case under authority of this chapter: PROVIDED, That the department shall prosecute all claims assigned to it and do any and all things necessary to recover on behalf of the state any and all amounts which an employer or insurance carrier might recover under the provisions of the law. [1986 c 266 § 35; 1984 c 38 § 31; 1973 1st ex.s. c 154 § 59; 1953 c 223 § 14.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**38.52.310 Coverage, classification, registration, of workers.** The department shall establish by rule and regulation various classes of emergency workers, the scope of the duties of each class, and the conditions under which said workers shall be deemed to be on duty and covered by the provisions of this chapter. The department shall also adopt rules and regulations prescribing the manner in which emergency workers of each class are to be registered. [1986 c 266 § 36; 1984 c 38 § 32; 1974 ex.s. c 171 § 33; 1953 c 223 § 15.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.320 Schedule of payments.** The department shall provide each compensation board with the approved maximum schedule of payments for injury or death prescribed in chapter 51.32 RCW: PROVIDED, That nothing in this chapter shall be construed as establishing any liability on the part of the department of labor and industries. [1986 c 266 § 37; 1984 c 38 § 33; 1974 ex.s. c 171 § 34; 1953 c 223 § 16.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.330 Expenditures authorized—Claims, payment and disposition—Appeals.** The department is authorized to make all expenditures necessary and proper to carry out the provisions of this chapter including payments to claimants for compensation as emergency workers and their dependents; to adjust and dispose of all claims submitted by a local compensation board. When medical treatment is necessary, the department is authorized to make medical and compensation payments on an interim basis. Nothing herein shall be construed to mean that the department or the state emergency management council or its officers or agents shall have the final decision with respect to the compensability of any case or the amount of compensation or benefits due, but any emergency worker or his or her dependents shall have the same right of appeal from any order, decision, or award to the same extent as provided in chapter 51.32 RCW. [1986 c 266 § 38; 1984 c 38 § 34; 1979 ex.s. c 268 § 3; 1974 ex.s. c 171 § 35; 1971 ex.s. c 289 § 72; 1953 c 223 § 17.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**Severability—Effective dates—1971 ex.s. c 289:** See RCW 51.98.060 and 51.98.070.

(2004 Ed.)

### **38.52.340 Benefits under other compensation plans.**

Nothing in this chapter shall deprive any emergency worker or his or her dependents of any right to compensation for injury or death sustained in the course of his or her regular employment even though his or her regular work is under direction of emergency management authorities: PROVIDED, That such worker, if he or she is eligible for some other compensation plan, and receives the benefits of such plan shall not also receive any compensation under this chapter. The department shall adopt such rules and regulations as may be necessary to protect the rights of such workers and may enter into agreements with authorities in charge of other compensation plans to insure protection of such workers: PROVIDED, That if the compensation from some other plan is less than would have been available under this chapter, he or she shall be entitled to receive the deficiency between the amount received under such other plan and the amount available under this chapter. [1986 c 266 § 39; 1984 c 38 § 35; 1974 ex.s. c 171 § 36; 1953 c 223 § 18.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.350 Benefits furnished under federal law—Reduction of state benefits.** Should the United States or any agent thereof, in accordance with any federal statute or rule or regulation, furnish monetary assistance, benefits, or other temporary or permanent relief to emergency workers or to their dependents for injuries arising out of and occurring in the course of their activities as emergency workers, then the amount of compensation which any emergency worker or his dependents are otherwise entitled to receive from the state of Washington as provided herein, shall be reduced by the amount of monetary assistance, benefits, or other temporary or permanent relief the emergency worker or his dependents have received and will receive from the United States or any agent thereof as a result of his injury. [1984 c 38 § 36; 1974 ex.s. c 171 § 37; 1953 c 223 § 19.]

**38.52.360 Medical, surgical or hospital treatment.** If, in addition to monetary assistance, benefits or other temporary or permanent relief, the United States or any agent thereof furnishes medical, surgical or hospital treatment or any combination thereof to an injured emergency worker, then the emergency worker has no right to receive similar medical, surgical or hospital treatment as provided in this chapter. However, the department may furnish medical, surgical or hospital treatment as part of the compensation provided under the provisions of this chapter. [1986 c 266 § 40; 1984 c 38 § 37; 1974 ex.s. c 171 § 38; 1953 c 223 § 20.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.370 Medical, surgical or hospital treatment—Reimbursement.** If, in addition to monetary assistance, benefits, or other temporary or permanent relief, the United States or any agent thereof, will reimburse an emergency worker or his or her dependents for medical, surgical or hospital treatment, or any combination thereof, furnished to the injured emergency worker, the emergency worker has no right to receive similar medical, surgical or hospital treatment as provided in this chapter, but the department, may furnish a medical, surgical or hospital treatment as part of the compen-

sation provided under the provisions of this chapter and apply to the United States or its agent for the reimbursement which will be made to the emergency worker or his or her dependents. As a condition to the furnishing of such medical, surgical or hospital treatment, the department shall require the emergency worker and his dependents to assign to the state of Washington, for the purpose of reimbursing for any medical, surgical or hospital treatment furnished or to be furnished by the state, any claim or right such emergency worker or his or her dependents may have to reimbursement from the United States or any agent thereof. [1986 c 266 § 41; 1984 c 38 § 38; 1974 ex.s. c 171 § 39; 1953 c 223 § 21.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.380 State compensation denied if payment prevents federal benefits.** If the furnishing of compensation under the provisions of this chapter to an emergency worker or his dependents prevents such emergency worker or his dependents from receiving assistance, benefits or other temporary or permanent relief under the provisions of a federal statute or rule or regulation, then the emergency worker and his dependents shall have no right to, and shall not receive, any compensation from the state of Washington under the provisions of this chapter for any injury for which the United States or any agent thereof will furnish assistance, benefits or other temporary or permanent relief in the absence of the furnishing of compensation by the state of Washington. [1984 c 38 § 39; 1974 ex.s. c 171 § 40; 1953 c 223 § 22.]

**38.52.390 Contracts or work on cost basis for emergency management activities.** The governor, or upon his or her direction, the director, or any political subdivision of the state, is authorized to contract with any person, firm, corporation, or entity to provide construction or work on a cost basis to be used in emergency management functions or activities as defined in RCW 38.52.010(1) or as hereafter amended, said functions or activities to expressly include natural disasters, as well as all other emergencies of a type contemplated by RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220 and 38.52.390. All funds received for purposes of RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220 and 38.52.390, whether appropriated funds, local funds, or from whatever source, may be used to pay for the construction, equipment, or work contracted for under this section. [1986 c 266 § 42; 1984 c 38 § 40; 1971 ex.s. c 8 § 6.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.400 Search and rescue activities—Powers and duties of local officials.** (1) The chief law enforcement officer of each political subdivision shall be responsible for local search and rescue activities. Operation of search and rescue activities shall be in accordance with state and local operations plans adopted by the elected governing body of each local political subdivision. These state and local plans must specify the use of the incident command system for multiagency/multijurisdiction search and rescue operations. The local emergency management director shall notify the department of all search and rescue missions. The local director of emergency management shall work in a coordinating

capacity directly supporting all search and rescue activities in that political subdivision and in registering emergency search and rescue workers for employee status. The chief law enforcement officer of each political subdivision may restrict access to a specific search and rescue area to personnel authorized by him. Access shall be restricted only for the period of time necessary to accomplish the search and rescue mission. No unauthorized person shall interfere with a search and rescue mission.

(2) When search and rescue activities result in the discovery of a deceased person or search and rescue workers assist in the recovery of human remains, the chief law enforcement officer of the political subdivision shall insure compliance with chapter 68.50 RCW. [1997 c 49 § 5; 1986 c 266 § 43; 1984 c 38 § 41; 1979 ex.s. c 268 § 4.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.410 Search and rescue activities—Distribution of funds for compensation and reimbursement of volunteers.** Funds received by the department specifically for the purposes of compensating search and rescue volunteers shall be distributed by the director to help fund medical and compensation coverage provided by this chapter and provide reimbursement by the state for: (1) Costs involved in extraordinary search and rescue operations such as search and rescue operations lasting over twenty-four hours where food and lodging for workers is necessary; (2) excessive transportation and rescue costs incurred by out-of-county residents which would not be otherwise collectible; and (3) compensation as provided in RCW 38.52.020(1)(d) as now or hereafter amended. [1986 c 266 § 44; 1984 c 38 § 42; 1979 ex.s. c 268 § 5.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**38.52.420 Model contingency plan for pollution control facilities and hazardous waste management.** (1) The department, in consultation with appropriate federal agencies, the departments of natural resources, fish and wildlife, and ecology, representatives of local government, and any other person the director may deem appropriate, shall assist in the development of a model contingency plan, consistent with other plans required for hazardous materials by federal and state law, to serve as a draft plan for local governments which may be incorporated into the state and local emergency management plans.

(2) The model contingency plan shall:

(a) Include specific recommendations for pollution control facilities which are deemed to be most appropriate for the control, collection, storage, treatment, disposal, and recycling of oil and other spilled material and furthering the prevention and mitigation of such pollution;

(b) Include recommendations for the training of local personnel consistent with other training proposed, funded, or required by federal or state laws for hazardous materials;

(c) Suggest cooperative training exercises between the public and private sector consistent with other training proposed, funded, or required by federal or state laws for hazardous materials;

(d) Identify federal and state laws requiring contingency or management plans applicable or related to prevention of

pollution, emergency response capabilities, and hazardous waste management, together with a list of funding sources that local governments may use in development of their specific plans;

(e) Promote formal agreements between the department and local entities for effective spill response; and

(f) Develop policies and procedures for the augmentation of emergency services and agency spill response personnel through the use of volunteers: PROVIDED, That no contingency plan may require the use of volunteers by a responding responsible party without that party's consent. [1997 c 49 § 6; 1995 c 391 § 4; 1994 c 264 § 11; 1988 c 36 § 11; 1987 c 479 § 3.]

**Effective date—1995 c 391:** See note following RCW 38.52.005.

### **38.52.430 Emergency response caused by person's intoxication—Recovery of costs from convicted person.**

A person whose intoxication causes an incident resulting in an appropriate emergency response, and who, in connection with the incident, has been found guilty of or has had their prosecution deferred for (1) driving while under the influence of intoxicating liquor or any drug, RCW 46.61.502; (2) operating an aircraft under the influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel while under the influence of alcohol or drugs, \*RCW 88.12.100; (4) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (5) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), is liable for the expense of an emergency response by a public agency to the incident.

The expense of an emergency response is a charge against the person liable for expenses under this section. The charge constitutes a debt of that person and is collectible by the public agency incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

In no event shall a person's liability under this section for the expense of an emergency response exceed one thousand dollars for a particular incident.

If more than one public agency makes a claim for payment from an individual for an emergency response to a single incident under the provisions of this section, and the sum of the claims exceeds the amount recovered, the division of the amount recovered shall be determined by an interlocal agreement consistent with the requirements of chapter 39.34 RCW. [1993 c 251 § 2.]

**\*Reviser's note:** RCW 88.12.100 was recodified as RCW 88.12.025 pursuant to 1993 c 244 § 45. RCW 88.12.025 was subsequently recodified as RCW 79A.60.040 pursuant to 1999 c 249 § 1601.

**Finding—Intent—1993 c 251:** "The legislature finds that a public agency incurs expenses in an emergency response. It is the intent of the legislature to allow a public agency to recover the expenses of an emergency response to an incident involving persons who operate a motor vehicle, boat or vessel, or a civil aircraft while under the influence of an alcoholic beverage or a drug, or the combined influence of an alcoholic beverage and a drug. It is the intent of the legislature that the recovery of expenses of an emergency response under this act shall supplement and shall not supplant other provisions of law relating to the recovery of those expenses." [1993 c 251 § 1.]

**38.52.500 Statewide enhanced 911 service—Finding.** The legislature finds that a statewide emergency communica-

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tions network of enhanced 911 telephone service, which allows an immediate display of a caller's identification and location, would serve to further the safety, health, and welfare of the state's citizens, and would save lives. The legislature, after reviewing the study outlined in section 1, chapter 260, Laws of 1990, further finds that statewide implementation of enhanced 911 telephone service is feasible and should be accomplished as soon as practicable. [1991 c 54 § 1.]

**Referral to electorate—1991 c 54:** See note following RCW 38.52.030.

### **38.52.501 Statewide enhanced 911 service—Findings.**

The legislature finds that statewide enhanced 911 has proven to be a lifesaving service and that routing a 911 call to the appropriate public safety answering point with a display of the caller's identification and location should be available for all users of telecommunications services, regardless of the technology used to make and transmit the 911 call. The legislature also finds that it is in the best public interest to ensure that there is adequate ongoing funding to support enhanced 911 service. [2002 c 341 § 1.]

**Severability—2002 c 341:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 341 § 14.]

**Effective date—2002 c 341:** "This act takes effect January 1, 2003." [2002 c 341 § 15.]

### **38.52.505 Statewide enhanced 911 service—Automatic location identification—Rules.**

The adjutant general shall establish rules on minimum information requirements of automatic location identification for the purposes of enhanced 911 emergency service. Such rules shall permit the chief of a local fire department or a chief fire protection officer or such other person as may be designated by the governing body of a city or county to take into consideration local circumstances when approving the accuracy of location information generated when calls are made to 911 from facilities within his or her service area. [1999 c 24 § 2.]

**Findings—1999 c 24:** "The legislature finds that the citizens of the state increasingly rely on the dependability of enhanced 911, a system that allows the person answering an emergency call to determine the location of the emergency immediately without the caller needing to speak. The legislature further finds that the degree of accuracy of the displayed information must be adequate to permit rapid location of the caller while taking into consideration variables specific to local conditions. The legislature further finds that it is appropriate that rules permitting local fire agencies to evaluate and approve the accuracy of location information relating to their service areas be adopted." [1999 c 24 § 1.]

### **38.52.510 Statewide enhanced 911 service—Funding by counties.**

By December 31, 1998, each county, singly or in combination with adjacent counties, shall implement district-wide, county-wide, or multicounty-wide enhanced 911 emergency communications systems so that enhanced 911 is available throughout the state. The county shall provide funding for the enhanced 911 communication system in the county or district in an amount equal to the amount the maximum tax under RCW 82.14B.030(1) would generate in the county or district or the amount necessary to provide full funding of the system in the county or district, whichever is less. The state enhanced 911 coordination office established

by RCW 38.52.520 shall assist and facilitate enhanced 911 implementation throughout the state. [1991 c 54 § 3.]

**Referral to electorate—1991 c 54:** See note following RCW 38.52.030.

**38.52.520 State enhanced 911 coordination office.** A state enhanced 911 coordination office, headed by the state enhanced 911 coordinator, is established in the emergency management division of the department. Duties of the office shall include:

(1) Coordinating and facilitating the implementation and operation of enhanced 911 emergency communications systems throughout the state;

(2) Seeking advice and assistance from, and providing staff support for, the enhanced 911 advisory committee; and

(3) Recommending to the utilities and transportation commission by August 31st of each year the level of the state enhanced 911 excise tax for the following year. [1991 c 54 § 4.]

**Referral to electorate—1991 c 54:** See note following RCW 38.52.030.

**38.52.525 State enhanced 911 coordination office—Public education materials.** The state enhanced 911 coordination office may develop and implement public education materials regarding the capability of specific equipment used as part of a private telecommunications system or in the provision of private shared telecommunications services to forward automatic location identification and automatic number identification. [1995 c 243 § 9.]

**Findings—Severability—1995 c 243:** See notes following RCW 80.36.555.

**38.52.530 Enhanced 911 advisory committee.** (*Expires December 31, 2006.*) The enhanced 911 advisory committee is created to advise and assist the state enhanced 911 coordinator in coordinating and facilitating the implementation and operation of enhanced 911 throughout the state. The director shall appoint members of the committee who represent diverse geographical areas of the state and include state residents who are members of the national emergency number association, the associated public communications officers Washington chapter, the Washington state fire chiefs association, the Washington association of sheriffs and police chiefs, the Washington state council of fire fighters, the Washington state council of police officers, the Washington ambulance association, the state fire protection policy board, the Washington fire commissioners association, the Washington state patrol, the association of Washington cities, the Washington state association of counties, the utilities and transportation commission or commission staff, and an equal number of representatives of large and small local exchange telephone companies and large and small radio communications service companies offering commercial mobile radio service in the state. This section expires December 31, 2006. [2002 c 341 § 3; 2000 c 34 § 1; 1997 c 49 § 7; 1991 c 54 § 5.]

**Severability—Effective date—2002 c 341:** See notes following RCW 38.52.501.

**Referral to electorate—1991 c 54:** See note following RCW 38.52.030.

**38.52.535 State enhanced 911 coordination office and advisory committee—Uniform national standards.** The state enhanced 911 coordination office and the enhanced 911 advisory committee may participate in efforts to set uniform national standards for automatic number identification and automatic location identification data transmission for private telecommunications systems and private shared telecommunications services. [1998 c 245 § 32; 1995 c 243 § 10.]

**Findings—Severability—1995 c 243:** See notes following RCW 80.36.555.

**38.52.540 Enhanced 911 account.** (1) The enhanced 911 account is created in the state treasury. All receipts from the state enhanced 911 excise taxes imposed by RCW 82.14B.030 shall be deposited into the account. Moneys in the account shall be used only to support the statewide coordination and management of the enhanced 911 system, for the implementation of wireless enhanced 911 statewide, and to help supplement, within available funds, the operational costs of the system, including adequate funding of counties to enable implementation of wireless enhanced 911 service and reimbursement of radio communications service companies for costs incurred in providing wireless enhanced 911 service pursuant to negotiated contracts between the counties or their agents and the radio communications service companies.

(2) Funds generated by the enhanced 911 excise tax imposed by RCW 82.14B.030(3) shall not be distributed to any county that has not imposed the maximum county enhanced 911 tax allowed under RCW 82.14B.030(1). Funds generated by the enhanced 911 excise tax imposed by RCW 82.14B.030(4) shall not be distributed to any county that has not imposed the maximum county enhanced 911 tax allowed under RCW 82.14B.030(2).

(3) The state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, is authorized to enter into statewide agreements to improve the efficiency of enhanced 911 services for all counties and shall specify by rule the additional purposes for which moneys, if available, may be expended from this account.

(4) During the 2001-2003 fiscal biennium, the legislature may transfer from the enhanced 911 account to the state general fund such amounts as reflect the excess fund balance of the account. [2002 c 371 § 905; 2002 c 341 § 4; 2001 c 128 § 2; 1998 c 304 § 14; 1994 c 96 § 7; 1991 c 54 § 6.]

**Reviser's note:** This section was amended by 2002 c 341 § 4 and by 2002 c 371 § 905, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Severability—Effective date—2002 c 341:** See notes following RCW 38.52.501.

**Findings—2001 c 128:** "The legislature finds that the statewide emergency communications network of enhanced 911 telephone service, which allows an immediate display of a caller's identification and location, has served to further the safety, health, and welfare of the state's citizens, and has saved lives.

The legislature further finds that statewide operation and management of the enhanced 911 system will create efficiencies of operation and permit greater local control of county 911 operations, and further that some counties will continue to need assistance from the state to maintain minimum enhanced 911 service levels." [2001 c 128 § 1.]

**Effective date—2001 c 128:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 128 § 4.]

**Findings—Effective dates—1998 c 304:** See notes following RCW 82.14B.020.

**Finding—Intent—Effective dates—1994 c 96:** See notes following RCW 82.14B.020.

**Referral to electorate—1991 c 54:** See note following RCW 38.52.030.

**38.52.545 Priorities for enhanced 911 funding.** In specifying rules defining the purposes for which available moneys may be expended, the state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, shall consider base needs of individual counties for specific assistance. Priorities for available enhanced 911 funding are as follows: (1) To assure that 911 dialing is operational statewide; (2) to assist counties as necessary to assure that they can achieve a basic service level for 911 operations; and (3) to assist counties as practicable to acquire items of a capital nature appropriate to increasing 911 effectiveness. [2001 c 128 § 3.]

**Findings—Effective date—2001 c 128:** See notes following RCW 38.52.540.

**38.52.550 Emergency communications systems and information—Immunity from civil liability.** A telecommunications company, or radio communications service company, providing emergency communications systems or services or a business or individual providing data base information to emergency communication system personnel shall not be liable for civil damages caused by an act or omission of the company, business, or individual in the:

(1) Good faith release of information not in the public record, including unpublished or unlisted subscriber information to emergency service providers responding to calls placed to a 911 or enhanced 911 emergency service; or

(2) Design, development, installation, maintenance, or provision of consolidated 911 or enhanced 911 emergency communication systems or services other than an act or omission constituting gross negligence or wanton or willful misconduct. [2002 c 341 § 5; 1991 c 329 § 7.]

**Severability—Effective date—2002 c 341:** See notes following RCW 38.52.501.

**38.52.561 911 calls from radio communications service companies—Technical and operational standards.** The state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, shall set nondiscriminatory, uniform technical and operational standards consistent with the rules of the federal communications commission for the transmission of 911 calls from radio communications service companies to enhanced 911 emergency communications systems. These standards must not exceed the requirements set by the federal communications commission. The authority given to the state enhanced 911 coordinator in this section is limited to setting standards as set forth in this section and does not constitute authority to regulate radio communications service companies. [2002 c 341 § 6.]

**Severability—Effective date—2002 c 341:** See notes following RCW 38.52.501.

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**38.52.900 Short title.** This chapter may be cited as the Washington Emergency Management Act. [1984 c 38 § 43; 1974 ex.s. c 171 § 41; 1951 c 178 § 1.]

**38.52.920 Repeal and saving.** Chapter 177, Laws of 1941, chapters 6 and 24, Laws of 1943, and chapter 88, Laws of 1949 are repealed: PROVIDED, That this section shall not affect the validity of any order, rule, regulation, contract, or agreement made or promulgated under authority of the repealed acts, which orders, rules, regulations, contracts, or agreements shall remain in force until they may be repealed, amended, or superseded by orders, rules, regulations, contracts, or agreements made or promulgated under this chapter: PROVIDED FURTHER, That this section shall not affect the tenure of any officer, employee, or person serving under authority of any repealed act and such officer, employee, or person shall continue in his position until such time as a successor is appointed or employed under the provisions of this chapter. [1951 c 178 § 17.]

**38.52.930 Transfer of powers, duties, and functions to state military department.** All powers, duties, and functions of the department of community, trade, and economic development pertaining to emergency management are transferred to the state military department. All references to the director or the department of community development or the department of community, trade, and economic development in the Revised Code of Washington shall be construed to mean the adjutant general or the state military department when referring to the functions transferred in this section. [1995 c 391 § 10.]

**Effective date—1995 c 391:** See note following RCW 38.52.005.

# Title 39

## PUBLIC CONTRACTS AND INDEBTEDNESS

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- 39.06** Public works—Registration, licensing, of contractors.
- 39.08** Contractor's bond.
- 39.10** Alternative public works contracting procedures.
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### Chapter 39.04 RCW PUBLIC WORKS

#### Sections

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- 39.04.015 Adjustment to bid price—Conditions.
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*Public buildings, provision to be made for aged and handicapped: Chapter 70.92 RCW.*

*Second class city or town, public contracts: RCW 35.23.352.*

*State highway construction and maintenance: Chapter 47.28 RCW.*

*Suppression of competitive bidding on public works, penalty: RCW 9.18.120 through 9.18.150.*

*Traffic control at work sites: RCW 47.36.200.*

*Workers' compensation law applicable to contracts for public works: RCW 51.12.050, 51.12.070.*

**39.04.010 Definitions.** The term state shall include the state of Washington and all departments, supervisors, commissioners and agencies thereof.

The term municipality shall include every city, county, town, district or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts or any such other districts as shall from time to

time be authorized by law for the reclamation or development of waste or undeveloped lands.

The term public work shall include all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with the provisions of RCW 39.12.020. The term does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060(4) or under development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).

The term contract shall mean a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid. However, a contract which is awarded from a small works roster need not be advertised. [2000 c 138 § 102; 1997 c 220 § 402 (Referendum Bill No. 48, approved June 17, 1997); 1993 c 174 § 1; 1989 c 363 § 5; 1986 c 282 § 1; 1982 c 98 § 1; 1977 ex.s. c 177 § 1; 1923 c 183 § 1; RRS § 10322-1.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Severability—1986 c 282:** See RCW 82.18.900.

**39.04.015 Adjustment to bid price—Conditions.** Notwithstanding the provisions of RCW 39.04.010, a state contracting authority is authorized to negotiate an adjustment to a bid price, based upon agreed changes to the contract plans and specifications, with a low responsive bidder under the following conditions:

(1) All bids for a state public works project involving buildings and any associated building utilities and appendants exceed the available funds, as certified by the appropriate fiscal officer;

(2) The apparent low responsive bid does not exceed the available funds by: (a) Five percent on projects valued under one million dollars; (b) the greater of fifty thousand dollars or two and one-half percent for projects valued between one million dollars and five million dollars; or (c) the greater of one hundred twenty-five thousand dollars or one percent for projects valued over five million dollars; and

(3) The negotiated adjustment will bring the bid price within the amount of available funds. [1989 c 59 § 1.]

**39.04.020 Plans and specifications—Estimates—Publication—Emergencies.** Whenever the state or any municipality shall determine that any public work is necessary to be done, it shall cause plans, specifications, or both thereof and an estimate of the cost of such work to be made and filed in the office of the director, supervisor, commissioner, trustee, board, or agency having by law the authority to require such work to be done. The plans, specifications, and estimates of cost shall be approved by the director, supervisor, commissioner, trustee, board, or agency and the origi-

nal draft or a certified copy filed in such office before further action is taken.

If the state or such municipality shall determine that it is necessary or advisable that such work shall be executed by any means or method other than by contract or by a small works roster process, and it shall appear by such estimate that the probable cost of executing such work will exceed the sum of twenty-five thousand dollars, then the state or such municipality shall at least fifteen days before beginning work cause such estimate, together with a description of the work, to be published at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which such work is to be done. When any emergency shall require the immediate execution of such public work, upon a finding of the existence of such emergency by the authority having power to direct such public work to be done and duly entered of record, publication of description and estimate may be made within seven days after the commencement of the work. [1994 c 243 § 1; 1993 c 379 § 111; 1986 c 282 § 2; 1982 c 98 § 4; 1975 1st ex.s. c 230 § 2; 1967 c 70 § 1; 1923 c 183 § 2; RRS § 10322-2. Formerly RCW 39.04.020 and 39.04.030.]

**Intent—Severability—Effective date—1993 c 379:** See notes following RCW 28B.10.029.

**Severability—1986 c 282:** See RCW 82.18.900.

**39.04.040 Work to be executed according to plans—Supplemental plans.** Whenever plans and specifications shall have been filed the work to be done shall be executed in accordance with such plans and specifications unless supplemental plans and specifications of the alterations to be made therein shall be made and filed in the office where the original plans and specifications are filed.

In the event that the probable cost of executing such work in accordance with the supplemental plans and specifications shall be increased or decreased from the estimated cost as shown by the original estimate to an amount in excess of ten percent of such estimate, then a supplemental estimate shall be made of the increased or decreased cost of executing the work in accordance with the supplemental plans and specifications and filed in the office where the original estimate is filed. [1923 c 183 § 3; RRS § 10322-3.]

**39.04.050 Contents of original estimates.** Original estimates shall show in detail the estimated cost of the work; the estimated quantities of each class of work; the estimated unit cost for each class; the estimated total cost for each class; the time limit, allowed for the completion of the work and the estimated dates of commencement and completion. [1986 c 282 § 3; 1923 c 183 § 4; RRS § 10322-4.]

**Severability—1986 c 282:** See RCW 82.18.900.

**39.04.060 Supplemental estimates.** Supplemental estimates shall show the estimated increase or decrease in the total quantities of each class, in the unit cost of each class, in the total cost for each class and in the total cost of the work as shown by the original estimate, together with any change in the time limit and in the estimated dates of commencing and completing the work. [1923 c 183 § 5; RRS § 10322-5.]

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**39.04.070 Account and record of cost.** Whenever the state or any municipality shall execute any public work by any means or method other than by contract or small works roster, it shall cause to be kept and preserved a full, true and accurate account and record of the costs of executing such work in accordance with the budgeting, accounting, and reporting system provisions prescribed by law for the state agency or municipality. [1986 c 282 § 4; 1923 c 183 § 6; RRS § 10322-6.]

**Severability—1986 c 282:** See RCW 82.18.900.

*State auditor to prescribe standard form for costs of public works: RCW 43.09.205.*

**39.04.080 Certified copy to be filed—Engineers' certificate.** A true copy of such account or record, duly certified by the officer or officers having by law authority to direct such work to be done, to be a full, true and accurate account of the costs of executing such work shall be filed in the office where the original plans and specifications are filed within sixty days after the completion of the work.

The engineer or other officer having charge of the execution of such work shall execute a certificate which shall be attached to and filed with such certified copy, certifying that such work was executed in accordance with the plans and specifications on file and the times of commencement and completion of such work. If the work is not in accordance with such plans and specifications he shall set forth the manner and extent of the variance therefrom. [1923 c 183 § 7; RRS § 10322-7.]

**39.04.100 Records open to public inspection—Certified copies.** All plans, specifications, estimates, and copies of accounts or records and all certificates attached thereto shall, when filed, become public records and shall at all reasonable times be subject to public inspection.

Certified copies of any estimate, account or record shall be furnished by the officer having the custody thereof to any person on demand and the payment of the legal fees for making and certifying the same. [1923 c 183 § 9; RRS § 10322-9.]

**39.04.105 Competitive bidding—Written protests—Notice of contract execution.** When a municipality receives a written protest from a bidder for a public works project which is the subject of competitive bids, the municipality shall not execute a contract for the project with anyone other than the protesting bidder without first providing at least two full business days' written notice of the municipality's intent to execute a contract for the project; provided that the protesting bidder submits notice in writing of its protest no later than two full business days following bid opening. Intermediate Saturdays, Sundays, and legal holidays are not counted. [2003 c 300 § 1.]

**39.04.107 Competitive bidding—Bidder claiming error.** A low bidder on a public works project who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. [2003 c 300 § 2.]

**39.04.110 Penalty for false entries.** Any director, supervisor, officer or employee of the state and any commissioner, trustee, supervisor, officer or employee of any municipality who shall knowingly make any false entry in any account or record required by this chapter or who shall knowingly certify to any false statement in any certificate required by this chapter, shall be guilty of a misdemeanor. [1923 c 183 § 10; RRS § 10322-10.]

*Falsifying accounts: RCW 42.20.070.*

*Misconduct of public officers: Chapter 42.20 RCW.*

**39.04.120 Change orders due to environmental protection requirements—Costs—Dispute resolution.** If the successful bidder must undertake additional work for public construction projects issued by the state of Washington, its authorities or agencies, or a political subdivision of the state due to the enactment of new environmental protection requirements or the amendment of existing environmental protection statutes, ordinances, or rules occurring after the submission of the successful bid, the awarding agency shall issue a change order setting forth the additional work that must be undertaken, which shall not invalidate the contract. The cost of such a change order to the awarding agency shall be determined in accordance with the provisions of the contract for change orders or, if no such provision is set forth in the contract, then the cost to the awarding agency shall be the contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, and subcontracts attributable to the additional activity plus a reasonable sum for overhead and profit. However, the additional costs to undertake work not specified in the contract documents shall not be approved unless written authorization is given the successful bidder prior to his undertaking such additional activity. In the event of a dispute between the awarding agency and the contractor, dispute resolution procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for dispute resolution, then the obtaining rules of the American arbitration association. [1998 c 196 § 1; 1973 1st ex.s. c 62 § 1.]

**Severability—1973 1st ex.s. c 62:** "If any provision or part of this 1973 act shall be judged to be invalid or unconstitutional, such adjudication shall not affect the validity of any provision or part of this 1973 act not adjudged invalid or unconstitutional." [1973 1st ex.s. c 62 § 4.]

*Delay due to litigation, change orders, costs, arbitration, termination: RCW 60.28.080.*

**39.04.130 Application of RCW 39.04.120.** RCW 39.04.120 shall take effect in ninety days but shall not apply to any contract awarded pursuant to an invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract. [1973 1st ex.s. c 62 § 2.]

**Severability—1973 1st ex.s. c 62:** See note following RCW 39.04.120.

**39.04.133 State capital improvement or construction projects—Product standards.** (1) The state's preferences for the purchase and use of recycled content products shall be included as a factor in the design and development of state capital improvement projects.

(2) If a construction project receives state public funding, the product standards, as provided in RCW 43.19A.020, shall apply to the materials used in the project, whenever the administering agency and project owner determine that such products would be cost-effective and are readily available.

(3) This section does not apply to contracts entered into by a municipality. [2002 c 299 § 2; 1996 c 198 § 5.]

**39.04.135 Demolition projects—Recycling or reuse of materials.** Material from demolition projects shall be recycled or reused whenever practicable. [1996 c 198 § 6.]

**39.04.140 Contracts affected by increase in price of petroleum products—Termination—Continuation with contracting agency sharing increased costs—Conditions.** (1) The legislature finds (a) that the increase in the price of petroleum products resulting from the world wide shortage of crude oil has created a condition which has rendered performance by contractors of many public works contracts economically impossible and (b) that provision should be made to provide for the orderly termination of such contracts; the deletion of work affected by petroleum prices without the necessity of litigation; or, alternatively at the election of any contracting agency, the continuation of the contract with the agency assuming a share of the increased petroleum costs.

(2) Whenever the state or any municipality shall have awarded any public works contract during the performance of which (a) any legally enforceable private agreement or contractual arrangement between either the contractor or a first tier subcontractor and his suppliers of crude oil, residual fuel oil, refined petroleum products, or asphalt required in order to complete performance of the public works contract are superseded, with resulting increased costs of performance of the public works contract, by force majeure regulations, rules, allocations, or rulings issued by any federal, state, or other agency acting pursuant to any federal or state economic stabilization act, petroleum allocation act, or other legislation authorizing the same; or (b) the cost of petroleum products for which has increased by more than twenty percent over the current market price thereof as the date of contract award, then the contractor may elect to terminate the contract in its entirety or to delete such portions of the work from the contract, and the state or municipality shall pay the contractor for all work performed prior to the date of termination of the contract or deletion of such work. The state or municipality shall also pay the contractor for all acceptable materials ordered by the contractor and delivered on the work site prior to the termination of the contract or deletion of such work by the contractor. Such materials shall be purchased from the contractor by the state or the municipality at the actual cost of such material to the contractor and shall thereupon become the property of the state or municipality. No payment shall be made to the contractor for overhead costs or anticipated profits as to work not performed as a result of deletion of such work or termination of the contract. Amounts retained and accumulated under RCW 60.28.010 shall be held for a period of thirty days following the election of the contractor to terminate the contract in its entirety: PROVIDED, That if the contractor elects to terminate or delete such portions of the work and the state or such municipality finds that it is in the

public interest to complete performance on such public works contract then the state or such municipality shall require the contractor to complete performance of the public works contract and the state or such municipality shall modify the provisions of that public works contract to increase the contract price so that the state or municipality shall bear eighty percent of such increased costs over the contractor's estimated cost at the time of contract bid opening and the contractor shall bear the balance thereof. Upon request by the state or municipality the contractor shall make his records available for audit by the state or municipality to verify such increased costs.

(3) This section shall apply only to public works contracts awarded prior to November 1, 1973, and only to work under such contracts which has not been performed on the date the contractor elects to terminate the contract or delete such work from the contract. [1974 ex.s. c 194 § 1.]

**Severability—1974 ex.s. c 194:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 194 § 2.]

**39.04.155 Small works roster contract procedures—Limited public works process.** (1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of two hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that

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become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 43.19.1911. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred thousand dollars to two hundred thousand dollars, a state agency or local government, other than a port district, that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government

may award a contract for work, construction, alteration, repair, or improvement project [projects] estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 43.19.1911. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities. [2001 c 284 § 1; 2000 c 138 § 101; 1998 c 278 § 12; 1993 c 198 § 1; 1991 c 363 § 109.]

**Purpose—2000 c 138:** "The purpose of this act is to establish a common small works roster procedure that state agencies and local governments may use to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property." [2000 c 138 § 1.]

**Part headings not law—2000 c 138:** "Part headings used in this act are not any part of the law." [2000 c 138 § 302.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

*Competitive bids—Contract procedure:* RCW 36.32.250.

**39.04.156 Small works roster manual—Notification to local governments.** The department of community, trade, and economic development, in cooperation with the municipal research and services center, shall prepare a small works roster manual and periodically notify the different types of local government authorized to use a small works roster process about this authority. [2000 c 138 § 104.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**39.04.160 Contracts subject to requirements established under office of minority and women's business enterprises.** All contracts entered into under this chapter by the state on or after September 1, 1983, are subject to the requirements established under chapter 39.19 RCW. [1983 c 120 § 11.]

**Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120:** See RCW 39.19.910, 39.19.920.

**39.04.170 Application of chapter to performance-based contracts for energy equipment.** This chapter shall not apply to performance-based contracts, as defined in \*RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW. [1985 c 169 § 5.]

**\*Reviser's note:** RCW 39.35A.020 was amended by 2001 c 214 § 18, changing subsection (3) to subsection (4).

**39.04.175 Application of chapter to certain agreements relating to water pollution control, solid waste handling facilities.** This chapter does not apply to the selection of persons or entities to construct or develop water pollution control facilities or to provide water pollution control services under RCW 70.150.040 or the selection of persons or entities to construct or develop solid waste handling facilities or to provide solid waste handling services under RCW 35.21.156 or under RCW 36.58.090. [1989 c 399 § 11; 1986 c 244 § 13.]

**Severability—1986 c 244:** See RCW 70.150.905.

**39.04.180 Trench excavations—Safety systems required.** On public works projects in which trench excavation will exceed a depth of four feet, any contract therefor shall require adequate safety systems for the trench excavation that meet the requirements of the Washington industrial safety and health act, chapter 49.17 RCW. This requirement shall be included in the cost estimates and bidding forms as a separate item. The costs of trench safety systems shall not be considered as incidental to any other contract item and any attempt to include the trench safety systems as an incidental cost is prohibited. [1988 c 180 § 1.]

**39.04.190 Purchase contract process—Other than formal sealed bidding.** (1) This section provides a uniform process to award contracts for the purchase of any materials, equipment, supplies, or services by those municipalities that are authorized to use this process in lieu of the requirements for formal sealed bidding. The state statutes governing a specific type of municipality shall establish the maximum dollar thresholds of the contracts that can be awarded under this

process, and may include other matters concerning the awarding of contracts for purchases, for the municipality.

(2) At least twice per year, the municipality shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of vendor lists and solicit the names of vendors for the lists. Municipalities shall by resolution establish a procedure for securing telephone or written quotations, or both, from at least three different vendors whenever possible to assure that a competitive price is established and for awarding the contracts for the purchase of any materials, equipment, supplies, or services to the lowest responsible bidder as defined in RCW 43.19.1911. Immediately after the award is made, the bid quotations obtained shall be recorded, open to public inspection, and shall be available by telephone inquiry. A contract awarded pursuant to this section need not be advertised. [1993 c 198 § 2; 1991 c 363 § 110.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**39.04.200 Small works roster or purchase contracts—Listing of contracts awarded required.** Any local government using the uniform process established in RCW 39.04.190 to award contracts for purchases must post a list of the contracts awarded under that process at least once every two months. Any state agency or local government using the small works roster process established in RCW 39.04.155 to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property must make available a list of the contracts awarded under that process at least once every year. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection. [2000 c 138 § 103; 1993 c 198 § 3; 1991 c 363 § 111.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**39.04.210 Correctional facilities construction and repair—Findings.** The legislature recognizes that fair and open competition is a basic tenet of public works procurement, that such competition reduces the appearance of and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically, and that effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which contractual services are procured. The legislature finds that there will continue to exist a need for additional correctional facilities due to the inadequate capacity of existing correctional facilities to accommodate the predicted growth of offender populations and that it is necessary to provide public works contract options for the effective construction and repair of additional department of corrections facilities. [1994 c 80 § 1; 1991 c 130 § 1.]

**Severability—1994 c 80:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the (2004 Ed.)

application of the provision to other persons or circumstances is not affected." [1994 c 80 § 4.]

**Effective date—1994 c 80:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994]." [1994 c 80 § 5.]

**Severability—1991 c 130:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 130 § 4.]

**39.04.220 Correctional facilities construction and repair—Use of general contractor/construction manager method for awarding contracts—Demonstration projects.** (1) In addition to currently authorized methods of public works contracting, and in lieu of the requirements of RCW 39.04.010 and 39.04.020 through 39.04.060, capital projects funded for over ten million dollars authorized by the legislature for the department of corrections to construct or repair facilities may be accomplished under contract using the general contractor/construction manager method described in this section. In addition, the general contractor/construction manager method may be used for up to two demonstration projects under ten million dollars for the department of corrections. Each demonstration project shall aggregate capital projects authorized by the legislature at a single site to total no less than three million dollars with the approval of the office of financial management. The department of general administration shall present its plan for the aggregation of projects under each demonstration project to the oversight advisory committee established under subsection (2) of this section prior to soliciting proposals for general contractor/construction manager services for the demonstration project.

(2) For the purposes of this section, "general contractor/construction manager" means a firm with which the department of general administration has selected and negotiated a maximum allowable construction cost to be guaranteed by the firm, after competitive selection through a formal advertisement, and competitive bids to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase. The department of general administration shall establish an independent oversight advisory committee with representatives of interest groups with an interest in this subject area, the department of corrections, and the private sector, to review selection and contracting procedures and contracting documents. The oversight advisory committee shall discuss and review the progress of the demonstration projects. The general contractor/construction manager method is limited to projects authorized on or before July 1, 1997.

(3) Contracts for the services of a general contractor/construction manager awarded under the authority of this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. Minority and women enterprise total project goals shall be specified in the bid instructions to the general contractor/construction manager finalists. The director of general administration is authorized to include an

incentive clause in any contract awarded under this section for savings of either time or cost or both from that originally negotiated. No incentives granted shall exceed five percent of the maximum allowable construction cost. The director of general administration or his or her designee shall establish a committee to evaluate the proposals considering such factors as: Ability of professional personnel; past performance in negotiated and complex projects; ability to meet time and budget requirements; location; recent, current, and projected work loads of the firm; and the concept of their proposal. After the committee has selected the most qualified finalists, these finalists shall submit sealed bids for the percent fee, which is the percentage amount to be earned by the general contractor/construction manager as overhead and profit, on the estimated maximum allowable construction cost and the fixed amount for the detailed specified general conditions work. The maximum allowable construction cost may be negotiated between the department of general administration and the selected firm after the scope of the project is adequately determined to establish a guaranteed contract cost for which the general contractor/construction manager will provide a performance and payment bond. The guaranteed contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the percent fee on the negotiated maximum allowable construction cost, and sales tax. If the department of general administration is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the department of general administration determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the department of general administration shall negotiate with the next low bidder and continue until an agreement is reached or the process is terminated. If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the state, the percent fee shall be renegotiated. All subcontract work shall be competitively bid with public bid openings. Specific contract requirements for women and minority enterprise participation shall be specified in each subcontract bid package that exceeds ten percent of the department's estimated project cost. All subcontractors who bid work over two hundred thousand dollars shall post a bid bond and the awarded subcontractor shall provide a performance and payment bond for their contract amount if required by the general contractor/construction manager. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. Bidding on subcontract work by the general contractor/construction manager or its subsidiaries is prohibited. The general contractor/construction manager may negotiate with the low-responsive bidder only in accordance with RCW 39.04.015 or, if unsuccessful in such negotiations, rebid.

(4) If the project is completed for less than the agreed upon maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the state. If the project is completed for more than the agreed upon maximum allowable construction cost, excepting increases due to any contract change orders

approved by the state, the additional cost shall be the responsibility of the general contractor/construction manager.

(5) The powers and authority conferred by this section shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained in this section may be construed as limiting any other powers or authority of the department of general administration. However, all actions taken pursuant to the powers and authority granted to the director or the department of general administration under this section may only be taken with the concurrence of the department of corrections. [1996 c 18 § 5; 1994 c 80 § 2; 1991 c 130 § 2.]

**Severability—Effective date—1994 c 80:** See notes following RCW 39.04.210.

**Severability—1991 c 130:** See note following RCW 39.04.210.

**39.04.230 Correctional facilities construction and repair—Alternative contracting method to remain in force until contracts completed.** Methods of public works contracting authorized by RCW 39.04.210 and 39.04.220 shall remain in full force and effect until completion of projects authorized on or before July 1, 1997. [1994 c 80 § 3; 1991 c 130 § 3.]

**Severability—Effective date—1994 c 80:** See notes following RCW 39.04.210.

**Severability—1991 c 130:** See note following RCW 39.04.210.

**39.04.240 Public works contracts—Awarding of attorneys' fees.** (1) The provisions of RCW 4.84.250 through 4.84.280 shall apply to an action arising out of a public works contract in which the state or a municipality, or other public body that contracts for public works, is a party, except that: (a) The maximum dollar limitation in RCW 4.84.250 shall not apply; and (b) in applying RCW 4.84.280, the time period for serving offers of settlement on the adverse party shall be the period not less than thirty days and not more than one hundred twenty days after completion of the service and filing of the summons and complaint.

(2) The rights provided for under this section may not be waived by the parties to a public works contract that is entered into on or after June 11, 1992, and a provision in such a contract that provides for waiver of these rights is void as against public policy. However, this subsection shall not be construed as prohibiting the parties from mutually agreeing to a clause in a public works contract that requires submission of a dispute arising under the contract to arbitration. [1999 c 107 § 1; 1992 c 171 § 1.]

**39.04.250 Payments received on account of work performed by subcontractor—Disputed amounts—Remedies.** (1) When payment is received by a contractor or subcontractor for work performed on a public work, the contractor or subcontractor shall pay to any subcontractor not later than ten days after the receipt of the payment, amounts allowed the contractor on account of the work performed by the subcontractor, to the extent of each subcontractor's interest therein.

(2) In the event of a good faith dispute over all or any portion of the amount due on a payment from the state or a municipality to the prime contractor, or from the prime con-

tractor or subcontractor to a subcontractor, then the state or the municipality, or the prime contractor or subcontractor, may withhold no more than one hundred fifty percent of the disputed amount. Those not a party to a dispute are entitled to full and prompt payment of their portion of a draw, progress payment, final payment, or released retainage.

(3) In addition to all other remedies, any person from whom funds have been withheld in violation of this section shall be entitled to receive from the person wrongfully withholding the funds, for every month and portion thereof that payment including retainage is not made, interest at the highest rate allowed under RCW 19.52.025. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to costs of suit and reasonable attorneys' fees. [1992 c 223 § 5.]

**Effective date—1992 c 223:** See note following RCW 39.76.011.

**Waiver of rights, construction—Application—1992 c 223:** See RCW 39.04.900 and 39.04.901.

**39.04.260 Private construction performed pursuant to contract for rental, lease, or purchase by state—Must comply with prevailing wage law.** Any work, construction, alteration, repair, or improvement, other than ordinary maintenance, that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities shall comply with chapter 39.12 RCW. [1993 c 110 § 1.]

**Application—1993 c 110:** "Section 1 of this act shall not apply to any project for which a call for competitive bids was made before July 25, 1993." [1993 c 110 § 2.]

**39.04.270 Electronic data processing and telecommunications systems—Municipalities—Acquisition method—Competitive negotiation—Findings, intent.** (1) The legislature finds that the unique aspects of electronic data processing and telecommunications systems and the importance of these systems for effective administration warrant separate acquisition authority for electronic data processing and telecommunication systems. It is the intent of the legislature that municipalities utilize an acquisition method for electronic data processing and telecommunication systems that is both competitive and compatible with the needs of the municipalities.

(2) A municipality may acquire electronic data processing or telecommunication equipment, software, or services through competitive negotiation rather than through competitive bidding.

(3) "Competitive negotiation," for the purposes of this section, shall include, as a minimum, the following requirements:

(a) A request for proposal shall be prepared and submitted to an adequate number of qualified sources, as determined by the municipality in its discretion, to permit reasonable competition consistent with the requirements of the procurement. Notice of the request for the proposal must be published in a newspaper of general circulation in the municipality at least thirteen days before the last date upon which proposals will be received. The request for proposal shall identify significant evaluation factors, including price, and their relative importance.

(b) The municipality shall provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources, and selection for awarding the contract.

(c) The award shall be made to the qualified bidder whose proposal is most advantageous to the municipality with price and other factors considered. The municipality may reject any and all proposals for good cause and request new proposals. [1996 c 257 § 1.]

**39.04.280 Competitive bidding requirements—Exemptions.** This section provides uniform exemptions to competitive bidding requirements utilized by municipalities when awarding contracts for public works and contracts for purchases. The statutes governing a specific type of municipality may also include other exemptions from competitive bidding requirements. The purpose of this section is to supplement and not to limit the current powers of any municipality to provide exemptions from competitive bidding requirements.

(1) Competitive bidding requirements may be waived by the governing body of the municipality for:

(a) Purchases that are clearly and legitimately limited to a single source of supply;

(b) Purchases involving special facilities or market conditions;

(c) Purchases in the event of an emergency;

(d) Purchases of insurance or bonds; and

(e) Public works in the event of an emergency.

(2)(a) The waiver of competitive bidding requirements under subsection (1) of this section may be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

If a resolution is adopted by a governing body to waive competitive bidding requirements under (b) of this subsection, the resolution must recite the factual basis for the exception. This subsection (2)(a) does not apply in the event of an emergency.

(b) If an emergency exists, the person or persons designated by the governing body of the municipality to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract.

(3) For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. [1998 c 278 § 1.]

**39.04.290 Contracts for building engineering systems.** (1) A state agency or local government may award contracts of any value for the design, fabrication, and installation of building engineering systems by: (a) Using a competitive bidding process or request for proposals process where bidders are required to provide final specifications and a bid price for the design, fabrication, and installation of building engineering systems, with the final specifications being approved by an appropriate design, engineering, and/or public regulatory body; or (b) using a competitive bidding process where bidders are required to provide final specifications for the final design, fabrication, and installation of building engineering systems as part of a larger project with the final specifications for the building engineering systems portion of the project being approved by an appropriate design, engineering, and/or public regulatory body. The provisions of chapter 39.80 RCW do not apply to the design of building engineering systems that are included as part of a contract described under this section.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Building engineering systems" means those systems where contracts for the systems customarily have been awarded with a requirement that the contractor provide final approved specifications, including fire alarm systems, building sprinkler systems, pneumatic tube systems, extensions of heating, ventilation, or air conditioning control systems, chlorination and chemical feed systems, emergency generator systems, building signage systems, pile foundations, and curtain wall systems.

(b) "Local government" means any county, city, town, school district, or other special district, municipal corporation, or quasi-municipal corporation.

(c) "State agency" means the department of general administration, the state parks and recreation commission, the department of fish and wildlife, the department of natural resources, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in building, renovation, remodeling, alteration, improvement, or repair activities. [2001 c 34 § 1.]

**39.04.900 Rights may not be waived—Construction—1992 c 223.** (1) The rights provided in chapter 223, Laws of 1992 may not be waived by the parties and a contract provision that provides for waiver of the rights provided in chapter 223, Laws of 1992 is void as against public policy.

(2) Chapter 223, Laws of 1992 is to be liberally construed to provide security for all parties intended to be protected by its provisions. [1992 c 223 § 6.]

**Effective date—1992 c 223:** See note following RCW 39.76.011.

**Application—1992 c 223:** See RCW 39.04.901.

**39.04.901 Application—1992 c 223.** (1) RCW 39.76.011, 60.28.011, 60.28.021, 60.28.051, 39.04.250, and 39.04.900 are applicable to all public works contracts entered into on or after September 1, 1992, relating to the construction of any work of improvement.

(2) RCW 39.76.010, 60.28.010, 60.28.020, and 60.28.050 are applicable to all public works contracts entered

into prior to September 1, 1992, relating to the construction of any work of improvement. [1992 c 223 § 7.]

**Effective date—1992 c 223:** See note following RCW 39.76.011.

### Chapter 39.06 RCW

#### PUBLIC WORKS—REGISTRATION, LICENSING, OF CONTRACTORS

##### Sections

39.06.010 Contracts with unregistered or unlicensed contractors and with other violators prohibited.

**39.06.010 Contracts with unregistered or unlicensed contractors and with other violators prohibited.** No agency of the state or any of its political subdivisions may execute a contract:

(1) With any contractor who is not registered or licensed as may be required by the laws of this state other than contractors on highway projects who have been prequalified as required by RCW 47.28.070, with the department of transportation to perform highway construction, reconstruction, or maintenance; or

(2) For two years from the date that a violation is finally determined, with any person or entity who has been determined by the respective administering agency to have violated RCW 50.12.070(1)(b), 51.16.070(1)(b), or \*82.32.070(1)(b). During this two-year period, the person or entity may not be permitted to bid, or have a bid considered, on any public works contract. [1997 c 54 § 1; 1984 c 7 § 43; 1967 c 70 § 3.]

**\*Reviser's note:** RCW 82.32.070 was amended by 1999 c 358 § 14, changing subsection (1)(b) to subsection (2).

**Severability—1984 c 7:** See note following RCW 47.01.141.

*Construction building permits—Cities, towns or counties prohibited from issuing without verification of registration: RCW 18.27.110.*

### Chapter 39.08 RCW

#### CONTRACTOR'S BOND

##### Sections

39.08.010 Bond required—Conditions—Retention of contract amount in lieu of bond—Contracts of one hundred thousand dollars or less.

39.08.015 Liability for failure to take bond.

39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorney's fees.

39.08.065 Notice to contractor condition to suit on bond when supplies are furnished to subcontractor.

39.08.080 Liens for labor, materials, taxes, on public works.

39.08.100 Marine vessel construction—Security in lieu of bond.

*Public officer requiring bond or insurance from particular insurer, agent or broker, procuring bond or insurance, violations: RCW 48.30.270.*

**39.08.010 Bond required—Conditions—Retention of contract amount in lieu of bond—Contracts of one hundred thousand dollars or less.** Whenever any board, council, commission, trustees, or body acting for the state or any county or municipality or any public body shall contract with any person or corporation to do any work for the state, county, or municipality, or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the person or persons with whom such contract is made to make, execute, and deliver to such board, council,

commission, trustees, or body a good and sufficient bond, with a surety company as surety, conditioned that such person or persons shall faithfully perform all the provisions of such contract and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, which bond in cases of cities and towns shall be filed with the clerk or comptroller thereof, and any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original contractor: PROVIDED, HOWEVER, That the provisions of RCW 39.08.010 through 39.08.030 shall not apply to any money loaned or advanced to any such contractor, subcontractor or other person in the performance of any such work: PROVIDED FURTHER, That on contracts of twenty-five thousand dollars or less, at the option of the contractor the respective public entity may, in lieu of the bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later: PROVIDED FURTHER, That for contracts of one hundred thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties: AND PROVIDED FURTHER, That the surety must agree to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington. [1989 c 145 § 1; 1982 c 98 § 5; 1975 1st ex.s. c 278 § 23; 1967 c 70 § 2; 1915 c 28 § 1; 1909 c 207 § 1; RRS § 1159. Prior: 1897 c 44 § 1; 1888 p 15 § 1.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

*Liens for labor, material, taxes on public works—Reserve fund required:* RCW 60.28.010.

*State highway construction and maintenance, bond and surety requirements:* Chapter 47.28 RCW.

**39.08.015 Liability for failure to take bond.** If any board of county commissioners of any county, or mayor and common council of any incorporated city or town, or tribunal transacting the business of any municipal corporation shall fail to take such bond as herein required, such county, incorporated city or town, or other municipal corporation, shall be liable to the persons mentioned in RCW 39.08.010, to the full extent and for the full amount of all such debts so contracted by such contractor. [1909 c 207 § 2; RRS § 1160. Prior: 1888 p 15 § 2. Formerly RCW 39.08.070.]

**39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorney's fees.** (1) The bond mentioned in RCW 39.08.010 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, except under subsection (2) of this section, and shall be to the state of Washington, except as otherwise provided in RCW 39.08.100, and except in cases of cities and towns, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond shall run: PROVIDED, The same shall not be for a less

amount than twenty-five percent of the contract price of any such improvement, and may designate that the same shall be payable to such city, and not to the state of Washington, and all such persons mentioned in RCW 39.08.010 shall have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements: PROVIDED, That such persons shall not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or materialman, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of . . . . . dollars (here insert the amount) against the bond taken from . . . . . (here insert the name of the principal and surety or sureties upon such bond) for the work of . . . . . (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed) . . . . .

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the claimant shall be entitled to recover in addition to all other costs, attorney's fees in such sum as the court shall adjudge reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice hereinbefore mentioned: PROVIDED FURTHER, That any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict herewith: AND PROVIDED FURTHER, That any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict herewith.

(2) Under the job order contracting procedure described in RCW 39.10.130, bonds will be in an amount not less than the dollar value of all open work orders. [2003 c 301 § 4; 1989 c 58 § 1; 1977 ex.s. c 166 § 4; 1915 c 28 § 2; 1909 c 207

§ 3; RRS § 1161. Prior: 1899 c 105 § 1; 1888 p 16 § 3. Formerly RCW 39.08.030 through 39.08.060.]

**Severability—1977 ex.s. c 166:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to the other persons or circumstances is not affected." [1977 ex.s. c 166 § 9.]

**39.08.065 Notice to contractor condition to suit on bond when supplies are furnished to subcontractor.** Every person, firm or corporation furnishing materials, supplies or provisions to be used in the construction, performance, carrying on, prosecution or doing of any work for the state, or any county, city, town, district, municipality or other public body, shall, not later than ten days after the date of the first delivery of such materials, supplies or provisions to any subcontractor or agent of any person, firm or corporation having a subcontract for the construction, performance, carrying on, prosecution or doing of such work, deliver or mail to the contractor a notice in writing stating in substance and effect that such person, firm or corporation has commenced to deliver materials, supplies or provisions for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished and that such contractor and his bond will be held for the payment of the same, and no suit or action shall be maintained in any court against the contractor or his bond to recover for such material, supplies or provisions or any part thereof unless the provisions of this section have been complied with. [1915 c 167 § 1; RRS § 1159-1. Formerly RCW 39.08.020.]

**39.08.080 Liens for labor, materials, taxes, on public works.** See chapter 60.28 RCW.

**39.08.100 Marine vessel construction—Security in lieu of bond.** On contracts for construction, maintenance, or repair of a marine vessel, the department of transportation may permit, subject to specified format and conditions, the substitution of one or more of the following alternate forms of security in lieu of all or part of the bond: Certified check, replacement bond, cashier's check, treasury bills, an irrevocable bank letter of credit, assignment of a savings account, or other liquid assets specifically approved by the secretary of transportation. The secretary of transportation shall predetermine and include in the special provisions of the bid package the amount of this alternative form of security or bond, or a combination of the two, on a case-by-case basis, in an amount adequate to protect one hundred percent of the state's exposure to loss. Assets used as an alternative form of security shall not be used to secure the bond. By October 1, 1989, the department shall develop and adopt rules under chapter 34.05 RCW that establish the procedures for determining the state's exposure to loss on contracts for construction, maintenance, or repair of a marine vessel. [1989 c 58 § 2.]

### Chapter 39.10 RCW

#### ALTERNATIVE PUBLIC WORKS CONTRACTING PROCEDURES

##### Sections

39.10.010 Finding—Purpose.  
39.10.020 Definitions.

39.10.030 Public notification and review process.  
39.10.040 Baseball stadium project—Alternative procedure may be used.  
39.10.051 Design-build procedure—Which public bodies may use.  
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39.10.115 School district project review board—Established—Procedures.  
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39.10.120 Application of chapter.  
39.10.130 Job order contracts.  
39.10.900 Captions not law—1994 c 132.  
39.10.901 Severability—1994 c 132.  
39.10.902 Repealer.

**39.10.010 Finding—Purpose. (Effective until July 1, 2007.)** The legislature finds that the traditional process of awarding public works contracts in lump sum to the lowest responsible bidder is a fair and objective method of selecting a contractor. However, under certain circumstances, alternative public works contracting procedures may best serve the public interest if such procedures are implemented in an open and fair process based on objective and equitable criteria. The purpose of this chapter is to authorize the use of certain supplemental alternative public works contracting procedures by state agencies and large municipalities under limited circumstances, to prescribe appropriate requirements to ensure that such contracting procedures serve the public interest, and to establish a process for evaluation of such contracting procedures. [1994 c 132 § 1.]

**39.10.020 Definitions. (Effective until July 1, 2007.)** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alternative public works contracting procedure" means the design-build and the general contractor/construction manager contracting procedures authorized in RCW 39.10.051 and 39.10.061, respectively.

(2) "Public body" means the state department of general administration; the University of Washington; Washington State University; every city with a population greater than seventy thousand and any public authority chartered by such city under RCW 35.21.730 through 35.21.755 and specifically authorized as provided in RCW 39.10.120(4); every county with a population greater than four hundred fifty thousand; every port district with total revenues greater than fifteen million dollars per year; every public hospital district with total revenues greater than fifteen million dollars per year utilizing the design-build procedure authorized by RCW 39.10.051 and every public hospital district, regardless of total revenues, proposing projects that are considered and approved by the public hospital district project review board under RCW 39.10.117; every public utility district with revenues from energy sales greater than twenty-three million dollars per year; those school districts proposing projects that are

considered and approved by the school district project review board under RCW 39.10.115; and the state ferry system.

(3) "Public works project" means any work for a public body within the definition of the term public work in RCW 39.04.010.

(4) "Job order contract" means a contract between a public body or any school district and a registered or licensed contractor in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated, definitive work orders for public works as defined in RCW 39.04.010.

(5) "Job order contractor" means a registered or licensed contractor awarded a job order contract.

(6) "Unit price book" means a book containing specific prices, based on generally accepted industry standards and information, where available, for various items of work to be performed by the job order contractor. The prices may include: All the costs of materials; labor; equipment; overhead, including bonding costs; and profit for performing the items of work. The unit prices for labor must be at the rates in effect at the time the individual work order is issued.

(7) "Work order" means an order issued for a definite scope of work to be performed pursuant to a job order contract. [2003 c 352 § 1; 2003 c 301 § 2; 2003 c 300 § 3; 2001 c 328 § 1; 2000 c 209 § 1; 1997 c 376 § 1; 1994 c 132 § 2.]

**Reviser's note:** This section was amended by 2003 c 300 § 3, 2003 c 301 § 2, and by 2003 c 352 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2001 c 328:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 328 § 8.]

**Effective date—1997 c 376:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 376 § 10.]

**39.10.030 Public notification and review process.** (*Effective until July 1, 2007.*) (1) An alternative public works contracting procedure authorized under this chapter may be used for a specific public works project only after a public body determines that use of the alternative procedure will serve the public interest by providing a substantial fiscal benefit, or that use of the traditional method of awarding contracts in lump sum to the low responsive bidder is not practical for meeting desired quality standards or delivery schedules.

(2) Whenever a public body determines to use one of the alternative public works contracting procedures authorized under this chapter for a public works project, it shall first ensure adequate public notification and opportunity for public review and comment by implementing the public hearing procedure under (a) of this subsection or the written public comment procedure under (b) of this subsection.

(a) Public hearing procedure:

(i) The public body shall conduct a public hearing to receive public comment on its preliminary determination to use the alternative public works contracting procedure. At least twenty days before the public hearing, the public body shall cause notice of such hearing to be published at least once in a legal newspaper of general circulation published in

or as near as possible to that part of the county in which the public work will be done. The notice shall clearly describe the proposed project and the preliminary determination to use the alternative public works contracting procedure. The notice shall also indicate when, where, and how persons may present their comments on the preliminary determination, and where persons may obtain additional written information describing the project.

(ii) The public body shall summarize in a written statement its reasons for using the alternative public works contracting procedure. This statement, along with other relevant information describing the project, shall be made available upon request to interested parties at least twenty days before the public hearing.

(iii) The public body shall receive and record both written and oral comments concerning the preliminary determination at the public hearing.

(b) Written public comment procedure:

(i) The public body shall establish a thirty-day public comment period to receive public comment on its preliminary determination to use the alternative public works contracting procedure. At least seven days before the beginning of the public comment period, the public body shall cause notice of the public comment period to be published at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public work will be done. The notice shall clearly describe the proposed project and the preliminary determination to use the alternative public works contracting procedure. The notice shall also indicate when, where, and how persons may submit their written comments on the preliminary determination, where persons may obtain additional written information describing the project, and the date, time, and location of the public hearing that shall be conducted under (b)(iv) of this subsection if significant adverse written comments are received by the public body.

(ii) The public body shall summarize in a written statement its reasons for using the alternative public works contracting procedure. This statement, along with other relevant information describing the project, shall be made available upon request to interested parties at least seven days before the beginning of the public comment period.

(iii) The public body shall receive written comments concerning the preliminary determination during the public comment period.

(iv) If the public body finds that it has received significant adverse comments relating to the use of the alternative public works contracting procedure, the public body shall conduct a public hearing to receive additional oral and written public comments on its preliminary determination to use the alternative public works contracting procedure. The public hearing shall be held on the date and at the time and location specified in the public notice published under (b)(i) of this subsection. At least seven days before the public hearing, the public body shall provide notice of the hearing to each person who has submitted written comments, and cause a notice of the hearing to be published at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public work will be done.

(v) The public body shall receive and record written and oral comments concerning the preliminary determination at the public hearing.

(3) Final determinations to use an alternative public works contracting procedure may be made only by the legislative or governing authority of the public body, or, in the case of state agencies, by the agency director or chief administrative officer. Final determinations shall be accompanied by a concise statement of the principal reasons for overruling any considerations urged against the determination. Final determinations are subject to appeal to superior court within thirty days of the determination, provided that notice of such appeal shall be provided to the public body within seven days of the determination. The court may award reasonable attorneys' fees to the prevailing party.

(4) Following completion of a public works project using one of the alternative public works contracting procedures under this chapter, a report shall be submitted to the legislative or governing authority of the public body reviewing the utilization and performance of the alternative public works contracting procedure. Such report shall be made available to the public. [1997 c 376 § 2; 1994 c 132 § 3.]

**Effective date—1997 c 376:** See note following RCW 39.10.020.

**39.10.040 Baseball stadium project—Alternative procedure may be used. (Effective until July 1, 2007.)** An alternative public works contracting procedure authorized in this chapter may be used by a special agency, authority, or other district established by a county for construction of a baseball stadium provided that:

(1) The county is authorized to use the alternative public works contracting procedure under this chapter;

(2) The special agency, authority, or district complies with all the requirements of this chapter related to the alternative public works contracting procedure utilized; and

(3) The county itself complies with RCW 39.10.030 with respect to the baseball stadium project to be undertaken by the special agency, authority, or district. [1994 c 132 § 4.]

**39.10.051 Design-build procedure—Which public bodies may use. (Effective until July 1, 2007.)** (1) Notwithstanding any other provision of law, and after complying with RCW 39.10.030, the following public bodies may utilize the design-build procedure of public works contracting for public works projects authorized under this section: The state department of general administration; the state ferry system; the University of Washington; Washington State University; every city with a population greater than seventy thousand and any public authority chartered by such city under RCW 35.21.730 through 35.21.755 and specifically authorized as provided in RCW 39.10.120(4); every county with a population greater than four hundred fifty thousand; every public utility district with revenues from energy sales greater than twenty-three million dollars per year; every public hospital district with total revenues greater than fifteen million dollars per year; and every port district with total revenues greater than fifteen million dollars per year. The authority granted to port districts in this section is in addition to and does not affect existing contracting authority under RCW 53.08.120 and 53.08.130. For the purposes of this section, "design-

build procedure" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract.

(2) Public bodies authorized under this section may utilize the design-build procedure for public works projects valued over ten million dollars where:

(a) The construction activities or technologies to be used are highly specialized and a design-build approach is critical in developing the construction methodology or implementing the proposed technology; or

(b) The project design is repetitive in nature and is an incidental part of the installation or construction; or

(c) Regular interaction with and feedback from facilities users and operators during design is not critical to an effective facility design.

(3) Public bodies authorized under this section may also use the design-build procedure for the following projects that meet the criteria in subsection (2)(b) and (c) of this section:

(a) The construction or erection of preengineered metal buildings or prefabricated modular buildings, regardless of cost; or

(b) The construction of new student housing projects valued over five million dollars.

(4) Contracts for design-build services shall be awarded through a competitive process utilizing public solicitation of proposals for design-build services. The public body shall publish at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public work will be done, a notice of its request for proposals for design-build services and the availability and location of the request for proposal documents. The request for proposal documents shall include:

(a) A detailed description of the project including programmatic, performance, and technical requirements and specifications, functional and operational elements, minimum and maximum net and gross areas of any building, and, at the discretion of the public body, preliminary engineering and architectural drawings;

(b) The reasons for using the design-build procedure;

(c) A description of the qualifications to be required of the proposer including, but not limited to, submission of the proposer's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors. Evaluation factors shall include, but not be limited to: Proposal price; ability of professional personnel; past performance on similar projects; ability to meet time and budget requirements; ability to provide a performance and payment bond for the project; recent, current, and projected work loads of the firm; location; and the concept of the proposal;

(e) The form of the contract to be awarded;

(f) The amount to be paid to finalists submitting best and final proposals who are not awarded a design-build contract; and

(g) Other information relevant to the project.

(5) The public body shall establish a committee to evaluate the proposals based on the factors, weighting, and process identified in the request for proposals. Based on its evaluation, the public body shall select not fewer than three nor

more than five finalists to submit best and final proposals. The public body may, in its sole discretion, reject all proposals. Design-build contracts shall be awarded using the procedures in (a) or (b) of this subsection.

(a) Best and final proposals shall be evaluated and scored based on the factors, weighting, and process identified in the initial request for proposals. The public body may score the proposals using a system that measures the quality and technical merits of the proposal on a unit price basis. Final proposals may not be considered if the proposal cost is greater than the maximum allowable construction cost identified in the initial request for proposals. The public body shall initiate negotiations with the firm submitting the highest scored best and final proposal. If the public body is unable to execute a contract with the firm submitting the highest scored best and final proposal, negotiations with that firm may be suspended or terminated and the public body may proceed to negotiate with the next highest scored firm. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

(b) If the public body determines that all finalists are capable of producing plans and specifications that adequately meet project requirements, the public body may award the contract to the firm that submits the responsive best and final proposal with the lowest price.

(6) The firm awarded the contract shall provide a performance and payment bond for the contracted amount. The public body shall provide appropriate honorarium payments to finalists submitting best and final proposals who are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects.

(7) The authority provided to the state ferry system in this section is limited to projects concerning construction, renovation, preservation, demolition, and reconstruction of ferry terminals and associated land-based facilities. [2003 c 352 § 2; 2003 c 300 § 4; 2002 c 46 § 1; 2001 c 328 § 2.]

**Reviser's note:** This section was amended by 2003 c 300 § 4 and by 2003 c 352 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2002 c 46:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2002]." [2002 c 46 § 5.]

**Effective date—2001 c 328:** See note following RCW 39.10.020.

**39.10.061 General contractor/construction manager procedure—Limitations. (Effective until July 1, 2007.)**

(1) Notwithstanding any other provision of law, and after complying with RCW 39.10.030, a public body may utilize the general contractor/construction manager procedure of public works contracting for public works projects authorized under subsection (2) of this section. For the purposes of this section, "general contractor/construction manager" means a firm with which a public body has selected and negotiated a maximum allowable construction cost to be guaranteed by the firm, after competitive selection through formal advertisement and competitive bids, to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, con-

structability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase.

(2) Except those school districts proposing projects that are considered and approved by the school district project review board and those public hospital districts proposing projects that are considered and approved by the public hospital district project review board, public bodies authorized under this section may utilize the general contractor/construction manager procedure for public works projects valued over ten million dollars where:

(a) Implementation of the project involves complex scheduling requirements; or

(b) The project involves construction at an existing facility which must continue to operate during construction; or

(c) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project.

(3) Public bodies should select general contractor/construction managers early in the life of public works projects, and in most situations no later than the completion of schematic design.

(4) Contracts for the services of a general contractor/construction manager under this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. The public solicitation of proposals shall include: A description of the project, including programmatic, performance, and technical requirements and specifications when available; the reasons for using the general contractor/construction manager procedure; a description of the qualifications to be required of the proposer, including submission of the proposer's accident prevention program; a description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors; the form of the contract to be awarded; the estimated maximum allowable construction cost; and the bid instructions to be used by the general contractor/construction manager finalists. Evaluation factors shall include, but not be limited to: Ability of professional personnel, past performance in negotiated and complex projects, and ability to meet time and budget requirements; the scope of work the general contractor/construction manager proposes to self-perform and its ability to perform it; location; recent, current, and projected work loads of the firm; and the concept of their proposal. A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, these finalists shall submit final proposals, including sealed bids for the percent fee, which is the percentage amount to be earned by the general contractor/construction manager as overhead and profit, on the estimated maximum allowable construction cost and the fixed amount for the detailed specified general conditions work. The public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals.

(5) The maximum allowable construction cost may be negotiated between the public body and the selected firm after the scope of the project is adequately determined to

establish a guaranteed contract cost for which the general contractor/construction manager will provide a performance and payment bond. The guaranteed contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the percent fee on the negotiated maximum allowable construction cost, and sales tax. If the public body is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the public body determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the public body shall negotiate with the next highest scored firm and continue until an agreement is reached or the process is terminated. If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the public body, the percent fee shall be renegotiated.

(6) All subcontract work shall be competitively bid with public bid openings. When critical to the successful completion of a subcontractor bid package and after publication of notice of intent to determine bidder eligibility in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public work will be done at least twenty days before requesting qualifications from interested subcontract bidders, the owner and general contractor/construction manager may determine subcontractor bidding eligibility using the following evaluation criteria:

- (a) Adequate financial resources or the ability to secure such resources;
- (b) History of successful completion of a contract of similar type and scope;
- (c) Project management and project supervision personnel with experience on similar projects and the availability of such personnel for the project;
- (d) Current and projected workload and the impact the project will have on the subcontractor's current and projected workload;
- (e) Ability to accurately estimate the subcontract bid package scope of work;
- (f) Ability to meet subcontract bid package shop drawing and other coordination procedures;
- (g) Eligibility to receive an award under applicable laws and regulations; and
- (h) Ability to meet subcontract bid package scheduling requirements.

The owner and general contractor/construction manager shall weigh the evaluation criteria and determine a minimum acceptable score to be considered an eligible subcontract bidder.

After publication of notice of intent to determine bidder eligibility, subcontractors requesting eligibility shall be provided the evaluation criteria and weighting to be used by the owner and general contractor/construction manager to determine eligible subcontract bidders. After the owner and general contractor/construction manager determine eligible subcontract bidders, subcontractors requesting eligibility shall be provided the results and scoring of the subcontract bidder eligibility determination.

Subcontract bid packages shall be awarded to the responsible bidder submitting the low responsive bid. The require-

ments of RCW 39.30.060 apply to each subcontract bid package. All subcontractors who bid work over three hundred thousand dollars shall post a bid bond and all subcontractors who are awarded a contract over three hundred thousand dollars shall provide a performance and payment bond for their contract amount. All other subcontractors shall provide a performance and payment bond if required by the general contractor/construction manager. If a general contractor/construction manager receives a written protest from a subcontractor bidder, the general contractor/construction manager shall not execute a contract for the subcontract bid package with anyone other than the protesting bidder without first providing at least two full business days' written notice of the general contractor/construction manager's intent to execute a contract for the subcontract bid package; provided that the protesting bidder submits notice in writing of its protest no later than two full business days following bid opening. Intermediate Saturdays, Sundays, and legal holidays are not counted. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. Except as provided for under subsection (7) of this section, bidding on subcontract work by the general contractor/construction manager or its subsidiaries is prohibited. The general contractor/construction manager may negotiate with the low-responsive bidder in accordance with RCW 39.10.080 or, if unsuccessful in such negotiations, rebid.

(7) The general contractor/construction manager, or its subsidiaries, may bid on subcontract work if:

- (a) The work within the subcontract bid package is customarily performed by the general contractor/construction manager;
- (b) The bid opening is managed by the public body; and
- (c) Notification of the general contractor/construction manager's intention to bid is included in the public solicitation of bids for the bid package.

In no event may the value of subcontract work performed by the general contractor/construction manager exceed thirty percent of the negotiated maximum allowable construction cost.

(8) A public body may include an incentive clause in any contract awarded under this section for savings of either time or cost or both from that originally negotiated. No incentives granted may exceed five percent of the maximum allowable construction cost. If the project is completed for less than the agreed upon maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the public body. If the project is completed for more than the agreed upon maximum allowable construction cost, excepting increases due to any contract change orders approved by the public body, the additional cost shall be the responsibility of the general contractor/construction manager.

(9) The authority provided to the state ferry system in this section is limited to projects concerning construction, renovation, preservation, demolition, and reconstruction of ferry terminals and associated land-based facilities. [2003 c 352 § 3; 2003 c 300 § 5; 2002 c 46 § 2; 2001 c 328 § 3.]

**Reviser's note:** This section was amended by 2003 c 300 § 5 and by 2003 c 352 § 3, each without reference to the other. Both amendments are

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2002 c 46:** See note following RCW 39.10.051.

**Effective date—2001 c 328:** See note following RCW 39.10.020.

**39.10.065 Demonstration projects—Contract deadline—Transfer of authority to other public body.** (*Effective until July 1, 2007.*) (1) In addition to the projects authorized in \*RCW 39.10.050 and 39.10.060, public bodies may use the general contractor/construction manager or design-build procedure for demonstration projects valued between three million dollars and ten million dollars as follows:

(a) Three demonstration projects by the department of general administration; and

(b) One demonstration project by each of the public bodies authorized in RCW 39.10.020(2) other than the department of general administration.

(2) Public bodies shall give weight to proposers' experience working on projects valued between three million dollars and ten million dollars in the evaluation process for the selection of a general contractor/construction manager or design-build firm for demonstration projects authorized in subsection (1) of this section.

(3) Cities which supply water to over three hundred fifty thousand people may use the design-build procedure for one water system demonstration project valued over ten million dollars. Use of the design-build procedure shall be deemed to effect compliance with the requirement for competitive bids under RCW 43.155.060.

(4) All contracts authorized under this section must be entered into before July 1, 1999.

(5) In the event that a public body determines not to perform a demonstration project using its authority under this section, it may transfer its authority to another public body. [1997 c 376 § 5.]

**\*Reviser's note:** RCW 39.10.050 and 39.10.060 were repealed by 2001 c 328 § 7.

**Effective date—1997 c 376:** See note following RCW 39.10.020.

**39.10.067 School district capital demonstration projects—Conditions.** (*Effective until July 1, 2007.*) In addition to the projects authorized in RCW 39.10.061, public bodies may also use the general contractor/construction manager contracting procedure for the construction of school district capital demonstration projects, subject to the following conditions:

(1) The project must receive approval from the school district project review board established under RCW 39.10.115.

(2) The school district project review board may not authorize more than sixteen demonstration projects valued over ten million dollars.

(3) The school district project review board may not authorize more than two demonstration projects valued between five and ten million dollars and the authorization for the two demonstration projects shall expire upon the completion of the two projects. [2003 c 301 § 3; 2002 c 46 § 3; 2000 c 209 § 3.]

**Effective date—2002 c 46:** See note following RCW 39.10.051.

(2004 Ed.)

**39.10.068 Public hospital district capital demonstration projects—Conditions.** (*Effective until July 1, 2007.*)

(1) In addition to the projects authorized in RCW 39.10.061, public hospital districts may also use the general contractor/construction manager contracting procedure for the construction of public hospital district capital demonstration projects, subject to the following conditions:

(a) The project must receive approval from the public hospital district project review board established under RCW 39.10.117.

(b) The public hospital district project review board may not authorize more than ten demonstration projects valued between five and ten million dollars.

(2) Public hospital districts may also use the general contractor/construction manager contracting procedure for the construction of any public hospital district capital project that has a value over ten million dollars and that has received approval from the public hospital district project review board established under RCW 39.10.117. [2003 c 300 § 6.]

**39.10.070 Project management and contracting requirements.** (*Effective until July 1, 2007.*)

(1) A public body utilizing the alternative public works contracting procedures authorized under \*RCW 39.10.050 and 39.10.060 shall provide for:

(a) The preparation of appropriate, complete, and coordinated design documents consistent with the procedure utilized;

(b) To the extent appropriate, an independent review of the contract documents through value engineering or constructability studies prior to bid or proposal solicitation;

(c) Reasonable budget contingencies totaling not less than five percent of the anticipated contract value;

(d) To the extent appropriate, on-site architectural or engineering representatives during major construction or installation phases;

(e) Employment of staff or consultants with expertise and prior experience in the management of comparable projects; and

(f) Contract documents that include alternative dispute resolution procedures to be attempted prior to the initiation of litigation.

(2) A public body utilizing the alternative public works contracting procedures under \*RCW 39.10.050 and 39.10.060 may provide incentive payments to contractors for early completion, cost savings, or other goals if such payments are identified in the request for proposals. [1994 c 132 § 7.]

**\*Reviser's note:** RCW 39.10.050 and 39.10.060 were repealed by 2001 c 328 § 7.

**39.10.080 Negotiated adjustments to lowest bid or proposal—When allowed.** (*Effective until July 1, 2007.*)

Notwithstanding the provisions of RCW 39.04.015, a public body is authorized to negotiate an adjustment to the lowest bid or proposal price for a public works project awarded under \*RCW 39.10.050 and 39.10.060 based upon agreed changes to the contract plans and specifications under the following conditions:

(1) All responsive bids or proposal prices exceed the available funds, as certified by an appropriate fiscal officer;

(2) The apparent low-responsive bid or proposal does not exceed the available funds by the greater of one hundred twenty-five thousand dollars or two percent for projects valued over ten million dollars; and

(3) The negotiated adjustment will bring the bid or proposal price within the amount of available funds. [1994 c 132 § 8.]

\*Reviser's note: RCW 39.10.050 and 39.10.060 were repealed by 2001 c 328 § 7.

**39.10.090 Construction of chapter—Waiver of other limits and requirements. (Effective until July 1, 2007.)**

This chapter shall not be construed to affect or modify the existing statutory, regulatory, or charter powers of public bodies except to the extent that a procedure authorized by this chapter is adopted by a public body for a particular public works project. In that event, the normal contracting or procurement limits or requirements of a public body as imposed by statute, ordinance, resolution, or regulation shall be deemed waived or amended only to the extent necessary to accommodate such procedures for a particular public works project. [1994 c 132 § 9.]

**39.10.100 Public inspection of certain records—Protection of trade secrets. (Effective until July 1, 2007.)**

(1) Except as provided in subsection (2) of this section, all proceedings, records, contracts, and other public records relating to alternative public works transactions under this chapter shall be open to the inspection of any interested person, firm, or corporation in accordance with chapter 42.17 RCW.

(2) Trade secrets, as defined in RCW 19.108.010, or other proprietary information submitted by a bidder, offeror, or contractor in connection with an alternative public works transaction under this chapter shall not be subject to chapter 42.17 RCW if the bidder, offeror, or contractor specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected. [1994 c 132 § 10.]

**39.10.115 School district project review board—Established—Procedures. (Effective until July 1, 2007.)**

(1) The school district project review board is established to review school district proposals submitted by school districts to use alternative public works contracting procedures. The board shall select and approve qualified projects based upon an evaluation of the information submitted by the school district under subsection (2) of this section. After July 1, 2001, any appointments for full terms or to fill a vacancy shall be made by the governor and shall include the following representatives, each having experience with public works or commercial construction: One representative from the office of the superintendent of public instruction; one representative from the office of financial management; two representatives from the construction industry, one of whom works for a construction company with gross annual revenues of twenty million dollars or less; one representative from the specialty contracting industry; one representative from organized labor; one representative from the design industry; one representative from a public body previously authorized under this chapter to use an alternative public works contracting procedure

who has experience using such alternative contracting procedures; one representative from school districts with ten thousand or more annual average full-time equivalent pupils; and one representative from school districts with fewer than ten thousand average full-time equivalent pupils. Each member shall be appointed for a term of three years, with the first three-year term commencing after June 8, 2000. Any member of the school district project review board who is directly affiliated with any applicant before the board must recuse him or herself from consideration of the application.

(2) A school district seeking to use alternative contracting procedures authorized under this chapter shall file an application with the school district project review board. The application form shall require the district to submit a detailed statement of the proposed project, including the school district's name; student population based upon October full-time equivalents; the current projected total budget for the project, including the estimated construction costs, costs for professional services, equipment and furnishing costs, off-site costs, contract administration costs, and other related project costs; the anticipated project design and construction schedule; a summary of the school district's construction activity for the preceding six years; and an explanation of why the school district believes the use of an alternative contracting procedure is in the public interest and why the school district is qualified to use an alternative contracting procedure, including a summary of the relevant experience of the school district's management team. The applicant shall also provide in a timely manner any other information concerning implementation of projects under this chapter requested by the school district project review board to assist in its consideration.

(3) Any school district whose application is approved by the school district project review board shall comply with the public notification and review requirements in RCW 39.10.030.

(4) Any school district whose application is approved by the school district project review board shall not use as an evaluation factor whether a contractor submitting a bid for the approved project has had prior general contractor/construction manager procedure experience. [2001 c 328 § 4; 2000 c 209 § 4.]

**Effective date—2001 c 328:** See note following RCW 39.10.020.

**39.10.117 Public hospital district project review board—Established—Procedures. (Effective until July 1, 2007.)**

(1) The public hospital district project review board is established to review public hospital district proposals submitted by public hospital districts to use alternative public works contracting procedures. The board shall select and approve qualified projects based upon an evaluation of the information submitted by the public hospital district under subsection (2) of this section. Any appointments for full terms or to fill a vacancy shall be made by the governor and shall include the following representatives, each having experience with public works or commercial construction: One representative from the department of health; one representative from the office of financial management; two representatives from the construction industry, one of whom works for a construction company with gross annual revenue

nues of twenty million dollars or less; one representative from the specialty contracting industry; one representative from organized labor; one representative from the design industry; one representative from a public body previously authorized under this chapter to use an alternative public works contracting procedure who has experience using such alternative contracting procedures; one representative from public hospital districts with total revenues greater than fifteen million dollars per year; and one representative from public hospital districts with total revenues equal to or less than fifteen million dollars per year. Each member shall be appointed for a term of three years, with the first three-year term commencing after July 27, 2003. Any member of the public hospital district project review board who is directly affiliated with any applicant before the board must recuse him [himself] or herself from consideration of the application.

(2) A public hospital district seeking to use alternative contracting procedures authorized under this chapter pursuant to RCW 39.10.068 shall file an application with the public hospital district project review board. The application form shall require the district to submit a detailed statement of the proposed project, including the public hospital district's name; the current projected total budget for the project, including the estimated construction costs, costs for professional services, equipment and furnishing costs, off-site costs, contract administration costs, and other related project costs; the anticipated project design and construction schedule; a summary of the public hospital district's construction activity for the preceding six years; and an explanation of why the public hospital district believes the use of an alternative contracting procedure is in the public interest and why the public hospital district is qualified to use an alternative contracting procedure, including a summary of the relevant experience of the public hospital district's management team. The applicant shall also provide in a timely manner any other information concerning implementation of projects under this chapter requested by the public hospital district project review board to assist in its consideration.

(3) Any public hospital district whose application is approved by the public hospital district project review board shall comply with the public notification and review requirements in RCW 39.10.030.

(4) Any public hospital district whose application is approved by the public hospital district project review board shall not use as an evaluation factor whether a contractor submitting a bid for the approved project has had prior general contractor/construction manager procedure experience. [2003 c 300 § 7.]

**39.10.120 Application of chapter.** (1) Except as provided in subsections (2) and (3) of this section, the alternative public works contracting procedures authorized under this chapter are limited to public works contracts signed before July 1, 2007. Methods of public works contracting authorized by RCW \*39.10.050 and 39.10.060 or 39.10.051 and 39.10.061 shall remain in full force and effect until completion of contracts signed before July 1, 2007.

(2) For the purposes of a baseball stadium as defined in RCW 82.14.0485, the design-build contracting procedures under \*RCW 39.10.050 shall remain in full force and effect

until completion of contracts signed before December 31, 1997.

(3) For the purposes of a stadium and exhibition center, as defined in RCW 36.102.010, the design-build contracting procedures under RCW \*39.10.050 or 39.10.051 shall remain in full force and effect until completion of contracts signed before December 31, 2002.

(4) A public authority chartered by a city that is a public body may utilize an alternative public works contracting procedure under this chapter only after receiving specific authorization on a project-by-project basis from the governing body of the city. For purposes of public authorities authorized to use alternative public works contracting procedures under this chapter, the city chartering any such public authority shall itself comply with RCW 39.10.030 on behalf of the public authority. [2001 c 328 § 5. Prior: 1997 c 376 § 7; 1997 c 220 § 404 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 305; 1994 c 132 § 12.]

**\*Reviser's note:** RCW 39.10.050 and 39.10.060 were repealed by 2001 c 328 § 7.

**Effective date—2001 c 328:** See note following RCW 39.10.020.

**Effective date—1997 c 376:** See note following RCW 39.10.020.

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

*Demonstration projects under RCW 39.10.065 limited to contracts entered into before July 1, 1999: See RCW 39.10.065(4).*

**39.10.130 Job order contracts. (Effective until July 1, 2007.)** (1) Public bodies may use a job order contract for public works projects when:

(a) A public body has made a determination that the use of job order contracts will benefit the public by providing an effective means of reducing the total lead-time and cost for public works projects or repair required at public facilities through the use of unit price books and work orders by eliminating time-consuming, costly aspects of the traditional public works process, which require separate contracting actions for each small project;

(b) The work order to be issued for a particular project does not exceed two hundred thousand dollars;

(c) Less than twenty percent of the dollar value of the work order consists of items of work not contained in the unit price book; and

(d) At least eighty percent of the job order contract must be subcontracted to entities other than the job order contractor.

(2) Public bodies shall award job order contracts through a competitive process utilizing public requests for proposals. Public bodies shall make an effort to solicit proposals from a certified minority or certified woman-owned contractor to the extent permitted by the Washington state civil rights act, RCW 49.60.400. The public body shall publish, at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public works will be done, a request for proposals for job order con-

tracts and the availability and location of the request for proposal documents. The public body shall ensure that the request for proposal documents at a minimum includes:

(a) A detailed description of the scope of the job order contract including performance, technical requirements and specifications, functional and operational elements, minimum and maximum work order amounts, duration of the contract, and options to extend the job order contract;

(b) The reasons for using job order contracts;

(c) A description of the qualifications required of the proposer;

(d) The identity of the specific unit price book to be used;

(e) The minimum contracted amount committed to the selected job order contractor;

(f) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors. The public body shall ensure that evaluation factors include, but are not limited to, proposal price and the ability of the proposer to perform the job order contract. In evaluating the ability of the proposer to perform the job order contract, the public body may consider: The ability of the professional personnel who will work on the job order contract; past performance on similar contracts; ability to meet time and budget requirements; ability to provide a performance and payment bond for the job order contract; recent, current, and projected work loads of the proposer; location; and the concept of the proposal;

(g) The form of the contract to be awarded;

(h) The method for pricing renewals of or extensions to the job order contract;

(i) A notice that the proposals are subject to the provisions of RCW 39.10.100; and

(j) Other information relevant to the project.

(3) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, the finalists shall submit final proposals, including sealed bids based upon the identified unit price book. Such bids may be in the form of coefficient markups from listed price book costs. The public body shall award the contract to the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public request for proposals.

(4) The public body shall provide a protest period of at least ten business days following the day of the announcement of the apparent successful proposal to allow a protester to file a detailed statement of the grounds of the protest. The public body shall promptly make a determination on the merits of the protest and provide to all proposers a written decision of denial or acceptance of the protest. The public body shall not execute the contract until two business days following the public body's decision on the protest.

(5) The public body shall issue no work orders until it has approved, in consultation with the office of minority and women's business enterprises or the equivalent local agency, a plan prepared by the job order contractor that equitably spreads certified women and minority business enterprise subcontracting opportunities, to the extent permitted by the Washington state civil rights act, RCW 49.60.400, among the various subcontract disciplines.

(6) Job order contracts may be executed for an initial contract term of not to exceed two years, with the option of

extending or renewing the job order contract for one year. All extensions or renewals must be priced as provided in the request for proposals. The extension or renewal must be mutually agreed to by the public body and the job order contractor.

(7) The maximum total dollar amount that may be awarded under a job order contract shall not exceed three million dollars in the first year of the job order contract, five million dollars over the first two years of the job order contract, and, if extended or renewed, eight million dollars over the three years of the job order contract.

(8) For each job order contract, public bodies shall not issue more than two work orders equal to or greater than one hundred fifty thousand dollars in a twelve-month contract performance period.

(9) All work orders issued for the same project shall be treated as a single work order for purposes of the one hundred fifty thousand dollar limit on work orders in subsection (8) of this section and the two hundred thousand dollar limit on work orders in subsection (1)(b) of this section.

(10) Any new permanent, enclosed building space constructed under a work order shall not exceed two thousand gross square feet.

(11) Each public body may have no more than two job order contracts in effect at any one time.

(12) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each work order issued shall be treated as a separate contract. The alternate filing provisions of RCW 39.12.040(2) shall apply to each work order that otherwise meets the eligibility requirements of RCW 39.12.040(2).

(13) The requirements of RCW 39.30.060 do not apply to requests for proposals for job order contracts.

(14) Job order contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the rates in effect at the time the individual work order is issued.

(15) If, in the initial contract term, the public body, at no fault of the job order contractor, fails to issue the minimum amount of work orders stated in the public request for proposals, the public body shall pay the contractor an amount equal to the difference between the minimum work order amount and the actual total of the work orders issued multiplied by an appropriate percentage for overhead and profit contained in the general conditions for Washington state facility construction. This will be the contractor's sole remedy.

(16) All job order contracts awarded under this section must be executed before July 1, 2007, however the job order contract may be extended or renewed as provided for in this section.

(17) For purposes of this section, "public body" includes any school district. [2003 c 301 § 1.]

**39.10.900 Captions not law—1994 c 132. (Effective until July 1, 2007.)** Captions as used in this act do not constitute any part of law. [1994 c 132 § 13.]

**39.10.901 Severability—1994 c 132. (Effective until July 1, 2007.)** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of

the act or the application of the provision to other persons or circumstances is not affected. [1994 c 132 § 14.]

**39.10.902 Repealer.** The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2007:

- (1) RCW 39.10.010 and 1994 c 132 § 1;
- (2) RCW 39.10.020 and 2003 c 301 § 2, 2003 c 300 § 3, 2001 c 328 § 1, 2000 c 209 § 1, 1997 c 376 § 1, & 1994 c 132 § 2;
- (3) RCW 39.10.030 and 1997 c 376 § 2 & 1994 c 132 § 3;
- (4) RCW 39.10.040 and 1994 c 132 § 4;
- (5) RCW 39.10.051 and 2003 c 300 § 4, 2002 c 46 § 1, & 2001 c 328 § 2;
- (6) RCW 39.10.061 and 2003 c 300 § 5, 2002 c 46 § 2, & 2001 c 328 § 3;
- (7) RCW 39.10.065 and 1997 c 376 § 5;
- (8) RCW 39.10.067 and 2003 c 301 § 3, 2002 c 46 § 3, & 2000 c 209 § 3;
- (9) RCW 39.10.070 and 1994 c 132 § 7;
- (10) RCW 39.10.080 and 1994 c 132 § 8;
- (11) RCW 39.10.090 and 1994 c 132 § 9;
- (12) RCW 39.10.100 and 1994 c 132 § 10;
- (13) RCW 39.10.115 and 2001 c 328 § 4 & 2000 c 209 § 4;
- (14) RCW 39.10.900 and 1994 c 132 § 13;
- (15) RCW 39.10.901 and 1994 c 132 § 14;
- (16) RCW 39.10.068 and 2003 c 300 § 6;
- (17) RCW 39.10.117 and 2003 c 300 § 7; and
- (18) RCW 39.10.130 and 2003 c 301 § 1. [2003 c 301 § 8; 2003 c 300 § 8; 2002 c 46 § 4; 2001 c 328 § 6; 1997 c 376 § 8; 1995 3rd sp.s. c 1 § 306; 1994 c 132 § 15.]

**Reviser's note:** This section was amended by 2003 c 300 § 8 and by 2003 c 301 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2002 c 46:** See note following RCW 39.10.051.

**Effective date—2001 c 328:** See note following RCW 39.10.020.

**Effective date—1997 c 376:** See note following RCW 39.10.020.

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**Chapter 39.12 RCW**

**PREVAILING WAGES ON PUBLIC WORKS**

Sections

- 39.12.010 Definitions.
- 39.12.015 Industrial statistician to make determinations of prevailing rate.
- 39.12.020 Prevailing rate to be paid on public works and under public building service maintenance contracts—Posting of statement of intent.
- 39.12.021 Prevailing rate to be paid on public works—Apprentice workers.
- 39.12.022 Vocationally handicapped—Exemption from RCW 39.12.020—Procedure.
- 39.12.026 Surveys—Applicability by county.
- 39.12.030 Contract specifications must state minimum hourly rate—Stipulation for payment.
- 39.12.040 Statement of intent to pay prevailing wages, affidavit of wages paid—Duty of public agencies to require—Approval—Prerequisite to payment—Alternative procedure.
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(2004 Ed.)

- 39.12.050 False statement or failure to file—Penalty—Unpaid wages lien against bond and retainage—Prohibitions on bidding on future contracts—Hearing.
- 39.12.060 Director of labor and industries to arbitrate disputes.
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- 39.12.070 Fees authorized for approvals, certifications, and arbitrations.
- 39.12.080 Public works administration account—Created.
- 39.12.090 Job order contracts.
- 39.12.900 Severability—1945 c 63.

*Enforcement of wage claims: RCW 49.48.040.*

*Hours of labor on public works: Chapter 49.28 RCW.*

*Workers' compensation applicable to public works contracts: RCW 51.12.050, 51.12.070.*

**39.12.010 Definitions.** (1) The "prevailing rate of wage", for the intents and purposes of this chapter, shall be the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workers, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workers, or mechanics in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to laborers, workers, or mechanics on any public work is based on some period of time other than an hour, the hourly wage for the purposes of this chapter shall be mathematically determined by the number of hours worked in such period of time.

(2) The "locality" for the purposes of this chapter shall be the largest city in the county wherein the physical work is being performed.

(3) The "usual benefits" for the purposes of this chapter shall include the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits.

(4) An "interested party" for the purposes of this chapter shall include a contractor, subcontractor, an employee of a contractor or subcontractor, an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, and the director of labor and industries or the director's designee. [1989 c 12 § 6; 1985 c 15 § 1; 1965 ex.s. c 133 § 1; 1945 c 63 § 3; Rem. Supp. 1945 § 10322-22.]

**Severability—1985 c 15:** See note following RCW 39.12.065.

**39.12.015 Industrial statistician to make determinations of prevailing rate.** All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries. [1965 ex.s. c 133 § 2.]

**39.12.020 Prevailing rate to be paid on public works and under public building service maintenance contracts—Posting of statement of intent.** The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at the job site: PROVIDED, That on road construction, sewer line, pipeline, transmission line, street, or alley improvement projects for which no field office is needed or established, a contractor may post the prevailing rate of wage statement at the contractor's local office, gravel crushing, concrete, or asphalt batch plant as long as the contractor provides a copy of the wage statement to any employee on request:

(1) A copy of a statement of intent to pay prevailing wages approved by the industrial statistician of the department of labor and industries under RCW 39.12.040; and

(2) The address and telephone number of the industrial statistician of the department of labor and industries where a complaint or inquiry concerning prevailing wages may be made.

This chapter shall not apply to workers or other persons regularly employed on monthly or per diem salary by the state, or any county, municipality, or political subdivision created by its laws. [1989 c 12 § 7; 1982 c 130 § 1; 1981 c 46 § 1; 1967 ex.s. c 14 § 1; 1945 c 63 § 1; Rem. Supp. 1945 § 10322-20.]

**39.12.021 Prevailing rate to be paid on public works—Apprentice workers.** Apprentice workers employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the state apprenticeship council pursuant to chapter 49.04 RCW, must be paid at least the prevailing hourly rate for an apprentice of that trade. Any worker for whom an apprenticeship agreement has not been registered and approved by the state apprenticeship council shall be considered to be a fully qualified journey level worker, and, therefore, shall be paid at the prevailing hourly rate for journey level workers. [1989 c 12 § 8; 1963 c 93 § 1.]

**39.12.022 Vocationally handicapped—Exemption from RCW 39.12.020—Procedure.** The director of the department of labor and industries, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations provide for the employment of individuals whose earning capacity is impaired by physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the prevailing rate applicable under RCW 39.12.020 and for such period as shall be fixed in such certificates. [1972 ex.s. c 91 § 1.]

**39.12.026 Surveys—Applicability by county.** (1) In establishing the prevailing rate of wage under RCW 39.12.010, 39.12.015, and 39.12.020, all data collected by the department may be used only in the county for which the work was performed.

(2) This section applies only to prevailing wage surveys initiated on or after August 1, 2003. [2003 c 363 § 206.]

**Findings—Intent—2003 c 363 §§ 201-206:** See note following RCW 49.04.041.

**Part headings not law—Severability—2003 c 363:** See notes following RCW 47.28.241.

**39.12.030 Contract specifications must state minimum hourly rate—Stipulation for payment.** The specifications for every contract for the construction, reconstruction, maintenance or repair of any public work to which the state or any county, municipality, or political subdivision created by its laws is a party, shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workers, or mechanics in each trade or occupation required for such public work employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, and the contract shall contain a stipulation that such laborers, workers, or mechanics shall be paid not less than such specified hourly minimum rate of wage. [1989 c 12 § 9; 1945 c 63 § 2; Rem. Supp. 1945 § 10322-21.]

**39.12.040 Statement of intent to pay prevailing wages, affidavit of wages paid—Duty of public agencies to require—Approval—Prerequisite to payment—Alternative procedure.** (1) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it shall be the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages". For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages shall include:

(a) The contractor's registration certificate number; and

(b) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to said officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it shall be the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an "Affidavit of Wages Paid" before the funds retained according to

the provisions of RCW 60.28.010 are released to the contractor. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to said officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two thousand five hundred dollars or less:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency shall retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency shall require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW 60.28.010. Within thirty days of receipt of the affidavit of wages paid, the awarding agency shall submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid shall be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in subsection (2) of this section, the awarding agency shall pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section shall be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by RCW 39.12.040(1). [1991 c 15 § 1; 1982 c 130 § 2; 1981 c 46 § 2; 1975-'76 2nd ex.s. c 49 § 1; 1965 ex.s. c 133 § 3; 1945 c 63 § 4; Rem. Supp. 1945 § 10322-23.]

**39.12.042 Compliance with RCW 39.12.040—Liability of public agencies to workers, laborers, or mechanics.** If any agency of the state, or any county, municipality, or political subdivision created by its laws shall knowingly fail to comply with the provisions of RCW 39.12.040 as now or hereafter amended, such agency of the state, or county, municipality, or political subdivision created by its laws, shall be liable to all workers, laborers, or mechanics to the full extent and for the full amount of wages due, pursuant to the prevailing wage requirements of RCW 39.12.020. [1993 c 404 § 3; 1989 c 12 § 11; 1975-'76 2nd ex.s. c 49 § 2.]

**Effective date—1993 c 404:** See note following RCW 39.12.070.

**39.12.050 False statement or failure to file—Penalty—Unpaid wages lien against bond and retainage—Prohibitions on bidding on future contracts—Hearing.**

(1) Any contractor or subcontractor who files a false statement or fails to file any statement or record required to be filed under this chapter and the rules adopted under this chapter, shall, after a determination to that effect has been issued by the director after hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum of five hundred dollars for each false filing or failure to file, and shall not be permitted to bid, or have a bid considered, on any public works contract until the penalty has been paid in full to the director. The civil penalty under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error. Civil penalties shall be deposited in the public works administration account.

To the extent that a contractor or subcontractor has not paid wages at the rate due pursuant to RCW 39.12.020, and a finding to that effect has been made as provided by this subsection, such unpaid wages shall constitute a lien against the bonds and retainage as provided in RCW 18.27.040, 19.28.041, 39.08.010, and 60.28.010.

(2) If a contractor or subcontractor is found to have violated the provisions of subsection (1) of this section for a second time within a five year period, the contractor or subcontractor shall be subject to the sanctions prescribed in subsection (1) of this section and shall not be allowed to bid on any public works contract for one year. The one year period shall run from the date of notice by the director of the determination of noncompliance. When an appeal is taken from the director's determination, the one year period shall commence from the date of the final determination of the appeal.

The director shall issue his or her findings that a contractor or subcontractor has violated the provisions of this subsection after a hearing held subject to the provisions of chapter 34.05 RCW. [2001 c 219 § 1; 1985 c 15 § 3; 1977 ex.s. c 71 § 1; 1973 c 120 § 1; 1945 c 63 § 5; Rem. Supp. 1945 § 10322-24.]

**Severability—1985 c 15:** See note following RCW 39.12.065.

**39.12.060 Director of labor and industries to arbitrate disputes.** Such contract shall contain a further provision that in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the department of labor and industries of the state and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute. [1989 c 12 § 10; 1965 ex.s. c 133 § 4; 1945 c 63 § 6; Rem. Supp. 1945 § 10322-25.]

*Arbitration: Chapters 7.04 and 49.08 RCW.*

**39.12.065 Investigation of complaints—Hearing—Remedies—Penalties.** (1) Upon complaint by an interested party, the director of labor and industries shall cause an investigation to be made to determine whether there has been compliance with this chapter and the rules adopted hereunder, and if the investigation indicates that a violation may have occurred, a hearing shall be held in accordance with

chapter 34.05 RCW. The director shall issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys fees.

A complaint concerning nonpayment of the prevailing rate of wage shall be filed with the department of labor and industries no later than thirty days from the acceptance date of the public works project. The failure to timely file such a complaint shall not prohibit a claimant from pursuing a private right of action against a contractor or subcontractor for unpaid prevailing wages. The remedy provided by this section is not exclusive and is concurrent with any other remedy provided by law.

(2) To the extent that a contractor or subcontractor has not paid the prevailing rate of wage under a determination issued as provided in subsection (1) of this section, the director shall notify the agency awarding the public works contract of the amount of the violation found, and the awarding agency shall withhold, or in the case of a bond, the director shall proceed against the bond in accordance with the applicable statute to recover, such amount from the following sources in the following order of priority until the total of such amount is withheld:

(a) The retainage or bond in lieu of retainage as provided in RCW 60.28.010;

(b) If the claimant was employed by the contractor or subcontractor on the public works project, the bond filed by the contractor or subcontractor with the department of labor and industries as provided in RCW 18.27.040 and 19.28.041;

(c) A surety bond, or at the contractor's or subcontractor's option an escrow account, running to the director in the amount of the violation found; and

(d) That portion of the progress payments which is properly allocable to the contractor or subcontractor who is found to be in violation of this chapter. Under no circumstances shall any portion of the progress payments be withheld that are properly allocable to a contractor, subcontractor, or supplier, that is not found to be in violation of this chapter.

The amount withheld shall be released to the director to distribute in accordance with the director's determination.

(3) A contractor or subcontractor that is found, in accordance with subsection (1) of this section, to have violated the requirement to pay the prevailing rate of wage shall be subject to a civil penalty of not less than one thousand dollars or an amount equal to twenty percent of the total prevailing wage violation found on the contract, whichever is greater, and shall not be permitted to bid, or have a bid considered, on any public works contract until such civil penalty has been paid in full to the director. If a contractor or subcontractor is found to have participated in a violation of the requirement to pay the prevailing rate of wage for a second time within a five-year period, the contractor or subcontractor shall be subject to the sanctions prescribed in this subsection and as an additional sanction shall not be allowed to bid on any public works contract for two years. Civil penalties shall be deposited in the public works administration account. If a previous or subsequent violation of a requirement to pay a prevailing rate of wage under federal or other state law is found against the contractor or subcontractor within five years from a vio-

lation under this section, the contractor or subcontractor shall not be allowed to bid on any public works contract for two years. A contractor or subcontractor shall not be barred from bidding on any public works contract if the contractor or subcontractor relied upon written information from the department to pay a prevailing rate of wage that is later determined to be in violation of this chapter. The civil penalty and sanctions under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error. To the extent that a contractor or subcontractor has not paid the prevailing wage rate under a determination issued as provided in subsection (1) of this section, the unpaid wages shall constitute a lien against the bonds and retainage as provided herein and in RCW 18.27.040, 19.28.041, 39.08.010, and 60.28.010. [2001 c 219 § 2; 1994 c 88 § 1; 1985 c 15 § 2.]

**Severability—1985 c 15:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 15 § 4.]

**39.12.070 Fees authorized for approvals, certifications, and arbitrations.** The department of labor and industries may charge fees to awarding agencies on public works for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid. The department may also charge fees to persons or organizations requesting the arbitration of disputes under RCW 39.12.060. The amount of the fees shall be established by rules adopted by the department under the procedures in the administrative procedure act, chapter 34.05 RCW. The fees shall apply to all approvals, certifications, and arbitration requests made after the effective date of the rules. All fees shall be deposited in the public works administration account. On the fifteenth day of the first month of each quarterly period, an amount equaling thirty percent of the revenues received into the public works administration account shall be transferred into the general fund. The department may refuse to arbitrate for contractors, subcontractors, persons, or organizations which have not paid the proper fees. The department may, if necessary, request the attorney general to take legal action to collect delinquent fees.

The department shall set the fees permitted by this section at a level that generates revenue that is as near as practicable to the amount of the appropriation to administer this chapter, including, but not limited to, the performance of adequate wage surveys, and to investigate and enforce all alleged violations of this chapter, including, but not limited to, incorrect statements of intent to pay prevailing wage, incorrect certificates of affidavits of wages paid, and wage claims, as provided for in this chapter and chapters 49.48 and 49.52 RCW. However, the fees charged for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid shall be no greater than twenty-five dollars. [1993 c 404 § 1; 1982 1st ex.s. c 38 § 1.]

**Effective date—1993 c 404:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 404 § 4.]

**39.12.080 Public works administration account—Created.** The public works administration account is created

in the state treasury. The department of labor and industries shall deposit in the account all moneys received from fees or civil penalties collected under RCW 39.12.050, 39.12.065, and 39.12.070. Appropriations from the account, not including moneys transferred to the general fund pursuant to RCW 39.12.070, may be made only for the purposes of administration of this chapter, including, but not limited to, the performance of adequate wage surveys, and for the investigation and enforcement of all alleged violations of this chapter as provided for in this chapter and chapters 49.48 and 49.52 RCW. [2001 c 219 § 3; 1993 c 404 § 2.]

**Effective date—1993 c 404:** See note following RCW 39.12.070.

**39.12.090 Job order contracts.** (*Effective until July 1, 2007.*) Job order contracts under RCW 39.10.130 must pay prevailing wages for all work that would otherwise be subject to the requirements of this chapter. Prevailing wages for all work performed pursuant to each work order must be the rates in effect at the time the individual work order is issued. [2003 c 301 § 6.]

**Repealer—2003 c 301 § 6:** "The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2007: RCW 39.12.090 and 2003 c 301 § 6." [2003 c 301 § 9.]

**39.12.900 Severability—1945 c 63.** If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional. [1945 c 63 § 7.]

## Chapter 39.19 RCW

### OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

#### Sections

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(2004 Ed.)

*Minority and women business development office: RCW 43.31.0925.*

**39.19.010 Intent.** The legislature finds that minority and women-owned businesses are significantly under-represented and have been denied equitable competitive opportunities in contracting. It is the intent of this chapter to mitigate societal discrimination and other factors in participating in public works and in providing goods and services and to delineate a policy that an increased level of participation by minority and women-owned and controlled businesses is desirable at all levels of state government. The purpose and intent of this chapter are to provide the maximum practicable opportunity for increased participation by minority and women-owned and controlled businesses in participating in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector. [1987 c 328 § 1; 1983 c 120 § 1.]

**39.19.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Advisory committee" means the advisory committee on minority and women's business enterprises.

(2) "Broker" means a person that provides a bona fide service, such as professional, technical, consultant, brokerage, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of a contract.

(3) "Director" means the director of the office of minority and women's business enterprises.

(4) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges.

(5) "Goals" means annual overall agency goals, expressed as a percentage of dollar volume, for participation by minority and women-owned and controlled businesses and shall not be construed as a minimum goal for any particular contract or for any particular geographical area. It is the intent of this chapter that such overall agency goals shall be achievable and shall be met on a contract-by-contract or class-of-contract basis.

(6) "Goods and/or services" includes professional services and all other goods and services.

(7) "Office" means the office of minority and women's business enterprises.

(8) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons.

(9) "Procurement" means the purchase, lease, or rental of any goods or services.

(10) "Public works" means all work, construction, highway and ferry construction, alteration, repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

(11) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions. [1996 c 69 § 4; 1987 c 328 § 2; 1983 c 120 § 2.]

**Intent—1996 c 69:** See note following RCW 39.19.030.

**39.19.030 Office of minority and women's business enterprises—Director—Powers and duties.** There is hereby created the office of minority and women's business enterprises. The governor shall appoint a director for the office, subject to confirmation by the senate. The director may employ a deputy director and a confidential secretary, both of which shall be exempt under chapter 41.06 RCW, and such staff as are necessary to carry out the purposes of this chapter.

The office shall consult with the minority and women's business enterprises advisory committee to:

(1) Develop, plan, and implement programs to provide an opportunity for participation by qualified minority and women-owned and controlled businesses in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector;

(2) Develop a comprehensive plan insuring that qualified minority and women-owned and controlled businesses are provided an opportunity to participate in public contracts for public works and goods and services;

(3) Identify barriers to equal participation by qualified minority and women-owned and controlled businesses in all state agency and educational institution contracts;

(4) Establish annual overall goals for participation by qualified minority and women-owned and controlled businesses for each state agency and educational institution to be administered on a contract-by-contract basis or on a class-of-contracts basis;

(5) Develop and maintain a central minority and women's business enterprise certification list for all state agencies and educational institutions. No business is entitled to certification under this chapter unless it meets the definition of small business concern as established by the office. All applications for certification under this chapter shall be sworn under oath;

(6) Develop, implement, and operate a system of monitoring compliance with this chapter;

(7) Adopt rules under chapter 34.05 RCW, the Administrative Procedure Act, governing: (a) Establishment of agency goals; (b) development and maintenance of a central minority and women's business enterprise certification program, including a definition of "small business concern" which shall be consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. Sec. 632, and its implementing regulations as guidance; (c) procedures for monitoring and enforcing compliance with goals, regulations, contract provisions, and this chapter; (d) utilization of standard clauses by state agencies and educational institutions, as specified in RCW 39.19.050; and (e) determination of an agency's or educational institution's goal attainment consistent with the limitations of RCW 39.19.075;

(8) Submit an annual report to the governor and the legislature outlining the progress in implementing this chapter;

(9) Investigate complaints of violations of this chapter with the assistance of the involved agency or educational institution; and

(10) Cooperate and act jointly or by division of labor with the United States or other states, and with political subdivisions of the state of Washington and their respective minority, socially and economically disadvantaged and

women business enterprise programs to carry out the purposes of this chapter. However, the power which may be exercised by the office under this subsection permits investigation and imposition of sanctions only if the investigation relates to a possible violation of chapter 39.19 RCW, and not to violation of local ordinances, rules, regulations, however denominated, adopted by political subdivisions of the state. [1996 c 69 § 5; 1989 c 175 § 85; 1987 c 328 § 3; 1983 c 120 § 3.]

**Intent—1996 c 69:** "It is the intent of the legislature to ensure that the counting of the dollar value of an agency's or educational institution's expenditures to certified minority and women's business enterprises meaningfully reflects the actual financial participation of the certified businesses." [1996 c 69 § 3.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**39.19.041 Ad hoc advisory committees.** The director may establish ad hoc advisory committees, as necessary, to assist in the development of policies to carry out the purposes of this chapter. [1995 c 269 § 1302.]

**Effective date—1995 c 269:** See note following RCW 9.94A.850.

**Part headings not law—Severability—1995 c 269:** See notes following RCW 13.40.005.

**39.19.050 Standard clauses required in requests for proposals, advertisements, and bids.** The rules adopted under RCW 39.19.030 shall include requirements for standard clauses in requests for proposals, advertisements, bids, or calls for bids, necessary to carry out the purposes of this chapter, which shall include notice of the statutory penalties under RCW 39.19.080 and 39.19.090 for noncompliance. [1983 c 120 § 5.]

**39.19.060 Compliance with public works and procurement goals—Plan to maximize opportunity for minority and women-owned businesses.** Each state agency and educational institution shall comply with the annual goals established for that agency or institution under this chapter for public works and procuring goods or services. This chapter applies to all public works and procurement by state agencies and educational institutions, including all contracts and other procurement under chapters 28B.10, 39.04, 39.29, 43.19, and 47.28 RCW. Each state agency shall adopt a plan, developed in consultation with the director and the advisory committee, to insure that minority and women-owned businesses are afforded the maximum practicable opportunity to directly and meaningfully participate in the execution of public contracts for public works and goods and services. The plan shall include specific measures the agency will undertake to increase the participation of certified minority and women-owned businesses. The office shall annually notify the governor, the state auditor, and the joint legislative audit and review committee of all agencies and educational institutions not in compliance with this chapter. [1996 c 288 § 28; 1993 c 512 § 9; 1983 c 120 § 6.]

**Short title—Part headings and section captions—Severability—Effective date—1993 c 512:** See RCW 43.172.900 through 43.172.903.

*Compliance with chapter 39.19 RCW: RCW 28B.10.023, 39.04.160, 39.29.050, 43.19.536, 47.28.030, 47.28.050, 47.28.090.*

**39.19.070 Compliance with goals—Bidding procedures.** It is the intent of this chapter that the goals established under this chapter for participation by minority and women-owned and controlled businesses be achievable. If necessary to accomplish this intent, contracts may be awarded to the next lowest responsible bidder in turn, or all bids may be rejected and new bids obtained, if the lowest responsible bidder does not meet the goals established for a particular contract under this chapter. The dollar value of the total contract used for the calculation of the specific contract goal may be increased or decreased to reflect executed change orders. An apparent low-bidder must be in compliance with the contract provisions required under this chapter as a condition precedent to the granting of a notice of award by any state agency or educational institution. [1994 c 15 § 1; 1987 c 328 § 4; 1983 c 120 § 7.]

**39.19.075 Compliance with goals—Valuation of goods or services.** For purposes of measuring an agency's or educational institution's goal attainment, any regulations adopted under RCW 39.19.030(7)(e) must provide that if a certified minority and women's business enterprise is a broker of goods or materials required under a contract, the contracting agency or educational institution may count only the dollar value of the fee or commission charged and not the value of goods or materials provided. The contracting agency or educational institution may, at its discretion, fix the dollar value of the fee or commission charged at either the actual dollar value of the fee or commission charged or at a standard percentage of the total value of the brokered goods, which percentage must reflect the fees or commissions generally paid to brokers for providing such services. [1996 c 69 § 6.]

**Intent—1996 c 69:** See note following RCW 39.19.030.

**39.19.080 Prohibited activities—Penalties.** (1) A person, firm, corporation, business, union, or other organization shall not:

(a) Prevent or interfere with a contractor's or subcontractor's compliance with this chapter, or any rule adopted under this chapter;

(b) Submit false or fraudulent information to the state concerning compliance with this chapter or any such rule;

(c) Fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a minority or women's business enterprise for the purpose of this chapter;

(d) Knowingly make a false statement, whether by affidavit, verified statement, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a minority or women's business enterprise;

(e) Knowingly obstruct, impede, or attempt to obstruct or impede any state official or employee who is investigating the qualification of a business entity that has requested certification as a minority or women's business enterprise;

(f) Fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public moneys to which the person is not entitled under this chapter; or

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(g) Knowingly make false statements that any entity is or is not certified as a minority or women's business enterprise for purposes of obtaining a contract governed by this chapter.

(2) Any person or entity violating this chapter or any rule adopted under this chapter shall be subject to the penalties in RCW 39.19.090. Nothing in this section prevents the state agency or educational institution from pursuing such procedures or sanctions as are otherwise provided by statute, rule, or contract provision. [1987 c 328 § 5; 1983 c 120 § 8.]

**39.19.090 Compliance with chapter or contract—Remedies.** If a person, firm, corporation, or business does not comply with any provision of this chapter or with a contract requirement established under this chapter, the state may withhold payment, debar the contractor, suspend, or terminate the contract and subject the contractor to civil penalties of up to ten percent of the amount of the contract or up to five thousand dollars for each violation. The office shall adopt, by rule, criteria for the imposition of penalties under this section. Wilful repeated violations, exceeding a single violation, may disqualify the contractor from further participation in state contracts for a period of up to three years. An apparent low-bidder must be in compliance with the contract provisions required under this chapter as a condition precedent to the granting of a notice of award by any state agency or educational institution.

The office shall follow administrative procedures under chapter 34.05 RCW in determining a violation and imposing penalties under this chapter.

The procedures and sanctions in this section are not exclusive; nothing in this section prevents the state agency or educational institution administering the contracts from pursuing such procedures or sanctions as are otherwise provided by statute, rule, or contract provision. [1987 c 328 § 6; 1983 c 120 § 9.]

**39.19.100 Enforcement by attorney general—Injunctive relief.** The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act prohibited or declared to be unlawful in this chapter. The attorney general may, in the discretion of the court, recover the costs of the action including reasonable attorneys' fees and the costs of investigation. [1987 c 328 § 12.]

**39.19.110 Enforcement by attorney general—Investigative powers.** (1) Whenever the attorney general believes that any person (a) may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated, that the attorney general believes to be relevant to the subject matter of an investigation, the attorney general may require such person to answer written interrogatories or give oral testimony regarding a possible violation of this chapter, or of any provision of a contract as required by this chapter, or (b) may have knowledge of any information that the attorney general believes relevant to the subject matter of such an investigation, the attorney general may, before instituting a civil proceeding thereon,

execute in writing and cause to be served upon such a person, a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of demands pertaining to the documentary material or information. Documents and information obtained under this section shall not be admissible in criminal prosecutions.

(2) Each such demand shall:

(a) State the statute, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) State with reasonable specificity what documentary material is required, if the demand is for the production of documentary material;

(c) Prescribe a return date governed by the court rules within which the documentary material is to be produced, the answers to written interrogatories are to be made, or a date, time, and place at which oral testimony is to be taken; and

(d) Identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying, to whom answers to written interrogatories are to be made, or who are to conduct the examination for oral testimony.

(3) No such demand may:

(a) Contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum, a request for answers to written interrogatories, or a notice of deposition upon oral examination issued under the court rules of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if that person is not a natural person, to any officer or managing agent of the person to be served;

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if that person has no place of business in this state, to the person's principal office or place of business.

(5)(a) Documentary material demanded under this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the attorney general;

(b) Written interrogatories in a demand served under this section shall be answered in the same manner as provided in the civil rules for superior court;

(c) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the same manner as provided in the civil rules for superior court for the taking of depositions. In the course of the deposition, the assistant attorney general conducting the examination may exclude all persons other than the person being examined, the person's counsel, and the officer before whom the

testimony is to be taken from the place where the examination is held;

(d) Any person compelled to appear pursuant to a demand for oral testimony under this section may be accompanied by counsel;

(e) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the county within which the person resides, is found, or transacts business, or in such other place as may be agreed upon between the person served and the attorney general.

(6) No documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand, or copies thereof, may, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor may the contents thereof be disclosed to, anyone other than an authorized employee or agent of the attorney general, without the consent of the person who produced such material, answered written interrogatories, or gave oral testimony: PROVIDED, That under such reasonable terms and conditions as the attorney general shall prescribe, the copies of such documentary material, answers to written interrogatories, or transcripts of oral testimony shall be available for inspection and copying by the person who produced the material, answered written interrogatories, or gave oral testimony, or any duly authorized representative of that person. The attorney general or any assistant attorney general may use such copies of documentary material, answers to written interrogatories, or transcripts of oral testimony as he or she determines necessary to enforce this chapter, including presentation before any court: PROVIDED FURTHER, That any such material, answers to written interrogatories, or transcripts of oral testimony that contain material designated by the declarant to be trade secrets shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing the material, answers to written interrogatories, or oral testimony.

(7) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued pursuant to subsection (1) of this section, stating good cause, may be filed in the superior court for Thurston county, or in any other county where the parties reside or are found. A petition, by the person on whom the demand is served, stating good cause, to require the attorney general or any person to perform any duty imposed by this section, and all other petitions in connection with a demand, may be filed in the superior court for Thurston county, or in the county where the parties reside. The court shall have jurisdiction to impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

(8) Whenever any person fails to comply with any civil investigative demand for documentary material, answers to written interrogatories, or oral testimony duly served upon that person under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and the person refuses to surrender such material, the attorney general may file, in the trial court of general jurisdiction in the county in which the person resides, is found, or transacts business, and serve upon that person a petition for an order of

the court for the enforcement of this section, except that if such person transacts business in more than one county, the petition shall be filed in the county in which the person maintains his or her principal place of business or in such other county as may be agreed upon by the parties to the petition. Whenever any petition is filed under this section in the trial court of general jurisdiction in any county, the court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry into effect this section, and may impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions. [1987 c 328 § 13.]

**39.19.120 Certification of business enterprises.** The office shall be the sole authority to perform certification of minority business enterprises, socially and economically disadvantaged business enterprises, and women's business enterprises throughout the state of Washington. Certification by the state office will allow these firms to participate in programs for these enterprises administered by the state of Washington, any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington.

This statewide certification process will prevent duplication of effort, achieve efficiency, and permit local jurisdictions to further develop, implement, and/or enhance comprehensive systems of monitoring and compliance for contracts issued by their agencies. [1987 c 328 § 7.]

**39.19.140 Implementation of statewide certification.** Implementation of statewide certification shall be effective January 1, 1988, following consultation by the office with appropriate state and local officials who currently administer similar certification programs. Any business having been certified under any of the programs identified pursuant to \*RCW 39.19.130 as a minority and women's business enterprise shall be deemed certified by the office as of January 1, 1988. [1987 c 328 § 9.]

\*Reviser's note: RCW 39.19.130 expired June 30, 1991.

**39.19.150 Local government may petition for reconsideration of business certification.** (1) Any city, county, town, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation having reason to believe that a particular minority and women's business enterprise should not have been certified under RCW 39.19.140 may petition the office for reconsideration. The basis for the petition may be one or more of the following:

(a) The office's rules or regulations were improperly applied; or

(b) Material facts relating to the minority and women's business enterprise's certification application to the office are untrue.

(2) The petitioner shall carry the burden of persuasion. The affected minority or women's business enterprise shall receive notice of the petition and an opportunity to respond.

(3) After reviewing the information presented in support of and in opposition to the petition, the office shall issue a

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written decision, granting or denying the petition. If the office grants the petition, it may revoke, suspend, or refuse to renew the certification or impose sanctions under this chapter as appropriate.

(4) The office's decision on a petition is administratively final and the rights of appeal set out in the office regulations shall apply. A certification shall remain in effect while a petition is pending. [1987 c 328 § 10.]

**39.19.160 Local government responsible for monitoring compliance.** Any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington utilizing the certification by the office retains the responsibility for monitoring compliance with the programs under its jurisdiction. The office shall not be responsible for enforcement of local ordinances, rules, or regulations, however titled. [1987 c 328 § 11.]

**39.19.170 Prequalification of minority and women-owned businesses—Waiver of performance bond.** (1) State agencies shall not require a performance bond for any public works project that does not exceed twenty-five thousand dollars awarded to a prequalified and certified minority or woman-owned business that has been prequalified as provided under subsection (2) of this section.

(2) A limited prequalification questionnaire shall be required assuring:

(a) That the bidder has adequate financial resources or the ability to secure such resources;

(b) That the bidder can meet the performance schedule;

(c) That the bidder is experienced in the type of work to be performed; and

(d) That all equipment to be used is adequate and functioning and that all equipment operators are qualified to operate such equipment. [1993 c 512 § 10.]

**Short title—Part headings and section captions—Severability—Effective date—1993 c 512:** See RCW 43.172.900 through 43.172.903.

**39.19.200 Minority and women's business enterprises account—Created.** The minority and women's business enterprises account is created in the custody of the state treasurer. All receipts from RCW 39.19.210, 39.19.220, and 39.19.230 shall be deposited in the account. Expenditures from the account may be used only for the purposes defraying all or part of the costs of the office in administering this chapter. Only the director or the director's designee may authorize expenditures from the account. Moneys in the account may be spent only after appropriation. [1993 c 195 § 1.]

**Effective date of 1993 c 195—1993 sp.s. c 24:** "Chapter 195, Laws of 1993 is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 sp.s. c 24 § 930.]

**39.19.210 Businesses using the office—Fees.** The office may charge a reasonable fee or other appropriate charge, to be set by rule adopted by the office under chapter 34.05 RCW, to a business using the services of the office. [1993 c 195 § 2.]

**Effective date of 1993 c 195—1993 sp.s. c 24:** See note following RCW 39.19.200.

**39.19.220 Political subdivisions—Fees.** The office may charge to a political subdivision in this state a reasonable fee or other appropriate charge, to be set by rule adopted by the office under chapter 34.05 RCW, prorated on the relative benefit to the political subdivision, for the certification under this chapter of a business. [1993 c 195 § 3.]

**Effective date of 1993 c 195—1993 sp.s. c 24:** See note following RCW 39.19.200.

**39.19.230 State agencies and educational institutions—Fees.** The office may charge to a state agency and educational institutions, as both are defined in RCW 39.19.020, a reasonable fee or other appropriate charge, to be set by rule adopted by the office under chapter 34.05 RCW, based upon the state agency's or educational institution's expenditure level of funds subject to the office. [1993 c 195 § 4.]

**Effective date of 1993 c 195—1993 sp.s. c 24:** See note following RCW 39.19.200.

**39.19.240 Linked deposit program—Compilation of information—Notification regarding enterprises no longer certified.** (1) The office shall, in consultation with the state treasurer and the department of community, trade, and economic development, compile information on minority and women's business enterprises that have received financial assistance through a qualified public depository under the provisions of RCW 43.86A.060. The information shall include, but is not limited to:

- (a) Name of the qualified public depository;
- (b) Geographic location of the minority or women's business enterprise;
- (c) Name of the minority or women's business enterprise;
- (d) Date of last certification by the office and certification number;
- (e) Type of business;
- (f) Amount and term of the loan to the minority or women's business enterprise; and
- (g) Other information the office deems necessary for the implementation of this section.

(2) The office shall notify the state treasurer of minority or women's business enterprises that are no longer certified under the provisions of this chapter. The written notification shall contain information regarding the reason for the decertification and information on financing provided to the minority or women's business enterprise under RCW 43.86A.060. [2002 c 305 § 2.]

**Sunset Act application:** See note following RCW 43.86A.060.

**39.19.910 Effective date—Applicability—1983 c 120.**

(1) This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983.

(2) Contracts entered into before September 1, 1983, are not subject to this act. [1983 c 120 § 21.]

**39.19.920 Severability—Conflict with federal requirements—1983 c 120.** (1) If any provision of this act or its application to any person or circumstance is held

invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

(2) If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The rules under this chapter shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1983 c 120 § 18.]

**39.19.921 Severability—1987 c 328.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 328 § 17.]

### Chapter 39.23 RCW

#### PURCHASE OF PRODUCTS AND SERVICES OF SHELTERED WORKSHOPS, DSHS PROGRAMS

##### Sections

39.23.005	Declaration of intent.
39.23.010	Definitions.
39.23.020	Products and/or services, purchase of—Authorization—Determining fair market price.

**39.23.005 Declaration of intent.** It is the intent of the legislature to encourage municipalities to purchase products and/or services manufactured or provided by sheltered workshops and programs of the department of social and health services which operate facilities serving the handicapped and disadvantaged. [1975 c 20 § 1.]

**39.23.010 Definitions.** As used in RCW 39.23.005 and 39.23.020 the term "sheltered workshops" shall have the meaning ascribed to it by RCW 82.04.385 and "programs of the department of social and health services" shall mean the group training homes and day training centers defined in \*RCW 72.33.800 and "municipality" shall have the meaning ascribed to it by RCW 39.04.010. [1975 c 20 § 2.]

**\*Reviser's note:** RCW 72.33.800 was repealed by 1988 c 176 § 1007. See Title 71A RCW.

**39.23.020 Products and/or services, purchase of—Authorization—Determining fair market price.** Municipalities are hereby authorized to purchase products and/or services manufactured or provided by sheltered workshops and programs of the department of social and health services. Such purchases shall be at the fair market price of such products and services as determined by a municipality. To determine the fair market price a municipality shall use the last comparable bid on the products and/or services or in the alternative the last price paid for the products and/or services. The increased cost of labor, materials, and other documented costs since the last comparable bid or the last price paid are additional cost factors which shall be considered in determining fair market price. Upon the establishment of the fair mar-

ket price as provided for in this section a municipality is hereby empowered to negotiate directly with sheltered workshops or officials in charge of the programs of the department of social and health services for the purchase of the products or services. [1977 ex.s. c 10 § 1; 1975 c 20 § 3.]

### Chapter 39.24 RCW

## PUBLIC PURCHASE PREFERENCES

#### Sections

39.24.050 Purchase of paper products meeting certain specifications required.

*Powers and duties of division of purchasing:* RCW 43.19.190.

*Purchase of correctional industries produced products:* Chapter 72.60 RCW.

*Reciprocity in bidding:* RCW 43.19.704.

**39.24.050 Purchase of paper products meeting certain specifications required.** A governmental unit shall, to the maximum extent economically feasible, purchase paper products which meet the specifications established by the department of general administration under RCW 43.19.538. [1982 c 61 § 3.]

### Chapter 39.28 RCW

## EMERGENCY PUBLIC WORKS

#### Sections

39.28.010 Definitions.

39.28.020 Powers conferred.

39.28.030 Construction of act.

39.28.040 Loans and grants to finance preliminary public works expenditures.

**39.28.010 Definitions.** The following terms wherever used or referred to in RCW 39.28.010 through 39.28.030 shall have the following meaning unless a different meaning appears from the context.

(1) The term "municipality" shall mean the state, a county, city, town, district or other municipal corporation or political subdivision;

(2) The term "governing body" shall mean the body, a board charged with the governing of the municipality;

(3) The term "law" shall mean any act or statute, general, special or local, of this state, including, without being limited to, the charter of any municipality;

(4) The term "bonds" shall mean bonds, interim receipts, certificates, or other obligations of a municipality issued or to be issued by its governing body for the purpose of financing or aiding in the financing of any work, undertaking or project for which a loan or grant, or both, has heretofore been made or may hereafter be made by any federal agency;

(5) The term "Recovery Act" shall mean any acts of the congress of the United States of America to reduce and relieve unemployment or to provide for the construction of public works;

(6) The term "federal agency" shall include the United States of America, the president of the United States of America, and any agency or instrumentality of the United States of America, which has heretofore been or hereafter

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may be designated, created or authorized to make loans or grants;

(7) The term "public works project" shall mean any work, project, or undertaking which any municipality, is authorized or required by law to undertake or any lawful purpose for which any municipality is authorized or required by law to make an appropriation;

(8) The term "contract" or "agreement" between a federal agency and a municipality shall include contracts and agreements in the customary form and shall also be deemed to include an allotment of funds, resolution, unilateral promise, or commitment by a federal agency by which it shall undertake to make a loan or grant, or both, upon the performance of specified conditions or compliance with rules and regulations theretofore or thereafter promulgated, prescribed or published by a federal agency. In the case of such an allotment of funds, resolution, unilateral promise, or commitment by a federal agency, the terms, conditions and restrictions therein set forth and the rules and regulations theretofore or thereafter promulgated, prescribed or published shall, for the purpose of RCW 39.28.010 through 39.28.030, be deemed to constitute covenants of such a contract which shall be performed by the municipality, if the municipality accepts any money from such federal agency. [1971 c 76 § 4; 1937 c 107 § 2; RRS § 10322A-8. Prior: 1935 c 107 § 2; RRS § 10322A-2.]

**Short title:** "This act may be cited as 'The Municipal Emergency Procedure Act (Revision of 1937)'." [1937 c 107 § 1; RRS § 10322A-7. Prior: 1935 c 107 § 1; RRS § 10322A-1.]

**Severability—1937 c 107:** "If any provision of this act, or the application thereof to any person, body, or circumstances shall be held invalid, the remainder of the act and the application of each provision to persons, bodies, or circumstances other than those as to which it shall have been held invalid shall not be affected thereby." [1937 c 107 § 5; RRS § 10322A-11. Prior: 1935 c 107 § 5; RRS § 10322A-5.]

**39.28.020 Powers conferred.** Every municipality shall have power and is hereby authorized:

(1) To accept from any federal agency grants for or in aid of the construction of any public works project;

(2) To make contracts and execute instruments containing such terms, provisions, and conditions as in the discretion of the governing body of the municipality may be necessary, proper or advisable for the purpose of obtaining grants or loans, or both, from any federal agency pursuant to or by virtue of the Recovery Act; to make all other contracts and execute all other instruments necessary, proper or advisable in or for the furtherance of any public works project and to carry out and perform the terms and conditions of all such contracts or instruments;

(3) To subscribe to and comply with the Recovery Act and any rules and regulations made by any federal agency with regard to any grants or loans, or both, from any federal agency;

(4) To perform any acts authorized under RCW 39.28.010 through 39.28.030 through or by means of its own officers, agents and employees, or by contracts with corporations, firms or individuals;

(5) To award any contract for the construction of any public works project or part thereof upon any day at least fifteen days after one publication of a notice requesting bids upon such contract in a newspaper of general circulation in

the municipality: PROVIDED, That in any case where publication of notice may be made in a shorter period of time under the provisions of existing statute or charter, such statute or charter shall govern;

(6) To sell bonds at private sale to any federal agency without any public advertisement;

(7) To issue interim receipts, certificates or other temporary obligations, in such form and containing such terms, conditions and provisions as the governing body of the municipality issuing the same may determine, pending the preparation or execution of definite bonds for the purpose of financing the construction of a public works project;

(8) To issue bonds bearing the signatures of officers in office on the date of signing such bonds, notwithstanding that before delivery thereof any or all the persons whose signatures appear thereon shall have ceased to be the officers of the municipality issuing the same;

(9) To include in the cost of a public works project which may be financed by the issuance of bonds: (a) Engineering, inspection, accounting, fiscal and legal expenses; (b) the cost of issuance of the bonds, including engraving, printing, advertising, and other similar expenses; (c) any interest costs during the period of construction of such public works project and for six months thereafter on money borrowed or estimated to be borrowed;

(10) To stipulate in any contract for the construction of any public works project or part thereof the maximum hours that any laborer, worker, or mechanic should be permitted or required to work in any one calendar day or calendar week or calendar month, and the minimum wages to be paid to laborers, workers, or mechanics in connection with any public works project: PROVIDED, That no such stipulation shall provide for hours in excess of or for wages less than may now or hereafter be required by any other law;

(11) To exercise any power conferred by RCW 39.28.010 through 39.28.030 for the purpose of obtaining grants or loans, or both, from any federal agency pursuant to or by virtue of the Recovery Act, independently or in conjunction with any other power or powers conferred by RCW 39.28.010 through 39.28.030 or heretofore or hereafter conferred by any other law;

(12) To do all acts and things necessary or convenient to carry out the powers expressly given in RCW 39.28.010 through 39.28.030. [1989 c 12 § 12; 1937 c 107 § 3; RRS § 10322A-9. Prior: 1935 c 107 § 3; RRS § 10322A-3.]

**Short title—Severability—1937 c 107:** See notes following RCW 39.28.010.

**39.28.030 Construction of act.** The powers conferred by RCW 39.28.010 through 39.28.030 shall be in addition and supplemental to and not in substitution for the powers now or hereafter conferred upon any municipality by any other law. RCW 39.28.010 through 39.28.030 is intended to aid in relieving the existing emergency by simplifying the procedure for the construction and financing of public works projects. RCW 39.28.010 through 39.28.030 is remedial in nature and the powers hereby granted shall be liberally construed. Nothing in RCW 39.28.010 through 39.28.030 shall be construed to authorize the issuance of bonds for any purpose by any municipality not authorized to issue bonds for such purpose under any other law heretofore or hereafter

enacted, nor to dispense with the approval by a state department, board, officer or commission of a public works project where such approval is necessary under provisions of existing law: PROVIDED, That any port district which is now indebted in an amount equal to or in excess of the indebtedness which may be contracted without a vote of the electors of the district is hereby authorized, for the purposes of RCW 39.28.010 through 39.28.030, through its governing body, to contract a further indebtedness and borrow money for port purposes and issue general bonds therefor, as in RCW 39.28.010 through 39.28.030 provided, in an additional amount not exceeding three-sixteenths of one percent of the value of the taxable property in the district, as the term "value of the taxable property" is defined in RCW 39.36.015, without the assent of the voters of the district: PROVIDED, FURTHER, That such additional indebtedness together with the existing indebtedness of such port district shall not exceed the total indebtedness permitted to be incurred by such port district under existing laws. [1970 ex.s. c 42 § 25; 1937 c 107 § 4; RRS § 10322A-10. Prior: 1935 c 107 § 4; RRS § 10322A-4.]

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

**Short title—Severability—1937 c 107:** See notes following RCW 39.28.010.

**39.28.040 Loans and grants to finance preliminary public works expenditures.** The state of Washington, its various counties, municipal corporations, quasi municipal corporations, cities, towns, villages and all other political subdivisions of the state are hereby authorized to accept from the federal government all loans, advances, grants in aid, or donations that may be made available by any federal agency for the purpose of financing the cost of architectural, engineering, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other acts preliminary to the construction of public works. [1971 c 76 § 5; 1945 c 106 § 1; Rem. Supp. 1945 § 10322-45.]

## Chapter 39.29 RCW

### PERSONAL SERVICE CONTRACTS

#### Sections

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**39.29.003 Intent.** It is the intent of this chapter to establish a policy of open competition for all personal service contracts entered into by state agencies, unless specifically exempted under this chapter. It is further the intent to provide for legislative and executive review of all personal service contracts, to centralize the location of information about personal service contracts for ease of public review, and ensure proper accounting of personal services expenditures. [1998 c 101 § 1; 1993 c 433 § 1; 1987 c 414 § 1; 1979 ex.s. c 61 § 1.]

**39.29.006 Definitions.** (*Effective until July 1, 2005.*) As used in this chapter:

(1) "Agency" means any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, and educational, correctional, and other types of institutions.

(2) "Client services" means services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.

(3) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(4) "Consultant" means an independent individual or firm contracting with an agency to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the agency except as to the result of the work. The agency monitors progress under the contract and authorizes payment.

(5) "Emergency" means a set of unforeseen circumstances beyond the control of the agency that either:

(a) Present a real, immediate threat to the proper performance of essential functions; or

(b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

(6) "Evidence of competition" means documentation demonstrating that the agency has solicited responses from multiple firms in selecting a consultant.

(7) "Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement. This term does not include purchased services as defined under subsection (9) of this section. This term does include client services.

(8) "Personal service contract" means an agreement, or any amendment thereto, with a consultant for the rendering of personal services to the state which is consistent with RCW 41.06.380.

(9) "Purchased services" means services provided by a vendor to accomplish routine, continuing and necessary functions. This term includes, but is not limited to, services acquired under RCW 43.19.190 or 43.105.041 for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.

(10) "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on either the uniqueness of the service or sole availability at the location required. [1998 c 101 § 2; 1993 c 433 § 2; 1987 c 414 § 2; 1981 c 263 § 1; 1979 ex.s. c 61 § 2.]

**39.29.006 Definitions.** (*Effective July 1, 2005.*) As used in this chapter:

(1) "Agency" means any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, and educational, correctional, and other types of institutions.

(2) "Client services" means services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.

(3) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(4) "Consultant" means an independent individual or firm contracting with an agency to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the agency except as to the result of the work. The agency monitors progress under the contract and authorizes payment.

(5) "Emergency" means a set of unforeseen circumstances beyond the control of the agency that either:

(a) Present a real, immediate threat to the proper performance of essential functions; or

(b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

(6) "Evidence of competition" means documentation demonstrating that the agency has solicited responses from multiple firms in selecting a consultant.

(7) "Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement. This term does not include purchased services as defined under subsection (9) of this section. This term does include client services.

(8) "Personal service contract" means an agreement, or any amendment thereto, with a consultant for the rendering of personal services to the state which is consistent with RCW 41.06.142.

(9) "Purchased services" means services provided by a vendor to accomplish routine, continuing and necessary func-

tions. This term includes, but is not limited to, services acquired under RCW 43.19.190 or 43.105.041 for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.

(10) "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on either the uniqueness of the service or sole availability at the location required. [2002 c 354 § 235; 1998 c 101 § 2; 1993 c 433 § 2; 1987 c 414 § 2; 1981 c 263 § 1; 1979 ex.s. c 61 § 2.]

**Short title—Headings, captions not law—Severability—Effective dates—2002 c 354:** See RCW 41.80.907 through 41.80.910.

### **39.29.008 Limitation on personal service contracts.**

Personal services may be procured only to resolve a particular agency problem or issue or to expedite a specific project that is temporary in nature. An agency may procure personal services only if it documents that:

- (1) The service is critical to agency responsibilities or operations, or is mandated or authorized by the legislature;
- (2) Sufficient staffing or expertise is not available within the agency to perform the service; and
- (3) Other qualified public resources are not available to perform the service. [1993 c 433 § 6.]

**39.29.011 Competitive solicitation required—Exceptions.** All personal service contracts shall be entered into pursuant to competitive solicitation, except for:

- (1) Emergency contracts;
- (2) Sole source contracts;
- (3) Contract amendments;
- (4) Contracts between a consultant and an agency of less than twenty thousand dollars. However, contracts of five thousand dollars or greater but less than twenty thousand dollars shall have documented evidence of competition. Agencies shall not structure contracts to evade these requirements; and
- (5) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the director of the office of financial management when it has been determined that a competitive solicitation process is not appropriate or cost-effective. [1998 c 101 § 3; 1987 c 414 § 3.]

**39.29.016 Emergency contracts.** Emergency contracts shall be filed with the office of financial management and made available for public inspection within three working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the office of financial management when the contract is filed. [1998 c 101 § 4; 1996 c 288 § 29; 1987 c 414 § 4.]

**39.29.018 Sole source contracts.** (1) Sole source contracts shall be filed with the office of financial management and made available for public inspection at least ten working

days prior to the proposed starting date of the contract. Documented justification for sole source contracts shall be provided to the office of financial management when the contract is filed. For sole source contracts of twenty thousand dollars or more, documented justification shall include evidence that the agency attempted to identify potential consultants by advertising through statewide or regional newspapers.

(2) The office of financial management shall approve sole source contracts of twenty thousand dollars or more before any such contract becomes binding and before any services may be performed under the contract. These requirements shall also apply to sole source contracts of less than twenty thousand dollars if the total amount of such contracts between an agency and the same consultant is twenty thousand dollars or more within a fiscal year. Agencies shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of twenty thousand dollars or more are reasonable. [1998 c 101 § 5; 1996 c 288 § 30; 1993 c 433 § 5; 1987 c 414 § 5.]

**39.29.020 Compliance—Expenditure of funds prohibited—Civil penalty.** No state officer or activity of state government subject to this chapter shall expend any funds for personal service contracts unless the agency has complied with the competitive procurement and other requirements of this chapter. The state officer or employee executing the personal service contracts shall be responsible for compliance with the requirements of this chapter. Failure to comply with the requirements of this chapter shall subject the state officer or employee to a civil penalty in the amount of three hundred dollars. A consultant who knowingly violates this chapter in seeking or performing work under a personal services contract shall be subject to a civil penalty of three hundred dollars or twenty-five percent of the amount of the contract, whichever is greater. The state auditor is responsible for auditing violations of this chapter. The attorney general is responsible for prosecuting violations of this chapter. [1987 c 414 § 6; 1974 ex.s. c 191 § 2.]

**39.29.025 Amendments.** (1) Substantial changes in either the scope of work specified in the contract or in the scope of work specified in the formal solicitation document must generally be awarded as new contracts. Substantial changes executed by contract amendments must be submitted to the office of financial management, and are subject to approval by the office of financial management.

(2) An amendment or amendments to personal service contracts, if the value of the amendment or amendments, whether singly or cumulatively, exceeds fifty percent of the value of the original contract must be provided to the office of financial management.

(3) The office of financial management shall approve amendments provided to it under this section before the amendments become binding and before services may be performed under the amendments.

(4) The amendments must be filed with the office of financial management and made available for public inspection at least ten working days prior to the proposed starting date of services under the amendments.

(5) The office of financial management shall approve amendments provided to it under this section only if they meet the criteria for approval of the amendments established by the director of the office of financial management. [1998 c 101 § 6; 1996 c 288 § 31; 1993 c 433 § 3.]

**39.29.040 Exemption of certain contracts.** This chapter does not apply to:

(1) Contracts specifying a fee of less than five thousand dollars if the total of the contracts from that agency with the contractor within a fiscal year does not exceed five thousand dollars;

(2) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;

(3) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;

(4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;

(5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

(6) Contracts for client services except as otherwise indicated in this chapter;

(7) Contracts for architectural and engineering services as defined in RCW 39.80.020, which shall be entered into under chapter 39.80 RCW;

(8) Contracts for the employment of expert witnesses for the purposes of litigation;

(9) Contracts for bank supervision authorized under RCW 30.38.040; and

(10) Contracts for interpreter services and interpreter brokerage services on behalf of limited-English speaking or sensory-impaired applicants and recipients of public assistance. [2002 c 260 § 11; 2002 c 200 § 2; 1998 c 101 § 7; 1996 c 2 § 19; 1995 c 80 § 1; 1987 c 414 § 7; 1986 c 33 § 3; 1979 ex.s. c 61 § 4.]

**Reviser's note:** This section was amended by 2002 c 200 § 2 and by 2002 c 260 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—2002 c 200:** "The legislature finds that limited-English speaking and sensory-impaired applicants and recipients of public assistance often require interpreter services in order to communicate effectively with employees of the department of social and health services, medical professionals, and other social services personnel. The legislature further finds that interpreter services can be procured and delivered through a variety of different means. It is in the public's interest for the department to deliver interpreter services, to the extent funds are available, by the means which it determines most cost-effectively ensure that limited-English speaking and sensory-impaired persons are able to communicate with department employees and service providers." [2002 c 200 § 1.]

**Severability—1996 c 2:** See RCW 30.38.900.

**39.29.050 Contracts subject to requirements established under office of minority and women's business enterprises.** All contracts entered into under this chapter on or after September 1, 1983, are subject to the requirements established under chapter 39.19 RCW. [1983 c 120 § 12.]

**Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120:** See RCW 39.19.910, 39.19.920.

**39.29.055 Contracts—Filing—Public inspection—Review and approval—Effective date.** (1) Personal service contracts subject to competitive solicitation shall be (a) filed with the office of financial management and made available for public inspection; and (b) reviewed and approved by the office of financial management when those contracts provide services relating to management consulting, organizational development, marketing, communications, employee training, or employee recruiting.

(2) Personal service contracts subject to competitive solicitation that provide services relating to management consulting, organizational development, marketing, communications, employee training, or employee recruiting shall be made available for public inspection at least ten working days before the proposed starting date of the contract. All other contracts shall be effective no earlier than the date they are filed with the office of financial management. [1998 c 101 § 8; 1996 c 288 § 32; 1993 c 433 § 7.]

**39.29.065 Office of financial management to establish procedures—Adjustment of dollar thresholds.** To implement this chapter, the director of the office of financial management shall establish procedures for the competitive solicitation and award of personal service contracts, record-keeping requirements, and procedures for the reporting and filing of contracts. For reporting purposes, the director may establish categories for grouping of contracts. The procedures required under this section shall also include the criteria for amending personal service contracts. At the beginning of each biennium, the director may, by administrative policy, adjust the dollar thresholds prescribed in RCW 39.29.011, 39.29.018, 39.29.040, and \*39.29.068 to levels not to exceed the percentage increase in the implicit price deflator. Adjusted dollar thresholds shall be rounded to the nearest five hundred dollar increment. [1998 c 101 § 9; 1987 c 414 § 8.]

**\*Reviser's note:** The dollar thresholds prescribed in RCW 39.29.068 were amended by 1998 c 101 § 10, and removed by 1998 c 245 § 33.

**39.29.068 Office of financial management to maintain list of contracts—Report to legislature (as amended by 1998 c 101).** The office of financial management shall maintain a publicly available list of all personal service contracts entered into by state agencies during each fiscal year. The list shall identify the contracting agency, the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis. The office of financial management shall also ensure that state accounting definitions and procedures are consistent with RCW 39.29.006 and permit the reporting of personal services expenditures by agency and by type of service. Designations of type of services shall include, but not be limited to, management and organizational services, legal and expert witness services, financial services, computer and information services, social or technical research, marketing, communications, and employee training or recruiting services. The office of financial management shall report annually to the fiscal committees of the senate and house of representatives on sole source contracts filed under this chapter. The report shall describe: (1) The number and aggregate value of contracts for each category established in this section; (2) the number and aggregate value of contracts of ~~((ten))~~ five thousand ~~((five hundred))~~ dollars or greater but less than ~~((ten))~~ twenty thousand dollars; (3) the number and aggregate value of contracts of ~~((ten))~~ twenty thousand dollars or greater; (4) the justification provided by agencies for the use of sole

source contracts; and (5) any trends in the use of sole source contracts. [1998 c 101 § 10; 1993 c 433 § 8.]

**39.29.068 Office of financial management to maintain list of contracts (as amended by 1998 c 245).** The office of financial management shall maintain a publicly available list of all personal service contracts entered into by state agencies during each fiscal year. The list shall identify the contracting agency, the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis. The office of financial management shall also ensure that state accounting definitions and procedures are consistent with RCW 39.29.006 and permit the reporting of personal services expenditures by agency and by type of service. Designations of type of services shall include, but not be limited to, management and organizational services, legal and expert witness services, financial services, computer and information services, social or technical research, marketing, communications, and employee training or recruiting services. ~~(The office of financial management shall report annually to the fiscal committees of the senate and house of representatives on sole source contracts filed under this chapter. The report shall describe: (1) The number and aggregate value of contracts for each category established in this section; (2) the number and aggregate value of contracts of two thousand five hundred dollars or greater but less than ten thousand dollars; (3) the number and aggregate value of contracts of ten thousand dollars or greater; (4) the justification provided by agencies for the use of sole source contracts; and (5) any trends in the use of sole source contracts.)~~ [1998 c 245 § 33; 1993 c 433 § 8.]

**Reviser's note:** RCW 39.29.068 was amended twice during the 1998 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**39.29.075 Summary reports on contracts.** As requested by the legislative auditor, the office of financial management shall provide information on contracts filed under this chapter for use in preparation of summary reports on personal services contracts. [1987 c 414 § 9.]

**39.29.080 Data generated under personal services contracts.** A state agency may not enter into a personal services contract with a consultant under which the consultant could charge additional costs to the agency, the joint legislative audit and review committee, or the state auditor for access to data generated under the contract. A consultant under such contract shall provide access to data generated under the contract to the contracting agency, the joint legislative audit and review committee, and the state auditor. For purposes of this section, "data" includes all information that supports the findings, conclusions, and recommendations of the consultant's reports, including computer models and the methodology for those models. [1997 c 373 § 1.]

**39.29.090 Contracts awarded by institutions of higher education.** Personal service contracts awarded by institutions of higher education from nonstate funds do not have to be filed in advance and approved by the office of financial management. Any such contract is subject to all other requirements of this chapter, including the requirements under \*RCW 39.29.068 for annual reporting of personal service contracts to the office of financial management. [1998 c 101 § 11.]

**\*Reviser's note:** Annual reporting requirements under RCW 39.29.068 were amended by 1998 c 101 § 10, and removed by 1998 c 245 § 33.

**39.29.100 Contract management—Uniform guidelines—Guidebook.** (1) The office of financial management

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shall adopt uniform guidelines for the effective and efficient management of personal service contracts and client service contracts by all state agencies. The guidelines must, at a minimum, include:

(a) Accounting methods, systems, measures, and principles to be used by agencies and contractors;

(b) Precontract procedures for selecting potential contractors based on their qualifications and ability to perform;

(c) Incorporation of performance measures and measurable benchmarks in contracts, and the use of performance audits;

(d) Uniform contract terms to ensure contract performance and compliance with state and federal standards;

(e) Proper payment and reimbursement methods to ensure that the state receives full value for taxpayer moneys, including cost settlements and cost allowance;

(f) Postcontract procedures, including methods for recovering improperly spent or overspent moneys for disallowance and adjustment;

(g) Adequate contract remedies and sanctions to ensure compliance;

(h) Monitoring, fund tracking, risk assessment, and auditing procedures and requirements;

(i) Financial reporting, record retention, and record access procedures and requirements;

(j) Procedures and criteria for terminating contracts for cause or otherwise; and

(k) Any other subject related to effective and efficient contract management.

(2) The office of financial management shall submit the guidelines required by subsection (1) of this section to the governor and the appropriate standing committees of the legislature no later than December 1, 2002.

(3) The office of financial management shall publish a guidebook for use by state agencies containing the guidelines required by subsection (1) of this section. [2002 c 260 § 7.]

**Effective date—2002 c 260 § 7:** "Section 7 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2002]." [2002 c 260 § 12.]

**39.29.110 Use of guidelines—Report to office of financial management.** (1) A state agency entering into or renewing personal service contracts or client service contracts shall follow the guidelines required by RCW 39.29.100.

(2) A state agency that has entered into or renewed personal service contracts or client service contracts during a calendar year shall, on or before January 1st of the following calendar year, provide the office of financial management with a report detailing the procedures the agency employed in entering into, renewing, and managing the contracts.

(3) The provisions of this section apply to state agencies entering into or renewing contracts after January 1, 2003. [2002 c 260 § 8.]

**Effective date—2002 c 260 §§ 8 and 9:** "Sections 8 and 9 of this act take effect January 1, 2003." [2002 c 260 § 13.]

**39.29.120 Contract management—Training—Risk-based audits—Reports.** (1) The office of financial management shall provide a training course for agency personnel

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responsible for executing and managing personal service contracts and client service contracts. The course must contain training on effective and efficient contract management under the guidelines established under RCW 39.29.100. State agencies shall require agency employees responsible for executing or managing personal service contracts and client service contracts to complete the training course to the satisfaction of the office of financial management. Beginning January 1, 2004, no agency employee may execute or manage personal service contracts or client service contracts unless the employee has completed the training course. Any request for exception to this requirement shall be submitted to the office of financial management in writing and shall be approved by the office of financial management prior to the employee executing or managing the contract.

(2)(a) The office of financial management shall conduct risk-based audits of the contracting practices associated with individual personal service and client service contracts from multiple state agencies to ensure compliance with the guidelines established in RCW 39.29.110. The office of financial management shall conduct the number of audits deemed appropriate by the director of the office of financial management based on funding provided.

(b) The office of financial management shall forward the results of the audits conducted under this section to the governor, the appropriate standing committees of the legislature, and the joint legislative audit and review committee. [2002 c 260 § 9.]

**Effective date—2002 c 260 §§ 8 and 9:** See note following RCW 39.29.110.

**39.29.130 Contract audits and investigative findings—Report by state auditor and attorney general.** The state auditor and the attorney general shall annually by November 30th of each year provide a collaborative report of contract audit and investigative findings, enforcement actions, and the status of agency resolution to the governor and the policy and fiscal committees of the legislature. [2002 c 260 § 10.]

**39.29.900 Severability—1987 c 414.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 414 § 13.]

**Chapter 39.30 RCW**

**CONTRACTS—INDEBTEDNESS LIMITATIONS—  
COMPETITIVE BIDDING VIOLATIONS**

Sections

- 39.30.010 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when.
- 39.30.020 Contracts requiring competitive bidding—Violations by municipal officer—Penalties.
- 39.30.040 Purchases—Competitive bidding—Local governments may consider tax revenues—Purchase of recycled or reused materials or products.
- 39.30.045 Purchase at auctions.
- 39.30.050 Contracts to require use of paper products meeting certain specifications.
- 39.30.060 Bids on public works—Identification, substitution of subcontractors.

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39.30.070 Exceptions—Contracts or development agreements related to stadium and exhibition center.

**39.30.010 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when.** Any city or town or metropolitan park district or county or library district may execute an executory conditional sales contract with a county or counties, the state or any of its political subdivisions, the government of the United States, or any private party for the purchase of any real or personal property, or property rights in connection with the exercise of any powers or duties which they now or hereafter are authorized to exercise, if the entire amount of the purchase price specified in such contract does not result in a total indebtedness in excess of three-fourths of one percent of the value of the taxable property in such library district or the maximum amount of nonvoter-approved indebtedness authorized in such county, city, town, or metropolitan park district. If such a proposed contract would result in a total indebtedness in excess of this amount, a proposition in regard to whether or not such a contract may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters. Any city or town or metropolitan park district or county or library district may jointly execute contracts authorized by this section, if the entire amount of the purchase price does not result in a joint total indebtedness in excess of the nonvoter-approved indebtedness limitation of any city, town, metropolitan park district, county, or library district that participates in the jointly executed contract. The term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015. [1997 c 361 § 2; 1970 ex.s. c 42 § 26; 1963 c 92 § 1; 1961 c 158 § 1.]

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

**39.30.020 Contracts requiring competitive bidding—Violations by municipal officer—Penalties.** In addition to any other remedies or penalties contained in any law, municipal charter, ordinance, resolution or other enactment, any municipal officer by or through whom or under whose supervision, in whole or in part, any contract is made in wilful and intentional violation of any law, municipal charter, ordinance, resolution or other enactment requiring competitive bidding upon such contract shall be held liable to a civil penalty of not less than three hundred dollars and may be held liable, jointly and severally with any other such municipal officer, for all consequential damages to the municipal corporation. If, as a result of a criminal action, the violation is found to have been intentional, the municipal officer shall immediately forfeit his office. For purposes of this section, "municipal officer" shall mean an "officer" or "municipal officer" as those terms are defined in RCW 42.23.020(2). [1974 ex.s. c 74 § 1.]

*Contracts by cities or towns, bidding requirements: RCW 35.23.352.*

**39.30.040 Purchases—Competitive bidding—Local governments may consider tax revenues—Purchase of recycled or reused materials or products.** (1) Whenever a unit of local government is required to make purchases from the lowest bidder or from the supplier offering the lowest

price for the items desired to be purchased, the unit of local government may, at its option when awarding a purchase contract, take into consideration tax revenue it would receive from purchasing the supplies, materials, or equipment from a supplier located within its boundaries. The unit of local government must award the purchase contract to the lowest bidder after such tax revenue has been considered. However, any local government may allow for preferential purchase of products made from recycled materials or products that may be recycled or reused. The tax revenues which units of local government may consider include sales taxes that the unit of local government imposes upon the sale of such supplies, materials, or equipment from the supplier to the unit of local government, and business and occupation taxes that the unit of local government imposes upon the supplier that are measured by the gross receipts of the supplier from such sale. Any unit of local government which considers tax revenues it would receive from the imposition of taxes upon a supplier located within its boundaries, shall also consider tax revenues it would receive from taxes it imposes upon a supplier located outside its boundaries.

(2) As used in this section, the term "unit of local government" means any county, city, town, metropolitan municipal corporation, public transit benefit area, county transportation authority, or other municipal or quasi-municipal corporation authorized to impose sales and use taxes or business and occupation taxes. [1989 c 431 § 58; 1985 c 72 § 1.]

**Severability—1989 c 431:** See RCW 70.95.901.

**39.30.045 Purchase at auctions.** Any municipality, as defined in RCW 39.04.010, may purchase any supplies, equipment, or materials at auctions conducted by the government of the United States or any agency thereof, any agency of the state of Washington, any municipality or other government agency, or any private party without being subject to public bidding requirements if the items can be obtained at a competitive price. [1993 c 198 § 4; 1991 c 363 § 112.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**39.30.050 Contracts to require use of paper products meeting certain specifications.** Any contract by a governmental unit shall require the use of paper products to the maximum extent economically feasible that meet the specifications established by the department of general administration under RCW 43.19.538. [1982 c 61 § 4.]

**39.30.060 Bids on public works—Identification, substitution of subcontractors.** (1) Every invitation to bid on a prime contract that is expected to cost one million dollars or more for the construction, alteration, or repair of any public building or public work of the state or a state agency or municipality as defined under RCW 39.04.010 or an institution of higher education as defined under RCW 28B.10.016 shall require each prime contract bidder to submit as part of the bid, or within one hour after the published bid submittal time, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of: HVAC (heating, ventilation, and air conditioning); plumbing as described in chapter 18.106 RCW; and

electrical as described in chapter 19.28 RCW, or to name itself for the work. The prime contract bidder shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the prime contract bidder must indicate which subcontractor will be used for which alternate. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder's bid nonresponsive and, therefore, void.

(2) Substitution of a listed subcontractor in furtherance of bid shopping or bid peddling before or after the award of the prime contract is prohibited and the originally listed subcontractor is entitled to recover monetary damages from the prime contract bidder who executed a contract with the public entity and the substituted subcontractor but not from the public entity inviting the bid. It is the original subcontractor's burden to prove by a preponderance of the evidence that bid shopping or bid peddling occurred. Substitution of a listed subcontractor may be made by the prime contractor for the following reasons:

(a) Refusal of the listed subcontractor to sign a contract with the prime contractor;

(b) Bankruptcy or insolvency of the listed subcontractor;

(c) Inability of the listed subcontractor to perform the requirements of the proposed contract or the project;

(d) Inability of the listed subcontractor to obtain the necessary license, bonding, insurance, or other statutory requirements to perform the work detailed in the contract; or

(e) The listed subcontractor is barred from participating in the project as a result of a court order or summary judgment.

(3) The requirement of this section to name the prime contract bidder's proposed HVAC, plumbing, and electrical subcontractors applies only to proposed HVAC, plumbing, and electrical subcontractors who will contract directly with the prime contract bidder submitting the bid to the public entity.

(4) This section does not apply to job order contract requests for proposals under RCW 39.10.130. [2003 c 301 § 5; 2002 c 163 § 2; 1999 c 109 § 1; 1995 c 94 § 1; 1994 c 91 § 1; 1993 c 378 § 1.]

**Intent—2002 c 163:** "This act is intended to discourage bid shopping and bid peddling on Washington state public building and works projects." [2002 c 163 § 1.]

**Application—1994 c 91:** "This act applies prospectively only and not retroactively. It applies only to invitations to bid issued on or after June 9, 1994." [1994 c 91 § 2.]

**Application—1993 c 378:** "This act applies prospectively only and not retroactively. It applies only to invitations to bid issued on or after July 25, 1993." [1993 c 378 § 2.]

**39.30.070 Exceptions—Contracts or development agreements related to stadium and exhibition center.** This chapter does not apply to contracts entered into under RCW 36.102.060(4) or development agreements entered into under RCW 36.102.060(7). [1997 c 220 § 403 (Referendum Bill No. 48, approved June 17, 1997).]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet,**

**election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

## Chapter 39.32 RCW

### PURCHASE OF FEDERAL PROPERTY

#### Sections

- 39.32.010 Definitions.
- 39.32.020 Acquisition of surplus property authorized.
- 39.32.035 Administration and use of general administration services account—Director's authority to lease and acquire surplus property.
- 39.32.040 Procedure to purchase—Requisitions—Price at which sold—Disposition of proceeds—Duties of governor.
- 39.32.060 Rules and regulations.
- 39.32.070 Purchase of property from federal government authorized—Authority to contract—Bidding—Payment.
- 39.32.080 Purchase of property from federal government authorized—Inconsistent provisions suspended.
- 39.32.090 Purchases by political subdivisions from or through United States authorized.

*Authority of counties to receive and distribute federal surplus commodities to needy:* RCW 36.39.040.

*State purchasing and material control director:* RCW 43.19.190.

*Public assistance recipients, certification of to receive federal surplus commodities:* RCW 74.04.340 through 74.04.360.

**39.32.010 Definitions.** For the purposes of RCW 39.32.010 through 39.32.060:

The term "eligible donee" means any public agency carrying out or promoting for the residents of a given political area one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, and public safety; or nonprofit educational or public health institutions or organizations, such as medical institutions, hospitals, clinics, health centers, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, child care centers, radio and television stations licensed by the federal communications commission as educational radio or educational television stations, museums attended by the public, and public libraries serving all residents of a community, district, state, or region, and which are exempt from taxation under Section 501 of the Internal Revenue Code of 1954, for purposes of education or public health, including research for any such purpose.

The term "public agency" means the state or any subdivision thereof, including any unit of local government, economic development district, emergency services organization, or any instrumentality created by compact or other agreement between the state and a political subdivision, or any Indian tribe, band, group, or community located on a state reservation.

The term "surplus property" means any property, title to which is in the federal, state, or local government or any department or agency thereof, and which property is to be disposed of as surplus under any act of congress or the legislature or local statute, heretofore or hereafter enacted providing for such disposition. [1995 c 137 § 2; 1977 ex.s. c 135 § 1; 1967 ex.s. c 70 § 1; 1945 c 205 § 1; Rem. Supp. 1945 § 10322-60.]

(2004 Ed.)

**39.32.020 Acquisition of surplus property authorized.** The director of general administration is hereby authorized to purchase, lease or otherwise acquire from federal, state, or local government or any surplus property disposal agency thereof surplus property to be used in accordance with the provisions of this chapter. [1995 c 137 § 3; 1977 ex.s. c 135 § 2; 1967 ex.s. c 70 § 2; 1945 c 205 § 2; Rem. Supp. 1945 § 10322-61.]

*Authority of superintendent of public instruction to acquire federal surplus or donated food commodities for school district hot lunch program:* Chapter 28A.235 RCW.

**39.32.035 Administration and use of general administration services account—Director's authority to lease and acquire surplus property.** The general administration services account shall be administered by the director of general administration and be used for the purchase, lease or other acquisition from time to time of surplus property from any federal, state, or local government surplus property disposal agency. The director may purchase, lease or acquire such surplus property on the requisition of an eligible donee and without such requisition at such time or times as he or she deems it advantageous to do so; and in either case he or she shall be responsible for the care and custody of the property purchased so long as it remains in his or her possession. [1998 c 105 § 3; 1995 c 137 § 4; 1977 ex.s. c 135 § 3; 1967 ex.s. c 70 § 4; 1945 c 205 § 4; Rem. Supp. 1945 § 10322-63. Formerly RCW 39.32.030, part.]

**Effective date—1998 c 105:** See note following RCW 43.19.025.

**39.32.040 Procedure to purchase—Requisitions—Price at which sold—Disposition of proceeds—Duties of governor.** In purchasing federal surplus property on requisition for any eligible donee the director may advance the purchase price thereof from the general administration services account, and he or she shall then in due course bill the proper eligible donee for the amount paid by him or her for the property plus a reasonable amount to cover the expense incurred by him or her in connection with the transaction. In purchasing surplus property without requisition, the director shall be deemed to take title outright and he or she shall then be authorized to resell from time to time any or all of such property to such eligible donees as desire to avail themselves of the privilege of purchasing. All moneys received in payment for surplus property from eligible donees shall be deposited by the director in the general administration services account. The director shall sell federal surplus property to eligible donees at a price sufficient only to reimburse the general administration services account for the cost of the property to the account, plus a reasonable amount to cover expenses incurred in connection with the transaction. Where surplus property is transferred to an eligible donee without cost to the transferee, the director may impose a reasonable charge to cover expenses incurred in connection with the transaction. The governor, through the director of general administration, shall administer the surplus property program in the state and shall perform or supervise all those functions with respect to the program, its agencies and instrumentalities. [1998 c 105 § 4; 1995 c 137 § 5; 1977 ex.s. c 135 § 4; 1967 ex.s. c 70 § 5; 1945 c 205 § 5; Rem. Supp. 1945 § 10322-64.]

**Effective date—1998 c 105:** See note following RCW 43.19.025.

**39.32.060 Rules and regulations.** The director of general administration shall have power to promulgate such rules and regulations as may be necessary to effectuate the purposes of RCW 39.32.010 through 39.32.060 and to carry out the provisions of the Federal Property and Administrative Services Act of 1949, as amended. [1977 ex.s. c 135 § 5; 1967 ex.s. c 70 § 6; 1945 c 205 § 7; Rem. Supp. 1945 § 10322-66.]

**39.32.070 Purchase of property from federal government authorized—Authority to contract—Bidding—Payment.** The state of Washington, through any department, division, bureau, board, commission, authority, or agency thereof, and all counties, cities, towns, and other political subdivisions thereof, is hereby authorized to enter into any contract with the United States of America, or with any agency thereof, for the purchase of any equipment, supplies, materials, or other property, without regard to the provisions of any law requiring the advertising, giving of notices, inviting or receiving bids, or which may require the delivery of purchases before payment, and to this end the executive head of any such department, division, bureau, board, commission, authority, or agency of the state, the county commissioners and the executive authority of any city or town, may designate by appropriate resolution or order any office holder or employee of its own to enter a bid or bids in its behalf at any sale of any equipment, supplies, material or other property real or personal owned by the United States of America or any agency thereof, and may authorize said person to make any down payment, or payment in full, required in connection with such bidding. [1945 c 180 § 1; Rem. Supp. 1945 § 10322-50. FORMER PART OF SECTION: 1945 c 88 § 1 now codified as RCW 39.32.090.]

**39.32.080 Purchase of property from federal government authorized—Inconsistent provisions suspended.** Any provisions of any law, charter, ordinance, resolution, bylaw, rule or regulation which are inconsistent with the provisions of RCW 39.32.070 and 39.32.080 are suspended to the extent such provisions are inconsistent herewith. [1945 c 180 § 2; Rem. Supp. 1945 § 10322-51.]

**39.32.090 Purchases by political subdivisions from or through United States authorized.** Whenever authorized by ordinance or resolution of its legislative authority any political subdivision of the state shall have power to purchase supplies, materials and/or equipment from or through the United States government without calling for bids, notwithstanding any law or charter provision to the contrary. [1945 c 88 § 1; Rem. Supp. 1945 § 10322-40. Formerly RCW 39.32.070, part.]

## Chapter 39.33 RCW

### INTERGOVERNMENTAL DISPOSITION OF PROPERTY

#### Sections

- 39.33.010 Sale, exchange, transfer, lease of public property authorized—Section deemed alternative.  
39.33.020 Disposal of surplus property—Hearing—Notice.

- 39.33.050 Public mass transportation systems—Contracts for services or use.  
39.33.060 Transfer of property or contract for use for park and recreational purposes.  
39.33.070 School districts and libraries—Disposal of obsolete or surplus reading materials—Procedures.  
39.33.080 Sale of certain property—Authorization.

**39.33.010 Sale, exchange, transfer, lease of public property authorized—Section deemed alternative.** (1) The state or any municipality or any political subdivision thereof, may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or property rights, including but not limited to the title to real property, to the state or any municipality or any political subdivision thereof, or the federal government, on such terms and conditions as may be mutually agreed upon by the proper authorities of the state and/or the subdivisions concerned. In addition, the state, or any municipality or any political subdivision thereof, may sell, transfer, exchange, lease, or otherwise dispose of personal property, except weapons, to a foreign entity.

(2) This section shall be deemed to provide an alternative method for the doing of the things authorized herein, and shall not be construed as imposing any additional condition upon the exercise of any other powers vested in the state, municipalities or political subdivisions.

(3) No intergovernmental transfer, lease, or other disposition of property made pursuant to any other provision of law prior to May 23, 1972, shall be construed to be invalid solely because the parties thereto did not comply with the procedures of this section. [2003 c 303 § 1; 1981 c 96 § 1; 1973 c 109 § 1; 1972 ex.s. c 95 § 1; 1953 c 133 § 1.]

**Effective date—2003 c 303:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 303 § 2.]

*Exchange of county tax title lands with other governmental agencies: Chapter 36.35 RCW.*

**39.33.020 Disposal of surplus property—Hearing—Notice.** Before disposing of surplus property with an estimated value of more than fifty thousand dollars, the state or a political subdivision shall hold a public hearing in the county where the property or the greatest portion thereof is located. At least ten days but not more than twenty-five days prior to the hearing, there shall be published a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing at least once in a newspaper of general circulation in the area where the property is located. A news release pertaining to the hearing shall be disseminated among printed and electronic media in the area where the property is located. If real property is involved, the public notice and news release shall identify the property using a description which can easily be understood by the public. If the surplus is real property, the public notice and news release shall also describe the proposed use of the lands involved. If there is a failure to substantially comply with the procedures set forth in this section, then the sale, transfer, exchange, lease, or other disposal shall be subject to being declared invalid by a court. Any such suit must be brought within one year from the date of the disposal agreement. [1995 c 123 § 1; 1981 c 96 § 2.]

**39.33.050 Public mass transportation systems—Contracts for services or use.** The legislative body of any municipal corporation, quasi municipal corporation or political subdivision of the state of Washington authorized to develop and operate a public mass transportation system shall have power to contract with the legislative body of any other municipal corporation, quasi municipal corporation or political subdivision of the state of Washington, or with any person, firm or corporation for public transportation services or for the use of all or any part of any publicly owned transportation facilities for such period and under such terms and conditions and upon such rentals, fees and charges as the legislative body operating such public transportation system may determine, and may pledge all or any portion of such rentals, fees and charges and all other revenue derived from the ownership or operation of publicly owned transportation facilities to pay and to secure the payment of general obligation bonds and/or revenue bonds of such municipality issued for the purpose of acquiring or constructing a public mass transportation system. [1969 ex.s. c 255 § 16.]

**Construction—Severability—1969 ex.s. c 255:** See notes following RCW 35.58.272.

*Public transportation systems:* RCW 35.58.272 and 35.58.2721.

**39.33.060 Transfer of property or contract for use for park and recreational purposes.** Any governmental unit, as defined in RCW 36.93.020(1) as it now exists or is hereafter amended, may convey its real or personal property or any interest or right therein to, or contract for the use of such property by, the county or park and recreation district wherein such property is located for park or recreational purposes, by private negotiation and upon such terms and with such consideration as might be mutually agreed to by such governmental unit and the board of county commissioners or the park and recreation district board of commissioners. [1971 ex.s. c 243 § 7.]

**Severability—1971 ex.s. c 243:** See RCW 84.34.920.

**39.33.070 School districts and libraries—Disposal of obsolete or surplus reading materials—Procedures.** Any school district or educational service district, after complying with the requirements of RCW 28A.335.180, and any library, as defined in RCW 27.12.010, may dispose of surplus or obsolete books, periodicals, newspapers, and other reading materials as follows:

(1) If the reading materials are estimated to have value as reading materials in excess of one thousand dollars, they shall be sold at public auction to the person submitting the highest reasonable bid following publication of notice of the auction in a newspaper with a general circulation in the library or school district.

(2) If no reasonable bids are submitted under subsection (1) of this section or if the reading materials are estimated to have value as reading materials of one thousand dollars or less, the library or school district may directly negotiate the sale of the reading materials to a public or private entity.

(3) If the reading materials are determined to have no value as reading materials or if no purchaser is found under subsection (2) of this section the reading materials may be recycled or destroyed.

(2004 Ed.)

These methods for disposing of surplus or obsolete reading materials shall be in addition to any other method available to libraries and school districts for disposal of the property. [1990 c 33 § 567; 1979 ex.s. c 134 § 1.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**39.33.080 Sale of certain property—Authorization. (Expires June 30, 2005.)** (1) During the 2003-05 biennium, notwithstanding any other provision of law, the department of general administration is authorized to sell the property and attendant parking lot located at 1058 Capitol Way, Olympia, for fair market value to a nonprofit organization whose function is to produce television coverage of state government deliberations and other events of statewide significance.

(2) This section expires June 30, 2005. [2004 c 277 § 912.]

**Severability—Effective dates—2004 c 277:** See notes following RCW 89.08.550.

**Chapter 39.34 RCW**

**INTERLOCAL COOPERATION ACT**

Sections

- 39.34.010 Declaration of purpose.
- 39.34.020 Definitions.
- 39.34.030 Joint powers—Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies—Financing of joint projects.
- 39.34.040 Agreements to be filed—Status of interstate agreements—Real party in interest—Actions.
- 39.34.050 Duty to submit agreement to jurisdictional state officer or agency.
- 39.34.055 Public purchase agreements with public benefit nonprofit corporations.
- 39.34.060 Participating agencies may appropriate funds and provide personnel, property, and services.
- 39.34.070 Authority of joint boards to receive loans or grants.
- 39.34.080 Contracts to perform governmental activities which each contracting agency is authorized to perform.
- 39.34.085 Agreements for operation of bus services.
- 39.34.090 Agencies' contracting authority regarding electricity, utilities' powers, preserved.
- 39.34.100 Powers conferred by chapter are supplemental.
- 39.34.110 Powers otherwise prohibited by Constitutions or federal laws.
- 39.34.130 Transactions between state agencies—Charging of costs—Regulation by director of financial management.
- 39.34.140 Transactions between state agencies—Procedures for payments through transfers upon accounts.
- 39.34.150 Transactions between state agencies—Advancements.
- 39.34.160 Transactions between state agencies—Time limitation for expenditure of advance—Unexpended balance.
- 39.34.170 Transactions between state agencies—Powers and authority cumulative.
- 39.34.180 Criminal justice responsibilities—Interlocal agreements—Termination.
- 39.34.190 Watershed management plan projects—Use of water-related revenues.
- 39.34.200 Watershed management partnerships—Formation.
- 39.34.210 Watershed management partnerships—Indebtedness—Bonds.
- 39.34.220 Watershed management plans—Additional authority for implementation—Existing agreements not affected.
- 39.34.900 Short title.
- 39.34.910 Severability—1967 c 239.
- 39.34.920 Effective date—1967 c 239.

*Hydroelectric resources, creation of separate legal authority by irrigation districts and cities, towns, or public utility districts:* RCW 87.03.828.

*Irrigation districts, creation of legal authority to carry out powers:* RCW 87.03.018.

*School district associations, right to mortgage or convey money security interest in association property—Limitations:* RCW 28A.335.100.

*School districts agreements with other governmental entities for transportation of students, the public or other noncommon school purposes—Limitations: RCW 28A.160.120.*

**39.34.010 Declaration of purpose.** It is the purpose of this chapter to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. [1967 c 239 § 1.]

*Joint operations by municipal corporations and political subdivisions, deposit and control of funds: RCW 43.09.285.*

**39.34.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

(2) "State" means a state of the United States.

(3) "Watershed management partnership" means an interlocal cooperation agreement formed under the authority of RCW 39.34.200.

(4) "WRIA" has the definition in RCW 90.82.020. [2003 c 327 § 3; 1985 c 33 § 1; 1979 c 36 § 1; 1977 ex.s. c 283 § 13; 1975 1st ex.s. c 115 § 1; 1973 c 34 § 1; 1971 c 33 § 1; 1969 c 88 § 1; 1969 c 40 § 1; 1967 c 239 § 3.]

**Finding—Intent—2003 c 327:** See note following RCW 39.34.190.

**Severability—1977 ex.s. c 283:** See note following RCW 28A.310.010.

**39.34.030 Joint powers—Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies—Financing of joint projects.** (1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter: PROVIDED, That any such joint or cooperative action by public agencies which are educational service districts and/or school districts shall comply with the provisions of RCW 28A.320.080. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agen-

cies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. Such entity may include a non-profit corporation organized pursuant to chapter 24.03 or 24.06 RCW whose membership is limited solely to the participating public agencies or a partnership organized pursuant to chapter 25.04 RCW whose partners are limited solely to participating public agencies and the funds of any such corporation or partnership shall be subject to audit in the manner provided by law for the auditing of public funds;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(f) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items (a), (c), (d), (e) and (f) enumerated in subdivision (3) hereof, contain the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented;

(b) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking. Any joint board is authorized to establish a special fund with a state, county, city, or district treasurer servicing an involved public agency designated "Operating fund of . . . . . joint board".

(5) No agreement made pursuant to this chapter relieves any public agency of any obligation or responsibility imposed upon it by law except that:

(a) To the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, the performance may be offered in satisfaction of the obligation or responsibility; and

(b) With respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or by a group of public agencies, any statutory obligation to provide notice for bids or proposals that applies to the public agencies involved is satisfied if the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its own statutory requirements and either (i) posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for purposes of posting public notice of bid or proposal solicitations, or (ii) provided an access link on the state's web portal to the notice.

(6) Financing of joint projects by agreement shall be as provided by law. [2004 c 190 § 1; 1992 c 161 § 4; 1990 c 33 § 568; 1981 c 308 § 2; 1972 ex.s. c 81 § 1; 1967 c 239 § 4.]

**Intent—1992 c 161:** See note following RCW 70.44.450.

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—1981 c 308:** See note following RCW 28A.320.080.

*Joint operations by municipal corporations or political subdivisions, deposit and control of funds:* RCW 43.09.285.

**39.34.040 Agreements to be filed—Status of interstate agreements—Real party in interest—Actions.** Prior to its entry into force, an agreement made pursuant to this chapter shall be filed with the county auditor. In the event that an agreement entered into pursuant to this chapter is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States the agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state. [1995 c 22 § 1; 1992 c 161 § 5; 1967 c 239 § 5.]

**Intent—1992 c 161:** See note following RCW 70.44.450.

**39.34.050 Duty to submit agreement to jurisdictional state officer or agency.** In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control. The agreement shall be approved or disapproved by the state officer or agency with regard to matters within his, her, or its jurisdiction within ninety days after receipt of the agreement. If a state officer or agency fails to act within the ninety-day time limit, the agreement shall be deemed approved by that state officer or agency. [1992 c 161 § 6; 1967 c 239 § 6.]

**Intent—1992 c 161:** See note following RCW 70.44.450.

**39.34.055 Public purchase agreements with public benefit nonprofit corporations.** The office of state procurement within the department of general administration may enter into an agreement with a public benefit nonprofit corporation to allow the public benefit nonprofit corporation to participate in state contracts for purchases administered by the office of state procurement. Such agreement must comply with the requirements of RCW 39.34.030 through 39.34.050. For the purposes of this section "public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in RCW 24.03.005 that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or a political subdivision of another state. [1994 c 98 § 1.]

(2004 Ed.)

**39.34.060 Participating agencies may appropriate funds and provide personnel, property, and services.** Any public agency entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give, or otherwise supply property, personnel, and services to the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking. [1992 c 161 § 7; 1967 c 239 § 7.]

**Intent—1992 c 161:** See note following RCW 70.44.450.

**39.34.070 Authority of joint boards to receive loans or grants.** Any joint board created pursuant to the provisions of this chapter is hereby authorized to accept loans or grants of federal, state or private funds in order to accomplish the purposes of this chapter provided each of the participating public agencies is authorized by law to receive such funds. [1967 c 239 § 8.]

**39.34.080 Contracts to perform governmental activities which each contracting agency is authorized to perform.** Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: PROVIDED, That such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties. [1967 c 239 § 9.]

**39.34.085 Agreements for operation of bus services.** In addition to the other powers granted by chapter 39.34 RCW, one or more cities or towns or a county, or any combination thereof, may enter into agreements with each other or with a public transportation agency of a contiguous state, or contiguous Canadian province, to allow a city or such other transportation agency to operate bus service for the transportation of the general public within the territorial boundaries of such city and/or county or to allow such city and/or county to operate such bus service within the jurisdiction of such other public agency when no such existing bus certificate of public convenience and necessity has been authorized by the Washington utilities and transportation commission: PROVIDED, HOWEVER, That such transportation may extend beyond the territorial boundaries of either party to the agreement if the agreement so provides, and if such service is not in conflict with existing bus service authorized by the Washington utilities and transportation commission. The provisions of this section shall be cumulative and nonexclusive and shall not affect any other right granted by this chapter or any other provision of law. [1977 c 46 § 1; 1969 ex.s. c 139 § 1.]

**39.34.090 Agencies' contracting authority regarding electricity, utilities' powers, preserved.** Nothing in this chapter shall be construed to increase or decrease existing authority of any public agency of this state to enter into agreements or contracts with any other public agency of this state or of any other state or the United States with regard to the generation, transmission, or distribution of electricity or

the existing powers of any private or public utilities. [1967 c 239 § 10.]

**39.34.100 Powers conferred by chapter are supplemental.** The powers and authority conferred by this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of any public agency. [1967 c 239 § 11.]

**39.34.110 Powers otherwise prohibited by Constitutions or federal laws.** No power, privilege, or other authority shall be exercised under this chapter where prohibited by the state Constitution or the Constitution or laws of the federal government. [1967 c 239 § 12.]

**39.34.130 Transactions between state agencies—Charging of costs—Regulation by director of financial management.** Except as otherwise provided by law, the full costs of a state agency incurred in providing services or furnishing materials to or for another agency under chapter 39.34 RCW or any other statute shall be charged to the agency contracting for such services or materials and shall be repaid and credited to the fund or appropriation against which the expenditure originally was charged. Amounts representing a return of expenditures from an appropriation shall be considered as returned loans of services or of goods, supplies or other materials furnished, and may be expended as part of the original appropriation to which they belong without further or additional appropriation. Such interagency transactions shall be subject to regulation by the director of financial management, including but not limited to provisions for the determination of costs, prevention of interagency contract costs beyond those which are fully reimbursable, disclosure of reimbursements in the governor's budget and such other requirements and restrictions as will promote more economical and efficient operations of state agencies.

Except as otherwise provided by law, this section shall not apply to the furnishing of materials or services by one agency to another when other funds have been provided specifically for that purpose pursuant to law. [1979 c 151 § 45; 1969 ex.s. c 61 § 1.]

*Duty to submit agreement of jurisdictional state officer or agency: RCW 39.34.050.*

**39.34.140 Transactions between state agencies—Procedures for payments through transfers upon accounts.** The director of financial management may establish procedures whereby some or all payments between state agencies may be made by transfers upon the accounts of the state treasurer in lieu of making such payments by warrant or check. Such procedures, when established, shall include provision for corresponding entries to be made in the accounts of the affected agencies. [1979 c 151 § 46; 1969 ex.s. c 61 § 2.]

**39.34.150 Transactions between state agencies—Advancements.** State agencies are authorized to advance funds to defray charges for materials to be furnished or services to be rendered by other state agencies. Such advances shall be made only upon the approval of the director of finan-

cial management, or his order made pursuant to an appropriate regulation requiring advances in certain cases. An advance shall be made from the fund or appropriation available for the procuring of such services or materials, to the state agency which is to perform the services or furnish the materials, in an amount no greater than the estimated charges therefor. [1979 c 151 § 47; 1969 ex.s. c 61 § 3.]

**39.34.160 Transactions between state agencies—Time limitation for expenditure of advance—Unexpended balance.** An advance made under RCW 39.34.130 through 39.34.150 from appropriated funds shall be available for expenditure for no longer than the period of the appropriation from which it was made. When the actual costs of materials and services have been finally determined, and in no event later than the lapsing of the appropriation, any unexpended balance of the advance shall be returned to the agency for credit to the fund or account from which it was made. [1969 ex.s. c 61 § 4.]

**39.34.170 Transactions between state agencies—Powers and authority cumulative.** The powers and authority conferred by RCW 39.34.130 through 39.34.160 shall be construed as in addition and supplemental to powers or authority conferred by any other law, and not to limit any other powers or authority of any public agency expressly granted by any other statute. [1969 ex.s. c 61 § 5.]

**39.34.180 Criminal justice responsibilities—Interlocal agreements—Termination.** (1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

(2) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; and (b) anticipated and potential revenues to fund the services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.

(3) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a city and county, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the

existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The city and county each select one arbitrator, and the initial two arbitrators pick a third arbitrator.

(4) A city or county that wishes to terminate an agreement for the provision of court services must provide written notice of the intent to terminate the agreement in accordance with RCW 3.50.810 and 35.20.010.

(5) For cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1, 1998. [2001 c 68 § 4; 1996 c 308 § 1.]

**Effective date—1996 c 308:** "This act shall take effect January 1, 1997." [1996 c 308 § 2.]

**39.34.190 Watershed management plan projects—Use of water-related revenues.** (1) The legislative authority of a city or county and the governing body of any special purpose district enumerated in subsection (2) of this section may authorize up to ten percent of its water-related revenues to be expended in the implementation of watershed management plan projects or activities that are in addition to the county's, city's, or district's existing water-related services or activities. Such limitation on expenditures shall not apply to additional revenues for watershed plan implementation that are authorized by voter approval under \*section 5 of this act or to water-related revenues of a public utility district organized according to Title 54 RCW. Water-related revenues include rates, charges, and fees for the provision of services relating to water supply, treatment, distribution, and management generally, and those general revenues of the local government that are expended for water management purposes. A local government may not expend for this purpose any revenues that were authorized by voter approval for other specified purposes or that are specifically dedicated to the repayment of municipal bonds or other debt instruments.

(2) The following special purpose districts may exercise the authority provided by this section:

- (a) Water districts, sewer districts, and water-sewer districts organized under Title 57 RCW;
- (b) Public utility districts organized under Title 54 RCW;
- (c) Irrigation, reclamation, conservation, and similar districts organized under Titles 87 and 89 RCW;
- (d) Port districts organized under Title 53 RCW;
- (e) Diking, drainage, and similar districts organized under Title 85 RCW;
- (f) Flood control and similar districts organized under Title 86 RCW;
- (g) Lake management districts organized under chapter 36.61 RCW;
- (h) Aquifer protection areas organized under chapter 36.36 RCW; and
- (i) Shellfish protection districts organized under chapter 90.72 RCW.

(3) The authority for expenditure of local government revenues provided by this section shall be applicable broadly to the implementation of watershed management plans addressing water supply, water transmission, water quality treatment or protection, or any other water-related purposes.

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Such plans include but are not limited to plans developed under the following authorities:

- (a) Watershed plans developed under chapter 90.82 RCW;
  - (b) Salmon recovery plans developed under chapter 77.85 RCW;
  - (c) Watershed management elements of comprehensive land use plans developed under the growth management act, chapter 36.70A RCW;
  - (d) Watershed management elements of shoreline master programs developed under the shoreline management act, chapter 90.58 RCW;
  - (e) Nonpoint pollution action plans developed under the Puget Sound water quality management planning authorities of chapter 90.71 RCW and chapter 400-12 WAC;
  - (f) Other comprehensive management plans addressing watershed health at a WRIA level or sub-WRIA basin drainage level;
  - (g) Coordinated water system plans under chapter 70.116 RCW and similar regional plans for water supply; and
  - (h) Any combination of the foregoing plans in an integrated watershed management plan.
- (4) The authority provided by this section to expend revenues for watershed management plan implementation shall be construed broadly to include, but not be limited to:
- (a) The coordination and oversight of plan implementation, including funding a watershed management partnership for this purpose;
  - (b) Technical support, monitoring, and data collection and analysis;
  - (c) The design, development, construction, and operation of projects included in the plan; and
  - (d) Conducting activities and programs included as elements in the plan. [2003 c 327 § 2.]

**\*Reviser's note:** Section 5 of this act was vetoed by the governor.

**Finding—Intent—2003 c 327:** "The legislature finds that throughout Washington state there are many active efforts to protect, manage, and restore watersheds. The state's river systems provide a variety of benefits for society's many needs, so efforts to protect these watersheds should reflect the diversity of social, environmental, and economic factors that make the state unique.

Yet, there is a conflict between the natural flow of river systems and the way watersheds are governed. From a hydrological standpoint, a watershed is a single, integrated system. But these systems usually flow through a number of cities, counties, and other municipalities as they move from their source to the sea. As a result, many are subject to the full range of management interests, including multiple government entities with jurisdiction over water. In many cases, the political boundaries of government do not align with the hydrological boundaries of watersheds and may actually hinder the implementation of coordinated, cooperative plans. Cooperative watershed management actions by local governments, special districts, and utilities can help maintain healthy watershed function and support the beneficial use of water by these entities and protect the quality of the resource that they use or affect. By participating in cooperative watershed management actions, local governments, special districts, and utilities are acting in the public interest and in a manner that is intended to sustain maximum beneficial use and high quality of water over time and to maintain the services that these entities provide.

Therefore, it is the intent of this act to remove statutory barriers that may prevent local governments from working together in the creation and implementation of cooperative, coordinated watershed plans. In addition, it is the further intent of this act to provide additional authorities to assist in such implementation." [2003 c 327 § 1.]

**39.34.200 Watershed management partnerships—Formation.** Any two or more public agencies may enter into

agreements with one another to form a watershed management partnership for the purpose of implementing any portion or all elements of a watershed management plan, including the coordination and oversight of plan implementation. The plan may be any plan or plan element described in RCW 39.34.190(3). The watershed partnership agreement shall include the provisions required of all interlocal agreements under RCW 39.34.030(3). The agreement shall be filed pursuant to RCW 39.34.040 with the county auditor of each county lying within the geographical watershed area to be addressed by the partnership. The public agencies forming the partnership shall designate a treasurer for the deposit, accounting, and handling of the funds of the partnership. The treasurer shall be either a county treasurer or a city treasurer of a county or city participating in the agreement to form the partnership. [2003 c 327 § 4.]

**Finding—Intent—2003 c 327:** See note following RCW 39.34.190.

**39.34.210 Watershed management partnerships—Indebtedness—Bonds.** Where a watershed management partnership formed under the authority of RCW 39.34.200 establishes a separate legal entity to conduct the cooperating undertaking of the partnership, such legal entity is authorized for the purpose of carrying out such undertaking to contract indebtedness and to issue and sell general obligation bonds pursuant to and in the manner provided for general county bonds in chapters 36.67 and 39.46 RCW and other applicable statutes, and to issue revenue bonds pursuant to and in the manner provided for revenue bonds in chapter 36.67 RCW and other applicable statutes. The joint board established by the partnership agreement shall perform the functions referenced in chapter 36.67 RCW to be performed by the county legislative authority in the case of county bonds. [2003 c 327 § 6.]

**Finding—Intent—2003 c 327:** See note following RCW 39.34.190.

**39.34.220 Watershed management plans—Additional authority for implementation—Existing agreements not affected.** The amendments by chapter 327, Laws of 2003 to the interlocal cooperation act authorities are intended to provide additional authority to public agencies for the purposes of implementing watershed management plans, and do not affect any agreements among public agencies existing on July 27, 2003. [2003 c 327 § 7.]

**Finding—Intent—2003 c 327:** See note following RCW 39.34.190.

**39.34.900 Short title.** This chapter may be cited as the "Interlocal Cooperation Act." [1967 c 239 § 2.]

**39.34.910 Severability—1967 c 239.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 239 § 14.]

**39.34.920 Effective date—1967 c 239.** The effective date of this chapter is July 1, 1967. [1967 c 239 § 15.]

## Chapter 39.35 RCW

### ENERGY CONSERVATION IN DESIGN OF PUBLIC FACILITIES

#### Sections

39.35.010	Legislative finding.
39.35.020	Legislative declaration.
39.35.030	Definitions.
39.35.040	Facility design to include life-cycle cost analysis.
39.35.050	Life-cycle cost analysis—Guidelines.
39.35.060	Life-cycle cost analysis—Review fees.
39.35.900	Severability—1975 1st ex.s. c 177.

**39.35.010 Legislative finding.** The legislature hereby finds:

(1) That major publicly owned or leased facilities have a significant impact on our state's consumption of energy;

(2) That energy conservation practices including energy management systems and renewable energy systems adopted for the design, construction, and utilization of such facilities will have a beneficial effect on our overall supply of energy;

(3) That the cost of the energy consumed by such facilities over the life of the facilities shall be considered in addition to the initial cost of constructing such facilities;

(4) That the cost of energy is significant and major facility designs shall be based on the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of a major facility, of the energy consumed, and of the operation and maintenance of a major facility as they affect energy consumption; and

(5) That the use of energy systems in these facilities which utilize renewable resources such as solar energy, wood or wood waste, or other nonconventional fuels, and which incorporate energy management systems, shall be considered in the design of all publicly owned or leased facilities. [2001 c 214 § 15; 1982 c 159 § 1; 1975 1st ex.s. c 177 § 1.]

**Findings—2001 c 214:** "(1) The legislature hereby finds that:

(a) The economy of the state and the health, safety, and welfare of its citizens are threatened by the current energy supply and price instabilities;

(b) Many energy efficiency programs for public buildings launched during the 1970s and 1980s were not maintained during the subsequent sustained period of low energy costs and abundant supply; and

(c) Conservation programs originally established in the 1970s and 1980s can be improved or updated. New programs drawing on recently developed technologies, including demand-side energy management systems, can materially increase the efficiency of energy use by the public sector.

(2) It is the policy of the state of Washington that:

(a) State government is committed to achieving significant gains in energy efficiency. Conventional conservation programs will be reviewed and updated in light of experience gained since their commencement;

(b) State government must play a leading role in demonstrating updated and new energy efficiency technologies. New programs or measures made possible by technological advances, such as demand-side response measures and energy management systems, shall be treated in the same manner as conventional conservation programs and will be integrated into the state's energy efficiency programs." [2001 c 214 § 14.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Applicability—1982 c 159:** "This act does not apply to a major facility construction or renovation on which a life-cycle cost analysis is commenced under chapter 39.35 RCW before June 10, 1982." [1982 c 159 § 5.]

**39.35.020 Legislative declaration.** The legislature declares that it is the public policy of this state to insure that energy conservation practices and renewable energy systems are employed in the design of major publicly owned or leased

facilities and that the use of at least one renewable energy system is considered. To this end the legislature authorizes and directs that public agencies analyze the cost of energy consumption of each major facility to be planned and constructed or renovated after September 8, 1975. [1982 c 159 § 2; 1975 1st ex.s. c 177 § 2.]

**Applicability—1982 c 159:** See notes following RCW 39.35.010.

**39.35.030 Definitions.** For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(2) "Department" means the state department of general administration.

(3) "Major facility" means any publicly owned or leased building having twenty-five thousand square feet or more of usable floor space.

(4) "Initial cost" means the moneys required for the capital construction or renovation of a major facility.

(5) "Renovation" means additions, alterations, or repairs within any twelve-month period which exceed fifty percent of the value of a major facility and which will affect any energy system.

(6) "Economic life" means the projected or anticipated useful life of a major facility as expressed by a term of years.

(7) "Energy management system" means a program, energy efficiency equipment, technology, device, or other measure including, but not limited to, a management, educational, or promotional program, smart appliance, meter reading system that provides energy information capability, computer software or hardware, communications equipment or hardware, thermostat or other control equipment, together with related administrative or operational programs, that allows identification and management of opportunities for improvement in the efficiency of energy use, including but not limited to a measure that allows:

(a) Energy consumers to obtain information about their energy usage and the cost of energy in connection with their usage;

(b) Interactive communication between energy consumers and their energy suppliers;

(c) Energy consumers to respond to energy price signals and to manage their purchase and use of energy; or

(d) For other kinds of dynamic, demand-side energy management.

(8) "Life-cycle cost" means the initial cost and cost of operation of a major facility over its economic life. This shall be calculated as the initial cost plus the operation, maintenance, and energy costs over its economic life, reflecting anticipated increases in these costs discounted to present value at the current rate for borrowing public funds, as determined by the office of financial management. The energy cost projections used shall be those provided by the department. The department shall update these projections at least every two years.

(9) "Life-cycle cost analysis" includes, but is not limited to, the following elements:

(a) The coordination and positioning of a major facility on its physical site;

(b) The amount and type of fenestration employed in a major facility;

(c) The amount of insulation incorporated into the design of a major facility;

(d) The variable occupancy and operating conditions of a major facility; and

(e) An energy-consumption analysis of a major facility.

(10) "Energy systems" means all utilities, including, but not limited to, heating, air-conditioning, ventilating, lighting, and the supplying of domestic hot water.

(11) "Energy-consumption analysis" means the evaluation of all energy systems and components by demand and type of energy including the internal energy load imposed on a major facility by its occupants, equipment, and components, and the external energy load imposed on a major facility by the climatic conditions of its location. An energy-consumption analysis of the operation of energy systems of a major facility shall include, but not be limited to, the following elements:

(a) The comparison of three or more system alternatives, at least one of which shall include renewable energy systems, and one of which shall comply at a minimum with the sustainable design guidelines of the United States green building council leadership in energy and environmental design silver standard or similar design standard as may be adopted by rule by the department;

(b) The simulation of each system over the entire range of operation of such facility for a year's operating period; and

(c) The evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs.

The energy-consumption analysis shall be prepared by a professional engineer or licensed architect who may use computers or such other methods as are capable of producing predictable results.

(12) "Renewable energy systems" means methods of facility design and construction and types of equipment for the utilization of renewable energy sources including, but not limited to, hydroelectric power, active or passive solar space heating or cooling, domestic solar water heating, windmills, waste heat, biomass and/or refuse-derived fuels, photovoltaic devices, and geothermal energy.

(13) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. Where these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. 292.202 (c) through (m) as of July 28, 1991, shall apply.

(14) "Selected buildings" means educational, office, residential care, and correctional facilities that are designed to comply with the design standards analyzed and recommended by the department.

(15) "Design standards" means the heating, air-conditioning, ventilating, and renewable resource systems identified, analyzed, and recommended by the department as providing an efficient energy system or systems based on the economic life of the selected buildings. [2001 c 214 § 16;

1996 c 186 § 402; 1994 c 242 § 1; 1991 c 201 § 14; 1982 c 159 § 3; 1975 1st ex.s. c 177 § 3.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**Captions not law—Severability—1991 c 201:** See RCW 39.35C.900 and 39.35C.901.

**Applicability—1982 c 159:** See notes following RCW 39.35.010.

**39.35.040 Facility design to include life-cycle cost analysis.** Whenever a public agency determines that any major facility is to be constructed or renovated, such agency shall cause to be included in the design phase of such construction or renovation a provision that requires a life-cycle cost analysis conforming with the guidelines developed in RCW 39.35.050 to be prepared for such facility. Such analysis shall be approved by the agency prior to the commencement of actual construction or renovation. A public agency may accept the facility design if the agency is satisfied that the life-cycle cost analysis provides for an efficient energy system or systems based on the economic life of the major facility.

Nothing in this section prohibits the construction or renovation of major facilities which utilize renewable energy systems. [1994 c 242 § 2; 1982 c 159 § 4; 1975 1st ex.s. c 177 § 4.]

**Applicability—1982 c 159:** See notes following RCW 39.35.010.

**39.35.050 Life-cycle cost analysis—Guidelines.** The department, in consultation with affected public agencies, shall develop and issue guidelines for administering this chapter. The purpose of the guidelines is to define a procedure and method for performance of life-cycle cost analysis to promote the selection of low-life-cycle cost alternatives. At a minimum, the guidelines must contain provisions that:

(1) Address energy considerations during the planning phase of the project;

(2) Identify energy components and system alternatives including energy management systems, renewable energy systems, and cogeneration applications prior to commencing the energy consumption analysis;

(3) Identify simplified methods to assure the lowest life-cycle cost alternatives for selected buildings with between twenty-five thousand and one hundred thousand square feet of usable floor area;

(4) Establish times during the design process for preparation, review, and approval or disapproval of the life-cycle cost analysis;

(5) Specify the assumptions to be used for escalation and inflation rates, equipment service lives, economic building lives, and maintenance costs;

(6) Determine life-cycle cost analysis format and submittal requirements to meet the provisions of chapter 201, Laws of 1991;

(7) Provide for review and approval of life-cycle cost analysis. [2001 c 214 § 17; 1996 c 186 § 403; 1994 c 242 § 3; 1991 c 201 § 15.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**Captions not law—Severability—1991 c 201:** See RCW 39.35C.900 and 39.35C.901.

**39.35.060 Life-cycle cost analysis—Review fees.** The department may impose fees upon affected public agencies for the review of life-cycle cost analyses. The fees shall be deposited in the general administration services account. The purpose of the fees is to recover the costs by the department for review of the analyses. The department shall set fees at a level necessary to recover all of its costs related to increasing the energy efficiency of state-supported new construction. The fees shall not exceed one-tenth of one percent of the total cost of any project or exceed two thousand dollars for any project unless mutually agreed to. The department shall provide detailed calculation ensuring that the energy savings resulting from its review of life-cycle cost analysis justify the costs of performing that review. [2001 c 292 § 1; 1996 c 186 § 404; 1991 c 201 § 16.]

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**Captions not law—Severability—1991 c 201:** See RCW 39.35C.900 and 39.35C.901.

**39.35.900 Severability—1975 1st ex.s. c 177.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 177 § 5.]

## Chapter 39.35A RCW

### PERFORMANCE-BASED CONTRACTS FOR ENERGY EQUIPMENT

#### Sections

39.35A.010 Legislative finding.

39.35A.020 Definitions.

39.35A.030 Performance-based contracts for energy equipment and supplies.

39.35A.040 Application of other procurement requirements.

39.35A.050 Energy service contractor registry—Identification of performance-based contracting services.

**39.35A.010 Legislative finding.** The legislature finds that:

(1) Conserving energy in publicly owned buildings will have a beneficial effect on our overall supply of energy;

(2) Conserving energy in publicly owned buildings can result in cost savings for taxpayers; and

(3) Performance-based energy contracts are a means by which municipalities can achieve energy conservation without capital outlay.

Therefore, the legislature declares that it is the policy that a municipality may, after a competitive selection process, negotiate a performance-based energy contract with a firm that offers the best proposal. [1985 c 169 § 1.]

**39.35A.020 Definitions.** Unless the context clearly indicates otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Energy equipment and services" means energy management systems and any equipment, materials, or supplies that are expected, upon installation, to reduce the energy use or energy cost of an existing building or facility, and the services associated with the equipment, materials, or supplies, including but not limited to design, engineering, financing, installation, project management, guarantees, operations, and maintenance.

(2) "Energy management system" has the definition provided in RCW 39.35.030.

(3) "Municipality" has the definition provided in RCW 39.04.010.

(4) "Performance-based contract" means one or more contracts for energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings attributable under the contract to the energy equipment and services; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings attributable under the contract to the energy equipment and services. Such guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy. [2001 c 214 § 18; 1985 c 169 § 2.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**39.35A.030 Performance-based contracts for energy equipment and supplies.** (1) Each municipality shall publish in advance its requirements to procure energy equipment and services under a performance-based contract. The announcement shall state concisely the scope and nature of the equipment and services for which a performance-based contract is required, and shall encourage firms to submit proposals to meet these requirements.

(2) The municipality may negotiate a fair and reasonable performance-based contract with the firm that is identified, based on the criteria that is established by the municipality, to be the firm that submits the best proposal.

(3) If the municipality is unable to negotiate a satisfactory contract with the firm that submits the best proposal, negotiations with that firm shall be formally terminated and the municipality may select another firm in accordance with this section and continue negotiation until a performance-based contract is reached or the selection process is terminated. [1985 c 169 § 3.]

**39.35A.040 Application of other procurement requirements.** If a municipality chooses, by resolution or other appropriate mechanism, to negotiate a performance-based contract under this chapter, no otherwise applicable statutory procurement requirement applies. [1985 c 169 § 4.]

**39.35A.050 Energy service contractor registry—Identification of performance-based contracting services.** The state department of general administration shall maintain a registry of energy service contractors and provide assis-

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tance to municipalities in identifying available performance-based contracting services. [2001 c 214 § 19.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

## Chapter 39.35B RCW LIFE-CYCLE COST ANALYSIS OF PUBLIC FACILITIES

### Sections

39.35B.010	Legislative findings.
39.35B.020	Legislative declaration.
39.35B.030	Intent.
39.35B.040	Implementation.

**39.35B.010 Legislative findings.** The legislature finds that:

(1) Operating costs of a facility over its lifetime may greatly exceed the initial cost of the facility;

(2) In the planning, design, and funding for new construction or major renovation of state-owned facilities it is desirable to consider not only the initial costs relating to design and construction or acquisition, but the anticipated operating costs relating to the building throughout its life;

(3) The consideration of both initial and operating costs is known as life-cycle cost or life-cycle cost analysis;

(4) Operating costs of a facility for purposes of this chapter include, but are not limited to, energy costs, maintenance and repair costs, and costs of the work or activity performed within the facility, including wages and salaries;

(5) Current law, chapter 39.35 RCW, speaks to life-cycle cost analysis only in relation to energy conservation; and

(6) Life-cycle cost may not be suitable or cost-effective for all capital projects or all components of a facility, and is not an exclusive criteria for decision-making, but is nonetheless a useful framework for evaluating design and capital investment alternatives. [1986 c 127 § 1.]

**39.35B.020 Legislative declaration.** The legislature declares that:

(1) It is the policy of the state to consider life-cycle costs in the selection of facility design alternatives, to the full extent practical, reasonable, and cost-effective;

(2) Life-cycle cost should be considered by the state government, school districts, and state universities and community colleges in the planning, design, and funding for new construction or major renovations; and

(3) Use of life-cycle cost should be encouraged for cities, counties, and other governmental districts including special purpose districts. [1986 c 127 § 2.]

**39.35B.030 Intent.** It is the intent of the legislature to:

(1) Expand the definition and use of "life-cycle cost" and "life-cycle cost analysis" to include consideration of all operating costs, as opposed to only energy-related costs as addressed by chapter 39.35 RCW;

(2) Encourage the recognition, development, and use of life-cycle cost concepts and procedures by both the executive and legislative branches in the state's design development and capital budgeting processes;

(3) Ensure the dissemination and use of a common and realistic discount rate by all state agencies in the calculation of the present value of future costs;

(4) Allow and encourage the executive branch to develop specific techniques and procedures for the state government and its agencies, and state universities and community colleges to implement this policy; and

(5) Encourage cities, counties, and other governmental districts including special purpose districts to adopt programs and procedures to implement this policy. [1986 c 127 § 3.]

**39.35B.040 Implementation.** The principal executives of all state agencies are responsible for implementing the policy set forth in this chapter. The office of financial management in conjunction with the department of general administration may establish guidelines for compliance by the state government and its agencies, and state universities and community colleges. The office of financial management shall include within its biennial capital budget instructions:

(1) A discount rate for the use of all agencies in calculating the present value of future costs, and several examples of resultant trade-offs between annual operating costs eliminated and additional capital costs thereby justified; and

(2) Types of projects and building components that are particularly appropriate for life-cycle cost analysis. [1986 c 127 § 4.]

## Chapter 39.35C RCW

### ENERGY CONSERVATION PROJECTS

#### Sections

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**39.35C.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. If these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

(2) "Conservation" means reduced energy consumption or energy cost, or increased efficiency in the use of energy, and activities, measures, or equipment designed to achieve

such results, but does not include thermal or electric energy production from cogeneration.

(3) "Cost-effective" means that the present value to a state agency or school district of the energy reasonably expected to be saved or produced by a facility, activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville power administration, is greater than the net present value of the costs of implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

(4) "Energy" means energy as defined in RCW 43.21F.025(1).

(5) "Energy audit" has the definition provided in RCW 43.19.670.

(6) "Energy efficiency project" means a conservation or cogeneration project.

(7) "Energy efficiency services" means assistance furnished by the department to state agencies and school districts in identifying, evaluating, and implementing energy efficiency projects.

(8) "Department" means the state department of general administration.

(9) "Performance-based contracting" means contracts for which payment is conditional on achieving contractually specified energy savings.

(10) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(11) "Public facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency or school district.

(12) "State agency" means every state office or department, whether elective or appointive, state institutions of higher education, and all boards, commissions, or divisions of state government, however designated.

(13) "State facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency.

(14) "Utility" means privately or publicly owned electric and gas utilities, electric cooperatives and mutuals, whether located within or without Washington state.

(15) "Local utility" means the utility or utilities in whose service territory a public facility is located. [2001 c 214 § 20; 1996 c 186 § 405; 1991 c 201 § 2.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**39.35C.020 State agency and school district conservation projects—Implementation—Department assistance.** (1) Each state agency and school district shall implement cost-effective conservation improvements and maintain efficient operation of its facilities in order to minimize energy consumption and related environmental impacts and reduce operating costs. Each state agency shall undertake an energy audit and implement cost-effective conservation measures pursuant to the time schedules and requirements set forth in chapter 43.19 RCW, except that any state agency that, after

December 31, 1997, has completed energy audits and implemented cost-effective conservation measures, or has contracted with an energy service company for energy audits and conservation measures, is deemed to have met the requirements of this subsection for those facilities included in the audits and conservation measures. Each school district shall undertake an energy audit and implement cost-effective conservation measures pursuant to the time schedules and requirements set forth in RCW 39.35C.025. Performance-based contracting shall be the preferred method for completing energy audits and implementing cost-effective conservation measures.

(2) The department shall assist state agencies and school districts in identifying, evaluating, and implementing cost-effective conservation projects at their facilities. The assistance shall include the following:

(a) Notifying state agencies and school districts of their responsibilities under this chapter;

(b) Apprising state agencies and school districts of opportunities to develop and finance such projects;

(c) Providing technical and analytical support, including procurement of performance-based contracting services;

(d) Reviewing verification procedures for energy savings; and

(e) Assisting in the structuring and arranging of financing for cost-effective conservation projects.

(3) Conservation projects implemented under this chapter shall have appropriate levels of monitoring to verify the performance and measure the energy savings over the life of the project. The department shall solicit involvement in program planning and implementation from utilities and other energy conservation suppliers, especially those that have demonstrated experience in performance-based energy programs.

(4) The department shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services.

(5) The department shall recover any costs and expenses it incurs in providing assistance pursuant to this section, including reimbursement from third parties participating in conservation projects. The department shall enter into a written agreement with the public agency for the recovery of costs. [2001 c 214 § 21; 1996 c 186 § 406; 1991 c 201 § 3.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**39.35C.025 Energy audit of school district facilities—Completion dates—Identification, implementation of cost-effective energy conservation measures.** (1) Except as provided in subsections (2) and (3) of this section, each school district shall conduct an energy audit of its facilities. This energy audit may be conducted by contract or by other arrangement, including appropriate district staff. Performance-based contracting shall be the preferred method for implementing and completing energy audits.

(a) For each district facility, the energy consumption surveys shall be completed no later than December 31, 2001, and the walk-through surveys shall be completed no later

than October 1, 2002. Upon completion of each walk-through survey, the district shall implement energy conservation maintenance and operation procedures that may be identified for any district facility. These procedures shall be implemented as soon as possible, but not later than twelve months after the walk-through survey.

(b) Except as provided in subsection (3) of this section, if a walk-through survey has identified potentially cost-effective energy conservation measures, the district shall undertake an investment grade audit of the facility. Investment grade audits shall be completed no later than June 30, 2003, and installation of cost-effective conservation measures recommended in the investment grade audit shall be completed no later than December 31, 2004.

(2) A school district that, after December 31, 1997, has completed energy audits and implemented cost-effective conservation measures, or has contracted with an energy service company for energy audits and conservation measures, is deemed to have met the requirements of this section for those facilities included in the audits and conservation measures.

(3) A school district that after reasonable efforts and consultation with the department is unable to obtain a contract with an energy service company to conduct an investment grade audit or install cost-effective conservation measures recommended in an investment grade audit, is exempt from the requirements of subsection (1)(b) of this section. [2001 c 214 § 22.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**39.35C.030 Department coordination of conservation development with utilities.** (1) The department shall consult with the local utilities to develop priorities for energy conservation projects pursuant to this chapter, cooperate where possible with existing utility programs, and consult with the local utilities prior to implementing projects in their service territory.

(2) A local utility shall be offered the initial opportunity to participate in the development of conservation projects in the following manner:

(a) Before initiating projects in a local utility service territory, the department shall notify the local utility in writing, on an annual basis, of public facilities in the local utility's service territory at which the department anticipates cost-effective conservation projects will be developed.

(b) Within sixty days of receipt of this notification, the local utility may express interest in these projects by submitting to the department a written description of the role the local utility is willing to perform in developing and acquiring the conservation at these facilities. This role may include any local utility conservation programs which would be available to the public facility, any competitive bidding or solicitation process which the local utility will be undertaking in accordance with the rules of the utilities and transportation commission or the public utility district, municipal utility, cooperative, or mutual governing body for which the public facility would be eligible, or any other role the local utility may be willing to perform.

(c) Upon receipt of the written description from the local utility, the department shall, through discussions with the local utility, and with involvement from state agencies and school districts responsible for the public facilities, develop a plan for coordinated delivery of conservation services and financing or make a determination of whether to participate in the local utility's competitive bidding or solicitation process. The plan shall identify the local utility in roles that the local utility is willing to perform and that are consistent with the provisions of RCW 39.35C.040(2) (d) and (e). [1996 c 186 § 407; 1991 c 201 § 4.]

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**39.35C.040 Sale of conserved energy.** (1) It is the intent of this chapter that the state, state agencies, and school districts are compensated fairly for the energy savings provided to utilities and be allowed to participate on an equal basis in any utility conservation program, bidding, or solicitation process. State agencies and school districts shall not receive preferential treatment. For the purposes of this section, any type of compensation from a utility or the Bonneville power administration intended to achieve reductions or efficiencies in energy use which are cost-effective to the utility or the Bonneville power administration shall be regarded as a sale of energy savings. Such compensation may include credits to the energy bill, low or no interest loans, rebates, or payment per unit of energy saved. The department shall, in coordination with utilities, the Bonneville power administration, state agencies, and school districts, facilitate the sale of energy savings at public facilities including participation in any competitive bidding or solicitation which has been agreed to by the state agency or school district. Energy savings may only be sold to local utilities or, under conditions specified in this section, to the Bonneville power administration. The department shall not attempt to sell energy savings occurring in one utility service territory to a different utility. Nothing in this chapter mandates that utilities purchase the energy savings.

(2) To ensure an equitable allocation of benefits to the state, state agencies, and school districts, the following conditions shall apply to transactions between utilities or the Bonneville power administration and state agencies or school districts for sales of energy savings:

(a) A transaction shall be approved by both the state agency or school district and the department.

(b) The state agency or school district and the department shall work together throughout the planning and negotiation process for such transactions unless the department determines that its participation will not further the purposes of this section.

(c) Before making a decision under (d) of this subsection, the department shall review the proposed transaction for its technical and economic feasibility, the adequacy and reasonableness of procedures proposed for verification of project or program performance, the degree of certainty of benefits to the state, state agency, or school district, the degree of risk assumed by the state or school district, the benefits offered to the state, state agency, or school district and such other factors as the department determines to be prudent.

(d) The department shall approve a transaction unless it finds, pursuant to the review in (c) of this subsection, that the transaction would not result in an equitable allocation of costs and benefits to the state, state agency, or school district, in which case the transaction shall be disapproved.

(e) In addition to the requirements of (c) and (d) of this subsection, in areas in which the Bonneville power administration has a program for the purchase of energy savings at public facilities, the department shall approve the transaction unless the local utility cannot offer a benefit substantially equivalent to that offered by the Bonneville power administration, in which case the transaction shall be disapproved. In determining whether the local utility can offer a substantially equivalent benefit, the department shall consider the net present value of the payment for energy savings; any goods, services, or financial assistance provided by the local utility; and any risks borne by the local utility. Any direct negative financial impact on a nongrowing, local utility shall be considered.

(3) Any party to a potential transaction may, within thirty days of any decision to disapprove a transaction made pursuant to subsection (2)(c), (d), or (e) of this section, request an independent reviewer who is mutually agreeable to all parties to the transaction to review the decision. The parties shall within thirty days of selection submit to the independent reviewer documentation supporting their positions. The independent reviewer shall render advice regarding the validity of the disapproval within an additional thirty days. [1996 c 186 § 408; 1991 c 201 § 5.]

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**39.35C.050 Authority of state agencies and school districts to implement conservation.** In addition to any other authorities conferred by law:

(1) The department, with the consent of the state agency or school district responsible for a facility, a state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Develop and finance conservation at public facilities in accordance with express provisions of this chapter;

(b) Contract for energy services, including performance-based contracts;

(c) Contract to sell energy savings from a conservation project at public facilities to local utilities or the Bonneville power administration.

(2) A state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may undertake procurements for third-party development of conservation at its facilities.

(3) A school district may:

(a) Develop and finance conservation at school district facilities;

(b) Contract for energy services, including performance-based contracts at school district facilities; and

(c) Contract to sell energy savings from energy conservation projects at school district facilities to local utilities or the Bonneville power administration directly or to local utility.

ties or the Bonneville power administration through third parties.

(4) In exercising the authority granted by subsections (1), (2), and (3) of this section, a school district or state agency must comply with the provisions of RCW 39.35C.040. [1996 c 186 § 409; 1991 c 201 § 6.]

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**39.35C.060 Authority to finance conservation in school districts and state agencies.** State agencies may use financing contracts under chapter 39.94 RCW to provide all or part of the funding for conservation projects. The department shall determine the eligibility of such projects for financing contracts. The repayments of the financing contracts shall be sufficient to pay, when due, the principal and interest on the contracts. [1996 c 186 § 410; 1991 c 201 § 7.]

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**39.35C.070 Development of cogeneration projects.**

(1) Consistent with the region's need to develop cost-effective, high efficiency electric energy resources, the state shall investigate and, if appropriate, pursue development of cost-effective opportunities for cogeneration in existing or new state facilities.

(2) To assist state agencies in identifying, evaluating, and developing potential cogeneration projects at their facilities, the department shall notify state agencies of their responsibilities under this chapter; apprise them of opportunities to develop and finance such projects; and provide technical and analytical support. The department shall recover costs for such assistance through written agreements, including reimbursement from third parties participating in such projects, for any costs and expenses incurred in providing such assistance.

(3)(a) The department shall identify priorities for cogeneration projects at state facilities, and, where such projects are initially deemed desirable by the department and the appropriate state agency, the department shall notify the local utility serving the state facility of its intent to conduct a feasibility study at such facility. The department shall consult with the local utility and provide the local utility an opportunity to participate in the development of the feasibility study for the state facility it serves.

(b) If the local utility has an interest in participating in the feasibility study, it shall notify the department and the state agency whose facility or facilities it serves within sixty days of receipt of notification pursuant to (a) of this subsection as to the nature and scope of its desired participation. The department, state agency, and local utility shall negotiate the responsibilities, if any, of each in conducting the feasibility study, and these responsibilities shall be specified in a written agreement.

(c) If a local utility identifies a potential cogeneration project at a state facility for which it intends to conduct a feasibility study, it shall notify the department and the appropriate state agency. The department, state agency, and local utility shall negotiate the responsibilities, if any, of each in conducting the feasibility study, and these responsibilities shall be specified in a written agreement. Nothing in this section

shall preclude a local utility from conducting an independent assessment of a potential cogeneration project at a state facility.

(d) Agreements written pursuant to (a) and (b) of this subsection shall include a provision for the recovery of costs incurred by a local utility in performing a feasibility study in the event such utility does not participate in the development of the cogeneration project. If the local utility does participate in the cogeneration project through energy purchase, project development or ownership, recovery of the utility's costs may be deferred or provided for through negotiation on agreements for energy purchase, project development or ownership.

(e) If the local utility declines participation in the feasibility study, the department and the state agency may receive and solicit proposals to conduct the feasibility study from other parties. Participation of these other parties shall also be secured and defined by a written agreement which may include the provision for reimbursement of costs incurred in the formulation of the feasibility study.

(4) The feasibility study shall include consideration of regional and local utility needs for power, the consistency of the proposed cogeneration project with the state energy strategy, the cost and certainty of fuel supplies, the value of electricity produced, the capability of the state agency to own and/or operate such facilities, the capability of utilities or third parties to own and/or operate such facilities, requirements for and costs of standby sources of power, costs associated with interconnection with the local electric utility's transmission system, the capability of the local electric utility to wheel electricity generated by the facility, costs associated with obtaining wheeling services, potential financial risks and losses to the state and/or state agency, measures to mitigate the financial risk to the state and/or state agency, and benefits to the state and to the state agency from a range of design configurations, ownership, and operation options.

(5) Based upon the findings of the feasibility study, the department and the state agency shall determine whether a cogeneration project will be cost-effective and whether development of a cogeneration project should be pursued. This determination shall be made in consultation with the local utility or, if the local utility had not participated in the development of the feasibility study, with any third party that may have participated in the development of the feasibility study.

(a) Recognizing the local utility's expertise, knowledge, and ownership and operation of the local utility systems, the department and the state agency shall have the authority to negotiate directly with the local utility for the purpose of entering into a sole source contract to develop, own, and/or operate the cogeneration facility. The contract may also include provisions for the purchase of electricity or thermal energy from the cogeneration facility, the acquisition of a fuel source, and any financial considerations which may accrue to the state from ownership and/or operation of the cogeneration facility by the local utility.

(b) The department may enter into contracts through competitive negotiation under this subsection for the development, ownership, and/or operation of a cogeneration facility. In determining an acceptable bid, the department and the state agency may consider such factors as technical knowl-

edge, experience, management, staff, or schedule, as may be necessary to achieve economical construction or operation of the project. The selection of a developer or operator of a cogeneration facility shall be made in accordance with procedures for competitive bidding under chapter 43.19 RCW.

(c) The department shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services.

(6)(a) The state may own and/or operate a cogeneration project at a state facility. However, unless the cogeneration project is determined to be cost-effective, based on the findings of the feasibility study, the department and state agency shall not pursue development of the project as a state-owned facility. If the project is found to be cost-effective, and the department and the state agency agree development of the cogeneration project should be pursued as a state-owned and/or operated facility, the department shall assist the state agency in the preparation of a finance and development plan for the cogeneration project. Any such plan shall fully account for and specify all costs to the state for developing and/or operating the cogeneration facility.

(b) It is the general intent of this chapter that cogeneration projects developed and owned by the state will be sized to the projected thermal energy load of the state facility over the useful life of the project. The principal purpose and use of such projects is to supply thermal energy to a state facility and not primarily to develop generating capacity for the sale of electricity. For state-owned projects with electricity production in excess of projected thermal requirements, the department shall seek and obtain legislative appropriation and approval for development. Nothing in chapter 201, Laws of 1991 shall be construed to authorize any state agency to sell electricity or thermal energy on a retail basis.

(7) When a cogeneration facility will be developed, owned, and/or operated by a state agency or third party other than the local serving utility, the department and the state agency shall negotiate a written agreement with the local utility. Elements of such an agreement shall include provisions to ensure system safety, provisions to ensure reliability of any interconnected operations equipment necessary for parallel operation and switching equipment capable of isolating the generation facility, the provision of and reimbursement for standby services, if required, and the provision of and reimbursement for wheeling electricity, if the provision of such has been agreed to by the local utility.

(8) The state may develop and own a thermal energy distribution system associated with a cogeneration project for the principal purpose of distributing thermal energy at the state facility. If thermal energy is to be sold outside the state facility, the state may only sell the thermal energy to a utility. [1996 c 186 § 411; 1991 c 201 § 8.]

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**39.35C.080 Sale of cogenerated electricity and thermal energy.** It is the intention of chapter 201, Laws of 1991 that the state and its agencies are compensated fairly for the energy provided to utilities from cogeneration at state facilities. Such compensation may include revenues from sales of electricity or thermal energy to utilities, lease of state properties, and value of thermal energy provided to the facility. It is

also the intent of chapter 201, Laws of 1991 that the state and its agencies be accorded the opportunity to compete on a fair and reasonable basis to fulfill a utility's new resource acquisition needs when selling the energy produced from cogeneration projects at state facilities through energy purchase agreements.

(1)(a) The department and state agencies may participate in any utility request for resource proposal process, as either established under the rules and regulations of the utilities and transportation commission, or by the governing board of a public utility district, municipal utility, cooperative, or mutual.

(b) If a local utility does not have a request for resource proposal pending, the energy office [department] or a state agency may negotiate an equitable and mutually beneficial energy purchase agreement with that utility.

(2) To ensure an equitable allocation of benefits to the state and its agencies, the following conditions shall apply to energy purchase agreements negotiated between utilities and state agencies:

(a) An energy purchase agreement shall be approved by both the department and the affected state agency.

(b) The department and the state agency shall work together throughout the planning and negotiation process for energy purchase agreements, unless the department determines that its participation will not further the purposes of this section.

(c) Before approving an energy purchase agreement, the department shall review the proposed agreement for its technical and economic feasibility, the degree of certainty of benefits, the degree of financial risk assumed by the state and/or the state agency, the benefits offered to the state and/or state agency, and other such factors as the department deems prudent. The department shall approve an energy purchase agreement unless it finds that such an agreement would not result in an equitable allocation of costs and benefits, in which case the transaction shall be disapproved.

(3)(a) The state or state agency shall comply with and shall be bound by applicable avoided cost schedules, electric power wheeling charges, interconnection requirements, utility tariffs, and regulatory provisions to the same extent it would be required to comply and would be bound if it were a private citizen. The state shall neither seek regulatory advantage, nor change regulations, regulatory policy, process, or decisions to its advantage as a seller of cogenerated energy. Nothing contained in chapter 201, Laws of 1991 shall be construed to mandate or require public or private utilities to wheel electric energy resources within or beyond their service territories. Nothing in chapter 201, Laws of 1991 authorizes any state agency or school district to make any sale of energy or waste heat beyond the explicit provisions of chapter 201, Laws of 1991. Nothing contained in chapter 201, Laws of 1991 requires a utility to purchase energy from the state or a state agency or enter into any agreement in connection with a cogeneration facility.

(b) The state shall neither construct, nor be party to an agreement for developing a cogeneration project at a state facility for the purpose of supplying its own electrical needs, unless it can show that such an arrangement would be in the economic interest of the state taking into account the cost of (i) interconnection requirements, as specified by the local

electric utility, (ii) standby charges, as may be required by the local electric utility, and (iii) the current price of electricity offered by the local electric utility. If the local electric utility can demonstrate that the cogeneration project may place an undue burden on the electric utility, the department or the state agency shall attempt to negotiate a mutually beneficial agreement that would minimize the burden upon the ratepayers of the local electric utility.

(4) Any party to an energy purchase agreement may, within thirty days of any decision made pursuant to subsection (2)(c) of this section to disapprove the agreement made pursuant to this section, request an independent reviewer who is mutually agreeable to all parties to review the decision. The parties shall within thirty days of selection submit to the independent reviewer documentation supporting their positions. The independent reviewer shall render advice regarding the validity of the disapproval within an additional thirty days.

(5) For the purposes of this section, "waste heat" means the thermal energy that otherwise would be released to the environment from an industrial process, electric generation, or other process. [1996 c 186 § 412; 1996 c 33 § 4; 1991 c 201 § 9.]

**Reviser's note:** This section was amended by 1996 c 33 § 4 and by 1996 c 186 § 412, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**Findings—1996 c 33:** See note following RCW 80.04.550.

**39.35C.090 Additional authority of state agencies.** In addition to any other authorities conferred by law:

(1) The department, with the consent of the state agency responsible for a facility, a state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Contract to sell electric energy generated at state facilities to a utility; and

(b) Contract to sell thermal energy produced at state facilities to a utility.

(2) A state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Acquire, install, permit, construct, own, operate, and maintain cogeneration and facility heating and cooling measures or equipment, or both, at its facilities;

(b) Lease state property for the installation and operation of cogeneration and facility heating and cooling equipment at its facilities;

(c) Contract to purchase all or part of the electric or thermal output of cogeneration plants at its facilities;

(d) Contract to purchase or otherwise acquire fuel or other energy sources needed to operate cogeneration plants at its facilities; and

(e) Undertake procurements for third-party development of cogeneration projects at its facilities, with successful bidders to be selected based on the responsible bid, including

nonprice elements listed in RCW 43.19.1911, that offers the greatest net achievable benefits to the state and its agencies.

(3) After July 28, 1991, a state agency shall consult with the department prior to exercising any authority granted by this section.

(4) In exercising the authority granted by subsections (1) and (2) of this section, a state agency must comply with the provisions of RCW 39.35C.080. [1996 c 186 § 413; 1991 c 201 § 10.]

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**39.35C.100 Energy efficiency construction account.**

(1) The energy efficiency construction account is hereby created in the state treasury. Moneys in the account may be spent only after appropriation and only for the following purposes:

(a) Construction of energy efficiency projects, including project evaluation and verification of benefits, project design, project development, project construction, and project administration.

(b) Payment of principal and interest and other costs required under bond covenant on bonds issued for the purpose of (a) of this subsection.

(2) Sources for this account may include:

(a) General obligation and revenue bond proceeds appropriated by the legislature;

(b) Loan repayments under RCW 39.35C.060 sufficient to pay principal and interest obligations; and

(c) Funding from federal, state, and local agencies. [1996 c 186 § 414; 1991 c 201 § 11.]

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**39.35C.130 Adoption of rules.** The department may adopt rules to implement RCW 39.35C.020 through 39.35C.040, 39.35C.070, 39.35C.080, and 39.35.050. [1996 c 186 § 416; 1991 c 201 § 17.]

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**39.35C.900 Captions not law—1991 c 201.** Captions as used in chapter 201, Laws of 1991 constitute no part of the law. [1991 c 201 § 22.]

**39.35C.901 Severability—1991 c 201.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 201 § 24.]

**Chapter 39.36 RCW**

**LIMITATION OF INDEBTEDNESS OF TAXING DISTRICTS**

Sections

39.36.010	Definitions.
39.36.015	"Value of the taxable property" defined.
39.36.020	Limitation of indebtedness prescribed.
39.36.030	Computation of indebtedness.
39.36.040	Authorizations in violation of chapter void.
39.36.050	Ballot proposition authorizing indebtedness—Excess property tax levies.

39.36.060 Chapter not applicable to loan agreements under chapter 39.69 RCW.  
 39.36.900 Validation—1969 c 142.

*Limitation of state debt: State Constitution Art. 8 § 1.*

*Limitation on levies: State Constitution Art. 7 § 2.*

*Limitations on municipal indebtedness: State Constitution Art. 8 § 6.*

**39.36.010 Definitions.** The term "taxing district" as herein used shall be held to mean and embrace all counties, cities, towns, townships, port districts, school districts, metropolitan park districts or other municipal corporations which now, or may hereafter exist.

The term "the last assessed valuation of the taxable property in such taxing district" as used herein shall be held to mean and embrace the aggregate assessed valuation for such taxing district as placed on the last completed and balanced tax rolls of the county next preceding the date of contracting the debt or incurring the liability. [1917 c 143 § 4; RRS § 5608.]

**39.36.015 "Value of the taxable property" defined.** Whenever used in \*this 1970 amendatory act, the term "value of the taxable property" shall mean the actual value of the taxable property in a taxing district incurring indebtedness, as the term "taxing district" is defined in RCW 39.36.010, to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness except that in incorporated cities the assessment shall be taken from the last assessment for city purposes, plus the timber assessed value for the district as defined in RCW 84.33.035. [1984 c 204 § 15; 1970 ex.s. c 42 § 1.]

**\*Reviser's note:** For codification of "this 1970 amendatory act" [1970 ex.s. c 42], see Codification Tables, Volume 0.

**Savings—Effective date—1984 c 204:** See notes following RCW 84.33.035.

**Severability—1970 ex.s. c 42:** "If any provision of this 1970 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1970 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 42 § 41.]

**Effective date—1970 ex.s. c 42:** "The effective date of this 1970 amendatory act is November 1, 1970." [1970 ex.s. c 42 § 42.]

**39.36.020 Limitation of indebtedness prescribed.** (1) Except as otherwise expressly provided by law or in subsections (2), (3) and (4) of this section, no taxing district shall for any purpose become indebted in any manner to an amount exceeding three-eighths of one percent of the value of the taxable property in such taxing district without the assent of three-fifths of the voters therein voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness incurred at any time exceed one and one-fourth percent on the value of the taxable property therein.

(2)(a)(i) Public hospital districts are limited to an indebtedness amount not exceeding three-fourths of one percent of the value of the taxable property in such public hospital districts without the assent of three-fifths of the voters therein voting at an election held for that purpose.

(ii) Counties, cities, and towns are limited to an indebtedness amount not exceeding one and one-half percent of the value of the taxable property in such counties, cities, or towns

without the assent of three-fifths of the voters therein voting at an election held for that purpose.

(b) In cases requiring such assent counties, cities, towns, and public hospital districts are limited to a total indebtedness of two and one-half percent of the value of the taxable property therein. However, any county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW may become indebted to a larger amount for its authorized metropolitan functions, as provided under chapter 35.58 RCW, but not exceeding an additional three-fourths of one percent of the value of the taxable property in the county without the assent of three-fifths of the voters therein voting at an election held for that purpose, and in cases requiring such assent not exceeding an additional two and one-half percent of the value of the taxable property in the county.

(3) School districts are limited to an indebtedness amount not exceeding three-eighths of one percent of the value of the taxable property in such district without the assent of three-fifths of the voters therein voting at an election held for that purpose. In cases requiring such assent school districts are limited to a total indebtedness of two and one-half percent of the value of the taxable property therein.

(4) No part of the indebtedness allowed in this chapter shall be incurred for any purpose other than strictly county, city, town, school district, township, port district, metropolitan park district, or other municipal purposes: PROVIDED, That a city or town, with such assent, may become indebted to a larger amount, but not exceeding two and one-half percent additional, determined as herein provided, for supplying such city or town with water, artificial light, and sewers, when the works for supplying such water, light, and sewers shall be owned and controlled by the city or town; and a city or town, with such assent, may become indebted to a larger amount, but not exceeding two and one-half percent additional for acquiring or developing open space, park facilities, and capital facilities associated with economic development: PROVIDED FURTHER, That any school district may become indebted to a larger amount but not exceeding two and one-half percent additional for capital outlays.

(5) Such indebtedness may be authorized in any total amount in one or more propositions and the amount of such authorization may exceed the amount of indebtedness which could then lawfully be incurred. Such indebtedness may be incurred in one or more series of bonds from time to time out of such authorization but at no time shall the total general indebtedness of any taxing district exceed the above limitation.

The term "value of the taxable property" as used in this section shall have the meaning set forth in RCW 39.36.015. [2000 c 156 § 1; 1994 c 277 § 1; 1993 c 240 § 12; 1971 ex.s. c 218 § 1; 1971 c 38 § 1; 1970 ex.s. c 42 § 27; 1969 c 142 § 3; 1967 c 107 § 4; 1959 c 227 § 1; 1953 c 163 § 2; 1917 c 143 § 1; RRS § 5605.]

**Effective date—2000 c 156:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2000]." [2000 c 156 § 2.]

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

**Validating—1953 c 163:** "Bonds authorized, issued and sold by any school district prior to the effective date of this act [March 18, 1953] and not in excess of the limitations provided in sections 1 and 2 thereof are hereby approved, ratified and validated, and are a legal and irrevocable obligation of such school district." [1953 c 163 § 3.]

*Cemetery districts, limitation upon indebtedness:* RCW 68.52.310.

*Cities other than first class, limitations upon indebtedness:* RCW 35.37.040, 35.37.050.

*Conditional sales contract debt, not counted as part of debt limit:* RCW 28A.335.200, 39.30.010.

*Counties, limitations upon indebtedness:* Chapter 36.67 RCW.

*Executory conditional sales contracts, limitations on indebtedness:* RCW 28A.335.200, 39.30.010.

*Leases by cities and towns, limitations on indebtedness:* RCW 35.42.200.

*Metropolitan municipal corporations, limitations on indebtedness:* RCW 35.58.450.

*Metropolitan park districts, incurring indebtedness:* RCW 35.61.100, 35.61.110.

*Municipal corporations, limitations upon indebtedness:* State Constitution Art. 8 § 6 (Amendment 27).

*Port districts, limitations upon indebtedness:* RCW 39.28.030, 53.36.030.

*Public utility districts, limitations upon indebtedness:* RCW 54.24.018.

*School districts, limitations upon indebtedness:* Chapters 28A.530, 28A.535 RCW.

*Validation requirement:* RCW 39.40.010.

*Water-sewer districts, limitations upon indebtedness:* RCW 57.20.110, 57.20.120.

**39.36.030 Computation of indebtedness.** (1) Whenever it shall be necessary to compute the indebtedness of a taxing district for bonding or any other indebtedness purposes, taxes levied for the current year and cash on hand received for the purpose of carrying on the business of such taxing district for such current year shall be considered as an asset only as against indebtedness incurred during such current year which is payable from such taxes or cash on hand: PROVIDED, HOWEVER, That all taxes levied for the payment of bonds, warrants or other public debts of such taxing district, shall be deemed a competent and sufficient asset of the taxing district to be considered in calculating the constitutional debt limit or the debt limit prescribed by this chapter for any taxing district: PROVIDED, That the provisions of this section shall not apply in computing the debt limit of a taxing district in connection with bonds authorized pursuant to a vote of the electors at an election called prior to March 1, 1917.

(2) If reductions in assessed valuation of property within a taxing district result in the outstanding indebtedness of the taxing district exceeding its statutory indebtedness limitations, the amount of such excess indebtedness shall not be included in the statutory indebtedness ceiling. Additional indebtedness that is subject to indebtedness limitations, other than refinancing indebtedness that does not increase the total amount of indebtedness, may not be issued by such a taxing district until its total outstanding indebtedness, including that which this subsection removes from the statutory indebtedness limitations, is below these limitations.

(3) Nothing in this section authorizes taxing districts to incur indebtedness beyond constitutional indebtedness limitations. [1986 c 50 § 1; 1921 c 123 § 1; 1917 c 143 § 2; RRS § 5606.]

(2004 Ed.)

### 39.36.040 Authorizations in violation of chapter void.

All orders, authorizations, allowances, contracts, payments or liabilities to pay, made or attempted to be made in violation of this chapter, shall be absolutely void and shall never be the foundation of a claim against a taxing district. [1994 c 81 § 75; 1923 c 45 § 1; 1917 c 143 § 3; RRS § 5607.]

**39.36.050 Ballot proposition authorizing indebtedness—Excess property tax levies.** The governing body of a taxing district desiring to place a ballot proposition authorizing indebtedness before the voters may submit the proposition at any special election held on the dates authorized in \*chapter 29.13 RCW. The ballot proposition shall include the maximum amount of the indebtedness to be authorized, the maximum term any bonds may have, a description of the purpose or purposes of the bond issue, and whether excess property tax levies authorized under RCW 84.52.056 will be authorized.

When it is required that such bonds be retired by excess property tax levies, or when the governing body desires such bonds be retired by excess property tax levies, the ballot proposition shall also include authorization for such excess bond retirement property tax levies provided under RCW 84.52.056.

Notice of the proposed election shall be published as required by \*\*RCW 29.27.080. [1984 c 186 § 3.]

**Reviser's note:** \*(1) District election dates are set by RCW 29A.04.330.

\*\* (2) RCW 29.27.080 was recodified as RCW 29A.52.350 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.52.350 was subsequently repealed by 2004 c 271 § 193.

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**39.36.060 Chapter not applicable to loan agreements under chapter 39.69 RCW.** This chapter does not apply to a loan made pursuant to a loan agreement under chapter 39.69 RCW, and any computation of indebtedness under this chapter shall exclude the amount of any loan under such a loan agreement. [1987 c 19 § 5.]

**39.36.900 Validation—1969 c 142.** All bonds heretofore issued, or heretofore voted and which may have been or may hereafter be issued, by any taxing district pursuant to any of the foregoing sections as amended or for any of the purposes authorized by any of said sections are hereby validated. [1969 c 142 § 6.]

## Chapter 39.40 RCW

### VOTE REQUIRED AT BOND ELECTIONS

#### Sections

39.40.010	Forty percent poll of voters required.
39.40.020	Existing election laws to apply.
39.40.030	Certification of votes—Canvass.
39.40.040	Prior bonds not affected.
39.40.900	Severability—1925 c 13.

*County acquisition of land for military purposes, bond election for:* Chapter 37.16 RCW.

*County roads and bridges, bond elections:* Chapter 36.76 RCW.

*Irrigation districts, bond elections:* Chapter 87.03 RCW.

*Port districts, vote required for certain bond issues:* RCW 53.36.030.

*Public utility districts, bond elections, vote required:* RCW 54.24.018.

**39.40.010 Forty percent poll of voters required.** No general obligation bonds of any county, port district, or metropolitan park district upon which a vote of the people is required under existing laws shall be issued, nor shall they become a lien upon the taxable property within such county or district unless, in addition to all other requirements provided by law in the matter of the issuance of general obligation bonds by such county or district, the total vote cast upon such proposition shall exceed forty percent of the total number of voters voting in such county or district at the general county or state election next preceding such bond election. [1961 ex.s. c 15 § 1; 1959 c 290 § 3; 1925 c 13 § 1; RRS § 5646-1.]

*Exceeding debt limitation by municipalities: State Constitution Art. 8 § 6 (Amendment 27).*

*Vote required for excess levy to retire bonds issued for capital purposes: RCW 84.52.056.*

**39.40.020 Existing election laws to apply.** In all such elections the provisions of existing law with respect to registration, opening and closing of registration books and the duties of officers and the appointment and selection of election officials shall apply. [1925 c 13 § 2; RRS § 5646-2.]

*Election laws in general: Title 29A RCW.*

**39.40.030 Certification of votes—Canvass.** The election officials in each of the precincts included within any such district shall, as soon as possible and in no case later than five days after the closing of the polls of any election involving the issuance of bonds, certify to the county auditor of the county within which such district is located the total number of votes cast for and against each separate proposal and the vote shall be canvassed and certified by a canvassing board consisting of the chairman of the board of county commissioners, the county auditor, and the prosecuting attorney who shall declare the result thereof. [1959 c 290 § 4; 1925 c 13 § 3; RRS § 5646-3.]

**39.40.040 Prior bonds not affected.** This chapter shall not affect the validity or the issuance of any such bonds voted at any lawful election held prior to the taking effect of this chapter. [1925 c 13 § 4; RRS § 5646-4.]

**39.40.900 Severability—1925 c 13.** If any section or provision of this chapter be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional. [1925 c 13 § 5; RRS § 5646-5.]

### Chapter 39.42 RCW

#### STATE BONDS, NOTES, AND OTHER EVIDENCES OF INDEBTEDNESS

##### Sections

39.42.010	Scope of application.
39.42.020	Evidences of indebtedness—Issuance—Signature.
39.42.030	Evidences of indebtedness—Issuance—State finance committee, duties and powers.
39.42.040	Disposition of proceeds from sale of bonds.
39.42.050	Anticipation notes—Issued, when—Payment of principal and interest.

39.42.060	Limitation on issuance of evidences of indebtedness—Annual computation of amount required to pay on outstanding debt.
39.42.070	Computation of general state revenues—Filing of certificate—Estimate of debt capacity.
39.42.080	Obligations allowable under debt limitation.
39.42.090	Certificates of indebtedness—Issued, when—Retirement.
39.42.100	Evidences of indebtedness—Defects not to affect validity—Copy of resolution authorizing issuance filed—Action to contest before delivery.
39.42.110	Evidences of indebtedness—As negotiable instruments, legal investments, and security for deposits.
39.42.120	Excess earnings account—Payments to United States treasury.
39.42.900	Effective date—1971 ex.s. c 184.

**39.42.010 Scope of application.** This chapter shall apply to all bonds, notes and other evidences of indebtedness of the state authorized by the legislature after \*the effective date of this chapter, unless otherwise provided in the authorizing acts. [1971 ex.s. c 184 § 1.]

\*Reviser's note: For "the effective date of this chapter," see RCW 39.42.900.

**39.42.020 Evidences of indebtedness—Issuance—Signature.** Bonds, notes or other evidences of indebtedness shall be issued by the state finance committee. They may be issued at one time or in a series from time to time. The maturity date of each series shall be determined by the state finance committee, but in no case shall any bonds mature later than thirty years from the date of issue. All evidences of indebtedness shall be signed in the name of the state by the governor and the treasurer. The facsimile signature of said officials is authorized and said evidences of indebtedness may be issued notwithstanding that any of the officials signing them or whose facsimile signatures appear on such evidences of indebtedness has ceased to hold office at the time of issue or at the time of delivery to the purchaser. [1971 ex.s. c 184 § 2.]

**39.42.030 Evidences of indebtedness—Issuance—State finance committee, duties and powers.** The state finance committee shall determine by resolution the amount, date or dates, terms, conditions, covenants, denominations, interest rate or rates (which may be fixed or variable), maturity or maturities, redemption rights, manner of execution and authentication, manner and price of sale and form of all bonds, notes, or other evidences of indebtedness.

Such bonds, notes, or other evidences of indebtedness shall be payable either to the bearer or to the registered owner as provided in RCW 39.46.030. The resolution may provide for the deposit in trust with any qualified public depository of all or any part of the proceeds of the bonds, notes, or other evidences of indebtedness or money set aside for the payment thereof.

The state finance committee shall also determine by resolution whether interest on all or any part of the bonds is to be payable periodically during the term of such bonds or only at the maturity of the bonds. For purposes of the limitations on the amount of bonds authorized to be issued contained in the acts authorizing their issuance, the amount of bonds which pay interest only at maturity shall be equal to the price, exclusive of accrued interest, at which the bonds are initially offered to the public.

The state finance committee may issue, under chapter 39.53 RCW and this chapter, bonds, notes, or other evidences

of indebtedness to refund at or prior to maturity any outstanding state bonds, notes, or other evidences of indebtedness.

The state finance committee may obtain bond insurance, letters of credit or other credit support instruments for the purpose of guaranteeing the payment or enhancing the marketability, or both, of any state bonds, notes, or other evidences of indebtedness, and may authorize the execution and delivery of agreements, promissory notes, and other related instruments. [1989 1st ex.s. c 14 § 16; 1983 c 167 § 104; 1971 ex.s. c 184 § 3.]

**Severability—Effective dates—1989 1st ex.s. c 14:** See RCW 43.99H.900 and 43.99H.901.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

### 39.42.040 Disposition of proceeds from sale of bonds.

The proceeds of the sale of any bonds shall be used solely for the purposes, including any expense incurred in connection with the issuance and sale of such bonds, specified in the general statute or special act authorizing the issuance of such bonds. [1971 ex.s. c 184 § 4.]

### 39.42.050 Anticipation notes—Issued, when—Payment of principal and interest.

When the state finance committee has decided to issue such bonds or a portion thereof, it may, pending the issuing of such bonds, issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of such bonds, which notes shall be designated as "anticipation notes". If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. Such portion of the proceeds of the sale of such bonds as may be required for such purpose shall be applied to the payment of the principal of such anticipation notes which have been issued. The interest on anticipation notes shall be paid from the revenue source and with the same priority of payment specified in the respective bond acts for payment of principal of and interest on the bonds against which anticipation notes are sold. The procedure for paying the interest on the notes, including the transfer of necessary funds for that purpose, shall be the same as prescribed for the bonds.

If the bonds shall constitute general obligations of the state and pledge the full faith and credit of the state to the payment thereof, then the notes issued in anticipation thereof shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due. The owner and holder of any of the notes or the trustee for the owner and holder of any of the notes may, by a mandamus or other appropriate proceeding, require the transfer and payment of funds as directed in this section. [1981 c 29 § 1; 1971 ex.s. c 184 § 5.]

**Application—1981 c 29:** "This act shall apply to all outstanding bond anticipation notes of the state, and interest on the notes shall be paid as provided in RCW 39.42.050: PROVIDED, That in the event such interest is not paid as provided in RCW 39.42.050 it shall be paid from such source or sources as are specified in such notes." [1981 c 29 § 2.]

(2004 Ed.)

### 39.42.060 Limitation on issuance of evidences of indebtedness—Annual computation of amount required to pay on outstanding debt.

No bonds, notes, or other evidences of indebtedness for borrowed money shall be issued by the state which will cause the aggregate debt contracted by the state to exceed that amount for which payments of principal and interest in any fiscal year would require the state to expend more than seven percent of the arithmetic mean of its general state revenues, as defined in RCW 39.42.070, for the three immediately preceding fiscal years as certified by the treasurer in accordance with RCW 39.42.070. It shall be the duty of the state finance committee to compute annually the amount required to pay principal of and interest on outstanding debt. In making such computation, the state finance committee shall include all borrowed money represented by bonds, notes, or other evidences of indebtedness which are secured by the full faith and credit of the state or are required to be paid, directly or indirectly, from general state revenues and which are incurred by the state, any department, authority, public corporation or quasi public corporation of the state, any state university or college, or any other public agency created by the state but not by counties, cities, towns, school districts, or other municipal corporations, and shall include debt incurred pursuant to section 3 of Article VIII of the Washington state Constitution, but shall exclude the following:

- (1) Obligations for the payment of current expenses of state government;
- (2) Indebtedness incurred pursuant to RCW 39.42.080 or 39.42.090;
- (3) Principal of and interest on bond anticipation notes;
- (4) Any indebtedness which has been refunded;
- (5) Financing contracts entered into under chapter 39.94 RCW;
- (6) Indebtedness authorized or incurred before July 1, 1993, pursuant to statute which requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from money other than general state revenues or from the special excise tax imposed pursuant to chapter 67.40 RCW;
- (7) Indebtedness authorized and incurred after July 1, 1993, pursuant to statute that requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from (a) moneys outside the state treasury, except higher education operating fees, (b) higher education building fees, (c) indirect costs recovered from federal grants and contracts, and (d) fees and charges associated with hospitals operated or managed by institutions of higher education;
- (8) Any agreement, promissory note, or other instrument entered into by the state finance committee under RCW 39.42.030 in connection with its acquisition of bond insurance, letters of credit, or other credit support instruments for the purpose of guaranteeing the payment or enhancing the marketability, or both, of any state bonds, notes, or other evidence of indebtedness;
- (9) Indebtedness incurred for the purposes identified in RCW 43.99N.020;
- (10) Indebtedness incurred for the purposes of the school district bond guaranty established by chapter 39.98 RCW;

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(11) Indebtedness incurred for the purposes of replacing the waterproof membrane over the east plaza garage and revising related landscaping construction pursuant to RCW 43.99Q.070;

(12) Indebtedness incurred for the purposes of the state legislative building rehabilitation, to the extent that principal and interest payments of such indebtedness are paid from the capitol building construction account pursuant to RCW 43.99Q.140(2)(b); and

(13) Indebtedness incurred for the purposes of financing projects under RCW 47.10.867.

To the extent necessary because of the constitutional or statutory debt limitation, priorities with respect to the issuance or guaranteeing of bonds, notes, or other evidences of indebtedness by the state shall be determined by the state finance committee. [2003 c 147 § 13; 2002 c 240 § 7; 2001 2nd sp.s. c 9 § 18; 1999 c 273 § 9; 1997 c 220 § 220 (Referendum Bill No. 48, approved June 17, 1997); 1993 c 52 § 1. Prior: 1989 1st ex.s. c 14 § 17; 1989 c 356 § 7; 1983 1st ex.s. c 36 § 1; 1979 ex.s. c 204 § 1; 1971 ex.s. c 184 § 6.]

**Effective date—2003 c 147:** See note following RCW 47.10.861.

**Severability—Effective date—2002 c 240:** See RCW 43.99G.902 and 43.99G.903.

**Severability—Effective date—2001 2nd sp.s. c 9:** See RCW 43.99Q.900 and 43.99Q.901.

**Contingent effective date—1999 c 273:** See RCW 39.98.900.

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Effective date—1993 c 52:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 52 § 2.]

**Severability—Effective dates—1989 1st ex.s. c 14:** See RCW 43.99H.900 and 43.99H.901.

**39.42.070 Computation of general state revenues—Filing of certificate—Estimate of debt capacity.** (1) On or after \*the effective date of this act, the treasurer shall compute general state revenues for the three fiscal years immediately preceding such date and shall determine the arithmetic mean thereof. As soon as is practicable after the close of each fiscal year thereafter, he or she shall do likewise. In determining the amount of general state revenues, the treasurer shall include all state money received in the treasury from each and every source whatsoever except: (a) Fees and revenues derived from the ownership or operation of any undertaking, facility or project; (b) moneys received as gifts, grants, donations, aid or assistance or otherwise from the United States or any department, bureau or corporation thereof, or any person, firm or corporation, public or private, when the terms and conditions of such gift, grant, donation, aid or assistance require the application and disbursement of such moneys otherwise than for the general purposes of the state of Washington; (c) moneys to be paid into and received from retirement system funds, and performance bonds and deposits; (d) moneys to be paid into and received from trust funds including but not limited to moneys received from taxes levied for specific purposes and the several permanent

and irreducible funds of the state and the moneys derived therefrom but excluding bond redemption funds; (e) proceeds received from the sale of bonds or other evidences of indebtedness. Upon computing general state revenues, the treasurer shall make and file in the office of the secretary of state, a certificate containing the results of such computations. Copies of said certificate shall be sent to each elected official of the state and each member of the legislature. The treasurer shall, at the same time, advise each elected official and each member of the legislature of the current available debt capacity of the state, and may make estimated projections for one or more years concerning debt capacity.

(2) For purposes of this chapter, general state revenues shall also include revenues that are deposited in the general fund under RCW 82.45.180(2), lottery revenues as provided in RCW 67.70.240(3), revenues paid into the general fund under RCW 84.52.067, and revenues deposited into the student achievement fund and distributed to school districts as provided in RCW 84.52.068. [2003 1st sp.s. c 9 § 1; 2002 c 240 § 8; 1971 ex.s. c 184 § 7.]

**\*Reviser's note:** For "the effective date of this act," see RCW 39.42.900.

**Severability—Effective date—2002 c 240:** See RCW 43.99G.902 and 43.99G.903.

**39.42.080 Obligations allowable under debt limitation.** The foregoing limitation on the aggregate amount of indebtedness of the state shall not prevent:

(1) The issuance of obligations to refund or replace any such indebtedness existing at any time in an amount not exceeding 1.05 times the amount which, taking into account earnings from the investment of the proceeds of the issue, is required to pay the principal thereof, interest thereon, and any premium payable with respect thereto, and the costs incurred in accomplishing such refunding, as provided in chapter 39.53 RCW, as now or hereafter amended: PROVIDED, That any proceeds of the refunding, bonds in excess of those acquired to accomplish such refunding or any obligations acquired with such excess proceeds, shall be applied exclusively for the payment of principal, interest, or call premiums with respect to such refunding obligations;

(2) The issuance of obligations in anticipation of revenues to be received by the state during a period of twelve calendar months next following their issuance;

(3) The issuance of obligations payable solely from revenues of particular public improvements;

(4) A pledge of the full faith, credit, and taxing power of the state to guarantee the payment of any obligation payable from any of revenues received from any of the following sources:

(a) the fees collected by the state as license fees for motor vehicles;

(b) excise taxes collected by the state on the sale, distribution, or use of motor vehicle fuel; and

(c) interest on the permanent common school fund:

PROVIDED, That the legislature shall, at all times, provide sufficient revenues from such sources to pay the principal and interest due on all obligations for which said source of revenue is pledged. [1974 ex.s. c 111 § 1; 1971 ex.s. c 184 § 8.]

**Severability—1974 ex.s. c 111:** "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 111 § 6.]

**39.42.090 Certificates of indebtedness—Issued, when—Retirement.** The state finance committee may issue certificates of indebtedness in such sum or sums that may be necessary to meet temporary deficiencies of the treasury. Such certificates may be issued only to provide for the appropriations already made by the legislature and such certificates must be retired and the debt discharged other than by refunding within twelve months after the date of issuance.

For the purposes of this section, the state treasury shall include all statutorily established funds and accounts except for any of the permanent irreducible funds of the state treasury. [1985 c 57 § 21; 1971 ex.s. c 184 § 9.]

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**39.42.100 Evidences of indebtedness—Defects not to affect validity—Copy of resolution authorizing issuance filed—Action to contest before delivery.** Bonds, notes, or other obligations issued and sold by the state of Washington pursuant to and in conformity with this chapter shall not be invalid for any irregularity or defect in the proceedings of the issuance or sale thereof, except as provided in this paragraph, and shall be incontestable in the hands of a bona fide purchaser or holder thereof. Whenever the state finance committee determines to issue bonds, notes or other evidences of indebtedness, it shall file with the treasurer a certified copy of the resolution authorizing their issuance at least thirty days prior to delivery to the purchaser of such bonds, notes, or other evidences of indebtedness. At any time prior to delivery, any person in interest shall have the right to institute an appropriate action or proceeding to contest the validity of the authorized indebtedness, the pledge of revenues for the payment of principal and interest on such indebtedness, the validity of the collection and disposition of revenue necessary to pay the principal and interest on such indebtedness, the expenditure of the proceeds derived from the sale of the evidences of indebtedness for the purposes specified by law, and the validity of all other provisions and proceedings in connection with the authorization and issuance of the evidences of indebtedness. If such action or proceeding shall not have been instituted prior to delivery, then the validity of the evidences of indebtedness shall be conclusively presumed and no court shall have authority to inquire into such matters. [1971 ex.s. c 184 § 10.]

**39.42.110 Evidences of indebtedness—As negotiable instruments, legal investments, and security for deposits.** All evidences of indebtedness issued under the provisions of this chapter shall be fully negotiable instruments and shall be legal investment for all state funds or for funds under state control and all funds of municipal corporations, and shall be legal security for all state, county and municipal deposits. [1971 ex.s. c 184 § 11.]

**39.42.120 Excess earnings account—Payments to United States treasury.** The excess earnings account is created in the state treasury. From the revenue funds from which

principal and interest payments on bonds are provided, the state treasurer shall periodically transfer to the excess earnings account such amounts as are owed to the federal government under section 148 of the federal internal revenue code. Pursuant to legislative appropriation from the excess earnings account, the state treasurer shall periodically remit to the United States treasury any amounts owed to the federal government under section 148 of the federal internal revenue code. [1988 c 92 § 1.]

**39.42.900 Effective date—1971 ex.s. c 184.** This act shall become effective coincident with the effective date of the constitutional amendment to Article VIII, section 1 and to Article VIII, section 3 of the Washington state Constitution as presented for a vote of the people by HJR 52, 1971 regular session. Unless such constitutional amendment shall be approved by the people at the next general election, this chapter shall be null and void. [1971 ex.s. c 184 § 12.]

**Reviser's note:** House Joint Resolution No. 52 was approved by the voters at the November 1972 general election.

## Chapter 39.44 RCW

### BONDS—MISCELLANEOUS PROVISIONS, BOND INFORMATION REPORTING

#### Sections

39.44.070	Life of bonds.
39.44.100	Facsimile signatures on bonds and coupons.
39.44.101	Facsimile signatures on bonds and coupons—Fraud— Destruction of plates—Penalty.
39.44.102	Facsimile signatures on bonds and coupons—Statements and signatures required on registered bonds.
39.44.110	Registration—Payment—Assignment.
39.44.120	Payment of coupon interest.
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39.44.140	Revenue bonds—Funds for reserve purposes may be included in issue amount.
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*Cities and towns, local improvement bonds: Chapter 35.45 RCW.*

#### *Counties, bonds*

*form, interest, etc.: Chapter 36.67 RCW.*

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*County road bonds, form, interest, etc.: Chapter 36.76 RCW.*

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*Irrigation district bonds, form, interest, maturity, etc.: RCW 87.03.200.*

*Municipal revenue bond act: Chapter 35.41 RCW.*

*Port district bonds, form, terms, etc.: Chapters 53.40 and 53.44 RCW.*

*Public utility district bonds, form, terms, etc.: RCW 54.24.018.*

*School district bonds, form, terms of sale, etc.: Chapter 28A.530 RCW.*

*Validation: Chapter 39.90 RCW.*

*Water-sewer district bonds, form, terms, etc.: RCW 57.20.010.*

**39.44.070 Life of bonds.** Notwithstanding the provisions of any charter to the contrary, bonds issued under \*RCW 39.44.010 through 39.44.080 may be issued to run for a period up to forty years from the date of the issue and shall, as near as practicable, be issued for a period which shall not

exceed the life of the improvement to be acquired by the use of the bonds. [1967 c 107 § 5; 1923 c 151 § 5; RRS § 5583-5.]

\*Reviser's note: RCW 39.44.010, 39.44.011, 39.44.020, 39.44.030, 39.44.060, and 39.44.080 were repealed by 1984 c 186 § 70.

**39.44.100 Facsimile signatures on bonds and coupons.** On all bonds hereafter issued by the state or any agency thereof or by any county, city, town, municipal corporation, quasi municipal corporation, junior taxing district, school district or other political subdivision of the state, the printed, engraved or lithographed facsimile signatures of the officers required by law to sign the bonds or any interest coupons thereon shall be sufficient signature on such bonds or coupons: PROVIDED, That such facsimile signatures shall not be used on the bonds of issues of less than one hundred thousand dollars par value and may always be used on interest coupons.

Whenever such facsimile signature reproduction of the signature of any officer is used in place of the personal signature of such officer, the issuing authority shall specify in a written order or requisition to the printer, engraver, or lithographer, the number of bonds or coupons upon which such facsimile signature is to be printed, engraved, or lithographed, and the manner of numbering the bonds or coupons upon which such signature shall be placed. Within ninety days after the completion of the printing, engraving, or lithographing of such bonds or coupons, the plate or plates used for the purpose of affixing the facsimile signature shall be destroyed and it shall be the duty of the issuing authority, within ninety days after receipt of the completed bonds or coupons, to ascertain that such plate or plates have been destroyed. [1983 c 167 § 107; 1961 c 141 § 3; 1955 c 375 § 1; 1941 c 52 § 1; Rem. Supp. 1941 § 5583-1a.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

*Uniform facsimile signature of public officials act: Chapter 39.62 RCW.*

**39.44.101 Facsimile signatures on bonds and coupons—Fraud—Destruction of plates—Penalty.** Every printer, engraver, or lithographer, who with the intent to defraud, prints, engraves, or lithographs a facsimile signature upon any bond or coupon without written order of the issuing authority, or fails to destroy such plate or plates containing the facsimile signature upon direction of such issuing authority, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 212; 1955 c 375 § 2.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

*Fraud, forgery: Chapter 9A.60 RCW.*

**39.44.102 Facsimile signatures on bonds and coupons—Statements and signatures required on registered bonds.** Where any bond so issued requires registration by the county treasurer, that bond shall bear a statement on the back thereof showing the name of the person to whom sold, date of issue, the number and series of the bond, and shall be signed by the county treasurer in his own name or by a deputy county treasurer in his own name. [1955 c 375 § 3.]

### **39.44.110 Registration—Payment—Assignment.**

Upon the presentation at the office of the officer or agent hereinafter provided for, any bond which is bearer in form that has heretofore been or may hereafter be issued by any county, city, town, port, school district, or other municipal or quasi municipal corporation in this state, may, if so provided in the proceedings authorizing the issuance of the same, be registered as to principal in the name of the owner upon the books of such municipality to be kept in said office, such registration to be noted on the reverse of the bond by such officer or agent. The principal of any bond so registered shall be payable only to the payee, his legal representative, successors or assigns, and such bond shall be transferable to another registered holder or back to bearer only upon presentation to such officer or agent, with a written assignment duly acknowledged or proved. The name of the assignee shall be written upon any bond so transferred and in the books so kept in the office of such officer or agent. [1983 c 167 § 108; 1961 c 141 § 4; 1915 c 91 § 1; RRS § 5494.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**39.44.120 Payment of coupon interest.** If so provided in the proceedings authorizing the issuance of any such bonds, upon the registration thereof as to principal, or at any time thereafter, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, may be surrendered to the officer or agent hereinafter provided and the bonds shall also become registered as to interest. Such coupons shall be canceled by such officer or agent, who shall sign a statement endorsed upon such bond of the cancellation of all unmatured coupons and the registration of such bond. Thereafter the interest evidenced by such canceled coupons shall be paid at the times provided therein to the registered owner of such bond in lawful money of the United States of America mailed to his address. [1983 c 167 § 109; 1961 c 141 § 5; 1915 c 91 § 2; RRS § 5495.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**39.44.130 Treasurers as registration officers—Fiscal agent.** (1) The duties prescribed in this chapter as to the registration of bonds of any city or town shall be performed by the treasurer thereof, and as to those of any county, port or school district by the county treasurer of the county in which such port or school district lies; but any treasurer as defined in RCW 39.46.020 may designate its legally designated fiscal agency or agencies for the performance of such duties, after making arrangements with such fiscal agency therefor, which arrangements may include provision for the payment by the bond owner of a fee for each registration.

(2) The county treasurer as ex officio treasurer of a special district shall act as fiscal agent or may appoint the fiscal agent to be used by the county. [1995 c 38 § 5; 1994 c 301 § 9; 1985 c 84 § 2; 1983 c 167 § 110; 1971 ex.s. c 79 § 1; 1915 c 91 § 3; RRS § 5496.]

**Acts of municipal officers ratified and confirmed—1995 c 38:** See note following RCW 3.02.045.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

*Fiscal agencies: Chapter 43.80 RCW.*

**39.44.140 Revenue bonds—Funds for reserve purposes may be included in issue amount.** Any county, city, town, political subdivision, or other municipal or quasi municipal corporation authorized to issue revenue bonds may include in the amount of any such issue funds for the purpose of establishing, maintaining or increasing reserves to:

(1) Secure the payment of the principal of and interest on such revenue bonds; or

(2) Provide for replacements or renewals of or repairs or betterments to revenue producing facilities; or

(3) Provide for contingencies, including, but not limited to, loss of revenue caused by such contingencies.

The authority granted pursuant to this section is additional and supplemental to any existing authority to issue revenue bonds and nothing in this section shall prevent the issuance of such bonds pursuant to any other law: PROVIDED, That no such bond issue may include an amount in excess of fifteen percent thereof for the purpose of establishing, maintaining or increasing reserves as enumerated above. [1983 c 167 § 111; 1977 ex.s. c 229 § 1.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**39.44.200 State and local government bond information—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 39.44.200 through 39.44.240.

(1) "Bond" means "bond" as defined in RCW 39.46.020, but also includes any other indebtedness that may be issued by any local government to fund private activities or purposes where the indebtedness is of a nonrecourse nature payable from private sources, including debt issued under chapter 39.50 RCW.

(2) "Local government" means "local government" as defined in RCW 39.46.020.

(3) "Type of bond" includes: (a) General obligation bonds, including councilmanic and voter-approved bonds; (b) revenue bonds; (c) local improvement district bonds; (d) special assessment bonds such as those issued by irrigation districts and diking districts; and (e) other classes of bonds.

(4) "State" means "state" as defined in RCW 39.46.020 but also includes any commissions or other entities of the state. [2001 c 299 § 14; 1990 c 220 § 1; 1989 c 225 § 1; 1987 c 297 § 12; 1985 c 130 § 5.]

**Severability—1987 c 297:** See RCW 39.86.906.

**39.44.210 State and local government bond information—Submittal—Contents—Annual report.** For each state or local government bond issued, the underwriter of the issue shall supply the department of community, trade, and economic development with information on the bond issue within twenty days of its issuance. In cases where the issuer of the bond makes a direct or private sale to a purchaser without benefit of an underwriter, the issuer shall supply the required information. The bond issue information shall be provided on a form prescribed by the department of community, trade, and economic development and shall include but is not limited to: (1) The par value of the bond issue; (2) the effective interest rates; (3) a schedule of maturities; (4) the purposes of the bond issue; (5) cost of issuance information;

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and (6) the type of bonds that are issued. A copy of the bond covenants shall be supplied with this information.

For each state or local government bond issued, the issuer's bond counsel promptly shall provide to the underwriter or to the department of community, trade, and economic development information on the amount of any fees charged for services rendered with regard to the bond issue.

Each local government that issues any type of bond shall make a report annually to the department of community, trade, and economic development that includes a summary of all the outstanding bonds of the local government as of the first day of January in that year. Such report shall distinguish the outstanding bond issues on the basis of the type of bond, as defined in RCW 39.44.200, and shall report the local government's outstanding indebtedness compared to any applicable limitations on indebtedness, including RCW 35.42.200, 39.30.010, and 39.36.020. [1995 c 399 § 54; 1990 c 220 § 2; 1989 c 225 § 2; 1985 c 130 § 1.]

*Fiscal agencies: Chapter 43.80 RCW.*

*Publication of local government bond information by department of community, trade, and economic development—Adoption of rules: RCW 43.63A.155.*

**39.44.230 State and local government bond information—Rules.** The department of community, trade, and economic development may adopt rules and regulations pursuant to the administrative procedure act to require (1) the submission of bond issuance information by underwriters and bond counsel to the department of community, trade, and economic development in a timely manner and (2) the submission of additional information on bond issues by state and local governments, including summaries of outstanding bond issues. [1995 c 399 § 55; 1989 c 225 § 3; 1985 c 130 § 3.]

**39.44.240 State and local government bond information—Validity of bonds not affected.** Failure to file the information required by RCW 39.44.210 and 39.44.230 shall not affect the validity of the bonds that are issued. [1989 c 225 § 4; 1985 c 130 § 4.]

**39.44.900 Validation—Savings—1982 c 216.** All bonds, the issuance of which was authorized or ratified at a general or special election held within the issuing jurisdiction prior to April 3, 1982, or the proposition for the issuance of which will be submitted at such an election pursuant to action of the legislative authority of the issuer taken prior to April 3, 1982, may be sold and issued with an interest rate or rates greater than any interest rate restriction contained in the ballot proposition or ordinance or resolution relating to such authorization or ratification if such bonds are or were sold and issued in accordance with the sale provisions and with an interest rate or rates not greater than those permitted by the applicable provision of \*this amendatory act, and any such bonds heretofore sold are declared valid obligations of the issuer. This section shall not apply to bonds having a total value exceeding fifteen million dollars. [1982 c 216 § 12.]

**\*Reviser's note:** For codification of "this amendatory act" [1982 c 216], see Codification Tables, Volume 0.

## Chapter 39.46 RCW

BONDS—OTHER MISCELLANEOUS  
PROVISIONS—REGISTRATION

## Sections

39.46.010	Purposes—Liberal construction.
39.46.020	Definitions.
39.46.030	Registration system authorized—Requirements—Fiscal agencies, agents.
39.46.040	Bonds—Issuer to determine amount, terms, conditions, interest, etc.
39.46.050	Bonds—Issuer authorized to establish lines of credit.
39.46.060	Bonds—Reproduction of physical instrument.
39.46.070	Bonds—Payment of costs of issuance and sale.
39.46.100	RCW 39.46.010 through 39.46.070 constitutes alternative method.
39.46.110	Local government general obligation bonds—Indebtedness—Payment—Notice by special district.
39.46.120	Notice of intent to sell general obligation bonds.
39.46.150	Revenue bonds—Alternative method of issuance—Limitations.
39.46.160	Revenue bonds—Alternative method of issuance—Bonds may include reserve funds.

**39.46.010 Purposes—Liberal construction.** The purposes of this chapter are to permit the state and local governments to conform with registration requirements of federal law which are necessary to exempt interest payments from federal income taxes when the state or local governments issue bonds or incur other obligations and to authorize the establishment and maintenance of differing systems of registering bonds and other obligations as these systems are developed and recognized, which may be instituted, discontinued, and reinstated from time to time. It is further the purpose of this chapter to grant local governments an alternative flexible authority to structure and sell their bond issues and to include a variety of features on their bonds.

This act shall be liberally construed to effect its purposes. [1983 c 167 § 1.]

**Severability—1983 c 167:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 167 § 273.]

**39.46.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Bond" means any agreement which may or may not be represented by a physical instrument, including notes, warrants, or certificates of indebtedness, that evidences an indebtedness of the state or a local government or a fund thereof, where the state or local government agrees to pay a specified amount of money, with or without interest, at a designated time or times to either registered owners or bearers, including debt issued under chapter 39.50 RCW.

(2) "Local government" means any county, city, town, special purpose district, political subdivision, municipal corporation, or quasi municipal corporation, including any public corporation created by such an entity.

(3) "Obligation" means an agreement that evidences an indebtedness of the state or a local government, other than a bond, and includes, but is not limited to, conditional sales contracts, lease obligations, and promissory notes.

(4) "State" includes the state, agencies of the state, and public corporations created by the state or agencies of the state.

(5) "Treasurer" means the state treasurer, county treasurer, city treasurer, or treasurer of any other municipal corporation. [2001 c 299 § 15; 1995 c 38 § 6; 1994 c 301 § 10; 1983 c 167 § 2.]

**Acts of municipal officers ratified and confirmed—1995 c 38:** See note following RCW 3.02.045.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**39.46.030 Registration system authorized—Requirements—Fiscal agencies, agents.** (1) The state and local governments are authorized to establish a system of registering the ownership of their bonds or other obligations as to principal and interest, or principal only. Registration may include, without limitation: (a) A book entry system of recording the ownership of a bond or other obligation whether or not a physical instrument is issued; or (b) recording the ownership of a bond or other obligation together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond or other obligation and either the reissuance of the old bond or other obligation or the issuance of a new bond or other obligation to the new owner.

(2) The system of registration shall define the method or methods by which transfer of the registered bonds or other obligations shall be effective, and by which payment of principal and any interest shall be made. The system of registration may permit the issuance of bonds or other obligations in any denomination to represent several registered bonds or other obligations of smaller denominations. The system of registration may also provide for any writing relating to a bond or other obligation that is not issued as a physical instrument, for identifying numbers or other designations, for a sufficient supply of certificates for subsequent transfers, for record and payment dates, for varying denominations, for communications to the owners of bonds or other obligations, for accounting, canceled certificate destruction, registration and release of securing interests, and for such other incidental matters pertaining to the registration of bonds or other obligations as the issuer may deem to be necessary or appropriate.

(3)(a) The state treasurer or a local treasurer may appoint (i) one or more of the fiscal agencies appointed from time to time by the state finance committee in accordance with chapter 43.80 RCW or (ii) other fiscal agents to act with respect to an issue of its bonds or other obligations as authenticating trustee, transfer agent, registrar, and paying or other agent and specify the rights and duties and means of compensation of any such fiscal agency so acting. The state treasurer or local treasurers may also enter into agreements with the fiscal agency or agencies in connection with the establishment and maintenance by such fiscal agency or agencies of a central depository system for the transfer or pledge of bonds or other obligations.

(b) The county treasurer as ex officio treasurer of a special district shall act as fiscal agent for such special district, unless the county treasurer appoints either one or more of the fiscal agencies appointed from time to time by the state finance committee in accordance with chapter 43.80 RCW or other fiscal agents selected in a manner consistent with RCW 43.80.120 to act with respect to an issue of its bonds or other obligations as authenticating trustee, transfer agent, registrar,

and paying or other agent and specify the rights and duties and means of compensation of any such fiscal agency.

(4) Nothing in this section precludes the issuer, or a trustee appointed by the issuer pursuant to any other provision of law, from itself performing, either alone or jointly with other issuers, fiscal agencies, or trustees, any transfer, registration, authentication, payment, or other function described in this section. [1995 c 38 § 7; 1994 c 301 § 11; 1985 c 84 § 1; 1983 c 167 § 3.]

**Acts of municipal officers ratified and confirmed—1995 c 38:** See note following RCW 3.02.045.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**39.46.040 Bonds—Issuer to determine amount, terms, conditions, interest, etc.** A local government authorized to issue bonds shall determine for the bond issue its amount, date or dates, terms not in excess of the maximum term otherwise provided in law, conditions, bond denominations, interest rate or rates, which may be fixed or variable, interest payment dates, maturity or maturities, redemption rights, registration privileges, manner of execution, price, manner of sale, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may be as provided in RCW 39.46.030. [1983 c 167 § 4.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**39.46.050 Bonds—Issuer authorized to establish lines of credit.** Each local government authorized to issue bonds is authorized to establish lines of credit with any qualified public depository to be drawn upon in exchange for its bonds or other obligations, to delegate to its treasurer authority to determine the amount of credit extended, and to pay interest and other finance or service charges. The interest rates on such bonds or other obligations may be a fixed rate or rates set periodically or a variable rate or rates determined by agreement of the parties. [2003 c 23 § 1; 1983 c 167 § 5.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**39.46.060 Bonds—Reproduction of physical instrument.** Where bonds are issued by the state or a local government as physical instruments, the bonds shall be printed, engraved, lithographed, typed, or reproduced and the manual or facsimile signatures of both a designated officer and chairperson of the governing body or chief executive shall be included on each bond. [1983 c 167 § 6.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**39.46.070 Bonds—Payment of costs of issuance and sale.** (1) Except as provided in subsection (2) of this section, the proceeds of any bonds issued by the state or a local government may be used to pay incidental costs and costs related to the sale and issuance of the bonds. Such costs include payments for fiscal and legal expenses, obtaining bond ratings, printing, engraving, advertising, establishing and funding reserve accounts and other accounts, an amount for working capital, capitalized interest for up to six months after comple-

tion of construction, necessary and related engineering, architectural, planning, and inspection costs, and other similar activities or purposes.

(2) In addition to the costs enumerated in subsection (1) of this section, costs authorized under this section include capitalized interest for up to seventy-two months from the date of issuance for bonds issued by the state for the construction of a public toll bridge under chapter 47.46 RCW. [2002 c 114 § 22; 1983 c 167 § 7.]

**Finding—Intent—2002 c 114:** See RCW 47.46.011.

**Captions not law—2002 c 114:** See note following RCW 47.46.011.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**39.46.100 RCW 39.46.010 through 39.46.070 constitutes alternative method.** RCW 39.46.010 through 39.46.070 shall be deemed to provide a complete, additional, and alternative method for the performance of those subjects authorized by these sections and shall be regarded as supplemental and additional to powers conferred by other state laws. Whenever bonds and other obligations are issued and sold in conformance with RCW 39.46.010 through 39.46.070, such issuance and sale need not comply with contrary requirements of other state laws applicable to the issuance and sale of bonds or other obligations. [1983 c 167 § 8.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**39.46.110 Local government general obligation bonds—Indebtedness—Payment—Notice by special district.** (1) General obligation bonds of local governments shall be subject to this section. Unless otherwise stated in law, the maximum term of any general obligation bond issue shall be forty years.

(2) General obligation bonds constitute an indebtedness of the local government issuing the bonds that are subject to the indebtedness limitations provided in Article VIII, section 6 of the state Constitution and are payable from tax revenues of the local government and such other money lawfully available and pledged or provided by the governing body of the local government for that purpose. Such governing body may pledge the full faith, credit and resources of the local government for the payment of general obligation bonds. The payment of such bonds shall be enforceable in mandamus against the local government and its officials. The officials now or hereafter charged by law with the duty of levying taxes pledged for the payment of general obligation bonds and interest thereon shall, in the manner provided by law, make an annual levy of such taxes sufficient together with other moneys lawfully available and pledge [pledged] therefor to meet the payments of principal and interest on the bonds as they come due.

(3) General obligation bonds, whether or not issued as physical instruments, shall be executed in the manner determined by the governing body or legislative body of the issuer. If the issuer is the county or a special district for which the county treasurer is the treasurer, the issuer shall notify the county treasurer at least thirty days in advance of authorizing the issuance of bonds or the incurrence of other certificates of indebtedness.

(4) Unless another statute specifically provides otherwise, the owner of a general obligation bond, or the owner of an interest coupon, issued by a local government shall not have any claim against the state arising from the general obligation bond or interest coupon.

(5) As used in this section, the term "local government" means every unit of local government, including municipal corporations, quasi municipal corporations, and political subdivisions, where property ownership is not a prerequisite to vote in the local government's elections. [1998 c 106 § 7; 1995 c 38 § 8; 1994 c 301 § 12; 1984 c 186 § 2.]

**Acts of municipal officers ratified and confirmed—1995 c 38:** See note following RCW 3.02.045.

**Purpose—1984 c 186:** "The purpose of this 1984 act is to provide simplified and uniform authorities for various local governments to issue and sell general obligation bonds. It is not the purpose of this 1984 act to alter the indebtedness limitation of local governments." [1984 c 186 § 1.]

**39.46.120 Notice of intent to sell general obligation bonds.** Notice of intent to sell general obligation bonds at a public sale shall be provided in a reasonable manner as determined by the legislative authority or governing body of the issuer. [1984 c 186 § 4.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**39.46.150 Revenue bonds—Alternative method of issuance—Limitations.** (1) Any local government authorized to issue revenue bonds may issue revenue bonds under this section and RCW 39.46.160. If a local government chooses to issue revenue bonds under this section and RCW 39.46.160, the issue shall be subject to the limitations and restrictions of these sections. The authority to issue revenue bonds under this section and RCW 39.46.160 is supplementary and in addition to any authority otherwise existing. The maximum term of any revenue bonds shall be forty years unless another statute authorizing the local government to issue revenue bonds provides for a different maximum term, in which event the local government may issue revenue bonds only with terms not in excess of such different maximum term.

(2) The governing body of a local government issuing revenue bonds shall create a special fund or funds, or use an existing special fund or funds, exclusively from which, along with reserve funds which may be created by the governing body, the principal and interest on such revenue bonds shall be payable. These reserve funds include those authorized to be created by RCW 39.46.160.

Subject to the limitations contained in this section, the governing body of a local government may provide such covenants as it may deem necessary to secure the payment of the principal of and interest on revenue bonds, and premium on revenue bonds, if any. Such covenants may include, but are not limited to, depositing certain revenues into a special fund or funds as provided in subsection (3) of this section; establishing, maintaining, and collecting fees, rates, charges, tariffs, or rentals, on facilities and services, the income of which is pledged for the payment of such bonds; operating, maintaining, managing, accounting, and auditing the local government; appointing trustees, depositaries, and paying agents; and any and all matters of like or different character, which affect the security or protection of the revenue bonds.

(3) The governing body may obligate the local government to set aside and pay into a special fund or funds created under subsection (2) of this section a proportion or a fixed amount of the revenues from the following: (a) The public improvements, projects, or facilities that are financed by the revenue bonds; or (b) the public utility or system, or an addition or extension to the public utility or system, where the improvements, projects, or facilities financed by the revenue bonds are a portion of the public utility or system; or (c) all the revenues of the local government; or (d) any other money legally available for such purposes. As used in this subsection, the term "revenues" includes the operating revenues of a local government that result from fees, rates, charges, tariffs, or rentals imposed upon the use or availability or benefit from projects, facilities, or utilities owned or operated by the local government and from related services provided by the local government and other revenues legally available to be pledged to secure the revenue bonds.

The proportion or fixed amount of revenue so obligated shall be a lien and charge against these revenues, subject only to maintenance and operating expenses. The governing body shall have due regard for the cost of maintenance and operation of the public utility, system, improvement, project, facility, addition, or extension that generates revenues obligated to be placed into the special fund or funds from which the revenue bonds are payable, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above such cost of maintenance and operation and the proportion or fixed amount, if any, of the revenue so previously pledged. Other revenues, including tax revenues, lawfully available for maintenance or operation of revenue generating facilities may be used for maintenance and operation purposes even though the facilities are acquired, constructed, expanded, replaced, or repaired with moneys arising from the sale of revenue bonds. However, the use of these other revenues for maintenance and operation purposes shall not be deemed to directly or indirectly guarantee the revenue bonds or create a general obligation. The obligation to maintain and impose fees, rates, charges, tariffs, or rentals at levels sufficient to finance maintenance and operations shall remain if the other revenues available for such purposes diminish or cease.

The governing body may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(4) A revenue bond issued by a local government shall not constitute an obligation of the state, either general or special, nor a general obligation of the local government issuing the bond, but is a special obligation of the local government issuing the bond, and the interest and principal on the bond shall only be payable from the special fund or funds established pursuant to subsection (2) of this section, the revenues lawfully pledged to the special fund or funds, and any lawfully created reserve funds. The owner of a revenue bond shall not have any claim for the payment thereof against the local government arising from the revenue bond except for payment from the special fund or funds, the revenues lawfully pledged to the special fund or funds, and any lawfully created reserve funds. The owner of a revenue bond issued by a local government shall not have any claim against the state

arising from the revenue bond. Tax revenues shall not be used directly or indirectly to secure or guarantee the payment of the principal of or interest on revenue bonds.

[(5)] The substance of the limitations included in this subsection shall be plainly printed, written, engraved, or reproduced on: (a) Each revenue bond that is a physical instrument; (b) the official notice of sale; and (c) each official statement associated with the bonds.

(6) The authority to create a fund shall include the authority to create accounts within a fund.

(7) Local governments issuing revenue bonds, payable from revenues derived from projects, facilities, or utilities, shall covenant to maintain and keep these projects, facilities, or utilities in proper operating condition for their useful life. [1986 c 168 § 1.]

*Funds for reserve purposes may be included in issue amount: RCW 39.44.140.*

**39.46.160 Revenue bonds—Alternative method of issuance—Bonds may include reserve funds.** Any local government issuing revenue bonds under this section and RCW 39.46.150 may include in the amount of any such issue money for the purpose of establishing, maintaining, or increasing reserve funds to:

- (1) Secure the payment of the principal of and interest on such revenue bonds; or
- (2) Provide for replacements or renewals of or repairs or betterments to revenue producing facilities; or
- (3) Provide for contingencies, including, but not limited to, loss of revenue caused by such contingencies. [1986 c 168 § 2.]

**Chapter 39.48 RCW**

**BONDS SOLD TO GOVERNMENT AT PRIVATE SALE**

Sections

- 39.48.010 Authority conferred.
- 39.48.020 Amortization—Requirements relaxed.
- 39.48.030 "Issuer" defined.
- 39.48.040 Chapter optional.

**39.48.010 Authority conferred.** Bonds and securities of all kinds heretofore or hereafter authorized, issued by any issuing corporation or district (hereinafter called the "issuer" and as hereinafter specified), whether such bonds and securities be issued for such issuer itself or for any other taxing or assessment district within its limits, and whether payable in whole or in part out of and from general taxes or payable in whole or in part out of and from the earnings to be derived from any utility, system, construction, work, or works, belonging to or operated by any such issuer, or payable in whole or in part out of and from "local" or "benefit" assessments upon lands within any assessment district or assessment subdivision within any such issuer, may be sold to the United States government or to any department, corporation or agency thereof by private sale without giving any prior notice thereof by publication or otherwise and in such manner as the governing authority of such issuer may provide: PROVIDED, Only that bonds or other securities sold at private sale under the authority of this chapter shall bear interest

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at a rate or rates as authorized by the issuer and that all bonds and securities sold and issued under the authority of this chapter shall be sold, if now required by existing law, at not less than par and accrued interest. [1970 ex.s. c 56 § 59; 1969 ex.s. c 232 § 76; 1933 ex.s. c 30 § 1; RRS § 5583-11.]

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.52.020.

**39.48.020 Amortization—Requirements relaxed.** It shall be proper to provide with respect to any bonds now required to be amortized as provided by \*RCW 39.44.010 through 39.44.080, that such amortized annual maturities shall commence to be payable at any time on or before five years from the date of said bonds, and that any bonds, or any part thereof, issued under the authority of this chapter, shall be redeemable prior to their fixed maturities, as provided by the governing board or authority of any such issuer. [1933 ex.s. c 30 § 2; RRS § 5583-12.]

**\*Reviser's note:** RCW 39.44.010, 39.44.011, 39.44.020, 39.44.030, 39.44.060, and 39.44.080 were repealed by 1984 c 186 § 70.

**39.48.030 "Issuer" defined.** The issuing corporations, districts, and subdivisions hereinbefore referred to and described as "issuer", shall include any county, city, town, school district, port district, metropolitan park district, taxing district, assessment district or any public corporation or municipal corporation authorized by existing law to issue bonds, securities or other evidences of indebtedness for itself or for any other taxing or assessment district therein or department thereof. [1933 ex.s. c 30 § 3; RRS § 5583-13.]

**39.48.040 Chapter optional.** It shall be optional with any such issuer, at its discretion, to exercise all or any of the powers conferred by this chapter in connection with the adoption and exercise by any such issuer of the provisions and powers granted by existing law. [1933 ex.s. c 30 § 4; RRS § 5583-14.]

**Chapter 39.50 RCW**

**SHORT-TERM OBLIGATIONS—MUNICIPAL CORPORATIONS**

Sections

- 39.50.010 Definitions.
- 39.50.020 Short-term obligations authorized.
- 39.50.030 Issuance of short-term obligations—Procedure—Interest rate—Contracts for future sale.
- 39.50.040 Refunding and renewal of short-term obligations.
- 39.50.050 Short-term obligations—Security.
- 39.50.060 Nonvoted general indebtedness.
- 39.50.070 Funds for payment of principal and interest.
- 39.50.900 Chapter cumulative—Applicability to joint operating agencies.

**39.50.010 Definitions.** As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

- (1) "Governing body" means the legislative authority of a municipal corporation by whatever name designated;
- (2) "Local improvement district" includes local improvement districts, utility local improvement districts, road

improvement districts, and other improvement districts that a municipal corporation is authorized by law to establish;

(3) "Municipal corporation" means any city, town, county, water-sewer district, school district, port district, public utility district, metropolitan municipal corporation, public transportation benefit area, park and recreation district, irrigation district, fire protection district or any other municipal or quasi municipal corporation described as such by statute, or regional transit authority, except joint operating agencies under chapter 43.52 RCW;

(4) "Ordinance" means an ordinance of a city or town or resolution or other instrument by which the governing body of the municipal corporation exercising any power under this chapter takes formal action and adopts legislative provisions and matters of some permanency; and

(5) "Short-term obligations" are warrants, notes, capital leases, or other evidences of indebtedness, except bonds. [2001 c 299 § 16; 1999 c 153 § 54; 1998 c 106 § 8; 1985 c 332 § 8; 1982 c 216 § 2.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**39.50.020 Short-term obligations authorized.** Subject to any applicable budget requirements, any municipal corporation may borrow money and issue short-term obligations as provided in this chapter, the proceeds of which may be used for any lawful purpose of the municipal corporation. Short-term obligations may be issued in anticipation of the receipt of revenues, taxes, or grants or the sale of (1) general obligation bonds if the bonds may be issued without the assent of the voters or if previously ratified by the voters; (2) revenue bonds if the bonds have been authorized by ordinance; (3) local improvement district bonds if the bonds have been authorized by ordinance. These short-term obligations shall be repaid out of money derived from the source or sources in anticipation of which they were issued or from any money otherwise legally available for this purpose. [1982 c 216 § 3.]

**39.50.030 Issuance of short-term obligations—Procedure—Interest rate—Contracts for future sale.** (1) The issuance of short-term obligations shall be authorized by ordinance of the governing body which ordinance shall fix the maximum amount of the obligations to be issued or, if applicable, the maximum amount which may be outstanding at any time, the maximum term and interest rate or rates to be borne thereby, the manner of sale, maximum price, form including bearer or registered as provided in RCW 39.46.030, terms, conditions, and the covenants thereof. For those municipalities and taxing and assessment districts for which the county treasurer is not the designated treasurer by law, the ordinance may provide for designation and employment of a paying agent for the short-term obligations and may authorize a designated representative of the municipal corporation, subject to the terms of the ordinance in selling and delivering short-term obligations authorized and fixing the dates, price, interest rates, and other details as may be specified in the ordinance. For the county and those taxing and assessment districts for which the county treasurer is the designated treasurer by law or other appointment, the county treasurer shall be notified thirty days in advance of borrowing under this chapter and will be the designated paying agent to act on its

behalf for all payments of principal, interest, and penalties for that obligation, subject to the terms of the ordinance in selling and delivering short-term obligations authorized and fixing the dates, price, interest rates, and other details as may be specified in the ordinance. Short-term obligations issued under this section shall bear such fixed or variable rate or rates of interest as the governing body considers to be in the best interests of the municipal corporation. Variable rates of interest may be fixed in relationship to such standard or index as the governing body designates.

The governing body may make contracts for the future sale of short-term obligations pursuant to which the purchasers are committed to purchase the short-term obligations from time to time on the terms and conditions stated in the contract, and may pay such consideration as it considers proper for the commitments. Short-term obligations issued in anticipation of the receipt of taxes shall be paid within six months from the end of the fiscal year in which they are issued. For the purpose of this subsection, short-term obligations issued in anticipation of the sale of general obligation bonds shall not be considered to be obligations issued in anticipation of the receipt of taxes.

(2) Notwithstanding subsection (1) of this section, such short-term obligations may be issued and sold in accordance with chapter 39.46 RCW. [2001 c 299 § 17; 1995 c 38 § 9; 1994 c 301 § 13; 1985 c 71 § 1; 1983 c 167 § 112; 1982 c 216 § 4.]

**Acts of municipal officers ratified and confirmed—1995 c 38:** See note following RCW 3.02.045.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**39.50.040 Refunding and renewal of short-term obligations.** Short-term obligations may, from time to time, be renewed or refunded by the issuance of short-term obligations and may be funded by the issuance of revenue, local improvement district, special assessment, or general obligation bonds. Short-term obligations payable from taxes shall not be renewed or refunded to a date later than six months from the end of the fiscal year in which the original short-term obligation was issued. For the purpose of this section, short-term obligations issued in anticipation of the sale of general obligation bonds shall not be considered to be short-term obligations payable from taxes. [1985 c 332 § 9; 1985 c 71 § 2; 1982 c 216 § 5.]

**39.50.050 Short-term obligations—Security.** Short-term obligations issued in anticipation of the receipt of taxes or the sale of general obligation bonds and the interest thereon shall be secured by the full faith, credit, taxing power, and resources of the municipal corporation. Short-term obligations issued in anticipation of the sale of revenue or local improvement district bonds and the interest thereon may be secured in the same manner as the revenue and local improvement district bonds in anticipation of which the obligations are issued and by an undertaking to issue the bonds. Short-term obligations issued in anticipation of grants, loans, or other sources of money shall be secured in the manner set forth in the ordinance authorizing their issuance. [1982 c 216 § 6.]

**39.50.060 Nonvoted general indebtedness.** A municipal corporation may incur nonvoted general indebtedness under this chapter up to an amount which, when added to all other authorized and outstanding nonvoted indebtedness of the municipal corporation, is equal to the maximum amount of indebtedness the municipal corporation is otherwise permitted to incur without a vote of the electors. [1982 c 216 § 7.]

**39.50.070 Funds for payment of principal and interest.** For the purpose of providing funds for the payment of principal of and interest on short-term obligations, the governing body may authorize the creation of a special fund or funds and provide for the payment from authorized sources to such funds of amounts sufficient to meet principal and interest requirements. [1982 c 216 § 8.]

**39.50.900 Chapter cumulative—Applicability to joint operating agencies.** The authority granted by this chapter shall be in addition and supplemental to any authority previously granted and shall not limit any other powers or authority previously granted to any municipal corporation. The authority granted by this chapter to public utility districts organized under Title 54 RCW shall not extend to joint operating agencies organized under chapter 43.52 RCW. [1982 c 216 § 9.]

### Chapter 39.52 RCW

## FUNDING INDEBTEDNESS IN COUNTIES, CITIES AND TOWNS

#### Sections

39.52.010	Issuance of funding bonds authorized.
39.52.015	Validation of prior bond issues.
39.52.020	Limitations on issuance of bonds.
39.52.035	Tax levy—Purpose.
39.52.050	"Corporate authorities" defined.

*Cities and towns, ratification and funding of indebtedness: Chapter 35.40 RCW.*

*Metropolitan municipal corporations, funding and refunding bonds: RCW 35.58.470.*

*Port districts, funding and refunding indebtedness: Chapter 53.44 RCW.*

*Public utility districts, funding and refunding bonds: RCW 54.24.090.*

*School districts, refunding bonds: RCW 28A.530.040.*

**39.52.010 Issuance of funding bonds authorized.** Any county, city, or town in the state of Washington which now has or may hereafter have an outstanding indebtedness evidenced by warrants or bonds, including warrants or bonds of any county, city, or town which are special fund obligations of and constitute a lien upon the waterworks or other public utilities of such county, city, or town, and are payable only from the income or funds derived or to be derived therefrom, whether issued originally within the limitations of the Constitution of this state, or of any law thereof, or whether such outstanding indebtedness has been or may hereafter be validated or legalized in the manner prescribed by law, may, by its corporate authorities, provide by ordinance or resolution for the issuance of funding bonds with which to take up and cancel such outstanding indebtedness in the manner hereinafter described, said bonds to constitute general obligations

of such county, city, or town: PROVIDED, That special fund obligations payable only from the income funds of the public utility, shall not be refunded by the issuance of general municipal bonds where voter approval is required before general municipal bonds may be issued for such public utility purposes, unless such general municipal bonds shall have been previously authorized. Nothing in this chapter shall be so construed as to prevent any such county, city, or town from funding its indebtedness as now provided by law. [1995 2nd sp.s. c 17 § 6; 1984 c 186 § 36; 1917 c 145 § 1; 1895 c 170 § 1; RRS § 5617.]

**Severability—1995 2nd sp.s. c 17:** See RCW 43.99K.900.

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**39.52.015 Validation of prior bond issues.** That all bonds heretofore voted or issued, and which may have been or may hereafter be issued by any county, city or town, for any of the purposes authorized by the preceding section as hereby amended, including general fund bonds issued for the purpose of refunding special utility fund bonds or warrants, shall be validated and have the same force and effect as though said section had been in full force and effect at the time said bonds were either authorized or issued. [1917 c 145 § 2; RRS § 5618.]

**39.52.020 Limitations on issuance of bonds.** No bonds issued under this chapter shall be issued for a longer period than twenty years. Nothing in this chapter shall be deemed to authorize the issuing of any funding bonds which exceeds any constitutional or statutory limitations of indebtedness. Such bonds shall be issued and sold in accordance with chapters 39.46 and 39.53 RCW, exclusive of RCW 39.53.120. [1995 2nd sp.s. c 17 § 7; 1984 c 186 § 37; 1983 c 167 § 113; 1970 ex.s. c 56 § 60; 1969 ex.s. c 232 § 31; 1895 c 170 § 2; RRS § 5619.]

**Severability—1995 2nd sp.s. c 17:** See RCW 43.99K.900.

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Purpose—1970 ex.s. c 56:** "Because market conditions are such that the state, state agencies, state colleges and universities, and the political subdivisions, municipal corporations and quasi municipal corporations of this state are finding it increasingly difficult and, in some cases, impossible to market bond issues and all other obligations, at the maximum permissible rate of interest payable on such bonds and obligations, it is the purpose of this 1970 amendatory act to remove all maximum rates of interest payable on such bonds and obligations." [1970 ex.s. c 56 § 1; 1969 ex.s. c 232 § 1.]

**Validation—Saving—1969 ex.s. c 232:** "All bonds, the issuance of which was authorized or ratified at a general or special election held within the issuing jurisdiction prior to the effective date of this amendatory act or the proposition for the issuance of which will be submitted at such an election pursuant to action of the legislative authority of the issuer taken prior to the effective date of this amendatory act, may be sold and issued with an interest rate or rates greater than any interest rate restriction contained in the ballot proposition or ordinance or resolution relating to such authorization or ratification if such bonds are sold and issued with an interest rate or rates not greater than those permitted by the applicable provision of this amendatory act." [1969 ex.s. c 232 § 94.]

**Severability—1969 ex.s. c 232:** "If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this 1969 amendatory act, such judgment or decree shall not affect, impair or nullify the remainder of this act, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this act so adjudged to be invalid or unconstitutional." [1969 ex.s. c 232 § 95.]

*Bonds, form, terms of sale, payment, etc.: Chapter 39.44 RCW.*

**39.52.035 Tax levy—Purpose.** The corporate authorities of any such county, city or town shall provide annually by ordinance or resolution for the levy and extension on the tax rolls of such county, city or town, and for the collection thereof, of a direct annual tax in addition to all other county, city or town taxes to be levied according to law, which shall be sufficient to meet the interest on all of said bonds promptly as the same matures, and also sufficient to fully pay each series of bonds as the same matures: PROVIDED, That such ordinance or resolution shall not be repealed until the levy therein provided for shall be fully paid, or the bonds both principal and interest shall be paid or canceled. [1895 c 170 § 4; RRS § 5621. Formerly RCW 39.52.030, part.]

**39.52.050 "Corporate authorities" defined.** The words "corporate authorities", used in this chapter, shall be held to mean the county legislative authority, or the council or commission of the city or town. [1984 c 186 § 38; 1895 c 170 § 6; RRS § 5623.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

### Chapter 39.53 RCW REFUNDING BOND ACT

#### Sections

39.53.010	Definitions.
39.53.020	Issuance authorized—Purposes—Saving to public body, criteria.
39.53.030	Refunding bonds may be exchanged for bonds to be refunded or sold.
39.53.040	What bonds may be refunded—Refunding plans—Redemption of refunding bonds.
39.53.045	Bonds payable from special assessments—Not subject to refunding.
39.53.050	Refunding bonds, principal amount—Disposition of reserves held to secure the bonds to be refunded.
39.53.060	Application of proceeds of sale of refunding bonds and other funds—Investment in government obligations—Incidental expenses.
39.53.070	Application of proceeds of sale of refunding bonds and other funds—Contracts for safekeeping and application—Use to pay and secure refunding bonds—Pledge of revenues—Duty to provide sufficient money to accomplish refunding.
39.53.080	Pledge of revenues to payment of refunding bonds when amounts sufficient to pay revenue bonds to be refunded are irrevocably set aside.
39.53.090	Annual maturities of general obligation refunding bonds issued to refund voted general obligation bonds.
39.53.100	Use of deposit moneys and investments in computing indebtedness.
39.53.110	Refunding and other bonds may be issued in combination.
39.53.120	Refunding bonds to be issued in accordance with laws applicable to type of bonds to be refunded.
39.53.130	Amendment of power contracts pursuant to refunding of certain bond issues.
39.53.140	Issuance of general obligation refunding bonds to refund general obligation or revenue bonds.
39.53.900	Short title.
39.53.910	Additional authority—Effect as to other laws.
39.53.920	Severability—1965 ex.s. c 138.
39.53.921	Severability—1977 ex.s. c 262.

**39.53.010 Definitions.** Except where the context otherwise requires, the definitions in this section apply throughout this chapter:

(1) "Bond" means any revenue bond or general obligation bond.

(2) "General obligation bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a public body which constitutes an indebtedness within the meaning of the constitutional debt limitation.

(3) "Governing body" means the council, commission, board of commissioners, board of directors, board of trustees, board of regents, or other legislative body of the public body designated herein in which the legislative powers of the public body are vested. With respect to the state, "governing body" means the state finance committee.

(4) "Government obligations" means any of the following: (a) Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America and bank certificates of deposit secured by such obligations; (b) bonds, debentures, notes, participation certificates, or other obligations issued by the banks for cooperatives, the federal intermediate credit bank, the federal home loan bank system, the export-import bank of the United States, federal land banks, or the federal national mortgage association; (c) public housing bonds and project notes fully secured by contracts with the United States; and (d) obligations of financial institutions insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation, to the extent insured or to the extent guaranteed as permitted under any other provision of state law.

(5) "Issuer" means the public body issuing any bond or bonds.

(6) "Ordinance" means an ordinance of a city or town, or ordinance, resolution or other instrument by which the governing body of the public body exercising any power under this chapter takes formal action and adopts legislative provisions and matters of some permanency.

(7) "Public body" means the state of Washington, its agencies, institutions, political subdivisions, and municipal and quasi-municipal corporations now or hereafter existing under the laws of the state of Washington.

(8) "Refunding bonds" means bonds issued for the purpose of paying the principal of or redemption premiums or interest on any outstanding bonds of the issuer, its predecessor, or a related public body.

(9) "Refunding plan" means the plan adopted by an ordinance of a public body to issue refunding bonds and redeem the bonds to be refunded.

(10) "Revenue bond" means any bond, note, warrant, certificate of indebtedness, or other obligation for the payment of money that is payable from designated revenues, special assessments, or a special fund but excluding any obligation constituting an indebtedness within the meaning of the constitutional debt limitation. [1999 c 230 § 1; 1984 c 186 § 68; 1973 1st ex.s. c 25 § 1; 1965 ex.s. c 138 § 2.]

**Application—Construction—1999 c 230:** "The authority of a public body to issue refunding bonds pursuant to this act is additional to any existing authority to issue such bonds and nothing in this act shall prevent the issuance of such bonds pursuant to any other law, and this act shall not be construed to amend any existing law authorizing the issuance of refunding bonds by a public body." [1999 c 230 § 13.]

**Severability—1999 c 230:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 230 § 14.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**39.53.020 Issuance authorized—Purposes—Saving to public body, criteria.** The governing body of any public body may by ordinance provide for the issuance of refunding bonds without an election (1) in order to pay or discharge all or any part of an outstanding series or issue of bonds, including any redemption premiums or interest thereon, in arrears or about to become due, and for which sufficient funds are not available, (2) when necessary or in the best interest of the public body to modify debt service or reserve requirements, sources of payment, covenants, or other terms of the bonds to be refunded, or (3) in order to effect a saving to the public body. To determine whether or not a saving will be effected, consideration shall be given to the interest to fixed maturities of the refunding bonds and the bonds to be refunded, the costs of issuance of the refunding bonds, including any sale discount, the redemption premiums, if any, to be paid, and the known earned income from the investment of the refunding bond proceeds pending redemption of the bonds to be refunded. [1999 c 230 § 2; 1977 ex.s. c 262 § 1; 1974 ex.s. c 111 § 2; 1965 ex.s. c 138 § 3.]

**Application—Construction—Severability—1999 c 230:** See notes following RCW 39.53.010.

**Severability—1974 ex.s. c 111:** See note following RCW 39.42.080.

**39.53.030 Refunding bonds may be exchanged for bonds to be refunded or sold.** Any refunding bonds issued may be delivered in exchange for the bonds to be refunded or may be sold in such manner and at such price as the governing body may in its discretion determine advisable. [1999 c 230 § 3; 1973 1st ex.s. c 25 § 2; 1965 ex.s. c 138 § 4.]

**Application—Construction—Severability—1999 c 230:** See notes following RCW 39.53.010.

**39.53.040 What bonds may be refunded—Refunding plans—Redemption of refunding bonds.** Bonds may be refunded under this chapter or under any other law of this state which authorizes the issuance of refunding bonds. In any refunding plan under this chapter the governing body shall provide irrevocably in the ordinance authorizing the issuance of the advance refunding bonds for the redemption or payment of the bonds to be refunded.

The ordinance authorizing the issuance of refunding bonds under this chapter may contain such provisions for the redemption of the refunding bonds prior to maturity and for payment of a premium upon such redemption as the governing body in its discretion may determine advisable. [1999 c 230 § 4; 1977 ex.s. c 262 § 2; 1973 1st ex.s. c 25 § 3; 1965 ex.s. c 138 § 5.]

**Application—Construction—Severability—1999 c 230:** See notes following RCW 39.53.010.

**39.53.045 Bonds payable from special assessments—Not subject to refunding.** Bonds payable solely from special assessments or special assessments and a guaranty fund issued on or prior to June 7, 1984, shall not be subject to refunding under this chapter. [1984 c 186 § 69.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**39.53.050 Refunding bonds, principal amount—Disposition of reserves held to secure the bonds to be refunded.** The principal amount of refunding bonds may

exceed the principal amount of the bonds to be refunded by an amount deemed reasonably required to effect such refunding. The principal amount of the refunding bonds may be less than or the same as the principal amount of the bonds to be refunded so long as provision is duly and sufficiently made for the retirement or redemption of such bonds to be refunded. Any reserves held to secure the bonds to be refunded, or other available money, may be used to accomplish the refunding in accordance with the refunding plan. Reserves not so used shall be pledged as security for the refunding bonds to the extent the reserves, if any, are required. The balance of any such reserves may be used for any lawful purpose. [1999 c 230 § 5; 1983 1st ex.s. c 69 § 1; 1977 ex.s. c 262 § 3; 1974 ex.s. c 111 § 3; 1965 ex.s. c 138 § 6.]

**Application—Construction—Severability—1999 c 230:** See notes following RCW 39.53.010.

**Severability—1974 ex.s. c 111:** See note following RCW 39.42.080.

**39.53.060 Application of proceeds of sale of refunding bonds and other funds—Investment in government obligations—Incidental expenses.** Prior to the application of the proceeds derived from the sale of refunding bonds to the purposes for which such bonds have been issued, such proceeds, together with any other funds the governing body may set aside for the payment of the bonds to be refunded, may be invested and reinvested only in government obligations maturing or having guaranteed redemption prices at the option of the holder at such time or times as may be required to provide funds sufficient to pay principal, interest and redemption premiums, if any, in accordance with the refunding plan. To the extent incidental expenses have been capitalized, such bond proceeds may be used to defray such expenses. [1999 c 230 § 6; 1973 1st ex.s. c 25 § 4; 1965 ex.s. c 138 § 7.]

**Application—Construction—Severability—1999 c 230:** See notes following RCW 39.53.010.

**39.53.070 Application of proceeds of sale of refunding bonds and other funds—Contracts for safekeeping and application—Use to pay and secure refunding bonds—Pledge of revenues—Duty to provide sufficient money to accomplish refunding.** The governing body may contract with respect to the safekeeping and application of the refunding bond proceeds and other funds included therewith and the income therefrom including the right to appoint a trustee which may be any trust company or state or national bank having powers of a trust company within or without the state of Washington. The governing body may provide in the refunding plan that until such moneys are required to redeem or retire the bonds to be refunded, the refunding bond proceeds and other funds, and the income therefrom shall be used to pay and secure the payment of the principal of and interest on the refunding bonds. The governing body may additionally pledge for the payment of revenue refunding bonds any revenues which might legally be pledged for the payment of revenue bonds of the issuer of the type to be refunded. Provisions must be made by the governing body for moneys sufficient in amount to accomplish the refunding as scheduled. [1999 c 230 § 7; 1973 1st ex.s. c 25 § 5; 1965 ex.s. c 138 § 8.]

**Application—Construction—Severability—1999 c 230:** See notes following RCW 39.53.010.

**39.53.080 Pledge of revenues to payment of refunding bonds when amounts sufficient to pay revenue bonds to be refunded are irrevocably set aside.** When a public body has irrevocably set aside for and pledged to the payment of revenue bonds to be refunded refunding bond proceeds and other moneys in amounts which together with known earned income from the investment thereof are sufficient in amount to pay the principal of and interest and any redemption premiums on such revenue bonds as the same become due and to accomplish the refunding as scheduled, the governing body may provide that the refunding revenue bonds shall be payable from any source which, either at the time of the issuance of the refunding bonds or the revenue bonds to be refunded, might legally be or have been pledged for the payment of the revenue bonds to be refunded to the extent it may legally do so, notwithstanding the pledge of such revenues for the payment of the revenue bonds to be refunded. [1999 c 230 § 8; 1965 ex.s. c 138 § 9.]

**Application—Construction—Severability—1999 c 230:** See notes following RCW 39.53.010.

**39.53.090 Annual maturities of general obligation refunding bonds issued to refund voted general obligation bonds.** The various annual maturities of general obligation refunding bonds issued to refund voted general obligation bonds shall not extend over a longer period of time than the bonds to be refunded. Such maturities may be changed in amount or shortened in term if the estimated respective annual principal and interest requirements of the refunding bonds, computed upon the anticipated effective interest rate the governing body shall in its discretion determine will be borne by such bonds, will not exceed the respective annual principal and interest requirements of the bonds to be refunded, except the issuer may increase the principal amount of annual maturities for the purpose of rounding out maturities to the nearest five thousand dollars. [1999 c 230 § 9; 1965 ex.s. c 138 § 10.]

**Application—Construction—Severability—1999 c 230:** See notes following RCW 39.53.010.

**39.53.100 Use of deposit moneys and investments in computing indebtedness.** In computing indebtedness for the purpose of any constitutional or statutory debt limitation there shall be deducted from the amount of outstanding indebtedness the amounts of money and investments credited to or on deposit for general obligation bond retirement. [1973 1st ex.s. c 25 § 6; 1965 ex.s. c 138 § 11.]

**39.53.110 Refunding and other bonds may be issued in combination.** Refunding bonds and bonds for any other purpose or purposes authorized may be issued separately or issued in combination in one or more series or issues by the same issuer. [1999 c 230 § 10; 1965 ex.s. c 138 § 12.]

**Application—Construction—Severability—1999 c 230:** See notes following RCW 39.53.010.

**39.53.120 Refunding bonds to be issued in accordance with laws applicable to type of bonds to be**

**refunded.** Except as specifically provided in this chapter, refunding bonds issued under this chapter shall be issued in accordance with the provisions of law applicable to the type of bonds of the issuer to be refunded, at the time of the issuance of either the refunding bonds or the bonds to be refunded. [1999 c 230 § 11; 1965 ex.s. c 138 § 13.]

**Application—Construction—Severability—1999 c 230:** See notes following RCW 39.53.010.

**39.53.130 Amendment of power contracts pursuant to refunding of certain bond issues.** If bonds are to be issued under this chapter for refunding of any bonds issued specifically to finance any electric power and energy project or facility and there are contracts in existence for the sale of electric power and energy generated by such project or facility wherein the cost of power to a purchaser specifically includes a portion of the debt service on the bonds to be refunded, such power contracts shall be amended to reflect in each year during the remaining terms of such contracts that portion of the savings to be realized from such refunding during each such year equal to the percentage of power output from such project or facility purchased by the purchaser under such power contracts. Nothing in this chapter shall be construed to alter, modify or change any such power contracts without the mutual agreement of the parties thereto. [1965 ex.s. c 138 § 15.]

**39.53.140 Issuance of general obligation refunding bonds to refund general obligation or revenue bonds.** Any public body may issue general obligation refunding bonds to refund any general obligation or revenue bonds of such issuer or its agencies or instrumentalities. The payment of general obligation refunding bonds may be additionally secured by a pledge of the revenues pledged to the payment of the revenue bonds to be refunded.

If the payment of revenue bonds to be refunded by general obligation bonds of the state is secured by (1) fees collected by the state as license fees for motor vehicles, or (2) excise taxes collected by the state on the sale, distribution or use of motor vehicle fuel, or (3) interest on the permanent school fund, then the state shall also pledge to the payment of such refunding bonds the same fees, excise taxes, or interest that were pledged to the payment of the revenue bonds to be refunded.

Any public body may issue revenue refunding bonds to refund any general obligation of such issuer or its agencies or instrumentalities if the bonds to be refunded were issued for purposes for which those revenue refunding bonds could be issued. [1999 c 230 § 12; 1974 ex.s. c 111 § 4; 1973 1st ex.s. c 25 § 7.]

**Application—Construction—Severability—1999 c 230:** See notes following RCW 39.53.010.

**Severability—1974 ex.s. c 111:** See note following RCW 39.42.080.

**39.53.900 Short title.** This chapter shall be known as the "Refunding Bond Act." [1965 ex.s. c 138 § 1.]

**39.53.910 Additional authority—Effect as to other laws.** The authority of a public body to issue refunding bonds pursuant to this chapter is additional to any existing authority

to issue such bonds and nothing in this chapter shall prevent the issuance of such bonds pursuant to any other law, and this chapter shall not be construed to amend any existing law authorizing the issuance of refunding bonds by a public body. [1965 ex.s. c 138 § 14.]

**39.53.920 Severability—1965 ex.s. c 138.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 ex.s. c 138 § 16.]

**39.53.921 Severability—1977 ex.s. c 262.** If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 262 § 4.]

### Chapter 39.56 RCW WARRANTS

#### Sections

39.56.020	Rate on municipal warrants.
39.56.030	Issuing officer to fix rate.
39.56.040	Cancellation of municipal warrants.
39.56.050	Municipal corporations authorized to establish line of credit for payment of warrants—Interest.

*Interest on judgments:* RCW 4.56.110.

*Usurious rates of interest:* Chapter 19.52 RCW.

**39.56.020 Rate on municipal warrants.** All county, city, town and school warrants, and all warrants or other evidences of indebtedness, drawn upon or payable from any public funds, shall bear interest at a rate or rates as authorized by the issuing authority. [1970 ex.s. c 56 § 106; 1899 c 80 § 4; RRS § 7302. Prior: 1895 c 136 § 3.]

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

*Cities and towns, local improvement district warrants, interest rate:* RCW 35.45.130.

**39.56.030 Issuing officer to fix rate.** It shall be the duty of every public officer issuing public warrants to make monthly investigation to ascertain the market value of the current warrants issued by him, and he shall, so far as practicable, fix the rate of interest on the warrants issued by him during the ensuing month so that the par value shall be the market value thereof. [1981 c 156 § 16; 1981 c 10 § 4; 1899 c 80 § 5; RRS § 7303.]

**39.56.040 Cancellation of municipal warrants.** Registered or interest bearing warrants of any municipal corporation not presented within one year of the date of their call, or other warrants not presented within one year of their issue, shall be canceled by passage of a resolution of the governing body of the municipal corporation, and upon notice of the passage of such resolution the auditor of the municipal corporation and the treasurer of the municipal corporation shall transfer all records of such warrants so as to leave the funds as if such warrants had never been drawn. [1975 1st ex.s. c 131 § 1.]

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**39.56.050 Municipal corporations authorized to establish line of credit for payment of warrants—Interest.** See RCW 43.09.2853.

### Chapter 39.58 RCW

### PUBLIC FUNDS—DEPOSITS AND INVESTMENTS— PUBLIC DEPOSITARIES

#### Sections

39.58.010	Definitions.
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39.58.040	General powers of commission.
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39.58.080	Deposit of public funds in public depository required—Deposits in institutions located outside the state.
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39.58.090	Authority to secure deposits in accordance with chapter—Bonds and securities for deposits dispensed with.
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39.58.130	Investment deposits—Net worth of public depository.
39.58.135	Limitations on deposits.
39.58.140	Liability of treasurers.
39.58.155	Statewide custodian—Exemption from chapter.
39.58.750	Receipt, disbursement, or transfer of public funds by wire or other electronic communication means authorized.

*Department of financial institutions:* Chapter 43.320 RCW.

*State investment board:* Chapter 43.33A RCW.

*Surplus funds in state treasury, investment program:* Chapter 43.86A RCW.

**39.58.010 Definitions.** In this chapter, unless the context otherwise requires:

(1) "Public funds" means moneys under the control of a treasurer or custodian belonging to, or held for the benefit of, the state or any of its political subdivisions, public corporations, municipal corporations, agencies, courts, boards, commissions, or committees, including moneys held as trustee, agent, or bailee;

(2) "Public depository" means a financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has been approved by the commission to hold public deposits, and which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability. Addition of the word "bank" denotes a bank, trust company, or national banking association and the word "thrift" denotes a savings association or savings bank;

(3) "Loss" means the issuance of an order by a regulatory or supervisory authority or a court of competent jurisdiction (a) restraining a public depository from making payments of deposit liabilities or (b) appointing a receiver for a public depository;

(4) "Commission" means the Washington public deposit protection commission created under RCW 39.58.030;

(5) "Eligible collateral" means securities which are enumerated in RCW 39.58.050 (5) and (6) as eligible collateral for public deposits;

(6) The "maximum liability" of a public depository on any given date means a sum equal to ten percent of (a) all public deposits held by the \*qualified public depository on the then most recent commission report date, or (b) the average of the balances of said public deposits on the last four immediately preceding reports required pursuant to RCW 39.58.100, whichever amount is greater, less any assessments paid to the commission pursuant to this chapter since the then most recent commission report date;

(7) "Public funds available for investment" means such public funds as are in excess of the anticipated cash needs throughout the duration of the contemplated investment period;

(8) "Investment deposits" means time deposits, money market deposit accounts, and savings deposits of public funds available for investment;

(9) "Treasurer" shall mean the state treasurer, a county treasurer, a city treasurer, a treasurer of any other municipal corporation, and any other custodian of public funds;

(10) "Financial institution" means any national or state chartered commercial bank or trust company, savings bank, or savings association, or branch or branches thereof, located in this state and lawfully engaged in business;

(11) "Commission report" means a formal accounting rendered by all public depositories to the commission in response to a demand for specific information made by the commission detailing pertinent affairs of each public depository as of the close of business on a specified date, which is the "commission report date." "Commission report due date" is the last day for the timely filing of a commission report;

(12) "Director of financial institutions" means the Washington state director of the department of financial institutions;

(13) "Net worth" of a public depository means (a) the equity capital as reported to its primary regulatory authority on the quarterly report of condition or statement of condition and may include capital notes and debentures which are subordinate to the interests of depositors, or (b) equity capital adjusted by rule of the commission;

(14) "Depository pledge agreement" means a tripartite agreement executed by the commission with a financial institution and its designated trustee. Such agreement shall be approved by the directors or the loan committee of the financial institution and shall continuously be a record of the financial institution. New securities may be pledged under this agreement in substitution of or in addition to securities originally pledged without executing a new agreement;

(15) "Trustee" means a third-party safekeeping agent which has completed a depository pledge agreement with a public depository and the commission. Such third-party safekeeping agent may be the federal reserve bank of San Francisco, the federal home loan bank of Seattle, the trust department of the public depository, or such other third-party safekeeping agent approved by the commission. [1996 c 256 § 1; 1994 c 92 § 494; 1984 c 177 § 10; 1983 c 66 § 3; 1977 ex.s. c 95 § 1; 1975 1st ex.s. c 77 § 1; 1973 c 126 § 9; 1969 ex.s. c 193 § 1.]

**\*Reviser's note:** The term "qualified public depository" was redefined as "public depository" by 1996 c 256 § 1.

**Severability—1983 c 66:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 66 § 24.]

**Severability—1969 ex.s. c 193:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 193 § 32.]

**Construction—1969 ex.s. c 193:** "Nothing in this act shall be construed so as to impair the obligation of any contract or agreement entered into prior to its effective date." [1969 ex.s. c 193 § 33.]

*City depositories:* Chapter 35.38 RCW.

*County depositories:* Chapter 36.48 RCW.

*State depositories:* Chapter 43.85 RCW.

**39.58.020 Public funds—Protection against loss.** All public funds deposited in public depositories, including investment deposits and accrued interest thereon, shall be protected against loss, as provided in this chapter. [1996 c 256 § 2; 1984 c 177 § 11; 1983 c 66 § 5; 1973 c 126 § 10; 1969 ex.s. c 193 § 2.]

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.030 Public deposit protection commission—State finance committee constitutes—Proceedings.** The Washington public deposit protection commission shall be the state finance committee. The record of the proceedings of the public deposit protection commission shall be kept in the office of the commission and a duly certified copy thereof, or any part thereof, shall be admissible in evidence in any action or proceedings in any court of this state. [1983 c 66 § 6; 1969 ex.s. c 193 § 3.]

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.040 General powers of commission.** The commission shall have power (1) to make and enforce regulations necessary and proper to the full and complete performance of its functions under this chapter; (2) to require any public depository to furnish such information dealing with public deposits and the exact status of its net worth as the commission shall request. Any public depository which refuses or neglects to give promptly and accurately or to allow verification of any information so requested shall no longer be a public depository and shall be excluded from the right to receive or hold public deposits until such time as the commission shall acknowledge that such depository has furnished the information requested; (3) to take such action as it deems best for the protection, collection, compromise or settlement of any claim arising in case of loss; (4) to prescribe regulations, subject to this chapter, fixing the requirements for qualification of financial institutions as public depositories, and fixing other terms and conditions consistent with this chapter, under which public deposits may be received and held; (5) to make and enforce regulations setting forth criteria establishing minimum standards for the financial condition of bank and thrift depositories and, if the minimum standards are not met, providing for additional collateral requirements or restrictions regarding a public depository's right to receive or hold public deposits; (6) to fix the official date on which any loss shall be deemed to have occurred taking into consideration

the orders, rules and regulations of supervisory authority as they affect the failure or inability of a public depository to repay public deposits in full; and (7) in case loss occurs in more than one public depository, to determine the allocation and time of payment of any sums due to public depositors under this chapter. [1996 c 256 § 3; 1986 c 25 § 2; 1984 c 177 § 12; 1983 c 66 § 7; 1975 1st ex.s. c 77 § 2; 1969 ex.s. c 193 § 4.]

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.045 Financial institutions claiming exemption from sales, use or ad valorem taxes—Notification of commission.** The director of the department of revenue shall notify the public deposit protection commission quarterly on the first day of October, January, April, and July of the names and addresses of any financial institutions which have claimed exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state. [1983 c 66 § 4.]

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.050 Collateral for deposits—Segregation—Eligible securities.** (1) Every public depository shall complete a depository pledge agreement with the commission and a trustee, and shall at all times maintain, segregated from its other assets, eligible collateral in the form of securities enumerated in this section having a value at least equal to its maximum liability and as otherwise prescribed in this chapter. Such collateral shall be segregated by deposit with the depository's trustee and shall be clearly designated as security for the benefit of public depositors under this chapter.

(2) Securities eligible as collateral shall be valued at market value, and the total market value of securities pledged in accordance with this chapter shall not be reduced by withdrawal or substitution of securities except by prior authorization, in writing, by the commission.

(3) The public depository shall have the right to make substitutions of an equal or greater amount of such collateral at any time.

(4) The income from the securities which have been segregated as collateral shall belong to the public depository without restriction.

(5) Each of the following enumerated classes of securities, providing there has been no default in the payment of principal or interest thereon, shall be eligible to qualify as collateral:

(a) Certificates, notes or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States;

(b) State, county, municipal, or school district bonds or warrants of taxing districts of the state of Washington or any other state of the United States, provided that such bonds and warrants shall be only those found to be within the limit of indebtedness prescribed by law for the taxing district issuing them and to be general obligations;

(c) The obligations of any United States government-sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as deter-

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mined by the board of governors of the federal reserve system;

(d) Bonds, notes, letters of credit, or other securities or evidence of indebtedness constituting the direct and general obligation of a federal home loan bank or federal reserve bank;

(e) Revenue bonds of this state or any authority, board, commission, committee, or similar agency thereof, and any municipality or taxing district of this state;

(f) Direct and general obligation bonds and warrants of any city, town, county, school district, port district, or other political subdivision of any state, having the power to levy general taxes, which are payable from general ad valorem taxes;

(g) Bonds issued by public utility districts as authorized under the provisions of Title 54 RCW, as now or hereafter amended;

(h) Bonds of any city of the state of Washington for the payment of which the entire revenues of the city's water system, power and light system, or both, less maintenance and operating costs, are irrevocably pledged, even though such bonds are not general obligations of such city;

(6) In addition to the securities enumerated in this section, every public depository may also segregate such bonds, securities, and other obligations as are designated to be authorized security for public deposits under the laws of this state.

(7) The commission may at any time or times declare any particular security as ineligible to qualify as collateral when in the commission's judgment it is deemed desirable to do so. [1996 c 256 § 4; 1989 c 97 § 4; 1984 c 177 § 13; 1983 c 66 § 8; 1975 1st ex.s. c 77 § 3; 1973 c 126 § 11; 1969 ex.s. c 193 § 5.]

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.060 Loss in a bank public depository—Procedure for payment.** When the commission determines that a loss has occurred in a bank public depository, it shall as soon as possible make payment to the proper public officers of all funds subject to such loss, pursuant to the following procedures:

(1) For the purposes of determining the sums to be paid, the director of financial institutions or the receiver shall, within twenty days after issuance of a restraining order or taking possession of any bank public depository, ascertain the amount of public funds on deposit therein as disclosed by its records and the amount thereof covered by deposit insurance and certify the amounts thereof to the commission and each such public depository;

(2) Within ten days after receipt of such certification, each such public depository shall furnish to the commission verified statements of its deposits in such bank public depository as disclosed by its records;

(3) Upon receipt of such certificate and statements, the commission shall ascertain and fix the amount of such public deposits, net after deduction of any amount received from deposit insurance, and, after determining and declaring the apparent net loss, assess the same against all then bank public depositories, as follows: First, against the public depository in which the loss occurred, to the extent of the full value of

collateral segregated pursuant to this chapter; second, against all other bank public depositaries pro rata in proportion to the maximum liability of each such depositary as it existed on the date of loss;

(4) Assessments made by the commission shall be payable on the second business day following demand, and in case of the failure of any public depositary so to pay, the commission shall forthwith take possession of the securities segregated as collateral by such depositary pursuant to this chapter and liquidate the same for the purpose of paying such assessment;

(5) Upon receipt of such assessment payments, the commission shall reimburse the public depositors of the public depositary in which the loss occurred to the extent of the depositary's net deposit liability to them. [1996 c 256 § 5; 1983 c 66 § 9; 1973 c 126 § 12; 1969 ex.s. c 193 § 6.]

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.065 Loss in a thrift public depositary—Procedure for payment.** When the commission determines that a loss has occurred in a thrift public depositary, it shall as soon as possible make payment to the proper public officers of all funds subject to such loss, pursuant to the following procedures:

(1) For the purposes of determining the sums to be paid, the director of financial institutions or the receiver shall, within twenty days after issuance of a restraining order or taking possession of any thrift public depositary, ascertain the amount of public funds on deposit therein as disclosed by its records and the amount thereof covered by deposit insurance and certify the amounts thereof to the commission and each such public depositor;

(2) Within ten days after receipt of such certification, each such public depositor shall furnish to the commission verified statements of its deposits in such thrift depositary as disclosed by its records;

(3) Upon receipt of such certificate and statements, the commission shall ascertain and fix the amount of such public deposits, net after deduction of any amount received from deposit insurance, and, after determining and declaring the apparent net loss, assess the same against all then thrift public depositaries, as follows: First, against the public depositary in which the loss occurred, to the extent of the full value of collateral segregated pursuant to this chapter; second, against all other thrift public depositaries pro rata in proportion to the maximum liability of each such depositary as it existed on the date of loss;

(4) Assessments made by the commission shall be payable on the second business day following demand, and in case of the failure of any public depositary so to pay, the commission shall forthwith take possession of the securities segregated as collateral by such depositary pursuant to this chapter and liquidate the same for the purpose of paying such assessment;

(5) Upon receipt of such assessment payments, the commission shall reimburse the public depositors of the public depositary in which the loss occurred to the extent of the depositary's net deposit liability to them. [1996 c 256 § 6; 1983 c 66 § 10.]

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.070 Subrogation of commission to depositor's rights—Sums received from distribution of assets, payment.** Upon payment to any public depositor, the commission shall be subrogated to all of such depositor's right, title and interest against the public depositary in which the loss occurred and shall share in any distribution of its assets ratably with other depositors. Any sums received from any distribution shall be paid to the public depositors to the extent of any unpaid net deposit liability and the balance remaining shall be paid to the public depositaries against which assessments were made, pro rata in proportion to the assessments actually paid by each such depositary: PROVIDED, That the public depositary in which the loss occurred shall not share in any such distribution of the balance remaining. If the commission incurs expense in enforcing any such claim, the amount thereof shall be paid as a liquidation expense of the public depositary in which the loss occurred. [1996 c 256 § 7; 1973 c 126 § 13; 1969 ex.s. c 193 § 7.]

**39.58.080 Deposit of public funds in public depositary required—Deposits in institutions located outside the state.** Except for funds deposited pursuant to a fiscal agency contract with the state fiscal agent or its correspondent bank, funds deposited pursuant to a custodial bank contract with the state's custodial bank, and funds deposited pursuant to a local government multistate joint self-insurance program as provided in RCW 48.62.081, no public funds shall be deposited in demand or investment deposits except in a public depositary located in this state or as otherwise expressly permitted by statute: PROVIDED, That the commission, or the chair upon delegation by the commission, upon good cause shown, may authorize, for such time and upon such terms and conditions as the commission or chair deem appropriate, a treasurer to maintain a demand deposit account with a banking institution located outside the state of Washington solely for the purpose of transmitting money received to public depositaries in the state of Washington for deposit. [1996 c 256 § 8; 1991 sp.s. c 30 § 27; 1986 c 160 § 1; 1984 c 177 § 14; 1983 c 66 § 11; 1969 ex.s. c 193 § 8.]

**Effective date, implementation, application—Severability—1991 sp.s. c 30:** See RCW 48.62.900 and 48.62.901.

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.085 Demand accounts in out-of-state and alien banks—Limitations.** The commission, or the chair upon delegation by the commission, may authorize state and local governmental entities to establish demand accounts in out-of-state and alien banks in an aggregate amount not to exceed one million dollars. No single governmental entity shall be authorized to hold more than fifty thousand dollars in one demand account.

The governmental entities establishing such demand accounts shall be solely responsible for their proper and prudent management and shall bear total responsibility for any losses incurred by such accounts. Accounts established under the provisions of this section shall not be considered insured by the commission.

The state auditor shall annually monitor compliance with this section and the financial status of such demand accounts. [1996 c 256 § 9; 1987 c 505 § 21; 1986 c 160 § 2.]

**39.58.090 Authority to secure deposits in accordance with chapter—Bonds and securities for deposits dispensed with.** All institutions located in this state which are permitted by the statutes of this state to hold and receive public funds shall have power to secure such deposits in accordance with this chapter. Except as provided in this chapter, no bond or other security shall be required of or given by any public depository for any public funds on deposit. [1996 c 256 § 10; 1984 c 177 § 15; 1969 ex.s. c 193 § 9.]

**39.58.100 Reports of public depositories—Certification by director of financial institutions.** On or before each commission report due date, each public depository shall render to the commission a written report, certified under oath, indicating the total amount of public funds on deposit held by it, the net worth of the depository, and the amount and nature of eligible collateral then segregated for the benefit of the commission.

The commission may instruct the director of financial institutions to examine and thereafter certify as to the accuracy of any statement to the commission by any public depository. [1996 c 256 § 11; 1984 c 177 § 16; 1983 c 66 § 12; 1969 ex.s. c 193 § 10.]

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.103 Notice to commission of reduced net worth.** Each public depository shall notify the commission in writing within five working days of the happening of an event which causes its net worth to be reduced by an amount greater than ten percent of the amount shown as its net worth on the most recent report submitted pursuant to RCW 39.58.100. [1983 c 66 § 13; 1975 1st ex.s. c 77 § 4.]

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.105 Investigation of financial institution applying to become public depository—Report.** The commission may require the state auditor or the director of financial institutions to thoroughly investigate and report to it concerning the condition of any financial institution which makes application to become a public depository, and may also as often as it deems necessary require such investigation and report concerning the condition of any financial institution which has been designated as a public depository. The expense of all such investigations or reports shall be borne by the financial institution examined. In lieu of any such investigation or report, the commission may rely upon information made available to it or the director of financial institutions by the office of the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, the federal reserve board, or any state bank or thrift regulatory agency.

The director of financial institutions shall in addition advise the commission of any action he or she has directed any public depository to take which will result in a reduction of greater than ten percent of the net worth of such depository as shown on the most recent report it submitted pursuant to RCW 39.58.100. [1996 c 256 § 12; 1983 c 66 § 14; 1975 1st ex.s. c 77 § 5.]

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.108 Requirements to become depository.** Any financial institution may become a depository upon approval by the commission and segregation of collateral in the manner as set forth in this chapter, and upon compliance with all rules as promulgated by the commission. For the first twelve-month period following qualification as a public depository, the depository shall at all times pledge and segregate eligible securities in an amount equal to not less than ten percent of all public funds on deposit in the depository. [1996 c 256 § 13; 1984 c 177 § 17; 1983 c 66 § 15; 1975 1st ex.s. c 77 § 6.]

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.120 Interest rates.** Time deposits issued pursuant to this chapter shall bear interest at a rate not in excess of the maximum rate permitted by any applicable governmental regulation. [1974 ex.s. c 50 § 1; 1969 ex.s. c 193 § 12.]

**39.58.130 Investment deposits—Net worth of public depository.** A treasurer is authorized to deposit in a public depository any public funds available for investment and secured by collateral in accordance with the provisions of this chapter, and receive interest thereon. The authority provided by this section is additional to any authority now or hereafter provided by law for the investment or deposit of public funds by any such treasurer: PROVIDED, That in no case shall the aggregate of demand and investment deposits of public funds by any such treasurer in any one public depository exceed at any time the net worth of that depository. If a public depository's net worth is reduced, a treasurer may allow public funds on deposit in excess of the reduced net worth to remain until maturity upon pledging by the depository of eligible securities valued at market value in an amount at least equal to the amount of the excess deposits. The collateral shall be segregated as provided in RCW 39.58.050. If the additional securities required by this section are not pledged by the depository, the depository shall permit withdrawal prior to maturity by the treasurer of deposits, including accrued interest, in accordance with applicable statutes and governmental regulations. [1996 c 256 § 14; 1984 c 177 § 18; 1983 c 66 § 16; 1969 ex.s. c 193 § 13.]

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.135 Limitations on deposits.** Notwithstanding RCW 39.58.130, (1) aggregate deposits received by a public depository from all public treasurers shall not exceed at any time one hundred fifty percent of the value of the depository's net worth, nor (2) shall the aggregate deposits received by any public depository exceed thirty percent of the total aggregate deposits of all public treasurers in all depositories as determined by the public deposit protection commission. However, a public depository may receive deposits in excess of the limits provided in this section if eligible securities, as prescribed in RCW 39.58.050, are pledged as collateral in an amount equal to one hundred percent of the value of deposits received in excess of the limitations prescribed in this section. [1996 c 256 § 15; 1986 c 25 § 1; 1984 c 177 § 19.]

**39.58.140 Liability of treasurers.** When deposits are made in accordance with this chapter, a treasurer shall not be liable for any loss thereof resulting from the failure or default

of any public depository without fault or neglect on his or her part or on the part of his or her assistants or clerks. [1996 c 256 § 16; 1969 ex.s. c 193 § 29.]

*Liability of state treasurer: RCW 43.85.070.*

**39.58.155 Statewide custodian—Exemption from chapter.** A statewide custodian under RCW 43.08.280 may be exempted from the requirements of this chapter, based on rules adopted by the public deposit protection commission. [1999 c 293 § 3.]

**Purpose—Effective date—1999 c 293:** See notes following RCW 43.08.280.

**39.58.750 Receipt, disbursement, or transfer of public funds by wire or other electronic communication means authorized.** Notwithstanding any provision of law to the contrary, the state treasurer or any county, city, or other municipal treasurer or other custodian of public funds may receive, disburse, or transfer public funds under his or her jurisdiction by means of wire or other electronic communication in accordance with accounting standards established by the state auditor under RCW 43.09.200 with regard to municipal treasurers or other custodians or by the office of financial management under RCW 43.88.160 in the case of the state treasurer and other state custodians to safeguard and insure accountability for the funds involved. [1996 c 256 § 17; 1981 c 101 § 1; 1979 c 151 § 48; 1977 ex.s. c 15 § 1. Formerly RCW 39.58.150.]

**Effective date—1977 ex.s. c 15:** "The effective date of this act shall be July 1, 1977." [1977 ex.s. c 15 § 2.]

## Chapter 39.59 RCW

### PUBLIC FUNDS—AUTHORIZED INVESTMENTS

#### Sections

39.59.010	Definitions.
39.59.020	Authorized investments—Bonds, warrants, and other investments.
39.59.030	Authorized investments—Mutual funds and money market funds.
39.59.900	Severability—1988 c 281.

**39.59.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Bond" means any agreement which may or may not be represented by a physical instrument, including but not limited to bonds, notes, warrants, or certificates of indebtedness, that evidences an obligation under which the issuer agrees to pay a specified amount of money, with or without interest, at a designated time or times either to registered owners or bearers.

(2) "Local government" means any county, city, town, special purpose district, political subdivision, municipal corporation, or quasi-municipal corporation, including any public corporation, authority, or other instrumentality created by such an entity.

(3) "Money market fund" means a mutual fund the portfolio which consists of only bonds having maturities or demand or tender provisions of not more than one year, managed by an investment advisor who has posted with the risk management division of the office of financial management a

bond or other similar instrument in the amount of at least five percent of the amount invested in the fund pursuant to RCW 39.59.030 (2) or (3).

(4) "Mutual fund" means a diversified mutual fund registered with the federal securities and exchange commission and which is managed by an investment advisor with assets under management of at least five hundred million dollars and with at least five years' experience in investing in bonds authorized for investment by this chapter and who has posted with the risk management division of the office of financial management a bond or other similar instrument in the amount of at least five percent of the amount invested in the fund pursuant to RCW 39.59.030(1).

(5) "State" includes a state, agencies, authorities, and instrumentalities of a state, and public corporations created by a state or agencies, authorities, or instrumentalities of a state. [2002 c 332 § 22; 1988 c 281 § 1.]

**Intent—Effective date—2002 c 332:** See notes following RCW 43.41.280.

*Enforcement of bonds under RCW 39.59.010 (3) and (4): RCW 43.41.330.*

**39.59.020 Authorized investments—Bonds, warrants, and other investments.** In addition to any other investment authority granted by law and notwithstanding any provision of law to the contrary, the state of Washington and local governments in the state of Washington are authorized to invest their funds and money in their custody or possession, eligible for investment, in:

(1) Bonds of the state of Washington and any local government in the state of Washington, which bonds have at the time of investment one of the three highest credit ratings of a nationally recognized rating agency;

(2) General obligation bonds of a state other than the state of Washington and general obligation bonds of a local government of a state other than the state of Washington, which bonds have at the time of investment one of the three highest credit ratings of a nationally recognized rating agency;

(3) Subject to compliance with RCW 39.56.030, registered warrants of a local government in the same county as the government making the investment; or

(4) Any investments authorized by law for the treasurer of the state of Washington or any local government of the state of Washington other than a metropolitan municipal corporation but, except as provided in chapter 39.58 RCW, such investments shall not include certificates of deposit of banks or bank branches not located in the state of Washington. [1988 c 281 § 2.]

**39.59.030 Authorized investments—Mutual funds and money market funds.** In addition to any other investment authority granted by law, the state of Washington and local governments in the state of Washington are authorized to invest their funds and money in their custody or possession, eligible for investment and subject to the arbitrage provisions of section 148 of the federal internal revenue code or similar provision concerning the investment of state and local money and funds, in:

(1) Shares of mutual funds with portfolios consisting of only United States government bonds or United States government guaranteed bonds issued by federal agencies with

average maturities less than four years, or bonds described in RCW 39.59.020 (1) or (2), except that bonds otherwise described in RCW 39.59.020 (1) or (2) shall have one of the four highest credit ratings of a nationally recognized rating agency;

(2) Shares of money market funds with portfolios consisting of only bonds of states and local governments or other issuers authorized by law for investment by local governments, which bonds have at the time of investment one of the two highest credit ratings of a nationally recognized rating agency; or

(3) Shares of money market funds with portfolios consisting of securities otherwise authorized by law for investment by local governments. [1988 c 281 § 3.]

**39.59.900 Severability—1988 c 281.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 281 § 10.]

### Chapter 39.60 RCW

#### INVESTMENT OF PUBLIC FUNDS IN BONDS, NOTES, ETC.—COLLATERAL

##### Sections

39.60.010	Investment of public and trust funds authorized.
39.60.020	Exchange of securities for federal agency bonds.
39.60.030	Obligations eligible as collateral security.
39.60.040	Insured shares, deposits or accounts as collateral—Partially guaranteed obligations.
39.60.050	Investment of public and trust funds in notes, bonds or debentures authorized—Requirements.

##### *Bonds and warrants of state and municipal corporations as investment and collateral for public funds:*

*ferry system bonds: RCW 47.60.100.*  
*highway construction bonds: RCW 47.10.050, 47.10.190, 47.10.320, 47.10.450, 47.10.710.*  
*metropolitan municipal corporation bonds: RCW 35.58.510.*  
*public utility district bonds and warrants: RCW 54.24.120.*  
*state warrants: RCW 43.84.120.*  
*toll bridge bonds: RCW 47.56.150, 47.58.070, 47.60.100.*

##### *Investments in bonds and warrants of state and municipal corporations authorized for:*

*cities of first class, employees' retirement fund: RCW 41.28.080.*  
*city and town pension funds: RCW 35.39.060.*  
*current state funds: RCW 43.84.080.*  
*insurers: RCW 48.13.040.*  
*metropolitan municipal corporation funds: RCW 35.58.520.*  
*mutual savings banks: RCW 32.20.050, 32.20.070, 32.20.110, 32.20.120, 32.20.130.*  
*permanent school fund: State Constitution Art. 16 § 5 (Amendment 44).*  
*savings and loan associations: RCW 33.24.030, 33.24.050, 33.24.080.*  
*statewide city employees' retirement fund: RCW 41.44.100.*  
*volunteer fire fighters' and reserve officers' relief and pension principal fund: RCW 41.24.030.*  
*workers' compensation funds: RCW 51.44.100.*

##### *Investments in federal bonds and securities authorized for:*

*cities and towns: RCW 35.39.030.*  
*current state funds: RCW 43.84.080.*  
*insurers: RCW 48.13.040.*  
*mutual savings banks: RCW 32.20.030.*  
*savings and loan associations: RCW 33.24.020.*  
*school district capital projects fund: RCW 28A.320.330.*  
*school districts, first class, insurance reserve funds: RCW 28A.330.110.*  
*statewide city employees' retirement fund: RCW 41.44.100.*  
*workers' compensation funds: RCW 51.44.100.*

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**39.60.010 Investment of public and trust funds authorized.** Notwithstanding the provisions of any other statute of the state of Washington to the contrary, it shall be lawful for the state of Washington and any of its departments, institutions and agencies, municipalities, districts, and any other political subdivision of the state, or any political or public corporation of the state, or for any insurance company, savings and loan association, or for any bank, trust company or other financial institution, operating under the laws of the state of Washington, or for any executor, administrator, guardian or conservator, trustee or other fiduciary to invest its funds or the moneys in its custody or possession, eligible for investment, in notes or bonds secured by mortgage which the Federal Housing Administrator has insured or has made a commitment to insure in obligations of national mortgage associations, in debentures issued by the Federal Housing Administrator, and in the bonds of the Home Owner's Loan Corporation, a corporation organized under and by virtue of the authority granted in H.R. 5240, designated as the Home Owner's Loan Act of 1933, passed by the congress of the United States and approved June 13, 1933, and in bonds of any other corporation which is or hereafter may be created by the United States, as a governmental agency or instrumentality. [1939 c 32 § 1; 1935 c 11 § 1; 1933 ex.s. c 37 § 1; RRS § 5545-1.]

**Severability—1933 ex.s. c 37:** "If any section, subsection, sentence, clause or phrase of this act for any reason shall be held to be unconstitutional, such holding shall not affect the validity of the remaining portion of this act. The legislature hereby declares that it would have passed this act in each section, subsection, sentence, clause and phrase thereof, separately and irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases be unconstitutional." [1933 ex.s. c 37 § 4.] This applies to RCW 39.60.010 through 39.60.030.

**39.60.020 Exchange of securities for federal agency bonds.** Notwithstanding the provisions of any other statute of the state of Washington to the contrary, it shall be also lawful for the state of Washington and any of its departments, institutions and agencies, municipalities, districts, and any other political subdivisions of the state, or any political or public corporation of the state, or for any insurance company, savings and loan association, building and loan association, or for any bank, trust company or other financial institution, operating under the laws of the state of Washington, or for any executor, administrator, guardian or conservator, trustee or other fiduciary, to exchange any mortgages, contracts, judgments or liens owned or held by it, for the bonds of the Home Owners' Loan Corporation, a corporation organized under and by virtue of the authority granted in H.R. 5240, designated as The Home Owners' Loan Act of 1933, passed by the congress of the United States and approved June 13, 1933, or for the bonds of any other corporation which is or hereafter may be created by the United States as a governmental agency or instrumentality; and to accept said bonds at their par value in any such exchange. [1933 ex.s. c 37 § 2; RRS § 5545-2.]

**39.60.030 Obligations eligible as collateral security.** Wherever, by statute of this state, collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or department; or an investment of capital or surplus, or a reserve or

other fund is required to be maintained consisting of designated securities, the bonds and other securities herein made eligible for investment shall also be eligible for such purpose. [1939 c 32 § 2; 1935 c 11 § 2; 1933 ex.s. c 37 § 3; RRS § 5545-3.]

**39.60.040 Insured shares, deposits or accounts as collateral—Partially guaranteed obligations.** The obligations issued pursuant to said Federal Home Loan Bank Act and to said Title IV of the National Housing Act as such acts are now or hereafter amended, and the shares, deposits or accounts of any institution which has the insurance protection provided by Title IV of the National Housing Act, as now or hereafter amended, may be used at face value or withdrawal value, and bonds or other interest bearing obligations as to which the payment of some but less than the full principal and interest is guaranteed by the United States of America or any agency thereof may be used to the extent of the portion so guaranteed, wherever, by statute of this state or otherwise, collateral is required as security for the deposit of public or other funds, or deposits are required to be made with any public official or department, or an investment of capital or surplus, or a reserve or other fund, is required to be maintained consisting of designated security, or wherever by statute of this state or otherwise, any surety, whether personal, corporate, or otherwise, or any collateral or security, is required or permitted for any purpose, including without limitation on the generality of the foregoing, any bond, recognizance, or undertaking. [1967 ex.s. c 48 § 1; 1941 c 249 § 2; Rem. Supp. 1941 § 3791-2.]

**39.60.050 Investment of public and trust funds in notes, bonds or debentures authorized—Requirements.** Notwithstanding the provisions of any other statute of the state of Washington to the contrary, it shall be lawful for the state of Washington and any of its departments, institutions and agencies, municipalities, districts, and any other political subdivision, or any political or public corporation of the state, or for any executor, administrator, guardian, or conservator, trustee or other fiduciary, to invest its funds or the moneys in its custody or possession, eligible for investment, in notes, bonds, or debentures of savings and loan associations, banks, mutual savings banks, savings and loan service corporations operating with approval of the federal home loan bank, and corporate mortgage companies: PROVIDED, That the notes, bonds or debentures are rated not less than "A" by a nationally recognized rating agency, or are insured or guaranteed by an agency of the federal government or by private insurer authorized to do business in the state: PROVIDED FURTHER, That the notes, bonds and debentures insured or guaranteed by a private insurer shall also be backed by a pool of mortgages equal to the amount of the notes, bonds or debentures. [1970 ex.s. c 93 § 1.]

**Severability—1970 ex.s. c 93:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 93 § 4.]

*Investment in local improvement district notes: RCW 35.45.150.*

## Chapter 39.62 RCW UNIFORM FACSIMILE SIGNATURE OF PUBLIC OFFICIALS ACT

### Sections

39.62.010	Definitions.
39.62.020	Facsimile signature—Authorized—Legal effect.
39.62.030	Facsimile seal—Authorized—Legal effect.
39.62.040	Unauthorized use—Penalty.
39.62.900	Construction—Uniformity.
39.62.910	Short title.
39.62.920	Severability—1969 c 86.

*Facsimile signatures on bonds and coupons: RCW 39.44.100 through 39.44.102.*

### **39.62.010 Definitions.** As used in this chapter:

(1) "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money, issued by this state or by any of its departments, agencies, counties, cities, towns, municipal corporations, junior taxing districts, school districts, or other instrumentalities or by any of its political subdivisions.

(2) "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(3) "Authorized officer" means any official of this state or any of its departments, agencies, counties, cities, towns, municipal corporations, junior taxing districts, school districts, or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted.

(4) "Facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer. [1969 c 86 § 1.]

**39.62.020 Facsimile signature—Authorized—Legal effect.** Any authorized officer, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(1) Any public security: PROVIDED, That at least one signature required or permitted to be placed thereon shall be manually subscribed, and

(2) Any instrument of payment.

Upon compliance with this chapter by the authorized officer, his facsimile signature has the same legal effect as his manual signature. [1969 c 86 § 2.]

**39.62.030 Facsimile seal—Authorized—Legal effect.** When the seal of this state or any of its departments, agencies, counties, cities, towns, municipal corporations, junior taxing districts, school districts, or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal. [1969 c 86 § 3.]

**39.62.040 Unauthorized use—Penalty.** Any person who with intent to defraud uses on a public security or an instrument of payment:

(1) A facsimile signature, or any reproduction of it, of any authorized officer, or

(2) Any facsimile seal, or any reproduction of it, of this state or any of its departments, agencies, counties, cities, towns, municipal corporations, junior taxing districts, school districts, or other instrumentalities or of any of its political subdivisions is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 213; 1969 c 86 § 4.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**39.62.900 Construction—Uniformity.** This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1969 c 86 § 5.]

**39.62.910 Short title.** This act may be cited as the uniform facsimile signature of public officials act. [1969 c 86 § 6.]

**39.62.920 Severability—1969 c 86.** If any provision of this 1969 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 c 86 § 7.]

## Chapter 39.64 RCW

### TAXING DISTRICT RELIEF

#### Sections

39.64.005	Short title.
39.64.010	Purpose of chapter.
39.64.020	Definitions.
39.64.030	Exercise of powers granted.
39.64.040	Petition in bankruptcy.
39.64.050	Resolution of authorization.
39.64.060	Resolution consenting to readjustment.
39.64.070	Plan of readjustment.
39.64.080	Powers under plan of readjustment.
39.64.085	Authority of operating agencies to levy taxes.
39.64.090	Validation of prior bankruptcy proceedings.
39.64.900	Construction—Severability—1935 c 143.

**39.64.005 Short title.** This chapter may be cited as the taxing district relief act. [1935 c 143 § 1; RRS § 5608-1.]

**39.64.010 Purpose of chapter.** The purpose of this chapter is to facilitate and permit taxing districts which are unable to meet their debts either in their present amount and/or at the time they fall due, to obtain relief by the readjustment of such debts as provided for by the act of congress hereinafter referred to, by supplementing the powers of those taxing districts for which refunding of debts is provided for by existing statutes, and by providing a method of refunding of debts for those taxing districts for which no method of refunding such debts has heretofore been provided, and by other provisions appropriate to such purposes.

This chapter shall not be construed as in anywise limiting the powers of the federal courts to grant relief as provided for in said act of congress. [1935 c 143 § 2; RRS § 5608-2.]

**39.64.020 Definitions.** For the purposes of this chapter a "taxing district" is defined to be a "taxing district" as described in section 80 of chapter IX of the act of congress entitled "An act to establish a uniform system of bankruptcy

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throughout the United States," approved July 1, 1898, as amended, to wit:

"Any municipality or other political subdivision of any state, including (but not hereby limiting the generality of the foregoing) any county, city, borough, village, parish, town, or township, unincorporated tax or special assessment district, and any school, drainage, irrigation, reclamation, levee, sewer, or paving, sanitary, port, improvement or other district (hereinafter referred to as a 'taxing district')."

Said act of congress and acts amendatory thereof and supplementary thereto, as the same may be amended from time to time, are herein referred to as the "federal bankruptcy act." [1935 c 143 § 3; RRS § 5608-3.]

**39.64.030 Exercise of powers granted.** All powers herein granted to taxing districts in state of Washington may be exercised by such districts. If a taxing district has no officers of its own, such powers may be exercised in its behalf by the officer or officers, board, council or commission having the power to contract in behalf of such district or to levy special assessments or special taxes within such district. [1935 c 143 § 4; RRS § 5608-4.]

**39.64.040 Petition in bankruptcy.** Any taxing district in the state of Washington is hereby authorized to file the petition mentioned in section 80 of chapter IX of the federal bankruptcy act. [1935 c 143 § 5; RRS § 5608-5.]

**39.64.050 Resolution of authorization.** Before the filing of any petition referred to in RCW 39.64.040, such taxing district shall adopt a resolution authorizing the filing thereof and authorizing its duly and regularly elected or appointed attorney or special counsel duly appointed for such purpose to file the same and to represent it in the proceedings with respect thereto in the competent United States district court. [1935 c 143 § 6; RRS § 5608-6.]

**39.64.060 Resolution consenting to readjustment.** No final decree or order of such United States district court confirming a plan of readjustment shall be effective for the purpose of binding such taxing district unless and until such taxing district files with such court a certified copy of a resolution of such taxing district, adopted by it or by the officer or officers, board, council or commission referred to in RCW 39.64.030, consenting to the plan of readjustment set forth or referred to in such final decree or order. [1935 c 143 § 7; RRS § 5608-7.]

**39.64.070 Plan of readjustment.** Such taxing district is hereby authorized and empowered to take any and all action necessary to carry out any plan of readjustment contemplated in said petition, or as the same may be modified from time to time, notwithstanding any other provisions of law. In case of the refunding of debts of irrigation districts, diking or drainage improvement districts, general debts of cities, or debts of other taxing districts for the refunding of which provision is already made under existing statutes, such refunding shall be had and done as provided for in such existing statutes, except that the tenor and character of the refunding bonds and the assessments levied to meet such bonds may be modified to

conform to the capacity of the taxing district, or the individual lots, tracts, or parcels of real property therein, to meet and carry the charges, both direct and contingent, against them, as found and set forth in the plan of readjustment and decree of court; and except also as such existing provisions of law may be otherwise supplemented by such plan of readjustment or the provisions of this chapter. [1935 c 143 § 8; RRS § 5608-8.]

**39.64.080 Powers under plan of readjustment.** Such taxing district shall have power to consummate the plan of readjustment, as adopted by the court's decree and approved by it as aforesaid, and if such plan, as approved by such decree, so requires, may, for such purpose, exercise any of the following powers:

(1) Cancel in whole or in part any assessments or any interest or penalties assessed thereon which may be outstanding and a lien upon any property in such taxing district, as and when such assessments are replaced by the readjusted or revised assessments provided for in the plan of readjustment approved by such decree.

(2) Issue refunding bonds to refund bonds theretofore issued by such taxing district. Such refunding bonds shall have such denominations, rates of interest and maturities as shall be provided in such plan of readjustment and shall be payable by special assessments or by general taxes, according to the nature of the taxing district, in the manner provided in such plan of readjustment and decree.

(3) Apportion and levy new assessments or taxes appropriate in time or times of payment to provide funds for the payment of principal and interest of such refunding bonds, and of all expenses incurred by such taxing district in filing the petition mentioned in RCW 39.64.040, and any and all other expenses necessary or incidental to the consummation of the plan of readjustment.

In the case of special assessment districts for the refunding of whose debts no procedure is provided by existing laws, such assessments shall be equitably apportioned and levied upon each lot, tract or parcel of real property within such taxing district, due consideration being given to the relative extent to which the original apportionments upon the various lots, tracts or parcels of real property within such taxing district have already been paid and due consideration also being given to the capacity of the respective lots, tracts or parcels of real property to carry such charges against them. Before levying or apportioning such assessment such taxing district or the officer or officers, board, council or commission mentioned in RCW 39.64.030 shall hold a hearing with reference thereto, notice of which hearing shall be published once a week for four consecutive weeks in the newspaper designated for the publication of legal notices by the legislative body of the city or town, or by the board of county commissioners of the county within which such taxing district or any part thereof is located, or in any newspaper published in the city, town or county within which such taxing district or any part thereof is located and of general circulation within such taxing district. At such hearing every owner of real property within such taxing district shall be given an opportunity to be heard with respect to the apportionment and levy of such assessment.

(4) In the case of special assessment districts, of cities or towns, provide that if any of the real property within such taxing district shall not, on foreclosure of the lien of such new assessment for delinquent assessments and penalties and interest thereon, be sold for a sufficient amount to pay such delinquent assessments, penalties and interest, or if any real property assessed was not subject to assessment, or if any assessment or installment or installments thereof shall have been eliminated by foreclosure of a tax lien or made void in any other manner, such taxing district shall cause a supplemental assessment sufficient in amount to make up such deficiency to be made on the real property within such taxing district, including real property upon which any such assessment or any installment or installments thereof shall have been so eliminated or made void. Such supplemental assessment shall be apportioned to the various lots, tracts and parcels of real property within such taxing district in proportion to the amounts apportioned thereto in the assessment originally made under such plan of readjustment.

(5) Provide that refunding bonds may, at the option of the holders thereof, be converted into warrants of such denominations and bearing such rate of interest as may be provided in the plan of readjustment, and that the new assessments mentioned in subdivision (3) and the supplemental assessments mentioned in subdivision (4) of this section may be paid in refunding bonds or warrants of such taxing district without regard to the serial numbers thereof, or in money, at the option of the person paying such assessments, such refunding bonds and warrants to be received at their par value in payment of such assessments. In such case such refunding bonds and warrants shall bear the following legend: "This bond (or warrant) shall be accepted at its face value in payment of assessments (including interest and penalties thereon) levied to pay the principal and interest of the series of bonds and warrants of which this bond (or warrant) is one without regard to the serial number appearing upon the face hereof."

(6) Provide that all sums of money already paid to the treasurer of such taxing district or other authorized officer in payment, in whole or in part, of any assessment levied by or for such taxing district or of interest or penalties thereon, shall be transferred by such treasurer or other authorized officer to a new account and made applicable to the payment of refunding bonds and warrants to be issued under such plan of readjustment.

(7) Provide that such treasurer or other authorized officer shall have authority to use funds in his possession not required for payment of current interest of such bonds and warrants, to buy such bonds and warrants in the open market through tenders or by call at the lowest prices obtainable at or below par and accrued interest, without preference of one bond or warrant over another because of its serial number, or for any other cause other than the date and hour of such tender or other offer and the amount which the owner of such bond or warrant agrees to accept for it. In such case such refunding bonds and warrants shall bear the following legend: "This bond (or warrant) may be retired by tender or by call without regard to the serial number appearing upon the face hereof."

(8) Provide that if, after the payment of all interest on refunding bonds and warrants issued under any plan of read-

justment adopted pursuant to this chapter and chapter IX of the federal bankruptcy act and the retirement of such bonds and warrants, there shall be remaining in the hands of the treasurer or other authorized officer of the taxing district which issued such bonds and warrants money applicable under the provisions of this chapter to the payment of such interest, bonds and warrants, such money shall be applied by such treasurer or other authorized officer to the maintenance, repair and replacement of the improvements originally financed by the bonds readjusted under this chapter and the federal bankruptcy act.

(9) The above enumeration of powers shall not be deemed to exclude powers not herein mentioned that may be necessary for or incidental to the accomplishment of the purposes hereof. [1935 c 143 § 9; RRS § 5608-9.]

**39.64.085 Authority of operating agencies to levy taxes.** Nothing in this chapter may be deemed to grant to any operating agency organized under chapter 43.52 RCW, or a project of any such operating agency, the authority to levy any tax or assessment not otherwise authorized by law. [1983 2nd ex.s. c 3 § 54.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**39.64.090 Validation of prior bankruptcy proceedings.** In the event that any taxing district in the state of Washington, before this chapter takes effect, shall have filed or purported or attempted to file a petition under the provisions of chapter IX of the federal bankruptcy act, or shall have taken or purported or attempted to take any other proceedings under or in contemplation of proceedings under the provisions of said chapter IX, then and in every such case all acts and proceedings of such taxing district, in connection with such petition or proceedings, are hereby, to all intents and purposes, declared as legal and valid as though taken after the \*effective date of this chapter. [1935 c 143 § 10; RRS § 5608-10.]

**\*Reviser's note:** The "effective date of this chapter" was March 21, 1935.

**39.64.900 Construction—Severability—1935 c 143.** This chapter and all its provisions shall be liberally construed to the end that the purposes hereof may be made effective. If any section, part or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or of any section, provision or part thereof not adjudged invalid or unconstitutional. [1935 c 143 § 11; RRS § 5608-11.]

**Chapter 39.67 RCW**

**AGREEMENTS BETWEEN TAXING DISTRICTS**

Sections

- 39.67.010 Agreements contingent on property tax levy—Authorized.
- 39.67.020 Transfer of funds between taxing districts.

**39.67.010 Agreements contingent on property tax levy—Authorized.** Any agreement or contract between two taxing districts other than the state which is otherwise authorized (2004 Ed.)

rized by law may be made contingent upon a particular property tax levy rate of an identified taxing district other than the state where such rate affects the regular property tax rate of one of the parties to the contract and therefore affects the party's resources with which to perform under the contract. The governing body of every taxing district that could have its tax levy adversely affected by such a contract shall be notified about the contract. [1988 c 274 § 2; 1986 c 107 § 1.]

**Purpose—Severability—1988 c 274:** See notes following RCW 84.52.010.

**Severability—1986 c 107:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 107 § 5.]

**Construction—1986 c 107 §§ 1 and 2:** "Sections 1 and 2 of this act are supplementary and in addition to any other authority granted by law and shall not be construed to limit any other law." [1986 c 107 § 6.]

**39.67.020 Transfer of funds between taxing districts.**

Any taxing district other than the state may transfer funds to another taxing district other than the state where the regular property tax levy rate of the second district may affect the regular property tax levy rate of the first district and where such transfer is part of an agreement whereby proration or reduction of property taxes is lessened or avoided. The governing body of every taxing district that could have its tax levy adversely affected by such an agreement shall be notified about the agreement. [1988 c 274 § 3; 1986 c 107 § 2.]

**Purpose—Severability—1988 c 274:** See notes following RCW 84.52.010.

**Severability—Construction—1986 c 107:** See notes following RCW 39.67.010.

**Chapter 39.69 RCW**

**PUBLIC LOANS TO MUNICIPAL CORPORATIONS**

Sections

- 39.69.010 "Municipal corporation" defined.
- 39.69.020 Loan agreements.
- 39.69.030 Application of constitutional debt limitations.
- 39.69.040 Chapter supplemental.

**39.69.010 "Municipal corporation" defined.** As used in this chapter, "municipal corporation" includes counties, cities, towns, port districts, water-sewer districts, school districts, metropolitan park districts, or such other units of local government which are authorized to issue obligations. [1999 c 153 § 53; 1987 c 19 § 1.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**39.69.020 Loan agreements.** Any municipal corporation may enter into a loan agreement containing the terms and conditions of a loan from an agency of the state of Washington or the United States of America and evidencing the obligation of the municipal corporation to repay that loan under the terms and conditions set forth in the loan agreement. A loan agreement may provide that the municipal corporation will repay the loan solely from revenues set aside into a special fund for repayment of that loan. In the case of a municipal corporation authorized to borrow money payable from taxes, and authorized to levy such taxes, the loan agreement

may provide that repayment of the loan is a general obligation of the municipal corporation, or both a general obligation and an obligation payable from revenues set aside into a special fund.

The state or federal agency making the loan shall have such rights of recovery in the event of default in payment or other breach of the loan agreement as may be provided in the loan agreement or otherwise by law. [1987 c 19 § 2.]

**39.69.030 Application of constitutional debt limitations.** Nothing in this chapter authorizes municipal corporations to incur indebtedness beyond constitutional indebtedness limitations. [1987 c 19 § 3.]

**39.69.040 Chapter supplemental.** The authority under this chapter is supplemental and in addition to the authority to issue obligations under any other provision of law. [1987 c 19 § 4.]

### Chapter 39.72 RCW

#### LOST OR DESTROYED EVIDENCE OF INDEBTEDNESS

##### Sections

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|-----------|---|
| 39.72.010 | Local government indebtedness—Issuance of duplicate instrument.             |
| 39.72.020 | Local government indebtedness—Records to be kept—Cancellation of originals. |

**39.72.010 Local government indebtedness—Issuance of duplicate instrument.** In case of the loss or destruction of a warrant for the payment of money, or any bond or other instrument or evidence of indebtedness, issued by any county, city or town, district or other political subdivision or municipal corporation of the state of Washington, hereinafter referred to as a municipal corporation, or by any department or agency of such municipal corporation, such municipal corporation may cause a duplicate to be issued in lieu thereof, subject to the same requirements and conditions, and according to the same procedure, as prescribed for the issuance of duplicate state instruments in RCW 43.08.064 and 43.08.066 as now or hereafter amended: PROVIDED, That the requirements of \*RCW 43.08.066(2) shall not be applicable to instruments received by employees of the above issuers for the payment of salary or wages or as other compensation for work performed nor shall those requirements be applicable to instruments received by former employees or their beneficiaries for the payment of pension benefits. [1975-'76 2nd ex.s. c 77 § 1; 1965 ex.s. c 61 § 4.]

**\*Reviser's note:** Subsection (2) of RCW 43.08.066 was removed by chapter 71, Laws of 1979 ex. sess.

*Lost or destroyed evidence of indebtedness issued by state: RCW 43.08.064 through 43.08.068.*

**39.72.020 Local government indebtedness—Records to be kept—Cancellation of originals.** When a municipal corporation issues a duplicate instrument, as authorized in this chapter, the issuing officer of such municipal corporation shall keep a full and complete record of all warrants, bonds or other instruments alleged to have been lost or destroyed, which were issued by such municipal corporation, and of the

issue of any duplicate therefor; and upon the issuance of any duplicate such officer shall enter upon his books the cancellation of the original instrument and immediately notify the treasurer of the county, city or other municipal corporation, the state auditor, and all trustees and paying agencies authorized to redeem such instruments on behalf of the municipal corporation, of such cancellation. The treasurer shall keep a similar list of all warrants, bonds or other instruments so canceled. [1965 ex.s. c 61 § 5.]

### Chapter 39.76 RCW

#### INTEREST ON UNPAID PUBLIC CONTRACTS

##### Sections

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| 39.76.010 | Interest on unpaid public contracts—Timely payment.                        |
| 39.76.011 | Interest on unpaid public contracts—When payment is considered to be made. |
| 39.76.020 | Interest on unpaid public contracts—Exceptions.                            |
| 39.76.030 | Penalties by state agencies to be paid from administrative funds.          |
| 39.76.040 | Interest on unpaid public contracts—Attorney fees.                         |

**39.76.010 Interest on unpaid public contracts—Timely payment.** (1) Except as provided in RCW 39.76.020, every state agency and unit of local government shall pay interest at the rate of one percent per month, but at least one dollar per month, on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel, whenever the state agency or unit of local government fails to make timely payment.

(2) For purposes of this section, payment shall be timely if:

(a) A check or warrant is mailed or is available on the date specified for the amount specified in the applicable contract documents or, if no date is specified, within thirty days of receipt of a properly completed invoice or receipt of goods or services, whichever is later.

(b) For any amount which is required to be withheld under state or federal law, a check or warrant is mailed or is available in the proper amount on the date the amount may be released under the applicable law. [1981 c 68 § 1.]

**Application—1992 c 223:** See RCW 39.04.901.

**39.76.011 Interest on unpaid public contracts—When payment is considered to be made.** (1) Except as provided in RCW 39.76.020, every state agency, county, city, town, school district, board, commission, or any other public body shall pay interest at a rate of one percent per month, but at least one dollar per month, on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel, whenever the public body fails to make timely payment.

(2) For purposes of this section, payment shall be timely if:

(a) Except as provided otherwise in this subsection, a check or warrant is mailed or is available on the date specified for the amount specified in the applicable contract documents but not later than thirty days of receipt of a properly completed invoice or receipt of goods or services, whichever is later. If a contract is funded by grant or federal money, the public body shall pay the prime contractor for satisfactory performance within thirty calendar days of the date the public

body receives a payment request that complies with the contract or within thirty calendar days of the date the public body actually receives the grant or federal money, whichever is later.

(b) On written contracts for public works, when part or all of a payment is going to be withheld for unsatisfactory performance or if the payment request made does not comply with the requirements of the contract, the public body shall notify the prime contractor in writing within eight working days after receipt of the payment request stating specifically why part or all of the payment is being withheld and what remedial actions must be taken by the prime contractor to receive the withheld amount.

(c) If the notification by the public body required by (b) of this subsection does not comply with the notice contents required under (b) of this subsection, the public body shall pay the interest under subsection (1) of this section from the ninth working day after receipt of the initial payment request until the contractor receives notice that does comply with the notice contents required under (b) of this subsection.

(d) If part or all of a payment is withheld under (b) of this subsection, the public body shall pay the withheld amount within thirty calendar days after the prime contractor satisfactorily completes the remedial actions identified in the notice. If the withheld amount is not paid within the thirty calendar days, the public body shall pay interest under subsection (1) of this section from the thirty-first calendar day until the date paid.

(e)(i) If the prime contractor on a public works contract, after making a request for payment to the public body but before paying a subcontractor for the subcontractor's performance covered by the payment request, discovers that part or all of the payment otherwise due to the subcontractor is subject to withholding from the subcontractor under the subcontract for unsatisfactory performance, the prime contractor may withhold the amount as allowed under the subcontract. If the prime contractor withholds an amount under this subsection, the prime contractor shall:

(A) Give the subcontractor notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the subcontractor payment;

(B) Give the contracting officer of the public body a copy of the notice furnished to the subcontractor under (e)(i)(A) of this subsection; and

(C) Pay the subcontractor within eight working days after the subcontractor satisfactorily completes the remedial action identified in the notice.

(ii) If the prime contractor does not comply with the notice and payment requirements of (e)(i) of this subsection, the contractor shall pay the subcontractor interest on the withheld amount from the eighth working day at an interest rate that is equal to the amount set forth in subsection (1) of this section.

(3) For the purposes of this section:

(a) A payment is considered to be made when mailed or personally delivered to the party being paid.

(b) An invoice is considered to be received when it is date-stamped or otherwise marked as delivered. If the invoice is not date-stamped or otherwise marked as delivered, the

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date of the invoice is considered to be the date when the invoice is received. [1992 c 223 § 1.]

**Effective date—1992 c 223:** "This act shall take effect September 1, 1992." [1992 c 223 § 9.]

**Waiver of rights, construction—Application—1992 c 223:** See RCW 39.04.900 and 39.04.901.

**39.76.020 Interest on unpaid public contracts—Exceptions.** RCW 39.76.010 does not apply to the following:

- (1) Interagency or intergovernmental transactions;
- (2) Amounts payable to employees or prospective employees of state agencies or local governmental units as reimbursement for expenses;
- (3) Belated claims for any time of delinquency after July 31 following the second year of the fiscal biennium;
- (4) Claims subject to a good faith dispute, when before the date of timely payment, notice of the dispute is:
  - (a) Sent by certified mail;
  - (b) Personally delivered; or
  - (c) Sent in accordance with procedures in the contract;
- (5) Delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppages due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the unit of local government or state agency;
- (6) Contracts entered before July 26, 1981; and
- (7) Payment from any retirement system listed in RCW 41.50.030 and chapter 41.24 RCW. [1981 c 68 § 2.]

**39.76.030 Penalties by state agencies to be paid from administrative funds.** Any state agency required to pay late payment penalties under this chapter shall pay the penalties from funds designated for administrative costs of the agency receiving the public works, personal services, goods and services, equipment, or travel and shall not be paid from funds appropriated for client services. [1981 c 68 § 3.]

**39.76.040 Interest on unpaid public contracts—Attorney fees.** In any action brought to collect interest due under this chapter, the prevailing party is entitled to an award of reasonable attorney fees. [1981 c 68 § 4.]

**Chapter 39.80 RCW**

**CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES**

Sections	
39.80.010	Legislative declaration.
39.80.020	Definitions.
39.80.030	Agency's requirement for professional services—Advance publication.
39.80.040	Procurement of architectural and engineering services—Submission of statement of qualifications and performance data—Participation by minority and women-owned firms.
39.80.050	Procurement of architectural and engineering services—Contract negotiations.
39.80.060	Procurement of architectural and engineering services—Exception for emergency work.
39.80.070	Contracts, modifications reported to the office of financial management.
39.80.900	Savings.
39.80.910	Severability—1981 c 61.

**39.80.010 Legislative declaration.** The legislature hereby establishes a state policy, to the extent provided in this chapter, that governmental agencies publicly announce requirements for architectural and engineering services, and negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices. [1981 c 61 § 1.]

**Effective date—1981 c 61:** "This act shall take effect on January 1, 1982." [1981 c 61 § 9.]

**39.80.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "State agency" means any department, agency, commission, bureau, office, or any other entity or authority of the state government.

(2) "Local agency" means any city and any town, county, special district, municipal corporation, agency, port district or authority, or political subdivision of any type, or any other entity or authority of local government in corporate form or otherwise.

(3) "Special district" means a local unit of government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, and including but not limited to, water-sewer districts, irrigation districts, fire districts, school districts, community college districts, hospital districts, transportation districts, and metropolitan municipal corporations organized under chapter 35.58 RCW.

(4) "Agency" means both state and local agencies and special districts as defined in subsections (1), (2), and (3) of this section.

(5) "Architectural and engineering services" or "professional services" means professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in chapters 18.08, 18.43, or 18.96 RCW.

(6) "Person" means any individual, organization, group, association, partnership, firm, joint venture, corporation, or any combination thereof.

(7) "Consultant" means any person providing professional services who is not an employee of the agency for which the services are provided.

(8) "Application" means a completed statement of qualifications together with a request to be considered for the award of one or more contracts for professional services. [1999 c 153 § 55; 1981 c 61 § 2.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**Effective date—1981 c 61:** See note following RCW 39.80.010.

**39.80.030 Agency's requirement for professional services—Advance publication.** Each agency shall publish in advance that agency's requirement for professional services. The announcement shall state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by: (1) Publishing an announcement on each

occasion when professional services provided by a consultant are required by the agency; or (2) announcing generally to the public its projected requirements for any category or type of professional services. [1981 c 61 § 3.]

**Effective date—1981 c 61:** See note following RCW 39.80.010.

**39.80.040 Procurement of architectural and engineering services—Submission of statement of qualifications and performance data—Participation by minority and women-owned firms.** In the procurement of architectural and engineering services, the agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, based upon criteria established by the agency, the firm deemed to be the most highly qualified to provide the services required for the proposed project. Such agency procedures and guidelines shall include a plan to insure that minority and women-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services. The level of participation by minority and women-owned firms shall be consistent with their general availability within the professional communities involved. [1981 c 61 § 4.]

**Effective date—1981 c 61:** See note following RCW 39.80.010.

**39.80.050 Procurement of architectural and engineering services—Contract negotiations.** (1) The agency shall negotiate a contract with the most qualified firm for architectural and engineering services at a price which the agency determines is fair and reasonable to the agency. In making its determination, the agency shall take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature thereof.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm shall be formally terminated and the agency shall select other firms in accordance with RCW 39.80.040 and continue in accordance with this section until an agreement is reached or the process is terminated. [1981 c 61 § 5.]

**Effective date—1981 c 61:** See note following RCW 39.80.010.

**39.80.060 Procurement of architectural and engineering services—Exception for emergency work.** (1) This chapter need not be complied with by any agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.

(2) Nothing in this chapter shall relieve the contracting authority from complying with applicable law limiting emergency expenditures. [1981 c 61 § 6.]

**Effective date—1981 c 61:** See note following RCW 39.80.010.

**39.80.070 Contracts, modifications reported to the office of financial management.** Contracts entered into by any state agency for architectural and engineering services, and modifications thereto, shall be reported to the office of financial management on a quarterly basis, in such form as the office of financial management prescribes. [1993 c 433 § 9.]

**39.80.900 Savings.** Nothing in this chapter shall affect the validity or effect of any contract in existence on January 1, 1982. [1981 c 61 § 7.]

**Effective date—1981 c 61:** See note following RCW 39.80.010.

**39.80.910 Severability—1981 c 61.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 61 § 8.]

**Effective date—1981 c 61:** See note following RCW 39.80.010.

## Chapter 39.84 RCW

### INDUSTRIAL DEVELOPMENT REVENUE BONDS

#### Sections

39.84.010	Finding and declaration of necessity.
39.84.020	Definitions.
39.84.030	Public corporations—Creation, dissolution.
39.84.040	Board of directors of public corporation.
39.84.050	Public corporations—Directors—Conflicts of interest.
39.84.060	Public corporations—Limitations.
39.84.070	Public corporations—Audit by state.
39.84.080	Public corporations—Powers.
39.84.090	Reporting to the department of community, trade, and economic development.
39.84.100	Revenue bonds—Provisions.
39.84.110	Revenue bonds—Refunding.
39.84.120	Trust agreements.
39.84.130	Commingling of bond proceeds or revenues with municipal funds prohibited—Exception.
39.84.140	Subleases and assignments.
39.84.150	Determination of rent.
39.84.160	Proceedings in the event of default.
39.84.170	Implementation of economic development programs by port district—Use of nonprofit corporations—Transfer of funds.
39.84.200	Authority of community economic revitalization board under this chapter.
39.84.900	Construction—Supplemental nature of chapter.
39.84.910	Captions not part of law.
39.84.920	Severability—1981 c 300.

*Special revenue financing: State Constitution Art. 33 § 1.*

**39.84.010 Finding and declaration of necessity.** The legislature hereby finds and declares that this state urgently needs to do the following: Promote higher employment; encourage the development of new jobs; maintain and supplement the capital investments in industry that currently exist in this state; encourage future employment by ensuring future capital investment; attract environmentally sound industry to the state; protect and enhance the quality of natural resources and the environment; and promote the production and conservation of energy. [1981 c 300 § 1.]

**39.84.020 Definitions.** As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Board of directors" means the board of directors of a public corporation.

(2) "Construction" or "construct" means construction and acquisition, whether by devise, purchase, gift, lease, or otherwise.

(3) "Facilities" means land, rights in land, buildings, structures, docks, wharves, machinery, transmission equipment, public broadcast equipment, landscaping, utilities, approaches, roadways and parking, handling and storage areas, and similar ancillary facilities.

(4) "Financing document" means a lease, sublease, installment sale agreement, conditional sale agreement, loan agreement, mortgage, deed of trust guaranty agreement, or other agreement for the purpose of providing funds to pay or secure debt service on revenue bonds.

(5) "Improvement" means reconstruction, remodeling, rehabilitation, extension, and enlargement; and "to improve" means to reconstruct, to remodel, to rehabilitate, to extend, and to enlarge.

(6) "Industrial development facilities" means manufacturing, processing, research, production, assembly, warehousing, transportation, public broadcasting, pollution control, solid waste disposal, energy facilities, sports facilities, parking facilities associated with industrial development facilities as defined in this section or with historic properties as defined in RCW 84.26.020 and industrial parks. For the purposes of this section, the term "sports facilities" shall not include facilities which are constructed for use by members of a private club or as integral or subordinate parts of a hotel or motel, or which are not available on a regular basis for general public use.

(7) "Industrial park" means acquisition and development of land as the site for an industrial park. For the purposes of this chapter, "development of land" includes the provision of water, sewage, drainage, or similar facilities, or of transportation, energy, or communication facilities, which are incidental to the use of the site as an industrial park, but does not include the provision of structures or buildings.

(8) "Municipality" means a city, town, county, or port district of this state.

(9) "Ordinance" means any appropriate method of taking official action or adopting a legislative decision by any municipality, whether known as a resolution, ordinance, or otherwise.

(10) "Project costs" means costs of (a) acquisition, construction, and improvement of any facilities included in an industrial development facility; (b) architectural, engineering, consulting, accounting, and legal costs related directly to the development, financing, and construction of an industrial development facility, including costs of studies assessing the feasibility of an industrial development facility; (c) finance costs, including discounts, if any, the costs of issuing revenue bonds, and costs incurred in carrying out any trust agreement; (d) interest during construction and during the six months after estimated completion of construction, and capitalized debt service or repair and replacement or other appropriate reserves; (e) the refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and (f) other costs incidental to any of the costs listed in this section.

(11) "Revenue bond" means a nonrecourse revenue bond, nonrecourse revenue note, or other nonrecourse reve-

nue obligation issued for the purpose of financing an industrial development facility on an interim or permanent basis.

(12) "User" means one or more persons acting as lessee, purchaser, mortgagor, or borrower under a financing document and may include a party who transfers the right of use and occupancy to another party by lease, sublease, or otherwise. [1986 c 309 § 1; 1986 c 308 § 2; 1985 c 439 § 1; 1983 1st ex.s. c 51 § 1; 1981 c 300 § 2.]

**Reviser's note:** This section was amended by 1986 c 308 § 2 and by 1986 c 309 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1986 c 308:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 308 § 3.]

**39.84.030 Public corporations—Creation, dissolution.** (1) For the purpose of facilitating economic development and employment opportunities in the state of Washington through the financing of the project costs of industrial development facilities, a municipality may enact an ordinance creating a public corporation for the purposes authorized in this chapter. The ordinance creating the public corporation shall approve a charter for the public corporation containing such provisions as are authorized by and not in conflict with this chapter. Any charter issued under this chapter shall contain in substance the limitations set forth in RCW 39.84.060. In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the public corporation, the public corporation is conclusively presumed to be established and authorized to transact business and exercise its powers under this chapter upon proof of the adoption of the ordinance creating the public corporation by the governing body. A copy of the ordinance duly certified by the clerk of the governing body of the municipality shall be admissible in evidence in any suit, action, or proceeding.

(2) A public corporation created by a municipality pursuant to this chapter may be dissolved by the municipality if the public corporation: (a) Has no property to administer, other than funds or property, if any, to be paid or transferred to the municipality by which it was established; and (b) all its outstanding obligations have been satisfied. Such a dissolution shall be accomplished by the governing body of the municipality adopting an ordinance providing for the dissolution.

(3) The creating municipality may, at its discretion and at any time, alter or change the structure, organizational programs, or activities of a public corporation, including termination of the public corporation if contracts entered into by the public corporation are not impaired. Any net earnings of a public corporation, beyond those necessary for retirement of indebtedness incurred by it, shall not inure to the benefit of any person other than the creating municipality. Upon dissolution of a public corporation, title to all property owned by the public corporation shall vest in the municipality. [1981 c 300 § 3.]

**39.84.040 Board of directors of public corporation.** The ordinance creating a public corporation shall include provisions establishing a board of directors to govern the affairs of the public corporation, what constitutes a quorum

of the board of directors, and how the public corporation shall conduct its affairs. [1981 c 300 § 4.]

**39.84.050 Public corporations—Directors—Conflicts of interest.** It shall be illegal for a director, officer, agent, or employee of a public corporation to have, directly or indirectly, any financial interest in any property to be included in or any contract for property, services, or materials to be furnished or used in connection with any industrial development facility financed through the public corporation. Violation of any provision of this section is a gross misdemeanor. [1981 c 300 § 5.]

**39.84.060 Public corporations—Limitations.** No municipality may give or lend any money or property in aid of a public corporation. The municipality that creates a public corporation shall annually review any financial statements of the public corporation and at all times shall have access to the books and records of the public corporation. No public corporation may issue revenue obligations under this chapter except upon the approval of both the municipality under the auspices of which it was created and the county, city, or town within whose planning jurisdiction the proposed industrial development facility lies. No revenue bonds may be issued pursuant to this chapter unless the board of directors of the public corporation proposing to issue revenue bonds makes a finding that in its opinion the interest paid on the bonds will be exempt from income taxation by the federal government. Revenue bonds issued by a public corporation under this chapter shall not be considered to constitute a debt of the state, of the municipality, or of any other municipal corporation, quasi municipal corporation, subdivision, or agency of this state or to pledge any or all of the faith and credit of any of these entities. The revenue bonds shall be payable solely from both the revenues derived as a result of the industrial development facilities funded by the revenue bonds, including, without limitation, amounts received under the terms of any financing document or by reason of any additional security furnished by the user of the industrial development facility in connection with the financing thereof, and money and other property received from private sources. Each revenue bond shall contain on its face statements to the effect that: (1) Neither the state, the municipality, or any other municipal corporation, quasi municipal corporation, subdivision, or agency of the state is obligated to pay the principal or the interest thereon; (2) no tax funds or governmental revenue may be used to pay the principal or interest thereon; and (3) neither any or all of the faith and credit nor the taxing power of the state, the municipality, or any other municipal corporation, quasi municipal corporation, subdivision, or agency thereof is pledged to the payment of the principal or the interest on the revenue bond. A public corporation may incur only those financial obligations which will be paid from revenues received pursuant to financing documents, from fees or charges paid by users or prospective users of the industrial development facilities funded by the revenue bonds, or from the proceeds of revenue bonds. A public corporation established under the terms of this chapter constitutes an authority and an instrumentality (within the meaning of those terms in the regulations of the United States treasury and the rulings of

the Internal Revenue Service prescribed pursuant to section 103 of the Internal Revenue Code of 1954, as amended) and may act on behalf of the municipality under whose auspices it is created for the specific public purposes authorized by this chapter. The public corporation is not a municipal corporation within the meaning of the state Constitution and the laws of the state, or a political subdivision within the meaning of the state Constitution and the laws of the state, including without limitation, Article VIII, section 7, of the Washington state Constitution. A municipality shall not delegate to a public corporation any of the municipality's attributes of sovereignty, including, without limitation, the power to tax, the power of eminent domain, and the police power. [1981 c 300 § 6.]

**39.84.070 Public corporations—Audit by state.** The finances of any public corporation are subject to examination by the state auditor's office pursuant to RCW 43.09.260. [1981 c 300 § 7.]

**39.84.080 Public corporations—Powers.** (1) A public corporation created under this chapter has the following powers with respect to industrial development facilities together with all powers incidental thereto or necessary for the performance thereof:

(a) To construct and maintain one or more industrial development facilities;

(b) To lease to a lessee all or any part of any industrial development facility for such rentals and upon such terms and conditions, including options to purchase, as its board of directors considers advisable and not in conflict with this chapter;

(c) To sell by installment contract or otherwise and convey all or any part of any industrial development facility for such purchase price and upon such terms and conditions as its board of directors considers advisable which are not in conflict with this chapter;

(d) To make secured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the project cost of any industrial development facility, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the project costs; and to charge and collect interest on the loans for the loan payments upon such terms and conditions as its board of directors considers advisable which are not in conflict with this chapter;

(e) To issue revenue bonds for the purpose of financing all or part of the project cost of any industrial development facility and to secure the payment of the revenue bonds as provided in this chapter;

(f) As security for the payment of the principal of and interest on any revenue bonds issued and any agreements made in connection therewith, to mortgage, pledge, or otherwise encumber any or all of its industrial development facilities or any part or parts thereof, whether then owned or thereafter acquired, and to assign any mortgage and repledge any security conveyed to the public corporation, to secure any loan made by the public corporation and to pledge the revenues and receipts therefrom;

(g) To sue and be sued, complain, and defend in its corporate name;

(h) To make contracts and to execute all instruments necessary or convenient for the carrying out of its business;

(i) To have a corporate seal and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(j) Subject to the limitations of RCW 39.84.060, to borrow money, accept grants from, or contract with any local, state, or federal governmental agency or with any financial, public, or private corporation;

(k) To make and alter bylaws not inconsistent with its charter for the administration and regulation of the affairs of the corporation;

(l) To collect fees or charges from users or prospective users of industrial development facilities to recover actual or anticipated administrative costs;

(m) To execute financing documents incidental to the powers enumerated in this subsection.

(2) No public corporation created under this chapter may operate any industrial development facility as a business other than as lessor, seller, or lender. The purchase and holding of mortgages, deeds of trust, or other security interests and contracting for any servicing thereof is not considered the operation of an industrial development facility.

(3) No public corporation may exercise any of the powers authorized in this section or issue any revenue bonds with respect to any industrial development facility unless the industrial development facility is located wholly within the boundaries of the municipality under whose auspices the public corporation is created or unless the industrial development facility comprises energy facilities or solid waste disposal facilities which provide energy for or dispose of solid waste from the municipality or the residents thereof. [1981 c 300 § 8.]

**39.84.090 Reporting to the department of community, trade, and economic development.** (1) Prior to issuance of any revenue bonds, each public corporation shall submit a copy of its enabling ordinance and charter, a description of any industrial development facility proposed to be undertaken, and the basis for its qualification as an industrial development facility to the department of community, trade, and economic development.

(2) If the industrial development facility is not eligible under this chapter, the department of community, trade, and economic development shall give notice to the public corporation, in writing and by certified mail, within twelve working days of receipt of the description.

(3) The department of community, trade, and economic development shall provide such advice and assistance to public corporations and municipalities which have created or may wish to create public corporations as the public corporations or municipalities request and the department of community, trade, and economic development considers appropriate. [1998 c 245 § 34; 1995 c 399 § 56; 1987 c 505 § 22; 1985 c 466 § 46; 1981 c 300 § 9.]

**Effective date—Severability—1985 c 466:** See notes following RCW 43.31.125.

*Department of community, trade, and economic development: Chapter 43.330 RCW.*

**39.84.100 Revenue bonds—Provisions.** (1) The principal of and the interest on any revenue bonds issued by a public corporation shall be payable solely from the funds provided for this payment from the revenues of the industrial development facilities funded by the revenue bonds. Each issue of revenue bonds shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times as may be determined by the board of directors, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the board of directors prior to the issuance of the revenue bonds or other revenue obligations.

(2) The board of directors shall determine the form and the manner of execution of the revenue bonds and shall fix the denomination or denominations of the revenue bonds and the place or places of payment of principal and interest. If any officer whose signature or a facsimile of whose signature appears on any revenue bonds or any coupons ceases to be an officer before the delivery of the revenue bonds, the signature shall for all purposes have the same effect as if he had remained in office until delivery. The revenue bonds may be issued in coupon or in registered form, as provided in RCW 39.46.030, or both as the board of directors may determine, and provisions may be made for the registration of any coupon revenue bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. A public corporation may sell revenue bonds at public or private sale for such price and bearing interest at such fixed or variable rate as may be determined by the board of directors.

(3) The proceeds of the revenue bonds of each issue shall be used solely for the payment of all or part of the project cost of or for the making of a loan in the amount of all or part of the project cost of the industrial development facility for which authorized and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing the issuance of the revenue bonds or in the trust agreement securing the bonds. If the proceeds of the revenue bonds of any series issued with respect to the cost of any industrial development facility exceeds the cost of the industrial development facility for which issued, the surplus shall be deposited to the credit of the debt service fund for the revenue bonds or used to purchase revenue bonds in the open market.

(4) A public corporation may issue interim notes in the manner provided for the issuance of revenue bonds to fund industrial development facilities prior to issuing other revenue bonds to fund such facilities. A public corporation may issue revenue bonds to fund industrial development facilities that are exchangeable for other revenue bonds when these other revenue bonds are executed and available for delivery.

(5) The principal of and interest on any revenue bonds issued by a public corporation shall be secured by a pledge of unexpended bond proceeds and the revenues and receipts received by the public corporation from the industrial development facilities funded by the revenue bonds pursuant to financing documents. The resolution under which the revenue bonds are authorized to be issued and any financing document may contain agreements and provisions respecting the maintenance or use of the industrial development facility

covered thereby, the fixing and collection of rents, purchase price payments or loan payments, the creation and maintenance of special funds from such revenues or from revenue bond proceeds, the rights and remedies available in the event of default, and other provisions relating to the security for the bonds, all as the board of directors consider advisable which are not in conflict with this chapter.

(6) The governing body of the municipality under whose auspices the public corporation is created shall approve by resolution any agreement to issue revenue bonds adopted by a public corporation, which agreement and resolution shall set out the amount and purpose of the revenue bonds. Additionally, no issue of revenue bonds, including refunding bonds, may be sold and delivered by a public corporation without a resolution of the governing body of the municipality under whose auspices the public corporation is created, adopted no more than sixty days before the date of sale of the revenue bonds specifically, approving the resolution of the public corporation providing for the issuance of the revenue bonds.

(7) All revenue bonds issued under this chapter and any interest coupons applicable thereto are negotiable instruments within the meaning of Article 8 of the Uniform Commercial Code, Title 62A RCW, regardless of form or character.

(8) Notwithstanding subsections (1) and (2) of this section, such bonds and interim notes may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 115; 1981 c 300 § 10.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**39.84.110 Revenue bonds—Refunding.** Each public corporation may provide by resolution for the issuance of revenue refunding bonds for the purpose of refunding any revenue bonds issued for an industrial development facility under this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption or maturity of the revenue bonds and, if considered advisable by the public corporation, for the additional purpose of financing improvements, extensions, or enlargements to the industrial development facility for another industrial development facility. The issuance of the revenue bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the public corporation in respect to the same shall be governed by this chapter insofar as applicable. [1981 c 300 § 11.]

**39.84.120 Trust agreements.** Any bonds issued under this chapter may be secured by a trust agreement between the public corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. The trust agreement may evidence a pledge or assignment of the financing documents and lease, sale, or loan revenues to be received from a lessee or purchaser of or borrower with respect to an industrial development facility for the payment of principal of and interest and any premium on the bonds as the same shall become due and payable and may provide for creation and maintenance of reserves for these purposes. A trust agreement or resolution

providing for the issuance of the revenue bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties in relation to the acquisition of property and the construction, improvement, maintenance, use, repair, operation, and insurance of the industrial development facility for which the bonds are authorized, and the custody, safeguarding, and application of all money. Any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of revenue bonds or of revenues may furnish such indemnifying bonds or pledge such securities as may be required by the corporation. A trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of private corporations. In addition, a trust agreement may contain such provisions as the public corporation considers reasonable and proper for the security of the bondholders which are not in conflict with this chapter. [1981 c 300 § 12.]

**39.84.130 Commingling of bond proceeds or revenues with municipal funds prohibited—Exception.** No part of the proceeds received from the sale of any revenue bonds under this chapter, of any revenues derived from any industrial development facility acquired or held under this chapter, or of any interest realized on moneys received under this chapter may be commingled by the public corporation with funds of the municipality creating the public corporation. However, those funds of the public corporation, other than proceeds received from the sale of revenue bonds, that are not otherwise encumbered for the payment of revenue bonds and are not reasonably anticipated by the board of directors to be necessary for administrative expenses of the public corporation may be transferred to the creating municipality and used for growth management, planning, or other economic development purposes. [1993 c 139 § 1; 1981 c 300 § 13.]

**39.84.140 Subleases and assignments.** A lessee or contracting party under a sale contract or loan agreement shall not be required to be the eventual user of an industrial development facility if any sublessee or assignee assumes all of the obligations of the lessee or contracting party under the lease, sale contract, or loan agreement, but the lessee or contracting party or their successors shall remain primarily liable for all of its obligations under the lease, sale contract, or loan agreement and the use of the industrial development facility shall be consistent with the purposes of this chapter. [1981 c 300 § 14.]

**39.84.150 Determination of rent.** Before entering into a lease, sale contract, or loan agreement with respect to any industrial development facility, the public corporation shall determine that there are sufficient revenues to pay (1) the principal of and the interest on the revenue bonds proposed to be issued to finance the industrial development facility; (2) the amount necessary to be paid each year into any reserve funds which the public corporation considers advisable to

establish in connection with the retirement of the proposed bonds and the maintenance of the industrial development facility; and (3) unless the terms of the lease, sale contract, or loan agreement provide that the lessee or contracting party shall maintain the industrial development facility and carry all proper insurance with respect thereto, the estimated cost of maintaining the industrial development facility in good repair and keeping it properly insured. [1981 c 300 § 15.]

**39.84.160 Proceedings in the event of default.** The proceedings authorizing any revenue bonds under this chapter or any financing document securing the revenue bonds may provide that if there is a default in the payment of the principal of or the interest on the bonds or in the performance of any agreement contained in the proceedings or financing document, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan repayments, and to apply the revenues from the industrial development facility in accordance with the proceedings or provisions of the financing document. Any financing document entered into under this chapter to secure revenue bonds issued under this chapter may also provide that if there is a default in the payment thereof or a violation of any agreement contained in the financing document, the industrial development facility may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Any financing document may also provide that any trustee under the financing document or the holder of any revenue bonds secured thereby may become the purchaser at any foreclosure sale if it is the highest bidder. [1981 c 300 § 16.]

**39.84.170 Implementation of economic development programs by port district—Use of nonprofit corporations—Transfer of funds.** Funds received by a port district under RCW 39.84.130 may be transferred to a nonprofit corporation created or re-created for the exclusive purpose of providing training, education, and general improvement to the public sector management skills necessary to implement the economic development programs of the port district. The nonprofit corporation selected for that purpose may be, without limitation, a corporation formed by the Washington public ports association.

Any nonprofit corporation selected for the purposes of this section must have tax exempt status under 26 U.S.C. Sec. 501(c)(3).

Transfers and expenditures of funds shall be deemed to be for industrial development and trade promotion as provided in Article VIII, section 8 of the Washington state Constitution.

Nothing in this chapter shall be construed to prohibit the receipt of additional public or private funds by a nonprofit corporation for the purposes described in this section. [2000 c 198 § 2.]

**39.84.200 Authority of community economic revitalization board under this chapter.** The community economic revitalization board under chapter 43.160 RCW shall have all the powers of a public corporation under this chapter.

To the extent applicable, all duties of a public corporation apply to the community economic revitalization board in exercising its powers under this chapter. [1984 c 257 § 11.]

**39.84.900 Construction—Supplemental nature of chapter.** This chapter supplements and neither restricts nor limits any powers which a municipality or presently authorized public corporation might otherwise have under any laws of this state. [1981 c 300 § 17.]

**39.84.910 Captions not part of law.** As used in this chapter, captions constitute no part of the law. [1981 c 300 § 19.]

**39.84.920 Severability—1981 c 300.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 300 § 20.]

## Chapter 39.86 RCW

### PRIVATE ACTIVITY BOND ALLOCATION

#### Sections

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**39.86.100 Legislative findings and policy.** The federal tax reform act of 1986 imposes an annual ceiling on the aggregate amount of federally tax-exempt private activity bonds, including bonds for housing, student loans, exempt facilities, small issue industrial, redevelopment, and certain public utility projects, that may be issued during any calendar year by or on behalf of states and their political subdivisions. In 2001, the ceiling will be increased to sixty-two dollars and fifty cents per capita and in 2002 the ceiling will be increased to seventy-five dollars per capita, to be indexed annually, for 2003 and every year thereafter. However, a study by the \*department of community development indicates that the dollar amount of the state ceiling is considerably less than the anticipated dollar amount for which issuers would need an allocation from the state ceiling. The tax reform act of 1986 provides a formula for allocating the annual ceiling among various issuers of private activity bonds within a state, but permits each state to enact a different allocation method that is appropriate to that state's needs. The purpose of this chapter is to provide a flexible and efficient method of allocating the annual state ceiling in Washington in a manner that recognizes the need of the state and its political subdivisions to finance activities or projects that satisfy a substantial public purpose. [2001 c 330 § 1; 1987 c 297 § 1.]

**\*Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994.

**39.86.110 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means the department of community, trade, and economic development.

(2) "Board" means the community economic revitalization board established under chapter 43.160 RCW.

(3) "Bonds" means bonds, notes, or other obligations of an issuer.

(4) "Bond use category" means any of the following categories of bonds which are subject to the state ceiling: (a) Housing, (b) student loans, (c) small issue, (d) exempt facility, (e) redevelopment, (f) public utility; and (g) remainder.

(5) "Carryforward" is an allocation or reallocation of the state ceiling which is carried from one calendar year to a later year, in accordance with the code.

(6) "Code" means the federal internal revenue code of 1986 as it exists on May 8, 1987. It also means the code as amended after May 8, 1987, but only if the amendments are approved by the agency under RCW 39.86.180.

(7) "Director" means the director of the agency or the director's designee.

(8) "Exempt facility" means the bond use category which includes all bonds which are exempt facility bonds as described in the code, except those for qualified residential rental projects.

(9) "Firm and convincing evidence" means documentation that satisfies the director that the issuer is committed to the prompt financing of, and will issue tax exempt bonds for, the project or program for which it requests an allocation from the state ceiling.

(10) "Housing" means the bond use category which includes: (a) Mortgage revenue bonds and mortgage credit certificates as described in the code; and (b) exempt facility bonds for qualified residential rental projects as described in the code.

(11) "Initial allocation" means the portion or dollar value of the state ceiling which initially in each calendar year is allocated to a bond use category for the issuance of private activity bonds, in accordance with RCW 39.86.120.

(12) "Issuer" means the state, any agency or instrumentality of the state, any political subdivision, or any other entity authorized to issue private activity bonds under state law.

(13) "Private activity bonds" means obligations that are private activity bonds as defined in the code or bonds for purposes described in section 1317(25) of the tax reform act of 1986.

(14) "Program" means the activities for which housing bonds or student loan bonds may be issued.

(15) "Public utility" means the bond use category which includes those bonds described in section 1317(25) of the tax reform act of 1986.

(16) "Redevelopment" means the bond use category which includes qualified redevelopment bonds as described in the code.

(17) "Remainder" means that portion of the state ceiling remaining after initial allocations are made under RCW 39.86.120 for any other bond use category.

(18) "Small issue" means the bond use category which includes all industrial development bonds that constitute qualified small issue bonds, as described in the code.

(19) "State" means the state of Washington.

(20) "State ceiling" means the volume limitation for each calendar year on tax-exempt private activity bonds, as imposed by the code.

(21) "Student loans" means the bond use category which includes qualified student loan bonds as described in the code. [1995 c 399 § 57; 1987 c 297 § 2.]

**39.86.120 Initial allocation.** (1) Except as provided in subsections (2) and (4) of this section, the initial allocation of the state ceiling shall be for each year as follows:

BOND USE CATEGORY	2001	2002 and THEREAFTER	ALTERNATIVE ALLOCATION
Housing	27.5%	30.0%	32.0%
Small Issue	24.5%	24.0%	25.0%
Exempt Facility	19.5%	19.0%	20.0%
Student Loans	14.5%	14.0%	15.0%
Public Utility	10.0%	10.0%	0.0%
Remainder and redevelopment	4.0%	3.0%	8.0%

(2) Initial allocations may be modified by the agency only to reflect an issuer's carryforward amount. Any reduction of the initial allocation shall be added to the remainder and be available for allocation or reallocation.

(3) The remainder shall be allocated by the agency among one or more issuers from any bond use category with regard to the criteria specified in RCW 39.86.130.

(4) Should any bond use category no longer be subject to the state ceiling due to federal or state provisions of law, the agency shall divide the amount of that initial allocation among the remaining categories as necessary or appropriate with regard to the criteria specified in RCW 39.86.130. Upon the earlier of: (a) Exhaustion of the seven hundred fifty million dollar authority under I.R.C. 1317(25), or any new federal legislation increasing the amount of authority, or creating additional authority; or (b) waiver of the authority described under (a) of this subsection due to alternative federal authority that does not use a state volume cap, then the alternative allocation schedule in subsection (1) of this section will be used.

(5)(a) Prior to September 1 of each calendar year, any available portion of an initial allocation may be allocated or reallocated only to an issuer within the same bond use category, except that the remainder category, or portions thereof, may be allocated at any time to any bond use category.

(b) Beginning September 1 of each calendar year, the agency may allocate or reallocate any available portion of the state ceiling to any bond use category with regard to the criteria specified in RCW 39.86.130. [2001 c 330 § 2; 1990 c 50 § 1; 1987 c 297 § 3.]

**39.86.130 Criteria.** (1) In granting an allocation, reallocation, or carryforward of the state ceiling as provided in this chapter, the agency shall consider existing state priorities

and other such criteria, including but not limited to, the following criteria:

(a) Need of issuers to issue private activity bonds within a bond use category;

(b) Amount of the state ceiling available;

(c) Public benefit and purpose to be satisfied, including economic development, educational opportunity, and public health, safety, or welfare;

(d) Cost or availability of alternative methods of financing for the project or program; and

(e) Certainty of using the allocation which is being requested.

(2) In determining whether to allocate an amount of the state ceiling to an issuer within any bond use category, the agency shall consider, but is not limited to, the following criteria for each of the bond use categories:

(a) Housing: Criteria which comply with RCW 43.180.200.

(b) Student loans: Criteria which comply with the applicable provisions of Title 28B RCW and rules adopted by the higher education coordinating board or applicable state agency dealing with student financial aid.

(c) Small issue: Recommendation by the board regarding how the amount of the state ceiling set aside for the small issue bond use category shall be allocated among issuers. Factors may include:

(i) The number of employment opportunities the project is likely to create or retain in relation to the amount of the bond issuance;

(ii) The level of unemployment existing in the geographic area likely to be affected by the project;

(iii) A commitment to providing employment opportunities to low-income persons in cooperation with the employment security department;

(iv) Geographic distribution of projects;

(v) The number of persons who will benefit from the project;

(vi) Consistency with criteria identified in subsection (1) of this section;

(vii) Order in which requests were received; and

(viii) Requirements of the board's umbrella bond program.

(d) Exempt facility or redevelopment: Factors which may include:

(i) State issuance needs;

(ii) Consistency with criteria identified in subsection (1) of this section;

(iii) Order in which requests were received;

(iv) The proportionate number of persons in relationship to the size of the community who will benefit from the project; and

(v) The unique timing and issuance needs of large scale projects that may require allocations in more than one year.

(e) Public utility: Factors which may include:

(i) Consistency with criteria identified in subsection (1) of this section; and

(ii) Timing needs for issuance of bonds over a multi-year period. [1987 c 297 § 4.]

**39.86.140 Procedure for obtaining state ceiling allocation.** (1) No issuer may receive an allocation of the state ceiling without a certificate of approval from the agency.

(2)(a) For each state ceiling allocation request, an issuer shall submit to the agency, no sooner than ninety days prior to the beginning of a calendar year for which an allocation of the state ceiling is being requested, a form identifying:

- (i) The amount of the allocation sought;
- (ii) The bond use category from which the allocation sought would be made;
- (iii) The project or program for which the allocation is requested;
- (iv) The financing schedule for which the allocation is needed; and
- (v) Any other such information required by the agency, including information which corresponds to the allocation criteria of RCW 39.86.130.

(b) Nothing in (a) of this subsection precludes a public utility issuer from filing and the agency from considering a request at such times as may be appropriate in order to meet the criteria set forth in RCW 39.86.130(2)(e)(ii).

(3) The agency may approve or deny an allocation for all or a portion of the issuer's request. Any denied request, however, shall remain on file with the agency for the remainder of the calendar year and shall be considered for receiving any allocation, reallocation, or carryforward of unused portions of the state ceiling during that period.

(4) After receiving an allocation request, the agency shall mail to the requesting issuer a written certificate of approval or notice of denial for an allocation amount, by a date no later than the latest of the following:

- (a) Forty-five days from May 8, 1987;
- (b) February 1 of the calendar year, other than 1987, for which the request is made;
- (c) Fifteen days from the date the agency receives an allocation request; or
- (d) Fifteen days from the date the agency receives a recommendation by the board with regard to a small issue allocation request, should the board choose to review individual requests.

(5)(a) For requests of the state ceiling of any calendar year, the following applies to all bond use categories except housing and student loans:

(i) Except for housing and student loans, any allocations granted prior to April 1, for which bonds have not been issued by September 1 of the same calendar year, shall revert to the agency on September 1 of the same calendar year for reallocation unless an extension or carryforward is granted;

(ii) Except for housing and student loans, any allocations granted on or after April 1, for which bonds have not been issued by December 15 of the same calendar year, shall revert to the agency on December 15 of the same calendar year for reallocation unless an extension or carryforward is granted.

(b) For each calendar year, any housing or student loan allocations, for which bonds have not been issued by December 15 of the same calendar year, shall revert to the agency on December 15 of the same calendar year for reallocation unless an extension or carryforward is granted.

(6) An extension of the deadlines provided by subsection (5) of this section may be granted by the agency for the approved allocation amount or a portion thereof, based on:

(a) Firm and convincing evidence that the bonds will be issued before the end of the calendar year if the extension is granted; and

(b) Any other criteria the agency deems appropriate.

(7) If an issuer determines that bonds subject to the state ceiling will not be issued for the project or program for which an allocation was granted, the issuer shall promptly notify the agency in writing so that the allocation may be canceled and the amount may be available for reallocation.

(8) Bonds subject to the state ceiling may be issued only to finance the project or program for which a certificate of approval is granted.

(9) Within three business days of the date that bonds for which an allocation of the state ceiling is granted have been delivered to the original purchasers, the issuer shall mail to the agency a written notification of the bond issuance. In accordance with chapter 39.44 RCW, the issuer shall also complete bond issuance information on the form provided by the agency.

(10) If the total amount of tax-exempt bonds issued for a project or program is less than the amount allocated, the remaining portion of the allocation shall revert to the agency for reallocation in accordance with the criteria in RCW 39.86.130. If the amount of tax-exempt bonds actually issued under the state ceiling is greater than the amount allocated, the entire allocation shall be disallowed. [1987 c 297 § 5.]

#### **39.86.150 Reallocation process and carryforwards.**

(1) Beginning September 1 of each calendar year, the agency may allocate or reallocate any portions of the state ceiling for which no certificate of approval is in effect. Reallocations may also be made from the remainder category at any time during the year.

(2) Prior to the end of each calendar year, the agency shall allocate or reallocate any unused portions of the state ceiling among one or more issuers as carryforward, to be used within three years, in accordance with the code and relevant criteria described in RCW 39.86.130. [1987 c 297 § 6.]

**39.86.160 Executive orders.** If federal legislation is enacted or federal regulations are promulgated which affect the state ceiling, when the legislature is not in session or is less than forty-five days from the constitutional end of session, the governor may establish by executive order an alternative system for the allocation of tax-exempt bonds under the state ceiling, effective until the legislature acts. In allocating or reallocating under this section, the governor shall take into account the requirements of federal law, the policy choices expressed in state law, and the projected needs of issuers. [1987 c 297 § 7.]

**39.86.170 Fees.** A fee schedule shall be established by rule by the agency to assist in support of bond allocation activities. Fees shall reflect costs actually incurred or expected to be incurred by the agency in its bond allocation activities. [1987 c 297 § 8.]

**39.86.180 Code amendments.** In order to permit the full use of the authorized state ceiling under federal law, the

agency may adopt rules approving any amendments made to the code after May 8, 1987. [1987 c 297 § 9.]

**39.86.190 Annual and biennial reports.** By February 1 of each year, the agency shall summarize for the legislature each previous year's bond allocation requests and issuance. Beginning in June of 1988 and thereafter in June of each even-numbered year, the agency shall also submit a biennial report summarizing usage of the bond allocation proceeds and any policy concerns for future bond allocations. [1987 c 297 § 10.]

**39.86.200 Ratification.** Any state ceiling allocations taken prior to May 8, 1987, in conformance with the code and an applicable executive order of the governor are ratified and confirmed and shall remain in full force and effect notwithstanding any other provision of this chapter. [1987 c 297 § 11.]

**39.86.905 Captions.** As used in this chapter, captions constitute no part of the law. [1987 c 297 § 15.]

**39.86.906 Severability—1987 c 297.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 297 § 14.]

## Chapter 39.88 RCW

### COMMUNITY REDEVELOPMENT FINANCING ACT

#### Sections

39.88.010	Declaration.
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**Reviser's note:** Senate Joint Resolution No. 143, amending the state Constitution to authorize the use of increased property tax revenues resulting from a public improvement for the purpose of paying obligations incurred for the improvement, was enacted during the 1982 first extraordinary session of the legislature and was submitted to the voters at the November 1982 state general election. It was defeated by a vote of 393,030 in favor and 882,194 against. A similar constitutional amendment, House Joint Resolution No. 23, was defeated at the November 1985 state general election.

**39.88.010 Declaration.** It is declared to be the public policy of the state of Washington to promote and facilitate the orderly development and economic stability of its urban areas. The provision of adequate government services and the creation of employment opportunities for the citizens within urban areas depends upon the economic growth and the strength of their tax base. The construction of necessary public improvements in accordance with local community plan-

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ning will encourage investment in job-producing private development and will expand the public tax base.

It is the purpose of this chapter to allocate a portion of regular property taxes for limited periods of time to assist in the financing of public improvements which are needed to encourage private development of urban areas; to prevent or arrest the decay of urban areas due to the inability of existing financing methods to provide needed public improvements; to encourage local taxing districts to cooperate in the allocation of future tax revenues arising in urban areas in order to facilitate the long-term growth of their common tax base; and to encourage private investment within urban areas. [1982 1st ex.s. c 42 § 2.]

**39.88.020 Definitions.** As used in this chapter the following terms have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Apportionment district" means the geographic area, within an urban area, from which regular property taxes are to be apportioned to finance a public improvement contained therein.

(2) "Assessed value of real property" means the valuation of real property as placed on the last completed assessment roll of the county.

(3) "City" means any city or town.

(4) "Ordinance" means any appropriate method of taking a legislative action by a county or city, whether known as a statute, resolution, ordinance, or otherwise.

(5) "Public improvement" means an undertaking to provide public facilities in an urban area which the sponsor has authority to provide.

(6) "Public improvement costs" means the costs of design, planning, acquisition, site preparation, construction, reconstruction, rehabilitation, improvement, and installation of the public improvement; costs of relocation, maintenance, and operation of property pending construction of the public improvement; costs of utilities relocated as a result of the public improvement; costs of financing, including interest during construction, legal and other professional services, taxes, and insurance; costs incurred by the assessor to revalue real property for the purpose of determining the tax allocation base value that are in excess of costs incurred by the assessor in accordance with his revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; and administrative costs reasonably necessary and related to these costs. These costs may include costs incurred prior to the adoption of the public improvement ordinance, but subsequent to July 10, 1982.

(7) "Public improvement ordinance" means the ordinance passed under RCW 39.88.040(4).

(8) "Regular property taxes" means regular property taxes as now or hereafter defined in RCW 84.04.140, except regular property taxes levied by port districts or public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness.

(9) "Sponsor" means any county or city initiating and undertaking a public improvement.

(10) "Tax allocation base value of real property" means the true and fair value of real property within an apportion-

ment district for the year in which the apportionment district was established.

(11) "Tax allocation bonds" means any bonds, notes, or other obligations issued by a sponsor pursuant to \*section 10 of this act.

(12) "Tax allocation revenues" means those tax revenues allocated to a sponsor under RCW 39.88.070(1)(b).

(13) "Taxing districts" means any governmental entity which levies or has levied for it regular property taxes upon real property located within a proposed or approved apportionment district.

(14) "Value of taxable property" means value of taxable property as defined in RCW 39.36.015.

(15) "Urban area" means an area in a city or located outside of a city that is characterized by intensive use of the land for the location of structures and receiving such urban services as sewers, water, and other public utilities and services normally associated with urbanized areas. Not more than twenty-five percent of the area within the urban area proposed apportionment district may be vacant land. [1982 1st ex.s. c 42 § 3.]

**\*Reviser's note:** "section 10 of this act," codified as RCW 39.88.090, deals with general obligation bonds. Tax allocation bonds are the subject of section 11 (RCW 39.88.100), which was apparently intended. The error arose in the renumbering of sections in the engrossing of amendments to Second Substitute Senate Bill No. 4603 [1982 1st ex.s. c 42].

**39.88.030 Authority—Limitations.** (1) Only public improvements which are determined by the legislative authority of the sponsor to meet the following criteria are eligible to be financed under this chapter:

(a) The public improvement is located within an urban area;

(b) The public improvement will encourage private development within the apportionment district;

(c) The public improvement will increase the fair market value of the real property located within the apportionment district;

(d) The private development which is anticipated to occur within the apportionment district as a result of the public improvement is consistent with an existing comprehensive land use plan and approved growth policies of the jurisdiction within which it is located;

(e) A public improvement located within a city has been approved by the legislative authority of such city; and

(f) A public improvement located within an urban area in an unincorporated area has been approved by the legislative authority of the county within whose boundaries the area lies.

(2) Apportionment of regular property tax revenues to finance the public improvements is subject to the following limitations:

(a) No apportionment of regular property tax revenues may take place within a previously established apportionment district where regular property taxes are still apportioned to finance public improvements without the concurrence of the sponsor which established the district;

(b) No apportionment district may be established which includes any geographic area included within a previously established apportionment district which has outstanding bonds payable in whole or in part from tax allocation revenues;

(c) The total amount of outstanding bonds payable in whole or in part from tax allocation revenues arising from property located within a city shall not exceed two percent of the value of taxable property within the city, and the total amount of outstanding bonds payable in whole or in part from tax allocation revenues arising from property located within the unincorporated areas of a county shall not exceed two percent of the value of taxable property within the entire unincorporated area of the county; and

(d) No taxes other than regular property taxes may be apportioned under this chapter.

(3) Public improvements may be undertaken and coordinated with other programs or efforts undertaken by the sponsor or others and may be funded in whole or in part from sources other than those provided by this chapter. [1982 1st ex.s. c 42 § 4.]

**39.88.040 Procedure for adoption of public improvement.** Public improvements funded by tax allocation revenues may only be located within an urban area. In order to secure an allocation of regular property taxes to finance a public improvement, a sponsor shall:

(1) Propose by ordinance a plan for the public improvement which includes a description of the contemplated public improvement, the estimated cost thereof, the boundaries of the apportionment district, the estimated period during which tax revenue apportionment is contemplated, and the ways in which the sponsor plans to use tax allocation revenues to finance the public improvement, and which sets at least three public hearings thereon before the legislative authority of the sponsor or a committee thereof: PROVIDED, That public hearings for the public improvement that is undertaken in combination or coordination by two or more sponsors may be held jointly; and public hearings, held before the legislative authority or a committee of a majority thereof may be combined with public hearings held for other purposes;

(2) At least fifteen days in advance of the hearing:

(a) Deliver notice of the hearing to all taxing districts, the county treasurer, and the county assessor, which notice includes a map or drawing showing the location of the contemplated public improvement and the boundaries of the proposed apportionment district, a brief description of the public improvement, the estimated cost thereof, the anticipated increase in property values within the apportionment district, the location of the sponsor's principal business office where it will maintain information concerning the public improvement for public inspection, and the date and place of hearing; and

(b) Post notice in at least six public places located in the proposed apportionment district and publish notice in a legal newspaper of general circulation within the sponsor's jurisdiction briefly describing the public improvement, the proposed apportionment, the boundaries of the proposed apportionment district, the location where additional information concerning the public improvement may be inspected, and the date and place of hearing;

(3) At the time and place fixed for the hearing under subsection (1) of this section, and at such times to which the hearing may be adjourned, receive and consider all statements and materials as may be submitted, and objections and letters filed before or within ten days thereafter;

(4) Within one hundred twenty days after completion of the public hearings, pass an ordinance establishing the apportionment district and authorizing the proposed public improvement, including any modifications which in the sponsor's opinion the hearings indicated should be made, which includes the boundaries of the apportionment district, a description of the public improvement, the estimated cost thereof, the portion of the estimated cost thereof to be reimbursed from tax allocation revenues, the estimated time during which regular property taxes are to be apportioned, the date upon which apportionment of the regular property taxes will commence, and a finding that the public improvement meets the conditions of RCW 39.88.030. [1982 1st ex.s. c 42 § 5.]

**39.88.050 Notice of public improvement.** Within fifteen days after enactment of the public improvement ordinance, the sponsor shall publish notice in a legal newspaper circulated within the designated apportionment district summarizing the final public improvement, including a brief description of the public improvement, the boundaries of the apportionment district, and the location where the public improvement ordinance and any other information concerning the public improvement may be inspected.

Within fifteen days after enactment of the public improvement ordinance, the sponsor shall deliver a certified copy thereof to each taxing district, the county treasurer, and the county assessor. [1982 1st ex.s. c 42 § 6.]

**39.88.060 Disagreements between taxing districts.**

(1) Any taxing district that objects to the apportionment district, the duration of the apportionment, the manner of apportionment, or the propriety of cost items established by the public improvement ordinance of the sponsor may, within thirty days after mailing of the ordinance, petition for review thereof by the state board of tax appeals. The state board of tax appeals shall meet within a reasonable time, hear all the evidence presented by the parties on matters in dispute, and determine the issues upon the evidence as may be presented to it at the hearing. The board may approve or deny the public improvement ordinance as enacted or may grant approval conditioned upon modification of the ordinance by the sponsor. The decision by the state board of tax appeals shall be final and conclusive but shall not preclude modification or discontinuation of the public improvement.

(2) If the sponsor modifies the public improvement ordinance as directed by the board, the public improvement ordinance shall be effective without further hearings or findings and shall not be subject to any further appeal. If the sponsor modifies the public improvement ordinance in a manner other than as directed by the board, the public improvement ordinance shall be subject to the procedures established pursuant to RCW 39.88.040 and 39.88.050. [1989 c 378 § 1; 1982 1st ex.s. c 42 § 7.]

**39.88.070 Apportionment of taxes.** (1) Upon the date established in the public improvement ordinance, but not sooner than the first day of the calendar year following the passage of the ordinance, the regular property taxes levied

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upon the assessed value of real property within the apportionment district shall be divided as follows:

(a) That portion of the regular property taxes produced by the rate of tax levied each year by or for each of the taxing districts upon the tax allocation base value of real property, or upon the assessed value of real property in each year, whichever is smaller, shall be allocated to and paid to the respective taxing districts; and

(b) That portion of the regular property taxes levied each year by or for each of the taxing districts upon the assessed value of real property within an apportionment district which is in excess of the tax allocation base value of real property shall be allocated and paid to the sponsor, or the sponsor's designated agent, until all public improvement costs to be paid from the tax allocation revenues have been paid, except that the sponsor may agree to receive less than the full amount of such portion as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of the taxes shall be allocated to the respective taxing districts as the sponsor and the taxing districts may agree.

(2) The county assessor shall revalue the real property within the apportionment district for the purpose of determining the tax allocation base value for the apportionment district and shall certify to the sponsor the tax allocation base value as soon as practicable after the assessor receives notice of the public improvement ordinance and shall certify to the sponsor the total assessed value of real property within thirty days after the property values for each succeeding year have been established, except that the assessed value of state-assessed real property within the apportionment district shall be certified as soon as the values are provided to the assessor by the department of revenue. Nothing in this section authorizes revaluations of real property by the assessor for property taxation that are not made in accordance with the assessor's revaluation plan under chapter 84.41 RCW.

(3) The date upon which the apportionment district was established shall be considered the date upon which the public improvement ordinance was enacted by the sponsor.

(4) The apportionment of regular property taxes under this section shall cease when tax allocation revenues are no longer necessary or obligated to pay public improvement costs or to pay principal of and interest on bonds issued to finance public improvement costs and payable in whole or in part from tax allocation revenues. At the time of termination of the apportionment, any excess money and any earnings thereon held by the sponsor shall be returned to the county treasurer and distributed to the taxing districts which were subject to the allocation in proportion to their regular property tax levies due for the year in which the funds are returned. [1982 1st ex.s. c 42 § 8.]

**39.88.080 Application of tax allocation revenues.** Tax allocation revenues may be applied as follows:

- (1) To pay public improvement costs;
- (2) To pay principal of and interest on, and to fund any necessary reserves for, tax allocation bonds;
- (3) To pay into bond funds established to pay the principal of and interest on general obligation bonds issued pursuant to law to finance public facilities that are specified in the

public improvement ordinance and constructed following the establishment of and within the apportionment district; or

(4) To pay any combination of the foregoing. [1982 1st ex.s. c 42 § 9.]

**39.88.090 General obligation bonds.** General obligation bonds which are issued to finance public facilities that are specified in the public improvement ordinance, and for which part or all of the principal or interest is paid by tax allocation revenues, shall be subject to the following requirements:

(1) The intent to issue such bonds and the maximum amount which the sponsor contemplates issuing are specified in the public improvement ordinance; and

(2) A statement of the intent of the sponsor to issue such bonds is included in all notices required by RCW 39.88.040 and 39.88.050.

In addition, the ordinance or resolution authorizing the issuance of such general obligation bonds shall be subject to potential referendum approval by the voters of the issuing entity when the bonds are part of the non-voter approved indebtedness limitation established pursuant to RCW 39.36.020. If the voters of the county or city issuing such bonds otherwise possess the general power of referendum on county or city matters, the ordinance or resolution shall be subject to that procedure. If the voters of the county or city issuing such bonds do not otherwise possess the general power of referendum on county or city matters, the referendum shall conform to the requirements and procedures for referendum petitions provided for code cities in RCW 35A.11.100. [1982 1st ex.s. c 42 § 10.]

**39.88.100 Tax allocation bonds.** (1) A sponsor may issue such tax allocation bonds as it may deem appropriate for the financing of public improvement costs and a reasonable bond reserve and for the refunding of any outstanding tax allocation bonds.

(2) The principal and interest of tax allocation bonds may be made payable from:

(a) Tax allocation revenues;

(b) Project revenues which may include (i) nontax income, revenues, fees, and rents from the public improvement financed with the proceeds of the bonds, or portions thereof, and (ii) contributions, grants, and nontax money available to the sponsor for payment of costs of the public improvement or the debt service of the bonds issued therefor;

(c) Any combination of the foregoing.

(3) Tax allocation bonds shall not be the general obligation of or guaranteed by all or any part of the full faith and credit of the sponsor or any other state or local government, or any tax revenues other than tax allocation revenues, and shall not be considered a debt of the sponsor or other state or local government for general indebtedness limitation purposes.

(4) The terms and conditions of tax allocation bonds may include provisions for the following matters, among others:

(a) The date of issuance, maturity date or dates, denominations, form, series, negotiability, registration, rank or priority, place of payment, interest rate or rates which may be fixed or may vary over the life of the tax allocation bonds,

bond reserve, coverage, and such other terms related to repayment of the tax allocation bonds;

(b) The application of tax allocation bond proceeds; the use, sale, or disposition of property acquired; consideration or rents and fees to be charged in the sale or lease of property acquired; consideration or rents and fees to be charged in the sale or lease of property within a public improvement; the application of rents, fees, and revenues within a public improvement; the maintenance, insurance, and replacement of property within a public improvement; other encumbrances, if any, upon all or part of property within a public improvement, then existing or thereafter acquired; and the type of debts that may be incurred;

(c) The creation of special funds; the money to be so applied; and the use and disposition of the money;

(d) The securing of the tax allocation bonds by a pledge of property and property rights, by assignment of income generated by the public improvement, or by pledging such additional specifically described resources other than tax revenues as are available to the sponsor;

(e) The terms and conditions for redemption;

(f) The replacement of lost and destroyed bond instruments;

(g) Procedures for amendment of the terms and conditions of the tax allocation bonds;

(h) The powers of a trustee to enforce covenants and take other actions in event of default; the rights, liabilities, powers, and duties arising upon the breach of any covenant, condition, or obligation; and

(i) When consistent with the terms of this chapter, such other terms, conditions, and provisions which may make the tax allocation bonds more marketable and further the purposes of this chapter.

(5) Tax allocation bonds may be issued and sold in such manner as the legislative authority of the sponsor shall determine.

(6) The sponsor may also issue or incur obligations in anticipation of the receipt of tax allocation bond proceeds or other money available to pay public improvement costs. [1982 1st ex.s. c 42 § 11.]

**39.88.110 Legal investments.** Tax allocation bonds authorized in this chapter shall be legal investments for any of the funds of the state and of municipal corporations, for trustees, and for other fiduciaries. [1982 1st ex.s. c 42 § 13.]

**39.88.120 Notice to state.** Whenever notice is required to be given to the state, notice shall be given to the director of revenue. [1982 1st ex.s. c 42 § 14.]

**39.88.130 Conclusive presumption of validity.** No direct or collateral attack on any public improvement, public improvement ordinance, or apportionment district purported to be authorized or created in conformance with applicable legal requirements, including the requirements of this chapter, may be commenced more than thirty days after publication of notice as required by RCW 39.88.050. [1982 1st ex.s. c 42 § 15.]

**39.88.900 Supplemental nature of chapter.** This chapter supplements and neither restricts nor limits any powers which the state or any municipal corporation might otherwise have under any laws of this state. [1982 1st ex.s. c 42 § 16.]

**39.88.905 Short title.** This chapter may be known and cited as the Community Redevelopment Financing Act of 1982. [1982 1st ex.s. c 42 § 1.]

**39.88.910 Captions not part of law—1982 1st ex.s. c 42.** As used in this act, captions constitute no part of the law. [1982 1st ex.s. c 42 § 17.]

**39.88.915 Severability—1982 1st ex.s. c 42.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 1st ex.s. c 42 § 18.]

**Chapter 39.89 RCW**

**COMMUNITY REVITALIZATION FINANCING**

Sections

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39.89.030	Authority—Conditions.
39.89.040	Coordination with other programs—Improvements by private developer must meet applicable state and local laws.
39.89.050	Procedure for creating increment area.
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39.89.100	Revenue bonds.
39.89.900	Supplemental nature of chapter.
39.89.902	Severability—2001 c 212.

**39.89.010 Declaration—Purpose.** (1) It is declared to be the public policy of the state of Washington to promote and facilitate the orderly development and economic stability of its communities. Local governments need the ability to raise revenue to finance public improvements that are designed to encourage economic growth and development in geographic areas characterized by high levels of unemployment and stagnate employment and income growth. The construction of necessary public improvements in accordance with local economic development plans will encourage investment in job-producing private development and expand the public tax base.

(2) It is the purpose of this chapter:

(a) To encourage taxing districts to cooperate in the allocation of future tax revenues that are used to finance public improvements designed to encourage private development in selected areas, in particular in those local governments that are located adjacent to another state or international border;

(b) To assist those local governments that have a competitive disadvantage in its ability to attract business, private investment, or commercial development due to its location near a state or international border; and

(c) To prevent or arrest the decay of selected areas due to the inability of existing financial methods to provide needed public improvements, and to encourage private investment

designed to promote and facilitate the orderly redevelopment of selected areas. [2001 c 212 § 1.]

**39.89.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assessed value of real property" means the valuation of real property as placed on the last completed assessment roll.

(2) "Local government" means any city, town, county, port district, or any combination thereof.

(3) "Ordinance" means any appropriate method of taking legislative action by a local government.

(4) "Public improvements" means:

(a) Infrastructure improvements within the increment area that include:

(i) Street and road construction and maintenance;

(ii) Water and sewer system construction and improvements;

(iii) Sidewalks and streetlights;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities and recreational areas; and

(vii) Storm water and drainage management systems;

and

(b) Expenditures for any of the following purposes:

(i) Providing environmental analysis, professional management, planning, and promotion within the increment area, including the management and promotion of retail trade activities in the increment area;

(ii) Providing maintenance and security for common or public areas in the increment area; or

(iii) Historic preservation activities authorized under RCW 35.21.395.

(5) "Public improvement costs" means the costs of: (a) Design, planning, acquisition, site preparation, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) relocating, maintaining, and operating property pending construction of public improvements; (c) relocating utilities as a result of public improvements; (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary reserves for general indebtedness; (e) assessments incurred in revaluing real property for the purpose of determining the tax allocation base value that are in excess of costs incurred by the assessor in accordance with the revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; and (f) administrative expenses and feasibility studies reasonably necessary and related to these costs, including related costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of community revitalization financing to fund the costs of the public improvements.

(6) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (a) Regular property taxes levied by port districts or public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness; and

(b) regular property taxes levied by the state for the support of the common schools under RCW 84.52.065. Regular property taxes do not include excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043.

(7) "Tax allocation base value" means the true and fair value of real property located within an increment area for taxes imposed in the year in which the increment area is created, plus twenty-five percent of any increase in the true and fair value of real property located within an increment area that is placed on the assessment rolls after the increment area is created.

(8) "Tax allocation revenues" means those tax revenues derived from the imposition of regular property taxes on the increment value and distributed to finance public improvements.

(9) "Increment area" means the geographic area from which taxes are to be appropriated to finance public improvements authorized under this chapter.

(10) "Increment value" means seventy-five percent of any increase in the true and fair value of real property in an increment area that is placed on the tax rolls after the increment area is created.

(11) "Taxing districts" means a governmental entity that levies or has levied for it regular property taxes upon real property located within a proposed or approved increment area.

(12) "Value of taxable property" means the value of the taxable property as defined in RCW 39.36.015. [2001 c 212 § 2.]

**39.89.030 Authority—Conditions.** A local government may finance public improvements using community revitalization financing subject to the following conditions:

(1) The local government adopts an ordinance designating an increment area within its boundaries and specifying the public improvements proposed to be financed in whole or in part with the use of community revitalization financing;

(2) The public improvements proposed to be financed in whole or in part using community revitalization financing are expected to encourage private development within the increment area and to increase the fair market value of real property within the increment area;

(3) Private development that is anticipated to occur within the increment area, as a result of the public improvements, will be consistent with the countywide planning policy adopted by the county under RCW 36.70A.210 and the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW;

(4) Taxing districts, in the aggregate, that levy at least seventy-five percent of the regular property tax within which the increment area is located approves the community revitalization financing of the project under RCW 39.89.050(1); and

(5) In an increment area that includes any portion of a fire protection district as defined in Title 52 RCW, the fire protection district must agree to participate in the community revitalization financing of the project under chapter 212, Laws of 2001, for the project to proceed. Approval by the fire protection district shall be considered as part of the required

participation by taxing districts under subsection (4) of this section. [2002 c 12 § 1; 2001 c 212 § 3.]

**39.89.040 Coordination with other programs—Improvements by private developer must meet applicable state and local laws.** (1) Public improvements that are financed with community revitalization financing may be undertaken and coordinated with other programs or efforts undertaken by the local government and other taxing districts and may be funded in part from revenue sources other than community revitalization financing.

(2) Public improvements that are constructed by a private developer must meet all applicable state and local laws. [2002 c 12 § 2; 2001 c 212 § 4.]

**39.89.050 Procedure for creating increment area.** Before adopting an ordinance creating the increment area, a local government must:

(1) Obtain written agreement for the use of community revitalization financing to finance all or a portion of the costs of the designated public improvements from taxing districts that, in the aggregate, levy at least seventy-five percent of the regular property tax on property within the increment area. A signed, written agreement from taxing districts that in the aggregate levy at least seventy-five percent of the regular property tax within the increment area, constitutes concurrence by all taxing districts in the increment area in the public improvement and participation in the public improvement to the extent of providing limited funding under community revitalization financing authorized under this chapter. The agreement must be authorized by the governing body of taxing districts that in the aggregate levy at least seventy-five percent of the regular property tax on property within the increment area;

(2) Hold a public hearing on the proposed financing of the public improvement in whole or in part with community revitalization financing. Notice of the public hearing must be published in a legal newspaper of general circulation within the proposed increment area at least ten days before the public hearing and posted in at least six conspicuous public places located in the proposed increment area. Notices must describe the contemplated public improvements, estimate the costs of the public improvements, describe the portion of the costs of the public improvements to be borne by community revitalization financing, describe any other sources of revenue to finance the public improvements, describe the boundaries of the proposed increment area, and estimate the period during which community revitalization financing is contemplated to be used. The public hearing may be held by either the governing body of the local government, or a committee of the governing body that includes at least a majority of the whole governing body; and

(3) Adopt an ordinance establishing the increment area that describes the public improvements, describes the boundaries of the increment area, estimates the cost of the public improvements and the portion of these costs to be financed by community revitalization financing, estimates the time during which regular property taxes are to be apportioned, provides the date when the apportionment of the regular property

taxes will commence, and finds that the conditions of RCW 39.89.030 are met. [2001 c 212 § 5.]

**39.89.060 Public notice—Notice to officials.** The local government shall:

(1) Publish notice in a legal newspaper of general circulation within the increment area that describes the public improvement, describes the boundaries of the increment area, and identifies the location and times where the ordinance and other public information concerning the public improvement may be inspected; and

(2) Deliver a certified copy of the ordinance to the county treasurer, the county assessor, and the governing body of each taxing district within which the increment area is located. [2001 c 212 § 6.]

**39.89.070 Apportionment of taxes.** (1) Commencing in the calendar year following the passage of the ordinance, the county treasurer shall distribute receipts from regular taxes imposed on real property located in the increment area as follows:

(a) Each taxing district shall receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the tax allocation base value for that community revitalization financing project in the taxing district, or upon the total assessed value of real property in the taxing district, whichever is smaller; and

(b) The local government that created the increment area shall receive an additional portion of the regular property taxes levied by or for each taxing district upon the increment value within the increment area. However, the local government that created the increment area may agree to receive less than the full amount of this portion as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of these tax receipts shall be allocated to the taxing districts that imposed regular property taxes, or have regular property taxes imposed for them, in the increment area for collection that year in proportion to their regular tax levy rates for collection that year. The local government may request that the treasurer transfer this additional portion of the property taxes to its designated agent. The portion of the tax receipts distributed to the local government or its agent under this subsection (1)(b) may only be expended to finance public improvement costs associated with the public improvements financed in whole or in part by community revitalization financing.

(2) The county assessor shall allocate twenty-five percent of any increased real property value occurring in the increment area to the tax allocation base value and seventy-five percent to the increment value. This section does not authorize revaluations of real property by the assessor for property taxation that are not made in accordance with the assessor's revaluation plan under chapter 84.41 RCW or under other authorized revaluation procedures.

(3) The apportionment of increases in assessed valuation in an increment area, and the associated distribution to the local government of receipts from regular property taxes that are imposed on the increment value, must cease when tax allocation revenues are no longer necessary or obligated to pay the costs of the public improvements. Any excess tax

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allocation revenues and earnings on the tax allocation revenues remaining at the time the apportionment of tax receipts terminates must be returned to the county treasurer and distributed to the taxing districts that imposed regular property taxes, or had regular property taxes imposed for it, in the increment area for collection that year, in proportion to the rates of their regular property tax levies for collection that year. [2001 c 212 § 7.]

**39.89.080 General indebtedness—Security.** (1) A local government designating an increment area and authorizing the use of community revitalization financing may incur general indebtedness, and issue general obligation bonds, to finance the public improvements and retire the indebtedness in whole or in part from tax allocation revenues it receives, subject to the following requirements:

(a) The ordinance adopted by the local government creating the increment area and authorizing the use of community revitalization financing indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated; and

(b) The local government includes this statement of the intent in all notices required by RCW 39.89.050.

(2) The general indebtedness incurred under subsection (1) of this section may be payable from other tax revenues, the full faith and credit of the local government, and nontax income, revenues, fees, and rents from the public improvements, as well as contributions, grants, and nontax money available to the local government for payment of costs of the public improvements or associated debt service on the general indebtedness.

(3) In addition to the requirements in subsection (1) of this section, a local government designating an increment area and authorizing the use of community revitalization financing may require the nonpublic participant to provide adequate security to protect the public investment in the public improvement within the increment area. [2001 c 212 § 8.]

**39.89.090 Conclusive presumption of validity.** A direct or collateral attack on a public improvement, public improvement ordinance, or increment area purported to be authorized or created in conformance with applicable legal requirements, including this chapter, may not be commenced more than thirty days after publication of notice as required by RCW 39.89.060. [2001 c 212 § 9.]

**39.89.100 Revenue bonds.** (1) A local government may issue revenue bonds to fund revenue-generating public improvements, or portions of public improvements, that are located within an increment area and that it is authorized to provide or operate. Whenever revenue bonds are to be issued, the legislative authority of the local government shall create or have created a special fund or funds from which, along with any reserves created pursuant to RCW 39.44.140, the principal and interest on these revenue bonds shall exclusively be payable. The legislative authority of the local government may obligate the local government to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues from the public improvements that are funded by the revenue bonds. This amount or proportion

is a lien and charge against these revenues, subject only to operating and maintenance expenses. The local government shall have due regard for the cost of operation and maintenance of the public improvements that are funded by the revenue bonds, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion, if any, of the revenue previously pledged. The local government may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(2) Revenue bonds issued pursuant to this section are not an indebtedness of the local government issuing the bonds, and the interest and principal on the bonds shall only be payable from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The owner or bearer of a revenue bond or any interest coupon issued pursuant to this section shall not have any claim against the local government arising from the bond or coupon except for payment from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each bond issued pursuant to this section.

(3) Revenue bonds with a maturity in excess of thirty years shall not be issued. The legislative authority of the local government shall by resolution determine for each revenue bond issue the amount, date, form, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, and covenants including the refunding of existing revenue bonds. Facsimile signatures may be used on the bonds and any coupons. Refunding revenue bonds may be issued in the same manner as revenue bonds are issued. [2002 c 12 § 3.]

**39.89.900 Supplemental nature of chapter.** This chapter supplements and neither restricts nor limits any powers which the state or any local government might otherwise have under any laws of this state. [2001 c 212 § 10.]

**39.89.902 Severability—2001 c 212.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2001 c 212 § 31.]

### Chapter 39.90 RCW

#### VALIDATION OF BONDS AND FINANCING PROCEEDINGS

##### Sections

39.90.010	Definition.
39.90.020	Validation of bonds, proceedings for issuance, sales, etc.
39.90.030	Validation of proceedings to finance or aid in financing.
39.90.050	Revenue bonds—Sale or issuance with greater interest rate than that specified authorized.
39.90.060	Validation of debts, contracts and obligations regardless of interest rates.

##### Cities and towns

sewerage system bonds validated: RCW 35.67.194.  
validating indebtedness: Chapter 35.40 RCW.

City and county armory sites: Chapter 36.64 RCW.

Counties: Chapter 36.67 RCW.

County road bonds: RCW 36.76.080.

Funding bonds, validation: RCW 39.52.015.

Irrigation district bonds, validating: See note following RCW 87.19.005.

Metropolitan park districts, validating bonds: See note following RCW 35.61.010.

Municipal utilities, validating bond proceedings: See notes following RCW 35.92.010.

##### School districts

validating bonds proceedings: RCW 28A.530.010, 28A.530.020, and note following RCW 39.36.020.

validating indebtedness: Chapter 28A.535 RCW.

Second class cities, validating bonds and proceedings: See note following RCW 35.23.545.

**39.90.010 Definition.** As used in this chapter, the term "public body" means any city, town, district or other governmental agency created by or under the laws of this state. [1947 c 242 § 1; Rem. Supp. 1947 § 5616-20.]

**39.90.020 Validation of bonds, proceedings for issuance, sales, etc.** All bonds heretofore issued for the purpose of financing or aiding in the financing of any work, undertaking, or project by any public body, including all proceedings for the authorization and issuance of such bonds, and the sale, execution, and delivery thereof, are hereby validated, ratified, approved, and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing body or commission or officers thereof, to authorize and issue such bonds, or to sell, execute, or deliver the same, and notwithstanding any defects or irregularities (other than constitutional), including the failure to publish notices of elections, in such proceedings, or in such sale, execution or delivery, and notwithstanding that such governing body or commission or officers may not have been elected, appointed or qualified for the offices they purported to hold; and such bonds are and shall be binding, legal, valid, and enforceable obligations of such public body. [1947 c 242 § 2; Rem. Supp. 1947 § 5616-21.]

**39.90.030 Validation of proceedings to finance or aid in financing.** All proceedings which have been taken prior to March 19, 1947, for the purpose of financing or aiding in the financing of any work, undertaking, or project by any public body, including all proceedings for the authorization and issuance of bonds and for the sale, execution, and delivery thereof, are hereby validated, ratified, approved, and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing body or commission or officers thereof, to authorize and issue such bonds, or to sell, execute, or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings. [1947 c 242 § 3; Rem. Supp. 1947 § 5616-22.]

**39.90.050 Revenue bonds—Sale or issuance with greater interest rate than that specified authorized.** All revenue bonds, the issuance of which was authorized or rati-

fied at a general or special election held within the issuing jurisdiction prior to July 1, 1970 or the proposition for the issuance of which will be submitted at such an election pursuant to action of the legislative authority of the issuer taken prior to July 1, 1970, may be sold and issued with an interest rate or rates greater than any interest rate restriction contained in the ballot proposition or ordinance or resolution relating to such authorization or ratification. [1970 ex.s. c 66 § 6.]

**39.90.060 Validation of debts, contracts and obligations regardless of interest rates.** All debts, contracts and obligations heretofore made or incurred by or in favor of the state, state agencies, The Evergreen State College, community colleges, and regional and state universities, and the political subdivisions, municipal corporations and quasi municipal corporations of this state, are hereby declared to be legal and valid and of full force and effect from the date thereof, regardless of the interest rate borne by any such debts, contracts and obligations. [1977 ex.s. c 169 § 93; 1970 ex.s. c 66 § 7.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

Chapter 39.92 RCW

LOCAL TRANSPORTATION ACT

Sections

39.92.010	Purpose.
39.92.020	Definitions.
39.92.030	Local programs authorized.
39.92.040	Transportation impact fee.
39.92.050	Interlocal cooperation—Consistency and assistance.
39.92.900	Severability—Prospective application—1988 c 179.
39.92.901	Section captions—1988 c 179.

**39.92.010 Purpose.** The legislature finds that there is an increasing need for local and regional transportation improvements as the result of both existing demands and the foreseeable future demands from economic growth and development within the state, including residential, commercial, and industrial development.

The legislature intends with this chapter to enable local governments to develop and adopt programs for the purpose of jointly funding, from public and private sources, transportation improvements necessitated in whole or in part by economic development and growth within their respective jurisdictions. The programs should provide a fair and predictable method for allocating the cost of necessary transportation improvements between the public and private sectors. The programs should include consideration of public transportation as a method of reducing off-site transportation impacts from development. The legislature finds that the private funds authorized to be collected pursuant to this chapter are for the purpose of mitigating the impacts of development and are not taxes. The state shall encourage and give priority to the state funding of local and regional transportation improvements that are funded in part by local, public, and private funds.

The authority provided by this chapter, RCW 35.43.182 through 35.43.188, and 36.88.072 through 36.88.078 for local governments to create and implement local transportation programs is intended to be supplemental, except as

expressly provided in RCW 39.92.030(9), 82.02.020, and 36.73.120, to the existing authorities and responsibilities of local governments to regulate development and provide public facilities. [1988 c 179 § 1.]

**39.92.020 Definitions.** The definitions set forth in this section apply throughout this chapter.

(1) "Developer" means an individual, group of individuals, partnership, corporation, association, municipal corporation, state agency, or other person undertaking development and their successors and assigns.

(2) "Development" means the subdivision or short platting of land or the construction or reconstruction of residential, commercial, industrial, public, or any other building, building space, or land.

(3) "Direct result of the proposed development" means those quantifiable transportation impacts that are caused by vehicles or pedestrians whose trip origin or destination is the proposed development.

(4) "Local government" means all counties, cities, and towns in the state of Washington and transportation benefit districts created pursuant to chapter 36.73 RCW.

(5) "Off-site transportation improvements" means those transportation capital improvements designated in the local plan adopted under this chapter that are authorized to be undertaken by local government and that serve the transportation needs of more than one development.

(6) "Transportation impact fee" means a monetary charge imposed on new development for the purpose of mitigating off-site transportation impacts that are a direct result of the proposed development.

(7) "Fair market value" means the price in terms of money that a property will bring in a competitive and open market under all conditions of a fair sale, the buyer and seller each prudently knowledgeable, and assuming the price is not affected by undue stimulus, measured at the time of the dedication to local government of land or improved transportation facilities. [1988 c 179 § 2.]

**39.92.030 Local programs authorized.** Local governments may develop and adopt programs for the purpose of jointly funding, from public and private sources, transportation improvements necessitated in whole or in part by economic development and growth within their respective jurisdictions. Local governments shall adopt the programs by ordinance after notice and public hearing. Each program shall contain the elements described in this section.

(1) The program shall identify the geographic boundaries of the entire area or areas generally benefited by the proposed off-site transportation improvements and within which transportation impact fees will be imposed under this chapter.

(2) The program shall be based on an adopted comprehensive, long-term transportation plan identifying the proposed off-site transportation improvements reasonable and necessary to meet the future growth needs of the designated plan area and intended to be covered by this joint funding program, including acquisition of right of way, construction and reconstruction of all major and minor arterials and intersection improvements, and identifying design standards, levels of service, capacities, and costs applicable to the program.

The program shall also indicate how the transportation plan is coordinated with applicable transportation plans for the region and for adjacent jurisdictions. The program shall also indicate how public transportation and ride-sharing improvements and services will be used to reduce off-site transportation impacts from development.

(3) The program shall include at least a six-year capital funding program, updated annually, identifying the specific public sources and amounts of revenue necessary to pay for that portion of the cost of all off-site transportation improvements contained in the transportation plan that will not foreseeably be funded by transportation impact fees. The program shall include a proposed schedule for construction and expenditures of funds. The funding plan shall consider the additional local tax revenue estimated to be generated by new development within the plan area if all or a portion of the additional revenue is proposed to be earmarked as future appropriations for such off-site transportation improvements.

(4) The program shall authorize transportation impact fees to be imposed on new development within the plan area for the purpose of providing a portion of the funding for reasonable and necessary off-site transportation improvements to solve the cumulative impacts of planned growth and development in the plan area. Off-site transportation impacts shall be measured as a pro rata share of the capacity of the off-site transportation improvements being funded under the program. The fees shall not exceed the amount that the local government can demonstrate is reasonably necessary as a direct result of the proposed development.

(5) The program shall provide that the funds collected as a result of a particular new development shall be used in substantial part to pay for improvements mitigating the impacts of the development or be refunded to the property owners of record. Fees paid toward more than one transportation improvement may be pooled and expended on any one of the improvements mitigating the impact of the development. The funds shall be expended in all cases within six years of collection by the local government or the unexpended funds shall be refunded.

(6) The program shall also describe the formula, timing, security, credits, and other terms and conditions affecting the amount and method of payment of the transportation impact fees as further provided for in RCW 39.92.040. In calculating the amount of the fee, local government shall consider and give credit for the developer's participation in public transportation and ride-sharing improvements and services.

(7) The administrative element of the program shall include: An opportunity for administrative appeal by the developer and hearing before an independent examiner of the amount of the transportation impact fee imposed; establishment of a designated account for the public and private funds appropriated or collected for the transportation improvements identified in the plan; methods to enforce collection of the public and private funds identified in the program; designation of the administrative departments or other entities responsible for administering the program, including determination of fee amounts, transportation planning, and construction; and provisions for future amendment of the program including the addition of other off-site transportation improvements. The program shall not be amended in a man-

ner to relieve local government of any contractual obligations made to prior developers.

(8) The program shall provide that private transportation impact fees shall not be collected for any off-site transportation improvement that is incapable of being reasonably carried out because of lack of public funds or other foreseeable impediment.

(9) The program shall provide that no transportation impact fee may be imposed on a development by local government pursuant to this program when mitigation of the same off-site transportation impacts for the development is being required by any government agency pursuant to any other local, state, or federal law. [1988 c 179 § 3.]

**39.92.040 Transportation impact fee.** The program shall describe the formula or method for calculating the amount of the transportation impact fees to be imposed on new development within the plan area. The program may require developers to pay a transportation impact fee for off-site transportation improvements not yet constructed and for those jointly-funded improvements constructed since the commencement of the program.

The program shall define the event in the development approval process that triggers a determination of the amount of the transportation impact fees and the event that triggers the obligation to make actual payment of the fees. However, the payment obligation shall not commence before the date the developer has obtained a building permit for the new development or, in the case of residential subdivisions or short plats, at the time of final plat approval, at the developer's option. If the developer of a residential subdivision or short plat elects to pay the fee at the date a building permit has been obtained, the option to pay the transportation impact fee by installments as authorized by this section is deemed to have been waived by the developer. The developer shall be given the option to pay the transportation impact fee in a lump sum, without interest, or by installment with reasonable interest over a period of five years or more as specified by the local government.

The local government shall require security for the obligation to pay the transportation impact fee, in the form of a recorded agreement, deed of trust, letter of credit, or other instrument determined satisfactory by the local government. The developer shall also be given credit against its obligations for the transportation impact fee, for the fair market value of off-site land and/or the cost of constructing off-site transportation improvements dedicated to the local government. If the value of the dedication exceeds the amount of transportation impact fee obligation, the developer is entitled to reimbursement from transportation impact fees attributable to the dedicated improvements and paid by subsequent developers within the plan area.

Payment of the transportation impact fee entitles the developer and its successors and assigns to credit against any other fee, local improvement district assessment, or other monetary imposition made specifically for the designated off-site transportation improvements intended to be covered by the transportation impact fee imposed pursuant to this program. The program shall also define the criteria for establishing periodic fee increases attributable to construction and

related cost increases for the improvements designated in the program. [1989 c 296 § 1; 1988 c 179 § 4.]

**39.92.050 Interlocal cooperation—Consistency and assistance.** Local governments are authorized and encouraged to enter into interlocal agreements to jointly develop and adopt with other local governments the transportation programs authorized by this chapter for the purpose of accomplishing regional transportation planning and development. Local governments shall also seek, to the greatest degree practicable, consistency among jurisdictions in the terms and conditions of their programs for the purpose of increasing fairness and predictability on a regional basis. Local governments shall seek comment, in the development of their programs, from other affected local governments, state agencies, and governments authorized to perform public transportation functions. Local governments are also encouraged to enter into interlocal agreements to provide technical assistance to each other, in return for reasonable reimbursement, for the purpose of developing and implementing such transportation programs. [1988 c 179 § 5.]

**39.92.900 Severability—Prospective application—1988 c 179.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. This act is intended to be prospective, not retroactive, in its application. [1988 c 179 § 17.]

**39.92.901 Section captions—1988 c 179.** Section captions used in this act do not constitute any part of the law. [1988 c 179 § 18.]

**Chapter 39.94 RCW  
FINANCING CONTRACTS**

Sections

39.94.010	Purposes—Construction.
39.94.020	Definitions.
39.94.030	Authority to enter into financing contracts—Terms—Intent—Obligation of state revenues.
39.94.040	State finance committee—Duties—Legislative approval required, when.
39.94.050	Financing program to be self-supporting—Payment of program expenses.
39.94.900	Application.

**39.94.010 Purposes—Construction.** The purposes of this chapter are to confirm the authority of the state, its agencies, departments, and instrumentalities, the state board for community and technical colleges, and the state institutions of higher education to enter into contracts for the acquisition of real and personal property which provide for payments over a term of more than one year and to exclude such contracts from the computation of indebtedness under RCW 39.42.060 and Article VIII, section 1 of the state Constitution. It is further the purpose of this chapter to permit the state, its agencies, departments, and instrumentalities, the state board for community and technical colleges, and the state institutions of higher education to enter into financing contracts which make provision for the issuance of certificates of participation and other financing structures. Financ-

ing contracts of the state, whether or not entered into under this chapter, shall be subject to approval by the state finance committee except as provided in this chapter.

This chapter shall be liberally construed to effect its purposes. [1998 c 291 § 2; 1989 c 356 § 1.]

**Application—1998 c 291:** See note following RCW 39.94.050.

**39.94.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Credit enhancement" includes insurance, letters of credit, lines of credit, or other similar agreements which enhance the security for the payment of the state's or an other agency's obligations under financing contracts.

(2) "Financing contract" means any contract entered into by the state for itself or on behalf of an other agency which provides for the use and purchase of real or personal property by the state and provides for payment by the state over a term of more than one year, and which provides that title to the subject property may secure performance of the state or transfer to the state or an other agency by the end of the term, upon exercise of an option, for a nominal amount or for a price determined without reference to fair market value. Financing contracts shall include, but not be limited to, conditional sales contracts, financing leases, lease purchase contracts, or refinancing contracts, but shall not include operating or true leases. For purposes of this chapter, the term "financing contract" shall not include any nonrecourse financing contract or other obligation payable only from money or other property received from private sources and not payable from any public money or property. The term "financing contract" shall include a "master financing contract."

(3) "Master financing contract" means a financing contract which provides for the use and purchase of property by the state, and which may include more than one financing contract and appropriation.

(4) "Other agency" means any commission established under Title 15 RCW, a library or regional library, an educational service district, the superintendent of public instruction, the school directors' association, a health district, or any county, city, town, school district, or other municipal corporation or quasi-municipal corporation described as such by statute.

(5) "State" means the state, agency, department, or instrumentality of the state, the state board for community and technical colleges, and any state institution of higher education.

(6) "State finance committee" means the state finance committee under chapter 43.33 RCW.

(7) "Trustee" means a bank or trust company, within or without the state, authorized by law to exercise trust powers. [1998 c 291 § 3; 1990 c 47 § 3; 1989 c 356 § 2.]

**Application—1998 c 291:** See note following RCW 39.94.050.

**39.94.030 Authority to enter into financing contracts—Terms—Intent—Obligation of state revenues.**

(1) The state may enter into financing contracts for itself or on behalf of an other agency for the use and acquisition for public purposes of real and personal property. Payments under financing contracts of the state shall be made by the

state from currently appropriated funds or funds not constituting "general state revenues" as defined in Article VIII, section 1 of the state Constitution. Except as provided in subsection (4)(b) of this section, payments under financing contracts of the state on behalf of any other agency shall be made solely from the sources identified in the financing contract, which may not obligate general state revenues as defined in Article VII, section 1 of the state Constitution. The treasurer of an other agency shall remit payments under financing contracts to the office of the state treasurer or to the state treasurer's designee. In the event of any deficiency of payments by an other agency under a financing contract, the treasurer of the other agency shall transfer any legally available funds of the other agency in satisfaction of the other agency's obligations under the financing contract if such funds have been obligated by the other agency under the financing contract and, if such deficiency is not thereby cured, the office of the state treasurer is directed to withdraw from that agency's share of state revenues for distribution or other money an amount sufficient to fulfill the terms and conditions of the financing contract. The term of any financing contract shall not exceed thirty years or the remaining useful life of the property, whichever is shorter. Financing contracts may include other terms and conditions agreed upon by the parties.

(2) The state for itself or on behalf of an other agency may enter into contracts for credit enhancement, which shall limit the recourse of the provider of credit enhancement solely to the security provided under the financing contract secured by the credit enhancement.

(3) The state or an other agency may grant a security interest in real or personal property acquired under financing contracts. The security interest may be perfected as provided by the uniform commercial code - secured transactions, or otherwise as provided by law for perfecting liens on real estate. Other terms and conditions may be included as agreed upon by the parties.

(4)(a) Except under (b) of this subsection, financing contracts and contracts for credit enhancement entered into under the limitations set forth in this chapter shall not constitute a debt or the contracting of indebtedness under RCW 39.42.060 or any other law limiting debt of the state. It is the intent of the legislature that such contracts also shall not constitute a debt or the contracting of indebtedness under Article VIII, section 1 of the state Constitution. Certificates of participation in payments to be made under financing contracts also shall not constitute a debt or the contracting of an indebtedness under RCW 39.42.060 if payment is conditioned upon payment by the state under the financing contract with respect to which the same relates. It is the intent of the legislature that such certificates also shall not constitute a debt or the contracting of indebtedness under Article VIII, section 1 of the state Constitution if payment of the certificates is conditioned upon payment by the state under the financing contract with respect to which those certificates relate.

(b) A financing contract made by the state on behalf of an other agency may be secured by the pledge of revenues of the other agency or other agency's full faith and credit or may, at the option of the state finance committee, include a contingent obligation by the state for payment under such financing contract. [1998 c 291 § 4; 1989 c 356 § 3.]

**Application—1998 c 291:** See note following RCW 39.94.050.

**39.94.040 State finance committee—Duties—Legislative approval required, when.** (1) Except as provided in RCW 28B.10.022, the state may not enter into any financing contract for itself if the aggregate principal amount payable thereunder is greater than an amount to be established from time to time by the state finance committee or participate in a program providing for the issuance of certificates of participation, including any contract for credit enhancement, without the prior approval of the state finance committee. Except as provided in RCW 28B.10.022, the state finance committee shall approve the form of all financing contracts or a standard format for all financing contracts. The state finance committee also may:

(a) Consolidate existing or potential financing contracts into master financing contracts with respect to property acquired by one or more agencies, departments, instrumentalities of the state, the state board for community and technical colleges, or a state institution of higher learning; or to be acquired by an other agency;

(b) Approve programs providing for the issuance of certificates of participation in master financing contracts for the state or for other agencies;

(c) Enter into agreements with trustees relating to master financing contracts; and

(d) Make appropriate rules for the performance of its duties under this chapter.

(2) In the performance of its duties under this chapter, the state finance committee may consult with representatives from the department of general administration, the office of financial management, and the department of information services.

(3) With the approval of the state finance committee, the state also may enter into agreements with trustees relating to financing contracts and the issuance of certificates of participation.

(4) Except for financing contracts for real property used for the purposes described under chapter 28B.140 RCW, the state may not enter into any financing contract for real property of the state without prior approval of the legislature.

(5) The state may not enter into any financing contract on behalf of an other agency without the approval of such a financing contract by the governing body of the other agency. [2003 c 6 § 2; 2002 c 151 § 6; 1998 c 291 § 5; 1989 c 356 § 4.]

**Application—1998 c 291:** See note following RCW 39.94.050.

**39.94.050 Financing program to be self-supporting—Payment of program expenses.** (1) It is the intent of the legislature that the financing program authorized by this chapter be self-supporting.

(2) The state treasurer is authorized to levy fees and apply specified investment earnings from time to time in amounts not to exceed sums sufficient to pay program expenses including, but not limited to, costs of issuance, and to create reserves to assure timely payment of financing contracts. The investment earnings available for this purpose represent the earnings on payments received from state and other agencies. [1998 c 291 § 1.]

**Application—1998 c 291:** "Chapter 291, Laws of 1998 is applicable to an other agency, as defined in RCW 39.94.020, for the financing of equipment on September 1, 1998, and for the financing of real estate on July 1, 2000." [1998 c 291 § 6.]

**39.94.900 Application.** The provisions of this chapter shall apply to all financing contracts entered into following July 23, 1989. [1989 c 356 § 5.]

## Chapter 39.96 RCW PAYMENT AGREEMENTS

### Sections

39.96.010	Findings and declaration.
39.96.020	Definitions.
39.96.030	Payment agreements authorized—Conditions.
39.96.040	Terms and conditions.
39.96.050	Payments—Credit enhancements.
39.96.060	Calculations regarding payment of obligations—Status of payments.
39.96.080	Authority cumulative.
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39.96.902	Severability—1993 c 273.
39.96.903	Effective date—1993 c 273.

**39.96.010 Findings and declaration.** The legislature finds and declares that the issuance by state and local governments of bonds and other obligations involves exposure to changes in interest rates; that a number of financial instruments are available to lower the net cost of these borrowings, or to reduce the exposure of state and local governments to changes in interest rates; that these reduced costs for state and local governments will benefit taxpayers and ratepayers; and that the legislature desires to provide state and local governments with express statutory authority to take advantage of these instruments. In recognition of the complexity of these financial instruments, the legislature desires that this authority be subject to certain limitations. [2004 c 108 § 1; 2000 c 184 § 1; 1995 c 192 § 1; 1993 c 273 § 1.]

**Effective date—2000 c 184:** "This act takes effect July 1, 2000." [2000 c 184 § 7.]

**Effective date—1995 c 192:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 192 § 3.]

**39.96.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Financial advisor" means a financial services or financial advisory firm:

(a) With recognized knowledge and experience in connection with the negotiation and execution of payment agreements;

(b) That is acting solely as financial advisor to the governmental entity in connection with the execution of the payment agreement and the issuance or incurring of any related obligations, and not as a principal, placement agent, purchaser, underwriter, or other similar party, and that does not control, nor is it controlled by or under common control with, any such party;

(c) That is compensated for its services in connection with the execution of payment agreements, either directly or indirectly, solely by the governmental entity; and

(d) Whose compensation is not based on a percentage of the notional amount of the payment agreement or of the principal amount of any related obligations.

(2004 Ed.)

(2) "Governmental entity" means state government or local government.

(3) "Local government" means any city, county, city transportation authority, regional transit authority established under chapter 81.112 RCW, port district, public hospital district, or public utility district, or any joint operating agency formed under RCW 43.52.360, that has or will have outstanding obligations in an aggregate principal amount of at least one hundred million dollars as of the date a payment agreement is executed or is scheduled by its terms to commence or had at least one hundred million dollars in gross revenues during the preceding calendar year.

(4) "Obligations" means bonds, notes, bond anticipation notes, commercial paper, or other obligations for borrowed money, or lease, installment purchase, or other similar financing agreements or certificates of participation in such agreements.

(5) "Payment agreement" means a written agreement which provides for an exchange of payments based on interest rates, or for ceilings or floors on these payments, or an option on these payments, or any combination, entered into on either a current or forward basis.

(6) "State government" means (a) the state of Washington, acting by and through its state finance committee, (b) the Washington health care facilities authority, (c) the Washington higher education facilities authority, (d) the Washington state housing finance commission, or (e) the state finance committee upon adoption of a resolution approving a payment agreement on behalf of any state institution of higher education as defined under RCW 28B.10.016: PROVIDED, That such approval shall not constitute the pledge of the full faith and credit of the state, but a pledge of only those funds specified in the approved agreement. [2004 c 108 § 2; 2003 c 47 § 1; 1993 c 273 § 2.]

**39.96.030 Payment agreements authorized—Conditions.** (1) Subject to subsections (2) and (3) of this section, any governmental entity may enter into a payment agreement in connection with, or incidental to, the issuance, incurring, or carrying of specific obligations, for the purpose of managing or reducing the governmental entity's exposure to fluctuations or levels of interest rates. No governmental entity may carry on a business of acting as a dealer in payment agreements. Nothing in this chapter shall be construed to provide governmental entities with separate or additional authority to invest funds or moneys relating to or held in connection with any obligations.

(2) No governmental entity may enter into a payment agreement under this chapter unless it first:

(a) Finds and determines, by ordinance or resolution, that the payment agreement, if fully performed by all parties thereto, will (i) reduce the amount or duration of its exposure to changes in interest rates; or (ii) result in a lower net cost of borrowing with respect to the related obligations;

(b) Obtains, on or prior to the date of execution of the payment agreement, a written certification from a financial advisor that (i) the terms and conditions of the payment agreement and any ancillary agreements, including without limitation, the interest rate or rates and any other amounts payable thereunder, are commercially reasonable in light of then existing market conditions; and (ii) the finding and

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determination contained in the ordinance or resolution required by (a) of this subsection is reasonable.

(3) Prior to selecting the other party to a payment agreement, a governmental entity shall solicit and give due consideration to proposals from at least two entities that meet the criteria set forth in RCW 39.96.040(2). Such solicitation and consideration shall be conducted in such manner as the governmental entity shall determine is reasonable. [2000 c 184 § 2; 1993 c 273 § 3.]

**Effective date—2000 c 184:** See note following RCW 39.96.010.

**39.96.040 Terms and conditions.** (1) Subject to subsections (2), (3), and (4) of this section, payment agreements entered into by any governmental entity may include those payment, term, security, default, remedy, termination, and other terms and conditions, and may be with those parties, as the governmental entity deems reasonably necessary or desirable.

(2) No governmental entity may enter into a payment agreement under this chapter unless:

(a) The other party to the agreement has a rating from at least two nationally recognized credit rating agencies, as of the date of execution of the agreement, that is within the two highest long-term investment grade rating categories, without regard to subcategories, or the payment obligations of the party under the agreement are unconditionally guaranteed by an entity that then has the required ratings; or

(b)(i) The other party to the agreement has a rating from at least two nationally recognized credit rating agencies, as of the date of execution of the agreement, that is within the three highest long-term investment grade rating categories, without regard to subcategories, or the payment obligations of the party under the agreement are unconditionally guaranteed by an entity that has the required ratings; and

(ii) The payment obligations of the other party under the agreement are collateralized by direct obligations of, or obligations the principal and interest on which are guaranteed by, the United States of America, that (A) are deposited with the governmental entity or an agent of the governmental entity; and (B) maintain a market value of not less than one hundred two percent of the net market value of the payment agreement to the governmental entity, as such net market value may be defined and determined from time to time under the terms of the payment agreement.

(3) No governmental entity may enter into a payment agreement with a party who qualifies under subsection (2)(a) of this section unless the payment agreement provides that, in the event the credit rating of the other party or its guarantor falls below the level required by subsection (2)(a) of this section, such party will comply with the collateralization requirements contained in subsection (2)(b) of this section.

(4) No governmental entity may enter into a payment agreement unless:

(a) The notional amount of the payment agreement does not exceed the principal amount of the obligations with respect to which the payment agreement is made; and

(b) The term of the payment agreement does not exceed the final term of the obligations with respect to which the payment agreement is made. [1993 c 273 § 4.]

**39.96.050 Payments—Credit enhancements.** (1) Subject to any covenants or agreements applicable to the obligations issued or incurred by the governmental entity, any payments required to be made by the governmental entity under a payment agreement entered into in connection with the issuance, incurring, or carrying of those obligations may be made from money set aside or pledged to pay or secure the payment of those obligations or from any other legally available source.

(2) Any governmental entity may enter into credit enhancement, liquidity, line of credit, or other similar agreements in connection with, or incidental to, the execution of a payment agreement. The credit enhancement, liquidity, line of credit, or other similar agreement may include those payment, term, security, default, remedy, termination, and other terms and conditions, and may be with those parties, as the governmental entity deems reasonably necessary or desirable. [1993 c 273 § 5.]

**39.96.060 Calculations regarding payment of obligations—Status of payments.** (1) Subject to any covenants or agreements applicable to the obligations issued or incurred by the governmental entity, if the governmental entity enters into a payment agreement with respect to those obligations, then it may elect to treat the amounts payable from time to time with respect to those obligations as the amounts payable after giving effect to the payment agreement for the purposes of calculating:

(a) Rates and charges to be imposed by a revenue-producing enterprise if the revenues are pledged or used to pay those obligations;

(b) Any taxes to be levied and collected to pay those obligation[s]; and

(c) Payments or debt service on those obligations for any other purpose.

(2) A payment agreement and any obligation of the governmental entity to make payments under the agreement in future fiscal years shall not constitute debt or indebtedness of the governmental entity for purposes of state constitutional and statutory debt limitation provisions if the obligation to make any payments is contingent upon the performance of the other party or parties to the agreement, and no moneys are paid to the governmental entity under the payment agreement that must be repaid in future fiscal years. [1993 c 273 § 6.]

**39.96.080 Authority cumulative.** The powers conferred by this chapter are in addition to, and not in substitution for, the powers conferred by any existing law, and the limitations imposed by this chapter do not directly or indirectly modify, limit, or affect the powers conferred by any existing law. [1993 c 273 § 8.]

**39.96.900 Liberal construction—1993 c 273.** This chapter shall be liberally construed to effect its purposes. [1993 c 273 § 9.]

**39.96.901 Captions not law—1993 c 273.** Captions used in this chapter do not constitute any part of the law. [1993 c 273 § 10.]

**39.96.902 Severability—1993 c 273.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 273 § 11.]

**39.96.903 Effective date—1993 c 273.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]. [1993 c 273 § 13.]

**Chapter 39.98 RCW  
SCHOOL DISTRICT CREDIT  
ENHANCEMENT PROGRAM**

Sections

39.98.010	Finding—School district debt obligation not removed.
39.98.020	Definitions.
39.98.030	Bonds guaranteed by full faith, credit, and taxing power of the state—Reference to chapter on face of bond conclusively establishes guaranty.
39.98.040	Certificate issued by state treasurer evidence of guaranty—Limitations on issuance of guaranteed bonds—Fees.
39.98.050	Debt service payments—Notifications upon nonpayment—Payments by state treasurer—Repayment.
39.98.060	Reimbursement of state-paid debt service payments—Interest and penalties—Legal actions—Revision of collection of taxes to meet obligations.
39.98.070	Appropriation required.
39.98.080	Adoption of rules.
39.98.900	Contingent effective date—1999 c 273.

**39.98.010 Finding—School district debt obligation not removed.** The legislature finds that implementation of the credit enhancement program provided for in this chapter can provide substantial savings to the taxpayers of the state of Washington with minimal cost or risk to the state government. The guaranty provided by pledging the credit of the state to the payment of voter-approved school district general obligation bonds will encourage lower interest rates, and therefore lower taxes, for such bonds than school districts alone can command, despite the excellent credit history of such obligations. Any such guarantee does not remove the debt obligation of the school district and is not state debt. [1999 c 273 § 1.]

**39.98.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bond" means any voted general obligation bond issued by a school district, holding a certificate issued pursuant to this chapter for such a bond.

(2) "Credit enhancement program" means the school district bond guaranty established by this chapter.

(3) "General obligation bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a district that constitutes an indebtedness within the meaning of any applicable constitutional or statutory debt limitations.

(4) "Paying agent" means the paying agent selected, from time to time, for a bond issue pursuant to state law.

(5) "Refunding bond" means any general obligation bond issued by a district for the purpose of refunding its outstanding general obligation bonds.

(6) "School district" or "district" means any school district existing now or later under the laws of the state. [1999 c 273 § 2.]

**39.98.030 Bonds guaranteed by full faith, credit, and taxing power of the state—Reference to chapter on face of bond conclusively establishes guaranty.** (1)(a) The full faith, credit, and taxing power of the state is pledged to guarantee full and timely payment of the principal of and interest on bonds as such payments become due. However, in the event of any acceleration of the due date of the principal by reason of mandatory redemption or acceleration resulting from default, the payments guaranteed shall be made in the amounts and at the times as payments of principal would have been due had there not been any acceleration.

(b) This guaranty does not extend to the payment of any redemption premium.

(c) Reference to this chapter by its title on the face of any bond conclusively establishes the guaranty provided to that bond under the provisions of this chapter.

(2)(a) The state pledges to and agrees with the owners of any bonds that the state will not alter, impair, or limit the rights vested by the credit enhancement program with respect to the bonds until the bonds, together with applicable interest, are fully paid and discharged. However, this chapter does not preclude an alteration, impairment, or limitation if full provision is made by law for the payment of the bonds.

(b) Each district may refer to this pledge and undertaking by the state in its bonds.

(3) Only validly issued bonds issued after January 1, 2000, may be guaranteed under this chapter. [1999 c 273 § 3.]

**39.98.040 Certificate issued by state treasurer evidence of guaranty—Limitations on issuance of guaranteed bonds—Fees.** (1)(a) Any district, by resolution of its board of directors, may request that the state treasurer issue a certificate evidencing the state's guaranty, under this chapter, of its bonds.

(b) After reviewing the request, if the state treasurer determines that the district is eligible under rules adopted by the state finance committee, the state treasurer shall promptly issue the certificate as to specific bonds of the district and provide it to the requesting district.

(c)(i) The district receiving the certificate and all other persons may rely on the certificate as evidencing the guaranty for bonds issued within one year from and after the date of the certificate, without making further inquiry during that year.

(ii) The certificate of eligibility is valid for one year even if the state treasurer later determines that the school district is ineligible.

(2) Any district that chooses to forego the benefits of the guaranty provided by this chapter for a particular issue of bonds may do so by not referring to this chapter on the face of its bonds.

(3) Any district that has bonds, the principal of or interest on which has been paid, in whole or in part, by the state under this chapter, may not issue any additional bonds guaranteed by this chapter until:

(a) All payment obligations of the district to the state under the credit enhancement program are satisfied; and

(b) The state treasurer and the state superintendent of public instruction each certify in writing, to be kept on file by the state treasurer and the state superintendent of public instruction, that the district is fiscally solvent.

(4) The state finance committee may establish by rule fees sufficient to cover the costs of administering this chapter. [1999 c 273 § 4.]

**39.98.050 Debt service payments—Notifications upon nonpayment—Payments by state treasurer—Repayment.** (1)(a) The county treasurer for each district with outstanding, unpaid bonds shall transfer money sufficient for each scheduled debt service payment to its paying agent on or before any principal or interest payment date for the bonds.

(b) A county treasurer who is unable to transfer a scheduled debt service payment to the paying agent on the transfer date shall immediately notify the paying agent and the state treasurer by:

(i) Telephone;

(ii) A writing sent by facsimile or electronic transmission; and

(iii) A writing sent by first class United States mail.

(2) If sufficient funds are not transferred to the paying agent as required by subsection (1) of this section, the paying agent shall immediately notify the state treasurer of that failure by:

(a) Telephone;

(b) A writing sent by facsimile or electronic transmission; and

(c) A writing sent by first class United States mail.

(3)(a) If sufficient money to pay the scheduled debt service payment have not been so transferred to the paying agent, the state treasurer shall, forthwith, transfer sufficient money to the paying agent to make the scheduled debt service payment.

(b) The payment by the state treasurer:

(i) Discharges the obligation of the issuing district to its bond owners for the payment, but does not retire any bond that has matured. The terms of that bond remain in effect until the state is repaid; and

(ii) Transfers the rights represented by the general obligation of the district from the bond owners to the state.

(c) The district shall repay to the state the money so transferred as provided in this chapter. [1999 c 273 § 5.]

**39.98.060 Reimbursement of state-paid debt service payments—Interest and penalties—Legal actions—Revision of collection of taxes to meet obligations.** (1) Any district that has issued bonds for which the state has made all or part of a debt service payment shall:

(a) Reimburse all money drawn by the state treasurer on its behalf;

(b) Pay interest to the state on all money paid by the state from the date that money was drawn to the date the state is repaid at a rate to be prescribed by rule by the state finance committee; and

(c) Pay all penalties required by this chapter.

(2)(a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any

prior draws by the district on the state, market interest and penalty rates, and the cost of funds or opportunity cost of investments, if any, that were required to be borrowed or liquidated by the state to make payment on the bonds.

(b) The state treasurer may, after considering the circumstances giving rise to the failure of the district to make payment on its bonds in a timely manner, impose on the district a penalty of not more than five percent of the amount paid by the state pursuant to its guaranty for each instance in which a payment by the state is made.

(3)(a)(i) If the state treasurer determines that amounts obtained under this chapter will not reimburse the state in full within one year from the state's payment of a district's scheduled debt service payment, the state treasurer may pursue any legal action, including mandamus, against the district to compel it to meet its repayment obligations to the state.

(ii) In pursuing its rights under (a)(i) of this subsection, the state shall have the same substantive and procedural rights as would a holder of the bonds of a district. If and to the extent that the state has made payments to the holders of bonds of a district under RCW 39.98.050 and has not been reimbursed by the district, the state shall be subrogated to the rights of those bond holders.

(iii) The state treasurer may also direct the district and the appropriate county officials to restructure and revise the collection of taxes for the payment of bonds on which the state treasurer has made payments under this chapter and, to the extent permitted by law, may require that the proceeds of such taxes be applied to the district's obligations to the state if all outstanding obligations of the school district payable from such taxes are fully paid or their payment is fully provided for.

(b) The district shall pay the fees, expenses, and costs incurred by the state in recovering amounts paid under the guaranty authorized by this chapter. [1999 c 273 § 6.]

**39.98.070 Appropriation required.** In order to effect the provisions of Article VIII, section 1(e) of the state Constitution, Senate Joint Resolution No. 8206, the legislature shall make provision for such amounts as may be required to make timely payments under the state school district credit enhancement program under this chapter in each and every biennial appropriations act. [1999 c 273 § 7.]

**39.98.080 Adoption of rules.** The state finance committee may adopt, under chapter 34.05 RCW, all rules necessary and appropriate for the implementation and administration of this chapter. [1999 c 273 § 8.]

**39.98.900 Contingent effective date—1999 c 273.** This act takes effect January 1, 2000, if the proposed amendment to Article VIII, section 1 of the state Constitution, guaranteeing the general obligation debt of school districts, is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety. [1999 c 273 § 10.]

**Reviser's note:** 1999 Senate Joint Resolution No. 8206 was approved at the November 1999 general election. See Article VIII, section 1 and Amendment 78 of the state Constitution.